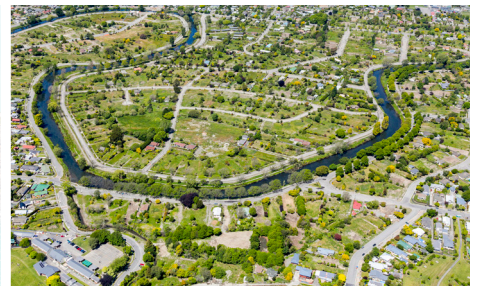


# Residential Red Zone Offer Recovery Plan: Draft

June 2015



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# Foreword

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The Canterbury earthquakes in 2010 and 2011 caused massive damage to areas in greater Christchurch. Thousands of property owners were facing significant delays resolving insurance issues and the prospect of living on damaged land, with damaged infrastructure, for prolonged periods.

Many New Zealanders will be familiar with what happened next. After an area-wide process for categorising properties the Crown made offers to buy properties in the worst affected areas, which would become known as the residential red zone, or the “red zone”.

The offers were intended to create certainty and confidence for people in the red zone to be able to move forward with their lives. The offers were to purchase property and needed to take into account what the Crown was purchasing. When offering to buy insured red zone properties at 100% of the 2007/08 rateable value the Crown could receive the benefit of any insurance recoveries for the property. Over 98% of insured residential property owners in the flat land red zone areas and 92% in the Port Hills red zone areas accepted the Crown’s offer.

For red zone properties that were vacant land, insured commercial properties or uninsured improved properties, the process was different. For the flat land red zone properties in these categories, the Crown made an offer in September 2012 based on 50% of the 2007/08 rateable land value. This offer took into account matters like fairness to other property owners and the risk that paying 100% of the rateable land value could reduce the incentive for property owners to insure in the future.

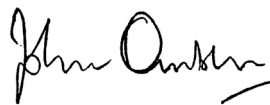
That offer was challenged in the courts and in March 2015 the Supreme Court ruled that the Crown offer to the “uninsured and uninsurable” had not been lawfully made. The Supreme Court directed the Minister for Canterbury Earthquake Recovery and me to reconsider those decisions.

These are the developments that bring us to this point. They are what this Draft Recovery Plan is all about. The Draft considers the Crown’s original decision and what has happened since then, including the matters raised in the Supreme Court’s judgment. It looks at what you told me is important, when I invited everyone in early May 2015 to provide their views on the Preliminary Draft Recovery Plan and what the Crown should consider for any new offer.

On the basis of all that information this Draft Recovery Plan sets out my assessment that new Crown offers need to be made and as soon as practicable. This is a particular consideration for the affected red zone property owners in the Port Hills, who have not yet received an offer. I have identified five key criteria that must be considered in determining the new Crown offers, and my preliminary views on the quantum of new offers.

With this Recovery Plan we need to balance making good decisions, quickly, with the need to get this right. More than four years on from the earthquakes, I’m conscious we need to provide certainty as soon as possible to assist the affected property owners to move forward with their lives.

I look forward to hearing what you think. I encourage everyone to take a look at this Draft Recovery Plan and provide feedback over the next 10 working days.



**John Ombler**  
Acting Chief Executive

# Executive summary

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This Draft Recovery Plan outlines the CERA Chief Executive's assessment that, if the Residential Red Zone Offer Recovery Plan is approved by the Minister for Canterbury Earthquake Recovery ("the Minister"), new Crown offers need to be made to the owners of vacant, insured commercial and uninsured improved red zone properties, and as soon as practicable.

The Draft Recovery Plan sets out the CERA Chief Executive's proposed five key criteria for determining new Crown offers for all vacant, insured commercial and uninsured improved properties in the flat land and Port Hills residential red zone areas.

The Draft Recovery Plan also considers the impact on other affected red zone property owners, including properties at Rāpaki Bay, insured privately-owned properties and underinsured properties.

## What are the key criteria?

- **Health and wellbeing**

New Crown offers need to take into account the health and wellbeing of the property owners, and to provide them with a fair and reasonable opportunity to move forward with their lives. The offers need to consider factors such as the impact of the Canterbury earthquakes, the Government's zoning decisions and the difficulties of living in the red zone. The offers should also consider how awaiting resolution of the Crown offer process has affected property owners, particularly in relation to health and wellbeing. This may be especially relevant for those property owners who have not yet received a Crown offer.

The uptake of the Crown offers has been very high and has increased the isolation for many people living in the red zone. There is little or no market for red zone properties. Without a new Crown offer, these property owners will likely have difficulty re-establishing themselves. Addressing the health and wellbeing of the affected property owners will also benefit the collective psychosocial recovery of greater Christchurch.

- **Insurance status and precedents**

New Crown offers need to take into account the insurance status of the properties. The Supreme Court found that insurance should not be the "determinative" factor but that it is "not an irrelevant factor" for considering new Crown offers. The Crown needs to consider the implications of paying for uninsured losses incurred by property owners who were uninsured or uninsurable.

- **Fairness and consistency**

New Crown offers need to be fair and consistent for these property owners as well as other red zone property owners and green zone property owners who have also suffered losses. Any approach the Crown takes to assisting the recovery of these property owners and greater Christchurch also has to be fair and consistent with the Crown's approaches elsewhere in New Zealand.

- **Timely recovery and a simple process**

The Crown needs to ensure a simple process that will help enable a timely recovery for these property owners and greater Christchurch. This must be a priority for any new Crown offers, particularly given the length of time since the earthquakes and the need for certainty for the affected property owners. This is especially relevant for those in the Port Hills who have not yet received a Crown offer.

- **Costs to the Crown**

The financial implications of new Crown offers and the opportunity costs must be considered. There are limitations on Crown expenditure and the Crown needs to ensure that any decisions on using public funds are fiscally prudent, taking into account the Crown's recovery objectives for greater Christchurch as well as its obligations to New Zealand taxpayers.

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## What is the basis for the key criteria?

The five key criteria are based on an assessment of multiple considerations, including:

- The Crown's recovery objectives and obligations, including the purposes of the Canterbury Earthquake Recovery Act 2011 ("CER Act");
- The matters raised by the Supreme Court in its judgment released in March 2015; and
- The views and information the public provided on the Preliminary Draft Residential Red Zone Offer Recovery Plan.

The five key criteria are what the Chief Executive has assessed must be taken into account for new Crown offers. They have been used qualitatively.

## How could a new Crown offer be constructed?

The main options for a new Crown offer are:

- The same as the original September 2012 offer (for land and/or improvements);
- An offer somewhere between 50-100% of the 2007/08 rateable value (for land and/or improvements);
- An offer at 100% of the 2007/08 rateable value (for land and/or improvements); or
- An offer higher than 100% of the 2007/08 rateable value (for land and/or improvements).

The majority of the public feedback on the Preliminary Draft Recovery Plan strongly supported using the 2007/08 rateable value, rather than a different rateable value, as a fair and consistent basis for a new Crown offer – a view which the Chief Executive shares. The level of any new Crown offer must represent the best balance between the five key criteria.

## What are the Chief Executive's preliminary views?

Taking into account the five key criteria the Chief Executive's preliminary views on the quantum of the new Crown offers are as follows:

- For all vacant red zone land: a new Crown offer at 100% of the 2007/08 rateable land value.
- For all insured commercial red zone properties: a new Crown offer at 100% of the 2007/08 rateable land value and 100% of the 2007/08 rateable improvements value for the insured improvements, if the insurance benefits are transferred to the Crown. Alternatively the owners may choose not to accept any payment for the improvements and keep the benefits of their insurance claims.
- For all uninsured improved red zone properties: a new Crown offer at 80% of the 2007/08 rateable land value. This takes into account the need to balance health and wellbeing needs and a timely recovery process with insurance status and precedents, costs to the Crown and fairness and consistency. No payment should be made for uninsured improvements. The owners could choose to relocate, salvage or sell any uninsured improvements, or they could elect for the Crown to demolish the improvements. The Crown would meet the demolition costs.

The Chief Executive considers that new offers of this quantum represent the best balance between the five key criteria. There are multiple considerations for any new Crown offer, which are discussed throughout the Draft Recovery Plan.

Former owners of vacant, insured commercial and uninsured improved red zone properties would be eligible for an ex gratia payment, if the total payment of new Crown offers is higher than 50% of the 2007/08 rateable land value.

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For other affected red zone property owners the Chief Executive's preliminary views on the quantum of new Crown offers are as follows:

- For the ten privately-owned red zone properties at Rāpaki Bay: new Crown offers on the same basis as the offers for vacant, uninsured improved and insured red zone properties, and the Crown should agree with the property owners to apply to the Māori Land Court to set aside the land as Māori reservation, if the owners wish to accept a Crown offer.
- For insured privately-owned red zone properties (whose owners decided not to accept the original Crown offer): the Crown could consider buying the properties, only if offered for sale by the owners, with payment on the same basis as the original Crown offer for insured red zone properties.

The quantum of these new Crown offers would be consistent with what the underinsured red zone property owners were offered.

## What happens next?

The next step is to find out what you think. Before the Minister makes a decision about the final Residential Red Zone Offer Recovery Plan he needs to ensure he has all the relevant information and understand the public's views.

Written responses on this Draft Recovery Plan are due by **5pm Thursday 9 July 2015**.

This is the final round of public engagement on the Residential Red Zone Offer Recovery Plan and we welcome your views.

### Have your say...

**Taking into account the key criteria, do you agree with the Chief Executive's preliminary views on new Crown offers for:**

- (1) Vacant red zone land?
- (2) Insured commercial red zone properties?
- (3) Uninsured improved red zone properties?
- (4) Other affected red zone properties, including at Rāpaki Bay and insured privately-owned properties?

**Why or why not?**

**Is there anything else you think the Crown needs to consider?**

### We need your feedback by:

**5pm, Thursday 9 July 2015**

Chapter 12 explains how you can provide written responses or follow the link [www.cera.govt.nz/redzoneoffer](http://www.cera.govt.nz/redzoneoffer)

# 1. Recovery Plan purpose and process

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## What is the purpose of this Recovery Plan?

