
REPORT ON DECISIONS MADE IN APPROVING THE RESIDENTIAL RED ZONE OFFER RECOVERY PLAN

1 INTRODUCTION

On 23 April 2015 I directed the Chief Executive of the Canterbury Earthquake Recovery Authority (CERA), under sections 16 and 19 of the Canterbury Earthquake Recovery Act 2011 to develop a Residential Red Zone Offer Recovery Plan (the Recovery Plan). My direction was published in the *New Zealand Gazette* on 23 April 2015 and stated that:

- The matters to be dealt with in the Recovery Plan are focused on whether the Crown should make offers to purchase vacant, insured commercial and uninsured Improved properties in the residential red zone (both flat land and in the Port Hills), whose owners have not accepted or been made a Crown offer.
- The Recovery Plan should also consider how such offers should be constructed, including the terms and conditions and method of calculating the quantum of consideration. (My direction noted that regardless of the outcome of the Recovery Plan no “replacement” offer will be less than the September 2012 Crown offer of 50% of the 2007/08 rateable land value).
- 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% payment, for example, but not limited to, those property owners who were underinsured by more than 20%, those who have already received (but did not accept) a Crown offer, and for Māori land where owners were unable to accept the Crown offer.

My direction specified that a number of issues would not be addressed by the Recovery Plan:

- 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 red zone properties;
- Remediation or mitigation of land or natural hazards;
- Interim or future use of the red zone; and
- District Plan zoning and provisions.

In accordance with my direction, the CERA Chief Executive provided me with the Draft Residential Red Zone Offer Recovery Plan and the public feedback for my consideration on 20 July 2015.

I wish to thank the people of greater Christchurch and all submitters, including CERA’s earthquake recovery strategic partners, who provided input on the Preliminary Draft Recovery Plan and those who responded to my invitation to make written comments on the Draft Recovery Plan.

I have considered the Draft Recovery Plan, the public's written comments, the additional information from the counsel for the Quake Outcasts, further input from officials, and the requirements of the Canterbury Earthquake Recovery Act 2011. I have now decided to approve the Recovery Plan, with some amendments. This report records the decisions I have made and the reasons for the amendments, as required under section 21(3) of the Act.

2 LEGAL REQUIREMENTS AND PROCESS

In accordance with section 20 of the Canterbury Earthquake Recovery Act 2011, the CERA Chief Executive publicly notified the "Preliminary Draft Residential Red Zone Offer Recovery Plan" on 5 May 2015 and invited written comments. The period for public written comments closed at 5pm 19 May 2015 with 814 written comments received by this date. A further 34 comments were received shortly after this, including those which had been sent by post. As these were able to be easily incorporated into the analysis process, they were received and considered with the others. An independent research company assessed all the written comments and provided a full summary of the public submissions to CERA.

In accordance with section 20 of the Act, I publicly notified the "Draft Residential Red Zone Offer Recovery Plan" on 25 June 2015 and invited written comments. The period for public written comments closed on 9 July 2015 with 319 written comments received by this date. Seven further comments were received shortly after this, including those which had been sent by post. As these were able to be easily incorporated into the analysis process, they were received and considered with the others. An independent research company assessed all the written comments and provided a full summary of the public submissions to CERA. A link to the full summary can be found in Chapter 13 of the Residential Red Zone Offer Recovery Plan.

On 17 April 2015 counsel for the Quake Outcasts provided information which they requested I consider in making decisions on the Recovery Plan. This was the same information provided to the CERA Chief Executive on the Preliminary Draft Recovery Plan. I also took that information into account, although it was not received early enough to be included in the independent assessment.

The Canterbury Earthquake Recovery Act 2011 requires that, in approving a recovery plan:

- a. I must ensure that I exercise my power in accordance with the purposes of the Act, which are set out in section 3 of the Act (section 10(1) CER Act);
- b. I exercise that power when I reasonably consider it is necessary (section 10(2));
- c. I must have regard to any information or advice from the Community Forum (section 6(4));
- d. the Recovery Plan must be consistent with the Recovery Strategy (section 18(1));
- e. other Recovery Plans are to be considered due to a need to ensure consistency (section 19(2)(f)); and
- f. I must have regard to the impact, effect, and funding implications of the Draft Recovery Plan (section 21(2)).

Under section 21(1) of the Act I am able to make changes or not as I think fit or withdraw all or part of the document.

