



27 June 2023



Ref: OIA-2022/23-0865

Dear 

Official Information Act request relating to Iwi involvement in Canterbury Earthquake Recovery Act 2011 and Hurunui/Kaikōura Recovery Act 2016

Thank you for your Official Information Act 1982 (the Act) request received on 1 May 2023. You requested:

"I am writing an article comparing the Ngāi Tahu role in the Canterbury Earthquake Recovery Act 2011 to the omission of the iwi in the Hurunui /Kaikoura Earthquakes Recovery Act 2016.

To that end, I have two separate information requests.

1: Has there been any advice given to the minister of the role of Ngāi Tahu under the CERA Act (specifically s 11(4) but also more generally)?

2: Why was Ngai Tahu and Kaikoura hapū Ngāti Kuri excluded from the Hurunui /Kaikoura Earthquakes Recovery Act 2016? Is there any documentation around that decision making process?"

On 29 May 2023, I wrote to you responding to Part (2) of your request and extending the time limit for response to Part (1) of your request by 22 working days, to 29 June 2023. The additional time was needed as this part of your request necessitated a search through a large quantity of information before a final decision was made on your request. I am now in a position to respond to the remainder of your request.

We have undertaken searches of files held by the Department of the Prime Minister and Cabinet (DPMC) relating to the initial response to the Canterbury earthquakes and drafting of the Canterbury Earthquake Recovery Act 2011 (CERA) in 2011. A large number of documents were assessed but no specific briefings to the Minister for Canterbury Earthquake Recovery relating to the role of Ngāi Tahu under the CERA were identified.

Although not a briefing to the Minister for Canterbury Earthquake Recovery we have identified information with some relevance. This is a document provided for responding to questions raised about the establishment of the Canterbury Earthquake Recovery Authority and the CERA. We believe this document was provided to the Minister for Canterbury Earthquake Recovery to assist with responding to questions and includes some information about the role of Ngāi Tahu (Document created 28 March 2011)

Please find a copy of that document **attached**.

We also encourage you to look at the Parliament website for other relevant information, including:

Canterbury Earthquake Recovery bill

- explanatory statement to the bill:
www.legislation.govt.nz/bill/government/2011/0286/latest/DLM3653504.html
- Other materials, including record of speeches on Hansard:
bills.parliament.nz/v/6/aea32d83-6049-40ce-a34b-ff93dc1ab5b0?Tab=history

Greater Christchurch Regeneration bill

- explanatory statement to the bill:
www.legislation.govt.nz/bill/government/2015/0079/10.0/d56e2.html#DLM6579201
- Other materials, including select committee report, speeches, and the departmental report etc: bills.parliament.nz/v/6/702b9f99-ce11-4ddf-a347-3cf027db0af1?Tab=history

Relevant to your request but not in scope, as it is not advice to the Minister, are two Cabinet papers prepared by Ministers regarding the proposed governance arrangements for Canterbury earthquake recovery. These documents were proactively release as part of Budget 2011. The Cabinet papers are publicly available on The Treasury website at: www.treasury.govt.nz/publications/information-release/canterbury-earthquakes-budget-2011-information-release. Links to the papers themselves are provided in the table below.

Description	Title	Link
Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery Paper. Signed 22/3/11	ACE(11)24 - Canterbury Earthquake Recovery: Proposed Governance Arrangements (Paper 1)	www.treasury.govt.nz/sites/default/files/2017-11/b11-2035181.pdf
Cabinet Paper, unsigned	Paper 1: Canterbury Earthquake Recovery: Proposed Governance Arrangements	www.treasury.govt.nz/sites/default/files/2017-11/b11-2081711.pdf

You have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the Act.

This response may be published on the Department of the Prime Minister and Cabinet's website during our regular publication cycle. Typically, information is released monthly, or as otherwise determined. Your personal information including name and contact details will be removed for publication.

Yours sincerely



Clare Ward
Executive Director
Strategy, Governance and Engagement Group

CERA Questions and Answers

Need for CERA

- **Why is a single government agency (CERA) being established?**

Lessons from other major natural disasters tell us the recovery will require integrated and timely decision making which is best delivered by a single entity responsible for overall coordination. Canterbury's recovery will also cost billions of dollars, for which central government must be accountable to taxpayers.

In determining the structure we have we looked at international experience of recovery from natural disasters, including:

- Cyclone Tracey, Darwin, 1974
- Hurricane Katrina, New Orleans, USA, 2005
- Black Sunday bushfires, Victoria, Australia, 2009, and
- Floods, Queensland, Australia, 2011.

- **What is the role of the Canterbury Earthquake Recovery Minister?**

The Minister for Earthquake Recovery will oversee the policy and legislative process as it relates to Canterbury's recovery. The Minister will work with the Christchurch City Council, Selwyn District Council, Waimakariri District Council and Environment Canterbury and engage with local communities of greater Christchurch, including Ngai Tahu, the private sector and business interests.

