

24 March 2016

Our Ref: LEX16738

Secretariat
Government Administration Committee
Parliament Buildings
Private Bag 18041
WELLINGTON 6160

Dear Committee Secretariat

CIVIL DEFENCE EMERGENCY MANAGEMENT AMENDMENT BILL

Please find attached the Council's submission on the above Bill.

The Council looks forward to presenting its submission to the Select Committee. The presentation will be made by Mayor Lianne Dalziel.

The Council would be delighted if the Select Committee decides to travel to Christchurch to hear from the Council and other submitters in the Canterbury region. However, if this is not possible the Council is happy to make its submission by audio or videoconference link.

Please contact me to make arrangements in relation to the oral hearing of the Council's submission. My contact details are judith.cheyne@ccc.govt.nz or (03) 941-8649.

Yours faithfully


Judith Cheyne
Senior Solicitor
Legal Services Unit

Encl

JC
TRIM: 16/0338572

24 March 2016

To: **Secretariat**
Government Administration Committee
Parliament House
Wellington

SUBMISSION OF THE CHRISTCHURCH CITY COUNCIL ON THE CIVIL DEFENCE EMERGENCY MANAGEMENT AMENDMENT BILL

Introduction

- 1) The Christchurch City Council (**the Council**) thanks the Committee for the opportunity to make this submission.
- 2) The Council wishes to appear in support of its submission. The Council will be represented by Mayor Lianne Dalziel.
- 3) The Council supports many of the amendments proposed in the Bill, but also has submissions suggesting improvements to the Bill. The Council has one key submission to make on the Bill, followed by other suggested amendments to improve understanding and clarify proposals in the Bill.

Improve and support greater local control in the transition recovery phase

- 4) Consistent with Council's submission to the Regulations Review Committee on the Inquiry into Parliament's Legislative Response to Future National Emergencies, the Council wishes to see the proposals in the Bill relating to the new transition period taking a more collaborative approach. The transition phase is the first step in the recovery phase; transitioning from the response phase of an emergency to the recovery phase.
- 5) The Council recommended in its Inquiry submission that a co-governance regime of local and central government agencies, working collaboratively with the private sector and communities is the preferred approach for recovery following an emergency. In the Council's view this should be recognised at the outset of the transition period not introduced at some later time
- 6) However, the Bill maintains a significant level of hierarchical control by central government over local authorities/civil defence agencies in relation to the transition period.
- 7) Given the purpose of this Bill is intended to amend the Act to enable better recovery from small to moderate emergencies, it is appropriate that in ensuring a 'seamless transition' from response to recovery, this transition phase is controlled by, as well as delivered by, local agencies.
- 8) While it is appropriate for the Director and/or Minister to have controlling powers in relation to national transition periods that apply over the whole of or substantial part of New Zealand, their powers should be different when it comes to a national transition period over a region or one district or part of a district, or in relation to local transition periods.

- 9) The Council therefore recommends the following amendments to Part 5A:
- i) Section 94A should be amended so that in addition to considering whether it is in the public interest and necessary or desirable to ensure a timely and effective recovery, the Minister may only give notice of a national transition period in relation to a region or part of a region, or district or part of a district, if the Minister has consulted with and/or had particular regard to the views of the relevant CDEM Group or Council. This provides a better collaborative, co-governance approach to the start of the recovery phase following an emergency.
 - ii) Section 94B - it is not clear whether subsections (1) and (2) apply separately or whether they could effectively be combined into one sections (a person appointed under s25A, as referred to in subsection (1), is also a person authorised to give notice of a local transition period (referred to in subsection (2))).
 - iii) Section 94B(3) should not require that a local transition period, where no state of emergency has been declared, can only be imposed if the Minister approves. The Council agrees this should not be a power that can be exercised without any checks and balances, but it should be a more collaborative co-governance approach. The powers should be similar to those for a national transition period being imposed in a region or district. The relevant Recovery Manager/person should only need to consult with and/or have regard to the views of the Minister (or perhaps more appropriately, the Director of Civil Defence).
 - iv) Section 94B(4) - as will be apparent from the recommendations above regarding section 94A; the Minister should not be able to give notice of a local transition period without consulting with and/or having particular regard to the views of the relevant CDEM Group or Council.
 - v) Section 94D - It would be appropriate before there is any extension of a national transition period (after 90 days) or local transition period (after 28 days) for some form of wider consultation with the community to take place, as is appropriate to the small or moderate scale of the emergency. The section currently provides for the public interest to be considered. This could be amended to require that the views of the public are sought, through a quick information gathering/consultation exercise, as to whether the public consider the continued use of special powers is required.
 - vi) The Council supports the powers proposed for recovery managers to exercise during a transition period but does not agree with the Minister's power of direction as being needed when a local transition period has been imposed. Section 94J should be limited so it only applies when notice has been given of a national transition period.

Insert new provision allowing for cost recovery from owners who benefit from any work done by Recovery Managers during a transition period

- 10) The CDEM Act provides for compensation to be made to property owners (see ss107-109), but not for any compensation to be made by property owners to any civil defence agency.

- 11) But there will be occasions when work is done that results in 'betterment' for a property owner. For example, 'make safe' works to a building may be required, which the owner can then incorporate into permanent structural strengthening of a building.
- 12) The Council recommends that in such cases, similar to the powers in the LGA02 (or the Building Act 2004), when a recovery manager does any work during a transition period on a private property, where the result is betterment for the owner (which can be assessed in accordance with the Public Works Act 1981) a power is given to recover those costs.
- 13) Any power will also need to address the insurance position of an owner. Alternatively, where the work is something the owner's insurer would have been required to do, power could be given to recover the costs directly from the insurer.

