Kaikōura recovery and strategic planning: preparation of an Order in Council

Proposal

1. I propose that Cabinet agree to the drafting of, and community consultation on, an Order in Council (Order) under the Hurunui/Kaikōura Earthquakes Recovery Act 2016 (the Recovery Act). The Order would suspend the legislated requirement for the Kaikōura District Council (the Council) to produce a long-term plan with a ten-year horizon and instead require it to produce a three-year plan that reflects the recovery efforts for the period 2018–21.

Executive summary

2. The 2016 North Canterbury earthquakes caused extensive damage to many of the Council’s assets and infrastructure. Recovery efforts from earthquake damage require a substantial amount of the Council’s resources, and will continue to be the Council’s focus for years some to come.

3. The earthquakes caused extensive damage, the scope of which is still being evaluated. Due to this, the Council lacks key planning information on the extent of infrastructure damage and levels of funding support for recovery repair and replacement work.

4. I propose an Order, under the Recovery Act, to suspend the long-term planning requirement of the Local Government Act 2002 (the LGA) for the Council and replace it with customised three-year plan. Engagement on the draft Order is required under the Recovery Act. The Order will deviate from the planning process as little as possible, and would return the Council to the standard long-term plan process in 2021.

5. Due to information uncertainty and resource pressures resulting from the earthquakes, the Council is severely constrained in its ability to develop a long-term plan that will meet its statutory obligations. Diverting Council staff efforts towards 10-year planning would be a poor use of resources at this point in the recovery. A long-term plan produced at this time would not meet the requirements of the LGA, given the lack of information available to the Council.

6. A customised planning vehicle will support the Council in setting out a meaningful strategic direction for the community without significantly affecting recovery efforts. This will allow the Council the flexibility it needs to adapt to a sustainable operating model as it works through the recovery.

Background

The Recovery Act 2016 enables the Government to provide regulatory relief to the Council during the earthquake recovery

7. The Recovery Act allows the Governor General to make Orders on the recommendation of the relevant Minister to create exemptions from, and modifications or extensions to, specified enactments. Orders under the Recovery Act
must be necessary or desirable for the purposes of the Act and not broader than is reasonably necessary.

8. The purpose of the Recovery Act is to assist the earthquake-affected areas and their councils and communities to respond to, and recover from, the impacts of the earthquakes.

9. The Recovery Act expires on 1 April 2018, meaning any Order under this Act must be in effect by 31 March 2018. The Order itself, because it relates to the Local Government Act 2002, can continue in force until 30 June 2021 (as provided for in schedule 1 of the Recovery Act).

Local authorities are required to adopt a long-term plan by 30 June 2018

10. The LGA requires local authorities to prepare a long-term plan with a ten-year horizon every three years. The long-term plan also acts as a local authority’s annual plan for the first year it is adopted. Local authorities are required under the LGA to prepare, consult on and adopt their next long-term plan by 30 June 2018.

11. The long-term plan sets the strategic direction for the local authority’s level of service provision and financial, infrastructure and asset management. The long-term plan is not binding on the local authority, but some decisions can only be made if they are provided for in a long-term plan. Where a local authority makes a decision that is inconsistent with the plan they must identify the inconsistency, the reasons for it and any intention to amend the plan to accommodate the decision.

12. Community consultation during the long-term planning process provides one of the key elements in interactions between a local authority and its ratepayers. The long-term plan contains discussions about the future direction of the community, the role of the local authority in the community, the level of expenditure the local authority will undertake and the methods for funding that expenditure.

Comment

The nature of the problem for the Council

13. The Council has formally requested an exemption from the long-term planning requirements for the 2018-21 period. I consider that the Council is not in a position to produce a long-term plan with a ten-year horizon, or one that contains all of the information required by the LGA.

14. Due to the extensive damage from the 2016 North Canterbury earthquakes, the Council lacks key planning information on the extent of infrastructure damage and levels of funding support for recovery repair and replacement work. In addition, the Council does not have the capacity to progress its statutory long-term planning requirements without diverting resources away from the earthquake recovery efforts.

