

**30. DELEGATIONS AND STANDARDS FOR PUBLIC NOTICES PERMITTING TEMPORARY ACCOMMODATION UNDER THE CANTERBURY EARTHQUAKE (RESOURCE MANAGEMENT ACT PERMITTED ACTIVITIES) ORDER 2011**



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**PURPOSE OF REPORT**

1. Following the 22 February earthquake the Council wants to help people to be able to continue to live, work and play in Christchurch. To help achieve this it is necessary to operate in different ways than normal for a limited period. With regards temporary accommodation the Council needs to reduce and streamline a number of processes to enable people to swiftly move in to temporary living and/or business accommodation. At the same time the Council needs to maintain some controls that help to maintain the quality of life of the general community. The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 ("the Permitted Activities OIC") provides a vehicle for the Council to achieve these aims.
2. This report has five purposes. First, to inform the Council of the Permitted Activities OIC. Secondly, to obtain Council approval of general standards for public notices permitting temporary accommodation for people and businesses displaced by the earthquake. Thirdly, to obtain delegation from Council to specified Council officers of the ability to impose further requirements on permitted temporary activities after they have established. Fourthly, to obtain a delegation from the Council to an independent commissioner of the discretion to permit by public notice temporary accommodation for people and businesses that do not comply with the general standards. Fifth, for the Council to approve the policy and rationale by which those delegations will be exercised.
3. The attached notices are intended to achieve the legal requirements. These will also need to be conveyed in a way that is comprehensible to the public at large. A communication process to achieve this is also under way.

**EXECUTIVE SUMMARY**

4. The earthquake has displaced people and businesses from their usual premises. A significant number of people and businesses need temporary accommodation while their usual homes and business locations are being repaired and services reinstated. Construction depots are needed for rebuilding.
5. There is not sufficient replacement accommodation for the displaced activities within their permitted zones in the City Plan. The need to obtain resource consent for temporary accommodation and for storage and construction depots would slow recovery. The needs of the displaced will not be met if they must comply with the City Plan or get resource consent. The Permitted Activities OIC was approved by the Governor-General on the recommendation of the Minister for the Environment on 8<sup>th</sup> March 2011 to enable the Council to permit temporary accommodation for displaced people and businesses that would otherwise not comply with the City Plan.
6. If the temporary accommodation breaches rules in the City Plan, it is permitted by the Council under the OIC only if the Council publishes a public notice specifying the type and specific location of the permitted activity, and only if it complies with the standards in the notice.
7. There are no current delegations from the Council to officers to enable efficient provision for temporary accommodation for displaced people and businesses. This report recommends: first, Council approval of a general set of standards to be used to permit activity at a zone-wide level; secondly, approval of a policy to be used to assess applications on a site by site basis for temporary accommodation that would not meet those general standards; thirdly, delegation from Council to specified Council officers of the ability to impose further requirements on permitted activities after they have established to address unanticipated or unintended adverse effects of activity in temporary accommodation; and fourthly, delegation to independent Commissioners to decide special cases using that policy.

#### **FINANCIAL IMPLICATIONS**

8. There may be significant costs for people and businesses displaced by the earthquake and aftershocks if the Council requires them to apply for resource consent, or go through individual applications for consideration for public notices. Moreover, the Council has no provision for cost recovery for permitting temporary accommodation under the Permitted Activities OIC. The process for individual consideration of temporary accommodation proposals followed by public notices would be a significant cost. The more specific the standards, the more individual requests for temporary accommodation, and the greater the cost for Council and community.

#### **DO THE RECOMMENDATIONS OF THIS REPORT ALIGN WITH 2009-19 LTCCP BUDGETS?**

9. There is no budget in the 2009-19 LTCCP, for Council resources being expended on costs resulting from the Canterbury Earthquake.

