

APPENDIX 31

EXTRACTS FROM LEGISLATION

This document shows how the Canterbury Earthquake (Building Act) Order 2010 (**Order**) interacts with the Building Act 2004 (**Act**).

The modifications made to the Act by the Order are in **red**, or have a ~~strike through~~. The clauses of the Order that modify the Act, without specifically altering the text, are included in boxes below the relevant section of the Act.

The Order comes into force on 16 September 2010 and expires on 16 September 2011.

The Order applies to Christchurch City Council, Selwyn District Council and Waimakariri District Council.

Building Act 2004

41 Building consent not required in certain cases

- (1) Despite section 40, a building consent is not required in relation to—
 - (a) a Crown building or Crown building work to which, under section 6, this Act does not apply; or
 - (b) any building work described in Schedule 1; or
 - (c) any building work in respect of which a building consent cannot practicably be obtained in advance because the building work has to be carried out urgently—
 - (i) for the purpose of saving or protecting life or health or preventing serious damage to property; or
 - (ii) in order to ensure that a specified system in a building that is covered by a compliance schedule, or would be covered if a compliance schedule were issued in respect of the building, is maintained in a safe condition or is made safe; or
 - (d) any energy work that, under section 43, does not require a building consent; or
 - (e) any building work that a territorial authority is authorised to carry out under this Act, **including under any provision of this Act as exempted, modified, or extended by the Canterbury Earthquake (Building Act) Order 2010.**
- (2) The Governor-General may, by Order in Council, add any building work or class of building works to Schedule 1 as being building work for which a building consent is not required.

121 Meaning of dangerous building

- (1) A building is dangerous for the purposes of this Act if,—
 - (a) in the ordinary course of events (excluding the occurrence of an earthquake), the building is likely to cause—
 - (i) injury or death (whether by collapse or otherwise) to any persons in it or to

persons on other property; or

(ii) damage to other property; or

- (b) in the event of fire, injury or death to any persons in the building or to persons on other property is likely because of fire hazard or the occupancy of the building; or
- (c) there is a risk that the building could collapse or otherwise cause injury or death to any person in the building as a result of an earthquake that generates shaking that is less than a moderate earthquake; or
- (d) there is a risk that other property could collapse or otherwise cause injury or death to any person in the building; or
- (e) a territorial authority has not been able to undertake an inspection to determine whether—
 - (i) the building is dangerous under paragraph (a); and
 - (ii) the territorial authority or the chief executive, as the case may be, is required to exercise powers under section 124 or 129 as modified by this order.

7 Modification of meaning of dangerous building and extent to which territorial authority can apply modified provision

- (2) Section 121(1)(c) of the Act as modified by this clause applies only for the purposes of a territorial authority exercising its powers under section 124(1)(a), (b), (c), or (d) as modified by clause 9.
- (3) Section 121(1)(d) or (e) of the Act as modified by this clause applies only for the purposes of a territorial authority exercising its powers under section 124(1)(a), (b), or (d) as modified by clause 9.

8 Notices under section 124 of Act

- (1) In this clause,—

red card means a card—

- (a) of the kind described in the New Zealand Society for Earthquake Engineering Building Safety Evaluation Guidelines; and
- (b) that was issued under Part 5 of the Civil Defence Emergency Management Act 2002 in relation to the Canterbury earthquake

yellow card means a card—

- (a) of the kind described in the New Zealand Society for Earthquake Engineering Building Safety Evaluation Guidelines; and
 - (b) that was issued under Part 5 of the Civil Defence Emergency Management Act 2002 in relation to the Canterbury earthquake.
- (2) A red card is deemed to be a notice issued under section 124(1)(b) of the Act that warns people not to approach the building.
 - (3) A yellow card is deemed to be a notice issued under section 124(1)(d) of the Act as modified by clause 9.
 - (4) Any restrictions on use that are described on a yellow card are deemed to be requirements of a notice issued under section 124(1)(d) of the Act as modified by clause

- (2) For the purpose of determining whether a building is dangerous in terms of subsection (1)(b), a territorial authority—
- (a) may seek advice from members of the New Zealand Fire Service who have been notified to the territorial authority by the Fire Service National Commander as being competent to give advice; and
 - (b) if the advice is sought, must have due regard to the advice.

124 Powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings

- (1) If a territorial authority is satisfied that a building is dangerous, earthquake prone, or insanitary, the territorial authority may—
- (a) put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
 - (b) attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building;
 - ~~(c) give written notice requiring work to be carried out on the building, within a time stated in the notice (which must not be less than 10 days after the notice is given under section 125), to—~~
 - ~~(i) reduce or remove the danger; or~~
 - ~~(ii) prevent the building from remaining insanitary.~~
 - (c) give written notice—
 - (i) requiring work to be carried out on the building to reduce or remove the danger or prevent the building from remaining insanitary; and
 - (ii) requiring the work to be carried out within a time stated in the notice (which must not be less than 5 days after the notice is given under section 125); and
 - (iii) advising the owner of the building that if the work is not carried out within the time stated in the notice,—
 - (A) a territorial authority may carry out the work required under the notice; and
 - (B) the owner of the building will be liable for the costs of the work carried out by the territorial authority unless the owner applies, within 5 days of the work being carried out, to a District Court for relief from the obligation to pay the territorial authority's costs;
 - (d) issue a notice restricting entry to a building for particular purposes or restricting entry to particular persons or groups of persons.

