

Regulatory Impact Statement

Options to streamline Resource Management Act and Reserve Act processes for Electricity Network Recovery under the Canterbury Earthquake Recovery Act 2011

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment and the Department of Conservation. It provides an analysis of options to streamline the approval of retrospective applications for resource consent under the Resource Management Act 1991 by Orion New Zealand Limited (Orion) for works undertaken to restore and support security of electricity supply following the Canterbury Earthquake of 22 February 2011. It also provides an analysis of options under the Reserves Act 1977 (Reserves Act) for long term use of an electricity substation at Rawhiti Domain Reserve, and for the use of temporary generators on reserves.

The analysis undertaken reflects the outcome of consultation with affected local authorities (Environment Canterbury and Christchurch City Council), the Canterbury Earthquake Recovery Agency (CERA), and Orion. Te Rūnanga o Ngāi Tahu have formally written, are aware of the recovery works and have no concerns with the preferred option under the Reserves Act.

This RIS was prepared to address emergency electricity network repair works following the 22 February 2011 earthquake. Therefore, the analysis does not reflect additional damage that may have been caused to the network following the more recent earthquakes on 13 June 2011. It is known that in the hours immediately after these earthquakes some 56,000 (later on 13 June 2011 this was reduced to 47,000) homes and businesses were without power with most damage being centred in the eastern suburbs.

This RIS has been prepared in the absence of information about the full and final details of permanent electricity supply solutions still being finalised by Orion or information and data relating to wider electricity supply issues in greater Christchurch. However, delaying policy approval to allow more time for the provision of information to feed into the preparation of the RIS is not desirable or practical.

We do not expect that the policy options proposed will impose additional costs on businesses, impair market competition, or impair incentives on businesses to innovate or invest. To reduce costs and disruption of having either no power or ongoing disrupted power, it is essential that normal electricity distribution be restored as soon as possible. The preferred option in respect of planning issues under the Resource Management Act (RMA) is for an Order in Council (OIC) to provide for the construction of a new substation, temporary lines and temporary generators to be dealt with as non-notified, controlled activity, resource consent applications without the need for written approvals from affected parties or wider public notification.

Any OIC would also provide for the tenure of the substation to be protected on the reserve. The preferred option in respect of Reserves Act authorities is for the part of the Rawhiti Domain used by the substation to be reclassified as a local purpose (electricity substation and reticulation purposes) reserve and Christchurch City Council (which administers the reserves) to be exempt from the requirement to publicly notify any proposed easements for the substation and reticulation over reserves.

Fundamental common law principles around access to the Courts are retained for the options under the Resource Management Act 1991 (RMA) and Reserves Act through judicial review.

It is difficult to speculate on either the nature or scale of any risk of judicial review. If there is a challenge of any sort the court may preserve the status quo until the matter is resolved. How long this would take would depend on the nature of the challenge. Alternatively a court may find that Parliament has made this legislation and that decisions have been made in accordance with the rule of law in this country. There is no way of pre-determining how an application for judicial review would be considered, or resolved, before it is made.

Kevin Currie – Director, Environmental Protection
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Date

1.0 Background

- 1.1 The Canterbury Earthquakes of 4 September 2010 and 22 February 2011 and their aftershocks, caused extensive damage to the electricity network in north-east Christchurch, owned and operated by Orion New Zealand Limited (Orion). Four high voltage underground 66kV cables from Bromley to Brighton and Dallington were severely damaged and will be retired. There was also severe liquefaction and subsidence (up to two metres) at Orion's existing New Brighton (Pages Road) substation, including damage to various infrastructure and electrical equipment.
- 1.2 Over 25,000 north-eastern Christchurch electricity connections to households and businesses have been impacted. Although Orion has restored power, the electricity network is in a fragile state. The faults and cuts in services will be an ongoing issue until all line breakages are fixed, a new substation is constructed, and other permanent measures are in place.
- 1.3 Orion commenced a rollout of emergency repairs to its electricity network shortly after the 22 February 2011 earthquake. The new works Orion has put in place include:
 - a. a new permanent substation on Rawhiti Domain off Keyes Road to replace the Pages Road substation at New Brighton. The substation site is to occupy approximately 3000m² of Rawhiti Domain.
 - b. three temporary 66kV overhead lines to be in place for up to three years while permanent underground replacement is made to the previous four large high voltage underground cables supplying north-east Christchurch. No private land has been required.
- 1.4 In addition, up to 31 temporary generators are being used to rollout repairs to Orion's network to provide power where repairs take time to complete. Six generators are at fixed sites (not located on reserves) and up to 25 mobile generators for temporary use at varying sites as required during repair work (may be located on reserves).

