



6 May 2011

Sir John Hansen  
Convenor  
Canterbury Earthquake Recovery Review Panel  
c/- Canterbury Earthquake Recovery Authority  
Private Bag 4999  
**CHRISTCHURCH 8140**

Dear Sir John

## **Canterbury Earthquake (Resource Management Act Port of Lyttelton Recovery) Order 2011**

### **Proposal**

1. The Canterbury Earthquake Recovery Review Panel is being asked to consider a proposal for an Order in Council (the Order) that will provide for reclamation work at the Port of Lyttelton to be classified as a controlled activity under the Resource Management Act 1991 (RMA) with the matters over which control is retained specified in the Order. Resource consent applications for the reclamation would not be publicly notified.
2. The Order also seeks to reduce the council's time within which to process consents from 20 to five working days to further streamline the non-notified resource consent process.
3. The Order will require the applicant to consult with specific stakeholders prior to the application being lodged and provide information in their application on the consultation undertaken, the issues raised and how they have responded to these matters.
4. The effect of the Order will be that there will be no submission process, public hearing or rights of appeal to the Environment Court, except on the part of the applicant. The Order also removes the ability for persons (other than councils) to take enforcement action.
5. A draft of the proposed Order is attached as Appendix 1 to this letter.

## Background

6. Section 71 of the Canterbury Earthquake Recovery Act 2011 (the Act) enacted on 18 April 2011 enables the Governor-General to make an Order in Council modifying any enactment on the recommendation of the Minister responsible for the Act if reasonably necessary or expedient for the purpose of the Act.
7. The infrastructure at the Port of Lyttelton has been severely and extensively damaged by the February 22nd earthquake and subsequent aftershocks. Of the land area of 14ha behind Cashin Quay wharves, 2ha has become immediately unusable and the full 14ha will require total reconstruction. The Lyttelton Port Company (LPC) consider it will take between three to five years to restore to previous levels of service. In order to effect the necessary repairs to the Port without impacting on operational effectiveness the Port needs to reclaim 10ha of additional land. It proposes to do this by using suitable waste from the wider City, supplemented by the Port's own quarry material where required, and will provide for permanent waste disposal.
8. The reclamation work proposed by the Port will assist with their own recovery and the wider City's recovery by providing for the disposal of waste and restoring key infrastructure that is important to the Christchurch economy, including immediate and long term business and employment opportunities.
9. The need to dispose of waste materials from the Christchurch urban area to allow for rebuilding, and the restoration of key infrastructure is considered urgent in nature and needs to be progressed without any undue delay.
10. Debris Taskforce analysis indicates there are significant cost savings for Christchurch of between \$59 million to \$120 million (volume and price dependent) from sending rubble direct from demolition sites to the Port's proposed reclamation, as it would be accepted free of charge. This is based on a total volume of 4 million tonnes with an estimated 25% coming direct to Lyttelton.
11. The Order proposes to speed up the reclamation work by removing the requirement for the notification of resource consent applications under the RMA and to provide for the reclamation work at the Port of Lyttelton as a controlled activity with the matters over which control is retained specified in the Order. Generally, applications for controlled activities under the RMA cannot be declined.
12. The Order also seeks to reduce the time within which councils have to process consents from 20 to five working days to further streamline the non-notified resource consent process.

13. The Order will require the applicant to consult with stakeholders (including Te Runanga o Ngai Tahu) prior to the application being lodged and provide information in their application on the consultation undertaken, the issues raised and how they have responded to these matters.
14. The effect of the Order will be that there will be no submission process, public hearing or rights of appeal to the Environment Court, except on the part of the applicant. The Order also removes the ability for persons (other than councils) to take enforcement action.
15. We consider that enabling the expedited recovery and repair of the Port of Lyttelton, including the reclamation work, is consistent with the purposes of the Canterbury Earthquake Recovery Act 2011 in respect to:
  - a. Section 3(d): Enabling a focussed, timely, and expedited recovery
  - b. Section 3(f); to facilitate, coordinate and direct the planning, rebuilding and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property
  - c. Section 3(g) to restore the social, economic, cultural and environmental well-being of greater Christchurch communities.