9 Modification of powers of territorial authorities in respect of dangerous, earthquake-prone, or insanitary buildings under section 124 of Act

- (2) A notice issued under section 124(1)(b) of the Act or section 124(1)(d) of the Act as modified by this clause—
 - (a) may be issued for a maximum period of 60 days; and
 - (b) may be renewed.
- (3) A notice issued under section 124(1)(c) of the Act as modified by this clause may be issued for such period that a territorial authority thinks fit.

- (2) This section does not limit the powers of a territorial authority under this Part.
- (3) A person commits an offence if the person fails to comply with a notice given under subsection (1)(c).
- (4) A person who commits an offence under this section is liable to a fine not exceeding \$200,000.

125 Requirements for notice given under section 124

- (1) A notice given under section 124(1)(c) must—
 - (a) be fixed to the building concerned; and
 - ~~(b) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice.~~
 - (b) state whether the owner of the building must obtain a building consent in order to carry out the work required by the notice; and
 - (c) if the owner is not required by the territorial authority to obtain a building consent, state—
 - (i) the conditions (if any) in respect of the work required by the notice; and
 - (ii) that the work must be carried out in accordance with the guidelines (if any) issued by the territorial authority on how building work to reduce or remove the danger or to demolish buildings should be carried out in accordance with the building code.
- (2) A copy of the notice must be given to—
 - (a) the owner of the building; and
 - (b) an occupier of the building; and
 - (c) every person who has an interest in the land on which the building is situated under a mortgage or other encumbrance registered under the Land Transfer Act 1952; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952; and

- (e) any statutory authority, if the land or building has been classified; and
 - (f) the New Zealand Historic Places Trust, if the building is a heritage building.
- (3) However, the notice, if fixed on the building, is not invalid because a copy of it has not been given to any or all of the persons referred to in subsection (2).

126 Territorial authority may carry out work

- (1) A territorial authority may apply to a District Court for an order authorising the territorial authority to carry out building work if any work required under a notice given by the territorial authority under section 124(1)(c) is not completed, or not proceeding with reasonable speed, within—
 - (a) the time stated in the notice; or
 - (b) any further time that the territorial authority may allow.
- (2) Before the territorial authority applies to a District Court under subsection (1), the territorial authority must give the owner of the building not less than 10 days' written notice of its intention to do so.
- (3) If a territorial authority carries out building work under the authority of an order made under subsection (1),—
 - (a) the owner of the building is liable for the costs of the work; and
 - (b) the territorial authority may recover those costs from the owner; and
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.
- (4) Subsections (1) to (3) do not apply to a territorial authority that has issued a notice under section 124(1)(c) as modified by the Canterbury Earthquake (Building Act) Order 2010.
- (5) If a territorial authority has issued a notice under section 124(1)(c) as modified by the Canterbury Earthquake (Building Act) Order 2010 and the work required under the notice has not been carried out within the time stated in the notice, the territorial authority may carry out the work required under the notice.
- (6) The owner of a building is liable for the costs of the work carried out by the territorial authority unless the owner—
 - (a) applies to a District Court, within 5 days of the work being carried out by the territorial authority, for relief from the obligation to pay the territorial authority's costs; and
 - (b) the application to the District Court is successful.
- (7) If the owner is liable for the costs of the work carried out by the territorial authority, the territorial authority may recover its costs from the owner, and the amount recoverable by the territorial authority becomes a charge on the land on which the work was carried out.

127 Building work includes demolition of building

Any work required or authorised to be done under section 124(1)(c) or section 126 may include the demolition of all or part of a building.

12 Building work includes demolition of building

The reference in section 127 of the Act to section 126 is modified to mean section 126 or 129 as each of those provisions are modified by this order.

128 Prohibition on using dangerous, earthquake-prone, or insanitary building

- (1) If a territorial authority has put up a hoarding or fence in relation to a building or attached a notice warning people not to approach a building under section 124(1), no person may—
 - (a) use or occupy the building; or
 - (b) permit another person to use or occupy the building.
- (2) A person commits an offence if the person fails to comply with this section.
- (3) A person who commits an offence under this section is liable to a fine not exceeding \$200,000 and, in the case of a continuing offence, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence has continued.

13 Prohibition on using dangerous, earthquake-prone, or insanitary building under section 128 of Act

Section 128 of the Act is extended so that it applies to any person who fails to comply with section 124(1)(d) of the Act as modified by this order.

129 Measures to avoid immediate danger or to fix insanitary conditions

- (1) This section applies if, because of the state of a building,—
 - (a) immediate danger to the safety of people is likely in terms of section 121 or section 122 or section 123; or
 - (b) immediate action is necessary to fix insanitary conditions.
- (2) The chief executive of a territorial authority may, by warrant issued under his or her signature, cause any action to be taken that is necessary in his or her judgment to—
 - (a) remove that danger; or
 - (b) fix those insanitary conditions.
- (3) If the territorial authority takes action under subsection (2) **and either of the events described in subsection (3A) has occurred,—**

- (a) the owner of the building is liable for the costs of the action; and
 - (b) the territorial authority may recover those costs from the owner; and
 - (c) the amount recoverable by the territorial authority becomes a charge on the land on which the building is situated.
- (3A) The events are—
- (a) the owner of the building has failed to apply to a District Court, within 5 days of the work being carried out, for an order that the owner is not liable for the costs of the territorial authority exercising its powers under this section:
 - (b) the owner's application to a District Court for an order that the owner is not liable for the costs of the territorial authority exercising its powers under this section is unsuccessful.
- (4) The chief executive of the territorial authority and the territorial authority are not under any liability arising from the issue, in good faith, of a warrant under subsection (2) or any liability arising from any work that the territorial authority has, in good faith, carried out under section 126 as modified by the Canterbury Earthquake (Building Act) Order 2010.