2.0 Status Quo and Problem Definition

Resource Management Act 1991

- 2.1 Resource consents are required under the Resource Management Act 1991 (RMA) when the environmental effects of a proposed activity cannot meet the standards of the relevant city/district or regional plan. The scale of the environmental effects generated by a proposal determine whether a council would require a resource consent to be non-notified, limited notified (only notified affected persons can make a submission) or publicly notified (anyone can make a submission). The RMA has different timeframes according to the type of notification process.
- 2.2 Normal RMA processes require resource consents to be granted in advance of work commencing. However, emergency provisions provide that where a state of emergency has been declared, works authorised by the Civil Defence Controller can be commenced immediately provided the relevant council is notified and resource consent is applied for retrospectively.
- 2.3 Orion is in the position where it now requires retrospective resource consents to formally authorise the works. Under the Christchurch City District Plan, the substation on Rawhiti Domain, overhead lines and temporary generators all require resource consent. The substation will be a discretionary¹ activity and depending on the location and nature of works, the three temporary overhead lines will be either discretionary or

¹ Requires resource consent and may be turned down by the council. Council has full discretion over all matters, and if granted, conditions may be imposed.

non-complying² activities. The activity status of the temporary generators is variable. However, a 'worst case scenario' has been assumed that resource consents will be required as a discretionary activity.

- 2.4 Some of the larger generators would require resource consent from Environment Canterbury under the Natural Resources Regional Plan for Air Discharge. In discussions with Environment Canterbury, it is considered that these consents would be relatively straight-forward and could be obtained through normal RMA processes on a non-notified basis. Therefore, no intervention is required for these consents. The effects of Orion's activities under the Christchurch City Plan are more significant and complex and are more likely to trigger notification. Therefore, intervention is required for activities under the Christchurch City Plan.
- 2.5 Under normal circumstances, the Christchurch City Council would decide if there are any affected parties, if the general public should be notified, and if the application should be approved.
- 2.6 Where resource consent has not been obtained, Orion run the risk of being in breach of the RMA and facing enforcement action such as compliance costs, or having to stop works. Any person can take enforcement action.

Problem statement

- 2.7 It is considered that normal RMA processes present uncertainty and risk to Orion's repair of the electricity network in Christchurch. The timeframes for notified applications will delay authorisation and present the risk of appeals being made to the Environment Court, resulting in further delays. The activity status of the works could result in the applications being declined. Enforcement action could also be taken against Orion for works already in place.
- 2.8 It is important to Christchurch's recovery that any RMA processes that may present delays or barriers to the approval of works to secure supply of electricity are minimised and where possible, removed.

Reserves Act 1977

- 2.9 The Reserves Act includes provisions on what can be done on the different types of reserves in respect of licences, leases and/or easements to be granted and the powers available to the council for those types of reserves. Reserves are classified to ensure the control, management, development, use, maintenance, and preservation for appropriate purposes. The classification determines the principle or primary purpose of the reserve.
- 2.10 The site of the proposed substation at Rawhiti Domain is a recreation reserve vested in the Christchurch City Council and derived from the Crown. Christchurch City Council officers have been in discussion with Orion and have jointly agreed to the substation proceeding on this site. The right for the substation to remain on Rawhiti Domain for the long term and for the temporary use of reserves for emergency generators now needs to be confirmed by a formal authority under the Reserves Act.
- 2.11 Under normal circumstances, the Reserves Act does not provide for the granting of a lease for an electricity substation on the recreation reserve. The granting of a lease of

² Requires resource consent and may be turned down by the council. The council must be satisfied that the proposal will not be contrary to the objectives or policies in the plan or that the adverse effects on the environment will be minor. If granted, conditions may be imposed.

sufficient term for an electricity substation is also not provided for under the restrictive leasing provisions for local purpose reserves.

- 2.12 To give Christchurch City Council authority to use powers under the Reserves Act such as excluding the public, a change in the recreation reserve classification is required. Normal processes to change the reserve classification involve approval from the Minister of Conservation and then conducting a full public consultation process. This process can take a significant amount of time. Following a change of classification, processes to secure use would then occur. The normal process to grant an occupation also involves approval from the Minister and full public consultation.
- 2.13 For a reserve derived from the Crown, any lease of 50 years or longer (including any rights of renewal) or a disposal of the freehold (other than by exchange), would be subject to the right of first refusal under the Ngai Tahu Claims Settlement Act 1998.
- 2.14 Tools and processes to secure long-term use by Orion of the substation site at Rawhiti Domain through an easement do exist and have been used elsewhere by the Christchurch City Council for similar installations. However, notification and submission processes are required unless certain exemption criteria are satisfied. It is uncertain whether exemptions would apply in this case.
- 2.15 The Reserves Act also includes powers for the Christchurch City Council to issue temporary occupation licences for activities on reserves. This is frequently used for construction activities or other activities with a temporary effect. The provisions in the Act are not worded in anticipation of activities such as temporary generators being licensed to use reserves.
- 2.16 It is uncertain if a licence can be provided without an amendment to the Reserves Act to clarify this. It is also necessary to clarify the ability to issue a blanket license across all council reserve classifications to avoid Orion requiring individual licenses on a case by case basis for each individual placement.
- 2.17 The Canterbury Earthquake (Reserves Legislation) Order 2011, provides for temporary occupation of reserves, and is not relevant because of the permanent nature of the substation site. It could be used for the temporary generators. However, Orion would require the Christchurch City Council's written authorisation. The Reserves Order expires in March 2012. Options to amend the Canterbury Earthquake (Reserves Legislation) Order 2011 are not within the scope of this analysis as it addresses all reserves in general (even those that would not be required for use by Orion).

