

**Government Response to the
Report of the Regulations Review Committee**

**Complaint regarding the Canterbury Earthquake (Building Act) Order 2011
(SR 2011/311)**

**Presented to the House of Representatives
in accordance with Standing Order 249**

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Introduction

On 24 April 2014 the Regulations Review Committee (the Committee) presented a Report, "Complaint regarding the Canterbury Earthquake (Building Act) Order 2011 (SR 2011/311)" (the Report) to the House.

The Report considers complaints the Committee received from Hon Ruth Dyson and Mr Philip Elmeý about the Canterbury Earthquake (Building Act) 2011 (the 2011 Order) on 4 February 2013 and 18 September 2013, respectively.

The 2011 Order was made under the authority of section 71 of the Canterbury Earthquake Recovery Act 2011 (CER Act). Among other things, the 2011 Order modified the Building Act 2004 (the Building Act) to give the three Canterbury councils the authority to restrict access to buildings by issuing extended section 124 notices under the Building Act, where there was a risk of injury or death from the collapse of nearby land (including rockfall, landslip, cliff collapse or subsidence). This modification lowered the risk threshold in section 121 of the Building Act, which defines a building as dangerous if it is likely to cause injury or death, in the ordinary course of events.

The 2011 Order expired on 16 September 2013, and was replaced by the Canterbury Earthquake (Building Act) Order 2013 (2013 Order). The 2013 Order was limited to continuing the existing extended section 124 notices in force until the CER Act expires on 18 April 2016.

The complaints focused on the Christchurch City Council's (CCC's) use of the modified powers to issue dangerous building notices to prohibit access to houses in the Port Hills that are considered to be at risk from rockfall. The rocks that pose a risk are on land that is publicly owned.

The complainants objected to the 2011 Order on four grounds specified in Standing Order 315(2), submitting that it:

- was not in accordance with the general objects and intentions of the statute under which it is made (Standing Order 315(2)(a))
- trespassed unduly on personal rights and liberties (Standing Order 315(2)(b))
- appeared to make an unusual or unexpected use of the powers conferred by the statute under which it was made (Standing Order 315(2)(c))
- contained matters more appropriate for parliamentary enactment (Standing Order 315(2)(f)).

The Government has carefully considered the Committee's Report and is responding to the Report in accordance with Standing Order 249.

Finding and recommendation

The Committee found that none of the Standing Order grounds raised by the complainants had been made out. The Committee acknowledged the extended section 124 notices must be causing difficulty for many homeowners in the Port Hills in Canterbury.

Recommendation: That Government, "as a matter of urgency, issue explicit guidelines for the relevant local authorities concerning the removal of extended section 124 notices issued under the 2011 Order."

Government Response

The Government is not planning to act on the Committee's recommendation. This is because the Government is satisfied that CCC has a process for removing extended section 124 dangerous building notices. CCC has used this process to remove notices from Port Hills properties where:

- rocks and rockfall sources causing the hazard were removed from the site, or
- rock protection structures were put in place, or
- the building has been demolished.

Rather than produce additional guidelines, the Government is targeting its support to areas where CCC has identified a need. Specifically, the Ministry of Business, Innovation and Employment (the Ministry) is working with CCC on a rockroll hazard mitigation process and to refine CCC's current Technical Guideline for Rock Protection Structures. The hazard mitigation process will assist affected property owners and approved geotechnical professionals to:

- determine whether a boulder source above a property is capable of releasing boulders with sufficient energy to cause harm to people in the building
- design a proposed rock protection structure (or other means) to mitigate the risk to an acceptable level, and if feasible, to facilitate the removal of the extended section 124 notice.

The rockroll hazard mitigation process can lead to a report being prepared for the property owner, with a proposal to mitigate the rockroll risk to life to an acceptable level (where feasible). If submitted to CCC, the report would provide a basis for CCC to decide whether a dangerous building notice should either remain in place or be removed, if the proposed structure (or other means) is built as specified.

Reducing the risk of rockroll to an acceptable level using the rockroll hazard mitigation process will require building consents, resource consents, and agreements between affected property owners, adjacent property owners, CCC and the Crown, depending on site specific circumstances. In some cases it might not be practicable, or feasible, to

mitigate the rockroll hazard to an acceptable level. In these situations, affected property owners may choose to accept the Crown offer to purchase their property¹.

The Ministry will continue to provide support to CCC on issues related to the extended section 124 notices, for example, undertaking research related to rockroll hazards and mitigation techniques.

Conclusion

The Government considers that it is not necessary to issue guidelines for CCC to remove extended section 124 notices. The Government is satisfied that CCC already has a process in place to consider whether the notices can be removed.

The Government is targeting its support to areas where CCC has identified a specific need in relation to the extended section 124 notices and will continue to provide support to CCC on issues related to the extended section 124 notices.

¹ The Crown offered to purchase properties in the Port Hills where residents face an unacceptable level of life risk and an engineering solution to mitigate the life risk for the properties would be uncertain, disruptive, not timely and not cost effective.