



Canterbury Earthquake  
Recovery Authority

*Te Mana Haumanu ki Waitaha*

# Landowners Information When Land is Acquired by Compulsory Acquisition

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OCTOBER 2013

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# Compulsory land acquisition

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This information booklet has been provided to you by the Canterbury Earthquake Recovery Authority (CERA) to inform you of your rights as an owner of land, or of an interest in land, where such land has been acquired by the Crown pursuant to the Canterbury Earthquake Recovery Act 2011 (CER Act).

The information contained in this booklet is general in nature and is not a substitute for independent legal advice. You should seek independent legal advice and any other professional advice as appropriate.

## **Canterbury Earthquake Recovery Act 2011**

The CER Act provides the Crown with the statutory power to acquire land for earthquake recovery related purposes as outlined in section 3 of the CER Act and where acquisition is reasonably considered to be necessary. The Minister for Canterbury Earthquake Recovery (the Minister) is responsible for administering the CER Act and can acquire land compulsorily in the name of the Crown.

## **Compulsory acquisition**

The first step in the compulsory acquisition process is for the Minister to issue a notice of intention to take land in accordance with section 54 of the CER Act. Notices of intention to take land must be served on the owner of the land together with all persons with a registered interest in the land unless such service is impracticable. A copy of the notice of intention must also be gazetted, publicly notified on two occasions and registered against the relevant computer register for the property.

If the Minister considers that land should be taken in the name of the Crown he will recommend that the Governor-General issue a Proclamation taking the land. The Governor-General accepts the Minister's recommendation by issuing a Proclamation declaring that the land is taken in the name of the Crown.

A Proclamation to take land must be published in the New Zealand Gazette and publicly notified within one month of its taking. Unless otherwise provided for in the Proclamation, the CER Act or any other Act, the land will vest in the Crown freed and discharged from all mortgages, charges, claims, estates or interests (including leasehold estates and interests) on the 14th day after the day of publication of the Proclamation in the Gazette.

The Crown will also succeed to all rights, entitlements and benefits that the owner has or may have against any insurer of the land or of any building or other property on the land where such insurance claims have not been settled in full as at the date of vesting.

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# Compensation

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The CER Act provides for compensation to be paid for the compulsory acquisition of land by the Crown. Entitlement to compensation is set out in Subpart 5 of the CER Act. Only a person who suffers loss from the compulsory acquisition is entitled to claim compensation, and generally that will be limited to landowners and/or persons with a relevant interest in the land.

## **Basic entitlement to compensation under the CER Act**

Compensation under the CER Act means compensation for actual loss and, except as provided by the CER Act, does not include compensation for:

- a loss by an insurer arising from a liability to indemnify;
- any part of a loss that is insured;
- any part of a loss that ought reasonably to have been insured;
- a consequence of regulatory change arising from the operation of this Act causing loss;
- cancellation of an existing resource consent that has already been exercised;
- cancellation of an existing use right;
- economic or consequential loss;
- loss of personal property exceeding \$20,000 in value;
- business interruption; or
- any other loss that the Minister reasonably considers is unwarranted and unjustified.

Once you make a claim for compensation, the Minister must determine whether compensation is payable and the amount of compensation to be paid. Compensation is determined as at the date of the compulsory acquisition.

The Minister must determine compensation having regard to the current market value of the land as determined by a valuation carried out by a registered valuer, and, so far as practicable, the Minister must determine compensation in accordance with the relevant provisions of Part 5 of the Public Works Act 1981.

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# Compensation provisions under Part 5 of the Public Works Act 1981

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The following information is drawn from provisions of Part 5 of the Public Works Act 1981 that may be relevant to the Minister's determination. Other matters covered in Part 5 of the Public Works Act 1981 may also be relevant to your claim and you should take legal advice on the application of this accordingly.

## **Compensation for land**

The land value is the value that could be expected for your land if sold in the open market by a willing seller to a willing buyer as at the date of the compulsory acquisition.

No allowance is made for the fact that your land has been taken compulsorily. Similarly, where the value of land has increased or decreased as a result of the anchor projects, the amount of that variation will not be taken into account.

## **Injurious affection**

Where the Crown has acquired some but not all of your land, in some circumstances there may be an adverse effect on the value of the land that you retain. For example, there may be a decrease in value as a consequence of the severance of your parcel of land. In such circumstances you may be entitled to additional compensation for what is known as injurious affection.

## **Betterment**

Where the Crown does not acquire all of your land, in some circumstances the anchor projects (or the prospect of them) may increase the value of your remaining land. Such an increase in value is known as betterment. Where betterment occurs, the increase in value of your remaining land may be deducted from the total amount of compensation that you would otherwise be entitled to for the land acquired and/or for any injurious affection.

