

# Regulatory Impact Statement

## **Options for Expediting RMA Processes for the Provision of Temporary Accommodation and other Specified Activities 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 aimed at speeding up the provision of temporary accommodation and other facilities and works required to ensure a timely response to, and recovery from, issues arising out of the Canterbury Earthquake of 4 September 2010 and following aftershocks.

This RIS was prepared in the days immediately following the substantial earthquake aftershock of 22 February 2011. The analysis therefore reflects only the limited, coarse, preliminary estimates of damage and costs available, and limited consultation (given the closure of local authority offices and diversion of local authority staff onto response work). It is known that the issues following the earthquake of 4 September 2010 have been exacerbated by the event of 22 February 2011 and that damage is far more serious and widespread within Christchurch City.

This RIS has been developed in the knowledge that the information available does not provide the full and final details of the degree and extent of damage, the number persons and businesses displaced, or the comprehensive range of works that will be required to assist in restoring Christchurch. 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 specific activities of a temporary nature (including temporary accommodation) to be made permitted activities despite the provision of any RMA plan, but only in areas identified by the Crown (including the Department of Building and Housing) and Canterbury local authorities. 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

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## 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, and to a lesser degree, foundation support failure with consequential land and building damage.
- 1.2 A substantial aftershock (6.3 on the Richter scale) on 22 February 2011 caused significant further damage particularly in Christchurch and Lyttleton. Although, full details of the damage caused by the 22 February event are currently unavailable, indicative preliminary modelling suggests the whole of the eastern half of Christchurch City has been affected by liquefaction (see diagrams Appendix 1). It appears that thousands of homes are seriously damaged, and between 25 and 33 percent of the buildings in the Christchurch central business district are damaged beyond economic repair will need to be demolished or rebuilt. Significant land stability problems (slips and subsidence) have also occurred around the hill suburbs of Mt Pleasant, Sumner and Redcliffs with a number of homes being destroyed or rendered uninhabitable.
- 1.3 Early estimates following the Canterbury Earthquake and following aftershocks (including the event of 22 February 2011) indicate that as many as 100,000 homes will need repair to make them safe to inhabit, with some 10,000 homes needing to be rebuilt. As a result, more than 10,000 people have been made homeless. More than 1,000 commercial buildings will also need to be demolished and rebuilt. One week on from the event of 22 February 2011, some 50,000 people had departed from Christchurch on flights, with a further 20,000 expected to leave by 6 March 2011.
- 1.4 Some pressure on the need to find temporary accommodation for those who cannot live in their homes is being met through residents staying with family or friends in Christchurch or other centres in the short term (the next few weeks). However it is expected that the issue of providing suitable accommodation will extend beyond the short term.
- 1.5 Residents and businesses will continue to be displaced while the act of demolishing, repairing, rebuilding, or replacing severely damaged buildings takes place.
- 1.6 Amongst buildings in urban areas of Christchurch that will need to be demolished is a range of buildings that would otherwise have been able to provide for accommodation or other activities for persons displaced from other areas (e.g. the Hotel Grand Chancellor). In the short to medium term (anticipated until after winter 2011 or longer), alternative sites need to be provided for to allow for temporary accommodation and other activities (including businesses).
- 1.7 Space is also required for activities (other than residential accommodation) associated with earthquake response and recovery efforts. For the purpose of options analysed in this RIS, depots or other storage facilities means transport, tradesperson, service providers or contractors depots incidental to any construction work within the purpose of CERRA, including land and buildings which are used for the receipt, delivery, transit and storage of goods or services, equipment, materials, machinery and vehicles and debris or waste.

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

- 1.8 Accommodation of a temporary nature needs to be provided for those rendered homeless by the earthquake until replacement permanent accommodation can be built

or found. Similarly businesses and other activities may need to find alternative locations to recommence operations until their buildings are repaired or replaced.