The Minister's direction, gazetted in the *New Zealand Gazette*, stated that the matters to be dealt with in the Residential Red Zone Offer 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 direction stated that 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. The 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.

The direction stated that 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.

This Recovery Plan focuses on areas of greater Christchurch identified as the residential red zone ("red zone") by the Crown, being the flat land (in both Waimakariri District and Christchurch) and Port Hills red zone areas.

## What is not covered in this Recovery Plan?

The Minister's gazetted direction stated that a number of issues would not be addressed by this Recovery Plan. These are:

- 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.

## What is the process for this Recovery Plan?

In April 2015 the Minister directed the CERA Chief Executive to prepare a Residential Red Zone Offer Recovery Plan.

The Preliminary Draft was publicly notified on 5 May 2015 and, over a period of ten working days, the public was invited to provide written responses.

The public feedback, as well as the Supreme Court's judgment and the Crown's recovery objectives and obligations, have been considered in preparing this Draft Recovery Plan.

The Chief Executive requested further time to consider the feedback and the Minister amended the direction, confirming that his decision on the Recovery Plan would be made by 31 July 2015.

The Draft Recovery Plan was publicly notified on 25 June 2015, in accordance with section 20 of the CER Act. The public now has 10 working days to provide written comments, which are due by 5pm Thursday 9 July 2015. You do not have to be an affected property owner or live in greater Christchurch to have a say.

After this second round of public engagement the Minister will consider the public's comments and the requirements of the CER Act to decide whether any changes need to be made to the Draft Recovery Plan.

The Minister will then decide, in accordance with section 21 of the CER Act, whether to approve the Recovery Plan, with or without amendments. If approved, the Recovery Plan will guide the Chief Executive in making decisions about exercising the power in section 53 of the CER Act, which he would rely on to make new offers to buy vacant, insured commercial and uninsured improved properties in the red zone.



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## What is the effect of this Recovery Plan?

This Draft Recovery Plan has been developed under the CER Act and, if approved by the Minister, will be a statutory document. The main effect of the approved Residential Red Zone Offer Recovery Plan will be to guide the Crown in relation to what new offers will be made to the owners of vacant, insured commercial and uninsured improved properties in the red zone.

If approved by the Minister, notice of its approval will be published in the *New Zealand Gazette* and *The Press* and a copy will be presented to the House of Representatives. It will be available on the CERA website and hard copies will be available through CERA.

## How does this Recovery Plan relate to the Recovery Strategy?

The Recovery Plan must be consistent with the Recovery Strategy for Greater Christchurch: Mahere Haumanutanga o Waitaha. The Recovery Strategy sets out the vision for the recovery.

Supporting this vision are the goals outlined below, which relate to the six components of recovery. The community is at the heart of the vision and the success of recovery.

This Draft Recovery Plan focuses primarily on the goals for social recovery. These goals include strengthening community resilience, safety and wellbeing, and enhancing quality of life for residents and visitors. It 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. The Draft Recovery Plan is also consistent with the goals set out in the Recovery Strategy for other areas of recovery.

**“ Greater Christchurch recovers and progresses as a place to be proud of – an attractive and vibrant place to live, work, visit and invest, mō tātou, ā, mō kā uri ā muri ake nei – for us and our children after us. ”**

*Recovery Strategy vision*



## 2. Context

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The Preliminary Draft Recovery Plan (see Chapter 14 for the link to the document) set out in detail the contextual information and developments which led to the Minister's decision to direct the Chief Executive to prepare the Recovery Plan. The key points are summarised below.

**September 2010 –  
June 2011**

As a result of the unprecedented and widespread earthquake damage, there was an urgent need for the Government to assist people in the worst affected areas who were otherwise facing protracted negotiations with their insurers and the prospect of living on damaged land, with damaged infrastructure, for prolonged periods.

**June 2011**

The Government agreed to an emergency social policy response which included (1) an area-wide process for categorising properties, which resulted in properties being categorised different 'zones', including green and red; and (2) terms for offers to purchase insured residential properties in the residential red zone.

**August 2011 –  
August 2012**

Crown offers were made for insured residential properties in the red zone, being the flat land and Port Hills.

The Crown offer was extended to property owners of not-for-profit organisations who held insurance for their improvements and to owners of dwellings under construction who held building or construction works insurance.

The Crown offer was also extended to underinsured residential red zone properties, with an adjusted price for improvements if the property's improvements were underinsured by more than 20%.

**September 2012**

In September 2012 the Crown made an offer to buy vacant, insured commercial and uninsured improved properties in the flat land red zone (this did not include the Port Hills red zone areas, which were part of a separate process).

**May 2013 –  
March 2015**

The September 2012 offer was challenged through the courts by way of judicial review. In its judgment released on 13 March 2015, the majority of the Supreme Court held that the Crown offer to the uninsured and uninsurable had not been lawfully made. The Court directed the Minister and CERA Chief Executive to reconsider the decisions about the September 2012 Crown offer in light of the matters considered in the Court's judgment.

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This Draft Recovery Plan is focused on three main categories of red zone properties. Based on the information CERA had prior to the public engagement on the Preliminary Draft Recovery Plan the categories and estimated numbers can be distinguished as follows.

### **Vacant land**

- There are an estimated 163 vacant land properties in the red zone (84 in the flat land and an estimated 79 in the Port Hills).
- It is not possible to insure vacant land in New Zealand, either through the Earthquake Commission (EQC) scheme or privately.
- Owners of vacant land can be distinguished from other property owners living in the red zone as they were not affected by devastation to houses on their land (although some may have had a residential property adjoining their vacant land or lived elsewhere in the red zone).
- There were different intentions for the vacant land among the property owners – including property developers and investors and individuals with intentions to build a family home.

### **Insured commercial properties**

- There are 20 insured commercial properties in the flat land areas and an estimated 144 in the Port Hills. 140 of the Port Hills properties are storage units or garages.
- Owners of commercial red zone properties were able to insure their buildings under private insurance contracts. They were not eligible for EQC cover and were therefore not able to insure their land.
- All of these owners in this category had insurance for their improvements.
- Aside from the 140 storage units and garages, the other 24 properties are mainly small businesses, reliant on local support and patronage, including corner stores, takeaway shops, veterinary clinics and cafés.

### **Uninsured improved properties**

- There are an estimated 106 uninsured improved properties in the red zone (97 in the flat land, and an estimated nine in the Port Hills). Uninsured improved properties have either a residential or commercial building and are not vacant land.
- The term “uninsured improved” describes properties (with land and improvements) in the red zone which, for various reasons, were not insured at the time of the 22 February 2011 earthquake.
- Property owners living in the red zone are directly affected by the surrounding environment. Particularly for the flat land red zone there is severe infrastructure damage throughout the areas, many surrounding neighbours and communities have left, and there is considerable uncertainty about what will happen to these areas in the future. In the Port Hills there are unique life risk considerations.

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There are other groups of properties, which may be affected by this Draft Recovery Plan, and these are considered in Chapter 11. They include:

### **Rāpaki Bay**

- There are ten privately-owned red zone properties at Rāpaki Bay. Six are vacant or uninsured improved properties and four are insured.
- A consideration for red zone properties at Rāpaki Bay is that they include Māori freehold land (seven properties) and General land owned by Māori (three properties). Māori freehold land can only legally be sold in accordance with Te Ture Whenua Māori Act 1993. For the owners of Māori freehold land to be able to accept a Crown offer, the Māori Land Court would need to agree to change the status of the land to General land. The Court would only agree to change the status if this did not result in Māori land alienation.
- For the owners to be able to accept a Crown offer, the Crown may need to consider making an agreement about the long-term use of the red zone land at Rāpaki Bay.

### **Insured privately-owned red zone properties**

- There are still some property owners living in the red zone who were insured and decided not to accept the original Crown offer. That was their choice as acceptance of the offer was voluntary.
- It is possible that the reality of living in the red zone has not met their expectations and they may now wish to sell. CERA is aware of at least seven property owners who may be in this situation. Although these property owners are not directly covered by the subject matter of this Recovery Plan this is a related issue. Chapter 11 considers whether the Crown should again offer to purchase these properties.

### **Underinsured**

- CERA is aware of 23 properties in the red zone that were underinsured (defined as having less than 80% insurance for their improvements) at the time of the 22 February 2011 earthquake.
- The Crown offered to purchase underinsured properties at a purchase price based on the 2007/08 rateable valuation, but adjusted the offer if a property's improvements were underinsured by more than 20%. This recognised that for properties with a high level of insurance (80% or above), a reasonable and practicable approach in the circumstances was to offer 100% of the 2007/08 rateable improvements value. For example, if a property was underinsured by 50%, that owner was offered 100% of the 2007/08 rateable land value and 50% of the 2007/08 rateable improvements value. This offer recognised that these underinsured properties had EQC cover but not the full improvements insurance cover.
- These property owners may be affected by a new Crown offer. If the Crown made an offer for uninsured improvements, for example, it may need to consider each of these 23 underinsured properties to ensure a fair and consistent approach.

# 3. Your say – analysis of public feedback

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## What was the process?

The purpose of the public engagement process on the Preliminary Draft Recovery Plan was to:

- Receive and understand a wide range of views from the public on the issues for consideration in the Preliminary Draft Recovery Plan; and
- Gauge what principles the public considers should be taken into consideration for any new Crown offers.

The public was invited to provide feedback on the Preliminary Draft Recovery Plan and could do so by completing a comments form online, providing comments via email, post, social media (including Facebook and Twitter) and by calling 0800 RING CERA. As part of the streamlined process for this Recovery Plan the public was invited to provide written responses over ten working days from 5-19 May 2015.

CERA also asked an independent research company to carry out focus groups over this period, with four focus groups held in greater Christchurch, representing a broad cross-section of the community, and one group held in Auckland to help understand perspectives of those outside of Christchurch.

