



30 June 2014

Canterbury Earthquake Recovery Review Panel
c/- Canterbury Earthquake Recovery Authority
Private Bay 4999
Christchurch 8140

Dear Panel Members,

Proposal

1. Cabinet has agreed that an Order in Council under section 71 (Governor-General may make Orders in Council for purpose of Act) of the Canterbury Earthquake Recovery Act 2011 (CER Act) be drafted to provide a streamlined process to review the Christchurch District Plans. The draft Order in Council amends the plan review process set out in the Resource Management Act 1991 (RMA).
2. Prior to recommending the making of the Order in Council to the Governor-General, the Minister for the Environment, being the Minister responsible for administering the Resource Management Act 1991, is required under section 74 of the CER Act to:
 - a Take into account the purposes of the CER Act; and
 - b Have regard to the recommendations of the Canterbury Earthquake Recovery Review Panel
3. The Canterbury Earthquake Recovery Review Panel is asked to consider the draft Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 (the draft Order).
4. The draft Order would provide a streamlined and expedited process for the review of the Christchurch City Council's (CCC) district plans, by amending the RMA as it relates to the Christchurch district. This will enable a fully operative district plan to be achieved in a timely manner, providing certainty for recovery and future development of Christchurch.
5. The draft Order is provided as **Attachment 1**.
6. The draft Order has five parts:

6. The draft Order has five parts:
 - a General amendments to the RMA to provide for the review and replacement of existing district plans
 - b Schedule 1 which outlines the process for the preparation of the replacement district plan
 - c Schedule 2 which provides further provisions for the appointment of the hearings panel
 - d Schedule 3 which relates to the functions and powers of the hearings panel
 - e Schedule 4 which contains the "Statement of Expectations"
 - f Schedule 5 which is the form for giving public notice of a proposal.

7. The proposed process:
 - a Requires the CCC to review its existing district plans, and prepare proposals for a replacement district plan;
 - b Requires the Council to have "particular regard to" the Statement of Expectations in the preparation of the replacement district plan (agreed by the Ministers for Canterbury Earthquake Recovery and the Environment) attached as Schedule 4 to the Order;
 - c Provides for Ministerial comment on draft proposals prior to notification, which CCC must have particular regard to, and may modify proposals based on Minister's comments before they are notified;
 - d Requires proposals to be notified by CCC that will form the replacement district plan;
 - e Provides for a notification period for proposals of 30 working days;
 - f Removes the requirement to notify a summary of submissions, but continues to provide for the further submission process, where a person can comment on submissions made by others;
 - g Provides for the appointment of an independent hearings panel of at least 4 members, including a Chairperson, by the Minister for Canterbury Earthquake Recovery and Minister for the Environment, in consultation with the CCC

- h Provides the first Chairperson appointed to the hearings panel to be the Hon Sir John Hansen;
 - i Provides the Chairperson and independent hearings panel with powers similar to that of a Board of Inquiry under the RMA, including the ability to permit cross-examination;
 - j Provides for the hearings panel to consider incorporating private plan changes into the review process;
 - k Provides for the hearings panel to make final decisions on proposals;
 - l Limits the right of appeal to the High Court on points of law only; and
 - m Enables normal RMA processes to resume on completion of the replacement district plan.
8. The provisions have been prepared having regard to the provisions of the Local Government (Auckland Transitional Provisions) Act 2010, which outlines the process for consideration of the Auckland Unitary Plan¹, and the provisions for Boards of Inquiry on matters of national significance under Part 6AA of the RMA.

Background

9. The Canterbury earthquakes have dramatically changed the circumstances of many residents and businesses in Christchurch. The Christchurch rebuild is a \$40 billion opportunity that will drive decades of development and growth.
10. In order to contribute to this wider earthquake recovery effort, the CCC needs an up-to-date and effective district plan to guide land use development and influence investment decisions. In addition, the district plan needs to be operative as soon as possible. CCC and other strategic partners (Environment Canterbury, Selwyn District Council, Waimakariri District Council, Te Rūnanga o Ngāi Tahu and the Canterbury Earthquake Recovery Authority (CERA)) agree that the existing district plans need significant revision and that a streamlined process would support an efficient and timely review of the plans.
11. Christchurch City's two district plans – the Christchurch 'City Plan' and the Banks Peninsula District Plan – were developed in the mid-1990s and have been amended in an incremental way many times since. In their current form, they are not fit for purpose. They do not reflect the improvements made to the RMA over time as well as not taking into account the unique circumstances Christchurch now faces.

¹ This is a combined regional policy statement, regional plan and district plan for all of the Auckland region

12. At its meeting on 24 April 2013, the CCC resolved to seek an expedited RMA process for the review of its district plans in relation to matters not addressed by the Land Use Recovery Plan². During the preparation of the Land Use Recovery Plan³ in 2013, it became apparent that the district plans were hindering recovery. The Land Use Recovery Plan, which was approved in December 2013, included a number of changes to the district plan that could take place immediately. Action 45 in the Land Use Recovery Plan set out a range of issues to be urgently addressed and the Recovery Plan also identifies and directs a significant number of changes to the district plan.
13. The desire for an expedited process was re-confirmed by the new CCC Councillors on 28 November 2013⁴. A group of Councillors were delegated authority to agree the expedited process for the district plan review, against a set of principles to apply to any truncated process.
14. An urgent review of the district plans also reflect the need for a solid basis for the many consenting decisions that will be needed in coming years. Current insurance forecasts identify mid-2014⁵ as the beginning of a consenting peak for the residential rebuild. Without amendment the district plans will hamper the rebuild and new development, and risk capital flight with development activity being pushed out of Christchurch City. A full review also presents the opportunity to write the plans in a new structure that is modern, simple, and more user-friendly.
15. The process for reviewing the district plans under the existing RMA process does not support a focussed, timely and efficient review. Under the standard RMA process, it could take up to ten years to amend the current district plans to reflect the changed circumstances arising from the earthquakes (due to required Schedule 1 RMA processes and potential appeals to the Environment Court).

Problem definition

16. The CCC's district plans were never designed to cope with the amount of repair and rebuild necessary to recover from the earthquakes – they are commonly regarded as first generation district plans.
17. The CCC needs to review and replace the existing operative district plans. CCC is required to respond to the requirements of the Land Use Recovery Plan and the wider earthquake recovery effort as well as ensure that the district plan provides a solid basis for consenting decisions that will be needed in coming years. Without amendment, the district plans will hamper the rebuild and new development as concluded in the December 2013 report by

²Item 23

<http://resources.ccc.govt.nz/files/TheCouncil/meetingsminutes/agendas/2013/April/24thApril2013/Council24April2013ConfirmedMinutes.pdf>

³ <http://cera.govt.nz/recovery-strategy/built-environment/land-use-recovery-plan#view-the-lurp> ⁴ Item 15

http://resources.ccc.govt.nz/files/TheCouncil/meetingsminutes/agendas/2013/November/Council_28Nov2013_UnconfirmedMinutes.pdf

⁴ Item 15

http://resources.ccc.govt.nz/files/TheCouncil/meetingsminutes/agendas/2013/November/Council_28Nov2013_UnconfirmedMinutes.pdf

⁵ CCC consents forecast September 2013

the Ministry for the Environment on CCC's RMA planning and consenting functions.⁶

18. Given the potential under the RMA for a district plan review to take up to 10 years, it was necessary that a process be provided which ensures a replacement district plan is able to be made operative as soon as practicably possible, and allows for a focused, timely and expedited recovery.

