



File No. 18368446

Rlwd 1/8/14

28 July 2014

David Rutherford  
Chief Commissioner  
Human Rights Commission  
P O Box 12411  
Thorndon

Dear Mr Rutherford

**Re: Rock fall and notices under section 124 of the Building Act 2004**

I am responding to your letter of 30 May 2014 following you receiving a number of approaches from residents in the Port Hills of Christchurch who are either living in, or have vacated, homes that are subject to extended section 124 notices, under the Building Act 2004.

I acknowledge that this can be a difficult situation for affected homeowners in the Port Hills. Their home may be undamaged and they cannot mitigate the danger easily as it is not usually located on their land.

The Government recognises that issuing an extended section 124 notice has an effect on people's rights, particularly property rights. When deciding to allow the Canterbury councils to issue extended section 124 notices, the Government balanced the need to maintain these property rights, along with the stress people may experience by not being able to live in their homes, with the risk to their life and their right to safety.

***Concern about an infringement of the right to adequate housing and health***

I note that your letter describes your concerns about the effect extended section 124 notices are having on affected people and their right to adequate housing and their right to health.

In the Port Hills, most of the extended section 124 notices were issued under the Canterbury Earthquake (Building Act) Order 2011 and continued by the Canterbury Earthquake (Building Act) Order 2013 (2013 Order). The extended section 124 notices prohibit access to buildings where there is a risk that the building, or adjacent land, or nearby land could collapse or otherwise cause injury or death of a person in the building. This includes collapse by way of rock fall, landslip, cliff collapse or subsidence.

The Government continued the existing extended section 124 notices in the 2013 Order because it recognised that the risk to life from earthquake-related hazards in the Port Hills still remains.

The Government also decided to give homeowners in the Port Hills red zone the opportunity to take up the Crown offer to purchase their insured residential properties. The Government made this decision to help homeowners facing an unacceptable level of life risk and to reduce the impact of their extended section 124 notices on them.

### ***Response to the Regulations Review Committee recommendation***

In your letter, you have asked what work the Ministry of Business, Innovation and Employment (the Ministry) is doing to respond to the Regulations Review Committee (the Committee's) recommendation in its report, "Complaint Regarding the Canterbury Earthquake (Building Act) Order 2011", to the House of Representatives. The Government Response to the report was presented to the House on 16 July 2014 and is attached for your information.

In line with the Government response, the Ministry is not planning to issue explicit guidelines to the relevant local authorities concerning the removal of extended section 124 notices in the Port Hills. This is because the Ministry is satisfied that Christchurch City Council has a process for removing extended section 124 dangerous building notices. Christchurch City Council has used this process to remove notices from Port Hills properties where:

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

To be most effective, rather than produce additional guidelines the Ministry is targeting its support to areas where Christchurch City Council has identified a need. Because they are committed to resolving issues with extended section 124 notices in the Port Hills, Christchurch City Council and the Ministry are developing a rock roll hazard mitigation process and refining the current technical guideline for rock protection structures. This work will include consultation with the industry at the relevant times during its development.

The rock roll hazard mitigation process/guide 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 of rock fall / boulder roll to an acceptable level, and if feasible, to facilitate the removal of the extended section 124 notice.

### ***Lifting extended section 124 notices***

Currently, homeowners can engage an approved geotechnical professional to design a proposed rock roll protection structure to mitigate the risk of rock fall / boulder roll to an acceptable level, if feasible. International design methods are available to support geotechnical professionals and could be used in conjunction with Christchurch City Council's current technical guideline for rock protection structures until the new rock roll hazard mitigation guide is available.

The geotechnical professional's design work could lead to a report being prepared for the homeowner, with a proposal to mitigate the rock fall / boulder roll risk to life to an acceptable level. If submitted to the Christchurch City Council, the report would provide a basis for Christchurch City Council to decide whether an extended section 124 notice should either remain in place, or be removed if the proposed structure is built as specified and the risk to life is mitigated to an acceptable level.

### ***Appeals process***

Homeowners can also appeal their extended section 124 notice. Where a homeowner disagrees with their extended section 124 notice they can apply to the Ministry for a determination. If the Ministry makes a determination against the extended section 124 notice it can be lifted.

Information arising from the determinations has informed the Ministry's work with Christchurch City Council to develop the rock roll hazard mitigation guide and to refine Christchurch City Council's current

technical guideline for rock protection structures. This work will assist Christchurch City Council's decision making about when and how to lift the extended section 124 notices in the Port Hills.

***Report to the United Nation Human Rights Council***

In your letter you refer to New Zealand's recent report to the United Nations Human Rights Council and the recommendations by three States made to New Zealand regarding the Canterbury Earthquakes.

After the Canterbury earthquakes in September 2010 and February 2011 the Government agreed that a timely and effective recovery from the destruction required a dedicated central government agency. The agency could provide leadership, act quickly on urgent priorities and coordinate the recovery efforts. Consequently, the Canterbury Earthquake Recovery Authority was established under the State Sector Act 1988 and the Canterbury Earthquake Recovery Act 2011 (CER Act) was made. The CER Act provides the government with a mechanism to address issues relating to the Canterbury recovery. Mechanisms that could address the issues raised in recommendations 51 – 53 of the report are included in the CER Act.

In conclusion, I acknowledge the difficult situation of the homeowners with extended section 124 notices on their properties in the Port Hills. I want to reiterate that the Ministry is assisting Christchurch City Council to develop further processes and guidelines as it seeks to resolve the issues related to the extended section 124 notices. The Government is also committed to helping affected homeowners in the Port Hills by providing them with a Crown offer on their insured residential properties.

Yours sincerely



Julie Knauft  
Manager, Construction Market Policy  
Ministry of Business, Innovation and Employment