15. The Council is one of New Zealand’s smallest local authorities with only 27 full-time-equivalent employees servicing an area 2,048 square kilometres with 3,552 residents. The Council is in the early stages of working through how to sustainably operate over the coming years given the size of the challenges it faces.

16. I am suitably convinced that requirements under the Recovery Act are met, in that the long-term planning requirements of the LGA:
16.1 may cause the council to divert resources away from the effort to efficiently respond to the damage caused by the earthquakes; and

16.2 may not be reasonably capable of being complied with, or complied with fully, owing to the circumstances resulting from the earthquakes.

17. I therefore propose an Order to aid the recovery of the district by temporarily replacing the long-term planning requirements of the LGA with a customised three-year plan. The proposed Order will need to come into effect by 31 March 2018, before the Recovery Act expires on 1 April 2018, and be in force until 30 June 2021. The three-year plan to which the Order applies will be in force between 1 July 2018 and 30 June 2021.

**Proposed Order in Council**

18. I seek Cabinet authorisation to instruct the Parliamentary Counsel Office to prepare a draft Order for consultation. The draft Order would:

18.1 suspend the requirement under the LGA for the Council to have a long-term plan with a ten-year horizon in place by 30 June 2018; and

18.2 require the Council to prepare a customised three-year plan, to be in place by 30 June 2018, that balances a focus on recovery efforts with transparency and accountability of communities about the strategic direction of the Council.

19. This proposal deviates from the planning process as little as possible, and would see a return to the standard long-term plan process in 2021. The three-year plan will:

19.1 identify significant infrastructure issues for the Council;

19.2 identify options for managing infrastructure issues and the implications of those options;

19.3 include a description of the major capital projects the Council is proposing and/or implementing to facilitate the recovery from the earthquake, and any other major capital projects being planned;

19.4 discuss the likely funding options for major capital projects and implications of the options on rates and debt; and

19.5 include a statement of the factors that are expected to have a significant impact on the Council during the years covered by the plan, including levels of service the Council will provide in the future.

20. The special consultative procedure will be used as part of the process for adopting the plan. The LGA requirement for the Council to prepare and adopt an annual plan for each financial year would remain. The three-year plan will constitute the annual plan for 2018/19, and will include relevant funding and financial statements.

21. The proposed Order will not include audit requirements for the three-year plan, as this is impractical given the information available and content of the plan. The plan will be required to clearly set out information limitations and assumptions made by the Council, and where commitments in the plan depend on the outcomes of funding arrangements that are in negotiation between the Crown and the Council.
Engagement on the draft Order in Council

22. I intend to undertake public consultation on the contents of the draft Order as provided for in the Recovery Act. Public consultation on the draft Order will outline the difficulties for the Council to produce a standard long-term plan. The consultation will also set out how a customised three-year plan will provide for community engagement in setting the strategic direction of the Council for the coming years.

23. The key channels that will be used to enable the public to provide feedback on the draft Order will be targeted publications and a dedicated Department of Internal Affairs email address. This will be supported by the use of Council communication channels.

24. The draft Order will also be provided to the Hurunui/Kaikōura Earthquakes Recovery Review Panel and the Regulations Review Committee for review in accordance with the requirements set out in the Recovery Act.

25. Feedback from consultation will be reviewed before the Order is finalised and submitted to Cabinet. I seek approval to submit the final Order direct to Cabinet for consideration and approval, if necessary, to enact the Order before the the Recovery Act expires.

Reasons for the proposed Order in Council

26. Proposed Orders under the Recovery Act must be accompanied by a ‘reasons assessment’. The assessment provides an explanation of what the proposed Order is intended to achieve, a description of the effect of the Order, and why the Order is deemed necessary or desirable for the purpose of the Recovery Act.

27. The preparation of a customised three-year plan in place of the standard long-term plan is considered necessary given the high level of information uncertainty and demand on Council resources inherent in the recovery. The ten-year period of the long-term plan is not a realistic financial planning horizon for the Council given the scale of infrastructure damage and subsequent funding uncertainties.

28. Preparing a customised three-year plan is considered reasonable under these circumstances. A three-year plan will provide the community with the best information available, and allow it to participate in strategic planning for the district, while the Council can continue to focus on recovery efforts.