Decision-making requirements of the Local Government Act 2002 should not apply to decision-making during response or recovery under the Civil Defence Emergency Management Act 2002

- 14) When officers or elected members or local authorities are exercising powers under the Civil Defence Emergency Management Act 2002 (CDEM Act), as a controller, member of a Civil Defence group etc, during an emergency they do not comply with the decision-making requirements in the Local Government Act 2002 (LGA02). They are performing a civil defence role, and although they are doing so because of their local authority 'status', to comply with the LGA02 requirements would be inconsistent with the civil defence role in an emergency. It is not clear whether the same is to be expected/ will apply to anyone performing the new role proposed in the Bill of a Recovery Manager during a transition period.
- 15) There is the potential for confusion in relation to local authority roles and responsibilities under the CDEM Act, and therefore confusion as to whether the decision-making requirements in ss76-81 of the LGA02 would apply to a Recovery Manager. The following discussion of relevant sections explains the potential for confusion.
- 16) Section 64 of the Act expressly provides for duties of 'local authorities' under the Act; to plan and provide for civil defence emergency management within its district, and ensure it is able to function to the fullest extent possible during and after an emergency. Local authorities are required to be members of and establish CDEM groups, and under section 12 these groups are joint committees under the LGA02.
- 17) Section 17 of the CDEM Act (Functions of Civil Defence Emergency Management groups) provides for emergency response and recovery activity functions of groups (functions (d), (e), and (f)). Although s17(3) lists a number of acts, including the LGA02 as legislative provisions specifically relevant to functions (g) and (h) (promoting public awareness of, and monitoring and reporting compliance with, the Act), and not (d), (e), and (f), there is nothing in section 17, or the CDEM Act, that explicitly states the LGA02 is not relevant to other functions carried out under the Act.
- 18) Section 6 of the CDEM Act provides that unless the CDEM Act otherwise provides, it *'does not limit, is not in substitution for, and **does not affect the***

functions, duties or powers of any person under the provisions of any enactment or any rule of law'. This would appear to include the requirement in s76(1) of the LGA02.

- 19) Section 76(1) of the LGA02 provides that *'every decision made by a local authority must be made in accordance with such of the provisions of sections 77, 78, 80, 81 and 82 as are applicable'*. Sections 76(5) and (6) state:

"....(5) Where a local authority is authorised or required to make a decision in the exercise of any power, authority, or jurisdiction given to it by this Act or any other enactment or by any bylaws, the provisions of subsections (1) to (4) and the provisions applied by those subsections, unless inconsistent with specific requirements of the Act, enactment, or bylaws under which the decision is to be made, apply in relation to the making of the decision.

(6) This section and the sections applied by this section do not limit any duty or obligation imposed on a local authority by any other enactment."

- 20) Although it seems clear decisions made under the CDEM Act during the response phase would be inconsistent with the requirements of s76(1) of the LGA02, it is not clear whether the same could be said about the transition/recovery phase.
- 21) The Council therefore recommends section 6 of the CDEM Act is amended to make it completely clear that the decision-making requirements of the LGA02 do not apply to any local authority, or officer or elected member of a local authority exercising any powers under the CDEM Act while a state of emergency or a transition period is in force.

Delete section 30A(4)

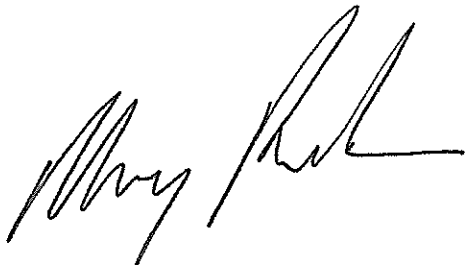
- 22) New section 30A(4) places an unreasonable requirement on Group and Local Recovery Managers (there is no similar requirement on National Recovery Managers), to supervise *'so far as is reasonably practicable'* any person they have authorised to exercise a power or perform a function or duty.
- 23) There is no guidance on what is considered *'reasonably practicable'*, which will make it difficult for Recovery Managers to understand the extent of this requirement on them. It is also unclear why the need for such a requirement arises, particularly as there is no similar duty imposed on Controllers under the CDEM Act.
- 24) The Council submits this provision should be revoked. There are ordinary common law duties of care (and statutory health and safety requirements) to ensure tasks are performed competently, and the protection from liability in section 110 of the CDEM Act does not apply *'for any act or omission to act that constitutes bad faith or gross negligence on the part of that person'*.

Submissions for minor amendments/clarification to the Bill/Act

- 25) Council recommends the following clauses of the Bill are also amended, as described:

- i) Section 9(3) (power of Director of Civil Defence to issue guidelines etc) refers at new (ca) to the development of national and local strategic recovery plans. It is not clear whether 'local strategic recovery plans' in this section are the more general plans for which there is already guidance available, which every local authority prepares at present, or whether this is a reference to new s57A and the recovery plans required to be prepared by every CDEM Group. It would be helpful if this was clarified.
 - ii) New section 30A should be strengthened by making express reference to recovery activities being one of the functions of Recovery Managers.
 - iii) Under section 49(2) consideration should also be given to adding reference to arrangements for giving notice of transition periods to be added to a CDEM Group plan.
 - iv) Section 115A needs to be amended to refer to 'local authority' not 'territorial authority'.
- 26) If you require clarification of any points raised in this submission, or any additional information, please contact Judith Cheyne (Senior Solicitor, Legal Services Unit, phone 03 941-8649, email: judith.cheyne@ccc.govt.nz) or Alicia Palmer (Head of CDEM & Rural Fire, phone 03 941 8217, email: alicia.palmer@ccc.govt.nz)

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mary Richardson', written in a cursive style.

Mary Richardson
General Manager, Customer & Community
CHRISTCHURCH CITY COUNCIL