



Hurunui/Kaikōura Earthquakes Recovery (Local Government Act 2002—Kaikoura District 3-Year Plan) Order 2018

Patsy Reddy, Governor-General

Order in Council

At Wellington this 19th day of March 2018

Present:

Her Excellency the Governor-General in Council

This order is made under section 7 of the Hurunui/Kaikōura Earthquakes Recovery Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Local Government made in accordance with section 8(1) and (2) of that Act.

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Order

1 Title

This order is the Hurunui/Kaikōura Earthquakes Recovery (Local Government Act 2002—Kaikoura District 3-Year Plan) Order 2018.

2 Commencement

This order comes into force on 30 March 2018.

3 Interpretation

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

3-Year Plan means the Kaikoura District Council 3-Year Plan prepared and adopted under clause 5(1)

Act means the Local Government Act 2002

council means the Kaikoura District Council

long-term plan means a long-term plan ordinarily required under section 93 of the Act

special consultative procedure means the procedure set out in section 83 of the Act.

(2) While this order is in force, the Act, the Local Government (Rating) Act 2002, and the Local Government (Financial Reporting and Prudence) Regulations 2014, as they relate to long-term plans, are to be read and applied with respect to the council—

- (a) with the modifications set out in this order; and
- (b) with any other modifications that are necessary as a result of this order.

Part 1

3-Year Plan instead of long-term plan

No requirement for long-term plan

4 No requirement for long-term plan for 3 financial years

- (1) Despite section 93 of the Act and any other provision of the Act or of any other Act or regulations, the council is not required to have a long-term plan with respect to the period beginning on 1 July 2018 and ending on 30 June 2021.
- (2) Subclause (1) does not exempt the council from the requirement to adopt a long-term plan before 1 July 2021, relating to the period beginning on that date, and for later years.

Requirement for 3-Year Plan

5 Kaikoura District 3-Year Plan

- (1) Instead of a long-term plan, the council must, before 1 July 2018, prepare and adopt a Kaikoura District 3-Year Plan for the 3 financial years beginning on 1 July 2018 and ending on 30 June 2021.
- (2) The council may amend the 3-Year Plan at any time.

6 Purpose of 3-Year Plan

The purpose of the 3-Year Plan is to—

- (a) describe the activities of the council; and
- (b) set out the council's plans and progress in relation to recovery from the Hurunui/Kaikōura earthquakes; and
- (c) describe the community outcomes of the Kaikoura district; and
- (d) provide integrated decision-making and co-ordination of the council's resources; and
- (e) provide a basis for accountability of the council to the community.

Special consultative procedure to be used

7 Use of special consultative procedure in adopting or amending 3-Year Plan

The council must use the special consultative procedure in adopting or amending the 3-Year Plan and, in doing so,—

- (a) a draft of the 3-Year Plan or any proposed amendment must serve as the statement of proposal for the purpose of section 83(1)(a) of the Act; and

- (b) the council must, in each case, prepare and adopt the summary referred to in section 83(1)(a)(ii) of the Act.

Contents and publication of 3-Year Plan

8 Contents of 3-Year Plan

- (1) The 3-Year Plan must include, for the financial years to which the plan relates,—
 - (a) the information required by the following clauses of Schedule 10 of the Act as if references in those clauses to a long-term plan were references to the 3-Year Plan:
 - (i) clause 1 (community outcomes):
 - (ii) clause 2 (groups of activities):
 - (iii) clause 3 (capital expenditure for groups of activities):
 - (iv) clause 5 (funding impact statement for groups of activities):
 - (v) clause 7 (council-controlled organisations):
 - (vi) clause 8 (development of Māori capacity to contribute to decision-making processes):
 - (vii) clause 10 (revenue and financing policy):
 - (viii) clause 12 (forecast financial statements):
 - (ix) clause 13 (financial statements for previous year):
 - (x) clause 14 (statement concerning balancing of budget):
 - (xi) clause 15 (funding impact statement):
 - (xii) clause 16 (reserve funds):
 - (b) in relation to each group of activities of the council, a statement of the intended levels of service provision:
 - (c) a financial strategy as if references in section 101A of the Act to a long-term plan were references to the 3-Year Plan:
 - (d) in relation to the council's infrastructure, including infrastructure that supports the core services referred to in section 11A(a) to (e) of the Act, a statement setting out—
 - (i) any significant infrastructure issues for the council:
 - (ii) the principal options for managing those infrastructure issues and the implications of those options:
 - (iii) a description of the major capital projects that the council is proposing or implementing, including any to facilitate the district's recovery from the Hurunui/Kaikōura earthquakes:
 - (iv) the likely funding options for major capital projects and implications of the options for rates and debt:

- (v) the factors that are expected to have a significant impact on the council during the financial years to which the plan relates, including levels of service the council will provide in the future:
- (e) a statement setting out—
 - (i) the significant forecasting assumptions on which the 3-Year Plan is based; and
 - (ii) the implications if those assumptions are not borne out in fact.
- (2) The council must, in complying with the requirements of this order in relation to the preparation and adoption of the 3-Year Plan, act in the manner, and include in that plan the detail, that the local authority considers on reasonable grounds to be appropriate.
- (3) The council must, in deciding what is appropriate for the purposes of subclause (2), have regard to—
 - (a) sections 77 to 82, 83, 96, 97, and 101 of the Act; and
 - (b) the significance of any matter; and
 - (c) the extent of the council's resources.
- (4) To avoid doubt, the 3-Year Plan and any amendment to it need not contain any report from the Auditor-General.