## **Policy Objective**

16. The policy objective to be achieved through the Order is to ensure that RMA resource consent application processes do not present undue delays or costs to LPC undertaking its urgent recovery works, and to aid and expedite the restoration of the social, economic, cultural and environmental well-being of greater Christchurch.
17. The Port of Lyttelton is the main deep-water port in the South Island providing a vital link in international trade routes and transport. The Port acts as a conduit for economic activity playing an essential role in Canterbury's economy, providing a gateway for a majority of the regions trade.
18. The infrastructure at the Port of Lyttelton has been severely and extensively damaged by the February 22nd earthquake and subsequent aftershocks. LPC estimate they will need to reconstruct approximately 14ha of container terminal paving at least twice over the next three to five years due to ongoing settlement in order to restore the Port to pre-September 2010 levels of service
19. In order to effect the necessary repairs to the Port a 10ha reclamation is required as soon as possible so recovery works can be undertaken without impinging upon existing operations. The 10ha reclamation at the eastern seaward end of the current container terminal will also provide

an additional waste disposal option to assist with Christchurch City's wider recovery in the short term.

20. Under normal RMA processes the proposed 10ha reclamation requires resource consent applications to both Environment Canterbury and Christchurch City Council. The scale of the reclamation and associated environmental effects and its location would almost certainly require applications for the resource consents to be publicly notified.
21. Notified resource applications take a minimum of two to three months to process, but generally in excess of six months for more complex proposals such as what the Port is proposing. Publicly notified consents are also significantly more costly than non-notified consents.
22. Assuming LPC were to obtain the necessary consents, an additional consideration is the potential appeal process available to submitters following a decision on a notified application, which can take further six months to a year or more to resolve. As such, there is a potential for delay of between six months to two years before LPC could commence work under the required consents.
23. Lyttelton Harbour/Whakaraupō is of significance to Te Runanga o Ngāi Tahu being a place occupied by Ngai Tahu under the leadership of Te Rakiwhakaputa who had accompanied the chief Moki on the historic Nga Tahu migration to Waitaha. Of particular note are current Rapaki Ngai Tahu concerns about the Harbour relating to the effects of pollution, commercial fishing and sediment infill.
24. Lyttelton Port is within a Statutory Acknowledgement Area under the Ngāi Tahu Claims Settlement Act 1998 where the Crown has acknowledged statements by Te Runanga o Ngāi Tahu of particular cultural, historic, spiritual, and traditional association. When considering resource consent applications, consent authorities must have regard to the statutory acknowledgements when forming a view on whether Te Runanga o Ngāi Tahu is an adversely affected person. In this regard we consider it appropriate that options for expediting recovery works provide mechanisms (such as consultation requirements) through which the significance of the harbour to Te Runanga o Ngāi Tahu can be recognised.

### **Preferred Option**

25. The status quo option, that of following normal RMA consenting processes, has been discounted as imposing costs and delays of such magnitude that it will not achieve the policy objective.
26. In addition to the status quo option there are three other options:

- a. An Order in Council which provides for a non-notified controlled activity resource consent process with no public participation (except for consultation with specified parties) and no hearing or appeal rights with decision making by the council within 5 working days (the preferred option).
- b. An Order in Council which provides for a non-notified controlled activity resource consent process with public participation and no hearing or appeal rights.

This option has been discounted on the grounds that public participation will add time and impose burdens on LPC and the councils, possibly unnecessarily given the LPC has carried out public consultation on a proposal for similar reclamation works comparatively recently.

- c. An Order in Council which grants resource consent without a formal RMA application process, but with terms and conditions attached to the approval to manage environmental effects.

This option has been discounted as it would result in an overly complex and drawn out process for preparing the Order, and would offer less flexibility for LPC and Councils to negotiate a mutually acceptable set of conditions.

27. Option 'a' is favoured as it provided the necessary certainty to the port that the required resource consents will be granted subject to conditions. Use of the controlled activity status means that the precise terms and conditions do not need to be specified in the Order itself. This speeds up the preparation and drafting of the Order, and also allows greater flexibility for LPC, councils and other relevant government departments and parties (ie. DoC or Te Runanga o Ngai Tahu) to agree on a mutually acceptable set of conditions.
28. The absence of a public submission and hearing process and use targeted consultation reduces the administration and consultative burden on LPC and councils and saves time and cost.
29. The absence of a hearing and appeal process also has benefits in terms of cost and time savings for LPC and councils and increases certainty for LPC that permission to carry out works cannot be overturned.

