

To: Minister for Canterbury Earthquake  
 Recovery

In Confidence

**DIRECTION TO DEVELOP A RESIDENTIAL RED ZONE OFFER  
 RECOVERY PLAN**

Date	16 April 2015	Priority	High
Report No	MGB/14-15/319	File Reference	

	Action Sought	Deadline
Hon Gerry Brownlee Minister for Canterbury Earthquake Recovery	<ul style="list-style-type: none"> <li>Agree that the use of your powers under sections 16 and 19 of the Canterbury Earthquake Recovery Act 2011 (CER Act 2011) to direct the development of a Residential Red Zone Offer Recovery Plan meets the requirements of section 10 of the CER Act.</li> <li>Approve the proposed process for the development of a Residential Red Zone Offer Recovery Plan, as set out in the direction that is signed by you, having regard to the matters listed in section 19(2) of the CER Act.</li> <li>Direct the Chief Executive of CERA, as a responsible entity under the CER Act, to develop a Residential Red Zone Offer Recovery Plan in accordance with the direction that is signed by you.</li> <li>Sign the attached direction which will then be published in the <i>New Zealand Gazette</i> notifying your direction to develop the Residential Red Zone Offer Recovery Plan.</li> </ul>	As soon as you are able

**Contact for Telephone Discussion (if required)**

Name	Position	Telephone	1st Contact
Benesia Smith	Deputy Chief Executive, Strategy and Governance		<input checked="" type="checkbox"/>
Emma Jacka	Manager, Policy – Built and Natural		

**Minister's office comments**

<input type="checkbox"/> Noted <input type="checkbox"/> Seen <input type="checkbox"/> Approved <input type="checkbox"/> Needs change <input type="checkbox"/> Withdrawn <input type="checkbox"/> Not seen by Minister <input type="checkbox"/> Overtaken by events <input type="checkbox"/> Referred to	<b>Comments</b>  
--	-------------------------



# DIRECTION TO DEVELOP A RESIDENTIAL RED ZONE OFFER RECOVERY PLAN

## Purpose

---

- 1 This briefing recommends you exercise your power under sections 16(1) and 19 of the Canterbury Earthquake Recovery Act 2011 (CER Act) to direct the Chief Executive of CERA (the Chief Executive) to develop a Residential Red Zone Offer Recovery Plan (the Recovery Plan).
- 2 If you agree with this recommendation you should also sign the draft direction (**Attachment A**), which would appear in the *New Zealand Gazette* as early as Thursday 23 April 2015 or soon thereafter.

## Executive Summary

---

- 3 In September 2012, the Chief Executive made an offer, on behalf of the Crown, to purchase vacant, commercial and uninsured residential properties in the flat land residential red zone under section 53 of the CER Act (the Crown offer). The Crown offer was challenged by way of judicial review and was appealed to the Supreme Court. The Court held that the Crown offer had not been lawfully made and directed that you and the Chief Executive reconsider the decision in light of the requirements of the CER Act, and the factors outlined in the judgment.
- 4 The factors outlined by the Supreme Court were that important decisions require community input, and that the insurance status of residential red zone properties while not an irrelevant factor, was not determinative. The Court also found that the Crown offer to purchase vacant, commercial and uninsured residential red zone properties should have considered the context of the residential red zone at the time the offer was made. That is, the offer should have considered the deteriorating living conditions, deteriorating infrastructure, and the effect of these conditions on residents' health and well-being.
- 5 The Court did not explicitly direct that a Recovery Plan should be used to reconsider the decision, but found that decisions relating to significant earthquake recovery measures require the use of a Recovery Plan (or be included in the Recovery Strategy).
- 6 CERA officials have assessed two options for moving forward in order to provide certainty about the effects of the Government's residential red zone process for particular greater Christchurch communities. One option involves the Chief Executive simply arriving at and making an offer. The Chief Executive and CERA do not currently hold sufficient additional information required to ensure that any new offer made considers the views of the affected parties or the wider public without going through some sort of engagement process.
- 7 The second option (recommended) is that you direct the Chief Executive to prepare a Recovery Plan. The availability of a Crown offer to purchase vacant, commercial and uninsured property in the residential red zone can be considered a significant earthquake recovery measure. In addition, while the Supreme Court did not explicitly direct that a Recovery Plan should be used, CERA officials consider there is a need to collate through a robust process the comments of the affected parties and the wider public in light of the Court asking for a range of additional information to be considered in the decision making process. It is considered critical that the affected parties and wider public are involved in the preparation of the Recovery Plan.



