

8 June 2011

Sir John Hansen
Convenor
Canterbury Earthquake Recovery Review Panel
c/- Canterbury Earthquake Recovery Authority
Private Bag 4999
CHRISTCHURCH, 8140

Dear Sir John

Canterbury Earthquake (Historic Places Act) Order no.2 2011

Proposal

- 1 We seek a review by the Canterbury Earthquake Recovery Review Panel of the draft Canterbury Earthquake (Historic Places Act) Amendment Order no.2 2011 under section 73 of the Canterbury Earthquake Recovery Act 2011 (CER Act).
- 2 The purpose of the Order in Council is to extend provisions of the Canterbury Earthquake (Historic Places Act) Order 2010 to reduce processing time for applications affecting archaeological sites that are of Māori interest. In this way the order will facilitate the response to the Canterbury earthquake and aftershocks.
- 3 A copy of the draft Order in Council is attached as Appendix 1.

Background

- 4 The Canterbury Earthquake (Historic Places Act) Order 2010 (the 2010 Order) came into force on 23 September 2010 in response to the earthquake of 4 September 2010. The 2010 Order affects the operation of the Historic Places Act 1993 (HP Act). The 2010 Order was extended on 28 March 2011 to assist local recovery following the aftershock of 22 February 2011, and now expires on 1 April 2012.
- 5 The 2010 Order requires the New Zealand Historic Places Trust (NZHPT) to process authorities to destroy, damage or modify archaeological sites within three working days (as opposed to the three months provided by the HP Act). An archaeological site is any place that was associated with human activity prior to 1900 (whether building/structure or land or both).

- 6 The Order also restricts appeal rights to applicants and property owners only. The officer has discretion to reduce the amount of information applicants are required to supply in applications.
- 7 The Order does not apply to archaeological sites of Māori interest. Instead the HP Act applies to those sites as would normally be the case.

Policy Objective

- 8 Government's overall objective is to promote speedy rebuilding of the Christchurch area in accordance with the Canterbury Earthquake Recovery Act 2011, while also ensuring that the New Zealand Historic Places Trust (NZHPT) takes the significance of sites of Māori interest into account when determining applications to modify archaeological sites. From Government's perspective, a site of Māori interest is defined as a site in which tangata whenua have an interest based on culture or tradition.
- 9 The policy objective for this Order - streamlining of processes for sites of interest to Māori - is a relatively small one. Since the 2010 Order has been in place, four applications have been made affecting sites of Māori interest (three in Christchurch City and one in Selwyn District). Applications have been processed quickly. Ngāi Tahu is satisfied that the application process is operating well. A very positive relationship already exists between Ngāi Tahu, NZHPT, and the councils of the wider Christchurch area. Appeals against both decisions and conditions are rare, and Ngāi Tahu has not lodged an appeal in the 12-year incumbency of the current NZHPT Senior Archaeologist.
- 10 A revised process that provides for a shorter application processing time would, however, provide greater certainty that sites of Māori interest will be assessed quickly, while ensuring NZHPT takes their significance into account when determining applications of interest to Māori.
- 11 A shorter application time also reduces the burden of regulation for applicants that already exists under the HP Act.
- 12 The process for modifying sites of Māori interest will balance the need to support the recovery and rebuilding of Canterbury against the need to protect sites of interest to Māori.
- 13 We set out three options below that have been considered by Ministry for Culture and Heritage (MCH) and were provided for Ministers' consideration.

Options

- 14 The first option is effectively the status quo. Pursuant to clause 10 of the Canterbury Earthquake (Historic Places Act) Order 2010, sites of Māori interest are subject to the usual HP Act process described in sections 9 to 20A of that Act. These sections allow three months for completion of processing of an application (and provide for extensions in some instances). This option provides certainty, but the three month period is long given the urgency of the recovery and rebuilding of Canterbury.
- 15 Option 2 would limit application processing to three working days, with a right of appeal available only to the applicant if the application is declined. It would require an amending Order in Council. This option would:
 - make sites of Māori interest subject to the *same* processing timeframes and appeal rights as other sites in Canterbury
 - prevent tangata whenua appealing decisions to permit destruction or modification of sites.
- 16 Option 3 would limit application processing for sites of Māori interest to five working days, with a right of appeal on the decision available to the applicant or to tangata whenua. Under this option, all applicants would be required to provide an assessment of any Māori values associated with the site, and a statement as to whether consultation with tangata whenua had taken place.
- 17 The extra two working days would provide sufficient time for the archaeological officer to check whether Māori values had been considered, including any additional discussion with tangata whenua that may be required.
- 18 The retention of appeal rights for tangata whenua would provide an appropriate check and balance on a shortened decision-making process. Currently tangata whenua have rights of appeal against decisions and any conditions of those decisions. An example of a condition is a requirement to undertake an archaeological investigation. In relation to conditions of the decision, the right of appeal in option 3 will be only on matters that are specifically related to tangata whenua culture or tradition (terminology used in the HP Act).
- 19 All appeals would need to be lodged within 10 working days (instead of 15 working days provided under the HP Act) in line with the 2011 Canterbury Earthquake Recovery legislation. For consistency, this 10 working day limit would also apply to appeals on other archaeological sites under the Order.
- 20 Option 3 has been discussed with Ngāi Tahu and is acceptable to them. This option would require an amending Order in Council.