Policy objective

19. In delivering a new district plan through a streamlined process, the objectives are:

- a. achieving a clear process for engagement that the community and developers understand and can take part in;
- b. producing efficiencies in time;
- c. providing certainty for the community, developers and the council;
- d. expediting Canterbury earthquake recovery;
- e. prioritising the sections of the district plan that should be given priority in the review process;
- f. ensuring integrity of the district plan; and
- g. avoiding a piecemeal approach.

20. It should provide a final plan that:

- h. is completed within the period of the CER Act;
- i. provides for a resilient future;
- j. is a quality district plan document and an holistic solution;
- k. is aligned with the purpose and principles of the RMA;
- l. gives effect to the Regional Policy Statement;
- m. achieves alignment with other territorial plans;
- n. creates an integrated whole district plan document; and
- o. generates minimal transitional periods between the current and new plan.

21. The options considered for achieving this are set out in more detail below.

Options considered

22. The assessment of options for expediting the district plan review is outlined in **Attachment 2** of this letter. This is an extract from the Regulatory Impact Statement (RIS) which can be provided if required. The options included:

⁶ Page 23 <http://www.mfe.govt.nz/publications/rma/assessment-chch-council-rma-plan/assessment-chch-council-rma-plan-consenting-delivery.pdf>.

- i. Use of an Order in Council under the CER Act to amend the RMA;
 - ii. Preparation of a recovery plan under the CER Act;
 - iii. A hybrid of either of the above options with the most urgent matters undertaken through streamlined process in (i) or (ii), combined with the standard RMA process for remaining matters;
 - iv. Use of s27 of the CER Act;
 - v. Ministerial call-in of parts of the plan under the RMA provisions;
 - vi. Special legislation; and
 - vii. Use of the Housing Accords and Special Housing Areas Act (HASHA Act)
23. Based on the policy objectives, the following criteria were developed to assess the options:
- a. Establishes a timely decision making process that minimises delay;
 - b. Results in an integrated and implementable new district plan;
 - c. Clearly allocates roles and accountability between central and local government;
 - d. Minimises transaction costs;
 - e. Provides a robust process and will withstand scrutiny by others;
 - f. Provides an appropriate balance of rights between affected parties, including the right to make submissions and be heard on those submissions;
 - g. Provides an appropriate balance of requirements under the RMA;
 - h. Retains the opportunity to be heard for people affected by a submission or proposal; and
 - i. Provides clear direction to minimise uncertainty for users, including interpretation and implementation.
24. These criteria demonstrate the necessary balance between robust process and timeliness. Given the potential for a 10 year process under the status quo, the current regime will inevitably lead to delays, and for this reason, one of the most important considerations was a process that provided an expedited review.
25. The two preferred options, after assessment against the criteria, were the use of an Order in Council to amend the standard RMA process, or the use of a recovery plan; both providing an holistic and integrated approach for the whole plan. The Recovery Plan option has the potential to confuse stakeholders as to the appropriate legal tests, and would require a complex new process to be developed and approved. On balance, the preferred

option (refer to **Attachment 2**) was the Order in Council, as being clearer for public involvement and similar to a standard RMA process, and clearly needing to have regard to the purpose and principles of the RMA.

Statutory tests under the CER Act

26. Under section 71(1), the Governor-General may, on recommendation of the relevant Minister (in this case the Minister for the Environment), by an Order in Council under the CER Act, grant exemptions, modify, or extend any provision of any enactment, that is reasonably necessary or expedient for all or any of the purposes stated in section 3(a)-(g) of the CER Act.
 - a The Minister for the Environment, in making a recommendation to the Governor-General must also take into account the purposes of the CER Act and have regard to the recommendations of the Canterbury Earthquake Recovery Review Panel.
27. At a high level the Ministry for the Environment's advice to the Minister for the Environment, in respect of whether the Order meets the "reasonably necessary or expedient" test in section 71(1), is that providing for an expedited alternative review process meets the purposes set out in sections 3(a), (b), (d) and (f).
28. We note that the Minister for the Environment has not yet made any decision in respect of whether she recommends to the Governor-General that the Order meets the statutory test in section 71(1) of the CER Act. Subject to receiving recommendations from the Canterbury Earthquake Recovery Review Panel, officials will be providing more detailed analysis to the Minister for the Environment seeking her agreement that the draft Order in Council is considered both reasonably necessary or expedient for the purposes of the CER Act, and ensuring that the Minister for the Environment has had regard to the recommendations made by the Panel.

Content of draft Order

Process for review of Christchurch City's district plans in the draft Order

29. The review of Christchurch City's district plans will replace the Christchurch City Plan and Banks Peninsula District Plan with a new single plan called the Christchurch District Plan, covering the entire geographic area of CCC's jurisdiction. This is provided through Clause 3(1) in the definition of "replacement district plan", with the review outlined in Clause 6.
30. The new district plan created through this review would need to have regard to the purpose and principles of the RMA and implement the planning instruments prepared under the CER Act. In this way, the plan will be fit for the purpose to facilitate the recovery and rebuild of the city while maintaining a longer term role in the sustainable management of natural and physical resources.
31. **Attachment 3** sets out the policy intent and process for the district plan review. This has been used as the basis for the preparation of the draft Order.

Roles and responsibilities in plan development

32. To ensure that the new Christchurch District Plan reflects the needs of the many people who will be affected by it, a collaborative approach between key stakeholders has been, and will continue to be, necessary to develop proposals for the replacement district plan for notification.
33. CCC leads the development of the replacement district plan, with the Canterbury Earthquake Recovery Authority, Environment Canterbury, Te Rūnanga o Ngāi Tahu, New Zealand Transport Agency, Selwyn District Council and Waimakariri District Council providing input (collectively known as the strategic partners).
34. The Ministry for the Environment (MfE) and other central government agencies (as appropriate) have, and will continue to provide, technical support to the strategic partners.
35. Consistent with the existing RMA consultation requirements, the CCC will consult with the Minister for the Environment and other relevant Ministers while developing the replacement district plan (Schedule 1 Clause 1). The Ministers or chief executives of relevant Government departments will also have the ability to make a submission on the plan.

Statement of Expectations

36. The Ministers for Canterbury Earthquake Recovery and the Environment have prepared a Statement of Expectations outlining central government expectations for the review (contained in Schedule 4 of the Order). The CCC and the hearings panel will be required to “have particular regard” to the Statement of Expectations in preparing the plan, and making decisions on it (Clauses 6(2) and 14(1)(d)).

Preparation of the replacement Christchurch District Plan

37. Given the urgent need for decisions to facilitate building and re-building in the city, the draft Order provides for the new district plan to be developed in phases. (Clause 6(4) and Clause 9(2)). The Ministers must specify in the terms of reference for the hearings panel the matters of priority that must be decided before 31 January 2015. The Ministers will consult with CCC in setting the terms of reference for the hearings panel (Clause 9(1) and 9(3)). The first proposal(s) to be notified will include those issues which require urgent review to provide for priority recovery and rebuilding needs outlined in Action 45 of the Land Use Recovery Plan, including minimising unnecessary consenting requirements as part of the rebuild. Notification will take place 37 days after the Order is made (Clause 6(4)(a)) which is the time required to enable Ministers to make comment and for the CCC to respond.
38. The remainder of the draft replacement district plan will be notified as proposals after the initial notification date. The decisions on the remainder of the district plan would need to be made by 9 March 2016 (Clause 6(4)(b)). The date of notification for the any subsequent proposal(s) will remain at the discretion of the CCC.