In addition, three specific focus groups were held with the members of the Quake Outcasts, the group of property owners of vacant land, insured commercial properties and uninsured improved red zone properties who challenged the September 2012 Crown offer by way of court action. A focus group was also held with members of the Red Section Owners, a group representing some of the red zone property owners in the Port Hills. These focus groups were held to provide another avenue for property owners directly affected by the Recovery Plan to provide their views on what should be considered by the Crown and to enhance CERA's understanding of the issues.

In total, more than 800 submissions and comments were received, which included over 300 comments via social media. The submitters included:

- The parties to the judicial review court proceedings, including the Quake Outcasts, Fowler Developments Ltd and the Human Rights Commissioner.
- The directly affected property owners, including members of the Quake Outcasts, the Red Section Owners, other property owners and the Rāpaki Bay red zone property owners.
- CERA's strategic partners and external agencies.
- The Insurance Council of New Zealand.
- Interested members of the general public.

## What was the public feedback?

A link to the full summary of all the public feedback received, which was prepared by an independent research company, can be found in Chapter 14. The focus in this section is on the main themes based on CERA's assessment of the public feedback:

- Emphasis on the loss and **impact on people's lives in the red zone as a result of the Government's zoning decisions, rather than the earthquakes. Significant health and wellbeing issues** were raised for both property owners who own properties or land in the red zone and those residing in the red zone. Affected property owners expressed how their emotional and physical health had been affected by waiting for resolution of the Crown offer process and how the process had been stressful. There were feelings of marginalisation, isolation and disempowerment and the view that the zoning decisions "killed" the market value of red zone land, effectively forcing people to accept the Crown offer.
- Emphasis on the **difficulties of living in the red zone** including security issues and isolation, and uncertainty about the future, including the availability of services/infrastructure. There were concerns about the resulting impact on residents' personal safety, mental health and financial position.
- Strong consensus that a **fair, simple and quick process** is needed.

- 
- Emphasis on the need for **fairness and consistency**. Many responses indicated that everyone in the red zone should be treated in the same way and receive an offer based on 100% of the 2007/08 rateable value. There was the view that this might not be fair to everyone but it is the most consistent approach. Other submitters felt that for fairness and consistency any new Crown offer should be the same as the September 2012 offer and that any higher would be unfair to those who had paid insurance.
  - **Differing views about the importance of insurance status** in considering any new Crown offer. While some responses viewed this as an essential consideration, many said it was irrelevant, or not very relevant. In some cases this view was based on the widespread misinterpretation of the Supreme Court's decision that insurance was "not an irrelevant factor" (the Supreme Court's judgment is discussed in Chapter 4).

For responses that made a distinction between vacant, insured commercial and uninsured improved properties, a theme was the **difference between uninsured and uninsurable**:

- Some suggested that a 50% offer (or even nothing at all) should be made to owners of uninsured improved properties, because their properties were insurable, but that a higher offer should be made to owners of vacant and insured commercial properties, because their land was uninsurable;
- Some pointed out that insurance is a personal choice and responsibility. Where insurance is available and the property is insurable, it is the owner's choice whether or not to insure. But if insurance is not available, there is limited opportunity for the property owner to manage risk;
- Some suggested the uninsured property owners should receive land value but no payment for the improvements. Some expressed concerns that paying more than this could disincentivise people from taking out residential insurance, and set a wider precedent for future natural disasters; and
- Some responses, including from some of the owners of uninsured improved properties, discussed the different reasons why people did not insure, including financial affordability, not trusting the insurance industry, mistakes made by others (e.g. banks and financial advisors), personal circumstances related to health or disabilities and those who made a conscious decision not to pay premiums. Some responses suggested that these reasons should be considered on a case-by-case basis for each of the uninsured properties.

Many responses suggested **paying additional compensation** to all vacant, insured commercial and uninsured improved property owners, taking into account things like financial circumstances of the property owners, compensation for legal fees, lost interest and equity, health and stress issues, the delays with making the original Crown offers to these property owners and changes to the Canterbury property market.

While the majority of the responses agreed that a new Crown offer needed to be made, there were also some suggestions for **alternative options**, including relocating owners to a house of the same value elsewhere in Christchurch, negotiating individual offers between the owner and the Crown and having a Crown acquisition process based on the Public Works Act and market value.

A number of responses asked about the **funding implications**. Some felt that consideration should be given to the limits on Government funds and the tax burden of the Crown offers. They emphasised the need to ensure any offer is affordable and that nobody profits from the Crown offers.

A number of responses, particularly from some of the directly affected property owners, **questioned the need for public engagement and a Recovery Plan process** and suggested the Crown should make new increased offers straight away.

There were some specific comments, including from Te Rūnanga o Ngāi Tahu and the Rāpaki Bay property owners, regarding red zone properties at **Rāpaki Bay**. The general consensus was that this land should remain in Māori ownership if possible and there was an emphasis on the special status of the land. Suggestions for a specific new Crown offer included a land swap and turning the land into Māori reservation.

Some responses focused on issues outside the scope of this Recovery Plan, including EQC insurance cover being extended and the interim and future use of red zone land.

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## What did we learn?

The assessment of the public engagement was largely qualitative with a focus on the key themes that emerged (with limited statistical or quantitative assessment). This recognised that people could, and did, provide comments in a variety of ways and could provide feedback anonymously and more than once if they wished to do so.

The breadth and depth of the issues and information provided, and the amount of interest expressed, has contributed to this being a valuable process. The public feedback has enhanced CERA's understanding of the issues and provided new information and different perspectives.

This in turn has helped to inform the Chief Executive's assessment about the need for new Crown offers and the key criteria for new Crown offers, which are set out in Chapters 6-11. In each of these chapters we discuss how the public feedback has been considered.

## What were the key findings of the public feedback on the Preliminary Draft Recovery Plan?

Considerable emphasis was placed on the central importance of considering property owners' health and wellbeing.

A better understanding of the public's views about values such as fairness and equity, including what the public considers is fair and reasonable for these red zone property owners.

There was a very strong consensus that a quick and simple outcome is needed.

The majority of responses agreed that a new Crown offer needed to be made, and that this should be based on 100% of the 2007/08 rateable value for fairness and consistency.

That said, a common view, especially in the submissions and some of the focus groups, was that a distinction should be made between the uninsured and uninsurable.

Another commonly expressed view was that the Government's zoning decisions, rather than the earthquake damage, have been the main contributor to the situation of vacant, insured commercial and uninsured improved red zone property owners.

There appears to be some misunderstanding about the Supreme Court's judgment, including the mistaken view that the Court found insurance status was "irrelevant". Chapter 4 looks at the Supreme Court's judgment in detail, including the matters the Court said should be considered for any new Crown offer.

There were a lot of questions and confusion about why a Recovery Plan process is being used, including the need for public engagement. Based on this finding, Chapter 1 set out each of the steps in the Recovery Plan process. Public participation, which was recommended by the Supreme Court, is a fundamental part of a Recovery Plan process.

## 4. Supreme Court's judgment – what needs to be considered?

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In its 13 March 2015 judgment (see Chapter 14 for a link to the full judgment), the majority of the Supreme Court highlighted multiple factors which the Court said are relevant to the terms of a Crown offer. This chapter looks at each of these factors in turn to help inform the development of the criteria for new offers for the vacant, insured commercial and uninsured improved red zone properties. In no particular order, the factors highlighted by the Supreme Court were:

### **CER Act purposes – providing support for earthquake recovery**

The Court found at [181] that in terms of the CER Act:

*“...the recovery of the red zone communities had to be considered and, to the extent practical, facilitated. This should have been taken into account...”*

With all the original Crown offers, the Government decided that the most practical way to facilitate recovery for the community as a whole was to implement the red zone offers. The recovery of the affected communities needs to remain a consideration for any new Crown offer. The Crown needs to think about how a new offer would facilitate, where possible, the recovery of affected communities.

### **The current environment in the red zone and the implications for services and for health and safety of those left behind**

The Court found at [183] and [184] that deteriorating infrastructure, lack of new residential activity, and risks to health and wellbeing of residents from remaining in areas with damaged land for prolonged periods are all relevant factors that should have been taken into account (and are arguably still relevant). The new context and the health and safety concerns about living in the red zone areas are relevant factors.

Some uninsured improved red zone properties are occupied by owners and some by their tenants. Living conditions are a relevant factor for those occupants. However, if properties are unoccupied or occupied by tenants, the relevant factor for the owners of those properties is likely to be financial rather than social or an amenity issue. The Crown offer is to the owner of the property not the tenants.

The current environment in the red zone, based on the public feedback and existing information, is difficult for most residents.

- Infrastructure has deteriorated and some services are provided via temporary means.
- There is no or very little new residential activity.
- There is uncertainty about the long-term future for red zone areas; the majority of the land in these areas is now Crown-owned.

With the very high uptake of the Crown offers, thousands of residents have left the areas and remaining residents are surrounded by large areas of empty land or houses and some residual demolition works. There are health and wellbeing considerations for property owners living in such areas, including social isolation.



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Other affected properties are vacant land, so the current living conditions in the red zone are not a relevant factor for that category of property. For the insured commercial properties, the majority of which are storage units and garages, owners are not usually living on the premises. However, some businesses may have been affected by the loss of their customer base. Where there was a business connected with a residence the properties were treated as residential in line with EQC's assessment.

### **Insurance status of the land – implications for the cost of the offer to the Crown, when insurance benefits are, or are not, available to be assigned**

The Court found at [167] and [168] that:

*“...the insurance status of properties was not an irrelevant factor,”* but other factors are also important.

*“For example, a distinction between the insured and the uninsured and uninsurable could have taken into account (alongside other relevant factors such as the recovery purpose of the Act) the cost difference for the Crown, provided there had been a clear connection between the offers made and that cost difference.”*

Insurance status was, and is, a relevant consideration for the Crown. A decision was made with the original Crown offer that, where not-for-profit organisations were insured as much as they could be but could not get cover for land damage, they would be eligible for the full offer because it was recognised they provide additional social benefits for the community.