- **What is the role of other Ministers?**

Ministers will retain their portfolio responsibilities and decision rights but will ensure when exercising those decisions in relation to greater Christchurch that they have been developed in collaboration with the Minister for Canterbury Earthquake Recovery so that those decisions are not inconsistent with the recovery effort.

- **What role will CERA play in relation to the Christchurch City Council?**

CERA will work in collaboration with Christchurch City Council, and with the Waimakariri and Selwyn District Councils on the development of the Recovery Strategy and on all the recovery plans.

Christchurch City Council will also lead the development of the one mandatory Recovery plan - the Recovery Plan for the Christchurch Central Business District (CBD). This will have input from CERA, Ngai Tahu and other parties as appropriate, and will involve community engagement led by Christchurch City Council. This plan is a critical part of the overall recovery, and has to be produced within nine months.

In addition to their roles in the Canterbury Earthquake Recovery process, these councils will still have their roles as community advocates, consent decision makers and service deliverers.

- **Why not just disestablish the City Council until the recovery process is completed?**

There are a number of reasons. First and foremost the government is committed to retaining local democracy and community engagement as much as possible through the recovery process.

The recovery is for Canterbury, so it is important that Canterbury is engaged through the process. A key aspect of that engagement will be Christchurch City Council's playing a lead role in the development the CBD Recovery Plan.

The council has a responsibility for its own infrastructure; it also has to address issues like rating; and there much other 'business as usual' work for the council to get on with.

- **What role will CERA play in relation to other government departments?**

CERA will work closely with other central government agencies to ensure the government has a coordinated approach to its contribution to the Canterbury recovery, and the Minister for Canterbury Earthquake Recovery will likewise be working closely with his colleagues.

- **What role will CERA play in relation to other stakeholders e.g. Ngai Tahu?**

The Minister and CERA will work closely with Ngai Tahu to agree processes for working together through the recovery.

- **What is the community forum?**

International experience reinforces the importance of engagement with local community interests through the recovery process. A community forum gives the opportunity for the Minister for Canterbury Earthquake Recovery to encourage meaningful participation by community representatives in the process. Therefore, the Minister will appoint approximately 20 members to the community forum. This forum will be for providing information and advice to the Minister and chief executive.

- **What is the cross-party forum?**

A cross-party parliamentary forum, comprising the Members of Parliament with a greater-Christchurch based constituency and those Members of Parliament with matched electorate responsibilities for greater Christchurch issues, will be convened in order that issues for recovery of greater Christchurch from the 4 September and 22 February earthquakes can be worked through in a cooperative manner.

Legislation

- **Why is new legislation necessary and desirable?**

The Canterbury Earthquake Response and Recovery Act 2010 will expire on 1 April 2012. Any Orders in Councils made under that Act will also expire on 1 April 2012. The scale and magnitude of the 22 February earthquake shows that the recovery process will be extensive and need to be in place for more than five years. There was therefore a need to work through which options are available to government to ensure that the Minister for Canterbury Earthquake Recovery and CERA can ensure a

timely and coordinated recovery effort for Christchurch and the greater Christchurch region.

The government considered three options:

- (a) *no legislative change*. This was considered not to be viable as the current legislation will expire on 1 April 2012;
- (b) *amend the existing Canterbury Earthquake Response and Recovery Act*. This was considered a viable option but that due to the significant amount of new material to be included in the Act it would mean that it resembled new legislation rather than an amended Act;
- (c) *new legislation*. This was considered to be the most cost-effective and appropriate means of implementing new policy and recognising the unique set of events, powers and authorities required to affect a timely and co-ordinated recovery.

- **What does the new legislation do?**

The legislation will set out the functions and powers of the Minister and CERA that will assist in the timely and coordinated recovery effort. This will include the need to prepare an overall Recovery Strategy, and a series of specific Recovery Plans, including a plan for the central business district.

- **When will the legislation be introduced into the House?**

Most probably the week beginning April 11.

Functions and powers of CERA

- **What are the tasks and functions of CERA?**

During its establishment phase, CERA will:

- Establish and maintain a close working relationship with the Christchurch City Council, Selwyn District Council, Waimakariri District Council, and Environment Canterbury
- engage with other local and central government agencies, Ngai Tahu, businesses, and the local community
- coordinate and prioritise recovery planning by central government agencies
- gather information necessary to assess the best approach(es) to the long-term recovery
- start work on a long-term recovery strategy
- assume responsibility for supporting the Canterbury Earthquake Recovery Commission
- review and oversee existing operations on the ground and work towards structures and arrangements that will be necessary for effective and co-ordinated rebuilding and recovery of Christchurch, and
- Provide support for the Minister for Canterbury Earthquake Recovery.