Section 32 analysis and Ministerial comment

39. Maintaining transparency and robustness in the plan review process is crucial for any plan-making process. Particularly in a streamlined process it is important that the right checks are provided for to ensure a quality plan and balance the expediency with which the plan will be developed. Furthermore, given government's strategic interest and investment in Christchurch's recovery, there is an added benefit to providing for Ministerial oversight.
40. For this reason, consistent with the existing RMA plan-making process, CCC will be required to undertake a cost-benefit evaluation (under section 32 of the RMA – as recently amended by the Resource Management Amendment Act 2013) of the replacement Christchurch District Plan (Schedule 1 Clause 2(1)).
41. To add another check on the process, Ministers for Canterbury Earthquake Recovery and the Environment are to be provided a copy of the proposals for the replacement district plan prior to its notification (Schedule 1 Clause 3(1)). Within 15 working days of the receipt of the draft proposal(s), Ministers are able to provide comment on the draft proposals to CCC. CCC will be required to have particular regard to the comments of the Ministers, and provide reasons for adopting those comments, or not, as the case may be.
42. Where the Ministerial comments result in a change to a proposal, that change is not required to be addressed in the Council's section 32 report notified with the proposal (Schedule 1 Clause 3(5)). To ensure transparency of decision-making the Ministerial comments would include reasons.

Notification and submissions

43. The submission process provides the opportunity for public input on the notified proposals. Reflecting the need for a timely process, the submission period for all proposals for the replacement district plan would be a maximum of 30 working days (Schedule 1 Clause 6(1)).
44. This compares to a minimum of 20 working days for a district plan change and minimum 40 working days for a full plan review under Schedule 1 of the RMA, and maximum 60 working days for the Auckland Unitary Plan.

Further submissions

45. Further submissions, under Schedule 1 of the RMA, provide an opportunity for a person to consider the implications of original submissions on them, and make further submissions to join the proceeding. The draft Order provides for this, but differs from the standard Schedule 1 process as the CCC will not be required to produce a summary of submissions to which further submissions will be made. Instead all submissions will be made available within ten working days after the closing date. The CCC and parties who have an interest greater than the general public or representing a relevant interest in the proposal can, within 10 days, make further submissions and be heard at the hearings (Schedule 1 Clauses 7 and 8).

Hearings panel

46. A streamlined submissions process requires a careful balance of checks and transparency to ensure a robust process. For that reason, the draft Order proposes that an independent hearings panel is established to hear submissions and make decisions on proposals. (Clause 8). This independence is crucial to manage any actual or perceived conflicts of interest or perceptions of bias in the outcomes.
47. The hearings panel (as provided for under Schedule 3 of the draft Order) would have similar powers to a Board of Inquiry under Part 6AA of the RMA, including the ability to permit cross-examination. The hearings panel would also have additional powers to make changes beyond the scope of submissions and to reconsider decisions, subject to new proposals being notified if these changes are in a material way outside the scope of submissions. (Clause 13)). Other powers include the ability to:
- i. direct conferencing of groups of experts which may be facilitated by a panel member or other independent party appointed by the panel;
 - ii. direct conferencing between submitters who wish to be heard at the hearing, and the CCC;
 - iii. facilitate pre-hearing meetings; and
 - iv. refer matters/issues to mediation or other alternative dispute resolution processes (including the ability to direct CCC to participate in alternative dispute resolution where the hearings panel considers this appropriate).
48. The hearings panel has the ability to use these powers and to commission reports to assist it in making decisions (Schedule 3 Clause 8(1)). Having these extended powers is important to add rigour to the process.
49. Ensuring that the hearing process is accessible and transparent is an important element of this process. For this reason, the hearings remain public without unnecessary formality to encourage greater public participation at this stage of the process. The CCC will need to keep a full record of proceedings, and a representative of the Council is required to be present at all hearings and any pre-hearing processes (Schedule 3 Clause 4(8)).

Membership and appointment of hearings panel

50. The hearings panel is appointed by the Minister for Canterbury Earthquake Recovery and the Minister for the Environment in consultation with the CCC (Clause 8).
51. The Hon Sir John Hansen is specified in the Order as being the first Chairperson to be appointed. The Chairperson is provided interim powers until the remainder of the hearings panel is appointed (Clause 8(6)).
52. The workload for the hearings panel is likely to be significant and complex. To ensure that the appropriate skills are held by panel members, the panel would have the same knowledge, skills and experience required by a Board of

Inquiry under the RMA e.g. knowledge of the local community and understanding of tikanga Māori (Clause 8(4)).

53. The hearings panel membership will comprise not fewer than 4 panel members, including one chairperson. The panel would have the ability to split and carry out concurrent hearing processes (Schedule 2 Clause 3(1)).

Funding of hearings panel and related activities

54. The CCC will be responsible for all costs incurred by the hearings panel including the cost of any functions and powers it exercises and the activities related to its performance (Schedule 2 Clause 4).
55. CCC will pay the remuneration of the hearings panel. The fees for hearings panel members will be set in accordance with Cabinet Appointments and Honours Committee guidelines.
56. CERA and MfE officials will work with the CCC and the Chairperson of the hearings panel to ensure an efficient hearing process is implemented, taking learnings from the Auckland Unitary Plan process.

Decision-making

57. The hearings panel will make final decisions on proposals for the replacement district plan (Clause 8(1) and Clause 10(1)(b)). The hearings panel will make a draft and a final decision on requirements (Clause 12 and Schedule 3 Clause 14).
58. Consideration was given to a process similar to the Auckland Unitary Plan decision process, where the hearings panel makes recommendations to the Council, and the Council has the express ability to deviate from the recommendations of the hearings panel (in which case Environment Court appeals can be made). However, given the importance to have timely decision-making to provide for recovery and rebuilding, and to remove the risk of delays, it was agreed that Christchurch requires a faster approach. We note that having the hearings panel make decisions is supported, including by the CCC and all the other strategic partners.

Rights of appeal

59. The usual RMA process provides for appeals on plans prepared under the RMA to the Environment Court on merit – a hearing a-new (*de novo*). *De novo* appeals have the potential to slow down the time in making the replacement district plan operative. Appeals on the original City Plan took 5 years to resolve and any similar timeframe would not provide the speed of resolution required to have an operative new district plan.
60. The draft Order provides for appeals to the High Court only on points of law (Clause 19). This is consistent with the Board of Inquiry approach under the RMA with decisions made by the independent panel.
61. To balance the reduction of appeal rights, the process has been designed to ensure a robust hearing process including cross-examination to add rigour to

the process and ensure the quality of the new district plan is fit to deliver on the needs for rebuilding the city.

Standard RMA process to resume

62. The proposed process represents a tailored approach to a plan review that responds to the needs of Christchurch at this time. Once the Order expires, along with the Canterbury Earthquake Recovery Act, standard RMA processes will resume.
63. There will continue to be resource consent applications and decisions made during the time that new parts of the replacement district plan become operative (Clause 16) and other parts of the existing district plan have not yet been replaced. To assist with this, the draft Order requires the CCC and the hearings panel to identify those parts of the existing district plan that are replaced as proposals are notified and decided. (Clauses 6(1)(b), 13(3) and 16(2)).