Community Forum

CERA officials, on my behalf, sought the views of the Community Forum on this Recovery Plan on 16 July 2015. The Forum's views were:

- Generally supported the Recovery Plan process, as a way of enabling community participation. The Forum acknowledged the complexities involved, with no "perfect solution".
- Recognised that the proposed new offers were more generous than the original September 2012 offers.
- Noted that the proposed new offers could set a precedent, for future disasters and expectations of Government assistance.
- Discussed the difficult living conditions in the red zone.
- Noted the change in prices of properties since the earthquakes.

New Crown offers and alternatives

New Crown offers need to be made and as soon as practicable. I have decided that no changes should be made to the proposed new offers for vacant and insured commercial red zone properties. No changes should be made to the proposed specific new offer for red zone properties at Rāpaki Bay, or the proposal for the Crown to consider purchasing insured red zone properties, if offered for sale by the owners. But I have decided that the new offer for uninsured improved red zone properties should be increased from the amount proposed in the Draft Recovery Plan of 80% of the 2007/08 rateable land value, to 100% of the 2007/08 rateable land value. No payment should be made for the uninsured improvements.

In making these decisions I have considered the public feedback, including the alternative suggestions and additional options suggested.

The majority of the public's feedback was in agreement that new Crown offers should be made. Of the 319 written comments received on the Draft Recovery Plan, there was widespread endorsement of the proposed offers for the vacant and insured commercial red zone properties, as acceptable or the minimum required. There was strong disagreement about the proposed offer for uninsured improved red zone properties, with many submitters advocating for an offer of at least 100% of the 2007/08 rateable land value, and others suggesting that the Crown should also pay for the uninsured improvements.

I have also considered the Supreme Court's judgment. The new Crown offers set out in the final Recovery Plan take into account the multiple factors raised in the judgment. However, the Supreme Court's judgment did not provide clear direction on the construct and quantum of new Crown offers.

Taking into account the five key criteria and the requirements of the Canterbury Earthquake Recovery Act 2011, I am satisfied that no changes are required to the quantum and construct of these offers, except for increasing the offer from 80% to 100% of the 2007/08 rateable land value for the uninsured improved red zone properties.

There should be no payment for the uninsured improvements for the uninsured improved properties. Paying for all uninsured loss for the approximately 106 uninsured improved red zone properties, at or close to 100% of the 2007/08 rateable improvements value, could expose the Crown to considerable risk around expectations of future assistance and disincentivise people from taking out insurance. It

would also mean the Crown would be making a significantly higher net financial contribution to these uninsured property owners, compared with the insured property owners in the red zone. This is because there are no insurance claims to help offset the cost to the Crown of purchasing the property.

Fairness and consistency, for these property owners as well as all other property owners, is a key consideration in making this decision, as are the precedent risks. No Crown offers have been made to uninsured green zone property owners (an estimated 3,500 properties, based on national insurance statistics), or any other green zone property owners. I have taken this into account in deciding that no payment should be made for the uninsured improvements for these red zone properties. The offer of 100% of the 2007/08 rateable land value for these red zone properties is fair and consistent, taking into account issues such as the impact of the earthquakes and the Government's zoning decisions on the red zone areas.

My view is that the new Crown offers represent the best balance between the five criteria, taking into account factors such as the health and wellbeing of the property owners, as well as the costs to the Crown and precedent risks.

During the public engagement there were some suggestions for alternative or additional options, which were centred mostly on three ideas:

- Land swaps;
- Compensation/financial payments (other than, or in addition to, a property purchase agreement);
- Case-by-case offers or individual negotiations between the Crown and each property owner.

Taking into account the Crown's objectives around fairness, consistency, certainty and timeliness for any new approach for these properties, I consider that these suggested alternatives or additional options would not meet the Crown's recovery objectives and obligations, for the following reasons.

There are an estimated 433 properties within the three categories (vacant, insured commercial and uninsured improved red zone properties) and negotiating individual case-by-case arrangements or land swaps would likely be extremely resource-intensive and could take many months before individual agreements were reached. It is not clear that suitable land would be available for "land swaps". The impact on the affected property owners and the costs to the Crown and New Zealand taxpayers need to be considered. Individual/case-by-case arrangements or land swaps would also be inconsistent with the Crown's approach for all other red zone property owners.

