

Regulatory Impact Statement

Proposed Order in Council Greater Christchurch - deferral of 2012 long-term plans

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Department of Internal Affairs.

It provides an analysis of options to better integrate earthquake recovery planning processes contained in the Canterbury Earthquake Recovery Act 2011 with local authority long-term planning processes contained in the Local Government Act 2002.

This analysis assumes that the planning systems in both pieces of legislation are fundamentally sound and not in need of further review. It is constrained by the fact that the situation being dealt with is unprecedented in New Zealand which makes it impossible to draw on previous experience in developing and assessing options. It is also constrained by the need to produce a prompt decision for the affected councils.

None of the policy options assessed are likely to have effects that the government has said will require a particularly strong case before regulation is considered. They would not:

- Impose additional costs on business;
- Impair private property rights, market competition, or the incentives on businesses to innovate and invest; or
- Override fundamental common law principles as referenced in chapter 3 of the Legislation Advisory Committee Guidelines.

Paul James, Chair, Regulatory Impact Assessment Panel

Date

[22/8/11]

Status quo and problem definition

Introduction

1. This regulatory impact statement considers whether councils in greater Christchurch¹ affected by the Canterbury earthquakes should have the option of deferring the preparation of long-term plans due to be prepared by 30 June 2012. It also considers what consequential arrangements, if any, should be substituted.

Background

Long-term plans

2. The Local Government Act 2002 (LGA) requires local authorities to prepare a long-term plan every three years. A long-term plan has a minimum planning period of 10 years, but remains in effect for only the first three years of that period. The last long-term plans covered the period 1 July 2009 to 30 June 2012² and the next long-term plans will cover the period 1 July 2012 to 30 June 2015.
3. A long-term plan includes:
 - the council's programmes and projects for the next ten years;
 - the implications of those projects and programmes for standards of service delivered to communities;
 - its financial strategy and revenue and financing policy; and
 - ten-year financial forecasts for the council.

The first year of the long-term plan also fills the role of the annual plan for that year.

4. Preparation of a long-term plan is a lengthy process typically spanning almost a complete year.

Earthquake recovery strategies and plans

5. The Canterbury Earthquake Recovery Act 2011 (the Recovery Act) requires the Canterbury Earthquake Recovery Authority (CERA) to prepare a recovery strategy for greater Christchurch. The recovery strategy is to be "an overarching, long-term strategy for the reconstruction, rebuilding, and recovery of greater Christchurch." The recovery strategy will be finalised no earlier than December 2011.

¹ Greater Christchurch covers the districts of the Selwyn and Waimakariri District Councils and the Christchurch City Council and includes the adjacent coastal marine area.

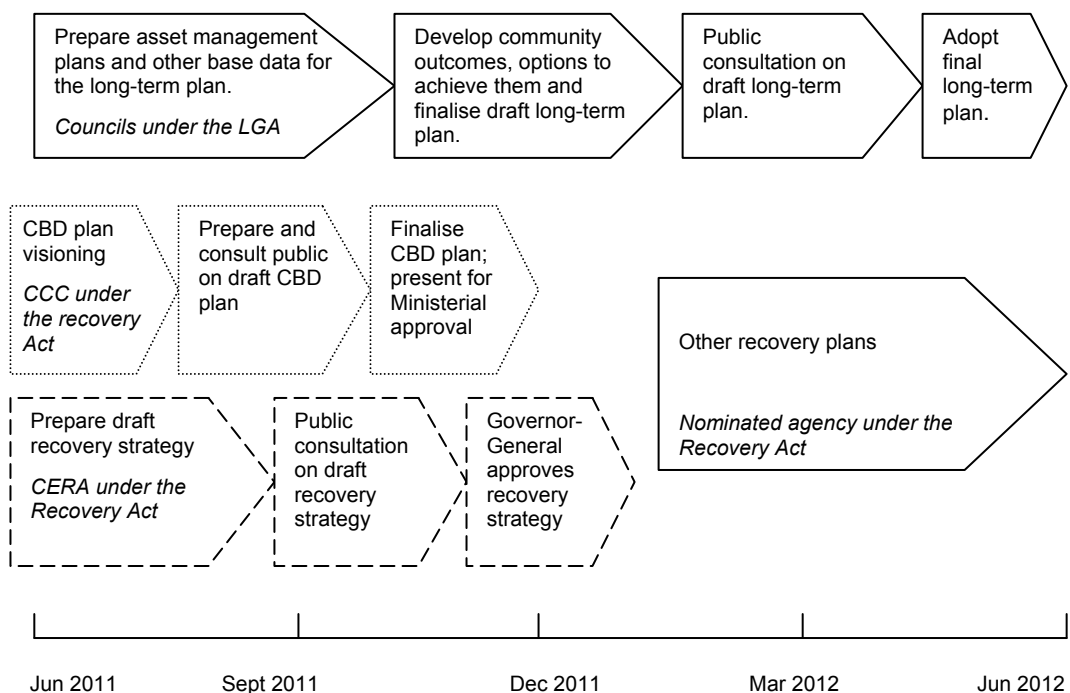
² In 2009 the plan was known as the "long-term council community plan." The LGA has been amended to call such plans long-term plans and this RIS uses that term throughout.