130 Territorial authority must apply to District Court for confirmation of warrant

- (1) If the chief executive of a territorial authority issues a warrant under section 129(2), the territorial authority, on completion of the action stated in the warrant, must apply to a District Court for confirmation of the warrant.
- (2) On hearing the application, the District Court may—
 - (a) confirm the warrant without modification; or
 - (b) confirm the warrant subject to modification; or
 - (c) set the warrant aside.
- (3) Subsection (1) does not apply if—
 - (a) the owner of the building concerned notifies the territorial authority that—
 - (i) the owner does not dispute the entry into the owner's land; and
 - (ii) confirmation of the warrant by a District Court is not required; and
 - (b) the owner pays the costs referred to in section 129(3)(a).

16 Exemption from requirement to apply under section 130 to District Court for confirmation of warrant

A territorial authority is exempted from the requirement in section 130 of the Act to apply to the District Court for confirmation of a warrant issued under section 129(2) of the Act.

204 Special powers of chief executive for monitoring performance of functions under this Act

- (1) The purpose of this section is to enable the chief executive to—
- (a) monitor the performance by territorial authorities, building consent authorities, or regional authorities of their functions under this Act; and
 - (b) carry out the review of territorial authorities under section 276; and
 - (c) assist the Minister in determining whether to exercise the Minister's power under section 277 (which relates to the non-performance of functions by a territorial authority); **and**
 - (d) **monitor earthquake-affected buildings.**

222 Inspections by territorial authority

- (1) An authorised officer is entitled, at all times during normal working hours or while building work is being carried out,—
- (a) to inspect—
 - (i) land on which building work is or is proposed to be carried out; and
 - (ii) building work that has been or is being carried out on or off the building site; and
 - (iii) any building; and
 - (b) to enter premises for—
 - (i) the purpose of inspecting the building; or
 - (ii) the purpose of determining whether the building is dangerous, earthquake prone, or insanitary within the meaning of subpart 6 of Part 2.
- (2) An authorised officer must, on entering private land under subsection (1), and when requested at any subsequent time, produce to the occupier of the land written evidence of the authorised officer's identity.
- (3) The powers conferred by this section are in addition to, and do not limit, the powers conferred by section 173 of the Local Government Act 2002.
- (4) In this section and sections 223 to 228,—

authorised officer means an officer of a territorial authority to whom either or both of the following applies:

- (a) he or she is authorised to carry out inspections; or
- (b) he or she is authorised to enter land—
 - (i) by this Act; or
 - (ii) by an order of the District Court made under section 227

inspection means the taking of all reasonable steps—

- (a) to determine whether—
 - (i) building work is being carried out without a building consent; or
 - (ii) building work is being carried out in accordance with a building consent; or
 - (iii) a notice to fix has been complied with;
- (b) to ensure that,—
 - (i) in relation to buildings for which a compliance schedule is issued, the inspection, maintenance, and reporting procedures stated in the compliance schedule are being complied with; or
 - (ii) in relation to buildings that have specified systems, the requirement for a compliance schedule is being complied with;
- (c) to enable a territorial authority to—
 - (i) identify dangerous, earthquake-prone, or insanitary buildings within its district; and
 - (ii) carry out its functions or duties in relation to those buildings;
- (d) to satisfy a territorial authority as to whether a certificate of acceptance for building work should be issued under section 96.

18 Definition of authorised officer extended

The definition of authorised officer in section 222(4) of the Act is extended so that an authorised officer includes any person accompanying the authorised officer.

Schedule 1

Exempt building work

s 41(1)(b)

A building consent is not required for the following building work:

- (a) any lawful repair and maintenance using comparable materials, or replacement with a comparable component or assembly in the same position, of any component or assembly incorporated or associated with a building, including all lawful repair and maintenance of that nature that is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006], except—
 - (i) complete or substantial replacement of a specified system; or
 - (ii) complete or substantial replacement of any component or assembly contributing to the building's structural behaviour or fire-safety properties; or
 - (iii) repair or replacement (other than maintenance) of any component or assembly

that has failed to satisfy the provisions of the building code for durability, for example, through a failure to comply with the external moisture requirements of the building code; or

- (iv) repair or replacement of a water storage heater connected to a solid-fuel heater or other supplementary heat exchanger (other than—
 - (A) repair of an open-vented water storage heater using the same pipework; or
 - (B) replacement of an open-vented water storage heater with a comparable heater using the same pipework):

19 Modifications to Schedule 1 of Act

- (1) Schedule 1 of the Act is modified so that the provisions in paragraph (a)(iv) relating to water storage heaters are disappplied.