Crown offers to red zone property owners have been offers to purchase property. The offers were not compensation or welfare. The Crown has never intended to compensate. To provide some kind of financial payment or compensation instead of, or in addition to, an offer to purchase the property, would raise multiple issues around fairness and consistency of approach including for other greater Christchurch property owners. It could also set precedents or expectations around Government assistance in future natural disasters. It would be very difficult to quantify or value the losses people have indicated they have suffered, such as emotional harm or stress – and certainly it would be very difficult to do so in a fair and consistent and timely way.

There has already been, and continues to be, a range of support and assistance for property owners in the red zone, which were outlined in the Draft Recovery Plan. In addition, the Crown needs to consider the limits on the availability of taxpayer resources and the justification for any increased spending. If new Crown offers are made, at a higher level than the September 2012 Crown offer, the resulting increased expenditure must be justifiable, compared with the alternative uses of public funds.

The original Crown offers did not take into account individual circumstances. The Crown offers for all other property owners in the red zone were based on the 2007/08 rating valuations. These rating valuations were chosen as the basis for the Crown's offer because they are an independent figure

which could be readily applied, and they determine the value for all properties in an area at the same point in time. For fairness and consistency and to support a timely process, my decision is that the Crown should not make case-by-case offers to the owners of the approximately 433 properties.

However, I have considered the information on the individual circumstances of these property owners provided during the public engagement on both the Preliminary Draft and Draft Recovery Plans, and considered health and wellbeing issues, in agreeing that the total amount of new offers should be significantly increased for all vacant, insured commercial and uninsured improved red zone properties from the amount originally offered in September 2012.

In addition, I have decided that the new offer for the uninsured improved red zone properties should be increased from the proposed amount in the Draft Recovery Plan of 80% of the 2007/08 rateable land value, to better reflect considerations such as the property owners' health and wellbeing, the strength of the public feedback and the need for a timely outcome.

Impact, effect and funding implications

As required by section 21(2) of the Canterbury Earthquake Recovery Act 2011, I have also had regard to the impact, effect and funding implications of the Recovery Plan, and have noted the impact assessment prepared by CERA.

The primary impact and effect of this Recovery Plan is to enable the CERA Chief Executive, on behalf of the Crown, to make decisions on new Crown offers to purchase vacant, insured commercial and uninsured improved red zone properties. I have considered the impact of the new Crown offers in the Recovery Plan, including for the health and wellbeing of the affected property owners, the recovery of greater Christchurch, and the costs to the Crown.

The main health and wellbeing, social and economic benefits of the new Crown offers would accrue directly to the property owners of vacant, insured commercial and uninsured improved red zone properties, providing them with certainty and assistance to move forward with their lives.

The Crown would incur almost all the costs of the new offers including: purchasing the properties; contributing towards some of the legal costs incurred by property owners; and funding the establishment costs of the Māori reservations at Rāpaki Bay.

The total cost to the Crown of the new offers for vacant, insured commercial and uninsured improved red zone properties is estimated at \$58.636 million. This cost can be met within existing Crown funding baselines and no new additional funding is required.

The total cost of the Crown agreeing to purchase all remaining insured privately-owned residential red zone properties is \$53.070 million. (This is the maximum amount that would be required for purchasing the approximately 109 properties, and at this stage only a small number of property owners have indicated they want a new Crown offer.) Again, this cost can be met within existing Crown funding baselines and no new additional funding is required.

Assisting the health and wellbeing of the affected red zone property owners will also have a beneficial impact on the collective psychosocial recovery of greater Christchurch.

My decision

I have considered the written comments and the advice received, against the Canterbury Earthquake Recovery Act 2011 requirements, the Recovery Strategy and the scope and intent of my direction to develop the Residential Red Zone Offer Recovery Plan.

There were no written comments which sought the complete withdrawal of the Draft Recovery Plan and the Community Forum did not advise me that it considered complete withdrawal was necessary.

The Draft Recovery Plan was in accordance with my direction and was consistent with the Recovery Strategy and the two other approved recovery plans, the Christchurch Central Recovery Plan and the Land Use Recovery Plan. I did not, therefore, consider that the exercise of my power to withdraw all of the Recovery Plan would ensure that the purposes of the Act are met and nor was it necessary.

I did, however, consider that making some changes to the Draft Recovery Plan and withdrawing some parts through deletion would better ensure the purposes of the Act were met and that these changes were necessary.