Problem statement

- 2.18 Normal processes involve a number of sequential procedural steps where each step involves a public participation process. These steps can take months to work through. It is also unclear whether under normal circumstances, Orion's electricity network restoration works would receive the authorisations it requires under the Reserves Act. To provide certainty to Orion, and the people of Christchurch impacted by a lack of security of electricity supply, it is vital these authorisations can be given and that processes do not present undue complexity and delays to the authorisation of works.
- 2.19 There is also a need to make processes under the Reserves Act more efficient and consistent by providing a single power which covers all council administered reserves, particularly for the use of temporary generators on reserves where different reserve classifications may exist.

Problem Scale

- 2.20 Both the RMA and Reserves Act are relevant for authorising the emergency works already undertaken by Orion. Each act involves a different process and considerations and operates on different timeframes (dependent on statutory timeframes associated with notification requirements under the RMA, and reserve status and occupation

procedural steps under the Reserves Act). Therefore, adding complexity and presenting different barriers to the authorisation of Orion's works.

Resource Management Act 1991

2.21 Timeframes prescribed for processing resource consents as set out in the RMA and Resource Management (Discount on Administrative Charges) Regulations 2010 are:

Application	Working days
Non-notified (no hearing)	20
Publicly or limited notified (no hearing)	50
Publicly or limited notified (hearing and no pre-circulation of evidence)	70
Publicly or limited notified (hearing with pre-circulation of evidence)	85

However, in reality the timeframes can be much longer than this. The timeframes listed do not take into account periods where councils are waiting on further information requested from consent applicants, or the time associated with hearing an application. Councils may also extend timeframes (with the permission of applicants or where special circumstances apply). Including these additional timeframes means that the actual notified resource consent application process can generally take in excess of three months, and is more likely to take more than six months for complex works. The RMA enables the applicant and any person who made a submission the right to appeal the council's decision to the Environment Court. Appeals, although not counted in the timeframes listed above, add the potential for significant further delays of six months to a year or more to resolve.

2.22 Figures provided by Christchurch City Council indicate that notified applications take on average 70 working days to process and cost in excess of \$28,858. These figures help illustrate how significantly a notified consent process could affect the time and cost to Orion in obtaining resource consent adding uncertainty to Orion for the restoration of the electricity network already underway.

Reserves Act 1977

2.23 There are no statutory timeframes in the Reserves Act for processing applications (with the exception of timeframes for notices of objection to the granting of an application which are to be provided to the relevant authority a minimum of one month after publication of the notice) which results in uncertainty for Orion. The step by step nature of processes under the Reserves Act can add significant delays to authorisations being received. As a minimum it can take two or more months (best case scenario) to change a reserve classification.

2.24 Following a change in classification long-term use arrangements can take an additional two months or more (best case scenario) to be set up. The length of the overall timeframes will depend on factors such as the nature of public submissions received at each step and timing of council meetings to obtain a formal council resolution.

Decisions already taken and legislative and regulatory powers available

2.25 Approval from the National Controller (exercising his emergency powers under the Civil Defence Emergency Management Act 2002) for a temporary 66kV line from Bromley grid exit point to New Brighton substation on Bexley Road was given in February 2011.

Subsequent approvals were given for a substation within Rawhiti Domain and two additional lines (authority given 23 March 2011).