An assumption was made that properties with contract works insurance were likely to imminently become insured residential properties, and the Crown could receive the benefit of the contracts works insurance claim in return for purchasing the property.

In both cases a decision was made to make the Crown offer for insured properties available for these properties, even though the land was not able to be insured.

A common theme of some of the public feedback was that there is a clear difference between the uninsured and uninsurable: those who chose not to have insurance cover compared to those who could not get insurance cover, even if they wanted to.

### **Moral hazard argument**

The Court found at [162] that the moral hazard argument:

*“...cannot readily be applied to vacant land, given that insurance and EQC cover is unavailable for vacant land.”* and

*“...the moral hazard arguments are stronger for the uninsured, rather than the uninsurable, but the effect should not be exaggerated.”*

The “moral hazard argument” refers to a concern that the incentive for people to take out insurance would be reduced if there is an expectation that the Crown will step in and help people whose properties are damaged as a result of a natural disaster, regardless of their insurance cover.

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In some ways the moral hazard argument is less relevant for vacant land or commercial properties, because it is not possible to take out insurance for vacant land or commercial land (although insurance is available for commercial buildings/improvements). It is relevant for uninsured properties with improvements. To what extent this “moral hazard” needs to be taken into account is assessed in the next few chapters.

#### **Relevance of reasons for absence of insurance**

The Court found at [169] that:

*“...for fairness to those who were insured to have been a good reason for the differential offers, it would have been necessary to address the problem of uninsurable properties and the fact that for some in the Quake Outcasts group there was no conscious choice not to insure.”*

The question to consider is whether an offer should be available for (1) those who did not have insurance because it was not available for their property, (2) those who chose not to have insurance although it was available and (3) those who did not have insurance for some other reason. These issues and the public feedback are considered in the next few chapters which assess the key criteria for new Crown offers for each of the categories of properties.

#### **Purpose for which the land is held by the offerees**

The Court recognised it would be very difficult to implement a policy which relied on knowledge of the purpose for which land was held. For example, in respect of vacant land it would have been hard to identify which properties were held as an investment and which were intended to be the site for owner-occupied family homes.

This point, as well as the public feedback, is taken into account in Chapter 8.

#### **The area-wide nature of the red zone decisions**

The Court noted at [166] that:

*“We are not suggesting that an area wide approach was erroneous. But the fact that some uninsured or uninsurable individual properties may have fared reasonably well and suffered little damage rather suggests that the harm suffered by the owners at least to a degree relates to government policy rather than their insurance status.”*

Although individual properties may have suffered little observable damage an assessment was made by the Crown, when deciding about the original Crown offers, that it would be difficult to remain in occupation given the area-wide land and infrastructure damage.

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### **The payment of “compensation” for uninsured loss to other offerees**

The Court at [158] was concerned that owners of insured properties were paid for losses not covered by EQC or insurance:

*“The fact that there had already been compensation for uninsured loss for insured property owners...was a relevant consideration and therefore should have been considered.”*

The Supreme Court identified that there would be a net cost to the Crown in making the original 100% offers (including to not-for-profit organisations and dwellings under construction).

When the June 2011 offer was made, it was unclear how the eventual insurance recoveries would compare to the actual offer made by the Crown. The purchase price offered for the insured residential properties was determined at a time when it was apparent there was widespread damage to land and buildings. It was clear there would be insurance recoveries for the damage (both for land and buildings), and that settling claims was likely to be a difficult and lengthy process. The degree of land damage meant there was doubt about the prospect of repairing even relatively minor structural damage to buildings.

It is acknowledged that the Crown offer for insured red zone properties was made to some property owners who were not fully covered by EQC or insurance. This included:

- Improvements that were underinsured by less than 20%;
- Payment for improvements with minor damage, even though this meant the Crown would receive little or no insurance recoveries;
- Payment for the total area of the land (EQC land cover only covers a proportion);
- Loss of equity as a result of the earthquakes; and
- The Crown offer was also extended to the owners of not-for-profit organisations and dwellings under construction who had insurance for the improvements but not for the land.

### **The goal of facilitating and encouraging voluntary departure from the red zones**

The Court found at [179/180] that: it was the Government's decision to encourage voluntary withdrawal from the red zones, and therefore the plight of those left behind in the red zones has been exacerbated by the actions of the Crown in making the purchase offers.

The Crown's goal with the original offers was to provide an opportunity for people to leave, given the:

- Difficulty of repairing damage to land and buildings, including the need for area-wide remediation of land;
- Time it was likely to take before repairs could occur;
- Potential for drawn out disputes with insurers; and
- Difficulty of repairing infrastructure.

The very high uptake of the offer has meant that many of those remaining in the red zone are isolated. However, as houses could not have been repaired without first remediating land on an area-wide basis, it is likely many residents would have left these badly affected areas even without the Crown offer.

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A central consideration for this Recovery Plan is the situation of the red zone property owners who are still living in the red zone and whether and how the Crown should assist them with re-establishing themselves elsewhere, if they wish to leave the red zone.

### **Factors taken into account in June 2011**

The Court queried what factors the Crown took into account for the June 2011 Crown offers.

These factors are discussed in detail in the Preliminary Draft Recovery Plan, a link to which can be found in Chapter 14. They include:

- The state of the land as a result of the earthquakes;
- Uncertainty about future use;
- Availability of services and the high cost of infrastructure provision; and
- Enabling people in the worst affected areas to move forward with their lives.

### **Delays**

The Court found that the delays in the September 2012 Crown offer being made to buy vacant, insured commercial and uninsured improved red zone properties should have been taken into account – including the deterioration in living conditions since the earthquakes.

The Supreme Court was concerned about the length of time between the June 2011 Crown offer for insured red zone properties, and the September 2012 offer. In addition, the owners of vacant, insured commercial and uninsured improved properties in the Port Hills have not yet received an offer. With this Recovery Plan the Chief Executive is conscious of the need to make good decisions quickly.

### **Lack of prior engagement**

The Court found at [186] that:

*“If the Recovery Plan process had been used in June 2011, then it may even have been that the position of other groups of property owners in the red zone [including owners of vacant, commercial and uninsured properties] would have been dealt with in that process. One advantage of this would have been that all types of property owners could have been considered together allowing for informed comparisons between groups.”*

While there was no formal public engagement on the original Crown offers, there was intense pressure for the Government to act to support those in the worst affected areas.

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This Recovery Plan process, to reconsider the Crown offers to buy vacant, insured commercial and uninsured improved properties, allows for everyone to provide their views in two rounds of public engagement. Public responses were invited in early May 2015 on what should be considered for any new Crown offer and the public is now invited to submit written comments on this Draft Recovery Plan.

### **Any effect of the red zone decision itself on property values**

The Court found at [166], for example, that:

*“...the fact that some uninsured or uninsurable individual properties may have fared reasonably well and suffered little damage rather suggests that the harm suffered by the owners at least to a degree relates to government policy.”*

It is difficult to assess the impact of the Government’s red zone decisions on property values, compared to the impact of the widespread and unprecedented damage caused by the Canterbury earthquakes in 2010 and 2011. If the Government had not intervened to assist the property owners in the worst affected areas, it is hard to predict what might have happened to property values over time.

What we can be certain about is that property values in the worst affected areas, which the Government zoned red, have greatly diminished.

As a comparison, the current average rateable value of land in areas where it is now known to be more complex to build, for example Technical Category 3 (TC3) land and in the Port Hills, has dropped. TC3 properties have an average current rateable land value of 70% of the 2007/08 rateable land value. There is no government assistance for property owners outside the red zone who have lost equity as a result of the earthquakes.

While TC3 land has dropped in rateable value generally there is still a market for it. The latest valuations provide a useful benchmark for assessing a fair offer to buy uninsured land in the red zone. It is difficult to assess the true market value for red zone land because there have been no sales except to the Crown.

Whether the diminished property values in the red zone are the result of the earthquake damage, the Government’s zoning decisions or a combination of both, the net effect now is that the owners of vacant, insured commercial and uninsured improved properties in the red zone will find it difficult to sell their properties and re-establish themselves elsewhere, if they want to do so. The Crown needs to consider this when thinking about any new offer.

# 5. What are the objectives for any new Crown offer?

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The previous chapter explored the matters the Supreme Court found should be considered for any new Crown offer.

As well as these matters, the Crown also needs to consider the CER Act's purposes. Those purposes include:

- To provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes;
- To enable a focused, timely and expedited recovery;
- To facilitate, co-ordinate, and direct the planning, rebuilding, and recovery of affected communities, including the repair and rebuilding of land, infrastructure, and other property; and
- To restore the social, economic, cultural and environmental well-being of greater Christchurch communities.

Those are the broad, overarching recovery objectives. The Chief Executive has also reconsidered the original objectives of the Crown offer. They were:

## Certainty

- Certainty of outcome for home-owners as soon as practicable.

## Confidence

- Create confidence for people to be able to move forward with their lives.
- Create confidence in decision-making processes.

## Best Information

- Use the best available information at the time to inform decisions.

## Simple Process

- Have a simple process in order to provide clarity and support for land-owners, residents and businesses in those areas.

More than four years on from the Canterbury earthquakes these objectives remain valid. The Crown needs to provide certainty of outcome and confidence for home-owners to be able to move forward with their lives. These objectives must be a central consideration for any new Crown offers.

## 6. Should the Crown make new offers?

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The last three chapters have discussed the public feedback, the Supreme Court's judgment and the Crown's objectives and obligations. With all this information in mind the key questions are whether the Crown should make new offers, and what the construct and quantum of the offers should be.