- 1.9 In a variety of instances the most suitable space for the temporary location or relocation of residents, businesses and recovery support activities are likely to be urban open spaces such as parks and reserves. In other instances, some buildings may need to be put to uses different to that for which they were built.
- 1.10 Current provisions in plans prepared under the Resource Management Act 1991 (RMA) did not anticipate the nature or scale of disruption caused by the Canterbury Earthquake and following aftershocks.
- 1.11 Resource consents are likely to be required to locate temporary activities in areas where RMA plans did not anticipate them in order to avoid being in breach of the RMA or the relevant RMA plan.
- 1.12 Having to obtain a resource consent for temporary activities (including accommodation) will result in delays, and possibly additional costs, at a time residents and businesses need quick action to recover and minimise disruption and adverse effects on health and wellbeing. It is important unnecessary restrictions on the creation and placement of temporary activities are removed.
- 1.13 While the state of emergency following the aftershock of 22 February 2011 remains in place emergency powers under the Civil Defence and Emergency Management Act 2002 and RMA effectively mean restrictions on the use of land (and other resources) that would have hampered the earthquake response do not apply (section 330B of the RMA). However, such an ability to override the restrictions only applies while the state of emergency remains in place and does not entirely remove the need to obtain requisite resource consents after the event.

**Problem Scale**

- 1.14 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.
- 1.15 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:

<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.

- 1.16 Experience prior to the event of 22 February 2011 indicated that resource consents were being required to locate such activities as site offices, storage depots and construction vehicle parking facilities in areas such as local reserves and parks. This was contributing to costs and delays in getting some 4 September 2010 earthquake recovery operations underway.
- 1.17 Since the 22 February 2011 aftershock, the need for more activities, including temporary accommodation, to be located in areas such as parks and reserves appears as though it will be both greater, and more urgent. Potentially hundreds or thousands of people will be requiring shelter in the form of temporary residential accommodation before the colder, wetter, weather of autumn and winter hits Canterbury.

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

- 1.18 The Civil Defence and Emergency Management Act 2002 and RMA provide emergency powers while a state of emergency has been declared and is in place. This can be used to temporarily override normal RMA plan restrictions with regard to the use of land (and other resources) or buildings. A national state of emergency was declared on 23 February 2011 was expected to expire on 7 March 2011. It is noted that even if the state of emergency was extended by several weeks, the damage to buildings in Christchurch will take much longer than that to repair.
- 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 OICs can provide for the exemption, modification or extension of statutory provisions.
- 1.20 On 24 February the Ad-hoc Cabinet Committee on Canterbury Earthquake Recovery (ACE), with Power to Act, agreed to amend the Canterbury Earthquake (Resource Management Act) Order 2010 to extend timeframes for provisions that had expired, including a relaxing of duties under the RMA for a local authority to observe and enforce its plan.

## **2.0 Objectives**

- 2.1 To ensure that barriers or restrictions on the placement of temporary activities (including providing for temporary accommodation and business activities) are removed following the Canterbury Earthquake and following aftershocks (including the event of 22 February 2011).

2.2 The removal of restrictions must be consistent with the purpose of CERRA including facilitating the response to the Canterbury Earthquake and enabling the relaxation or suspension of provisions in enactments that may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the Canterbury Earthquake.

### 3.0 Assessment criteria for options

3.1 The options considered in this RIS have been assessed against the following criteria. The first criterion, enabling the timely provision of temporary activities, is the priority for any action taken. The subsequent four criteria are not weighted and their relative importance depends on judgement in each case. Assessment criteria include:

- enable timely provision of temporary activities
- provide certainty for those requiring (or benefiting from) the use of temporary activities (including applicants)
- provide certainty for those who may be affected by the placement of temporary activities
- ensure local authorities can still manage activities in such a way as to adequately avoid, remedy or mitigate adverse effects on the environment
- preserve opportunities for public participation, where possible, under the RMA.

### 4.0 Regulatory impact analysis

4.1 Four options have been identified to achieve the objective:

- Option 1: An OIC to permit certain specified activities in specially identified areas (the preferred option).
- Option 2: Rely on existing RMA plan and resource consenting processes (i.e. “do nothing”)
- Option 3: Rely on emergency works provisions of the Civil Defence and Emergency Management Act 2002 and RMA
- Option 4: Rely on provisions of the existing Canterbury Earthquake (Resource Management Act) Order 2010 once these have been extended

#### ***Option 1: An OIC to permit specified activities in specially identified areas***

4.2 This option would see a new OIC prepared which would specify certain activities listed in a schedule to the order to be considered as permitted activities under the relevant local authority’s RMA plans if that activity was located in a particular location.