9 Publication of 3-Year Plan

The council must, within 1 month after the adoption of the 3-Year Plan,—

- (a) make it publicly available within the meaning of that expression in section 5(3) of the Act; and
- (b) send copies of it to the Secretary for Local Government, the Auditor-General, and the Parliamentary Library.

Part 2

Application of certain provisions and revocation

10 3-Year Plan treated as long-term plan for certain legislative provisions

The following provisions and enactments apply in relation to the council, as if references in them to a long-term plan were references to the 3-Year Plan:

- (a) sections 95, 96, and 98 of the Act; and
- (b) part 3 of Schedule 10 of the Act with respect to the council's 2019/20 and 2020/21 annual reports; and
- (c) the Local Government (Rating) Act 2002; and
- (d) the Local Government (Financial Reporting and Prudence) Regulations 2014.

11 3-Year Plan serves as annual plan for first year

Despite section 95(1) of the Act, for the financial year 2018/19, the financial statement and funding impact statement included in the 3-Year Plan in relation to that financial year must be regarded as the annual plan adopted by the council for that year.

12 Non-application of section 97 of Act

- (1) Section 97 of the Act does not apply with respect to the council during the period beginning on 1 July 2018 and ending on 30 June 2021.
- (2) However, during that period, the council must not make a decision described in section 97(1) of the Act unless it has first used the special consultative procedure in considering whether to make the decision.

13 Pre-election report

- (1) Clause 36(1)(b) and (c) of Schedule 10 of the Act applies to the council (*see* section 99A of the Act) as if references in that clause to the 3 financial years immediately following the date of the election were references to the financial year immediately following the date of the election.
- (2) To avoid doubt, however, the pre-election report may include a description of major projects planned for any period after the financial year immediately following the date of the election.

Revocation

14 Revocation

This order is revoked on the close of 30 June 2021.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 30 March 2018 and is revoked on the close of 30 June 2021, applies to the Kaikoura District Council.

Clause 1 states the Title of the order.

Clause 2 provides that the order comes into force on 30 March 2018.

Clause 3 defines expressions used in the order and provides interpretive guidance.

Clause 4 exempts the council from the obligation to have a long-term plan under the Local Government Act 2002 (the **Act**) while the order is in force. However, before

1 July 2021, the council must adopt a long-term plan with respect to the period beginning on that date.

Clause 5 requires the council to prepare and adopt a plan (to be called the Kaikoura District 3-Year Plan) covering the period 1 July 2018 to 30 June 2021. The council may amend the plan at any time.

Clause 6 sets out the purpose of the 3-Year Plan.

Clause 7 provides that the council must use the special consultative procedure in adopting or amending the 3-Year Plan.

Clause 8 sets out the required contents of the 3-Year Plan, including—

- certain contents described in Schedule 10 of the Act:
- information about intended levels of service provision:
- a financial strategy under section 101A of the Act:
- key information relating to the district’s infrastructure:
- a statement of the assumptions on which the plan is based and the implications if those assumptions are not borne out.

Clause 9 requires the 3-Year Plan to be made publicly available and to be provided to certain public offices.

Clause 10 provides that certain additional legislative provisions apply to the council as if the 3-Year Plan were a long-term plan.

Clause 11 provides that the financial statement and funding impact statement in the 3-Year Plan also serve as the annual plan for the financial year 2018/19.

Clause 12 disapplies section 97 of the Act for the period to which the 3-Year Plan relates. That section requires decisions about levels of service and the transfer of strategic assets not to be taken unless explicitly provided for in the relevant long-term plan. This clause provides instead that those decisions must be made only after use of the special consultative procedure.

Clause 13 modifies, in their application to the council, the requirements relating to the information to be provided in pre-election reports. Certain financial information and major project information need only be provided in relation to the year immediately following the date of the election rather than for a period of 3 years as ordinarily required.

Clause 14 provides that the order is revoked on the close of 30 June 2021.

This Order in Council is made under the Hurunui/Kaikōura Earthquakes Recovery Act 2016, and its effect is temporary.

Statement of reasons

The relevant Minister (the Minister of Local Government) considers that this order is necessary or desirable for the purpose of the Hurunui/Kaikōura Earthquakes Recov-

ery Act 2016 and is no broader than is reasonably necessary for the reasons that follow.

The Kaikoura District Council (the **council**) does not have the capability or capacity to conduct the extensive statutory planning process in parallel to resourcing earthquake recovery efforts. The extensive process of adopting a long-term plan would require the council to divert resources away from recovery efforts, which at this point need to be given a higher priority. In addition,—

- long-term planning must have a detailed understanding of the present situation, including the financials and fundamentals such as asset condition and performance in order to plan for the future. The council cannot meet the statutory requirements of a long-term plan with the information available at this time. It is not clear when the necessary information will be available;
- a long-term plan produced by the council for this period is likely to be inaccurate and lack the necessary information to provide for meaningful community consultation on the future direction of the district. It is not feasible for the council to undertake strategic planning beyond earthquake recovery at this time.

Strategic planning in a relevant form will be important during the recovery period. The preparation of a customised 3-year plan in place of the standard long-term plan is necessary given the high level of uncertainty around critical information and the demands on council resources to co-ordinate the recovery.

Preparing a customised 3-year planning document is reasonable in these circumstances. It will reduce the planning burden on the council. It will provide the Kaikōura communities with more useful information on the strategic planning for the district by focusing on recovery efforts. It will provide for relevant financial planning, future council decision making, and accountability to communities.

The 3-year plan does not contain audit requirements because this would be inconsistent with the objective of reducing the regulatory burden on the council during the recovery period. Further, the process for setting the 3-year plan in consultation with the community and audits of subsequent annual reports will provide checks on the council's planning.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 22 March 2018.

This order is administered by the Department of Internal Affairs.