## **Costs and Benefits – Preferred Option**

### *Benefits*

30. A controlled activity status provides greater certainty for LPC as it removes any doubt about whether an application would be granted

consent or not, which means the reclamation works could essentially start without undue delay.

31. RMA processes remain largely intact as a resource consent is still required for the Port's recovery works and councils are still able to impose and review conditions of consent to manage adverse effects of activities.
32. Controlled activity status provides certainty to LPC as to the subject matter around which conditions may be imposed, while still allowing flexibility for the actual terms and conditions themselves to be negotiated with councils.
33. There is potential time and cost savings for the applicant in commencing recovery works and any hearing or appeal process is avoided.
34. The councils will still have the ability to monitor consent conditions and take enforcement action with respect to any breaches.
35. The cost effective and timely removal of debris from the wider City will support business owners' re-establishment efforts, minimising ongoing reliance on financial support mechanisms including exposure to business continuity insurance.
36. Significant cost savings for the wider economy will be achieved by transporting waste directly from demolition sites to the reclamation and the Port accepting the waste free of charge.

#### *Costs/limitations*

37. Persons 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. This could also increase the risk of judicial review.
38. Councils may have to rely on general RMA environmental protection duties and responsibilities under sections 16 and 17 to manage some unforeseen environmental effects as there is no ability to decline the consent.

#### **Risks**

39. The proposed Order will have an impact on the principles of natural justice by removing the statutory rights for hearings and appeals. Applicants and councils will have the responsibility for identifying and addressing all adverse effects of the proposed reclamation works as the Order will remove submission and appeals rights of affected parties. To ensure some legal checks and balances remain the ability to seek judicial review is retained.

40. A reduction in public participation can reduce the quality of information available to guide the setting of appropriate resource consent conditions. This risk is mitigated by a requirement in the Order for consultation with a range of parties (including the Lyttelton Community Association, Diamond Harbour Community Association, Department of Conservation and New Zealand Historic Places Trust) prior to the lodgement of the resource consent application. LPC is also able to draw on information obtained when they consulted recently on a similar sized proposal for land reclamation at the Port to assist in the handling of coal shipments (these consents are currently before the Environment Court, but with proceedings on hold).
41. A reduction in public participation as a result of consents not being notified could reduce the ability for Te Runanga o Ngāi Tahu to input into the consent process to help protect the values they attach to the harbour and its resources. This risk is mitigated by a requirement in the proposed Order for Te Runanga o Ngāi Tahu to be consulted before the application for a consent is lodged with councils. Additionally, RMA sections 6(e) (recognising and providing for the relationship of Maori with ancestral land, water sites, waahi tapu and other taonga), 7(a) (having particular regard to kaitiakitanga) and 8 (taking into account the principles of the Treaty of Waitangi) will continue to be relevant to resource consent application processes and decisions.
42. There is a small risk that Port recovery works may still be required after the Order 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.

## **Consultation**

43. The following departments have been consulted: Department of Conservation, Department of Internal Affairs, Land Information New Zealand, Ministry of Economic Development, Ministry of Justice, Ministry of Transport, Ministry of Culture and Heritage, TPK, and Treasury. The Department of Prime Minister and Cabinet has also been informed of the Order.
44. Environment Canterbury and Christchurch City Council staff were consulted in the preparation of the Order. LPC and their lawyers, Lane Neave, have also been involved in the development of the proposed Order and are supportive of the recommended approach.

## **Publicity**

45. The Order in Council will be published in the *Gazette*. Any publicity around the proposed Order will be undertaken as part of the wider communication strategy for the Canterbury Earthquake. These

arrangements include engagement with the Canterbury Earthquake Recovery Authority, LPC, councils and other key stakeholders, as well as media announcements.

## **Conclusion**

46. We look forward to receiving your comments so that they can be taken into account. The key contact for this item of work is Vicki Barker ([vicki.barker@mfe.govt.nz](mailto:vicki.barker@mfe.govt.nz))

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kevin Currie', with a long horizontal stroke extending to the right.

**Kevin Currie**  
**Director, Environmental Protection**  
**Ministry for the Environment**