CERA will work in collaboration with relevant local authorities. CERA will:

- support local authorities in understanding the magnitude of the recovery, and

- help to coordinate the efforts of local and central government, NGOs, the private sector and greater Christchurch residents.

- **What powers will the Minister and CERA have to carry out these tasks?**

It is proposed that the new legislation set out the powers to be given to the Minister and CERA in order to affect a timely and co-ordinated recovery effort. In summary the powers are based on the following broad categories of activities:

- CERA carrying on activities and responsibilities to coordinate the recovery, following the ending of the State of National Emergency. These are similar to activities and responsibilities currently exercised by the National Controller, and would be exercised in accordance with the purposes of the new legislation;
- CERA developing the Long-Term Recovery Strategy (“Recovery Strategy”) in collaboration with other stakeholders, including local government, other central government departments and agencies, Ngai Tahu and regional business and community groups; and
- CERA ensuring implementation of the Recovery Strategy and Recovery Plans occurs efficiently either through its own action or through monitoring the actions of others who have a responsibility for implementation.

- **What is the role for the Canterbury Earthquake Recovery Commission?**

Under the new legislation the role of the Canterbury Earthquake Recovery Commission will be disestablished. Ministers and the Mayors of Christchurch City and Waimakariri District Councils did not consider the Commission to be necessary under the new arrangements.

- **Will CERA have the power to rate?**

No.

- **Why is there a need to maintain the Order in Council process?**

It has not been possible to identify all of the powers and authorities that might be required to ensure a timely and coordinated recovery effort. Consequently the ability to implement Orders in Council, as was provided for in the Canterbury Earthquake Response and Recovery Act, will be maintained under the new legislation.

Checks and balances

- **What checks will be put in place or already exist to make sure Orders in Council are necessary and appropriate?**

A review panel, comprising four members and convened by a former or retired High Court judge will be setup to review all draft Orders in Council. The review panel will make recommendations to the relevant Minister on the draft Orders in Council within three days, which the relevant Minister must have regard to.

- **What rights of appeal and review will exist over decisions made by the Minister for Canterbury Earthquake Recovery, Ministers, and CERA?**

It is proposed that the new legislation remove some established rights of appeal that would otherwise apply. Fair, truncated and speedy appeal rights will be provided for a limited range of decisions where the significance of the effects of a particular decision means that independent and robust legal scrutiny is desirable. For example, compulsory acquisition of land and interests in land and council decision on resource consents granted or declined, or notices of requirement granted, pursuant to the provisions of a Recovery Plan.

Judicial review will also be available of all decisions made by the Minister for Canterbury Earthquake Recovery, Ministers, CERA, and local councils.

Recovery Strategies and Plans

- **What is the Recovery Strategy?**

The Long-Term Recovery Strategy is a document setting out a purpose for the recovery, reconstruction and rebuilding of greater Christchurch. It will also address some of the high level questions that will need to be addressed for the recovery to occur in a co-ordinated and timely manner.

- **Who will prepare it and by when?**

The Recovery Strategy will be prepared by CERA in collaboration with Christchurch City Council, and where appropriate with Environment Canterbury, Selwyn District Council, Waimakariri District Council, Ngai Tahu and other parties deemed necessary.

We expect the final Recovery Strategy to be published around September/October 2011.

- **What is the relationship of the Recovery Strategy to other planning documents?**

The Recovery Strategy (where it creates roles for councils) will be immediately incorporated, or given effect, to:

- the extent necessary into the Long Term Plans of councils in greater Christchurch area;
- to the extent it has a bearing on resource management issues in the region into the regional policy statement, relevant regional plans and district plans and other statutory plans as appropriate; and
- the triennial agreements under the Local Government Act.

- **What is a Recovery Plan and how is it different to the Recovery Strategy?**

A Recovery Plan is a more detailed document than the Recovery Strategy. The Recovery Plan will set out the detail of what needs to be done, where, when, how and by whom.

- **Will a Recovery Plan be required for the CBD?**

Yes. The Christchurch City Council will play the lead role in the developing the CBD Recovery Plan.

- **What about other locations and areas of concern?**

Recovery Plans may cover any social, economic, cultural, infrastructural or environmental matter, for example such as waste and stormwater, public transport, economic recovery, communications, or heritage buildings, or combination thereof. Recovery Plans may be area-specific (for example limited in extent to Halswell or Avonside or to the area covered by the Waimakariri District Council), or apply to the entire Greater Christchurch area (such as when tied to rebuilding network infrastructure).

- **What is the relationship of a Recovery Plan to other planning or strategy documents?**

Recovery Plans must give effect to the Recovery Strategy. The new legislation will provide for all, or parts, of a Recovery Plan to have immediate legal effect from the date the Plan is approved or a date specified in the Plan, with respect to plans and planning processes under the Resource Management Act 1991 (RMA), the Local Government Act 2002, the Land Transport Management Act 2003, and the Reserves Act 1977.