6. In addition to the recovery strategy, the Recovery Act requires the Christchurch City Council to prepare a recovery plan for the Christchurch central business district (the CBD plan). The timeframe for preparing a draft CBD plan is the same as for preparing the recovery strategy.
7. The Minister for Canterbury Earthquake Recovery may direct that other recovery plans also be prepared. It appears that a number of recovery plans will be prepared, with much of this work occurring in the 2012 calendar year.
8. Section 26 of the Recovery Act provides that council annual plans and long-term plans must not be inconsistent with an approved recovery plan. A recovery plan is to be read together with, and forms part of an annual plan and long-term plan, and prevails where it is inconsistent with one of those plans.
9. Section 27 of the Recovery Act also permits the Minister for Canterbury Earthquake Recovery to suspend, amend or revoke, in whole or in part, a council plan or policy under the LGA, except a funding impact statement, which contains details of a council's rating system.

The problem

10. The timeline below shows the overlap between the current planning cycles.

Figure One: Timeline of the different planning processes



11. This overlap creates some problems and others arise from the circumstances. The problems are shown in the following table.

Table one: Parties affected and problems that arise

Party affected	Problem
Christchurch City Council	<p>Logistical - staff that would normally prepare a long-term plan are committed to preparing a CBD recovery plan and engaging with CERA on the recovery strategy. They are also assisting the community in preparing recovery plans for other areas of Christchurch City.</p> <p>Information - a key foundation of long-term plans is asset management plans. Christchurch City's engineering and community infrastructure is so damaged that it is not practical to prepare new asset management plans in time for a 2012 long-term plan.</p>
Christchurch City residents and businesses	Confusion and consultation overload - effective engagement with residents and businesses may be difficult because of the large number of planning exercises being consulted on.
CERA and the Government	Misalignment of plans - If council plans do not align, the government has the power to intervene and direct changes. However, this would divert resources from other recovery work for greater Christchurch.
Other councils in greater Christchurch	The other greater Christchurch councils are generally not as affected as the Christchurch City Council. The other councils face two risks. The first is that the recovery strategy or subsequent recovery plans create unforeseen issues or opportunities and it is preferable to delay their long-term plans to deal with those matters. The second is that a further major aftershock may disrupt their processes to the point where a delay in their next long-term plan is desirable.
All stakeholders	Long-term plans are poorly aligned with the recovery and strategy plans. This hinders an effective recovery process.

12. Simply deferring the preparation of the long-term plan is an insufficient solution to these problems. Section 93(1) of the LGA requires each local authority to have a long-term plan at all times, and much local authority reporting and decision-making is referenced against the current long-term plan. For example, section 97 identifies some decisions that can only be made if they are provided for in a long-term plan. Annual plans have as one of their purposes "to support the long-term plan in providing integrated decision-making and co-ordination of the resources of the local authority" (section 95(5)(c)). Each annual plan must contain "appropriate references to the long-term plan." Any proposal to defer a

long-term plan therefore also needs to consider carefully the nature of the alternative arrangements put in place.