Taking all the above information into account, I have made the decision to approve the Residential Red Zone Offer Recovery Plan, with amendments. Changes made to the Draft Recovery Plan, and the reasons for those changes, are described below. I am satisfied that all of those parts of the Residential Red Zone Offer Recovery Plan that remain unchanged from the draft prepared by the CERA Chief Executive are in accordance with the relevant Canterbury Earthquake Recovery Act 2011 provisions, the Recovery Strategy and the scope and intent of my direction to develop the Residential Red Zone Offer Recovery Plan, and accord with the guidance given by the Supreme Court.

3 CONTENT OF THE RESIDENTIAL RED ZONE OFFER RECOVERY PLAN

The following section sets out the significant amendments I have made to the Draft Residential Red Zone Offer Recovery Plan. Changes of an editorial nature are outlined in Part 4 of this decision report.

The major substantive change, which is reflected throughout the final Recovery Plan, is my decision that the new Crown offer for uninsured improved red zone properties should be increased from 80% of the 2007/08 rateable land value to 100% of the 2007/08 rateable land value. My reasoning for this is included in the Recovery Plan and in this report.

Foreword

As this is the final Recovery Plan, the CERA Chief Executive's foreword has been deleted. The Recovery Plan sets out my decisions on the Recovery Plan and new Crown offers.

Chapter 1: The Recovery Plan purpose and process

Information has been added on how this Recovery Plan relates to the other Recovery Plans. This section now also confirms that in preparing the Recovery Plan consideration was given to any existing Treaty of Waitangi obligations, which is a requirement of the Recovery Strategy.

Chapter 3: Your say – analysis of public feedback

The analysis of the public feedback on the Preliminary Draft Recovery Plan has been replaced with the main themes of the public's written comments on the Draft Recovery Plan, with a link to the full summary of the public engagement held from 25 June 2015 to 9 July 2015. I have also reflected throughout the Recovery Plan how the public's written comments have been taken into account in determining the quantum and construct of new Crown offers.

Chapter 4: Supreme Court's judgment – what needs to be considered?

This chapter has been deleted, as there is a detailed discussion of each of the matters raised in the Supreme Court judgment in the Draft Recovery Plan, which is publicly available. A link is provided to the Supreme Court judgment in Chapter 13.

Chapter 6: Should the Crown make new offers?

The discussion (now Chapter 5) of the different options and alternatives considered has been condensed. This is because the final Recovery Plan focuses on my decisions about new Crown offers. The information about the different options considered is available in the Draft Recovery Plan. In making my decision on the Recovery Plan I took into account this information and the public's written comments on this issue, as outlined in section 2 above.

Chapter 7: What about the funding implications?

This chapter (now Chapter 6) includes my assessment of the impact, effect and funding implications of the Recovery Plan, including the benefits to the property owners, and the costs to the Crown.

Chapters 8-10 (vacant land, insured commercial properties, uninsured improved properties)

The repetition about the five key criteria in each of these chapters has been removed, and a new preceding chapter (Chapter 7) created which sets out the five key criteria. In each of the following chapters the specific new Crown offers are highlighted up front. As discussed above, the major substantive change is my decision that the new Crown offer for uninsured improved red zone properties should be increased from 80% to 100% of the 2007/08 rateable land value.

Chapter 11: Other affected properties

The section on underinsured red zone properties clarifies that the original Crown offer included 100% for the land, in addition to an offer for the improvements on a pro rata basis. I have also indicated that if underinsured red zone property owners wished to sell their property to the Crown, the Crown could consider purchasing them, on the same basis as the original offer.

Chapter 12: What next?

This chapter, which is not relevant for the final Recovery Plan, has been deleted. The public has had the opportunity to provide views and information through two rounds of public engagement and after considering the public's written comments I have decided to approve the Recovery Plan.

4 EDITORIAL CHANGES TO THE RESIDENTIAL RED ZONE OFFER RECOVERY PLAN

I have made editorial changes to the text and graphics of the Residential Red Zone Offer Recovery Plan to ensure a clear, concise and easy to understand document.

