

# Existing Use Rights

## Replacement of Earthquake Damaged Buildings

This information sheet provides guidance on existing use rights for people wanting to replace buildings damaged or destroyed in the earthquakes. To assist with the Canterbury rebuild, the Council intends to be as flexible and pragmatic as possible when considering whether a building has existing use rights.

### What are Existing Use Rights?

Existing use rights may be relevant to you if you are replacing a building that complied with the planning rules at the time it was built, but doesn't meet the current rules. Provided that certain legal requirements are met, Existing Use Rights enable the reconstruction of a similar building without the need to obtain resource consent under the current rules. For example, if the current rules require a 1.8 metre setback from the boundary but the original dwelling was located only 1 metre from the boundary, a similar replacement dwelling can be built 1 metre from the boundary without the need for resource consent (as long as the legal requirements are met).

**Note:** Existing Use Rights do not apply to buildings that were established via resource consent. Such buildings can be reconstructed at any time in accordance with the approved resource consent.

### What are the requirements for Existing Use Rights?

The legal requirements for existing use rights relating to land use under the District Plan are contained in Section 10 of the Resource Management Act 1991. There are four key requirements to rebuilding under existing use rights and these are explained below.

#### 1. Lawfully established

The first part of the assessment is determining whether the building was lawfully established, meaning that either it complied with the rules at the time it was built or that the council granted specific permission at that time. Factual information must be available to confirm this.

In the case of residential buildings, this is usually fairly straightforward. In most cases the Council holds records that demonstrate this to the level required (such as historical aerial photographs, consent documentation and rating information). Information held by the Council can be made available on request.

In cases where limited Council records exist, the owner or their agent should ensure there is comprehensive photographic evidence and to-scale drawings of the building (including a floor plan, site plan, and elevations) before it is demolished. A survey of the building before it is demolished can also confirm its exact location and height at critical points such as under the eaves and the top of gables. For hill sites, surveyed ground levels and building height at critical points are necessary. If the building is already demolished, it may be possible to establish lawful establishment by other means, such as old photographs, certificates of title, and newspaper articles.

For buildings that were constructed many years ago it may be difficult to obtain information which confirms when it was built. When this is the case, the Council is taking a pragmatic approach and only requires confirmation that the building was existing at the time the first District Plans came into force, rather than at the time the building was first constructed. In most cases this is the early 1960s.

#### 2. Adverse effects the same or similar

The replacement building needs to be largely similar in bulk and location to the lawfully established building.

There can be small changes though, such as the building being slightly larger, taller, or closer to a boundary than before, or a reconfiguration of the internal layout (as long as it meets item 3 below).

#### 3. Do not apply if the extent of non-compliance is increased

A replacement building cannot breach the current District Plan rules by a greater extent than the building it is replacing. A replacement building also cannot create any new non-compliance.

For example, if the original house was located 1.2m from the boundary and the current District Plan rule requires a 1.8m setback, a replacement house cannot be located closer to the boundary than the old house. The same applies to other rules such as height, recession plane (sunlight angle) and building coverage.

#### 4. Cease after 12 months

Existing use rights cease to exist after an activity has been discontinued for 12 months. For earthquake rebuilds, the commencement of the 12 month period is delayed if there has been an obstacle to commencing the rebuild, for example, EQC apportionment, insurance settlement, geotechnical investigation, obtaining building consent. It is only when there are no external obstacles remaining and the “ball is back in the owner’s court” that the 12 month time limit for replacing the building commences.

Owners can apply to extend the duration of existing use rights if an application is made to Council within 2 years of the building being demolished. In considering the application, the Council needs to be satisfied that the effect of the extension is not contrary to the objectives and policies of the District Plan, and other relevant documents such as the Recovery Plans or Regional Policy Statement. It also needs to consider whether any neighbouring properties could be affected by extending the existing use rights.

### Process for confirming Existing Use Rights

The Council will work with property owners or their agents to find out whether existing use rights apply to their individual situations. The legal onus is on the owner or agent to establish existing use rights, but planning staff will assist where they can to advise what information is required and where it could be sourced from if not held by the Council.

As a starting point, we recommend that owners request the property file for their property to see what information there is already which might assist in establishing existing use rights. It is also recommended that owners or their agents request a **pre-application meeting** at an early stage, so that our planning staff can review the information available on Council records and discuss the details of the proposed replacement building to find out whether existing use rights are likely to apply.

If it is likely that existing use rights apply, property owners have the option of applying for an Existing Use Certificate to confirm this. The **application form** sets out the information that must be provided.

Existing use rights can also be checked as part of the Project Information Memorandum planning assessment when a building consent is applied for.

### What happens if existing use rights don’t apply?

If existing use rights do not apply, or there is not enough information to confirm this, then the building needs to comply with the District Plan rules or resource consent will need to be obtained. In some cases an application for resource consent can be quicker and less costly to process than an application for an Existing Use Certificate.

### Flood Management Areas

When replacing a dwelling in a flood management area there are other factors that need be considered, including flood levels and Building Act floor level requirements. Council staff can provide you with specific advice relating to your own property (refer contact details below).

### Non-residential activities

Existing use rights also apply to activities carried out within a building or site, so for commercial and non-residential activities it is usually necessary to confirm that the requirements outlined above are satisfied for both the building and the activity. Additional sources of information that can help confirm lawful establishment and continuity of an activity include: company accounts and records, correspondence, legal agreements and contracts, and records from public departments.

### Other approvals

Existing use rights relate only to the Resource Management Act and the rules in the District Plan. They do not remove a property owner’s obligation to obtain other consents or approvals that may be required (e.g. building consent, resource consent from Environment Canterbury, liquor license, etc).

### Further information

For more information about existing use rights or to request a pre-application meeting, contact the Council’s Call Centre on 941 8999.