(aab) the replacement or repositioning of water heaters carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006, except for systems that—

- (i) are not open-vented; or
- (ii) have an uncontrolled heat source; or
- (iii) have a controlled heat source other than gas or electricity:

(ab) the opening and reinstatement of any purpose-made access point within a drainage system that—

- (i) is not a NUO system or part of a NUO system; and
- (ii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 2006:

(ac) the alteration to drains for a dwelling, if the alteration—

- (i) is of a minor nature (for example, shifting a gully trap); and
- (ii) does not include making any new connection to a service provided by a network utility operator; and
- (iii) is carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976:

(ad) the alteration to existing sanitary plumbing (as defined in section 3 of the Plumbers, Gasfitters, and Drainlayers Act 1976) in a dwelling (for example, replacing a bath with a shower or moving a toilet) carried out in accordance with the Plumbers, Gasfitters, and Drainlayers Act 1976 [[and that is not repair or replacement to which paragraph (a)(iv) (other than subsubparagraph (A) or (B)) applies:

(ae) the installation, replacement, or removal in any existing building of a window (including a roof window) or an exterior doorway if—

- (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) in the case of replacement, the window or doorway being replaced satisfied the provisions of the building code for durability:
- (af) the alteration to an entrance or an internal doorway of a dwelling to improve access for persons with disabilities, if compliance with the provisions of the building code relating to structural stability is not reduced:
- (ag) the alteration to the interior of any non-residential building (for example, a shop, office, library, factory, warehouse, church, or school), if the alteration does not—
 - (i) reduce compliance with the provisions of the building code that relate to means of escape from fire, protection of other property, sanitary facilities, structural stability, fire-rating performance, and access and facilities for persons with disabilities; or
 - (ii) modify or affect any specified system:
- (b) the construction or alteration of any motorway sign, stopbank, culvert for carrying water under or in association with a road, or other similar structure that is a simple structure and is owned or controlled by a network utility operator or other similar organisation:
- (c) construction or alteration of any retaining wall that retains not more than 1.5 metres depth of ground and that does not support any surcharge or any load additional to the load of that ground (for example, the load of vehicles on a road):
- (ca) the construction, alteration, or removal of an internal wall (including the construction, alteration, or removal of an internal doorway) in any existing building if—
 - (i) compliance with the provisions of the building code relating to structural stability is not reduced; and
 - (ii) the means of escape from fire provided within the building are not detrimentally affected; and
 - (iii) the wall is not made of units of material (such as brick, burnt clay, concrete, or stone) laid to a bond in and joined together with mortar:
- (d) the construction or alteration of any wall (except a retaining wall or an internal wall)], fence (except a fence as defined in section 2 of the Fencing of Swimming Pools Act 1987), or hoarding, in each case of a height not exceeding 2 metres above the supporting ground:
- (da) the construction or alteration of any dam that is not a large dam:
- (db) the construction, installation, replacement, alteration, or removal of a retaining wall in a rural zone, if—
 - (i) the wall retains no more than 3 metres depth of ground; and
 - (ii) the distance between the wall and any legal boundary or existing building is at least 3 metres; and

- (iii) the wall has been designed by a chartered professional engineer:
- (e) the construction or alteration of any tank or pool and any structural support of the tank or pool (except a swimming pool as defined in section 2 of the Fencing of Swimming Pools Act 1987), including any tank or pool that is part of any other building for which a building consent is required,—
 - (i) not exceeding 35 000 litres capacity and supported directly by the ground; or
 - (ii) not exceeding 2 000 litres capacity and supported not more than 2 metres above the supporting ground; or
 - (iii) not exceeding 500 litres capacity and supported not more than 4 metres above the supporting ground:
- (f) the construction, alteration, or removal of any tent or marquee that has a floor area not exceeding 50 square metres if that tent or marquee is to be, or has been, used for public assembly for a period of not more than 1 month:
- (fa) the construction, alteration, or removal of any tent or marquee that has a floor area not exceeding 100 square metres if that tent or marquee is, or has been, for private use for a period of not more than 1 month:
- ~~(g) the construction or alteration of any platform, bridge, or the like from which it is not possible for a person to fall more than 1 metre even if it collapses:-~~
- (g) the construction or alteration of any platform, bridge, boardwalk, or the like from which it is not possible for a person to fall more than 1.5 metres even if it collapses:
- (h) the construction or alteration of any temporary storage stack of goods or materials:
- (i) building work in connection with any detached building (except a building that is required to be licensed in terms of the Hazardous Substances and New Organisms Act 1996 or a building closer than its own height to any residential accommodation or to any legal boundary) that—
 - (i) houses fixed plant or machinery, the only normal visits to which are intermittent visits for routine inspection and maintenance of that plant or machinery; or
 - (ii) into which, or into the immediate vicinity of which, people cannot or do not normally go; or
 - (iii) is used only by people engaged in the construction or maintenance of another building for which a building consent is required; or
 - (iv) does not exceed 1 storey, does not exceed 10 square metres in floor area, and does not contain sanitary facilities or facilities for the storage of potable water, but may contain sleeping accommodation (without cooking facilities) if the detached building is used in connection with a dwelling:
- (j) building work in connection with the closing in of an existing veranda, patio, or the like so as to provide an enclosed porch, conservatory, or the like with a floor area not exceeding 5 square metres:
- (ja) the construction, alteration, or removal of any fabric, glass, or metal awning on any building that—

- (i) is on the ground or first storey level; and
 - (ii) does not exceed 15 square metres in size:
- (jb) the construction, alteration, or removal of a pergola:
- (jc) the construction, alteration, or removal of a porch or verandah on any building where that porch or verandah—
 - (i) is on the ground or first storey level; and
 - (ii) is over a deck or a patio; and
 - (iii) does not exceed 15 square metres in size:

19 Modifications to Schedule 1 of Act

- (5) The requirement in paragraph (jc)(iii) of Schedule 1 of the Act is modified so that the porch or verandah must not exceed 20 square metres in size.

