

## CANTERBURY EARTHQUAKE RECOVERY ACT 2011

The Canterbury Earthquake Recovery Act 2011 ("the Act") commenced on 19 April 2011.

The Act provides a range of measures which enable the Minister for Canterbury Earthquake Recovery and the new public service department, Canterbury Regional Earthquake Authority (CERA), to facilitate and direct the response and recovery from the impacts of the Canterbury earthquakes.

### Planning Regime

In the first instance, CERA will develop a Recovery Strategy, in consultation with key stakeholders including the Christchurch City Council, Environment Canterbury, Waimakariri District Council, Selwyn District Council, and Te Runanga o NgSi Tahu, and "any other persons or organisations that the Minister considers appropriate".

The Recovery Strategy will act as an overarching, long-term strategy setting the overall direction for the recovery efforts and may include provisions to address:

1. The areas where rebuilding or other redevelopment may or may not occur, and the possible sequencing of rebuilding or other redevelopment;
2. The location of existing and future infrastructure and the possible sequencing of repairs, rebuilding, and reconstructions;
3. The nature of the Recovery Plans to be developed and the relationship between the plans; and
4. Any additional matters to be addressed in particular Recovery Plans, including who should lead the development of the Plans.

A draft Recovery Strategy must be developed within 9 months after the date on which the Act comes into force and must be publicly notified. Further, at least one public hearing must be held where members of the public can appear and be heard.

A number of Recovery Plans will sit under the Recovery Strategy, providing the detail of what needs to be done and how it will be implemented.

Recovery Plans must be consistent with the Recovery Strategy and can cover any social, economic, cultural or environmental matter, and any particular infrastructure, work or activity on a site-specific or wider geographic basis within greater Christchurch.

Christchurch City Council will lead the development of a mandatory Recovery Plan for the CBD. This Recovery Plan is to be developed within 9 months of the commencement of the Act and the Council must consult with CERA, Te Runanga o Ngai Tahu, and Environment Canterbury. Development of the CBD Recovery Plan must involve public consultation, with members of the public being able to make submissions on the draft plan and attend at least one public hearing.

The Act does not however provide mandatory public consultation requirements in relation to the development of other Recovery Plans. Instead, the Act empowers the Minister to determine the requirements for public consultation.

### Effect of Recovery Plans

Recovery Plans will be 'read into' statutory plans (including plans under the Resource Management Act, Local Government, Land Transport Management, Reserves and Wildlife Acts) and prevail where inconsistent. This will enable Recovery Plans to ZShW immediate legal effect from date the Plan is approved or date specified within the relevant Plan.

A Council can also be directed by a Recovery Plan to amend proposed regional policy statements, regional policy statements, proposed plans and plans and to make the required amendments, in some instances, without public consultation.

Further a Council must not make a decision or recommendation that is inconsistent with a Recovery Plan.

### Statutory Powers

There are broad powers under the Act, given either to the Minister or CERA, including the power to:

1. obtain or require information from any source;
2. enter onto land, remove fixtures and fittings, perform work on land, construct structures, and register its interest in those structures;
3. close roads and divert traffic;
4. enter and remove, including demolition powers;
5. require land to be temporarily vacated so work can be coordinated (which may involve buildings being demolished);
6. compulsory acquire land;
7. approve certain council or organisation contracts, over a certain threshold, if necessary;
8. suspend, amend or revoke any council plans and policies; and
9. suspend or cancel resource consents.

### Compensation

Compensation is available where land is compulsorily acquired and in respect of some building demolition.

The Crown does not need to compensate owners or tenants of dangerous buildings which are demolished. The Crown may however recover the cost of demolition from the owner.



Where a non-dangerous building is demolished in order to demolish a dangerous building, the Crown must compensate the owner of the non-dangerous building. If a non-dangerous building is demolished for any other reason the Crown must also compensate for the loss incurred.

No compensation is payable under the Act for the suspension, amendment or revocation of council plan and policies or suspension or cancellation of any resource consents.

Where compensation may be payable, a claim must be lodged with CERA within two years. The Minister will determine whether compensation is payable, and the amount of compensation to be paid.

Compensation is payable on the basis of actual loss and the Act specifies certain matters which are excluded from the right to compensation. They include any part of a loss that is insured, economic or consequential loss, business interruption and any other matter which the Minister reasonably considers is unwarranted or unjustified.

Where land is compulsorily acquired, the Act makes specific provision for compensation to be determined having regard to the land's current market value and, so far as practicable, in accordance with the provisions the Public Works Act 1981.

### Checks and Balances

Within the Act there is provision for checks and balances on the various specific powers provided to the Minister and CERA. The primary check is the requirement for the exercise of powers to be for the specified purpose of the Act and only where it is considered reasonably necessary.

The Minister is also required to:

1. appoint a 'community forum', made up of at least 20 persons, for the purpose of providing information and advice to the Minister;
2. arrange for a cross-party parliamentary forum to provide information and advice to the Minister; and

3. present a quarterly report on the operation of the Act to the House, which must include a description of the powers exercised under the Act during that period.

Additionally, the right to seek judicial review will apply to the decisions of the Minister and CERA.

### Orders in Council

The Governor-General is permitted to make Orders in Council on the recommendation of the Minister to exempt, modify or extend any provisions of any enactment for the purpose of the Act.

A Canterbury Earthquake Recovery Review Panel has been established under the Act to review draft Orders in Council. Appointments to the Panel include former High Court Judge Sir John Hansen. The Minister is required to have regard to the Panel's recommendation and must consult with the cross-party forum.

### Appeal rights

The Act expressly limits rights of appeal that might otherwise apply, such that appeals are only available to the High Court in specified circumstances. For example, against a determination of compensation.

Decisions made by the High Court are appealable to the Court of Appeal.

### Conclusion

The Act has potentially significant implications particularly in respect of the Resource Management Act. The Canterbury Earthquake Recovery Act 2011 and CERA have a life span of 5 years and will be reviewed annually. The Act reflects the need for timely and effective decision-making powers while acknowledging that the people of Christchurch have a right to a say in how their city should be rebuilt. The Act has wide ranging powers but also includes a number of checks and balances.

If you wish to discuss what the effect of the provisions might mean for you or your business please do not hesitate to contact us.



**Paul Dorrance**  
Partner, Christchurch  
T: +64 3 379 2430  
M: +64 21 2263537  
p.dorrance@DuncanCotterill.com



**Paul Calder**  
Partner, Christchurch  
T: +64 3 379 2430  
M: +64 21 905 525  
p.calder@DuncanCotterill.com



**Juliette Derry**  
Legal Advisor  
DDI: +64 3 374 3603  
M: +64 21 224 1003  
j.derry@DuncanCotterill.com