- 2.26 The National Controller and Christchurch City Council officers have also approved the placement of the substation on Rawhiti Domain and construction commenced in late March. Construction and long-term occupation on the site now needs to be legitimised. Works to the lines commenced shortly after 22 February 2011.
- 2.27 Orion has since lodged retrospective resource consents under RMA section 330B in the name of the National Controller. Orion now has a holding position on these applications but need to get the protection of granted consents and reserve permissions as soon as possible.
- 2.28 In response to the exceptional circumstances associated with the Canterbury Earthquakes, Parliament passed the Canterbury Earthquake Response and Recovery Act 2010, which was repealed by the Canterbury Earthquake Recovery Act 2011 (CER Act) on 19 April 2011. The CER Act puts in place relevant tools which among other things can be used to grant exemptions, modify, or extend any enactment (including the Resource Management Act or the Reserves Act). These tools are:
- Ministerial direction and powers – the Minister for Canterbury Earthquake Recovery can suspend, amend or revoke all parts of RMA and Reserves Act plans. The anticipated use of these powers is for emergencies, and as a matter of last resort and for matters with a high level of urgency.
 - Orders in Council (OIC) – the Minister for the Environment can make any provision and can amend, modify or extend the RMA and Reserves Act, for a range of purposes. The anticipated use of these powers is only where necessary, and for matters with a medium to high level of urgency.
 - Recovery Plan – the Minister for Canterbury Earthquake Recovery can direct that a recovery plan is prepared to change or require changes to be made to RMA and Reserves Act plans. The anticipated use of these powers is for matters with less urgency.

3.0 Objectives

- 3.1 To provide a method to expedite resource consent application and Reserves Act processes for Orion's emergency electricity network restoration works that are consistent with the purpose of CER Act to:
- provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes (section 3(a))
 - enable a focussed, timely, and expedited recovery (section 3(d))
 - facilitate, co-ordinate and direct the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure and other property (section 3(f))
 - restore the social, economic, cultural, and environmental wellbeing of greater Christchurch communities (section 3(g)).

Assessment Criterion

- 3.2 The options proposed have been assessed against the following criteria. These criteria have been used in previous analyses for Canterbury Earthquake work and have been retained in this analysis for consistency. The first two criteria, to minimise delay and providing certainty are the priority given the importance of expediting the restoration of a secure supply of electricity in Christchurch. The additional criterion specific to the Reserves Act, to secure long term use of the reserve site, is also a priority.
- 3.3 The criteria, to preserve opportunities for public input is not a priority in this analysis. Options that have included provisions to preserve opportunities for public input in other proposals progressed under Canterbury Earthquake legislation, either through limited notified requirements or targeted consultation, have not been considered in this RIS. Orion has provided, and continues to provide, information to the public including information on websites and newspapers, holding public meetings on the proposed substation site and providing opportunities for public comments. It is considered that the work Orion has done to communicate its electricity network repair works mitigates the removal of any formal consultation requirements.
- 3.4 Assessment criteria include:
- minimise delay to the restoration of the electricity network to north-eastern Christchurch and formal authorisation of works
 - provide certainty to Orion
 - preserve opportunities for public input, where possible

RMA specific criterion:

- ensure that local authorities can still require activities to be managed in such a way as to adequately avoid, remedy or mitigate relevant adverse effects of electricity network restoration works

Reserves Act specific criterion:

- to secure long term use of the Rawhiti Domain site for Orion's substation

4.0 Regulatory impact analysis

- 4.1 There are a number of tools available under the CER Act, including a ministerial direction, recovery plans and OICs, to assist in the recovery and rebuilding of Christchurch.
- 4.2 The Minister for Canterbury Earthquake Recovery can suspend, amend or revoke all parts of the RMA plans or direct that Orion's electricity network restoration works are an authorised activity. A ministerial direction of this nature would ignore the provisions in the RMA and the Reserves Act and exclude the councils from managing the effects of the activity. It would also exclude any affected parties from providing written comment on the proposal. The ministerial powers in the CER Act are anticipated to only be used in emergencies, and as a matter of last resort.
- 4.3 The Minister for Canterbury Earthquake Recovery can direct a responsible entity to prepare a recovery plan on a site specific or wider geographic basis within greater Christchurch. A recovery plan could take several months or more to prepare, and must be notified and invite members of the public to make written comment. Given the

urgency associated with authorising the works already undertaken by Orion, and given that work on a recovery plan has not yet been directed, it is not the appropriate tool in this instance.

- 4.4 To address the scale of the problem to be resolved, and the level of urgency required, an OIC is considered the most appropriate option and meets the purposes of the CER Act. An OIC can be progressed quickly, minimises potential delay to the authorisation of electricity network repair works, provides greater certainty for Orion and benefits Christchurch's electricity network recovery.

Options for the formulation of an Order in Council under the Resource Management Act 1991

- 4.5 It is considered appropriate and workable to retain a resource consent process to enable particular effects to be assessed and avoided, remedied or mitigated by way of conditions of consent. Three approaches have been identified and assessed for possible inclusion in an OIC to expedite RMA resource consent application processes. As discussed above, options which retain an element of consultation have not been considered because of the work Orion has done to keep the public informed about its electricity network repair works.