Plan changes to the replacement district plan

64. The draft Order would not limit the ability to apply for private plan changes (Clause 20). Unlike the process in the RMA, whereby the Council would accept or reject applications for private plan changes, the hearings panel would consider those requests in accordance with the criteria for acceptance included in the draft Order (Clause 21). The hearings panel would then be able to direct when the change would be notified, so that it can be incorporated into the hearing process.
65. The draft Order would also provide for the CCC to recover administrative costs associated with private plan changes, but not its own evidence costs associated with these (Clause 23). This is consistent with Board of Inquiry processes.

Extension to time limits and waiver of compliance

66. Given the need for timely decisions on the district plan, the draft Order removes the general ability for the Council to waive or extend time limits specified in the Order (Clause 4(1)(b)). Specific provision is made for the Chairperson to accept late submissions (Schedule 2 Clause 3(1)(e)) and to waive compliance with specific timeframes (Schedule 3 Clause 5). This would not impede the overall timeliness of delivery of the replacement district plan.

Alignment with Auckland Unitary Plan process

67. The Auckland Unitary Plan process has been carefully considered, as many of the steps developed for that process aim to streamline plan development. The Christchurch process differs from the process adopted in Auckland. In Auckland the regional policy statement, regional plans and seven district plans were combined; in Christchurch the Banks Peninsula District Plan and the Christchurch City Plan are being reviewed to prepare the replacement

district plan. In addition, there are significantly different time pressures for the Christchurch District Plan.

68. The proposed process for Christchurch aligns with many of the elements in the process adopted for the Auckland Unitary Plan. The proposed process does however differ from the process used in Auckland, where it is essential that a timely and expedient process is required. The key differences between the processes are:
- a Ministerial expectations provided in a statement of expectations;
 - b the Christchurch process enables the opportunity for Ministerial comment on the draft proposals before the proposals are notified;
 - c there is no audit of the section 32 RMA cost benefit report;
 - d a summary of submissions is not required; and
 - e the hearings panel is to make final decisions on the proposals, which become part of the replacement district plan.
69. The differences in the proposed process for Christchurch reflect the urgency with which decisions on the plans must be made and are balanced by strong expectations that strategic partners work collaboratively upfront and undertake Schedule 1 RMA consultation.

Consultation

Christchurch City Council

70. CCC has been given the opportunity to provide significant input into the process at a number of stages along the way, and its input has shaped the policy content in the draft Order. CERA, MfE and CCC officials have also worked through the detail of the draft Order and agree on drafting and workability issues. Ministers have spoken directly with the CCC staff and the Mayor of Christchurch. The CCC has provided a letter of support for the draft Order (attachment 4).
71. The CCC has suggested a change to the drafting of Clause 6(5) and Schedule 1 Clause 3(2). The changes clarify how the validation clause in subclause (5) is intended to work. CERA officials support the change. MfE officials have no views on the change as they have not had the opportunity for a legal review of them.
72. CCC staff and Councillors support an expedited and more collaborative process for the production of the district plan including an accelerated decision-making process to review the city's district plans, as noted earlier in this letter in relation to minutes of the Council meetings. In particular, CCC supports the proposal to address urgent matters in the first stage, hearing of the proposals by an independent hearings panel, decision-making by the hearings panel, and the removal of the right of appeal to the Environment Court.
73. Earlier policy options included the ability for the Ministers to direct changes to the replacement district plan before it is notified. CCC opposed this, and an

alternative was agreed whereby the Ministers make comment, and that 'particular regard' is had to those comments before notifying final proposals. Provision for this process has been made in the draft Order.

74. During the process of finalising the draft Order, the CCC raised some policy issues that were discussed by officials and also by the Ministers and the Mayor. These issues have been resolved and support to proceed with the draft Order given by CCC. The policy issues included the proposed appointment process for the hearings panel, the timeframes to complete the review, how to deal with requests for changes to the plan and who would be the final decision-maker on designations, and numbers for the hearings panel. The CCC has emphasised the need for any splitting of the hearings panel to be done at a minimum cost to ratepayers.

Strategic partners

75. Officials have also engaged with officials from the strategic partnership (CCC, Environment Canterbury, Te Rūnanga o Ngāi Tahu, Selwyn District Council and Waimakariri District Council and the New Zealand Transport Agency). Letters of support from all the Strategic Partners are provided as **Attachment 4**.
76. Te Rūnanga o Ngāi Tahu is supportive of the process. The iwi had initial concerns that the release of urgent matters first would not enable an holistic view of the issues, with particular concern that Ngāi Tahu issues would not be dealt with in an holistic manner. The iwi want to see integration of cultural issues throughout the plan.
77. Environment Canterbury agrees that an expedited review of the Christchurch district plans is necessary to support the recovery of Christchurch and give effect to the Recovery Strategy and Recovery Plans. Environment Canterbury considers it important that the replacement district plan appropriately reflects the community's aspirations for the district and that the community are provided the opportunity to contribute through an appropriate consultation process. Environment Canterbury supports the hearings panel having powers similar to section 293 of the RMA (allowing matters to be addressed that are outside of the scope of submissions), to aid the delivery of an integrated plan. Environment Canterbury does not support the removal of the requirement to notify a summary of submissions.
78. Selwyn District Council has outlined support for the process and believes it is essential to the recovery of Christchurch that the review of the City's plans, which is being used as a vehicle for many of the actions in the Land Use Recovery Plan, is done relatively quickly. It considers the existing Schedule 1 RMA process would inevitably get bogged down in lengthy litigation creating uncertainty, delays and unnecessary expense and a review which truncates the full appeal process will go a long way to addressing these problems.
79. The New Zealand Transport Agency supports the process outlined in the draft Order, but notes that designating authorities being able to provide comments on draft decisions from the hearings panel on designations before they are finalised is critical to the proposed process.
80. Waimakariri District Council staff have not expressed any concerns on the proposal, noting their input into the collaborative process for drafting the plan will be appropriate to the cross boundary issues that affect the districts.

Government departments

81. The following ministries/agencies have been consulted on the proposal: The Treasury; Ministry of Business, Innovation and Employment; Te Puni Kokiri; Ministry of Transport; Department of Internal Affairs; Ministry of Social Development; NZ Transport Agency; Ministry of Health; Ministry of Justice and Ministry of Education. The Department of the Prime Minister and Cabinet was informed.
82. Ministry of Justice has submitted that appeals on a point of law should be heard in the Environment Court (not the High Court), as the Court has the expertise in interpreting the RMA law. The appeals on points of law would be heard by a judge alone so it can be heard in a timely manner. The Auckland Unitary Plan, Environment Canterbury and CER Act legislation all provide for RMA appeals on points of law to the High Court. To introduce this new policy for Christchurch and in an expedited process is risky to a timely conclusion of the district plan review.
83. Ministry of Transport is comfortable with the form of independent panel proposed is prefers this model to the Auckland model where the Council is the final decision maker. They do consider that the panel membership requires the necessary expertise on designations.

Community consultation

84. No community consultation has been undertaken on the draft Order or the process.
85. However, the proposal to fast-track the district plan review was outlined to the Community Forum on 16 October 2013. The Community Forum expressed its support for an expedited district plan review process, with provision for community input and consultation.

Costs, benefits and risks

Costs and benefits

86. A full RIS considering the costs and benefits of the policy options contained in the draft Order in Council has been prepared, consulted on across government, and assessed by the Regulatory Impact Assessment Team. That Team considered that the RIS meets the quality assurance criteria. The RIS considered a range of policy options for the different steps in the plan review process, and can be provided on request.