- (k) any other building work in respect of which the territorial authority (or, as the case requires, the regional authority) considers that a building consent is not necessary for the purposes of this Act because that building work—
 - (i) is unlikely to be carried out otherwise than in accordance with the building code; or
 - (ii) if carried out otherwise than in accordance with the building code, is unlikely to endanger people or any building, whether on the same land or on other property.
- (ka) the construction, alteration, or removal of a carport that does not exceed 20 square metres in size:
- (kb) the replacement or alteration of internal wall and floor linings and finishes in a dwelling:
- (kc) the installation of thermal insulation, other than in-wall foam insulation, in an existing building, except where the insulation is installed in—
 - (i) an external wall of the building; or
 - (ii) an internal wall of the building that is a fire separation (also known as a firewall);
- (kd) the making of a penetration no greater than 300 millimetres in diameter to enable the passage of pipes, cables, ducts, wires, hoses, and the like through any existing building and any associated building work, such as the weatherproofing and fireproofing of the penetration:
- (ke) the demolition of all or part of a damaged building that is detached (that is, stand-alone) and less than 3 storeys high.

19 Modifications to Schedule 1 of Act

- (7) In the event of any inconsistency between this clause and any provision of Schedule 1 of the Act, this clause prevails.

EXTRACTS FROM CANTERBURY EARTHQUAKE RECOVERY ACT 2011

4 Interpretation

(1) In this Act, unless the context otherwise requires,—

building consent has the same meaning as in section 7 of the Building Act 2004

Canterbury Earthquake Recovery Review Panel means the Canterbury Earthquake Recovery Review Panel appointed under section 72

Canterbury earthquakes means any earthquake in Canterbury on or after 4 September 2010, and includes any aftershock

CBD means the area bounded by—

- (a) the 4 avenues that are Bealey Avenue, Fitzgerald Avenue, Moorhouse Avenue, and Deans Avenue; and
- (b) Harper Avenue

CERA means the Canterbury Earthquake Recovery Authority established by the State Sector (Canterbury Earthquake Recovery Authority) Order 2011

chief executive means the chief executive of CERA

council means the Christchurch City Council, the Canterbury Regional Council (Environment Canterbury), the Selwyn District Council, or the Waimakariri District Council

council organisation has the same meaning as in section 6 of the Local Government Act 2002

dangerous building has the same meaning as in sections 121 and 122 of the Building Act 2004, but with the modifications made by clause 7(1) of the Canterbury Earthquake (Building Act) Order 2010

enactment has the same meaning as in section 29 of the Interpretation Act 1999 and also includes any plan, programme, bylaw, or rule made under any Act

greater Christchurch means the districts of the Christchurch City Council, the Selwyn District Council, and the Waimakariri District Council, and includes the coastal marine area adjacent to these districts

land includes an interest in land

Minister means the Minister for Canterbury Earthquake Recovery

modify, in relation to a provision or liability, includes disapplying or suspending the provision or liability

network utility operator has the same meaning as it has in section 2(1) of the Resource Management Act 1991

public notice or **publicly notify** means a notice published—

- (a) in the *Gazette*; or
- (b) in a newspaper circulating in the area to which the notice relates

rebuilding includes—

- (a) extending, repairing, improving, subdividing, or converting any land, infrastructure, or other property; and
- (b) rebuilding communities

recovery includes restoration and enhancement

Recovery Plan means a Recovery Plan approved under section 21(2)

Recovery Strategy means a Recovery Strategy approved under section 11(2)

relevant Minister,—

- (a) in relation to an enactment other than this Act, means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the enactment;
- (b) in relation to a bylaw made by a territorial authority or regional council, means the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the Act under which the bylaw is made

requiring authority has the same meaning as in section 2(1) of the Resource Management Act 1991

responsible entity means the chief executive, a council, a council organisation, a department of the Public Service, an instrument of the Crown, a Crown entity, a requiring authority, or a network utility operator

RMA document—

- (a) means any of the following under the Resource Management Act 1991:
 - (i) a regional policy statement;
 - (ii) a proposed regional policy statement;
 - (iii) a proposed plan;
 - (iv) a plan; and
 - (b) includes a change or variation to any document mentioned in paragraph (a).
- (2) In this Act, unless the context otherwise requires, **abatement notice**, **designation**, **enforcement order**, **heritage order**, **notice of requirement**, **resource consent**, and **rule** have the same meanings as in section 2(1) of the Resource Management Act 1991.

38 Works

- (1) The chief executive may carry out or commission works.
- (2) The works include (without limitation)—
 - (a) the erection, reconstruction, placement, alteration, or extension of all or any part of any building, structure, or other erection on or under land:

- (b) the demolition of all or part of a building, structure, or other erection on or under land;
 - (c) the removal and disposal of any building, structure, or other erection on or under land, or material.
- (3) The chief executive may remove fixtures and fittings from any building.
- (4) If the chief executive gives written notice to an owner of a building, structure, or other erection on or under land that demolition work is to be carried out there,—
- (a) the owner must give notice to the chief executive within 10 days after the chief executive's notice is given stating whether or not the owner intends to carry out the works and, if the owner intends to do so, specifying a time within which the works will be carried out; and
 - (b) if the owner fails to give notice under paragraph (a) or the chief executive is not satisfied with the time specified, or the works are not carried out in the time specified or otherwise agreed, then—
 - (i) the chief executive may commission the carrying out of the works; and
 - (ii) in the case of the demolition of a building to which section 40(1) or (2) refers, the chief executive may recover the costs of carrying out the work from the owner of the dangerous building in question; and
 - (iii) the amount recoverable becomes a charge on the land on which the work was carried out.
- (5) To avoid doubt, works under this section may be undertaken on or under public or private land, and with or without the consent of the owner or occupier.
- (6) To avoid doubt, this section does not override any requirements for resource consents or building consents that may apply to works under this section, but any such requirements may be varied by Orders in Council made under this Act.