- 8 Any decision that a Recovery Plan is reasonably considered necessary to achieve the purposes of the CER Act is a balanced one. There are marginal gains in terms of timeliness and costs when compared to the other option. However, it is expected that the preparation of a draft Recovery Plan will assist in bringing together relevant information to inform a final offer to vacant, commercial and uninsured property owners in the "residential red zone" which seeks to contribute to the over-arching purpose of the CER Act by providing for the social, economic, cultural and environmental well-being of greater Christchurch communities.
- 9 The key purpose of the Recovery Plan would be to determine whether to make purchase offers to the owners of vacant, commercial and uninsured residential red zone properties (in both the flat land and Port Hills) and how such offers should be constructed.
- 10 CERA officials recommend that you direct the Chief Executive to prepare a Recovery Plan under section 16(1) of the CER Act. Doing so would be consistent with the Supreme Court's judgment in *Quake Outcasts v The Minister for Canterbury Earthquake Recovery*<sup>1</sup> (*Quake Outcasts*) and is also consistent with the *Recovery Strategy for Greater Christchurch - Mahere Haumanutanga o Waitaha*.
- 11 You may, pursuant to section 19 of the CER Act, determine how Recovery Plans are to be developed, including any requirements as to consultation or public hearings. We recommend that you agree to publicly notify the Residential Red Zone Offer Recovery Plan in both its preliminary draft and draft stages. Doing so will ensure that all relevant views are canvassed.
- 12 If you agree to directing the development of a Recovery Plan, we propose the following next steps:
- you must ensure that the direction is notified in the *New Zealand Gazette* together with the list of all other Recovery Plans being developed or in force. A notice is attached for your signature. We recommend you sign the notice by 21 April 2015 so that it can be included in the *New Zealand Gazette* of 23 April 2015;
  - the Chief Executive should inform, in writing, counsel acting for the Quake Outcasts and Fowler Developments Limited of your decision;
  - the Chief Executive will immediately contact the strategic partners and the Community Forum to inform them of your decision;
  - the Chief Executive will develop the preliminary draft Recovery Plan, publicly notify it by 5 May 2015 and call for written responses and additional information;
  - the public will have 10 working days from the date of notification to provide responses and information on the preliminary draft Recovery Plan;
  - the Chief Executive will review written responses and additional information and prepare a draft Recovery Plan for you to publicly notify in accordance with section 20 of the CER Act by 26 May 2015;
  - the public will have 10 working days to provide written comments on the draft Recovery Plan;
  - the written responses and additional information will be reviewed on your behalf by 16 June 2015; and
  - you will then need to consider whether the draft Recovery Plan should be withdrawn in all or in part, or whether changes should be made or not prior to approval (having regard to the impact, effect, and funding implications of the Recovery Plan). The Recovery Plan will then, subject to your final approval, be made operative by the end of June 2015.

<sup>1</sup> *Quake Outcasts v The Minister for Canterbury Earthquake Recovery* [2015] NZSC 27



## Financial Implications

---

- 13 The cost to prepare this draft Recovery Plan will be met within existing baselines.

## Consultation

---

### Community Forum

- 14 The Community Forum met on 10 April 2015 to discuss the Supreme Court's *Quake Outcasts* judgment and how the Crown might respond to it. The Forum considered whether the Crown should make an offer to owners of vacant, commercial and uninsured residential red zone properties based on the information currently held by CERA today, or whether a new offer required the input of those affected by any decision, and the wider public.
- 15 The Forum concluded that a Recovery Plan, while taking longer (estimated to be six to seven months), would ensure that all relevant views could be considered as part of the decision making process. This would result in a more robust and fair process for property owners and the Crown. While the Forum was mindful of the need for the Crown to act with haste, it considered that this was outweighed by the requirement of a sound process.
- 16 The Community Forum suggested that, given a Recovery Plan might take up to six to seven months to be prepared and finalised and that people may be in unsatisfactory accommodation over another winter, the Chief Executive could, as an interim measure, consider making an offer now of 50 per cent of the 2007/08 rateable value for land only, to be topped up if the Recovery Plan proposed a higher offer. This could assist those vacant, commercial and uninsured residential red zone property owners who did not accept, or did not receive, the Crown's September 2012 offer, without prejudice to the outcome of the Recovery Plan process.
- 17 CERA officials advise that the Forum's recommendation that the Chief Executive consider an interim measure of making a 50 per cent offer (as described above) was made when it was thought the development of a Recovery Plan would take significantly longer than the timetable now proposed. Given the time period now proposed is just over two months, CERA officials consider an interim measure is no longer necessary and may cause confusion. The time period is such that people are likely to wait until they know what the full offer is before making a decision.

### Relevant government departments

- 18 Crown Law has been consulted in the preparation of this briefing and agrees with its recommendations. The Department of the Prime Minister and Cabinet and the Treasury have been informed of this briefing.

