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23 August 2011

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

Dear Sir John

## **Canterbury Earthquake (Building Act) Order 2011**

### **Proposal**

- 1 We seek a review by the Canterbury Earthquake Recovery Review Panel, of the draft Canterbury Earthquake (Building Act) Order 2011 (the Order in Council), under section 73 of the Canterbury Earthquake Recovery Act 2011.
- 2 The Order in Council replaces the Canterbury Earthquake (Building Act) Order 2010 (the 2010 Order in Council), to provide councils with additional powers to deal with the dangerous building situations they face and extend the period for which the powers are available to 16 September 2013.
- 3 A copy of the draft Order in Council is attached as Appendix 1.

### **Background**

- 4 The 2010 Order in Council is due to expire on 16 September 2011. It came into force on 16 September 2010, primarily to address concerns from affected councils that existing powers in the Building Act 2004 (the Building Act) did not address the full range of dangerous building situations existing in Canterbury after the 7.1 magnitude earthquake of 4 September 2010. It:
  - extends powers for councils in the Canterbury region to deal with dangerous buildings – this includes:



- deeming red and yellow placards issued under the Civil Defence Emergency Management Act 2002 during a state of emergency to be dangerous building notices under the Building Act (for 60 days from date of issue)
  - allowing for access to be restricted to buildings that are not themselves dangerous but are at risk from adjacent or nearby dangerous buildings
  - allowing councils to restrict entry into buildings that have not yet been inspected and had their safety assessed, and
  - allowing councils to demolish dangerous buildings where an owner refuses to do so, without the need to obtain District Court approval
- empowers Department of Building and Housing (the Department) staff to enter onto property and into buildings to gather earthquake information (to help provide pivotal information to inform building science developments and, in particular, improvements to building safety in the event of earthquakes)
  - exempts certain low risk plumbing-related work (in relation to water storage heaters) from building consent requirements (to help facilitate reconstruction activities).
- 5 The 2010 Order in Council is important for protecting the health and safety of people in Canterbury, and for facilitating reconstruction activities in affected areas.
- 6 The affected Canterbury councils have requested that the 2010 Order in Council be continued, with minor changes to improve the clarity and workability of provisions, to help them deal with ongoing earthquake response issues promptly and effectively.
- 7 The affected councils have also requested that modifications be made to take into account new risks that have arisen since the 4 September 2010 earthquake in relation to certain land hazards. Christchurch City Council has advised that following the 22 February 2011 earthquake there are now a number of buildings (largely houses) that are at risk from natural land hazards such as rockfalls, landslides, cliff collapse and subsidence. During the state of emergency following the 22 February 2011 earthquake, access to affected buildings was restricted through the use of red and yellow placards under the Civil Defence and Emergency Management Act 2002. However, Christchurch City Council has indicated that a longer term solution involving the use of modified Building Act powers would be desirable to protect the health and safety of users of these buildings.

### **Policy Objective**

- 8 Dangerous buildings and dangerous building situations still exist in Canterbury.

- 9 Expiry of the 2010 Order in Council would mean that councils must revert to the powers accorded to them by the Building Act. These do not address the full range of dangerous building situations that exist following the Canterbury earthquakes and do not recognise the ongoing uncertainties the region faces.
- 10 Provisions in the 2010 Order in Council need to continue in force after the 2010 Order in Council expires on 16 September 2011 to ensure that the affected Canterbury councils can continue to protect the health and safety of people in Canterbury and can contribute to recovery and reconstruction activities.
- 11 At the request of the affected Canterbury councils, some changes to the 2010 Order in Council are also proposed. The main changes included in the draft Order in Council are:
  - an extension to provisions in the 2010 Order in Council enabling councils to restrict access to buildings that are 'at risk' of nearby dangerous buildings and other property to help address health and safety risks associated with certain land hazards (such as rock falls and landslides)
  - removing time limits for notices restricting entry into buildings that are themselves dangerous (to be consistent with the Building Act 2004)
  - providing for notices restricting entry to 'at risk' buildings, and notices issued by councils restricting access where a building has not been inspected, to remain in force for up to 12 weeks from date of issue (with an ability to be renewed), or until the danger has been removed (if this is sooner)
  - providing for red and yellow cards issued under the Civil Defence Emergency Management Act 2002 in a future state of emergency to remain in force as dangerous building notices for up to 12 weeks from date of issue (with an ability to be renewed), or until the danger has been removed (if this is sooner).

### **Costs and benefits**

- 12 The proposed option will help councils to deal with ongoing earthquake response issues promptly and effectively. It will also help to ensure that people in Canterbury are adequately protected from public health and safety risks following the Canterbury earthquakes, and ensure that recovery activities are facilitated.
- 13 Retaining information gathering powers for the Department and the plumbing related building consent exemptions (regarding water storage heaters) remain important for future earthquake-related risk reduction work and will assist in recovery activities going forward.
- 14 While the exercise of powers by councils under the Order in Council will significantly impact on the rights of owners to access their property, as the exercise of powers under the 2010 Order in Council do, the Department is not aware of any evidence that councils have or will use these powers inappropriately. In addition, proposed powers enabling the affected councils to restrict access to 'at risk' buildings have been designed to recognise the rights of

affected owners as well as the practical difficulties facing councils and the need to follow up on the affected buildings.

## **Risks**

15 We do not consider there to be significant risks in proceeding with the proposed Order in Council.

## **Timing and commencement of the Order in Council**

16 It is desirable that the Order in Council comes into effect as soon as possible to ensure the affected Canterbury councils have the necessary powers to deal with dangerous building situations in Canterbury following the earthquakes and to enable the powers to be used immediately.

17 A waiver of the 28 day rule will be sought to enable the draft Order in Council to commence on 17 September 2011 – the day after the 2010 Order in Council expires.

18 The Order in Council will remain in force until 16 September 2013. Ongoing need for an Order in Council will be reviewed and assessed prior to this.

## **Consultation**

19 The following agencies were consulted in developing the Order in Council: Department of Internal Affairs, Ministry of Civil Defence and Emergency Management, Ministry of Justice, Ministry for the Environment, the Treasury, Ministry of Economic Development, Land Information New Zealand and the Canterbury Earthquake Recovery Authority. The Department of the Prime Minister and Cabinet was informed.

20 Councils in Canterbury had input into the development of the 2010 Order in Council. Policy proposals for the replacement Order in Council were informed by discussions with, and comment from, councils in Canterbury (Christchurch City Council, Waimakariri District Council and Selwyn District Council). These councils have also provided input into the replacement Order in Council during its drafting stages.

21 The Order in Council has also been reviewed by the Parliamentary Cross-Party Forum.

## **Profile of draft Order in Council and proposed publicity**

22 This initiative is unlikely to cause controversy. Once the Order in Council is made, it will be gazetted. Any publicity associated with the Order in Council will be undertaken as part of the Government's wider communications strategy on the response to the Canterbury earthquakes. The Department will provide guidance to the affected councils to assist them in their use of the powers in the Order in Council.

## Conclusion

23 We look forward to receiving your recommendations so that regard can be had to them before the relevant Minister makes a recommendation on the draft Order. The key contact for this item of work is Hayden Taylor, who can be contacted at 04 817 4281 or [hayden.taylor@dbh.govt.nz](mailto:hayden.taylor@dbh.govt.nz).

Yours sincerely

A handwritten signature in black ink, appearing to read 'D Kelly', with a long horizontal flourish extending to the right.

David Kelly  
**Deputy Chief Executive, Building Quality**  
**Department of Building and Housing**