39 Provisions relating to demolition or other works

- (1) This section applies if any works are to be carried out under section 38.
- (2) The chief executive may—
- (a) put up a hoarding or fence to prevent people from approaching works nearer than is safe;
 - (b) attach in a prominent place on, or adjacent to, the works a notice that warns people not to approach the works;
 - (c) by written notice direct an owner, occupier, or other person to leave the works or land for a specified period or until further notice;
 - (d) give written notice of the work to be carried out.
- (3) If practicable, a copy of a notice under subsection (2)(d) must be given to—
- (a) the owner of the building or land; and

- (b) every occupier of the building or land; and
 - (c) every person who has an interest in the land on which the works are situated that is registered under the Land Transfer Act 1952; and
 - (d) every person claiming an interest in the land that is protected by a caveat lodged and in force under section 137 of the Land Transfer Act 1952.
- (4) If it is necessary to enter any land to carry out any work, any notice under subsection (2)(d) to the occupier must be given not less than 24 hours in advance.
- (5) No notice needs to be given under subsection (4) if the work is necessary because of—
- (a) sudden emergency causing or likely to cause—
 - (i) loss of life or injury to a person; or
 - (ii) damage to property; or
 - (iii) damage to the environment; or
 - (b) danger to any works or adjoining property.
- (6) The chief executive must ensure that, if the power in subsection (5) is exercised, the occupier and, if the occupier is not the owner, the owner of the land or building are informed of the exercise of that power as soon as practicable.
- (7) Any notice under subsection (2)(c) must be given at least 1 month in advance, but there is no right of appeal or objection against the notice.

40 Compensation for demolition of buildings

- (1) If the chief executive demolishes a dangerous building,—
- (a) the Crown is not liable to compensate the owner or any tenant or other occupier of the building; and
 - (b) the chief executive may recover the cost of demolition from the owner.
- (2) If the chief executive demolishes a non-dangerous building in order to demolish a dangerous building, the Crown is liable to compensate the owner of the non-dangerous building for a loss resulting from the demolition of the non-dangerous building whether or not the loss is insured in whole or in part.
- (3) If the chief executive demolishes a non-dangerous building for any other reason, and the Crown has not acquired the land on which the building is situated, the Crown is liable to compensate the owner of the non-dangerous building for a loss resulting from the demolition of the non-dangerous building whether or not the loss is insured in whole or in part.
- (4) Claims under this section must be made and determined in accordance with this section and subpart 5.

41 Compensation for damage to other property caused by demolition of building

- (1) The Crown is liable to pay compensation for negligent physical loss or damage caused to other property that results directly from the demolition of a building by the chief executive, except for damage to property that is in or on or under or part of a dangerous building.
- (2) Claims under this section must be made and determined in accordance with this section and subpart 5.

44 Temporary buildings

- (1) Despite any other enactment, the chief executive may—
 - (a) erect or authorise the erection and use of temporary buildings on any public reserve, private land, road, or street and provide for their removal; and
 - (b) validate the erection and use of any temporary building on any public reserve, private land, road, or street and provide for its removal, and in that case the erection and use of the building (whether it occurred before or after the commencement of this Act) must be treated as having been authorised by this section.
- (2) No building consent or resource consent is required for the erection or use of any temporary building under subsection (1).
- (3) If practicable, the chief executive must consult the relevant road controlling authority before exercising a power under this section in relation to a road.

46 Closing and stopping roads, etc

- (1) The chief executive may, for such period as he or she considers necessary, totally or partially prohibit or restrict public access, with or without vehicles, to any road or public place within greater Christchurch.
- (2) The chief executive may close a road or divert or control the traffic on any road while any work or investigation affecting the road is being undertaken.
- (3) The chief executive may, by giving public notice or in any other manner that he or she determines, stop any road or part of a road in greater Christchurch.
- (4) The stopping of a road under subsection (3) has effect as if the road had been stopped in accordance with section 342 and Schedule 10 of the Local Government Act 1974 and as if the chief executive were a council within the meaning of that section.
- (5) The chief executive must consult the relevant road controlling authority—
 - (a) before stopping a road or part of a road under this section;
 - (b) if practicable, before exercising any other power under this section in relation to a road.
- (6) To avoid doubt,—
 - (a) there is no right of appeal or objection against a decision made under subsection (3);
 - (b) nothing in section 345 of the Local Government Act 1974 applies to the

disposal of land resulting from a stopping of a road under this section.