## Recommendations

---

19 It is recommended that you:

### **Background**

- 1 **Note** the judgment of the Supreme Court in *Quake Outcasts v The Minister for Canterbury Earthquake Recovery Authority*;
- 2 **Note** that while the Court does not directly mandate its use, a Recovery Plan is the statutory process under which significant earthquake recovery decisions should be made, and provides the opportunity for the affected parties and public to comment on the proposal;
- 3 **Note** that on 13 April 2015 Cabinet noted your intention to consider directing the Chief Executive of CERA to develop a Residential Red Zone Offer Recovery Plan [CAB Min (15) 11/4 refers];

### **Options**

- 4 **Note** that CERA officials have considered two options for the Government's response to the Supreme Court's judgment, including:
  - 4.1 The Chief Executive making a new offer to purchase vacant, commercial and uninsured residential red zone properties based on information currently available to CERA; and
  - 4.2 A Recovery Plan process to reconsider the offer to purchase vacant, commercial and uninsured residential red zone properties that seeks comments and any other information from the public;

### **Views of the Community Forum**

- 5 **Note** that the Community Forum met on 10 April 2015 and recommended that:
  - 5.1 a Recovery Plan would be the appropriate method for you to reconsider the Crown's offer to owners of vacant, commercial and uninsured residential red zone properties;
  - 5.2 given a Recovery Plan might take up to six months to be prepared and finalised and that people may be in unsatisfactory accommodation over another winter, the Chief Executive could, as an interim measure, consider making (without prejudice to the outcome of the Recovery Plan process) an offer now of 50 per cent of the 2007/08 rateable value for land only, to be topped up if the Recovery Plan proposed a higher offer;
- 6 **Note** that you (and the Chief Executive) are required under the CER Act to have regard to information or advice you are given by the Community Forum;




**Directing the development of a Recovery Plan**

- 7 Note that CERA officials consider using your powers to direct the development of a Recovery Plan under sections 16 and 19 of the CER Act complies with sections 10(1) and (2), as it can reasonably be considered necessary to prepare a Residential Red Zone Offer Recovery Plan in an expeditious manner to provide for the recovery of greater Christchurch;
- 8 Note that CERA officials consider that the exercise of the powers to direct the development of a draft Recovery Plan are particularly in accordance with the purposes in section 3(b), (d), (f) and (g) and that the only other option is to make the decision without information and therefore it is necessary to exercise the powers;
- 9 Agree that the use of your powers under sections 16 and 19 of the CER Act to direct the development of a Residential Red Zone Offer Recovery Plan meets the requirements of section 10 of the CER Act;  YES  NO
- 10 Approve the proposed process for the development of a Residential Red Zone Offer Recovery Plan, as set out in the direction that is signed by you (having had regard to the matters listed in section 19(2) of the CER Act);  YES  NO
- 11 Direct the Chief Executive of CERA, as a responsible entity under the CER Act, to develop a Residential Red Zone Offer Recovery Plan, which is to be undertaken in accordance with the direction;  YES  NO
- 12 Sign the attached direction which will then be published in the *New Zealand Gazette* notifying your direction to develop the Residential Red Zone Offer Recovery Plan;  YES  NO

**Other Matters**

- 13 Note that the Chief Executive will send a letter to counsel for the Quake Outcasts informing them of your decision; and
- 14 Agree to the public release of this briefing.  YES  NO

  
Benesia Smith  
Deputy Chief Executive, Strategy and Governance

NOTED / APPROVED / NOT APPROVED

Hon Gerry Brownlee Minister for Canterbury Earthquake Recovery
Date: 2014 / 2015

Attachment A: Direction to Develop a Residential Red Zone Offer Recovery Plan



## Background

---

- 20 In September 2012, the Chief Executive of the Canterbury Earthquake Recovery Authority (the Chief Executive) made an offer, on behalf of the Crown, to purchase vacant, commercial and uninsured residential properties in the flat land residential red zone<sup>2</sup> under section 53 of the Canterbury Earthquake Recovery Act 2011 (CER Act).
- 21 The purchase price offered for vacant and uninsured residential red zone properties was 50 per cent of the 2007/08 rateable value for land only. For commercial residential red zone land, the Crown offer was 50 per cent of the 2007/08 rateable value for land. In respect of insured improvements on commercial land, property owners were able to choose between Option One and Option Two<sup>3</sup>. Due to the time taken to finalise zoning decisions in the Port Hills, and litigation associated with the Crown's offer, owners of vacant, commercial and uninsured properties in the Port Hills have not yet received an offer from the Crown.