Objectives

13. The objectives, against which the options are evaluated, are:
- to facilitate the earthquake recovery in greater Christchurch by integrating the recovery planning processes specified in the Recovery Act with the long-term planning processes contained in the LGA;
 - to preserve the integrity of the existing LGA governance and consultation processes as far as practicable; and
 - to provide effective alternative planning arrangements to those in the LGA if the 2012 long-term plans are deferred.

Regulatory Impact Analysis

14. The options for dealing with this problem are quite narrow. The aim is to integrate two existing statutory processes rather than to fundamentally review the merits of those processes. It is not realistic to accelerate the recovery planning processes specified in the Recovery Act. This limits options to ways of deferring the 2012 long-term plans and dealing with the consequences of those deferrals.
15. Section 71 of the Recovery Act permits Orders in Council to be made that grant exemptions from, modify or extend the provisions of other Acts, including the LGA. Orders can only be made if they are reasonably necessary or expedient for one or more of the purposes of the Recovery Act. One of the purposes of the Recovery Act is to “facilitate, co-ordinate, and direct the planning, rebuilding, and recovery of affected communities.” As the problem being addressed is one related to facilitating and coordinating recovery planning, an Order in Council is an appropriate means of addressing the problem.

Options

16. As noted above, non-regulatory interventions are not an option. The “do nothing” option leaves one form of regulatory intervention in place (the status quo of the LGA and Recovery Act), which creates the problems outlined earlier. The alternative is another form of regulatory intervention. Within that option there is a hierarchy of choices to be made. Those choices, discussed in detail below, are:
- mandatory or optional deferral of the long-term plan;
 - deferral for one year or a longer period; and
 - where deferral occurs, to either:
 - continue the existing long-term plan in force; or

- continue relevant parts of the existing long-term plan in force with modifications to annual plan and decision-making provisions.

Mandatory or optional deferral of long-term plans

17. At the time of writing Christchurch City Council is clear that it wishes to defer the preparation of its 2012 long-term plan. The Waimakariri and Selwyn District Councils and Environment Canterbury wish to proceed with their 2012 long-term plans, but are conscious that unforeseen factors may, at a later date, make it prudent to defer these plans.
18. The simplest and most prudent way to deal with this situation is to make deferral optional. This would enable any of the affected councils to change its process at any time before the 2012 long-term plan is adopted.
19. Under this approach a council that proceeded with a 2012 long-term plan would have two options for amending the plan to take account of the recovery strategy. Depending on timing, the council may have the opportunity to modify the long-term plan between the time the draft plan is notified for public submissions and the final plan is adopted. This could be a result of its own deliberations or as a result of submissions by CERA on its draft long-term plan.
20. Alternatively the council could, after adopting its 2012 long-term plan, proceed with a formal amendment to its plan and re-consult its community on the particular issues at stake. This course of action may be necessary to adjust long-term plans to accommodate particular recovery plans produced after the recovery strategy is approved.
21. These options are in addition to the powers in the Recovery Act for the Minister for Canterbury Earthquake Recovery to direct amendments to a long-term plan. Therefore we consider that deferring the 2012 long-term plan should be optional for affected councils.

Deferral for one year or a longer period

22. It is desirable, subject to the overall objective of integrating the recovery planning processes in the Recovery Act with the planning processes in the LGA, to have long-term plans prepared as soon as possible. It is likely that the councils' long-term plans will flesh out detail about the implications of the recovery strategy for each council. This process will be important for each community.
23. Deferring the long-term plan to 2013 will allow affected councils to have a dialogue with their community about the overall effects of the recovery strategy, the recovery plans that have been completed and the council's own plans for its community. This would provide a coordinated framework for the council's activities for the next two years. By that time the council should be in a position to assess the progress of the recovery and to enter a further dialogue with its community about next steps.