#### **LEGAL CONSIDERATIONS**

10. Council processes and delegations to implement the Permitted Activities OIC ought to be designed so as to achieve the intent of the OIC and the purpose of the Canterbury Earthquake Response and Recovery Act 2010 (CERRA).
11. The purpose of CERRA includes facilitating the response to the Canterbury earthquake and providing statutory power to assist with the response to the earthquake.
12. CERRA enables the Governor-General to make Orders in Council on the recommendation of Ministers if they are reasonably necessary or expedient for the purpose of the Act.
13. The Act currently provides that Orders in Council must expire by 31<sup>st</sup> March 2012. Parliament is almost certainly going to amend that expiry date as a result of the effects of the 22<sup>nd</sup> February earthquake; however, until it does so, implementation of Orders in Council cannot extend past 31<sup>st</sup> March 2012. The Permitted Activities OIC expires on 31<sup>st</sup> March 2012. Staff have been advised that the Government is aware of, and is addressing this inconsistency.
14. The Permitted Activities OIC enables the Council to provide for the needs of people displaced from their normal place of residence or business by the effects of the earthquake: damage to land or buildings; repair and reconstruction of essential services; land remediation work; or risk from adjacent structures (clause 7(1)). The definition of temporary accommodation in the Permitted Activities OIC encompasses a wide range of types of accommodation. For example, it includes: large scale provision of mobile homes or modular housing by the Department of Building and Housing; people living in caravans on the sites of their damaged homes; City offices moving to residences or warehouses in industrial zones.
15. Temporary accommodation for those people is permitted despite anything to the contrary in the City Plan if the temporary accommodation is in a specified location identified in a public notice issued by the Council and the temporary accommodation complies with any standards imposed by that notice (clause 7(3)(a)). Every person providing or using that temporary accommodation must also comply with any further requirements imposed by the Council by public notice for the purpose of controlling noise or other effects of the activity after it has commenced (clause 7(3)(b)).
16. The requirement in the Permitted Activities OIC for a "specified location" to be identified in the public notice can be applied as broadly or narrowly as the Council wishes. The "specified location" identified in the public notice can be a zone, or can be a specific address or allotment.
17. In addition to providing for residences and businesses, the Permitted Activities OIC enables the Council to publish a public notice and impose standards for temporary depots and storage facilities for transport, tradesmen and contractors if they are reasonably incidental to construction work undertaken for the purposes of CERRA (clause 8).

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18. The temporary accommodation and depots that would otherwise be in breach of the City Plan are permitted by public notices under the OIC for no longer than the duration of the OIC. There will be no existing use rights when the Permitted Activities OIC comes to an end (clause 5).
19. The Permitted Activities OIC is irrelevant if people and businesses relocate to accommodation for which their activity is already permitted in the City Plan. The need for the new permitted activities power arises as there is insufficient accommodation for those people and businesses in existence and permitted by the City Plan.
20. Public notices will authorise activity from the date of the public notice. The numerous activities that have relocated prior to the public notice in breach of the City Plan will be lawful from that date of the public notice if they comply with the standards in the notice.
21. Temporary accommodation for persons displaced by the earthquake that does not comply with the City Plan and does not comply with standards or requirements imposed under the Permitted Activities OIC – either the general standards recommended in this report, or specific standards set by the Commissioner Panel for the specific proposal - must obtain a resource consent.
22. Section 84 of the Resource Management Act 1991 requires local authorities to observe and enforce their district plans. However, as a result of the extraordinary circumstances of the Canterbury earthquake, the Canterbury Earthquake (Resource Management Act) Order 2010 ("the RMA 2010 OIC") provided that those duties "...apply to the local authorities only as far as it is reasonably practicable for the local authorities to fulfil those duties, having regard to the circumstances arising from the Canterbury earthquake". The RMA 2010 OIC initially provided for that relaxation of enforcement of the City Plan only for the period from 4 September 2010 to 4 December 2010. Subsequent to the 22<sup>nd</sup> February aftershock, the Governor-General has amended that period of relaxation of enforcement to the period between 22 February 2011 and 31 March 2012.
23. The Permitted Activity OIC does not change the need for building consents or for resource consents from the Canterbury Regional Council. Other statutory constraints still apply.

#### **ALIGNMENT WITH LTCCP AND ACTIVITY MANAGEMENT PLANS**

Do the recommendations of this report support a level of service or project in the 2009-19 LTCCP?

24. Yes

#### **ALIGNMENT WITH STRATEGIES**

Do the recommendations align with the Council's strategies?

25. Yes

#### **CONSULTATION FULFILMENT**

26. Council officers have consulted with officers of the Department of Building and Housing. Public consultation has not been possible due to the emergency. However, officers are aware of numerous enquiries from displaced people and businesses who are urgently seeking clarity and direction concerning temporary accommodation.

#### **STAFF RECOMMENDATION**

It is recommended that the Council:

- (a) Approve the publication of public notices under clauses 7(3)(a) and 8(3)(a) of the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 to permit temporary accommodation, depots and storage facilities in general accordance with the standards set out in the attachments to this report, in the zones identified in those standards.

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- (b) Delegate to the Resource Consent Manager and the Planning Administration Manager the discretion to impose further requirements on temporary accommodation, depot and storage facility activity after it has commenced under clause 7(3)(b) and 8(3)(b) of the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011.
- (c) Delegate to a Commissioner to be appointed from an approved list by the Resource Consent Manager or the Planning Administration Manager the discretion to permit, by public notice under clause 7(3)(a) and 8(3)(a) of the Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011, temporary accommodation, depots and storage facilities that do not meet the standards approved by the Council under recommendation (a) above.
- (d) That the approved list of commissioners for the purpose of recommendation (c) above be the following:
  - Ken Lawn
  - David Mountfort
  - David Collins
- (e) Resolve that the discretions delegated by the Council pursuant to recommendations (b) and (c) above must be exercised in a manner that is consistent with the document entitled Policy for Permitting Temporary Accommodation attached to this report.