### Overview of court action

- 22 The Crown offer to vacant, commercial and uninsured flat land residential red zone property owners was challenged by way of a judicial review and was appealed to the Supreme Court. The Court considered that the CER Act provided a comprehensive regime to deal with earthquake recovery, and that the mechanisms under the CER Act had not been used in formulating and extending the Crown offer. The Court held that the offer had not been lawfully made and directed that the Chief Executive reconsider the decision.
- 23 The Court held that relevant factors that should have been taken into account were that important decisions require community input, and that the insurance status of residential red zone properties was not determinative in isolation. The Court also found that the Crown's September 2012 offer to purchase vacant, commercial and uninsured residential red zone properties should have considered the context of the residential red zone at the time the offer was made. That is, the offer should have considered the deteriorating living conditions, deteriorating infrastructure, and the effect of these conditions on residents' health and wellbeing.

### Cabinet consideration

- 24 On 13 April 2015, Cabinet noted your intention to consider directing the Chief Executive to develop a Recovery Plan [CAB Min (15) 11/14 refers].

---

<sup>2</sup> The residential red zone was the term used to distinguish between the suburbs and the Christchurch CBD red zone.

<sup>3</sup> In addition to the 50 per cent offer for commercial land, commercial residential red zone property owners were able to choose from two options in respect of their insured improvements: to transfer their property and the benefit of their insurance claims to the Crown and in exchange receive the full 2007/08 rateable value for their improvements; or to transfer their property to the Crown and to retain and pursue any insurance claim held in respect of the improvements.



### Information on vacant, commercial and uninsured numbers

25 The following table sets out information on the approximate numbers of vacant, commercial and uninsured in the residential red zone:

Numbers of VCU properties in flat land RRZ (at 16/4/15, approx.)	Total	Accepted Crown offer	Numbers of VCU properties in Port Hills RRZ at (16/4/15, approx.)	Total	Accepted
Vacant	80	55	Vacant	68	No offer made
Commercial	20	15	Commercial	144	
Uninsured	95	62	Uninsured	9	
<b>Flatland total</b>	<b>195</b>	<b>132</b>	<b>Port Hills total</b>	<b>221<sup>4</sup></b>	
<b>Total VCU properties in RRZ</b>				<b>416</b>	

### Comment

26 CERA officials have considered two options for resolving this issue. These are:

- that the Chief Executive makes a new offer to purchase vacant, commercial and uninsured residential red zone properties based on the information currently available. CERA officials have, since the Court of Appeal released its judgment in the Quake Outcasts litigation, tried to formulate a revised Crown offer that meets the requirements of the CER Act. However, in light of the Supreme Court's judgment, CERA does not hold all the information that is now required to make an offer in accordance with the CER Act. For example, CERA does not hold any information on the living conditions of the relevant property owners as at 2015; and
- that you direct the development of a Recovery Plan to reconsider the Crown offer to purchase vacant, commercial and uninsured residential red zone properties. This process will provide the additional information that the Supreme Court found was required to make a Crown offer under the CER Act.

27 While the Supreme Court did not explicitly direct that a Recovery Plan should be developed in order to reconsider the offer in respect of vacant, commercial and uninsured residential red zone property, the Court did conclude that decisions relating to significant earthquake recovery measures should have been made under the CER Act.

28 We consider that a Crown offer to purchase vacant, commercial and uninsured residential red zone properties is a significant recovery measure as it may affect the ability of owners of that land to recover from the effects of the earthquakes. These factors mean an offer will have consequences for the recovery of greater Christchurch communities.

29 The Court was also critical of the lack of opportunity for public input into the Crown's decision to make an offer to purchase vacant, commercial and uninsured residential red zone properties, which a Recovery Plan would ensure. A Recovery Plan would enable the Chief Executive to assess the circumstances of the residential red zone and the owners of vacant, commercial and uninsured residential red zone property as at 2015 (being the date of the "reconsidered" offer), and cover off the other matters identified in the Supreme Court's decision which need to be specifically addressed.

<sup>4</sup> Note: this number is an approximate based on consent forms returned. CERA has not received 16 consent forms as at 16 April 2015.



- 30 For these reasons, and to ensure that an appropriate opportunity is given for the affected parties and the public to comment on any proposed reconsidered offer, we recommend the use of a Recovery Plan.

## **Proposed Approach to the Recovery Plan**

---

### **Responsible entity**

- 31 The Chief Executive is a responsible entity as defined in the CER Act, and, as such, you may direct the Chief Executive to develop a Recovery Plan under section 16(1) of the CER Act.
- 32 The Chief Executive is the responsible entity that is in the best position to consider and assess the factors that may be relevant to future decisions relating to offers to vacant, commercial and uninsured residential property owners in the residential red zone. This is because the Chief Executive:
- has the statutory powers to acquire, sell and otherwise deal with land and property under section 53 of the CER Act;
  - is cognisant of the potential financial implications of options for offers to purchase property and is responsible for administering the Vote: Canterbury Earthquake Recovery appropriation for Red Zone Property Acquisition; and
  - holds more of the relevant information on the properties than any of the other responsible entities, which are a council, a council organisation, a department of the Public Service, an instrument of the Crown, a Crown entity, a requiring authority, or a network utility operator.
- 33 We recommend that the Chief Executive should be directed to develop the Recovery Plan.

