



9 September 2013

Sir John Hansen
Convenor
Canterbury Earthquake Recovery Review Panel
C/- Canterbury Earthquake Recovery Authority
Private Bag
Christchurch

Dear Sir John

Canterbury Earthquake (Building Act) Order 2013

Proposal

1. We seek a review by the Canterbury Earthquake Recovery Review Panel, of the proposed Canterbury Earthquake (Building Act) Order 2013 (2013 Order) under section 73 of the Canterbury Earthquake Recovery Act 2011.
2. This proposed 2013 Order will continue part of the Canterbury Earthquake (Building Act) Order 2011 (2011 Order), to enable the existing dangerous building notices issued under the 2011 Order to continue in force.
3. A copy of the proposed 2013 Order is attached.

Background

4. The 2011 Order came into force on 17 September 2011 to assist with managing the recovery in Canterbury following the major earthquakes. The Order expires on 16 September 2013. It replaced the Canterbury Earthquake (Building Act) Order 2010 which extended the powers of the greater Christchurch councils under the Building Act 2004 (Building Act) to deal with buildings that had become dangerous as a result of the Canterbury earthquakes.
5. The 2011 Order includes provisions that broaden the definition of a dangerous building. It allows greater Christchurch councils to issue a notice (referred to in this letter as an extended section 124 notice) to restrict access to buildings that are not themselves dangerous but are at risk from natural hazards including rock fall, landslip, cliff collapse or subsidence or at risk of collapsing or causing

injury or death in a less than moderate earthquake. The Order also allows notices to be issued where a building is dangerous because of earthquakes.

6. The Chief Executive of the Canterbury Earthquake Recovery Authority (CERA) also has powers to prohibit access to specified areas and buildings for the purposes of the recovery under Section 45 of the Canterbury Earthquake Recovery Act 2011 (CER Act). To date these powers have been used for commercial buildings and public spaces.

Extended dangerous building notices

7. The power to issue extended section 124 notices is the only power in the 2011 Order which is still in use in both the Port Hills, for private residential properties, and in the Waimakariri District for earthquake risks in commercial buildings.
8. As at 31 July 2013, Christchurch City Council had issued an estimated 377 extended section 124 notices to property owners in the Port Hills. Of these, post the Zoning Review decisions made by Cabinet on 15 July 2013 (yet to be announced), an estimated 234 of the properties will be Crown owned in the red zone, 140 remain privately owned in the red zone and three are in the green zone where it is feasible for the owner to mitigate the risk on an individual basis.
9. Waimakariri District Council has issued a total of 38¹ extended section 124 notices to date, for commercial buildings. In most cases some elements of the buildings posed immediate danger, for example unrestrained or unreinforced parapets. Similar at-risk commercial properties in Christchurch City are being managed by CERA under the CER Act. Waimakariri District Council estimates another 100 commercial buildings have yet to have a detailed engineering re-assessment carried out.
10. Recent geotechnical information and determinations have confirmed that the level of risk associated with the extended section 124 notices still exists in the Port Hills. The acceptance of red zone offers is likely to reduce the number of properties at risk; however it is clear that an on-going regulatory mechanism is required to deal with the risk to life from occupation of dangerous buildings.

Review of the continuation of the Order

11. Officials reviewed the need for continuation of the powers under the 2011 Order. The objectives of the powers provided through the 2011 Order are to protect the health and safety of building users in greater Christchurch and to facilitate aspects of the wider response and recovery effort after the Canterbury earthquakes.

¹ Some of these notices may since have been lifted or the buildings demolished.

12. Legal advice confirms that if the 2011 Order lapses existing extended section 124 notices will not be enforceable. The three main options considered are outlined below.

Let the order expire and existing notices lapse

13. At the time the 2011 Order was drafted, it was not considered that the existing Building Act provisions could be used to cover rock fall related to earthquake activity. Recent advice from Crown Law agrees with this interpretation. In addition, the explicit exclusion of the occurrence of earthquakes in section 121 also prevents the Waimakariri District Council from using a normal section 124 notice under the Building Act to address the risk in its damaged commercial buildings.
14. CERA has some powers to prohibit entry under section 45 of the CER Act on a case-by-case basis. The use of CERA powers for commercial buildings in Waimakariri District could be considered in line with CERA's on-going work for similar situations in Christchurch City.
15. CERA considers it is unlikely many of the residential properties in the Port Hills with extended section 124 notices would meet the criteria for a section 45 notice to prohibit entry. This would mean that people may reoccupy their houses and be subject to risk. This situation would be very uncertain for owners with extended section 124 notices once the 2011 Order expires.
16. If the 2011 Order lapses Christchurch City Council would have no legislative mechanism to restrict access to properties where there is a risk to life from earthquake related geotechnical hazards. Notices that were previously placed could no longer be enforced and councils would have to rely on people deciding not to occupy their property due to their understanding of the continuing risk. This approach could be supported by education to inform residents about the risk of returning to properties which are in danger.
17. This option is not being progressed.

Make a new Order explicitly continuing the existing powers to issue extended section 124 notices

18. Under this option, a new 2013 Order would be made enabling councils to continue to place new and enforce existing extended section 124 notices.
19. This option would provide continuity and consistency for affected home owners and protect the health and safety of building users. It would also ensure that they continue to have access to determinations if they dispute the notices on their properties, and provide a clear process for the notices to be lifted if the hazard is mitigated.
20. However, almost three years on from the earthquakes, a great deal more is understood about the risks to properties in greater Christchurch. Any new risks which arise are less likely to be directly earthquake related than they were in

2011 when the Order was made. This situation is no different to on-going risk management that councils undertake elsewhere in the country. Extending the ability for Christchurch City Council and Waimakariri District Council to place new notices would set a precedent for other territorial authorities to seek similar powers.

