



DEALING WITH RESOURCE MANAGEMENT MATTERS AFTER THE EARTHQUAKE

Following the February 22 earthquake, new Orders in Council have been made under the Canterbury Earthquake Response and Recovery Act 2010 (enacted following the September 2010 earthquake).

New Orders in Council have been made which impact on the Resource Management Act 1991 ("RMA"). They deal with a process for land remediation, which also includes work on infrastructure and flood protection works, the status of temporary accommodation and depots, and relaxing some requirements under the RMA.

Land Remediation Work (Also Including Infrastructure Repair And Flood Protection)

The Canterbury Earthquake (Resource Management Act) Order 2011 provides for land remediation work to proceed without being unduly delayed by processes under the RMA.

"Land Remediation Work" is defined in the Order and includes work to:

- Protect, stabilize, or remediate land affected by the Canterbury land to:
 - Enable use of the land or of adjacent land or structures to be resumed;
 - Protect the land or adjacent land or structures from damage (including that from erosion, liquefaction, subsidence, slippage or falling rocks or debris).
- Repair or reconstruct infrastructure
- Provide for flood protection.

These applications must not be notified but the council must consult with persons (including those whose properties may be affected) who will be or likely to be adversely affected by the work. In doing so, regard must be had to the need for the land remediation to proceed expeditiously. The minimum requirements for consultation are that the person is invited to make written comments on the application and be given at least 10 working days to provide that. Otherwise, the council may undertake consultation as it thinks fit.

Those commenting on the proposal have no rights of appeal and no rights of objection to the decision. Only the council may issue enforcement proceedings in relation to land remediation work.

The Order provides for a more efficient application process. Consents are still required and so all relevant matters will be considered and suitable conditions likely imposed. However,

the notification process that may otherwise have applied has been slimmed down to consultation with people who are or may be adversely affected.

As land remediation work includes not just the remediation of the land, but the restoration of infrastructure, it is envisaged that this Order will mean that such repairs and reconstruction will not be held up by the resource consent process.

Temporary Accommodation, Storage and Depots

The Canterbury Earthquake (Resource Management Permitted Activities) Order 2011 provides for temporary accommodation and temporary depots and storage facilities to be treated as permitted activities for the purpose of the RMA. The Order applies from 22 February 2011 to 31 March 2012.

While an activity is a permitted activity under this Order, it is treated as if it is a permitted activity under the plan that would otherwise apply to the activity. No existing use rights or qualification for a certificate of compliance under the RMA exists for these activities. Only the relevant consent authority may bring enforcement proceedings in relation to these activities.

"Temporary Accommodation" is defined in the order. It includes accommodation for people displaced from their normal home or business due to:

- a. Damage to land or structures caused by the earthquake.
- b. Repair or construction of structures or essential services.
- c. Land remediation works.
- d. Risk of damage to land or structures or of injury to people.

These activities are only permitted activities if the prescribed public notice process is followed by the responsible Council and the Council's requirements are met.

"Temporary depots and storage facilities" are also defined in the order. They include depots or storage facilities for transport purposes, for use by tradespersons, service providers or contractors incidental to construction work associated with the earthquake. The uses of land and structures used for this purpose are wide and include those involving vehicles, machinery, food, emergency supplies and the provision of services.

These activities are also treated as permitted activities provided the public notice process is followed and the Council's requirements are met.

These provisions are not going to apply to all displaced residents and businesses. They will only apply where the council has given public notice of a specified location for temporary accommodation, storage facilities and depots. Some businesses may find that the new premises in which they are currently operating are not appropriately zoned for their activity and / or they do not meet all of the district or regional plan rules. In those instances, and where the council has not followed the process in this order, you will still need to apply for resource consent for your activity. Under the Canterbury Earthquake (Resource Management Act) Amendment Order 2011 (see below), the Council's obligations to enforce its district or regional plan or resource consents is suspended, but that does not mean that councils will not take action if the appropriate consents are not in place.

Extension of provisions made in September 2010

Following the September 2010 earthquake, the Canterbury Earthquake (Resource Management Act) Order 2010 was made. In response to the February 2011 earthquake, the Canterbury Earthquake (Resource Management Act) Amendment Order 2011 was made. It amends the 2010 Order and, in many cases, extends timeframes so that the provisions of

the 2010 Order apply post-February 2011. The matters included in this Order are aimed at relaxing requirements on local authorities so that they can focus on earthquake recovery.

The provisions that are now in place are:

1. When local authorities hold consents which expire, or there are steps to be taken under resource consents granted to them, between 22 February 2011 and 31 March 2012, a 60 day extension is given to that expiry or step.
2. If an applicant requests, the local authority processing a resource consent application may grant an extension of up to 6 months for requirements or processes relating to that application. Written notice of this is required.

The Canterbury Earthquake (Resource Management Act) Amendment Order 2010 was made to clarify that this power to extend the time periods in (1) and (2) above are additional to, and not in substitution for, existing powers to extend time.

3. The local authority can also extend the time (by up to 6 months) for taking any steps in relation to a policy or plan change request.
4. Between 2 July 2011 and 31 March 2012, these local authorities will not be required to discount resource consent processing charges as a result of any failure to process resource consent applications within the timeframes required by the RMA.
5. Obligations on local authorities to keep records and to enforce their district and regional plans have also been relaxed between 22 February 2011 and 31 March 2012. The Council's obligations to enforce resource consents are also now suspended under this Amendment Order.
6. If emergency works are undertaken under the RMA by or on behalf of the local authority, timeframes are extended for giving advice of action (to 20 working days) and for lodging a resource consent application (to 60 working days) for those works. The procedure for entering a place for the purpose of emergency work is set out in clause 11, rather than section 330(3) of the RMA.
7. If the local authority takes steps, using powers under the Building Act 2004, to fix unsanitary conditions or remove danger to safety in relation to a building, a resource consent is not required.
8. The local authority may permit the Chief Executive to delegate powers and functions. Normally only the Council (being the councillors) can delegate functions and powers.
9. Local authorities are not liable for prosecution if they allow a contravention of certain sections of the RMA, provided that the omission is reasonably necessary for the response to the earthquake.
10. The Kate Valley landfill, although in the Hurunui District, is provided for in this Order. Exemptions are made to allow for the landfill to be used in the recovery from the 22 February 2012 earthquake.

For more detail on these, and other, Orders in Council dealing with the aftermath of the February earthquake, see our website: www.wynnwilliams.co.nz or our Resource Management and Environmental Law Team.

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