



Human Rights
Commission
Te Kāhui Tika Tangata

30 May 2014

David Kelly
Canterbury Recovery Programme Director
Ministry of Business, Innovation and Employment
PO Box 5488
Lambton Quay
WELLINGTON 6011

Dear David

ROCKFALL AND NOTICES ISSUED UNDER SECTION 124 OF THE BUILDING ACT

The Commission has received a number of approaches from residents in the Port Hills of Christchurch who are either living in or vacated homes that are subject to section 124 (s.124) notices. They are concerned about the seeming lack of respect for or recognition of their human rights.

The Commission is aware that these notices were issued by the Christchurch City Council. However, as the agency responsible for oversight of the Act, it is critical to be fully aware of the consequences on the lives of those whose homes are subject to a notice.

The Commission is concerned that the effect of the imposition of s.124 notices is leading to an infringement of the right to adequate housing and of the right to health of those who own the homes which are the subject of such notices.

The Regulations Review Committee in its report published on 24 April 2014 concerning complaints regarding the Canterbury Earthquake (Building Act) Order 2011 (SR 2011/311) is relevant. This Order amends the definitions of a dangerous building to include danger to a building from rock fall and has significant impact on some Port Hill residents.

In brief the Regulations Review Committee was asked by the Hon. Ruth Dyson MP and Phil Elmej to consider their objections to the making of SR 2011/311. The Regulations Review Committee decided that none of the Standing Orders grounds raised by the complainants were made out. However, the Regulations Review Committee went on to recommend that: the Government as a matter of urgency, issue explicit guidelines for the relevant local authorities concerning the removal of extended s. 124 notices issued under the Canterbury Earthquake (Building Act) Order 2011.

As the agency responsible for the administration of SR 2011/311, we are enquiring as to what work MBIE is undertaking in response to the Regulations Review Committee's request that the government urgently undertake the preparation of the guidelines.

In its report the Regulations Review Committee made a compelling case why its recommendation requires an urgent response, it commented that: “the position that these homeowners have found themselves in as a result of the 2011 order is not sustainable.” The Regulations Review Committee also commented that:

- The extended s.124 notices issued under the modified provisions of the Building Act must have caused, and must still be causing, considerable frustration and difficulty for many homeowners in the Port Hills
- Property owners have no certainty as to when, or if, these extended notices will be lifted
- The relevant local authorities are yet to release guidelines on how extended s.124 notices may be removed
- Affected homeowners are effectively locked into their current position until at least 18 April 2016, when the Canterbury Earthquake Recovery Act 2011 will be repealed
- There is of course no guarantee that the extended s.124 notices will lapse on 19 April 2016, as a law change could be subsequently introduced to continue their effect further.

Government agencies have acknowledged the effects on the health of affected people of the secondary stressors around land and housing issues. The State has also acknowledged the human rights implications in its recent report to the United Nations Human Rights Council. Three States made recommendations to New Zealand regarding the Canterbury Earthquake:

“51. Speed up the rebuilding and compensation process in the aftermath of the Canterbury earthquakes (Germany)

52. Consider policies in relation to gender mainstreaming, adequacy of housing and access to buildings for persons with disabilities in the post-recovery efforts of the Canterbury earthquakes (Trinidad and Tobago)

53. Facilitate the realization of economic, social and cultural rights through the reconstruction of the areas affected by earthquakes in 2010 and 2011.” (Algeria)

New Zealand’s response was:

“51: New Zealand agrees to speed up the rebuilding processes that are within the scope of government.

52, 53: Accepted in full.”

The State is obliged to and has accepted that it must meet its international human rights obligations.

The Human Rights Commission fully endorses and supports the Regulations Review Committee request that such work be urgently undertaken. Urgent action would also accord with the State’s response to the United Nations Human Rights Council.

The time it has taken and the extraordinary difficulties in having the notices lifted mean that what are intended to be “notices to fix and repair” are de facto eviction notices.

The homeowners’ right to health is also being infringed. The homeowners are experiencing considerable stress due to:

- a. financial uncertainty
- b. insurance issues
- c. anxiety due to dislocation from their community
- d. a sense of being excluded from the processes that will determine whether they can return to their homes i.e. a lack of participation
- e. a sense of being disenfranchised through lack of easily understood information about how they might satisfy the Christchurch City Council that it is appropriate to lift the notice.

All of the above matters are taking a heavy toll on the general health and wellbeing of the homeowners

In July 2013 we wrote to the-then Mayor of Christchurch about the situation commenting that the time had come for homeowners to be provided with clear, straightforward guidance on what are their options and for all the government agencies involved in the situation to provide them with all the necessary support and assistance to allow them to make decisions.

A recent decision by the High Court *Kraal and Irvine v. The Earthquake Commission and Allianz New Zealand Limited* [2014] NZHC 919 adds another aspect to the human rights issues. Justice Mallon decided that a s.124 notice does not amount to physical loss or damage to a property and therefore it is not covered either by the EQC or by the insurance policy. In effect the homeowners are denied the use of their undamaged or repairable property through the operation of a s. 124 notice and are not able to receive adequate compensation for the loss that causes.

You may have seen an interview in *The Press* of 26 May 2014 with the partner of Helen Kraal one of the litigants in which he made a very pertinent comment about what it means to be trapped in this situation:

"It's not just the amount of money that's on the line – people's futures are on the line...Generally speaking, people around the Port Hills are not young 20-something-year-olds. They're people in their late 40s, 50s or 60s who may have to start all over again."

It is noteworthy that part of the evidence provided to the court included that the Christchurch City Council has no general plan for reassessing the s. 124 notices that are still in place.

It is also noteworthy that two of the three applications for a determination under the Building Act to in effect review the imposition of a s. 124 notice issued by the Christchurch City Council have resulted in the notices being lifted.

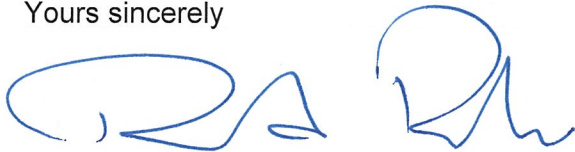
Christchurch City Council has a huge workload and is working on many fronts. MBIE has the technical skills and resources to support them in this issue by developing guidance as to

how rock fall risk could be mitigated, and how the risks can be properly assessed This would allow the people of the Port Hills to move forward.

A timely response is required to this issue as residents have already been waiting far too long. Much of the answer lies within Government as either the owner of the land where mitigation works can be placed or the holder of the technical skills to move this forward.

I have copied this letter to the Mayor and Chief Executive of Christchurch City for their information.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized 'D' followed by a series of loops and a final flourish.

David Rutherford
Chief Commissioner | Te Amokapua

cc Mayor Lianne Dalziel – Christchurch City Council
Jane Parfitt – Acting CEO, Christchurch City Council