### **The Chief Executive of CERA's role**

- 34 The Chief Executive will carry out two functions in the development of the proposed Recovery Plan:
- develop a preliminary draft Recovery Plan, and seek written comments and any other information from the public; and
  - facilitate and collate public comments on the preliminary draft Recovery Plan and provide you with the draft Recovery Plan for public notification under section 20 of the CER Act.
- 35 There could be a perceived conflict in the Chief Executive having statutory responsibility for acquiring land, and as the responsible entity carrying out the development of the preliminary draft and draft Recovery Plan. However, we consider there is no conflict in the Chief Executive carrying out these two roles which are both authorised by the CER Act. This is because any purchase decisions would need to be in accordance with the approved Recovery Plan (as well as the purposes of the CER Act) and you, as the Minister for Canterbury Earthquake Recovery, give final approval to the Recovery Plan. It is your decision whether to make any changes, or no changes, withdraw or approve the draft Recovery Plan, after considering any public written comments, and having regard to the Recovery Plan's likely impact, effect and funding implications.

### **Geographical scope of the Recovery Plan**

- 36 The proposed geographic scope of the Recovery Plan is limited to the residential red zone in Waimakariri and Christchurch (both flat land and Port Hills).



### Matters to be addressed by the Recovery Plan

- 37 The proposed scope of the Recovery Plan is the question of whether future offers to purchase land should be made to vacant, commercial and uninsured property owners and how such offers in the flat land and Port Hills should be constructed. A consequential matter will be the impact on other owners who did not receive the 100 per cent payment, for example, but not limited to, those property owners who were underinsured by more than 20 per cent, those who have already received (but did not accept) a Crown offer and Maori land, such as in Rapaki Bay, where owners were unable to sell land directly to the Crown.
- 38 The focus of the Recovery Plan will be owners of property who:
- received a Crown offer to purchase their residential red zone property for 50 per cent of the 2007/08 rateable value for land only;
  - would have been eligible for the September 2012 offer, but did not return a consent form; or
  - own property in the Port Hills residential red zone and have not been eligible for an offer from the Crown to purchase that property.
- 39 The following issues will be out of the Recovery Plan's scope:
- land zoning decisions (that is, the basis on which properties were zoned as red or green and the decision to make an offer to purchase properties only in the residential red zone);
  - the Crown offer to purchase insured residential red zone properties and the way the offer was constructed;
  - remediation or mitigation of land or natural hazards;
  - the interim or future use of the residential red zone; and
  - district plan zoning and provisions.
- 40 It is proposed the Recovery Plan will consider the factors that should be taken into account in deciding on whether a purchase offer should be made, and the terms and conditions (including the quantum of consideration) of any offer. This will include consideration of those matters identified by the Supreme Court. The intended outcome is a fair and robust basis on which any future purchase offers can be made.
- 41 In theory it would be possible that the development of a Recovery Plan could result in an offer of less than the offer already made. To avoid any concerns on this score and as a sign of good faith, CERA officials consider that the direction should specifically state that no offer to purchase will be made that is less than 50 per cent of the 2007/08 rateable value for land only.



### Consultation or public hearings

- 42 You may determine how Recovery Plans are to be developed, including any requirements as to consultation or public hearings (section 19 of the CER Act). In making such a determination, you must have regard to:
- the nature and scope of the Recovery Plan;
  - the needs of people affected by it;
  - the possible funding implications and the sources of funding;
  - the New Zealand Disability Strategy;
  - the need to act expeditiously; and
  - the need to ensure the Recovery Plan is consistent with other Recovery Plans.
- 43 In this case, the most significant of the above matters in preparing the draft Recovery Plan are the needs of people affected by the proposed Recovery Plan and the need to act expeditiously. It is recognised that there may be some people with disabilities who are directly affected but counsel involved in the Quake Outcasts proceedings, including the Human Rights Commissioner, will be able to provide some comfort that these people will be represented.
- 44 We recommend you direct the Chief Executive to prepare a preliminary draft Recovery Plan for consultation. During the consultation period, any person who wishes to may provide written responses to the preliminary draft, and any information they consider relevant, which would then inform the development of the draft Recovery Plan. We recommend that an advertisement be placed in The Press and that other media be utilised to invite any person who wishes to provide written responses and any other information on the preliminary draft Recovery Plan, which will be able to be viewed on the CERA website.
- 45 The parties that were involved in the *Quake Outcasts* litigation are the Quake Outcasts group, Fowler Developments Limited and the Human Rights Commissioner. It is recommended those parties are invited to review the preliminary draft Recovery Plan through counsel acting for them in the litigation.
- 46 To facilitate that work, we propose that the Crown contributes to the reasonable cost of the Quake Outcasts engaging counsel, up to a maximum of \$5,000 (plus GST)<sup>5</sup>, or their actual costs, whichever is the lesser. We consider that amount is a reasonable contribution to fees that would be entailed for the required work.
- 47 The Supreme Court focussed on the very difficult living conditions of some of the Quake Outcasts since the September 2012 decisions were made. The proposed process and the financial contribution to legal costs will enable further, and up to date, information to be gathered about the circumstances of the residential property owners.
- 48 We recommend that you do not direct the Chief Executive to conduct public hearings following the release of a preliminary draft Recovery Plan. Conducting public hearings would take time and resources which would be inconsistent with the need to act expeditiously. The public will be given a further opportunity to provide written comments and additional information on the Recovery Plan before it is finalised.