24. Deferral of a long-term plan further than 2013 would eliminate any need for a council choosing that option to present an integrated picture to its community of the effects of the various strands of the recovery process as they affect its community. Since 2013 is election year for local authorities we consider on grounds of both public accountability and prudent management that a long-term plan should be prepared no later than that year.

Continue the 2009 long-term plan in force entirely or partially with modifications

Consequential effects of deferring long-term plans

25. The LGA provides that a long-term plan remains in force for three years. By implication it lapses at that point and, unless it is replaced, a void is created. The two choices for filling the void need to address these issues created by deferral of the long-term plan:

- *Financial strategy* - the 2012 long-term plan will be the first to include a formal financial strategy under section 101A of the LGA. The impact of the earthquakes on the affected councils is such that they will need to considerably rethink their current (informal) financial strategies. For the Christchurch City Council this is evident to some degree in the consultation documents for the 2011/12 annual plan. Circumstances dictated that consultation on that annual plan was truncated. A wider community debate on the council's financial strategy and the consequences of that should not be excessively delayed.
- *Maintenance of funding and financial policies* – these policies deal with issues relating to how council activities are funded and associated risks managed. Simply allowing the 2009 long-term plan to cease to have effect would place these policies in limbo.
- *Contribution of Māori to decision-making* – a long-term plan is required to record the steps a local authority intends to take to foster the development of Māori capacity to contribute to its decision-making. If the 2009 plan ceases to have effect, then there would be no requirement to publicly record the council's proposals.
- *Significant level of service decisions* – Section 97(1)(a) of the LGA prohibits a council from significantly altering the level of service of any significant activity it provides unless it has already provided for that change in its long-term plan. If the existing long-term plan ceases to have effect, the council would be unable to make such decisions as it would have no long-term plan in which to place them.
- *Transfer of ownership or control of strategic assets* – Section 97(1)(b) of the LGA prohibits a council from transferring ownership or control of a strategic asset unless that proposal is provided for in its long-term plan. The Christchurch City Council has defined most of its subsidiary companies as strategic assets. It would be barred from making any such decision as it would have no long-term plan in which to provide for the transfer.

Continue 2009 long-term plans in force

26. Under this choice the 2009 long-term plans continue in force until a new plan is prepared. The main difficulty is that both the annual plan for 2012/13 and the subsequent annual report would be required to explain departures in financial plans and performance measures caused by the earthquake. Lack of formal recognition within the planning and reporting system of “the new normal” for Christchurch communities would undermine the credibility of the planning and reporting process.
27. It may also be prudent in this case to provide some flexibility in the operation of section 97(1)(a) to allow councils to temporarily depart from the long-term plan levels of service as part of the recovery process.

Continue 2009 long-term plans partially in force with consequential modifications

28. The elements of the 2009 long-term plans that are likely to remain relevant to council decision-making are the provisions relating to council-controlled organisations; provisions relating to Māori contribution to decision-making; and the funding and financial policies. The remaining material is either descriptive material or has been compromised by events.
29. If all but those provisions were put aside then the following modifications could be made to the operation of other statutory provisions to preserve the intentions of the LGA:
 - (a) the annual plan for 2012/13 could be used as the benchmark for triggering section 97(1)(a). Hence if the council concerned proposed any significant alteration to the level of service for a significant activity that had not been included in the annual plan for that year, then it would be required to prepare a formal statement of proposal and consult the public on that proposal. This would also require a technical amendment to require councils to include intended levels of service in the annual plan for that year;
 - (b) the same approach could be used for any proposal to transfer ownership or control of a strategic asset. Any such proposal, if not included in the annual plan for that year, would require preparation of a statement of proposal and formal consultation before it could proceed; and
 - (c) consequential amendments would be needed to the annual reporting requirements for 2012/13 to reflect the suspension of most of the 2009/19 long-term plan.
30. This option would maintain the existing funding and financial policies until the next long-term plan is prepared. The council could, however, amend those policies in the same manner as currently applies. This requires an audited amendment to its long-term plan.
31. It would also be necessary to clarify with this option that the long-term plan prepared in 2013 would remain in effect for only two years. This would ensure that any council adopting this option came into line with sector practice in 2015. It seems likely that an early review will be desirable to allow those councils

affected to reassess progress on the recovery and its effect on their long-term plans. It also allows newly elected councils to reframe long-term plans earlier in their term of office to reflect their policies and aspirations.