48 Directions to take or stop taking action

- (1) The Minister may direct any council or council organisation to take or stop taking any action, or to make or not to make a decision.
- (2) Subsection (1) applies (without limitation) to any action or inaction that is required, authorised, or prevented by or under—
 - (a) a resource consent that is current or has expired, whether or not the consent has been or is being exercised; or
 - (b) section 9 or 124 of the Resource Management Act 1991; or
 - (c) an abatement notice or enforcement order; or
 - (d) a rule in a plan that permits an activity; or
 - (e) a designation or heritage order; or
 - (f) a certificate of compliance under that Act; or
 - (g) an existing use protected or allowed under section 10, 10A, or 10B of that Act.
- (3) Despite subsection (1), the Minister must not direct any council to—
 - (a) set a rate under section 23 of the Local Government (Rating) Act 2002; or
 - (b) take any action or make any decision in relation to rates described in a funding impact statement included in an annual plan or a long-term plan under the Local Government Act 2002.
- (4) A council or council organisation must comply with directions given under subsection (1).

51 Requiring structural survey

The chief executive may require any owner, insurer, or mortgagee of a building that he or she considers has or may have experienced structural change in the Canterbury earthquakes to carry out a full structural survey of the building before it is re-occupied for business or accommodation by the owner, a tenant, or any member of the public.

52 Power to direct owner to act for benefit of adjoining or adjacent owners

- (1) This section applies if the chief executive considers that it is desirable that the owners of any 2 or more adjoining or adjacent properties should act for the benefit of each other, whether because it would assist the implementation of a Recovery Plan or because they have sufficiently linked interests in relation to those properties as a result of any of the Canterbury earthquakes.
- (2) The chief executive may direct any of them to act for the benefit of any other adjoining or adjacent owners in the manner specified by the chief executive.

53 Acquiring or disposing of property

- (1) The chief executive may, in the name of the Crown, purchase or otherwise

acquire, hold, sell, exchange, mortgage, lease, and dispose of land and personal property.

- (2) Subsection (3) applies if land acquired by the chief executive is no longer required for that purpose and is available for disposal.
- (3) To avoid doubt, nothing in sections 40 to 42 of the Public Works Act 1981 applies to the disposal of land to which this subsection applies, whether by sale, exchange, or otherwise, except as provided in section 58.
- (4) The Minister may, by notice in the *Gazette*, declare land held under this Act to be set apart for a Government work in terms of the Public Works Act 1981.
- (5) The Minister may, by notice in the *Gazette*, declare land held for a public work in terms of the Public Works Act 1981 to be held under this Act.
- (6) To avoid doubt, any requirements to offer land back under the Public Works Act 1981 continue to apply to any land declared under subsection (5) to be held under this Act.

54 Notice of intention to take land

- (1) The Minister may acquire land compulsorily by causing a notice of intention to take land in the name of the Crown to be published in the *Gazette* and twice publicly notified, which notice must give—
 - (a) a general description of the land required to be taken (including the name of and number in the road or some other readily identifiable description of the place where the land is situated); and
 - (b) a description of the purpose for which the land is to be used.
- (2) The Minister must serve on the owner of, and persons with a registered interest in, the land a notice of the intention to take the land in the form set out in Schedule 1, unless it is impracticable to do so.
- (3) The Minister must lodge a copy of the relevant notice in the *Gazette* under subsection (1) with the Registrar-General of Land, who must register it without fee against the computer register affected.
- (4) Any notice under this section may be withdrawn by the Minister, and, if it is withdrawn, a notice to that effect must be lodged with the Registrar-General of Land, who must register it without fee against the computer register to the land.
- (5) To avoid doubt, there is no right of objection to a notice of intention to take land.
- (6) A notice of intention to take land under this section ceases to have effect on the expiration of 3 years after the date of the publication of the relevant notice in the *Gazette* unless, on or before the expiration of that period,—
 - (a) a Proclamation taking the land has been published in the *Gazette*; or
 - (b) the Minister has, by further notice in writing served on the owner of the land intended to be taken, and persons with a registered interest in the land, confirmed the intention of taking the land.
- (7) If the Minister has confirmed the intention of taking the land, the notice of

intention so confirmed ceases to have effect unless, on or before the expiration of 2 years after the date of that confirmation, a Proclamation taking the land has been published in the *Gazette*.

58 Certain land must be offered back

- (1) This section applies if any residential land in the CBD, or any land in greater Christchurch outside the CBD, is compulsorily acquired under section 55.
- (2) If the chief executive wishes to exercise his or her power under this Act to dispose of land to which this section applies, the chief executive must offer to sell the land by private contract to the person from whom it was acquired or that person's successor—
 - (a) at the current market value of the land as determined by a valuation carried out by a registered valuer; or
 - (b) if the chief executive considers it reasonable to do so, at any lesser price.
- (3) Subsection (2) does not apply if—
 - (a) the chief executive considers that to offer the land back would be impracticable, unreasonable, or unfair; or
 - (b) the land is to be set apart for a Government work under section 53(4).
- (4) Section 40(2A), (4), and (5) of the Public Works Act 1981 applies with all necessary modifications to an offer back under this section.
- (5) If any offer to sell land under subsection (2) has not been accepted within 20 working days of the receipt of the offer, the chief executive may dispose of the land on any terms and conditions that he or she thinks fit.