4.3 For temporary accommodation, the areas in which it would be permitted would be identified by the Department of Building and Housing<sup>1</sup> in consultation with the local authority within whose area the accommodation is to be located.

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<sup>1</sup> DBH have developed criteria for potential temporary housing areas that include the avoidance of various hazards, being clear of damage, accessibility, and availability for immediate use.

- 4.4 For other temporary activities (depots, storage facilities, sanitary and ablution facilities, emergency medical facilities, and other structures necessary to respond in a timely manner to urgent circumstances resulting from the Canterbury earthquake), the areas in which these activities are to be permitted would be determined and identified by the local authority in whose area the activities are to be located.
- 4.5 To provide certainty and awareness of the locations where the specified activities are allowed to take place as permitted activities, public notice will be given through the relevant local authority website, written notice signposted on the site concerned, and in local newspapers.
- 4.6 Temporary activities located outside the identified areas would remain subject to normal RMA plan and resource consent requirements, and for the removal of any doubt, subject to enforcement provisions linked to section 17 of the RMA (duty to avoid, remedy or mitigate adverse effects).

### *Benefits*

- Enables temporary activities (including temporary accommodation) to be established quickly in specific areas.
- Provides a degree of flexibility in use as sites can be identified and uses changed quickly as needs change.
- Provides certainty as to where temporary activities can and cannot be located, and thereby some means of managing environment effects by directing such activities away from areas that are not suitable.
- Provides a measured enforcement capability to ensure individuals or parties do not locate their activities in places that are not suitable for temporary activities (including accommodation) and which may place their (or others') health and wellbeing at risk.

### *Costs / Limitations*

- Effectively removes regular environmental management controls that safeguard the amenity, character, and people's enjoyment of areas such as parks and reserves where these have been identified for use for temporary activities.
- No formal opportunity for public participation in respect of deciding where temporary activities are located. As there are no appeal rights, adversely affected parties can only express opposition through judicial reviews of decisions made in respect of identifying areas for temporary activities and the form of the notice.

### ***Option 2: Rely on existing RMA plan provisions and consenting processes***

- 4.7 Under this option temporary activities would be subject to, and expected to comply with, the provisions of the relevant local authority RMA plan. If the activity could not meet the performance standards specified in the plan to be a permitted activity a resource consent would be required (which may or may not be publicly notified depending on circumstances). Normal enforcement powers under the RMA would

continue to apply in respect of activities that required a resource consent, but which did not obtain one.

#### *Benefits*

- Provides strong environmental management safeguards that help preserve the character, amenity and people's enjoyment of areas such as parks and reserves.
- Enables a high degree of public participation in decisions on where temporary activities can be located (either through plan change or notified resource consent processes) such that the risk of judicial review is low (note that the provisions of the RMA effectively prohibit judicial review where an ability to appeal a decision to the Environment Court is still available).

#### *Costs / Limitations*

- Likely to result in potentially lengthy delays and add costs that will adversely impact on the ability to provide temporary accommodation in a timely fashion or add to delays in the performance of some recovery tasks.

#### ***Option 3: Rely on emergency powers under CDEM and the RMA***

4.8 Under this option the use of land for temporary activities, including accommodation, would be reliant upon a state of emergency being in force (thus invoking section 330B of the RMA which allows contravention of sections in the RMA restricting the use of land while a state of emergency is in place), or the temporary activity being classified as an "emergency work" under section 330 of the RMA.

#### *Benefits*

- Available immediately (the state of emergency has already been declared)
- No resource consent is required in advance of activities commencing (however retrospective resource consents may be required).

#### *Costs/limitations*

- The override ability effectively only lasts for a short duration (the duration of the state of emergency, or as long as the temporary activity can be considered an emergency work). Beyond that time normal RMA plan compliance and resource consent requirements need to be met.
- It is doubtful that some types of recovery works would meet the case law definition of emergency works (in terms of being carried out to address an immediate or urgent risk) under the RMA.
- Resource consents may still be required after the emergency temporary works are carried out (although the timeframe to apply for these may be extended by the Canterbury Earthquake (Resource Management Act) Order 2010).
- Less flexible in terms of land uses being able to be changed quickly in response to changing needs.