## **Additional compensation**

In addition to compensation for land taken and for injurious affection, you may also be entitled to compensation for costs of a non-recurring nature you have incurred as a direct result of the acquisition. Such compensation may include disturbance payments, compensation for loss arising on a transfer of your mortgage or business loss.

However, you will only be entitled to compensation for actual losses incurred as a direct result of the compulsory acquisition under the CER Act. It is therefore important that you keep a detailed record of all relevant communications and that you document all your expenses and losses so they can be included as evidence in support of your claim for compensation.

You are also under an obligation to take all reasonable steps to ensure that your losses are kept to a minimum. If there is evidence to suggest that your losses have been unreasonably increased as a result of your conduct, you may not be entitled to compensation for that increased amount.

## **Disturbance payments**

Disturbance payments may be available for disturbance to your land caused by the compulsory acquisition, in particular the reasonable costs associated with having to move from your land. Such costs may include reasonable professional legal and valuation fees and costs associated with relocating your personal property to other land.

## **Loss on mortgage repayments**

If you buy land in substitution for the land that has been compulsorily acquired, you may have to pay a higher interest rate under a new mortgage. Where this occurs, you may be entitled to compensation for that loss.

## **Business loss**

If you have a business located on the land being compulsorily acquired, you may be entitled to compensation for business loss resulting from the relocation of your business or for a loss of goodwill. For example, you may have to close your business while you relocate to new premises which will result in your business not earning during that period.

Business loss may include a loss of actual profits, but such loss must actually have been incurred before it can be claimed.

If you intend to claim compensation for business loss it must be supported by verifiable proof of loss. It is recommended that you engage an accountant to assist with the preparation of your claim.

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# **Process for making a claim and assessing compensation**

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To make a claim for compensation you must send or deliver to CERA a properly completed claim form. The claim should be supported by all relevant documentation and information required to establish your right to compensation.

Your claim for compensation must be lodged within two (2) years after the exercise of the power of compulsory acquisition.

Before the Minister makes his determination on compensation, you will have a reasonable opportunity to appear before him or at his discretion his delegate to make representations as to the nature of the claim and the amount of compensation payable. You may appear before the Minister or his delegate either personally or through a representative, for example a solicitor, accountant or other expert.

The Minister must ensure that claims for compensation are determined within a reasonable period.

Alternatively you can choose to continue to work with the Crown's agent (The Property Group Limited) towards reaching an agreed position on the compensation payable for the compulsory acquisition of your land or your interest in the land. If agreement on the compensation payable is reached, the Crown's agent will recommend that the Minister agree to pay the compensation so agreed.

## **Right of appeal**

Following determination of your compensation claim, you will have a right of appeal against that determination to the High Court. An appeal to the High Court must be made within ten (10) working days after the decision determining compensation is given. If the court considers it necessary, the court may appoint one or more suitably qualified persons to provide the court with advice on your appeal.

Following the decision of the High Court, you have a limited right of appeal to the Court of Appeal. An appeal to the Court of Appeal must be made within ten (10) working days after the decision of the High Court is given.

Following the decision of the Court of Appeal, you have a limited right of appeal to the Supreme Court. An appeal to the Supreme Court must be brought in accordance with the timeframes under the Supreme Court Rules 2004.

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# **Important contact information**

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## **Important phone numbers**

CERA (general enquiries) ..... **0800 7464 2372**  
The Property Group Limited (Crown Agent) ..... **03 363 5901**  
Canterbury Support Line (8am – 11pm, 7 days) .... **0800 777 846**

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## **Important websites**

All information ..... **www.cera.govt.nz**  
CCDU ..... **www.ccd�.govt.nz/land-acquisition**

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## **Important emails**

CERA ..... **info@cera.govt.nz**  
CCDU ..... **info@ccdu.govt.nz**  
The Property Group Limited (Crown Agent) ..... **ccdu@propertygroup.co.nz**

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**Contact**

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Private Bag 4999, Christchurch 8140  
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**Published in October 2013 by**

Canterbury Earthquake Recovery Authority  
Christchurch, New Zealand

**Citation**

Canterbury Earthquake Recovery Authority (2013). *Landowners Information When Land is Acquired by Compulsory Acquisition*. Christchurch: Canterbury Earthquake Recovery Authority.

**ISBNs**

978-0-478-39743-7

Landowners information when land is acquired by compulsory acquisition (Print)

978-0-478-39744-4

Landowners information when land is acquired by compulsory acquisition (Online)

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