From a recovery perspective, the developments which led the Crown to make the original September 2012 offer are still relevant. In some cases they have become even more pressing or have been exacerbated with the passage of time, including:

- **Enabling people in the worst affected areas to move forward with their lives.** This is particularly the case for the owners of vacant, insured commercial and uninsured improved properties in the Port Hills red zone who have not yet received a Crown offer. The owners of red zone properties in the flat land are also waiting to know how the Crown will reconsider the September 2012 offer in light of the Supreme Court's judgment. This includes moving on from health and wellbeing issues associated with living in these areas.
- **The state of the land as a result of the earthquakes.** In the worst affected areas the damage to land was area-wide, with extensive area-wide remediation measures required to fix the damage. That situation has not changed. There are also life risk issues unique to the Port Hills areas, with on-going risks of rockfall and cliff collapse.
- **Availability of services and the high cost of infrastructure provision.** With the high uptake of the Crown offer by insured property owners the costs of infrastructure provision for remaining occupied properties in the red zone are very high. For now, infrastructure provision for many of them is achieved through temporary measures. These measures produce a sub-optimal service for users, increase the risk of contamination and are significantly more expensive than service provision for green zone properties.

The Chief Executive has assessed that from a recovery perspective, taking into account the above factors, new offers need to be made by the Crown. That was the overwhelming consensus of the public feedback, a point on which almost everyone agreed.

Like other property owners in the red zone, without a new Crown offer to purchase their properties, remaining owners would likely be facing protracted negotiations over issues such as future insurance (if the land was built on), building consents and remediation or mitigation of land damage and risks. Their red zone properties are in areas which have been the hardest hit by the earthquakes. In the flat land area-wide remediation would be required before new building work could take place.

This is a particular consideration for the owners of uninsured improved properties, many of whom are still living in the red zone, and for any insured commercial property owners still operating a business in the red zone.

While the owners of the vacant land and most insured commercial properties are not usually living on their properties, the effect of owning their red-zoned land on their economic and emotional wellbeing also needs to be taken into account.

Without some kind of intervention from the Government, the Chief Executive has assessed that these property owners may have difficulty re-establishing themselves and moving forward with their lives with certainty and confidence.

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## What are the alternatives?

While the majority of the public's feedback was in agreement that a Crown offer should be made to buy vacant, insured commercial and uninsured improved red zone properties, there were some suggestions for alternative options. These alternatives were centred mostly on three ideas:

- Land swaps;
- Compensation/financial payments (other than a property purchase agreement); and
- 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, the Chief Executive has assessed that these suggested alternatives would not meet the Crown's recovery objectives and obligations.

Based on the information CERA has to date, there are an estimated 433 properties within the three categories (vacant, insured commercial and uninsured improved red zone properties) and negotiating individual 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 of such a process on the affected property owners and the costs to the Crown and New Zealand taxpayers need to be considered.

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, including:

- Red Cross grants;
- Residential Advisory Service;
- Temporary Accommodation Allowance;
- Social welfare entitlements;
- Counselling;
- Financial advice; and
- Support services (such as the Earthquake Support Coordination Service).

In addition, the Crown needs to consider the limits on the availability of taxpayer resources and the justification for any increased spending. If a new Crown offer is 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.

Individual arrangements or land swaps would be inconsistent with the Crown's approach for all other red zone property owners. This assessment reflects the strong theme of the public feedback that a fair and quick outcome needs to happen as soon as possible and a simple process is needed, which case-by-case approaches would exclude.



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## How could new offers be constructed?

There are many options for how new Crown offers could be constructed. They include an offer that is the same as the original September 2012 offer, offers based on ranges between 50-100% of the 2007/08 rateable value (for land and/or improvements), and offers higher than 100% of the 2007/08 rateable value (for land and/or improvements), with additional payments for factors such as lost interest and personal stress.

The majority of the public feedback supported using the 2007/08 rateable value as a fair and consistent basis for a new Crown offer, a view which the Chief Executive shares.

The main options can be summarised as follows:

### Offer the same as the September 2012 Crown offer

This would reflect the fact the Crown would receive no insurance recoveries in return for purchasing the land, as the land is uninsured. It would also take into account the precedent risks around the Government paying for uninsurable loss.

But it might not enable the property owners to move forward with their lives, or take into account their health and wellbeing, which was a central theme of the public feedback.

It would also not take into account the fact many of these property owners were unable to get insurance for their land. Based on this situation, the public feedback was supportive of an offer at 100%.

### Offer somewhere between 50 and 100% of the 2007/08 rateable value for land and/or improvements

There are almost endless permutations within this option. The Crown could offer a purchase price based on the average net cost to the Crown of payments to insured properties. This would equalise the cost to the taxpayer of purchase offers to insured and uninsured properties. It would also take into account the precedent risks around the Government paying for uninsurable loss.

But it would not reflect the fact many of these property owners were unable to get insurance for their land. For property owners in this situation, the public feedback was supportive of an offer at 100%, as a fair and reasonable offer to enable the property owners to move forward with their lives, and taking into account their health and wellbeing.

## How could new offers be constructed?

### Offer higher than 100% of the 2007/08 rateable value for land and/or improvements, or 100% plus additional financial payments

Some of the public feedback suggested that additional compensation needed to be made, for issues such as personal stress and lost interest.

The majority of the public feedback was, however, supportive of an offer at 100%, as a fair and reasonable offer to enable the property owners to move forward with their lives.

But it would not be fair or consistent with other Crown offers, and to other property owners, including in the red and green zones, many of whom have lost significant equity and suffered personal stress.

It would also not reflect the fact the Crown would receive no insurance recoveries in return for purchasing the land. The Crown needs to consider the precedent risks around paying for uninsurable loss.

### Offer 100% of the 2007/08 rateable value for land and/or improvements

The public feedback was supportive of an offer at 100% as a fair and reasonable offer to enable the property owners to move forward with their lives.

It would also be consistent with the amount owners of not-for-profit organisations and properties with partially constructed buildings received with the original Crown offer.

It would reflect the Supreme Court's judgment and the public feedback on the need to provide fair and reasonable assistance to these property owners, and to consider factors other than insurance status – including health and wellbeing and the impacts of living in the red zone.

But it would not reflect the fact the Crown would receive no insurance recoveries in return for purchasing the land, and would be unfair to those who had paid insurance.

# 7. What about the funding implications?

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The Crown needs to consider the financial implications of making new Crown offers to the owners of vacant, insured commercial and uninsured improved red zone properties.

If the Recovery Plan is approved by the Minister, it will guide the exercise of the power of the CERA Chief Executive to make decisions about new offers to buy vacant, insured commercial and uninsured improved red zone properties, and decisions about making additional payments to former owners of flat land vacant, insured commercial and uninsured improved red zone properties that have been sold to the Crown. Those decisions would require Crown expenditure, which is outlined below.

Acquisition by the Crown of red zone properties affected by rockfall in the Port Hills would need to take into account the cost-sharing agreement between the Crown and the Christchurch City Council.

The exact total cost can only be confirmed once CERA has the relevant information from owners on their particular circumstances, for example the level of insurance they had. Information is gathered through self-identification and would be the first stage in a new Crown offer process.

Based on the information CERA has to date, the estimated cost of new Crown offers to buy vacant, insured commercial and uninsured improved red zone properties would include:

- The 131 Crown purchases of vacant, insured commercial and uninsured improved red zone properties in the flat land, where the former owners have settled based on the original 50% offer, and who may receive an ex gratia payment if the total payment of a new Crown offer is higher than 50% of the 2007/08 rateable land value;
- The cost of purchasing 70 vacant, insured commercial and uninsured improved red zone properties in the flat land, where the original September 2012 offer has expired (and the owners did not accept the original offer but may want to accept a new Crown offer); and
- The cost of purchasing the estimated 232 Port Hills vacant, insured commercial and uninsured improved red zone properties in the Port Hills whose owners have not received an offer.

There are limitations on Crown expenditure and the Crown must ensure that any decisions on using public funds are fiscally prudent, taking into account the Crown's recovery objectives for greater Christchurch as well as its obligations to New Zealand taxpayers. This point was reflected in some of the public's written responses on the Preliminary Draft Recovery Plan.

The objectives of the Crown offer cannot be pursued regardless of cost, and there are opportunity costs. The Crown will also need to consider whether the new Crown offers are affordable.

The Minister will need to decide whether to approve the Recovery Plan and, in accordance with section 21 of the CER Act, will need to have regard to the impact, effect and funding implications.

## 8. Vacant land

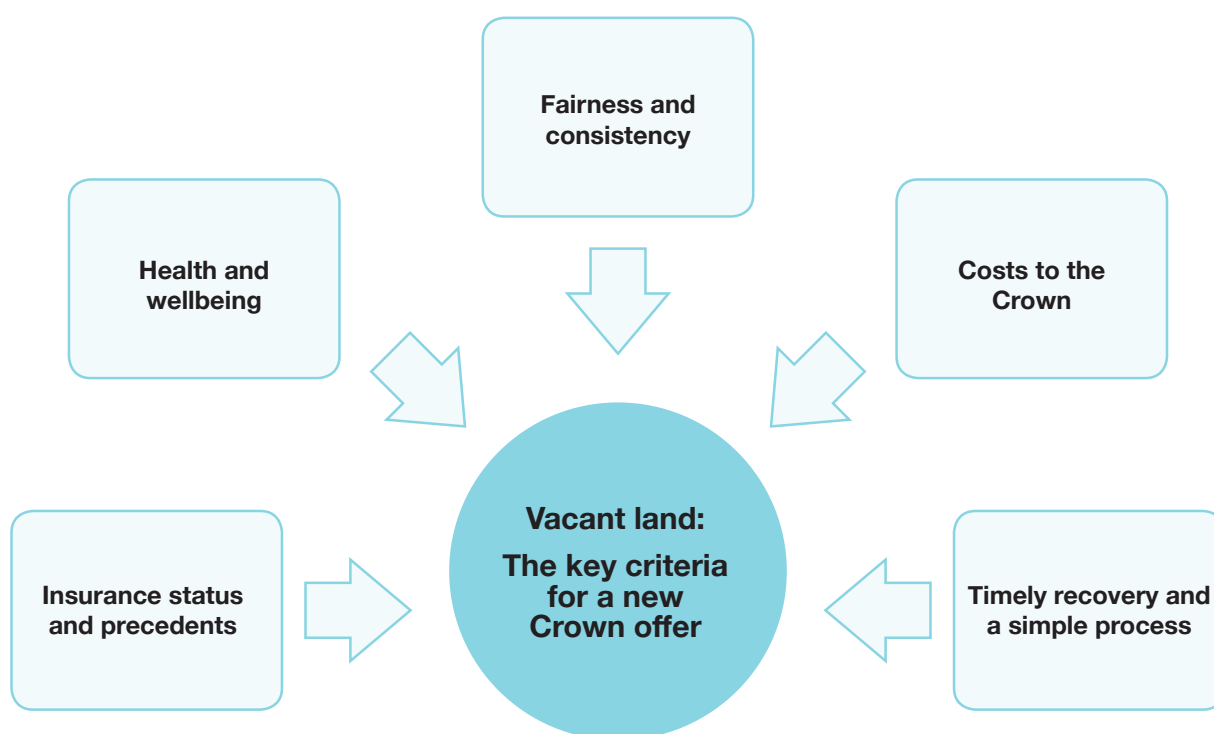
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Taking into account the Crown's recovery objectives and obligations, the Supreme Court's judgment and the public feedback on the Preliminary Draft Recovery Plan, the Chief Executive has identified five key criteria for considering a new Crown offer for vacant red zone land.