#### **Option 4: Rely on provisions of the existing Canterbury Earthquake (Resource Management Act) Order 2010**

4.9 This option relies on the existing Canterbury Earthquake (Resource Management Act) Order 2010 provisions relating to the relaxation of RMA provisions concerning section 84 duties of local authorities to monitor and enforce their own plans being extended.

##### *Benefits*

- Provisions are already contained within an existing OIC which, although expired, are to be re-invoked (a separate OIC has been approved that will do this).

##### *Costs/limitations*

- Clause 10 of the Canterbury Earthquake (Resource Management Act) Order 2010 does not actually waive the enforcement of RMA plans and only relaxes the duty to enforce them “to the extent that is practicable for the local authorities to fulfil those duties...”. Therefore, if a temporary activity does not comply with the plan, there is an expectation that the plan will be enforced unless it is impractical to do so.
- Provides little transparency or certainty for those undertaking activities or those who may be affected by those activities as to whether an activity is able to operate in a particular area or, if not, whether enforcement action will be taken.

## **5.0 Consultation**

5.1 The following departments have been consulted: Treasury, Ministry of Justice, Department of Building and Housing, Department of Conservation and Department of Internal Affairs,

5.2 As required by CERRA, consultation with the Canterbury Earthquake Recovery Commission on the proposed options is scheduled for 3 March 2011.

## **6.0 Conclusions and recommendations**

6.1 The table below summarises the discussion in section 3 above and shows how well each of the options is considered to meet the criteria associated with the objective relative to the status quo. In the table below, “+” represents an improvement on the status quo, “0” means the option is neutral in relation to the status quo, and “-” represents a position that is less favourable than the status quo.



Issue:  Options to allow temporary activities to be undertaken in a timely manner	Objectives				
	Timeliness	Certainty for those requiring (or benefiting from) the use of temporary activities	Certainty for those affected by placement of activities	Avoid, remedy or mitigate adverse effects on the environment	Preserve opportunities for public participation
Option 1: An Order in Council to permit certain specified activities in specially identified areas	+	+	+	0	-
Option 2: Rely on existing RMA plan and resource consenting processes (i.e. "do nothing")	0	0	0	0	0
Option 3: Rely on emergency works provisions of the Civil Defence and Emergency Management Act 2002 and RMA	+	-/0	-	0	-
Option 4: Rely on provisions of the existing Canterbury Earthquake (Resource Management Act) Order 2010 once these have been extended	-	-	-	-	-

6.2 The preferred option for an OIC to allow temporary activities (including accommodation) specified in a schedule attached to that OIC to be deemed permitted activities under the RMA provided those activities are only located in areas identified by the Department of Building and House or the relevant local authority (Option 1).

6.3 Proceeding with Option 1 could result in a time saving of at least 50 working days (for those applications that would have been notified), and 20 working days where a resource consent was required but the application did not need to be notified.

## **7.0 Implementation**

- 7.1 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.
- 7.2 It is acknowledged that there is a risk that temporary accommodation may still be required after the OIC expiry date. Should this occur an option exists for a resource consent to be applied for before the expiry date to ensure technical compliance with the RMA and relevant plans after that date.
- 7.3 The Department of Conservation is proposing an OIC that will allow the use of reserves for temporary activities of the same type and nature as being proposed in the OIC that is the preferred option in this RIS. The Reserves Act 1977 OIC would effectively remove restrictions under that Act or a reserve management plan that could have prevented, limited, or delayed the use of reserves for temporary activities (including temporary accommodation).
- 7.4 The combined effect of 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.

## **8.0 Monitoring, evaluation and review**

- 8.1 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 allowing the timely provision of temporary accommodation and facilitating other temporary activities required for recovery work, and to determine the level of community concern over the use and effect of the OIC.
- 8.2 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.
- 8.3 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.

## Appendix 1: EQC Preliminary indicative land damage map (24 February 2011)

The following diagrams are preliminary assessments only. They were made from grid flyovers rather than from on-site geotechnical investigation and should therefore be treated as indicative only.

Extent of liquefaction from 4 September 2010. Orange = major liquefaction. Yellow = minor / trace / isolated small liquefaction areas.



Extent of liquefaction from 22 February 2011. Preliminary indicative land damage map. Orange = major liquefaction. Yellow = minor / trace / isolated small liquefaction areas.