- **What are CERA's first items of business? What are its first deliverables?**

During its establishment phase, CERA will:

- Establish and maintain a close working relationship with the Christchurch City Council, Selwyn District Council, Waimakariri District Council, and Environment Canterbury
- engage with other local and central government agencies, Ngai Tahu, businesses, and the local community
- coordinate and prioritise recovery planning by central government agencies
- gather information necessary to assess the best approach(es) to the long-term recovery
- start work on a long-term recovery strategy
- assume responsibility for supporting the Canterbury Earthquake Recovery Commission
- review and oversee existing operations on the ground and work towards structures and arrangements that will be necessary for effective and co-ordinated rebuilding and recovery of Christchurch; and
- Provide immediate support for the Minister for Canterbury Earthquake Recovery.

Acquiring land (or interest in land)

- **What powers will CERA have to acquire land (or an interest in land)?**

The new legislation will set out powers for CERA to acquire land or an interest in land (including fixtures such as buildings), compulsorily if necessary and to demolish buildings, rebuild or change the use of an area.

- **Why are these powers necessary?**

Acquisition of land powers are considered to be necessary in order to facilitate the recovery of Christchurch. It may be necessary for CERA to demolish a building (that is otherwise sound), or rebuild on a site, or otherwise take control of land and use it in a new way (such as to form part of a new commercial centre, or a park, or for remediation).

- **What compensation will be available?**

Compensation would be payable at the market value at the date of taking control, and would also reflect the extent to which property was undamaged and avoid paying compensation for loss that was or ought to have been insured.

- **When will compensation be assessed from?**

Compensation would be assessed from the date of taking control.

- **What about compensation for other losses people may suffer?**

The legislation will not create any new compensation entitlements for other losses that persons may suffer. The new legislation would need to specify that some matters will not be compensated. For example, we consider there should be no compensation for government actions that result in:

- losses that were, or ought to have been, insured e.g. business interruption or a building that has already been destroyed and has no value (to avoid double-dipping or because that was the owners' choice);
- economic or consequential loss e.g. the inability due to the cordon to obtain access to carry on a business or fulfil a lucrative order (because such a decision is taken in the wider interests of the community);
- claims by insurers (because they have chosen to bear the risks);
- losses of personal property worth more than \$20,000 which is the threshold in Civil Defence Emergency Management Act (because more valuable property may or could have been insured); and
- unwarranted and unjustified claims, with clear authority being given to reject such claims (because a residual discretion is necessary to deal with unforeseeable claims).

Operational/procedural questions

- **Will CERA be subject to the Official Information Act?**

Yes. An Order in Council will add CERA to Schedule 1 of the Ombudsmen Act 1975. This will ensure that CERA is subject to the Official Information Act 1982 enabling transparency and accountability of decision making processes. This Order is also proposed to come into effect on 29 March 2011

- **What budget will it have?**

It is proposed that:

- A new separate Vote be set up and initially this Vote contain one departmental output expense appropriation "Planning for the Recovery"

- the scope of this appropriation be limited to expenses incurred in planning the recovery from the Canterbury earthquakes; and
- initial funding for this appropriation be by way of a fiscally neutral transfer of \$500,000 from the departmental output expense in Vote Economic Development.

Beyond this initial funding, Budget Ministers, in consultation with the Minister for Canterbury Earthquake Recovery, should determine the amount of funding to be appropriated for CERA and any additional amount to be held in a tagged contingency for this purpose.

- **How many staff will CERA employ?**

CERA will in-part be staffed by secondees from government ministries with a direct interest in the recovery process. The department's eventual headcount will depend on a number of things, including whether it contracts out some services or establishes its own functions.

- **Where will CERA be based?**

CERA will be a Christchurch-based organisation.

- **How long will CERA exist?**

The legislation will provide for CERA to run for five years and to be reviewed annually. The annual review will enable a regular re-evaluation of whether there is an ongoing need for the extraordinary powers provided for under the new legislation. After this, the new legislation will expire.

- **Will John Hamilton be seconded into or work for CERA?**

John Hamilton, as National Controller and Director Civil Defence Emergency Management, will provide advice as appropriate to the Minister for Canterbury Earthquake Recovery and the Chief Executive of CERA to ensure a timely and co-ordinated transition from the response to recovery phase.

- **When was the last time a new government department was established?**

The last time a new government department was established was in February 2011 with the Ministry of Science and Innovation. Previous examples include the re-amalgamation of the Department of Courts into the Ministry of Justice and the set-up of the Department of Building and Housing which took over the functions of the former Ministry of Housing.

The establishment of CERA is the result of recognising that there is no single central or local government agency which has the powers available to manage, oversee and, if necessary, direct the recovery effort.