- **Option 1** – Non-notified controlled activities (preferred option)
- **Option 2** – Permitted activities subject to conditions
- **Option 3** – Deemed designation with requirement for an outline plan

Option 1 – Non-notified controlled activities (preferred option)

- 4.6 This option proposes that the substation, temporary lines and temporary generators be treated as 'controlled activities' where the Christchurch City Council must approve the application, however, conditions may be imposed on consents granted. The OIC would specify the matters over which the Christchurch City Council would retain control for example safety, noise or separation from residences considerations.
- 4.7 Applications would be non-notified resource consent applications without the need for written approvals from affected parties or the opportunity for formal public notification, submissions, objections and appeals. The opportunity for any person (other than the Council) to take enforcement action would also be removed.
- 4.8 With no notification provisions, there are no submitters. Therefore, the ability to object to a certain decision, or to appeal a decision to the Environment Court, would be restricted to the applicant only. However, the ability to apply for judicial review would be retained.

Benefits

- Prompt and certain resource consent process and outcome for retrospective resource consent applications lodged by Orion to restore the electricity network in north-eastern Christchurch. Reduced risk to Orion of being served with either an abatement notice to stop works or the possibility of facing compliance costs for breaches against the plan requirements.
- Reduced application and compliance costs to Orion as controlled activity status provides certainty as to the subject matter around which conditions of

consent may be imposed, while still allowing flexibility for the actual terms and conditions to be negotiated with Christchurch City Council.

- Ability to manage environmental effects is retained as RMA processes remain largely intact as resource consent is still required and the Christchurch City Council is still able to consider effects, apply conditions on a case by case basis, and monitor and enforce those conditions.
- Removing the requirement for written approvals and opportunities for wider public notification, reduces the burden on councils if they were required to follow standard processes (i.e. reducing council staff involvement in extensive negotiations, administration and support associated with hearings).
- This option enables the OIC to be in place faster than if applications were treated as permitted activities as all effects do not need to be anticipated up front during the drafting of the OIC.

Costs/Limitations

- Persons affected by the application would have no opportunity to be part of the resource consent process as there would be no obligation to obtain written approvals and no requirement to consult with the wider community. However, any concerns raised during the present Orion consultation can be required to form part of the consent application. This provides a record of any public concerns and also provides Christchurch City Council the opportunity to consider matters raised in imposing any conditions on the consent.
- A controlled activity option could potentially favour Orion as the Christchurch City Council would have no ability/discretion to decline an application if it is likely to have significant long term environmental effects. The Christchurch City Council may have to rely on general RMA environmental protection duties and responsibilities under sections 16 and 17 to manage unforeseen environmental effects.
- Judicial reviews of decisions can significantly impact on the time and cost of obtaining a resource consent. Should any judicial review arise, this will be an additional expense for councils.

Option 2 – Permitted activities subject to conditions

- 4.9 Under this option, the substation, lines and generators would be treated as permitted activities where no resource consent would be required. The OIC would override any council district or regional plan rules that would otherwise have required resource consent to be obtained.
- 4.10 This option would require Orion to clarify what activities are proposed and how the effects are going to be managed (i.e. minimum performance standards). The OIC would need to set out the specific conditions or performance standards Orion would need to meet to qualify as a permitted activity.

Benefits

- A deemed activity status would provide certainty for all parties by removing any doubt about whether an application would be granted consent or not.
- There are potential time and cost savings for Orion associated with removing the need to prepare comprehensive resource consent applications. It also

removes the burden on local authorities to undertake an assessment of these applications.

- Avoids any appeal process and associated time delays.

Costs/Limitations

- This option would be reliant on the applicant clarifying what activities are proposed and how the effects would be mitigated i.e. through conditions of consent. Although Orion has provided substantial information about the works, the level of detail required to specify conditions or performance standards in an OIC is currently not available. It is unlikely this information will be available within the timeframes required for the drafting of the OIC.
- Controls in the OIC are unlikely to be sophisticated or flexible enough to adequately anticipate and manage the range and variability of environmental effects generated.
- As it is the council's role and responsibility to monitor and enforce conditions of consent on an ongoing basis, they are best placed to decide what conditions are suitable and workable through a consent process. If conditions or performance standards were set in an OIC and subsequently required modification, an amendment would need to be made to the OIC.
- Persons affected by the applications would not get the opportunity to be part of the resource consent process as there would be no requirement to consult with affected parties. This could increase the risk of being judicially reviewed.