Risks

87. The timing of the process is a significant issue. As the preparation of the new district plan will occur via a process established under the CER Act, all processes, barring appeals, must be completed by 19 April 2016 – which is the expiry of the CER Act and any Order in Council made under it. This is a challenging timeframe and if the timetable proves too challenging there may be a need to consider other options, including special legislation to clarify whether this special process should be able to continue.
88. As with any statutory decision, an Order in Council under the CER Act can be subject to judicial review proceedings. The fact that the proposal will restrict appeal rights to points of law to the High Court and modify the further submissions process could create incentives for some affected persons to

seek a judicial review. Unlike most matters subject to judicial review, the CER Act does build in some protection through section 74(2) which provides that the recommendation of the relevant Minister to make the Order in Council may not be challenged, reviewed, quashed, or called into question in any court. Anyone seeking judicial review will need to persuade the Court that it has jurisdiction.

89. Providing an alternative Schedule 1 RMA process could result in the perception that the community has less opportunity and time to engage in the planning process, possibly resulting in less community support and less scrutiny of the district plan content. This is mitigated by ensuring there is a robust hearing process that provides an opportunity for interested parties to make submissions and be heard, including the ability permit cross-examination at the hearing.
90. A further risk relates to the level of local autonomy in the district planning process. CCC has made it clear it wants Government to provide a streamlined process which enables it to continue to lead the district plan review process and provides timely delivery of a new district plan.
91. The proposal for the review of Christchurch City's district plans seeks to introduce a further resource management regime, which, while aligned with the underlying principles of the Board of Inquiry and Auckland Unitary Plan processes, and the proposed RM Reform policy wherever possible, does have differences. This is considered unavoidable given the different operating environments. In Christchurch there is a need for a more urgent review of both district plans which are not fit for purpose to enable and facilitate recovery and there is additional pressure on Council to produce this in a very short time frame.

Timing

92. Ministers are seeking to report to Cabinet on the draft Order on 7 July 2014. We are seeking that the Order comes into effect the day after the date it is made, which is likely to be on 8 July 2014.

Profile of draft Order in Council and proposed publicity

93. There has been, and we expect there will continue to be, significant interest in the Canterbury earthquake recovery and the review of the Christchurch District Plans. The support of CCC is significant, and should help to minimise controversy over the proposal. While policy intents have been publically signalled by the CCC regarding an expedited process, there has been no public discussion regarding what form that might take.
94. It is important that both central government and CCC play a joint role in supporting the proposed process should the Order be made.

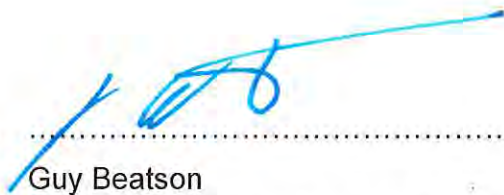
Conclusion

95. We look forward to receiving your recommendations to inform the Minister for Canterbury Earthquake Recovery, and the Minister for the Environment before she makes any recommendation on the Order. Should you have any queries, the key contact for this matter is Viv Smith, Planning Manager, Canterbury Earthquake Recovery Authority 027 4957096; or Lesley Baddon, Manager Urban Environment, Ministry for the Environment 021 738357.

Yours sincerely,



.....
Benesia Smith
Deputy Chief Executive – Strategy and
Governance
Canterbury Earthquake Recovery
Authority



.....
Guy Beatson
Deputy Secretary – Natural Resources
Policy
Ministry for the Environment

Attachment 1 Draft Order in Council

Attachment 2 Analysis of options to deliver an expedited district plan review process

Attachment 3 Review process diagram

Attachment 4 Letters of endorsement from strategic partners

Attachment 1: Draft Order in Council

Attachment 2: Analysis of options to delivery an expedited review of the district planning framework

1. The following assesses the mechanisms that could be used to deliver a streamlined district plan review process. An analysis of the process is then undertaken for the preferred mechanism.
2. An impact analysis has been undertaken for each policy mechanism and each process option – for which the costs, benefits and risks are identified and measured qualitatively, and quantitatively, where possible.
3. The assessment criteria are used to analyse the policy mechanisms and then again for each process option identified. This has been undertaken by scoring each mechanism or process option against the status quo. Ticks (✓✓✓, ✓✓, ✓) means the option was better at achieving the criteria than the status quo; a dash (-) means no change compared to status quo; and crosses (×××, ××, ×) worse than status quo. The greater the scoring is the better or worse the option is than the status quo. For example in relation to “The opportunity to be heard for people affected by a submission or proposal is not lost”, a consultation process that reduces public input by giving less time for submissions would be ×; a process that removed the further submission process would be ××; and a process that had no right to be heard would be ×××.

Policy Mechanisms

4. Table 1 below outlines possible mechanisms put forward to achieve a streamlined district plan review process.

Table 1: Practical Policy Mechanisms

Mechanism	Key Features
1. Order in Council under the CER Act	<p>A special process designed to streamline the district plan review process. This will require an amendment to the RMA to shorten the timeframe to deliver the district plan review.</p> <p>An Order in Council will need to align with the principles of the CER Act</p> <p>The process, baring appeals, will need to be completed by 18 April 2016 – the expiry of the CER Act.</p>
2. Recovery Plan under CER Act	<p>Minister directs new recovery plan – annexed to it will be district plan changes</p> <p>CCC review district plan and prepare new recovery plan in accordance with the CER Act.</p> <p>Minister receives recovery plan, calls for written comments and then makes changes to the district plan – in this case replacing it with a new district plan.</p> <p>The process, baring appeals, will need to be completed by 18 April 2016 – the expiry of the CER Act.</p>

<p>3. Streamlined process for priority recovery matters (either one of above options) and a standard RMA process for remainder – i.e. a two stage process</p>	<p>A two stage process, using one of the above options for the urgent priority recovery matters, with the remainder of the district plan to proceed through a standard RMA Schedule 1 process taking up to ten years to complete.</p>
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5. Other mechanisms have also been considered as an alternative district plan review process; however they were considered, and discounted. They are identified in the Table 2 below.

Table 2: Discounted mechanisms

Mechanisms	Reason mechanism considered unviable
<p>s 27 under CER Act – Ministerial Direction</p>	<p>Significant legal process risk⁷.</p>
<p>Powers to direct a plan change and call-in to EPA process (Board of Inquiry (BOI))</p>	<p>This mechanism will apply to only part of the plan. Under section 25A(2) of the RMA the Minister for the Environment may only direct a territorial authority to prepare a change to district plan that addresses a resource management issue relating to a function in section 31 of the RMA. The Minister has the powers under section 142(2) to call in that matter. These powers do not extend to an entire district plan review. As identified above, the priority areas identify areas of immediate action; however the benefit of reviewing the entire district plan will be to ensure efficiency and consistency of the entire district plan.</p>
<p>Special legislation under the RMA (like the Auckland Unitary Plan)</p>	<p>This process is provided for under the CER Act via an Order in Council and it is therefore unnecessary to have primary legislation to provide the mechanism for implementation. The Statute, unless progressed under urgency would require 3 months – 1 year to pass legislation. Further the costs of special legislation are not warranted at approximately \$3.3 million verse \$0.5 million for a regulatory response.⁸ The advantage of special legislation however is that the process can extend beyond the life of the CER Act – i.e. beyond 18 April 2016.</p>
<p>Housing Accords and Special Housing Areas Act (HASHA Act)</p>	<p>Although the HASHA Act would give early legal effect to new residential provisions. This Act only addresses residential issues, and not form and function of the district plan.</p>

⁷ Court of Appeal in Canterbury Regional Council v Independent Fisheries Limited and Others COA CA 438/2012 [20 December 2012] and related cases

⁸ Wilson N, Nghiem N, Foster R, Cobiac L, Blakely T. Estimating the cost of new public health legislation. [8 May 2012]. <http://www.otago.ac.nz/wellington/otago034147.pdf>

Analysis of practicable policy mechanisms

6. Table 3 below evaluates the impact of the three practicable policy mechanisms to achieve a streamlined district plan review process.