<sup>5</sup> That is \$5,000 for counsel for the Quake Outcasts group (but for not each individual in the group).



## Timeframes

- 49 CERA officials considered two timeframe options for developing and finalising a Recovery Plan. These were:
- *Option A*: Finalise the Recovery Plan by the end of June 2015 (2.5 months) allowing for a total of 20 working days of public consultation; or
  - *Option B*: Finalise the Recovery Plan by the end of October 2015 (6 months) allowing for a total of 40 working days of public consultation.
- 50 The Community Forum considered a Recovery Plan process that was similar in length to Option B. The Forum concluded that a Recovery Plan would ensure that all relevant views could be considered as part of the decision making process. The Forum was mindful of the need for the Crown to act with haste but also of the need for a sound process.
- 51 CERA officials recommend Option A because it strikes a satisfactory balance between the requirement of a fair and robust process involving the affected parties and providing for public comment, against the need to act expeditiously.
- 52 We recommend you direct the Chief Executive to advertise in The Press inviting any person who wishes to provide written responses and any other information in the period between the notification in the *New Zealand Gazette* and the finalisation of the preliminary draft. The Chief Executive should develop a preliminary draft Recovery Plan, and publicly notify it by 5 May 2015 and call for written responses and additional information.
- 53 We recommend you allow 10 working days from the date the preliminary draft Recovery Plan is notified for the public to provide written responses and any additional information.
- 54 We recommend the Chief Executive then be directed to review the written responses and additional information, and to prepare a draft Recovery Plan to be publicly notified in accordance with section 20 of the CER Act by 26 May 2015. We propose that the public be given 10 working days to provide written comments from the date the draft Recovery Plan is notified in the *New Zealand Gazette*.
- 55 The written responses and additional information will be reviewed on your behalf by 16 June 2015. You will then need to consider whether the draft Recovery Plan should be withdrawn in all or in part, or whether changes should be made or not prior to approval (having regard to the impact, effect, and funding implications of the Recovery Plan). The Recovery Plan will then, subject to your final approval, be made operative by the end of June 2015.

## Legislative Requirements

---

### Exercising CER Act powers

- 56 Section 10 of the CER Act requires that you ensure when you exercise a power under the CER Act, you do so in accordance with the purposes of the CER Act and where you reasonably consider it necessary. This applies to the exercise of the powers in sections 16 and 19 of the Act which you would rely on to direct the preparation of a Recovery Plan.

### The purposes of the CER Act

- 57 We consider that the proposal to develop a draft Recovery Plan is in accordance with the purposes of the CER Act; in particular it is consistent with the purposes identified in sections 3(b), 3(d), 3(f), and 3(g) of the CER Act.



- 58 In accordance with section 3(b) of the CER Act, greater Christchurch communities will participate in the process for the development of a Recovery Plan. It will consider the factors that should be taken into account in deciding on whether a purchase offer should be made, and the terms and conditions (including the quantum of consideration) of any offer in a timely manner. A Recovery Plan will ensure a focused, timely and expedited recovery for the owners of vacant, commercial and uninsured residential red zone property in accordance with section 3(d) of the CER Act. The Recovery Plan will focus on a particular group of property owners affected by the Canterbury earthquakes, and will determine an appropriate response that balances the requirements of timeliness against the requirement for a fair and robust process.
- 59 The intended outcome of the Recovery Plan, being a fair and robust basis on which further purchase offers to remaining residential red zone residents can be made, will facilitate the recovery of affected communities in accordance with section 3(f) of the CER Act. It will contribute to the restoration of the social, economic, cultural and environmental well-being of greater Christchurch communities and therefore meet the purpose set out in section 3(g) of the CER Act.
- 60 While a Recovery Plan is not necessarily the most expeditious manner in which an offer could be made to purchase vacant, commercial and uninsured residential red zone properties, the Supreme Court held that significant decisions that impact on the recovery of greater Christchurch should be made by way of a Recovery Plan. The Court was also critical of the lack of community input into the Crown's earlier offer in respect of vacant, commercial and uninsured residential red zone properties. A Recovery Plan responds to these issues as this is a significant recovery decision, and provides the opportunity for the public to comment on the decision-making process in an expedited manner.