The Chief Executive has assessed that these five key criteria are the most important considerations for a new Crown offer and they must all be taken into account. Rather than weighting or ranking these criteria, the Chief Executive considers that they are all of equal importance and must all be considered when developing a new Crown offer.

There may be competing considerations, for example the costs and risks of the Crown paying for all uninsured loss, and the health and wellbeing issues for people living in the red zone. There is also a degree of overlap or connectedness with these key criteria, for example a timely recovery and a simple process will impact on the property owners' health and wellbeing.

The quantum of a new Crown offer will need to represent the best balance between the criteria.



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## Health and wellbeing

The Crown offer process has had an impact on the health and wellbeing of affected property owners, regardless of whether the property owner currently resides, formerly resided or never resided in the red zone. Owners of vacant land can be distinguished from other property owners living in the red zone as they were not affected by devastation to houses on their land (although some may have had a residential property adjoining their vacant land or lived elsewhere in the red zone).

There are still significant health and wellbeing considerations for all these property owners, based on factors such as the time since the Canterbury earthquakes and the uncertainty and delays over the Crown offer. This is a particular consideration for the owners of vacant red zone land in the Port Hills who have not yet received an offer.

These points were highlighted in the public feedback, with the strong consensus that health and wellbeing needs to be a central consideration for any new Crown offer and that these property owners need a quick and fair outcome.

The public feedback, including from the property owners themselves, emphasised the many difficulties of owning property and/or living in the red zone and the need for the Government to help people in this situation to move forward with their lives.

The owners of vacant red zone land could choose to hold on to their land, based on their own assessment that they could remediate, build on or sell the land in the future and that the value of the land may increase over time.

What we do know, though, is that the value of land in the red zone is significantly diminished from its pre-earthquake value and there is currently little or no market for red zone land. While that situation could change in the future, currently the choices for these owners are limited. They have equity tied up with their property but there is high uncertainty over its medium to long-term potential. As discussed above and in the public feedback this situation may be having a significant impact on the property owners' ability to recover from the earthquakes.

## Insurance status and precedents

Insurance status is another key criteria. The Supreme Court found that while insurance should not be the "determinative" factor, it is "not an irrelevant factor" for considering new Crown offers. There were differing views expressed by the public about the importance of insurance status. While there was a strong emphasis on the need for "everyone to receive the same offer", another common view was that a distinction should be made between uninsured and uninsurable.

These are important points and they need to be considered.

The Crown cannot recover the proceeds of any insurance claims to offset the purchase price of buying the uninsured land. As such, some could see such payment as unfair to other property owners, for example those in the red zone who were insured or those with properties in the green zone whose land values dropped significantly following the earthquakes.

If the Crown pays for all uninsured loss, for example by making an offer at 100% of the 2007/08 rateable value, especially for properties that were insurable but for various reasons were not insured, this may create disincentives for people to take out insurance. It may also create expectations about how the Government might respond in future natural disasters in New Zealand.

The damage caused by the Canterbury earthquakes was unprecedented, and there was widespread public support for the Government to provide assistance to people in the worst affected areas. The owners of uninsured properties have lost considerable equity following the Canterbury earthquakes, and the risks of not insuring – where insurance is available – remain clear.

In addition, it is not possible to insure vacant land in New Zealand, either through EQC or privately. As the Supreme Court noted and the public feedback emphasised, vacant land is effectively uninsurable, and this status needs to be taken into account.

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## Fairness and consistency

The need for a fair and consistent Crown offer was a central theme of the public feedback as discussed in Chapter 3. There were differing views about what would be fair and consistent. A common theme was that for uninsurable land, where EQC cover was not available, it would be fair if the Crown made an offer at 100% of the 2007/08 rateable land value.

As discussed above, vacant land cannot be insured. This risk needs to be taken into account when buying vacant land anywhere in New Zealand. However, the Canterbury earthquakes were unprecedented in scale and impact, and it would have been very difficult for the owners of vacant land to predict these developments and what has happened over the last four years. There is currently little or no market for red zone land.

The Crown needs to consider whether making an increased offer above 50% of the 2007/08 rateable land value would be fair and consistent, for these property owners, for all red zone property owners and for green zone property owners who have also been affected by the earthquakes.

## Timely recovery and a simple process

The owners of vacant red zone land had different intentions for their properties, including property developers and investors and individuals with intentions to build new family homes.

The majority of the public feedback was in agreement that the difficulties of determining the intended use of the land, and the difficulties of making fair and consistent decisions based on the different intentions for the land, mean that one Crown offer for all vacant red zone land would be preferable. In other words, the Crown should not seek to distinguish or discriminate on the basis of the intended use of the land.

Taking into account this feedback, and the requirement for a timely recovery and a simple process, the Chief Executive's assessment is that a new Crown offer should be made for all vacant red zone land, irrespective of the intended use of the land, and that offer should be made as soon as practicable.

## Costs to the Crown

There are limitations on Crown expenditure and the Crown must ensure that any decisions on using public funds are fiscally prudent, taking into account the Crown's recovery objectives for greater Christchurch as well as its obligations to New Zealand taxpayers.

This means that any new Crown offers to the owners of vacant red zone land, as well as the owners of insured commercial properties and uninsured improved properties in the red zone, need to take into account:

- Whether this will raise expectations of future Government assistance, including for natural disasters or events, and discourage property owners from taking out insurance, based on an assumption that the Government will intervene if a natural disaster occurs;
- Whether the expenditure is an appropriate use of taxpayer funds; and
- Whether there are opportunity costs, for example for other parts of the recovery.

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## Chief Executive's preliminary view

**Offer 100% of the 2007/08 rateable land value for all vacant red zone land.**

**The Chief Executive considers that an offer of this quantum represents the best balance between the five key criteria. There are multiple considerations for any new Crown offer for vacant land, as discussed in this and previous chapters.**

An offer at 100% would reflect the Supreme Court's judgment and the strength of the public feedback on the need to provide fair and reasonable assistance to these property owners, and to consider factors other than the insurance status. Those factors include the property owners' health and wellbeing, the impacts of the Canterbury earthquakes, the Government's zoning decisions and the stresses associated with awaiting the resolution of the Crown offer process.

An offer at 100% would not reflect the fact that the Crown cannot recover the proceeds of an insurance claim to offset the purchase price of buying the uninsured land. However, such an offer would reflect the uninsurable status of vacant land.

It would be fair and consistent with the amount owners of insured residential properties, including not-for-profit organisations and properties with partially constructed dwellings, received with the original Crown offer.

The offer would reflect the pre-earthquake value of the land, using the same rateable land value (2007/08) as was the basis for the Crown offers for insured red zone properties.

To offer 100% of the 2007/08 rateable land value would be a relatively simple process, structured in a similar way to other Crown offers. Many of the affected property owners are already familiar with the steps. As such, it would help to enable a timely and focused recovery for the affected property owners.

Based on the increased level of this potential new offer, former owners of vacant red zone properties who accepted the September 2012 Crown offer would be eligible for an ex gratia payment from the Crown (so that the total paid is 100% of the 2007/08 rateable land value). CERA would proactively seek to contact any former owners who are affected.

By offering to pay 100% of the 2007/08 rateable land value, the offer would assist the owners with moving forward with their lives, including bettering their health and wellbeing and re-establishing themselves elsewhere, if they wish to do so.