Table 3: Evaluating the impact of the practicable mechanisms

Impact	Incidence	Magnitude and comment
Mechanism 1: Amend the RMA Schedule 1 process via an Order in Council (OIC)		
Costs		
Cost of regulation making	Central government	Approximately \$0.5 million.
Costs of adopting a new process	CCC	Low.
Costs of lack of input into plan development	General public and private sector	Medium – reduced input from general public and private sector.
Benefits		
Clear single process, including public participation	CCC, general public and submitters	Magnitude unknown, but potentially high and will provide greater certainty than Mechanism 2 – new recovery plan - process will follow similar lines to that for Schedule 1 of the RMA hearings.
Purpose aligned to RMA	Hearings panel	High degree of certainty provided for hearings panel to apply statutory purpose against one legal test – the RMA.
Reduced time and costs for preparing the District Plan	General public and CCC	Minimises transaction costs.
Reduced consenting costs and time delays from an up to date coherent planning framework	General public, business and CCC	Unknown, but potentially high (e.g. 590 building consents were held up by Building Act S37 notices).
Reduced appeal costs to environment court	General public, CCC	Potentially in the order of \$5m based on similar district plan appeal processes.
Narrow focus possible	CCC	High can potentially restrict nature of consideration to just Objectives, Policies and Rules.
Risks		
Judicial Review	CCC, Central Government	Subject to the Canterbury Earthquake Recovery Review Panel recommendations and potential review of Regulations Review Committee. Potential cross-party parliamentary forum consultation required – although not determinative. Judicial review risk, mitigated by ensuring robust public consultation processes (submissions and hearings).

Timing	CCC, Central Government	Potentially up to 3-4 months to establish OIC process and gain cabinet approval. 1-2 years to undertake process of review, but could be a staged process to cater for priority changes first. Will need to be complete by April 2016, which is when the CER Act and any OIC expires. Appeals can be outstanding however.
Accountability	CCC, Central Government	Moderate to High degree of Ministerial accountability, but process established by OIC will determine degree of on-going involvement and CCC autonomy. Minister for the Environment responsible for the making of the OIC.

Net Impact: Some cost in preparing regulation. Provides for clear decision making through a potentially staged process, thereby enabling early progress on recovery matters. Purpose of the District Plan is aligned to the RMA purpose. Reduces transaction costs and provides for a single process and consultation with the public. Reduced rights to appeal but no different to those of the recovery plan process. Will enable quick implementation. Potentially more timely in delivery. Has medium potential judicial review risk. Overall will result in net benefits.

Mechanism 2: A new recovery plan		
Costs		
Cost of process	Central Government	Low – process already provided for, just requires direction and gazettal.
Cost of Recovery Plan	CCC	Moderate additional costs on top of preparing district plan changes.
Costs of lack of input into plan development	General public and private sector	Medium – reduced input from general public and private sector.
Benefits		
Can happen without statute or OIC	Central Government	High, avoids need for statutory or regulatory processes.
Narrow focus	CCC	High restricts consideration to just Objectives, Policies and Methods.
Risks		
Potential for judicial review challenge	CCC, Central Government	Medium/High, needs to comply with the requirements of the CER Act and the RMA. There is a moderate level of judicial review risk, mitigated by ensuring robust public consultation processes (submissions and hearings).
Focus on CER Act v RMA	Hearings panel	High, concern that the focus will be confused. Function of district plan should align to RMA not CER Act.
Confusion of process for stakeholders	Submitters	High, in order to provide for a staged release of the recovery plan significant risks of what was operative and not operative could occur. Dissimilar to usual RMA one stage decision-making process would involve hearing and decisions, then written comments to Minister of Canterbury Earthquake Recovery and then final decisions.

Timing	CCC, Central Government	Up to 2 months to establish process. 1-2 years to prepare recovery plan. 1-3 months for the Minister to consult and approve recovery plan. Would have a maximum of 2 years to fit within CER Act, but could be a staged process. Appeals can be outstanding however.
Accountability	CCC, Central Government	High degree of Ministerial accountability. CCC to submit recommended plan for Ministerial consideration. Minister for Canterbury Earthquake Recovery is responsible for the recovery plan.

Net Impact: Requires a formal consultation stage followed by written submissions. Many transaction costs. Clearly articulates accountability between central and local government. Public participation can be incorporated through public hearings. Significant concern about a potentially a confusing process with regard to be had to both the CER Act and RMA during the preparation of the District Plan. Process confusion for the public and key stakeholders. Would allow certainty in implementation and avoid need for undue process. Has medium potential judicial review risk. Overall considered to be potential net costs.

Mechanism 3: Two stage process – either an OIC or a recovery plan for Stage 1 priority matters, with Stage 2 matters considered under the traditional RMA schedule 1 provisions

(the following outlines additional considerations to those addressed above in mechanism 1 and 2 which also apply)

Costs		
Cost of process	Central Government	Low – process already provided for. However, CCC may need to invest in additional robust consultation, and potential for legal risk/cost.
Elongated process	CCC	High - requires additional costs for running two processes that will potentially mean the existing district plan is operative for longer than desirable to achieve recovery. Doesn't allow for the existing district plan to be superseded quickly and will potentially require consideration of both the current (operative) and the new district plan for a longer time.
Costs of lack of input into plan development and elongated process	General public and private sector	High –confusion over the different processes and what happens where and in the length of time to become fully operative.
Benefits		
Narrow focus	CCC	Enables focus on priority recovery issues first.
Risks		
Potential for judicial review challenge	CCC, Central Government	Potentially needs to comply with the requirements of the CER Act and the RMA. Legal advice is that there is a moderate level of judicial review risk, mitigated by ensuring robust public consultation processes (submissions and hearings).
Focus on CER Act v RMA	Hearings panel	Very high concern that the focus will be confused. Two processes to achieve the same outcome.

Confusion of process for stakeholders	submitters	High, in order to provide for a staged release of the recovery plan significant risks of what was operative and not operative could occur.
Timing	CCC, Central Government	Would mean policy direction in District Plan recovery only of part of the plan by 2015 with the potential for the entire district plan to take till 2023 to be operative.
Accountability	CCC, Central Government	Low degree of Ministerial accountability. Process left to CCC to deliver in a timely manner.

Net Impact: Significant concern about a potentially confusing process for the public and key stakeholders. Many transaction costs. Overall considered to be potential net costs. Presents little advantage over the status quo. On balance status quo considered to be probably better, noting though that the standard RMA schedule 1 process could take up to ten years to complete.

7. Table 4 below assesses the three practicable mechanisms against the assessment criteria (using the system identified in paragraph 3 above).