Previous Order in Council

29. A similar Order was made under the Canterbury Earthquakes Recovery Act 2011 to support the Christchurch City Council in its recovery efforts.

Consultation

30. The National Recovery Office (Ministry of Civil Defence & Emergency Management, Department of the Prime Minister and Cabinet), Ministry of Transport, Land Information New Zealand, New Zealand Transport Agency, Ministry for the Environment, Ministry of Health, Te Puni Kōkiri and the Treasury have been consulted in preparing this paper.

31. The Office of the Auditor-General and the Department of the Prime Minister and Cabinet were informed.
Financial implications

32. There are no direct Crown financial implications arising from the proposed Order. However, there are ongoing discussions around Crown support for the Council as a result of the earthquakes to move the Council to a sustainable operating model.

Human rights and gender implications and disability perspectives

33. The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993. There are no gender implications from this proposal. There are no disability implications arising from this proposal.

Legislative implications

34. The proposed Order will be made under section 7 of the Recovery Act to modify long-term planning requirements for the Council under the LGA and make consequential amendments to enable a three-year plan in its place. The final Order will need to be in effect by 31 March 2018 ahead of the Recovery Act expiring.

35. A number of minor modifications to the application of the LGA to the Council will be required to enable it to continue to operate effectively in the absence of a traditional long-term plan and to maintain elements of a long-term plan in the proposed three-year plan. Consequential modifications may also be required to how the Local Government (Rating) Act 2002 applies to the Council for the purposes of striking rates during this period. These will be addressed when drafting the Order.

Regulatory impact analysis

36. Regulatory impact analysis requirements apply to the proposals in this paper. The Department of Internal Affairs has completed a draft regulatory impact assessment and consulted relevant government agencies on the draft.

37. Following consultation on the draft Order, the Department of Internal Affairs will incorporate any feedback into the analysis of options in the regulatory impact assessment. I will provide Cabinet with the final regulatory impact assessment following community consultation alongside the recommended final Order.

Publicity

38. I propose undertaking consultation on the proposed Order with affected persons as provided for under the Recovery Act and outlined in this paper. I will issue a press release as part of this consultation.

39. I intend to proactively release this paper through the Department of Internal Affairs website.

Recommendations

40. I recommend that the Committee:

1. note the Kaikōura District Council requires support to meet its statutory strategic planning requirements under the Local Government Act 2002 by 30 June 2018 because:
   1.1 there are ongoing effects of the 2016 North Canterbury earthquakes that require a continued focus on recovery efforts:
1.2 the earthquakes have resulted in a high level of information uncertainty and resource challenges for the Kaikōura District Council;
1.3 the Kaikōura District Council is severely constrained in its ability to develop a long-term plan that will meet the statutory obligations;
1.4 producing a long-term plan would require the Kaikōura District Council to divert resources from recovery efforts;

Order in Council to substitute a three-year plan

2. **agree** an Order in Council (Order) be prepared under section 7 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016 to suspend, between 30 June 2018 and 30 June 2021, the statutory requirement for the Kaikōura District Council to have a long-term plan, and enable a customised three-year plan covering 2018-21;

3. **invite** the Minister of Local Government to issue drafting instructions to the Parliamentary Counsel Office;

Consultation

4. **note** there will be a period of consultation on the draft Order, as provided for under the Hurunui/Kaikōura Earthquakes Recovery Act 2016, and that:
   4.1 the Kaikōura District Council supports the proposal and will assist the consultation on the draft Order;
   4.2 the Hurunui/Kaikōura Earthquakes Recovery Review Panel and Regulations Review Committee will be consulted on the draft Order;
   4.3 changes may be made to the draft Order as a result of any feedback that is received during the consultation;

Timing of the Order in Council

5. **note** the Order will need to take effect by 31 March 2018 and will expire on 30 June 2021; and

6. **agree** the Order may be considered directly by Cabinet, without consideration by a Cabinet Committee, to facilitate the Order coming into force ahead of the expiration of the Hurunui/Kaikōura Earthquakes Recovery Act 2016.

Authorised for lodgement

Hon Nanaia Mahuta

**Minister of Local Government**

/ / 2017