## BACKGROUND (THE ISSUES)

27. The overall aim of the Permitted Activities OIC and of the recommendations in this report is to re-house people and businesses who have been displaced by the earthquake as quickly as possible with a minimum of costs in time or money resulting from procedure, rules and regulations. The objective is to facilitate recovery from the earthquake by providing for temporary accommodation quickly and efficiently.
28. The Permitted Activities OIC enables temporary accommodation (business and residential) and temporary depots and storage facilities to be treated as permitted activities for the purposes of the City Plan. The Permitted Activities OIC covers temporary accommodation only if it is located in areas specified for the purpose by public notice by the Council and complies with standards and requirements imposed by the Council in the public notice.
29. The Council does not have complete information on the quantum of households and businesses requiring temporary accommodation, the length of time for which such accommodation will be needed, and the preferred locations and property requirements of the households and businesses that have been displaced. The following information is based on Council officers' broad estimates.
30. **Businesses displaced:** Most recent figures pre-earthquake were that there were 4,108 businesses comprising 30,405 employees in the central city red zone. Not all the buildings in this zone have received red stickers. But many with green and yellow stickers will be uninhabitable for a period whilst other buildings are demolished, services restored, roads cleared and non-structural repairs completed. These businesses will adopt various strategies to find temporary accommodation, including relocating to residences, other company offices around the country, other permanent premises and specifically provided temporary business accommodation.
31. **Office based businesses specifically:** 112 predominantly office based buildings have been identified in the central city red zone. This equates to approximately 372,534 square metres of total floor space. Of this an estimated 127,926 square metres is in red stickered buildings and 152,599 square metres in yellow stickered buildings. Not all this space will be offices i.e. in many cases the ground floors will be used for retail. Also not all the available floor space was being used prior to the earthquake. Assuming 80% of the total floor space is currently tenanted office floor space we can estimate 224,420 square metres of lost floor space for a considerable period.
32. These figures do not include the lost business space elsewhere in the city.
33. **Residential Accommodation:** Preliminary estimates by the Department of Building and Housing (DBH) are that 20% of homes with red and yellow stickers will require specially provided temporary housing (i.e. as opposed to self-relocating to the private rental market, friends and family etc.) over the next 12 months. DBH estimates that approximately 5000 houses have received red and yellow stickers and therefore approximately 1000 temporary homes will need to be provided over this period. DBH estimates that there may be a need for a further 1,000 temporary homes for those displaced during repairs or rebuilds.
34. These figures are very preliminary.
35. Temporary accommodation for people and businesses displaced by the earthquake will be in a wide range of environments, encompassing a single caravan on the site of a damaged house, a white collar business occupying a warehouse, a temporary business park for numerous businesses, and a large modular housing development either on a site to then be replaced by a permanent residential subdivision, or by the Department of Building and Housing to be removed and remediated. It should be noted that temporary accommodation could be established on sections with damaged or demolished buildings but also on sites where there is either an undamaged home or other building of no current building. This necessitates the Council adopting a broad and enabling approach to exercising the discretion to permit temporary accommodation that breaches rules in the City Plan.

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36. A pragmatic approach is needed that strikes a balance between getting people and businesses housed quickly, satisfying legal obligations, and minimizing adverse effects on the environment. Consideration also needs to be given to solving the immediate issue while not compromising adopted land use plans and policies, such as the City Plan and UDS. It is with these considerations in mind that officers have prepared the attached Policy for Temporary Accommodation, Standards for endorsement by the Council, and delegations.
37. The drafting of the proposed Standards and the proposed delegation to a Commissioner for deciding "special cases" are interconnected and should be considered by Council as a package. If the Standards were more general there may be fewer requests for special consideration, less delay resulting from a need to obtain special approval, but more scope for adverse effects in the community. If the Standards were more limiting then there would be more call for special consideration, more delay, but possibly more constraint of adverse effects in the community.
38. Officers consider that the recommendations in this report strike an appropriate balance between those considerations.
39. The attached Policy for Temporary Accommodation explains the planning assessment that underlies the Standards attached to this report.
40. There are three mechanisms available in the current legislative framework for addressing the needs of temporary accommodation activity that does not meet the general standards:
  - i. relax enforcement of the City Plan relying on clause 10 of the RMA 2010 OIC<sup>1</sup>;
  - ii. provide for a site specific public notice under clause 7(3) of the permitted activities OIC that applies to a specific activity;
  - iii. require resource consent to be obtained for the activity, in accordance with the City Plan provisions.
41. The framework established by the proposed delegations in this report strike an appropriate balance in the use of all three of those mechanisms.
42. In some instances, it is appropriate for the Council to rely on clause 10 of the RMA 2010 OIC and relax its observance of the City Plan to allow an activity that cannot comply with the general standards and/or the City Plan to continue for a short period of time. In those circumstances, it would not be necessary to consider or rely on the Permitted Activities OIC. It will however be a matter of judgement for Council officers whether it is appropriate to rely on this clause in the RMA 2010 OIC in the circumstances of each case. In exercising this judgement, Council officers would consider:
  - i. the length of time that the activity is to continue in the temporary location;
  - ii. the reasons why it has become established in the temporary location;
  - iii. any adverse effects created by the activity.
43. When it is not appropriate to relax the observance and/or enforcement of the City Plan, the options available to the person carrying out the activity would be to:
  - i. seek a resource consent, following the usual processes set out in the City Plan; or