Option 3 – Deeming a designation with requirement for an outline plan

- 4.11 This option provides for the substation, lines and generators to be provided for via a designation. A designation is a provision in a district plan which provides notice that a requiring authority intends to use land in the future for a particular work or project. Designations are geographically defined (located on a specific site/route) and are usually noted on a plan. Designations generally relate to long term permanent infrastructure.
- 4.12 Works within the scope of a designation do not require resource consent, but can require the approval of an outline plan where the council has the opportunity to request amendments or conditions on the detail of the work.
- 4.13 Deeming the designation for automatic inclusion in the Christchurch City Council District Plan would by-pass the standard notice of requirement process (removing the normal consultation, and/or notification and subsequent opportunity for appeal processes).

Benefits

- This option would provide certainty to Orion by securing land for electricity purposes within the broad scope of a designation. The finer details of the works including conditions can then be set out in the outline plan of works which does not require public input.
- Orion would be able to do anything allowed by the designation and the usual provisions of the district plan would not apply.

Costs/Limitations

- It would be challenging to accurately describe the geographic extent of the designation in an OIC. It would also not be possible to adequately define the geographic location for each of the mobile generators. Each of the mobile generators would be limited to those locations. Plans are typically not used in OIC's or regulations. For greater accuracy, designations are usually displayed on plans.
- Controls on the designation would need to be set in the OIC. These matters would usually be considered in the recommendation of the territorial authority when assessing a notice of requirement.

Options for the formulation of an Order in Council to streamline the rights of works on reserve land under the Reserves Act

4.14 Three options have been identified and assessed for possible inclusion in an OIC to expedite Reserves Act requirements so that the need for long-term occupancy of part of the Rawhiti Domain Reserve as a local purpose reserve for the purpose of an electrical substation and reticulation purposes is met. These options include:

- **Option 1** – Easement over required area of reserve without public notice (preferred option)
- **Option 2** – Long term lease of required area of reserve and easement for the power lines without public notice
- **Option 3** – Disposal of freehold area of reserve without public notice.

Option 1 – Easement over required area of reserve without public notice (preferred option)

4.15 Under this option, the area of land required for the substation would be reclassified a local purpose reserve for electricity substation and reticulation purposes. The Christchurch City Council would also be given the power to grant a non-notified easement to Orion for the substation site over the Rawhiti Domain and for the temporary power lines with any terms and conditions the Council considers appropriate, including the payment of fees in compensation of the easement. The consent of the Minister of Conservation and public notice would not be required.

Benefits

- This option would allow Orion long-term permanent use right of the site as easements are typically perpetual.
- Avoids any notification process and associated delays.
- This option does not exclude any future agreements being made between the Christchurch City Council and Orion to exchange the land if Orion finds suitable land.
- Retains land as reserve vested in the council, should Orion cease to use the land for electricity purposes, or should a land exchange option become available.

Costs/Limitations

- Affected persons would not get the opportunity to be part of the process as there would be no requirement to publicly notify. This could increase the risk of being judicially reviewed. It is considered this risk is minimal.

Option 2 – Long term lease of required area of reserve and easement for the power lines without public notice

- 4.16 Under this option, the area of land required for the substation would be reclassified a local purpose reserve for electricity substation and reticulation purposes.
- 4.17 Any OIC developed under this option would enable the Christchurch City Council to grant Orion a lease for the area to be occupied by the substation for a period (with rights of renewal) of up to 49 years, without the need to undertake public notification or receive the consent of the Minister of Conservation.

Benefits

- This option would allow Orion long-term occupancy of the site (up to 49 years) without triggering the 'right of first refusal' in the Ngai Tahu Claims Settlement Act.
- Avoids any appeal process and associated delays.

Costs/Limitations

- Any lease would not include the temporary overhead powerlines which service the substation. These would still require an easement.
 - A fixed term lease would require Orion to renegotiate at the end of each term. It does not provide certainty of a permanent interest in land to Orion. A lease of more than 49 years is not acceptable to the Department of Conservation.
 - Affected persons would not get the opportunity to be part of the process as there would be no requirement to publicly notify. This could increase the risk of being judicially reviewed.
 - Setting a lease term of 49 years may be perceived as intentionally excluding the 'right of first refusal' provisions of the Ngai Tahu Claims Settlement Act which would apply to a lease of longer duration.
- 4.18 Orion's objective is to have a permanent interest in the land without the requirement to renegotiate leases on the expiry of a fixed term. Orion does not want a lease with a limited tenure which this option proposes.

Option 3 – Disposal of freehold area of reserve without public notice

- 4.19 This option would require the revocation of the reserve status and sale of the area under the Land Act 1948. Revocation usually only occurs when an area is clearly no longer required as a reserve.
- 4.20 Proposed revocations of recreation reserves must be advertised. The consent of the Minister of Conservation is also required and Land Information New Zealand would

have to agree to a preferential sale to Orion. In addition to this, the disposal of Crown land would trigger the 'right of first refusal' provisions under the Ngai Tahu Claims Settlement Act.

