

Chair

Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery

Canterbury Earthquake (Resource Management Act 1991) Amendment Order 2010

Proposal

1. I seek approval to authorise the submission to the Governor-General in Executive Council of the Canterbury Earthquake (Resource Management Act 1991) Amendment Order 2010.
2. The Amendment Order is required to correct a technical error in the Canterbury Earthquake (Resource Management Act 1991) Order 2010 which was signed by the Governor-General on 16 September 2010.

Background

3. On 14 September 2010 the Canterbury Earthquake Response and Recovery Act received Royal Assent. The Act provides that the relevant Minister may recommend to the Governor-General the making of Orders in Council which can provide for the exemption, modification, or extension of statutory provisions.
4. Following consultation with Christchurch City Council, Waimakariri District Council, and Selwyn District Council, and the regional council, Environment Canterbury (the Councils), the Canterbury Earthquake (Resource Management Act 1991) Order 2010 was drafted, approved by the Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery on 15 September 2010 and submitted to Executive Council on 16 September 2010.

Policy

5. Clause 7 of the Canterbury Earthquake (Resource Management Act 1991) Order provides the Councils, in their capacity as consent authorities, with an extension to the usual powers they have to extend timeframes under section 37A, provided the applicant agrees.
6. Clause 7 (1) uses the words "instead of section 37A of the Act". These are intended to be additional powers and not replace the current powers under section 37A of the Resource Management Act 1991.
7. For the avoidance of doubt a correction should be made to the Canterbury Earthquake (Resource Management Act 1991) Order to ensure that the powers contained in clause 7 are additional to the powers under section 37A of the Resource Management Act 1991. A similar change is needed to clause 6 which uses the same formula of words "instead of section 37A".
8. The Canterbury Earthquake (Resource Management Act 1991) Amendment Order 2010 makes this correction to the Canterbury Earthquake (Resource Management Act 1991) Order 2010. It provides clarification of, but does not, change the policy intent.

Statutory tests

9. The Act requires that, in making a recommendation, the relevant Ministers must take into account the purpose of the Act, consult the Recovery Commission if practicable and have regard to its recommendations.
10. The Recovery Commission (the Commission) is unlikely to be appointed at the time this paper is considered, or, if the Commission has been appointed, it is unlikely to be in a position to be able to provide advice. Officials have advised me, however, that the need for a change to the Canterbury Earthquake (Resource Management Act 1991) Order has been discussed with the lawyer acting on behalf of the three territorial authorities and Environment Canterbury has also been informed.
11. I am recommending to the Governor-General the making of the Canterbury Earthquake (Resource Management Act 1991) Amendment Order 2010 under section 6(4) of the Act. I consider that the Order in Council is reasonably necessary and expedient for the purpose of the Act. The Order will facilitate the response to the Canterbury earthquake.

Timing and the 28-Day Rule

12. Because of the emergency situation, Cabinet agreed on 13 September 2010 that the 28 day rule for all Orders in Council made under the legislation will be waived and the Orders in Councils are able to apply immediately.

Publicity

13. Once approved, the Canterbury Earthquake (Resource Management Act 1991) Amendment Order 2010, will be notified in the *New Zealand Gazette* and the councils concerned will be informed.

Consultation

14. The Ministry of Economic Development and the Department of Prime Minister and Cabinet have been informed about the need for a correction to the Canterbury Earthquake (Resource Management Act 1991) Order 2010.
15. The need for a change to the Canterbury Earthquake (Resource Management Act 1991) Order has been discussed with the lawyer acting on behalf of the three territorial authorities and Environment Canterbury has also been informed.

Recommendations

16. I recommend that the relevant Ministers
 1. **note** that on 16 September 2010 the Governor-General in Executive Council approved the Canterbury Earthquake (Resource Management Act 1991) Order 2010.
 2. **note** there is a technical error in the Order and a need to clarify the intent of clause 6 and clause 7 of the Canterbury Earthquake (Resource Management Act 1991) Order 2010 to ensure that the Councils are given additional powers with respect to section 37A of the Resource Management Act 1991.

3. authorise the submission to the Governor General in Executive Council of the
Canterbury Earthquake (Resource Management Act 1991) Amendment Order
2010



Hon Dr Nick Smith
Minister for the Environment

16 / 9 / 10