**Is the exercise of power reasonably considered necessary?**

- 61 There are two aspects to the requirement in section 10 that you "reasonably consider it necessary". Not only must you consider it necessary, that is, needed or required in the circumstances, as opposed to merely convenient or expedient, to exercise the power, but your consideration of necessity must be reasonable. This means you must consider whether the exercise of the particular power is necessary to achieve a particular purpose or purposes of the CER Act at the time the power is exercised, taking into account the nature of the particular decision, its consequences and any alternative powers that may have been available.
- 62 An alternative to directing the preparation of a Recovery Plan is to immediately reconsider offers to the owners of the relevant land, without a Recovery Plan. Such decisions would need to rely on the existing information that is available, including the Supreme Court's decision, but would not include a process to consider any new information or to have the benefit of public input.
- 63 The Supreme Court directed you and the Chief Executive to reconsider the offer to vacant, commercial and uninsured residential red zone properties in light of its judgment that the previous offer made by the Crown did not provide an opportunity for the affected parties, or the wider public, to provide comments on the proposal. The Court also found that significant recovery decisions should be made using the correct statutory process under the CER Act, which is a Recovery Plan. While a Recovery Plan may take longer than the Chief Executive simply arriving at and making an offer, we consider that the requirement of a robust process that considers the comments of the affected parties and the wider public outweighs this concern.
- 64 We therefore consider that you may reasonably consider the use of developing a draft Recovery Plan in this circumstance to be necessary. Although the Supreme Court did not



mandate the use of a Recovery Plan for reconsidering the offer to purchase vacant, commercial and uninsured residential red zone properties, a Recovery Plan ensures a robust decision-making process that provides public input into an expedited, but none the less significant, recovery decision, in accordance with the requirements of the CER Act.

### **Proposed approach to development of the Recovery Plan**

- 65 The nature and scope of the draft Recovery Plan is addressed in detail above and in the draft direction. We consider that the proposed approach meets the requirements of section 19(2) of the CER Act, in particular the needs of the people affected by it, by providing for any person who wishes to provide written responses to the preliminary draft, and any information they consider relevant at both the preliminary draft, and draft stages of the Recovery Plan.
- 66 The development of a Recovery Plan by the end of June 2015 will balance the requirement of a fair and robust process involving the affected parties and providing for public comment, against the need to act expeditiously.

### **Consistency with the Recovery Strategy**

- 67 Recovery Plans approved under the CER Act must be consistent with the *Recovery Strategy for Greater Christchurch – Mahere Haumanutanga o Waitaha*, so the goals of the Recovery Strategy will need to be considered during the preparation of the Recovery Plan.
- 68 To assist the development of the Recovery Plan, impact assessment methodologies and tools will be used as required by section 7 of the Recovery Strategy to integrate activities, connect the components of recovery, and implement the goals of the Recovery Strategy. Similar assessments provided valuable process to inform the preparation of the Christchurch Central Recovery Plan, the Land Use Recovery Plan and the Lyttelton Port Recovery Plan. This assessment is likely to involve a cross-section of the community and relevant experts, and would occur concurrently to the preparation of a draft Recovery Plan.

### **Communications / Publicity**

---

- 69 If you agree to the recommendations in this briefing, CERA officials will work with your office to prepare a media statement and information for the CERA website explaining your decision to direct the development of a Recovery Plan.

### **Next Steps**

---

- 70 If you agree with the recommendations set out in this briefing, your office will need to ensure that the direction is notified in the *New Zealand Gazette* together with the list of all other Recovery Plans being developed or in force. A draft direction is attached for your signature, and could appear in the *New Zealand Gazette* as early as Thursday 23 April 2015 or soon thereafter (**Attachment A**).
- 71 CERA officials recommend that a briefing is taken to Cabinet for noting when you are considering decisions to change, withdraw or approve a Recovery Plan after written comments have been received by you on the draft Recovery Plan. You followed this process when you were making decisions on the Christchurch Central Recovery Plan and the Land Use Recovery Plan.