Table 4: Assessment of mechanism against assessment criteria

A timely decision making process that minimises delay	Integrated and implementable new district plan	Allocates roles and accountability between central and local government	Minimises transaction costs	Provides robust process	Provides appropriate balance of rights between affected parties	Opportunity to be heard for submitters	Clear direction / minimises uncertainty.	Overall weighted score
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Mechanism 1: Amend the Schedule 1 of the RMA process via an Order in Council (OIC)

✓✓✓	✓	✓	-	✓	x	x	✓	✓
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Mechanism 2: A new recovery plan

✓✓✓	✓	x	x	-	x	x	✓	x
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Mechanism 3: Two stage process – either an OIC or a recovery plan (as above) for urgent recovery matters, with remainder of the plan considered under the traditional RMA schedule 1 provisions

✓	x	✓	xxx	x	x	x	xx	xx
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- On the basis of the above assessment, the preferred option is the amendment to the RMA process through an OIC under the CER Act. The significant benefit of the OIC mechanism is that the process can be expedited under the CER Act, but the district plan is prepared having regard to the purpose and principles of the RMA
- An OIC can be made if it is reasonably necessary or expedient for any of the section 3 (a) to (g) purposes of the CER Act. This is a different test to the section 10 CER Act tests that apply to directing and approving a recovery plan.

10. The OIC mechanism will be clearer for the public to follow as it can provide a process akin to the RMA Schedule 1 process. Appropriate levels of public participation can be provided for and there is also a single clear decision-making body in the hearings panel. Also the district plan is able to contain more than just objectives, policies and methods should that be found to be desirable.

Attachment 3: Review process diagram

Summary of policy intent for OIC

– streamlined process for the review of the Christchurch district plans

<p>Pre-notification consultation Sch. 1 cl. 1 (2) (a)-(g) Sch. 1 cl. 1 (3)</p>	<ul style="list-style-type: none"> Requirement to consult strategic partners Must consult relevant Ministers and NZTA Able to consult anyone else 	<p>Powers and duties of panel Sch.2 Cl.3 Sch. 3</p> <ul style="list-style-type: none"> Chair can direct alternative dispute resolution Panel can commission reports, conferencing and correct errors Accept late submissions Enable direction to circulate any evidence, not just expert Permit cross-examination Limit the circumstances in which parties may speak or call evidence Panel to keep a full record of proceedings Council required to attend all hearings 	
<p>Section 32 evaluation report Sch. 1 cl.2 (1)(b) Cl. 14(4)(a)</p>	<ul style="list-style-type: none"> RMA process to apply Hearing panel to undertake further evaluation 		
<p>Statement of Expectations Cl 6(2), Cl.14(1)(d), Sch. 4,</p>	<ul style="list-style-type: none"> CCC and hearings panel to have particular regard to Statement of Expectations 		
<p>Draft plan to be provided to Ministers for comment Sch. 1 cl.3</p>	<ul style="list-style-type: none"> Following decision to proceed, CCC to provide draft to Min CER & Env for comment 20wd to provide comment CCC to have particular regard to comments 		<p>Decision-making on proposal Cl. 12, Cl.13, Cl 14</p> <ul style="list-style-type: none"> Panel to make decisions Matters outside of scope can be considered Decision treated as that of CCC
<p>Designations (for notification) Sch. 1 cl.4 (1)-(11)</p>	<ul style="list-style-type: none"> CCC to invite req. authorities to rollover or seek new requirements 30 working days to respond Can take place before OIC made 		<p>Deadline for decision on initial proposal Clause 9(2) Cl.6 (4)(b)</p> <ul style="list-style-type: none"> Decisions to be made on initial priority matters specified in terms of reference by 28 February 2015 Decisions on any subsequent proposal by 9 Mar 2016
<p>Notification Cl. 6 (1)(a), (b) Cl. 6 (4)(a)</p>	<ul style="list-style-type: none"> CCC must undertake a full review of all existing plans CCC to notify proposals (as per proposed plans under the RMA) 		<p>Effect of decisions Cl. 15 Cl. 16</p> <ul style="list-style-type: none"> Deem approved when appeals resolved, or appeal period expired if no appeals Positive obligation on CCC to make proposal operative
<p>Submissions Sch.1 cl. 6</p>	<ul style="list-style-type: none"> Any person can make a submission Closing date 30wd after notification 		<p>Appeals Cl. 19</p> <ul style="list-style-type: none"> Appeals to High Court on points of law only Provision that any further appeals go to the Court of Appeal
<p>Further submissions Sch.1 cl. 7 (1) Sch.1 cl. 7 (3)</p>	<ul style="list-style-type: none"> Publish and notify availability of submissions within 10 wd Any person with an interest greater than the general public may make a further submission 		<p>Restrictions on alterations to plans (plan changes and variations) Cl. 20 and Cl. 21</p> <ul style="list-style-type: none"> Plan changes can be received, hearings panel decide whether to accept/reject
<p>Appointment of hearing panel (and costs) Cl. 8</p>	<ul style="list-style-type: none"> Ministers to establish as soon as practicable Requirement to consult CCC Minimum of 4 members, including Chair Relevant skills and experience CCC responsible for all costs 		<p>Withdrawal Sch.1 cl.5 (6)</p> <ul style="list-style-type: none"> No ability to withdraw a proposal once it has been notified
<p>Terms of reference (ToR) for hearings panel Cl. 9, Sch.2 cl. 1, Sch.2 Cl. 5</p>	<ul style="list-style-type: none"> Terms of reference from Ministers to specify timeframes, priority matters Ability to decide urgent matters first Include limitations on liability 		<p>Further changes Cl. 4 (2)(a)</p> <ul style="list-style-type: none"> OIC process not to apply to private plan changes notified prior to commencement of Order All changes post-OIC will revert to normal RMA Schedule 1 process
<p>Functions of panel Cl. 10</p>	<ul style="list-style-type: none"> Hear and make decisions on proposals Ability to hold pre-hearing meetings Regulate its own proceedings 	<p>Transitional provisions Cl 6(5), Sch.1(1)(5), Sch.1 Cl.4(11)</p> <ul style="list-style-type: none"> Any actions relating to the review undertaken before the OIC made will be treated as if done under the OIC (e.g. consultation) 	
		<p>Objection rights Cl. 18</p> <ul style="list-style-type: none"> Any objections (e.g to strike out a submission) to be made to the hearings panel No right of appeal against the decision 	
		<p>Duty to avoid unreasonable delay, time limits and extension of time limits Cl. 4(1)(b), Sch. 3 cl.5</p> <ul style="list-style-type: none"> No ability of Council to extend timeframes in OIC Hearing panel able to consider late submissions 	

Attachment 4: Letters of endorsement from strategic partners

27 June 2014

Benesia Smith
Deputy Chief Executive,
Strategy and Governance Group
Canterbury Earthquake Recovery Authority

By email: benesia.smith@cera.govt.nz

Dear Benesia

PROPOSED CANTERBURY EARTHQUAKE (CHRISTCHURCH REPLACEMENT DISTRICT PLAN) ORDER 2014

Since mid 2013 the Council and the Government have been in dialogue to agree a proposed Order in Council to assist the Council in the timely and expeditious review of its City Plan(s).

The City Plan is a crucial part of the regulatory environment which manages the development of all parts of the City. The Canterbury Earthquake sequence has generated the need and opportunity to rebuild, and invest in the city at an unprecedented scale. Having a modern, updated and fit for purpose City Plan is crucial to this process. While the step of truncating the process surrounding the review of the City Plan is not a step my Council takes lightly, it has resolved to support such an approach in order to quickly update its plan in the light of the need to assist the speedy recovery of the District. The Plan is to be updated in both content (reflecting the post earthquake circumstances of the City) and also in format, and form (to assist easy processing). The Plan also seeks to build on the expressions of our community for a better quality urban environment for the city.