Conclusions and recommendations

32. The recommended option is to permit affected councils to defer their 2012 long-term plan to 2013. Their 2009 long-term plan would remain partially in force until 2013, with the consequential modifications outlined in paragraphs 28 – 31 above. We consider this better meets the objectives than simply continuing existing long-term plans in force for another year. In particular, continuing existing long-term plans in force would undermine the integrity of the LGA governance and consultation processes since they fail to recognise “the new normal” for Christchurch communities.
33. The table below summarises the benefits and costs of this option for affected stakeholders, compared to the status quo.

Table Two: Benefits and costs of the recommended option

For councils deferring their long-term plan	<p>Benefits</p> <ul style="list-style-type: none"> • Better alignment of their long-term plan with the recovery strategy and recovery plans; • better information about recovery costs upon which to base the long-term plan; and • staff resources focused on immediate recovery needs. <p>Costs</p> <ul style="list-style-type: none"> • Risks strategic decisions being made outside a clear long-term framework.
Residents and businesses	<p>Benefits</p> <ul style="list-style-type: none"> • Higher quality plans are ultimately presented for them to consider; and • more orderly consultation processes occur. <p>Costs</p> <ul style="list-style-type: none"> • Opportunity to participate in long-term direction of their community is deferred for a year.
CERA and the Government	<p>Benefits</p> <ul style="list-style-type: none"> • Council resources are not diverted from immediate recovery work; and • reduced likelihood of need for Government intervention in council long-term plans; <p>Costs</p> <ul style="list-style-type: none"> • Some people may criticise the Government for allowing councils to defer long-term plans.

Consultation

34. CERA and the Office of the Auditor-General were consulted on a draft of this Regulatory Impact Statement.
35. The Christchurch City Council, Waimakariri District Council, Selwyn District Council and Environment Canterbury were also consulted.
36. CERA expressed the view that given the powers in the Recovery Act, the main reasons for permitting a council to defer preparation of a long-term plan were the logistical issues for the affected councils and the risk of public confusion over multiple overlapping consultation processes occurring. This is a matter of emphasis rather than substance. The Office of the Auditor-General had no comment on the draft RIS.
37. Christchurch City Council had some reservations about the initial proposal. Discussions with council officials showed these were more in the way the options were presented than in substance. Amendments to the RIS have clarified the options and their implications more fully and the Council agrees with the proposal as it is now presented.
38. Waimakariri District Council and Selwyn District Council support the proposals in the RIS. Initially we had proposed that Environment Canterbury not have the option of deferring the 2012 long-term plan. That council indicated that it felt the option should be available to it. The RIS has been changed to accommodate Environment Canterbury's request. A further major aftershock could disrupt the ability of Environment Canterbury to proceed with a 2012 long-term plan.

Implementation

39. The proposal will be implemented by an Order in Council under the Recovery Act. The primary strategy for mitigating implementation risk is to consult fully with affected parties in drafting the proposed Order. The purpose of the Order is, in part, to minimise local authority compliance costs by integrating local authority planning processes in greater Christchurch with recovery planning processes under the Recovery Act. No enforcement strategy is required, since the Order will simply provide an alternative procedure that councils may choose to follow.

Monitoring, evaluation and review

40. No formal monitoring or review programme is proposed. The intervention is a temporary intervention only and it is intended that after one year affected councils will resume normal planning processes. The Department of Internal Affairs would maintain informal contact with councils exercising the powers proposed in this Order to ensure it is operating as intended.