72 Should you agree with this briefing's recommendations:

- you must ensure that the direction is notified in the *New Zealand Gazette* together with the list of all other Recovery Plans being developed or in force. A notice is attached for your signature. We recommend you sign the notice by 21 April 2015 so that it can be included in the *New Zealand Gazette* of 23 April 2015;
- the Chief Executive will inform counsel acting for the Quake Outcasts and Fowler Developments Limited informing of your decision;
- the Chief Executive will immediately contact the strategic partners and the Community Forum to inform them of your decision;
- the Chief Executive will develop the preliminary draft Recovery Plan, publicly notify it by 5 May 2015 and call for written responses and additional information;
- the public will have 10 working days from the date of notification to provide responses and information on the preliminary draft Recovery Plan;
- the Chief Executive will review written responses and additional information and prepare a draft Recovery Plan for you to publicly notify in accordance with section 20 of the CER Act by 26 May 2015;
- the public will have 10 working days to provide written comments from the date the draft Recovery Plan is notified in the *New Zealand Gazette*; and
- the written responses and additional information will be reviewed on your behalf by 16 June 2015. You will then need to consider whether the draft Recovery Plan should be withdrawn in all or in part, or whether changes should be made or not prior to approval (having regard to the impact, effect, and funding implications of the Recovery Plan). The Recovery Plan will then, subject to your final approval, be made operative by the end of June 2015.



# **DIRECTION TO DEVELOP A RESIDENTIAL RED ZONE OFFER RECOVERY PLAN**

Pursuant to sections 16 and 19 of the Canterbury Earthquake Recovery Act 2011, the Minister for Canterbury Earthquake Recovery gives the following notice:

## **1. Title**

1.1. This notice is a direction to develop a Residential Red Zone Offer Recovery Plan.

## **2. Direction**

2.1. Pursuant to section 16(1) of the Canterbury Earthquake Recovery Act 2011, I direct the Chief Executive of the Canterbury Earthquake Recovery Authority (the Chief Executive) to develop a Residential Red Zone Offer Recovery Plan (the 'Recovery Plan') in accordance with the matters specified in this direction.

## **3. Geographical Extent**

3.1. The Recovery Plan must only apply to the areas of greater Christchurch identified as the residential red zone by the Crown.

3.2. The Recovery Plan will not apply to land outside the residential red zone.

## **4. Matters to be dealt with**

4.1. The matters to be dealt with in the Recovery Plan are focussed on whether the Crown should make offers to purchase vacant, commercial and uninsured property in the residential red zone (both flat land and in the Port Hills), whose owners have not accepted or been made a Crown offer.

4.2. It will also consider how such offers should be constructed, including the terms and conditions and method of calculating the quantum of consideration. (It is noted that regardless of the outcome of the Recovery Plan no "replacement" offer will be less than the September 2012 Crown offer of 50 per cent of the 2007/08 rateable value for land only.)

4.3. As a consequential matter the Recovery Plan should address whether new offers should be made to other owners who did not receive the Crown's 100 per cent payment, for example, but not limited to, those property owners who were underinsured by more than 20 per cent, those who have already received (but did not accept) a Crown offer and for Maori land where owners were unable to accept the Crown offer.

4.4. The Recovery Plan will not address:

4.4.1. Zoning decisions (that is, the basis on which properties were zoned as red or green and the decision to make an offer to purchase properties only in the residential red zone);

4.4.2. The Crown offer to purchase insured residential red zone properties;

4.4.3. Remediation or mitigation of land or natural hazards;

4.4.4. The interim or future use of the residential red zone; and

4.4.5. District plan zoning and provisions.



## 5. Development of the draft Residential Red Zone Offer Recovery Plan

5.1. The Chief Executive is directed to prepare a preliminary draft Recovery Plan available for consultation. During the consultation period, any person who wishes to may provide written responses to the preliminary draft, and any information they consider relevant, which would then inform the development of the draft Recovery Plan.

5.2. The Chief Executive must provide 10 working days for written responses from the public. The Chief Executive is not required to hold any public hearings.

5.3. The Chief Executive is directed to consider the public's written responses and any additional information, and must develop a draft Recovery Plan to be submitted to the Minister for Canterbury Earthquake Recovery to be publicly notified in accordance with section 20 of the Canterbury Earthquake Recovery Act 2011 by 26 May 2015.

## 6. Other Recovery Plans

6.1. The Christchurch Central Recovery Plan and the Land Use Recovery Plan have been approved. The Lyttelton Port Recovery Plan is currently being prepared.

## 7. Minister for Canterbury Earthquake Recovery

7.1. Upon receipt of the draft Residential Red Zone Offer Recovery Plan, the Minister for Canterbury Earthquake Recovery will notify it in accordance with section 20 of the Canterbury Earthquake Recovery Act 2011. Written comments will be invited from the public on a 10 working day basis.

Dated at Wellington this 20<sup>th</sup> day of April 2015.

  
Hon GERRY BROWNLEE  
Minister for Canterbury Earthquake Recovery

Released by the Minister for Canterbury Earthquake Recovery