



28 February 2013

Sir John Hansen
Convenor
Canterbury Earthquake Recovery Review Panel
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Dear Sir John

Canterbury Earthquake (Local Government Act 2002 – Christchurch City 3 Year Plan) Order 2013

Proposal

1. The Canterbury Earthquake Recovery Review Panel is asked to consider the draft Canterbury Earthquake (Local Government Act 2002 – Christchurch City 3 Year Plan) Order 2013 (the draft Order).
2. The draft Order would suspend the requirement, under the Local Government Act 2002, for the Christchurch City Council (the Council) to have a Long-Term Plan (LTP) in place by 30 June 2013. The draft Order will require that the Council prepare a 3 Year Plan instead of the long-term plan. The 3 Year Plan would be similar to a LTP, except that its timeframe would be limited to three years, it would not be audited, and it may be revised to include the Council's response to any Crown and Council agreement regarding cost-sharing of horizontal infrastructure and major central city anchor projects. The draft Order would require that a pre-election report be prepared, but that the pre-election report would only report on the timeframe covered by the 3 Year Plan.
3. The draft Order is attached as Appendix 1.

Background

4. The Council is required, under the Local Government Act 2002 (LGA02), to adopt a LTP for 2013-2022 by 30 June 2013. LTPs are the chief financial forecasting, planning and accountability document for councils.
5. Due to the scale of the damage caused by the Canterbury earthquakes, the uncertainty arising from ongoing assessments of repair costs, and the fact that a cost-sharing agreement has yet to be reached, the Council is severely constrained in its ability to develop a robust LTP. In particular, it is hampered in its ability to forecast its capital and operating expenditure and sources of funding for

both the recovery and its business-as-usual operations, for the next ten years. The audit opinion on such a document would necessarily be qualified, which could increase community and market uncertainty. A lack of robust information could create business risks for the private sector, communities and individuals who are relying on the information for their own financial planning purposes. This could in turn affect the level of investment and confidence in the recovery.

6. The LTP needs to be replaced with another plan, which can:
 - provide a framework for strategic earthquake recovery decisions, without being required to report on a ten-year horizon; and
 - reflect the outcome of joint Crown and Council cost-sharing and governance arrangements.
7. The draft Order appears to be reasonably necessary to facilitate the expedient delivery of a cost-sharing agreement between Crown and Council for the asset and infrastructure rebuild of Christchurch City. This in turn would assist in restoring the economic well-being of Christchurch communities.
8. The draft Order would assist the Crown and the Council to fulfil the purposes of the Canterbury Earthquake Recovery Act 2011 (CER Act) under:
 - section 3(d) - to enable a focused, timely and expedient recovery;
 - 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; and
 - section 3(g) – to restore the social, economic, cultural, and environmental well-being of greater Christchurch communities.

Policy Objective

9. The primary Crown objective is to expedite the progress of the rebuild and recovery of greater Christchurch. In order to achieve this primary objective, the proposal contained in the draft Order has been designed to:
 - minimise the risks of uncertainty, or conflicts around financial planning for the asset and infrastructure rebuild of Christchurch City;
 - expedite focused and robust financial planning for the rebuild and recovery of Christchurch City;
 - maintain transparency, accountability and participation from the people of Christchurch;
 - conform to the purposes of the CER Act;
 - achieve administrative practicality, including a clear exit mechanism from the intervention proposed; and
 - receive the support of the Council.

Timing

10. The Council is required to adopt a LTP for 2013-2022 by 30 June 2013. To meet this timeframe, it must have a draft LTP for audit by March 2013 and for public consultation by April 2013. Until its obligations under the LGA02 are lifted by the draft Order (if progressed), the Council is legally obliged to continue to develop its LTP, including audit and public consultation. The draft Order would therefore need to come into force as soon as practicable to remove these legal obligations,

at the latest by mid March 2013. In order to achieve this timeframe, the Cabinet paper seeking authorisation to submit the Order to the Executive Council must be lodged with Cabinet office on 7 March 2013.

Preferred Option

11. In the time available given the timeframe outlined above, analysis has been limited to the two options outlined below.