**On balance this is the Chief Executive's preliminary view.**

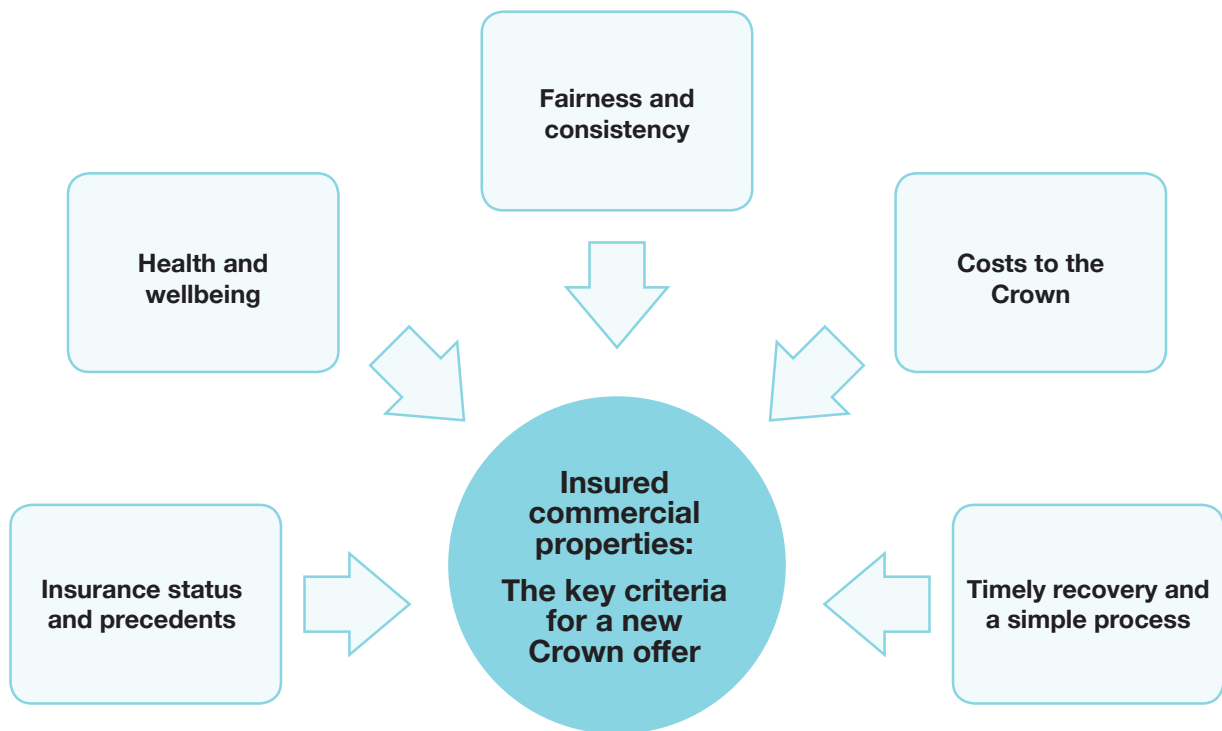
### Have your say...

**Do you agree with the Chief Executive's preliminary view?  
Head to Chapter 12 to find out how you can provide your views.**

# 9. Insured commercial properties

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The Chief Executive has assessed that the same five key criteria must be taken into account for a new Crown offer for insured commercial red zone properties. Many of the factors discussed in the previous chapter apply to the insured commercial properties too, and as such are not repeated in this chapter. There are, however, some specific considerations for the insured commercial properties, which we discuss below.



## Health and wellbeing

Most of the owners of the insured commercial red zone properties are not residing on their red zone property (although they may be living in an adjoining property or different part of the red zone). If they were, and are still, operating a business in the red zone, there may be significant health and wellbeing considerations for these property owners. There are also health and wellbeing considerations related to awaiting the resolution of the Crown offer process, particularly for those property owners who have been involved in judicial proceedings or are yet to receive an offer.

Following the earthquakes and the high uptake of the Crown offer, red zone areas have become increasingly isolated, and many commercial businesses have lost their customer base and community support. The impact on the owners' financial and emotional wellbeing needs to be considered. Taking into account factors such as the time since the Canterbury earthquakes and the uncertainty and delays over the Crown offer, insured commercial property owners need to have an opportunity to move forward with their lives. The time delays are a particular consideration for insured commercial red zone properties in the Port Hills whose owners have not yet received an offer.

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## Insurance status and precedents

As with the vacant red zone land, it is not possible to insure commercial land in New Zealand, either through EQC or privately. As the public feedback emphasised, commercial land is effectively uninsurable and this status needs to be taken into account.

All of the commercial property owners in this category had insurance for their improvements. In other words, they had the maximum amount of insurance available for their property (commercial properties with no insurance are included in the uninsured improved category). The September 2012 Crown offer to owners of red zone insured commercial properties in the flat land was for 100% of the 2007/08 rateable improvements value for the insured improvements and 50% of the 2007/08 rateable land value.

## Fairness and consistency

Regarding the level of a new Crown offer and the precedents, the Crown has already paid for uninsured loss of insured red zone properties, as discussed in Chapter 4. The original offers included extending the Crown offer of 100% of the 2007/08 rateable land and improvements value to the owners of not-for-profit organisations and buildings under construction in the red zone. Like the insured commercial red zone properties, the owners of these properties had insurance for their improvements but not for their land. On this basis, a fair and consistent approach could be to extend the same Crown offer to insured commercial properties.

## Costs to the Crown

If the Crown pays for uninsured loss for these insured commercial red zone properties, the Crown could recover the proceeds of an insurance claim for the insured improvements to offset some of the purchase price of buying the uninsured land.

## Timely recovery and a simple process

As part of the public engagement on the Preliminary Draft Recovery Plan we asked the question about whether a distinction should be made between the different types of insured commercial properties (for example, of the approximately 164 insured commercial properties in this category, 140 are storage units or garages).

There was limited feedback on this, with most of the responses in agreement that there should be no differentiation or discrimination on the basis of the type of commercial property and that everyone in this category should receive the same offer.

The impacts of the earthquakes and the Government's zoning decisions may have been experienced differently, based on the different type of commercial property. For example, an owner of a café who lost their customer base and cannot continue running the business might have experienced significant personal stress and impacts on health and wellbeing. However, the distinction is in some ways a subjective one and difficult to establish with certainty. An owner of a storage unit might feel just as emotionally affected by the earthquakes and zoning decisions as the owner of a café or other business.

There was a strong consensus in the public feedback that a quick and fair outcome is required, based on a simple process. A differentiated approach, for example the Crown taking into account the type of commercial property and adjusting the purchase price accordingly, would likely result in a prolonged process and it would be difficult to ensure fairness and consistency. This would not meet the Crown's objectives of a focused and timely recovery or reflect the public feedback.

The Chief Executive has assessed that the most reasonable and practicable option in the circumstances is to consider these insured commercial properties as one group, that is, not to distinguish on the basis of the specific type of commercial property and every property owner should receive the same offer.



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## Chief Executive's preliminary view

**Offer 100% of the 2007/08 rateable land value for all insured commercial red zone properties.**

**The offer for insured improvements would be 100% of the 2007/08 rateable improvements value, if the insurance benefits are transferred to the Crown, or the owners may choose not to accept any payment for the improvements and keep the benefits of their insurance claims.**

**The Chief Executive considers that an offer of this quantum represents the best balance between the five key criteria. There are multiple considerations for any new Crown offer for insured commercial properties, as discussed in this and previous chapters.**

Consistent with the structure of previous Crown offers, an offer at 100% would provide two options:

Option 1: 100% of the land component, and 100% of the improvements of the property's 2007/08 rateable value, in return the owners would transfer the land and improvements to the Crown, plus the insurance claims; OR

Option 2: 100% of the 2007/08 rateable land value only and owners pursue their own insurance claim. In return the land and improvements are transferred to the Crown.

This offer would reflect the Supreme Court's judgment and the strength of the public feedback on the need to provide fair and reasonable assistance to these property owners, and to consider factors other than insurance status. Those factors include the property owners' health and wellbeing, the impacts of the Canterbury earthquakes, the Government's zoning decisions and the stresses associated with awaiting the resolution of the Crown offer process.

This offer would reflect the uninsurable status of commercial land. In addition, the Crown could (if the owners chose Option 1) recover the proceeds of an insurance claim for the insured improvements to offset some of the purchase price of buying the uninsured land.

This offer would be consistent with all other Crown offers, including the amount owners of not-for-profit organisations and properties with partially constructed buildings received with the original Crown offer.

Based on the increased level of this potential new offer, former owners of insured commercial red zone properties who accepted the September 2012 Crown offer would be eligible for an ex gratia payment from the Crown (so that the total paid is 100% of the 2007/08 rateable land value). CERA would proactively seek to contact any former owners who are affected.

By offering to pay 100% of the 2007/08 rateable land value, the offer would assist the owners with moving forward with their lives, including re-establishing themselves elsewhere, if they wish to do so.

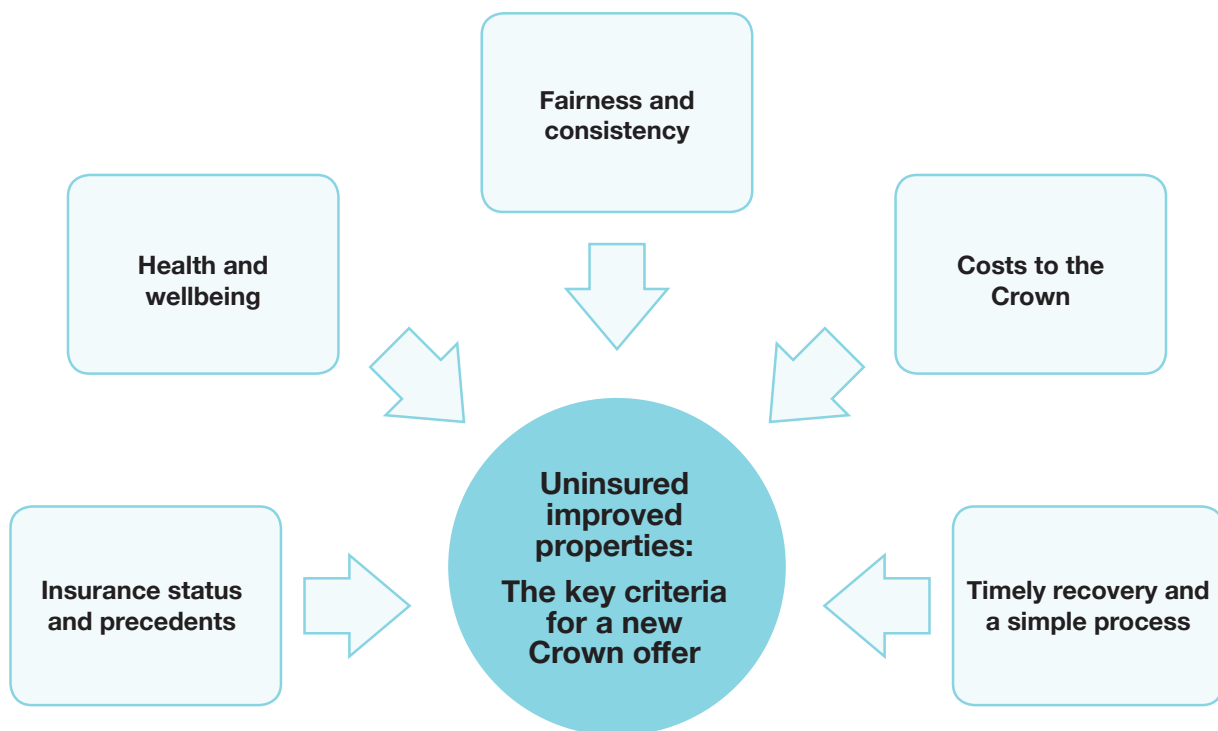
**On balance, this is the Chief Executive's preliminary view.**

### Have your say...

**Do you agree with the Chief Executive's preliminary view?  
Head to Chapter 12 to find out how you can provide your views.**

# 10. Uninsured improved properties

The Chief Executive has assessed that the same five key criteria must be taken into account for a new Crown offer for uninsured improved red zone properties. Many of the factors discussed in Chapter 8 apply to the uninsured improved properties too, and as such are not repeated in this chapter. There are, however, some specific considerations for these uninsured improved properties, which we discuss below.