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<sup>1</sup> Clause 10 of the RMA 2010 OIC states that between 22 February 2011 and 31 March 2012 the duty under [section 84](#) of the RMA for the Council to observe and enforce its district plans, including the duty to enforce a resource consent, apply only as far as it is reasonably practicable having regard to the circumstances arising from the Canterbury earthquake.

- ii. make a case to the Council justifying the issuing of a site specific public notice under clause 7(3) of the Permitted Activities OIC to permit the relevant activity.
44. It is appropriate for the Council to adopt a process for the exercise of the public notice power, given the unfettered discretion under clause 7(3) of the Permitted Activities OIC. The recommended process is:
- i. delegate powers to enable an independent Commissioner to decide whether the giving of a public notice is appropriate. The Resource Consents Manager or Planning Administration Manager can appoint a single Commissioner from a list of Commissioners suitable for this role. Delegation to a single Commissioner enables the process to operate quickly. The ability to act immediately is essential for facilitating recovery from the Canterbury earthquake and addresses the needs of people and businesses who are already in crisis, awaiting certainty regarding alternative accommodation. It is also noted that these approvals are ultimately protected by the terms of OIC;
  - ii. Council officers managing the process, and Commissioners, to obtain sufficient information and justification as to why the Council should issue a site specific public notice. The person carrying out the activity should be required to provide information about what the activity is and how it is carried out (e.g. numbers of staff, hours of operation, impacts on neighbours), the reasons why the activity has located to the relevant location, how long they intend to carry out the activity at that location, and why;
  - iii. The Commissioner must undertake any site visits and obtain any monitoring considered necessary for an established activity;
  - iv. The Commissioner to impose specific standards given the individual circumstances (e.g. a lapse date or date that the activity should cease);
  - v. Officers to document the decision to issue a site specific public notice, including reasons for the decision, the information considered or relied on, the standards imposed and reasons for these, and discussions with neighbours or other potentially affected parties (if any).
45. Officers are of the opinion that this process for the exercise of the public notice power achieves the right balance between robustness of process, as the activity may potentially impact third party rights, and speed and efficiency. The use of a single commissioner selected from a small group of available commissioners should ensure the ready availability of a commissioner whenever required. It will enable applications to be considered and resolved quickly (within three working days) and avoids the need to advertise a meeting in advance (as would be the case if a panel met).
46. It is recognised that at times local knowledge will be important to the considerations of the commissioner in assessing applications that do not comply with the general standards that apply to the activity and zone concerned. To achieve this proposals will be sent to the members of the relevant community board for comment. The timing for this would be very limited if Council is to continue to meet the agreed three day turnaround. The relevant Commissioner would be appraised of any comments received as part of his or her deliberation..
47. There will be some activities for which it will not be appropriate to issue a public notice under clause 7(3) given the potential adverse effects generated by the relevant activity, and potential impacts on third party rights. The person carrying out the relevant activity must then seek resource consent.
48. A delegation from Council to specified Council officers of the ability to impose further requirements on permitted temporary accommodation and depots and storage facilities is recommended. The Permitted Activities OIC allows the Council to impose additional standards and requirements after they have established to address unanticipated or unintended adverse effects of activity in temporary accommodation. The delegation will enable officers to respond swiftly to resolve problems when unanticipated effects emerge.

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49. It should be noted that for temporary housing that may be provided on parks and reserves, the Council has a role as land owner as well as regulator. In addition to the standards and/or process outlined in this report being complied with, the Council will have to give permission as the landowner.

### **CONCLUSION**

50. The delegations proposed in this report provide an effective, efficient and comprehensive response by the Council to address the urgent need for temporary accommodation for people and businesses displaced by the earthquake and aftershocks. These delegations will enable the Council to facilitate recovery more effectively than would alternative decision making processes. The mechanisms being used are non-enforcement in some cases, Council approval of general standards to apply in most cases, a speedy process for consideration of public notices in some cases, and resource consent requirements for those activities that are not catered for in decisions under the Permitted Activities OIC.