- 21 Under any of the three options, the archaeological officer will reject an application where consultation with tangata whenua has not taken place, or where other required information has not been provided. In such circumstances the officer would return the application to the applicant for further work.
- 22 The table below shows the options' advantages and disadvantages:

OPTION	ADVANTAGES	DISADVANTAGES
Option 1: status quo	<ul style="list-style-type: none"> Established process. 	<ul style="list-style-type: none"> Could delay recovery process. Could lead to complaints by property owners.
Option 2: 3 working days	<ul style="list-style-type: none"> This option is most aligned with speedy rebuilding. Established process in context of Canterbury earthquakes. 	<ul style="list-style-type: none"> May be seen as unnecessary regulation because NZHPT is already processing applications quickly. Risk of inadequate assessment of applications. Risk of sites, including koiwi tangata, being disturbed without notification.
Option 3: 5 working days and appeal rights for tangata whenua	<ul style="list-style-type: none"> Slightly longer timeframe allows systematic recording and investigation of sites. Meets needs of tangata whenua. 	<ul style="list-style-type: none"> May be seen as unnecessary regulation because NZHPT is already processing applications quickly. Still a 5 day delay to site modification for each relevant property. Slight increase in complexity due to differences in treatment between sites.

Preferred Option

- 23 MCH's preferred option is Option 3 because its overall impact is to reduce the regulatory burden on the private sector, enhance the private property rights of landowners, and increase the incentives on businesses to invest in rebuilding, while also respecting the Māori values and physical remains (such as koiwi tangata) associated with particular sites. The provision of two days additional processing time over other sites is important for NZHPT to investigate the Māori values of sites and reflects the Crown's Treaty relationship with Ngāi Tahu.
- 24 The relatively short amount of additional processing time is itself a reflection of the positive relationship between the Crown and Ngāi Tahu underpinning this option. It will continue to be important that applicants engage early with Ngāi Tahu before applications are lodged. Both NZHPT and Ngāi Tahu are committed to this occurring under the amended OIC.

Costs and Benefits

- 26 The preferred option carries no additional costs to applicants over and above the Canterbury Earthquake (Historic Places Act) Order 2010.
- 27 The differences between the preferred option and the status quo pre-September are that:
- building owners will have to wait either three working days or five working days (depending on whether the site is of interest to Māori) rather than three months for NZHPT's decision on whether they can destroy/damage/modify an archaeological site, a significant benefit for owners
 - NZHPT has discretion to reduce the amount of information required in an application, reducing costs and bureaucratic delay.
- 28 No additional costs will be placed on any party, and if NZHPT does experience additional costs, they will be met from its baseline allocation. The key benefit is that property owners will only wait three working days or five working days rather than three months for NZHPT to make its decision on the application.

Risks

- 29 The preferred option involves a risk of inadequate assessment of applications because of the tight time constraints. This risk will be mitigated by the use of highly experienced people as archaeological officers, employed by the NZHPT.

Timing

- 30 This Order in Council will be made under the Canterbury Earthquake Recovery Act 2011. Section 59 of the Canterbury Earthquake Recovery Act 2011 provides that the Act, and by implication Orders in Council made under it, does not affect the operation of the Ngāi Tahu Claims Settlement Act 1998.
- 31 The Regulations will come into force on the day after they are gazetted on the grounds that the regulation is being made in response to an emergency event.

Canterbury context

- 32 Examples of sites of Māori interest within Christchurch's central business district are Tautahi Rua Koiwi (including St Luke's Vicarage and St Luke's Church located on the site), Puari Urupā (including two former Christchurch library buildings) and Tautahi Pā, all of which have potential for physical remains being sited underground. Recorded archaeological sites of Māori origin number 414 within Christchurch City, 87 within Selwyn District and 192 within Waimakariri District. These numbers reflect recorded sites only, so are not exhaustive.

Consultation

- 33 We have consulted with the following government agencies: the Ministry for the Environment; the Department of Building and Housing; the Ministry of Justice; the Office of Treaty Settlements; the Department of Internal Affairs; Canterbury Earthquake Recovery Authority, Te Puni Kōkiri; Department of Conservation, Ministry of Transport and the Treasury. These agencies agree with the proposal or have no comment. The Department of Prime Minister and Cabinet has been informed.
- 34 We have advised the following agencies outside central government of the proposal: Christchurch City Council; Waimakariri District Council; Selwyn District Council; Environment Canterbury; NZHPT and Te Runanga o Ngāi Tahu. These agencies also agree with the proposal.

Profile of draft OIC and proposed publicity

- 35 This initiative is unlikely to cause controversy. The Order will be gazetted. Additional publicity for this initiative will not be required because property owners routinely contact NZHPT when archaeological sites are affected. NZHPT will advise applicants of the reduced timeframes for emergency applications.

Conclusion

- 36 We look forward to receiving your recommendations so that regard can be had to them before the relevant Minister make a recommendation on the draft Orders. The key contact for this item of work is Peter Richardson who can be contacted at 04 498 9215.

Yours sincerely



Peter Richardson
Manager, Heritage Sector