Option One: Status Quo – LTP with active monitoring

12. The status quo option would require that the Council continue to develop, consult on, and adopt its 2013-2022 LTP by 30 June 2013. Officials would work closely with the Council to monitor the development of the LTP for the purpose of reducing or mitigating risks, and identifying any conflicts or inconsistencies with the funding strategy. There is no regulatory intervention.

Option Two: Order in Council to suspend the LTP requirements between June 2013 and June 2015 and require a 3 year plan to be adopted for Christchurch (preferred option)

13. Option Two proposes an Order in Council under Section 71 of the CER Act to suspend the requirement under section 93(1) of the LGA02 for the Council to have a LTP between 30 June 2013 and 30 June 2015. The requirement under section 95 of the LGA02 to prepare and adopt an annual plan for each financial year would remain.
14. This option is in alignment with the Council's passing of a resolution to support the Minister for Canterbury Earthquake Recovery and the Minister of Local Government developing an Order in Council under urgency to suspend the need for a LTP in 2013 and require a 3 Year Plan for Christchurch.
15. In order to manage the absence of a LTP, the draft Order would also require that a 3 Year Plan is adopted for Christchurch City that would focus on managing the ongoing uncertainty around financial planning for the infrastructure and asset rebuild of Christchurch City. A number of amendments through the draft Order to the requirements under the LGA02 are required to enable the Council to continue to operate effectively in the absence of a LTP and to enable most aspects of a LTP to be included in the 3 Year Plan and subsequent annual plans.
16. The 3 Year Plan would cover 2013/14 – 2015/16, would replace most aspects of the LTP, would outline a financial plan for the rebuild of Christchurch City, and would act as an annual plan for 2013/14. The 3 Year Plan would reflect the Council's response to, and implementation of, the cost-sharing agreement reached between the Crown and the Council.
17. The 3 Year Plan would provide information to the community about the Council's 3 Year Planning goals and its intended capital works programme and levels of services and would set out the Council's financial strategy, as well as updating those financial policies that need revision. The financial strategy contained in the final 3 Year Plan would reflect the outcome of the cost-sharing agreement between the Crown and the Council. The community would be able to comment on the draft 3 Year Plan through the Special Consultative Procedure, as defined in section 83 of the LGA02. It should be noted that the draft order will exempt the Council from the requirement of consulting, through a Special Consultative Procedure, on changes the Council may make to the 3 Year Plan as a result of any cost-sharing agreement reached between the Crown and the Council. This is necessary to provide the Crown and the Council with the flexibility necessary to arrive at a clear cost-sharing and governance arrangement, and permit the

Council to interpret this in a way that enables them to best manage their ongoing operations without the time delay inherent in a consultative process. The details of the cost-sharing agreement will not be available by the time the 3 Year Plan is adopted for consultation, and flexibility and expediency is required so that the Council can implement a cost-sharing arrangement, and strike rates as required by the 30 June.

18. There will be no audit requirement for the 3 Year Plan. The document available for public consultation would make it clear that the financial commitments signalled in the final document reflect the outcomes of cost-sharing arrangements between Crown and Council. These agreements will be in place by April 2013, in time for Council to strike rates for the coming year.
19. The 3 Year Plan would act as an Annual Plan for the upcoming fiscal year (2013-14), much as a LTP constitutes an annual plan in the year of its adoption. The Annual Plan adopted in June 2014 would report on the remaining two years of expenditure, under the 3 Year Plan. The Council would re-join in the standard LGA02 LTP process in 2015.
20. The Department of Internal Affairs, the Canterbury Earthquake Recovery Authority and the Council support this option. This is the recommended option.