Benefits

- This option would give Orion freehold of the land, providing certainty of occupation.

Costs/Limitations

- The area of the Reserve is permanently removed from Christchurch City Council's reserve lands and there is no certainty that it will ever be available to be integrated back into the Reserve in the future (for example should the substation be moved or not required in the future). The Christchurch City Council would not obtain any land in exchange.
- Any sale of the area under the Land Act 1948 would first need to be offered to Ngai Tahu under the right of first refusal in the Ngai Tahu Claims Settlement Act 1998.
- This option is likely to involve a more protracted process and be more controversial than a lease or easement of the land.
- An easement for the temporary powerlines to cross the Domain will still be required.

4.21 This option is not supported by the Christchurch City Council or Department of Conservation as it is not necessary for the purpose of undertaking the recovery works or long term use of the site.

4.22 Christchurch City Council does not want to revoke the reserve and have it disposed of. There is the possibility of a future land exchange negotiated between Orion and the Christchurch City Council. However, potential sites for exchange are currently unconfirmed and a solution is required in the meantime.

Temporary Generators

4.23 While there are powers under existing Reserves Act provisions for licensing the placement and operation of temporary generators on reserves, to provide certainty and efficiency of process, it is considered beneficial to include in an OIC a power over all classes of reserves for issuing temporary blanket licences for electricity purposes. This power would be in addition to the powers already available in provisions of the Reserves Act relating to licences to occupy reserves temporarily.

Benefits

- The granting of a licence would not need to be site specific, but would ensure that appropriate authorisation would be in place.
- This option would avoid doubt and risk to all parties due to uncertainty whether the existing provisions can be applied to this purpose.

- This option is consistent with approaches that have previously been used by the Christchurch City Council for similar works.
- Christchurch City Council would be able to set standard terms and conditions, for example requirement for reserve land to be reinstated when generator is removed.
- Temporary licences do not require notification.

Costs/Limitations

- No costs have been identified with this option.

4.24 Other options considered for the placement and operation of temporary generators on reserves includes the status quo which involves issuing licences under existing Reserves Act provisions. With this option there is a risk of legal challenge due to the uncertainty of whether temporary licenses can be used for electricity purposes on all classifications of reserve. This also presents uncertainty for Orion.

4.25 Alternatively, the Christchurch City Council and Orion could rely on an informal agreement. An informal understanding that generators will be used in a range of locations around the city has been relied on to date and Christchurch City Council has accepted this approach. However, this option presents some uncertainty for both parties as there is no statutory basis to reach such as agreement. This option presents a risk of legal challenge and does not give the Christchurch City Council the ability to set terms and conditions for example requiring a bond. Both the Christchurch City Council and Orion would prefer the protection of an appropriate license.

5.0 Consultation

5.1 The following Government departments have been consulted: Canterbury Earthquake Recovery Authority, Department of Building and Housing, Department of Conservation, Department of Internal Affairs, Land Information New Zealand, Ministry of Agriculture and Forestry, Ministry of Culture and Heritage, Ministry of Economic Development, Ministry of Health, Ministry of Justice, Ministry of Transport, Te Puni Kokiri, and Treasury. The Department of Prime Minister and Cabinet has been informed.

5.2 Orion and its legal representatives and officers from Christchurch City Council and Environment Canterbury have been consulted about all options for expediting resource consent processes. Both Orion and Christchurch City Council officers acknowledge it is appropriate to retain a resource consent requirement given the nature of the works involved but given the circumstances support the certainty and reduced risk of a non-notified controlled activity status as provided by Option 1 (RMA). Environment Canterbury considers that no intervention is required for resource consents required under the Natural Resource Regional Plan for Air Discharge for the larger generators.

5.3 For the Reserves Act, Option 1, enabling a streamlined process for a non-notified easement for the required substation site is the preferred option of Christchurch City Council, Orion and the Department of Conservation. This option also includes changing the status of the reserve. Easements are used for many other similar uses on Christchurch City Council reserves and will provide the necessary mechanism to hold the land, provide protection to Orion, and use other powers in the Reserves Act such as excluding the public.

- 5.4 It was considered by all parties that deeming the reserve status to be amended by an OIC for the part of the reserve occupied by the substation to be the simplest, most efficient and streamlined approach.
- 5.5 As a means for providing an appropriate occupation right for the substation on Rawhiti Domain, Orion and its legal representatives advised that they would accept either freehold, lease or easement options. However the long term lease option was not supported by Department of Conservation and the disposal option was not supported by Christchurch City Council officers.
- 5.6 Te Rūnanga o Ngāi Tahu are aware of the options under the Reserves Act and have formally written to state that it has no concerns with the preferred option under the Reserves Act. Te Rūnanga o Ngāi Tahu have also provided an RMA perspective which seeks consideration of earthworks and contaminant containment in the resource consent conditions.
- 5.7 Section 73(2) of the CERA requires the Canterbury Earthquake Recovery Review Panel to review all draft OIC before they are recommended under section 71 of that Act. Consultation with the Review Panel will be undertaken and the outcome of this consultation will be advised prior to Cabinet.