83 Protection from liability

- (1) Except as otherwise provided in this Act, no action lies against the Crown, or an officer or employee or Minister of the Crown, or against any other person,—
 - (a) to recover any damages or other amount for any loss, damage, or adverse effect that is due directly or indirectly to any action taken under this Act; or
 - (b) to require any work to be carried out or other action to be taken in order to remedy or mitigate any loss, damage, or adverse effect that results directly or indirectly from any action taken under this Act.
- (2) No person who takes any action under this Act is liable under the Resource Management Act 1991 for any fine, costs, or expenses in respect of that action, except as otherwise provided in this Act.
- (3) Subsection (1) applies whether the loss, damage, or adverse effect is caused by any person taking any action or failing to take any action, so long as the act or omission occurred in the exercise or performance, or intended exercise or intended performance, of his or her functions, duties, or powers under this Act.
- (4) No person is exempted from liability under subsection (1) for any act or omission to act that constitutes bad faith or gross negligence on the part of that person.

- (5) If, under this Act, the Minister or the chief executive becomes a party to any agreement or arrangement entered into by a council for the purposes of carrying out demolition or other works, the Minister or chief executive is entitled to the full benefit of any provision in the agreement or arrangement that limits or excludes any liability of the council (such as liability for damage caused by, or for the costs of, demolition work) under the agreement or arrangement.
- (6) If a council assumes any liability of the Minister or chief executive in relation to demolition or other works under this Act, the council is entitled to the full benefit of any provision in an agreement or arrangement that limits or excludes any liability of the Minister or the chief executive (such as liability for damage caused by, or for the costs of, demolition work) under the agreement or arrangement.
- (7) No action lies against a council or council organisation that acts in accordance with a direction under section 48(1) for any loss or damage resulting from acting in accordance with the direction, unless it acts in bad faith or with gross negligence.
- (8) In this section, references to this Act include Orders in Council made under this Act or the Canterbury Earthquake Response and Recovery Act 2010.

APPENDIX 32

PROTOCOL FOR ASSESSING BUILDINGS DAMAGED IN THE EARTHQUAKE

Christchurch City Council – Protocol for assessing buildings damaged in the earthquake

These guidelines set out the Council's approach to the relationship between earthquake-prone buildings, the Council's earthquake-prone buildings policy (EQPB Policy) and the provisions of the Building Act 2004

What is an earthquake-prone building?

A building is earthquake-prone under the Building Act 2004 (BA04) if it will have its ultimate capacity exceeded in a moderate earthquake and would be likely to collapse and cause injury to people or damage to other property. (A "moderate earthquake" is one of the same duration but one-third as strong as the level of earthquake shaking used to design a new building.) In general terms, this is where the structural strength of the building is less than 33% of the building code requirements for a new building.

Note: Buildings used wholly or mainly for residential purposes cannot be EQPBs unless they are 2 or more storeys high and contains 3 or more household units (e.g. high-rise apartment buildings) – all commercial buildings can be EQPBs.

Buildings damaged in the earthquake that have a structural strength (before and after the earthquake) of over 33% of the building code

The Council's EQPB Policy does not apply to these buildings and the Council will deal with any building consent application for repairs to these buildings under section 112 of the Building Act 2004 (if that section applies). That means the structural strength of the building, as a whole, only needs to comply with the building code to the same extent as it did before the earthquake.

Note: Any new building work required as part of the repairs will need to comply fully with the building code. The building, as a whole, may also need to be upgraded in relation to its means of escape from fire and access and facilities for persons with disabilities (if this is a requirement in terms of section 118 of the Building Act 2004).

Buildings damaged in the earthquake that have a structural strength of less than 33% of the building code after the earthquake

Whether or not a building had a structural strength before the earthquake of above or below 33%, if the building's strength is now below 33% of the building code it will be considered by the Council to be an earthquake-prone building based on the definition in the BA04 referred to above.

An application for consent for repairs to a damaged earthquake-prone building provides the Council with the opportunity to address the structural strength of that building at the same time in the context of the EQPB Policy.

The approach in the EQPB policy is for the Council and building owners to work together on solutions for an EQPB, on a case by case basis.

- **How much of the building has been damaged and needs repair.** If the repairs required to the building are not structural, or only involve a small part of the building, and the owner can provide an expert opinion acceptable to the Council as to the structural safety of the building (without strengthening being done at the same time as the repairs, and despite it being earthquake-prone), the Council will grant consent under s112 for the area of repairs, and any other upgrading required under s112. The Council will also consider allowing the owner an extension of time, as provided for in clause 2.3.4 of the EQPB Policy, for the strengthening work to be completed within an appropriate period (being not less than 3 years).

The applicant will have to supply information in terms of these criteria to support the case for the extent of work (including any strengthening) being appropriate.

If enforcement action is necessary – the issue of a section 124 notice

The Council wants damaged earthquake-prone buildings to be strengthened so they are, as a minimum, no longer posing a danger to occupants, other property or the public. That is, the ultimate capacity of the building will not be exceeded in a moderate earthquake and the building will not be likely to collapse and cause injury to people or damage to other property.

The Council cannot require a building owner to strengthen a building under s112 of the BA04, or under the EQPB Policy on its own. The Council can issue a section 124 notice if the building is dangerous, earthquake-prone or insanitary. The work required by a section 124 notice is such work as required to reduce or remove the danger or prevent the building from remaining insanitary. The work required may include the demolition of all or part of a building.

The Council will consider exercising its power to issue a section 124 notice when agreement over the level of strengthening for a building cannot be reached. In any notice the Council will normally require a building owner to strengthen their building to the level considered achievable by the Council that removes the danger posed by the building being earthquake-prone. It will not require demolition of the building unless that appears to be the only practicable option.

If the building owner does not agree with the Council's decision to issue a section 124 notice requiring the owner to strengthen the building the owner can apply for a determination to the Department of Building and Housing.