4.1 General changes

The general editorial changes include removal of unnecessary background material. This includes details of development of the Draft Recovery Plan, some demographic and statistical information, and some of the contextual information about the red zone properties at Rāpaki Bay. This material provided useful context, in the Draft Recovery Plan, for people considering whether to make written comments. However I consider that the information does not need to be retained in the final Recovery Plan. The information can be obtained from the published Draft Recovery Plan or from other sources.

4.2 Specific changes

The specific editorial changes include removal of references to the CERA Chief Executive's preliminary views about new Crown offers throughout the document. This is because, following two rounds of public engagement and my consideration of the Canterbury Earthquake Recovery Act 2011 requirements, I have approved the final Residential Red Zone Offer Recovery Plan which sets out my decisions on the appropriate construct and quantum of new Crown offers. This in turn will enable the CERA Chief Executive to make decisions about new Crown offers.

5 CONSIDERATIONS

In testing the Recovery Plan against the Canterbury Earthquake Recovery Act 2011, I consider it is in accordance with the purposes under section 3 and is consistent with the other existing Recovery Plans – the Christchurch Central Recovery Plan and the Land Use Recovery Plan. The Recovery Plan, in my view:

- Provides appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes. The Recovery Plan considers other alternatives to new Crown offers and assesses that these would not meet the requirements of the Canterbury Earthquake Recovery Act 2011 or the Crown's recovery objectives;
- Reflects community feedback and enables community involvement in the reconsideration of the Crown offers for vacant, insured commercial and uninsured improved red zone properties. Community involvement and feedback has been facilitated through two rounds of public engagement, and I have reflected throughout the Recovery Plan how the public's written comments have been considered in determining the construct and quantum of new Crown offers;
- Enables community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery. By having a streamlined process and two rounds of public engagement, the process for this Recovery Plan has enabled community participation while also focusing on providing an outcome as soon as practicable;
- Enables a more focused, timely, and expedited recovery. More than four years on from the Canterbury earthquakes, I am conscious of the need to assist the affected property owners to move forwards with their lives, particularly those in the Port Hills who have not yet received a Crown offer. The Recovery Plan emphasises the need for decisions on new Crown offers to be made as soon as practicable;
- Facilitates, coordinates, and directs the planning, rebuilding and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property. My assessment is that new Crown offers of this quantum would assist with the recovery of the affected property owners; and
- Helps restore the social, economic, cultural, and environmental well-being of greater Christchurch communities. As well as assisting the health and wellbeing of the affected property owners, new Crown offers of this quantum would assist with the collective psychosocial recovery of greater Christchurch communities.

I consider that the Recovery Plan is a necessary intervention to enable the timely and expedited recovery of greater Christchurch given that:

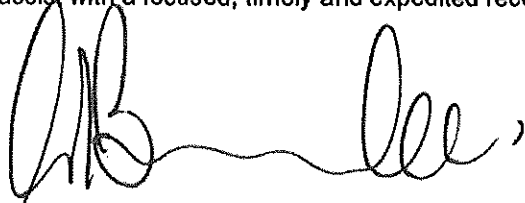
- The majority of the Supreme Court in *Quake Outcasts v The Minister for Canterbury Earthquake Recovery* concluded that the broad outlines of a purchase decision should have been included in a Recovery Plan;
- Public participation, which was recommended by the Supreme Court, is a fundamental part of a Recovery Plan process;

- The affected red zone property owners need certainty and confidence to move forward with their lives, and the Recovery Plan has identified the key criteria for new Crown offers and what the quantum and construct of new Crown offers should be; and
- The Recovery Plan highlights the need to consider the health and wellbeing of the affected property owners and fairness and consistency for all property owners. The Recovery Plan emphasises that new Crown offers at an increased quantum are made as soon as possible, to assist with the recovery of the affected property owners and of greater Christchurch.

I consider that the Recovery Plan is consistent with the Recovery Strategy and the other existing Recovery Plans. This Recovery Plan focuses primarily on the goals for social recovery, which include strengthening community resilience, safety and wellbeing, and enhancing quality of life for residents and visitors. It also focuses on the leadership and integration goals, which include facilitating a timely and efficient recovery, and intervening where necessary to remove impediments, resolve issues and provide certainty.

6 CONCLUSION

I am happy to be able to approve the Residential Red Zone Offer Recovery Plan in the knowledge that the changes from the Draft Recovery Plan have resulted in a stronger document and one that will assist with a focused, timely and expedited recovery for greater Christchurch.



Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

Date: 27 / July / 2015