6.0 Conclusions and recommendations

- 6.1 Based on the analysis of benefits and costs/limitations in section 4 above, the following conclusions have been drawn on how each option meets (or does not meet) the assessment criteria.

Resource Management Act 1991

Options for formulation of an OIC	Objectives			
	Minimise delay	Certainty to Orion	Preserve opportunities for public input	Avoid, remedy or mitigate adverse effects on environment
Option 1 – Non-notified controlled activities (preferred option)	✓	✓	X	✓
Option 2 –Permitted activities subject to conditions	✓	✓	X	X
Option 3 – Deemed designation with requirement for an outline plan	✓ / X	X	X	X

- 6.2 The preferred option for an OIC to facilitate the approval of applications for resource consent under the RMA by Orion is to deem all resource consents as non-notified, controlled activities (Option 1: RMA).

6.3 Proceeding with Option 1 could result in a time saving of up to 65 working days for those applications that would have been notified. The longest RMA statutory processing time is for notified applications with pre-circulation of evidence at 85 working days. This would be reduced to 20 working days if applications are non-notified. This option provides certainty to Orion that resource consent will be granted and provides for a timely response to resource consents required for emergency electricity network restoration.

Reserves Act 1977

Options for formulation of an OIC	Objectives			
	Minimise delay	Certainty to Orion	Preserve opportunities for public input	Secure long term use of Rawhiti Domain site
Option 1 – Easement over required area of reserve without public notice (preferred option)	✓	✓	X	✓
Option 2 – Long term lease of required area of reserve and easement for the power lines without public notice	✓	X	X	✓ / X
Option 3 – Disposal of freehold area of reserve without public notice	X	✓	X	✓
Providing for licensing temporary generators	✓	✓	X	N/A

6.4 Under the Reserves Act, the preferred option to protect use of the reserve for Orion’s substation installation is enabling a streamlined process (non-notified) for an easement over the required area of reserve for the substation and for the temporary power lines and changing the classification of the reserve to a local purpose reserve (Option 1: Reserves Act). The Christchurch City Council already has the ability to grant easements and has used this to authorise other Orion substations on reserves. The easement would be a permanent interest in the land with options for the Christchurch City Council to use powers such as excluding the public through the reclassification of the reserve to a local purposes (electricity substation and reticulation) reserve.

7.0 Implementation

- 7.1 The proposed OIC will only be in force for a set period of time (for the duration of CERA until 19 April 2016). An expiry date will ensure that the powers available in the OIC provisions are unable to be used in perpetuity where this cannot be justified.
- 7.2 The combined effect of all OIC's promulgated under the CER Act is that they reduce the usual opportunities for land owners and affected parties to participate in statutory approval processes and to remove, or restrict, any rights of appeal. While such restrictions are not desirable, they are considered necessary to facilitate Orion's electricity network recovery works.
- 7.3 The Christchurch City Council would retain responsibility for ensuring any resource consents issued are monitored, and recovery works are carried out in accordance with conditions of consent. This includes an ability for the council to use RMA enforcement provisions. The Christchurch City Council would retain responsibility for administering the easement granted under the Reserves Act.
- 7.4 Due to the urgency of the recovery works Cabinet will be asked to agree to seek a waiver of the 28 day rule to enable the OIC to commence the day it is approved by Executive Council. This is consistent with the approach taken to other OIC. It is intended that the Order will expire on the expiry of the CER Act 2011.

8.0 Monitoring, evaluation and review

- 8.1 Ministry for the Environment officials will monitor the effect of the OIC by liaising with the Christchurch City Council and Orion to see if the OIC is being used, whether it has been successful in shortening Reserves Act and RMA timeframes, and to determine any community concern over the use and effect of the OIC.
- 8.2 To achieve this, the Ministry for the Environment has written to the local authorities in Canterbury and has asked them to monitor and report on the effect of existing OICs and any new OICs that are approved and are relevant to their functions under the RMA. The reporting will be quarterly, with the first report due 31 August 2011. This quarterly reporting will also feed into the monitoring that the Christchurch Earthquake Recovery Authority (CERA) is required to do under section 88 of the CER Act on its effectiveness. Should any implementation issues arise, the OIC can be modified or revoked if necessary.