Costs, Benefits and Risks

Option One: Status Quo – LTP with active monitoring

21. The main benefits of Option One are that it would allow for the operation of the local government accountability, planning and decision-making framework under which all councils operate. This includes full implementation of the 2010 and 2012 local government law reforms. This option would provide Christchurch residents with the opportunity to contribute to and influence the Council's long term decisions and priorities through the transparent, statutory LTP process, under which Council's are required to consult through the special consultative procedure.
22. However, the status quo option does not address the risks of the Council being unable to prepare a robust, reliable and accountable LTP that covers the ten year timeframe and the level of detail required. These risks are due to the continuing environment of uncertainty and financial pressure in Christchurch as a result of the earthquakes. Production of a LTP may distract time, resources and public attention away from the development of a permanent Crown and Council cost-sharing arrangement. If the LTP were to be produced, it would be likely to contain incorrect and misleading financial information that could be in conflict with, or inconsistent with, the shared funding strategy between the Crown and Council.
23. The status quo option also presents risks of increased costs. There may be more costs associated with managing a fundamentally unreliable LTP in an environment of continual change. Potential publication of inconsistent information about shared costs could generate public confusion and ongoing uncertainty about the plans for Christchurch's recovery, which may increase the cost of borrowing for the Council, create business risks for the private sector, and could adversely affect the level of investment into the recovery.

Option Two: Order in Council to suspend the LTP requirements between June 2013 and June 2015 and require a 3 Year Plan to be adopted for Christchurch (preferred option)

24. Option Two would provide a framework for strategic earthquake recovery decisions, without being subject to the ten-year planning horizon and the detailed requirements of the LTP. It would also reflect joint Crown and Council cost-sharing and governance arrangements.
25. Option Two best aligns with the primary Crown policy objective of expediting the progress of the rebuild and recovery of greater Christchurch. This option would reduce the risk of uncertainty and confusion that could be generated by issuing conflicting information and expedite the rebuild and recovery of Christchurch City by providing the most reliable financial planning information that can be prepared under Christchurch's special circumstances.
26. Option Two would also meet the objectives of conforming with the purposes of the CER Act and providing for public consultation through the special consultative procedure. It is supported by the Council, and would help ease the administrative difficulties associated with the requirements of a LTP process. There are no substantial costs associated with this option.
27. The key risk of Option Two is that the Council is obliged to continue to develop and consult on its 2013-2022 LTP, and incur costs accordingly, until its legal obligations are suspended under the proposed Order in Council, should it come into force. This risk would be mitigated by the Order coming into force as soon as practicable to remove these legal obligations, at the latest by mid March 2013. Another substantial risk associated with Option Two is that some sectors of the community may see the suspension of the LTP requirements as an infringement of the democratic process and that the role of the Crown in suspending the long-term planning process is "heavy-handed". However, this risk would be mitigated by the Council releasing the information that will be available from the 3 Year Plan. Under this option, the Council would also be required to issue a modified pre-election report, which would be based on the 3 Year Plan information, thereby providing electors with a tool for assessing the performance and future direction of councillors and for making electoral choices.
28. The Council would be required to maintain a transparent consultation process through the Special Consultative Procedure. However, as noted above, the Council would be exempted under the provisions of the Order from consulting on changes the Council may make to the 3 Year Plan as a result of the cost-sharing agreement reached between Crown and the Council. As noted, the details of the cost-sharing agreement will not be available by the time the 3 Year Plan is adopted for consultation, and flexibility and expediency is required so that the Council can implement the cost-sharing arrangement, and strike rates as required by 30 June 2013.

Other relevant matters

29. There are no other relevant actions underway or proposed that relate to the subject matter of the draft Order.

Consultation

30. The Cabinet policy paper proposing the draft Order was jointly prepared by the Department of Internal Affairs and the Canterbury Earthquake Recovery

Authority. The Council was consulted on, and supported, the proposals in the Cabinet paper.

31. The Treasury was consulted on the Cabinet paper. The Office of the Auditor General and the Department of Prime Minister and Cabinet have been informed.
32. The Canterbury Earthquake Recovery Authority and the Christchurch City Council were closely consulted on the draft Order.

Profile of draft Order in Council and proposed publicity

33. The proposals in the draft Order have already had some level of public profile, through media statements that have been issued by the Government and the Council. The Council has made public its resolution to support the proposals in the draft Order.
34. The Minister for Canterbury Earthquake Recovery and the Minister of Local Government may issue an additional media statement after the Governor-General has authorised the draft Order.

Conclusion

35. We look forward to receiving your recommendations so that regard can be had to them before the Minister of Local Government makes a recommendation on the draft Order.
36. The key contact for this item of work is:

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Yours sincerely



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