

Canterbury Earthquake Orders

The Canterbury Earthquake Response and Recovery Act ("the Canterbury Earthquake Act") was passed into law under urgency on 14 September 2010. The Canterbury Earthquake Act enables the Governor-General (on advice from the relevant Minister) to modify or grant an exemption from a range of existing legislation. This is done by an Order in Council.

To date, seven Orders in Council have been passed under the Canterbury Earthquake Act and other legislation. Three of these orders have particular significance to property and building related issues. These are:

- The Canterbury Earthquake (Building Act) Order 2010;
- The Canterbury Earthquake (Local Government Act 2002) Order 2010; and
- The Canterbury Earthquake (Resource Management Act) Order 2010.

Canterbury Earthquake (Building Act) Order 2010

This Order exempts, modifies and extends the application of certain provisions for the Building Act 2004. The purpose of the Order is to enable councils in the Canterbury region to take appropriate action in respect of dangerous buildings and related issues arising from the Canterbury earthquake.

The Order, which is in force for one year, applies to the districts of the Christchurch City Council, Selwyn District Council and Waimakariri District Council.

What is deemed to be a "dangerous building" is extended by the Order to account for damage caused by the earthquake, allowing the Council to do a range of things including putting up hoardings and giving notice of required works to those buildings. In addition to a building being dangerous due to risk to people, a building can also be deemed dangerous if the Council has been unable to carry out an inspection to determine that risk.

The Order modifies the usual notice provisions of the Building Act. The notice for required works on dangerous buildings shall require the work to be carried out within a time stated and advise that the territorial authority may carry out the work required under the notice if the owner of the building does not. The owner of the building will be liable for the cost of the work carried out by the territorial authority unless they apply to the District Court for relief from their obligations to pay these costs. This application must be made within 5 days of the works being carried out. The onus is on the building owner to apply for this relief.

Red and Yellow card are deemed to be notices restricting access to buildings under the modified Building Act. The notices can be issued for up to 60 days and also renewed following that.

The Order also adds several exemptions to activities where resource consents are not required. These are found in the first schedule of the Building Act.

Canterbury Earthquake (Local Government Act 2002) Order 2010

This order exempts the same Canterbury Councils from certain provisions of the Local Government Act 2002 until 20 June 2011.

These exemptions include:

- Requirements in relation to identifying practical options for the achievement of objectives;
- Considering benefits and costs;
- Considering community views;
- Considering the local authority's capacity to meet needs in relation to any statutory responsibility of that local authority;
- Giving consideration to the views and preferences of persons likely affected by their decision making;
- Identifying whether their decisions will have consequences that could be significantly inconsistent with policies adopted by the local authority;
- Managing funds in a way not inconsistent with the Council's annual plan or long term community plan; and
- The normal requirement to use the special consultative procedure in certain situations.

Importantly, these exemptions only apply to the extent that a decision, act or omission is necessary or desirable to further the purposes of the Canterbury Earthquake Act. These purposes include facilitating the response to the Canterbury earthquake.

Canterbury Earthquake (Resource Management Act) Order 2010

This Order provides for the extension of certain time periods prescribed by the Resource Management Act. It relaxes certain administrative and other duties. The Order expires on 31 March 2012 and applies to the same Canterbury Councils.

Under the Order, if the local authority holds a resource consent that expires between 4 September 2010 and 4 December 2010 that consent is deemed to be renewed for 60 working days from the date on which it would otherwise have expired.

Other timeframes imposed by the RMA can be extended upon the request of an applicant for up to 6 months.

In relation to the preparation and change of policy statements and plans, the local authority may waive or extend the time for the exercise of a function or for carrying out or completing any requirement or process provided the change requested is not relevant to the promotion of the purpose of the Canterbury Earthquake Act. Again, any such waiver or extension shall not exceed six months.

The duty of territorial authorities to keep records and observe and enforce district and regional plans and policy statements between 4 September 2010 and 4 December 2010 only apply as far as it is reasonably practical for the local authorities to fulfil those duties.

Modifications are made to the existing emergency works powers under section 330 of the Resource Management Act including extending the timeframe where retrospective resource consent must be obtained following emergency work to 60 working days.

If the CEO of a local authority authorises the removal of a danger caused by a building (pursuant to the Building Act) where there is immediate danger, no resource consent is required. Unlike in normal situations, the Council is exempt from the requirement to apply to the District Court following the removal of the danger for confirmation of the CEO's decision (by way of warrant) to remove that danger.

The Order also contains a provision excusing the local authority of liability to prosecution for an omission if the local authority permits a contravention of various sections of the Resource Management Act provided that that omission is reasonably necessary to promote the purpose of the Canterbury Earthquake Act.

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