21. This option is not being progressed.

Make a new order to continue the existing notices only

22. Under this option, a new 2013 Order would be made and be limited to ensuring that the existing extended section 124 notices continue in force. It would not include any of the other provisions from the 2011 Order. The Building Act or the CER Act would be used as appropriate to manage any newly identified risks.
23. This option would provide continuity and consistency for affected home owners, meaning property owners' existing extended section 124 notices would remain in place to protect the health and safety of building users in greater Christchurch. It would ensure that they continue to have access to determinations and provide a clear process for the notices to be lifted.
24. While the acceptance of red zone offers is likely to reduce the number of homeowners affected, it is considered that the on-going level of risk justifies the need to retain a statutory mechanism to prevent access to those properties where an unacceptable risk has been identified. It is recognised that this is a contentious issue.
25. It is proposed that the new 2013 Order expire on 18 April 2016, to coincide with the term of the CER Act. This would provide more certainty to owners whose properties are already subject to notices under the extended section 124, both in the Port Hills and Waimakariri District. It also provides property owners time to complete any rock fall protection works they may undertake in the long term as an alternative to accepting the Crown offer.
26. This option is being progressed.

Costs and benefits

27. Almost three years on from the earthquakes, a great deal more is understood about the risks to properties in greater Christchurch. This and recent determinations have confirmed that a life risk still exist in some situations.
28. Letting the 2011 Order expire does not meet the primary objective of the Order – to protect the health and safety of building users in Canterbury – as many existing dangerous properties are unlikely to get a new notice. CERA would incur new compliance costs as each property with an extended section 124 notice would have to be assessed on a case-by-case basis to determine whether the property meets the criteria for a section 45 notice.

29. Making the proposed 2013 Order recognises that the danger still exists for property owners with section 124 notices. It meets the safety objective and provides property owners with continuity and certainty while signalling a move towards "business as usual" as any new notices would need to be placed under existing legislation.

Timing and commencement of the proposed 2013 Order and proposed publicity

30. The 2011 Order in Council expires on 16 September 2013. In this case, it is highly desirable that the proposed 2013 Order come into force on 17 September 2013. This will require a waiver of the 28-day rule and will provide property owners with extended section 124 notices issued under the 2011 Order with certainty and continuity regarding the safety their property.
31. There is significant public interest around the extended section 124 notices issued, particularly for properties on the Port Hills. Any publicity associated with the proposals in this paper will be undertaken as part of the Government's wider communications strategy on the response to the Canterbury earthquakes.
32. The Ministry will continue to provide guidance to the councils to assist them in their use of the powers in the proposed 2013 Order.

Consultation

33. CERA, Christchurch City Council and Waimakariri District Council were involved throughout the review process and the development of the proposals. The Councils are in agreement with the purpose of the proposed 2013 Order as it provides continuity and there are mechanisms to address new dangerous building situations that may emerge.
34. Selwyn District Council confirmed that from their perspective there was no need for the 2011 Order to be remade. The issues raised by Waimakariri District Council have been dealt with under the proposals made in this paper.
35. The Canterbury Earthquake Recovery Cross Party Parliamentary Forum is being consulted on the proposed 2013 Order.
36. The following agencies are being consulted on the proposed 2013 Order: Department of Internal Affairs, Ministry of Civil Defence and Emergency Management, Ministry of Justice, Ministry for the Environment, Treasury, and Land Information New Zealand. The Department of Prime Minister and Cabinet has been informed.

Legislative amendments

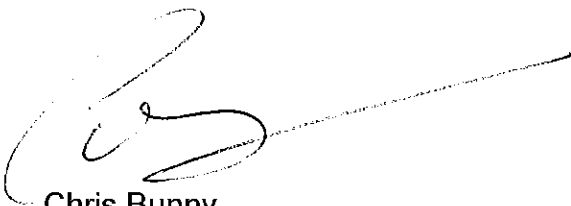
37. The 2011 Order was an interim measure to provide a mechanism for authorities to manage risk from new geotechnical hazards to buildings and to restrict access to buildings to help protect the health and safety of users of affected buildings.

38. The Building Amendment Bill (No 4) 2011, introduced in September 2011, includes a new power for territorial authorities to deal with "affected buildings" which are at risk because they are near or adjacent to dangerous buildings. This addresses part of clause 7(1)(d) in the 2011 Order. The remaining part of the clause relates to the management of natural hazards which is being considered as part of the current review of the Resource Management Act 1991.
39. Officials are currently developing proposals to amend the Building Act to provide for the management of buildings post emergencies, to address the recommendations of the Canterbury Earthquakes Royal Commission. This work will include a development of a legislative framework that could address situations where existing buildings become at risk as a result of a change in the risk profile of the land due to an event such as earthquakes, or new information about land hazards becoming available. It will involve consultation with the Ministry for the Environment, other relevant agencies and the public.

Conclusion

40. We look forward to receiving your recommendations so that regard can be had to them before the relevant Minister makes a recommendation on the proposed 2013 Order.
41. Should you have any questions about this this item of work I can be contacted on phone (04) 901 8728 or email chris.bunny@mbie.govt.nz.

Yours sincerely



Chris Bunny
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Ministry of Business, Innovation and Employment