Earlier this year the Council wrote to the Review Panel, expressing its support for an earlier version of the Order in Council.

However following that the Minister for the Environment redrafted parts of the proposed Order (in particular Schedule 4) without consultation, or with the agreement of the City Council. While the substance of the Statement remained unchanged, the Directions proposed were contrary to much of the Christchurch community's sentiment regarding the review.

Considerable effort has gone into endeavouring to resolve these issues and it is now considered that the final version of the Order (PCO18020/2.6) is acceptable to Council, with just one exception, and we have also provided this feedback to the Crown. Accordingly the Draft OIC is supported by the Christchurch City Council for approval, but with the preference that the change described below be made.

One of the added provisions which the Council first saw yesterday at clauses 6(5) and in Schedule 1 clause 3(2) state that ministerial comments can be on whether the Council has *complied* with the OIC with regard to the Statement of Expectations. Our concern is that ministerial statements of non-compliance with the OIC may be used in judicial review proceedings by third parties. We do not think that was the drafting intent. We propose the following minor changes to mitigate that risk:

Clause 6(5):

Any action taken under subclause (1) before the commencement of this order is to be treated as having been taken under and in accordance with this clause, unless ~~the Ministers are not satisfied that the obligation under subclause (2) has been complied with~~ **Schedule 1 clause 3(2) applies..**

Schedule 1 clause 3(2):

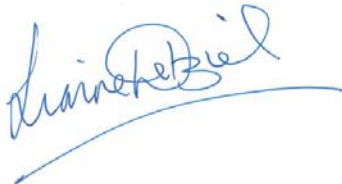
If, in any case, the Ministers are not satisfied ~~that the obligation under clause 6 (2) of this order has been complied with~~ **that there has been an opportunity for the Council to have particular regard to the Statement of Expectations**, the Ministers may make comments accordingly under subclause (1).

I would finally note that this final version of the Draft Order in Council records the appointment of Sir John Hansen as the Chairperson of the proposed Hearings Panel. I would like to congratulate Sir John on his appointment and look forward to his involvement in the review.

I would also draw the Review Panel's attention to Section 8 (2) (b), which sets a minimum number of panellists but departs from earlier versions in not specifying a maximum. As the costs of the review fall largely on the Council I am concerned at the open-ended nature of this provision. Council staff will endeavour to work very closely with Sir John and his advisers to ensure that the most efficient and effective hearings process is put in place at a minimum cost to the ratepayers of the city.

I look forward to your advice confirming the adoption of the Order in Council.

Yours sincerely



Lianne Dalziel
MAYOR

cc: Chief Executive, Environment Canterbury, bill.bayfield@ecan.govt.nz
Chief Executive, Waimakariri District Council, jim.palmer@wmk.govt.nz
Chief Executive, Selwyn District Council, david.ward@selwyn.govt.nz
Dr Karleen Edwards, Chief Executive, Christchurch City Council, karleen.edwards@ccc.govt.nz
Mike Theelen, Chief Planning Officer, Christchurch City Council, michael.theelen@ccc.govt.nz
Professor Peter Skelton, Environment Canterbury Commissioner, skeltonp@xtra.co.nz

29 January 2014

Hon Sir John Hansen
Review Panel Convenor
C/- Canterbury Earthquake Recovery Authority
Private Bag 4999
Christchurch 8140

Dear Sir John

Order in Council for an Expedited Review of the Christchurch City District Plan

The purpose of this letter is to convey Environment Canterbury's endorsement to the Review Panel of the need for, and draft content of an Order in Council for an expedited review of Christchurch City Council's District Plans.

As developer of the draft Land Use Recovery Plan on behalf of the Minister for Canterbury Earthquake Recovery during 2013, we have for some time been convinced of the need for an expedited and full review of the Christchurch City District Plans as a necessary component of the timely recovery of Canterbury from the earthquakes of 2010 and 2011. Actions within the final Land Use Recovery Plan signal the need for such a review.

In considering the draft Order, we note the key features of the process that it would establish. These key features being:

1. Support for a truncated district plan review process
2. The appointment of an independent hearing panel to make final decisions on the district plan
3. Removal of the right of appeal to the Environment Court on the decisions of the hearing panel, and appeals to the High Court on points of law only

We note extensive discussions have taken place at both a governance and a staff level with CCC, ourselves and the other strategic partners in relation to development of the policy to support an Order, and that this has informed and shaped the final form of the draft Order.

Yours sincerely



**Prof. Peter Skelton CNZM
Commissioner**

Our Ref: GVNC/MCOM/1
Contact:



From: Jim Palmer [<mailto:jim.palmer@wmk.govt.nz>]
Sent: Friday, 24 January 2014 4:45 p.m.
To: Benesia Smith; david.ward@selwyn.govt.nz
Subject: RE: Canterbury Earthquake Recovery Review Panel on the draft Order in Council

Hi Benesia ... and Happy New Year

Waimakariri District Council staff have participated in a number of discussions with the Strategic Partners about the best approach to progressing the CCC District Plan review.

We are comfortable with what is proposed in the draft Order in Council. The Waimakariri District Council sees the need to fast track the review and on the understanding that Christchurch City Council supports the approach we are also in agreement.

Kind regards
Jim

Jim Palmer
Chief Executive
Waimakariri District Council
Ph: (03) 311 8900



From: David Ward [<mailto:David.Ward@selwyn.govt.nz>]
Sent: Monday, 27 January 2014 11:06 a.m.
To: Benesia Smith
Subject: RE: Canterbury Earthquake Recovery Review Panel on the draft Order in Council

Seasons greetings Benesia,

I have discussed your request with my staff who have been directly involved in the matter to date. In our view the OiC is a proposed piece of legislation that provides an expedited process for the hearing of the City Plan review. Fundamentally it reduces appeals rights puts in place Commissioners with powers similar to those of a Board of Inquiry and provides for reduced timeframes. Selwyn District Council endorses the Order in Council.

Regards

DAVID WARD
Chief Executive Officer
Direct Dial: (03) 347 2805





Te Rūnanga o NGĀI TAHU

28 January 2014

Benesia Smith
Deputy Chief Executive, Strategy & Governance
Canterbury Earthquake Recovery Authority
Private Bag 4999
CHRISTCHURCH 8140

Tēnā koe Benesia

RE: DRAFT ORDER IN COUNCIL – CANTERBURY EARTHQUAKE (CHRISTCHURCH REPLACEMENT DISTRICT PLAN) ORDER 2014

Nāia te mihi kau, te maioha ki a koe i runga i ngā tini āhuatanga o te wā. Kia tau te mauri.

Te Rūnanga o Ngāi Tahu (Te Rūnanga) endorses the making of an Order in Council (OIC) to provide for the expedited review of the district plans and the key features that are included in the draft.

Te Rūnanga support for a truncated district plan review process includes:

1. The appointment of an independent hearing panel to make final decisions on the district plan.
2. Removal of the right of appeal to the Environment Court on the decisions of the hearing panel, and appeals to the High Court on points of law only.

The draft order includes the obligation of the Council to consult with Te Rūnanga (and other parties) in a manner that each party agrees with. Te Rūnanga looks forward to working with the Council to developing this agreement in order that the district plan review can be progressed within the timeframes outlined in the draft Order in Council.

As one of the strategic partners involved in the development of the Land Use Recovery Plan and a statutory partner with the Crown we support a process that develops a district plan that provides an effective framework to support the recovery of Christchurch City from the earthquakes.

Mō tātou,

Arihia Bennett
Chief Executive Officer