There are two key distinctions for this group of mostly residential red zone property owners, compared with owners of the vacant land and insured commercial properties. The first is that some property owners are still living in the red zone and the second is that these properties were uninsurable.

## Health and wellbeing

As well as experiencing the stresses related to awaiting the resolution of the Crown offer process, some property owners are also experiencing the difficulties associated with living in the red zone. This may be having a significant impact on their economic and emotional wellbeing.

The difficulties of living in the red zone were emphasised in the public feedback, including from the property owners themselves, and have been discussed in this Draft Recovery Plan. Issues such as the extent of the earthquake damage, uncertainty about the availability of services and infrastructure provision and the isolation and security risks are a particular concern for those still living in the red zone. A new Crown offer for uninsured improved red zone properties needs to take this into account, providing a fair and reasonable opportunity for the uninsured improved red zone property owners to move forward with their lives.

As discussed in Chapter 4 some uninsured improved red zone properties are occupied by owners and some are tenanted. If properties are unoccupied or occupied by tenants, the relevant factor for the owners of those properties is likely to be financial rather than a social or an amenity issue (the Crown offer is to the owner of the property not the tenants). However, there are health and wellbeing issues related to awaiting the resolution of the Crown offer process, which apply to all affected property owners, and these need to be considered.

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## Insurance status and precedents

The second key distinction is that these properties were insurable, but for a variety of reasons did not have any insurance at the time of the 2010-2011 Canterbury earthquakes. This is an important point and one the Crown needs to consider.

As discussed in earlier chapters the Crown has already paid for uninsured loss, including for not-for-profit organisations and dwellings under construction (with contracts works insurance but no EQC land cover), and where the EQC land cover did not cover the total footprint of the property. However, these insured red zone properties were insured to the extent possible (except for the underinsured, where the Crown offer was for 100% of the 2007/08 rateable land value and a pro rata payment was made for improvements relative to the level of insurance).

In addition, for insured properties the Crown was able to offset some of the costs of purchasing the properties against the value of the insurance claim recoveries. Those two factors significantly lowered the risks of the Crown paying for uninsured loss, such as disincentivising people to take out insurance and raising expectations of Government intervention in future.

For the vacant land and insured commercial properties, they were in effect insured to the extent possible: the commercial properties had insurance for their improvements and the land was uninsurable.

Paying for all uninsured loss for the approximately 106 uninsured improved red zone properties, for example at or close to 100% of the 2007/08 rateable land value and 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, taking into account there are no insurance claims to help offset the cost of purchasing the property.

That said, the two examples in the table below help to illustrate why an increased offer for the uninsured land is required. They show how in another disaster scenario uninsured improved property owners can retain some of the value of their property through the land value. But for the owners of these uninsured improved red zone properties, following the earthquakes and the Government's zoning decisions, there is little or no value retained for their land.

### Example A

#### **Uninsured residential property in New Zealand is destroyed by a fire.**

- The owner did not have insurance cover and therefore cannot make an insurance claim.
- No-one wants to buy the damaged house.
- The owner therefore loses the value of the house, and must pay any clean-up or demolition costs.
- But the owner would retain the value of the land. They could then choose to sell the land or build on it, and as such would have some options to re-establish themselves.

### Example B

#### **Uninsured residential property is in one of the areas in greater Christchurch hit hardest by the earthquakes. The area is zoned red.**

- The owner did not have insurance cover and therefore cannot make an insurance claim.
- The owner could in theory retain some of the value of the property – either by continuing to live there (repair or rebuild), or by seeking to sell it. But the land has suffered extensive earthquake damage, its value has greatly diminished, and there is currently little or no market for red zone land.
- If the owner wished to continue living on the property they would likely face issues with future insurance and consenting (if they wanted to build), uncertainty around infrastructure provision and services, and health and wellbeing issues.

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## Fairness and consistency

The Crown also needs to consider what is fair and consistent, including for the red zone property owners who paid insurance premiums (and who assigned the benefits of their insurance claims to the Crown under the offer), property owners in the green zone (some insured, some uninsured) who have also been affected by the earthquakes, property owners outside of greater Christchurch who pay insurance premiums and property owners outside of greater Christchurch who may also be uninsured and affected by a natural disaster.

A new Crown offer for the uninsured improved red zone properties needs to balance the considerations about the owners' health and wellbeing and a timely recovery with the costs and precedent risks of paying for uninsured loss when insurance was available.

## Timely recovery and a simple process

As part of the public engagement we asked the question about whether a distinction should be made based on the different circumstances of property owners and the reasons why they did not insure.

We received a range of views on this question, including from the property owners, as set out in the full summary of the public feedback (a link to which is in Chapter 14). They included:

- Lack of insurance might be due to oversight;
- Some people could not afford to take out insurance;
- Some were unable to obtain insurance;
- If people consciously chose not to pay for insurance, this should be considered;
- People should have the opportunity to explain why they did not have insurance, and the Crown should make individual offers based on those reasons;
- Insurance is a personal responsibility; and
- Treat all parties in a consistent and fair way.

Taking into account this public feedback the CERA Chief Executive considered whether there should be individual offers made based on the different circumstances.

That could include, for example, distinguishing between owners who made a deliberate or conscious decision not to insure, and owners who for various reasons let their insurance lapse.

To make individual assessments and tailored offers, based on the personal circumstances of each property owner and the reasons why they did not have insurance, would require the decision maker to make value judgements about people's personal decisions. This would likely be an extremely difficult and subjective process and could be seen as effectively blaming or rewarding people for choices they have made.

It would be difficult to apply such discretion fairly and consistently for each of these property owners, to have any finality or certainty and also taking into account the need for fairness and consistency of approach for all other property owners.

Making individual offers based on personal circumstances would take a considerable amount of time, which would not reflect the public feedback on the Preliminary Draft Recovery Plan and very strong consensus about the need for a quick and fair outcome and a simple process.

The Crown offer process has been tested and is widely understood by the public. Any new Crown offer needs to be consistent with this, and provide a quick and simple process that enables a timely recovery.

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## Chief Executive's preliminary view

**Offer 80% of the 2007/08 rateable land value for all uninsured improved red zone properties. No payment should be made for uninsured improvements.**

**The Chief Executive acknowledges that this has been a qualitative assessment. He considers that an offer of this quantum represents the best balance between the five key criteria. There are multiple considerations for any new Crown offer for uninsured improvements, as discussed in this and previous chapters.**

The owners of uninsured improved red zone properties who wished to accept this offer would have the choice of:

1. Relocating, salvaging or selling to a third party any uninsured improvements (e.g. house, garage) if they wish to do so. This would provide an opportunity for the owners to retain some of the value of the uninsured improvements, and options for re-establishing themselves elsewhere; OR
2. Electing for the Crown to demolish the improvements as part of the standard settlement process. The demolition costs would be met by the Crown, which is consistent with the original Crown offers. This is a potentially significant cost for the Crown, particularly for demolition of uninsured improved properties in the Port Hills red zone areas with life risk and access issues.

An offer at 80% of the 2007/08 rateable land value would reflect the public feedback on the need to provide fair and reasonable assistance to these property owners, and to consider factors other than the insurance status. Those factors include the property owners' health and wellbeing, the impacts of the Canterbury earthquakes, the Government's zoning decisions and the stresses associated with awaiting the resolution of the Crown offer process.

The impact on owners' health and wellbeing and difficulties for some who are living in the red zone are important considerations for a new offer. The environment in the red zone has changed considerably since the Crown offer was made in September 2012 and this may be having a significant impact on these property owners' health and wellbeing. The Chief Executive has considered the need for a timely recovery and a simple process.

The Chief Executive considered different options for new Crown offers, including ranges between 50-100% of the 2007/08 rateable land value and case-by-case individual offers, which could more accurately reflect the net financial cost to the Crown and the insurance status of these properties.

Based on the increased level of this potential new offer, former owners of uninsured red zone properties who accepted the September 2012 Crown offer would be eligible for an ex gratia payment from the Crown (so that the total paid is 80% of the 2007/08 rateable land value). CERA would proactively seek to contact any former owners who are affected.

By offering to pay 80% of the 2007/08 rateable land value, the offer would provide these owners with a fair and reasonable opportunity to re-establish themselves elsewhere, if they wish to do so. This is because the offer would mean the owners could keep most of the pre-earthquake equity of their land based on the pre-earthquake value.

**On balance, this is the Chief Executive's preliminary view.**

### Have your say...

**Do you agree with the Chief Executive's preliminary view?  
Head to Chapter 12 to find out how you can provide your views.**

# 11. Other affected properties

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This chapter looks at other affected red zone properties, including at Rāpaki Bay, insured privately-owned properties and underinsured properties.

## Rāpaki Bay

There are ten privately-owned red zone properties at Rāpaki Bay in the Banks Peninsula. The owners of the six vacant or uninsured improved residential red zone properties at Rāpaki Bay are part of the main focus of this Recovery Plan and are included in the vacant and uninsured improved categories in Chapters 8 and 10. The other four insured privately-owned red zone properties at Rāpaki Bay may be affected by a new Crown offer.

There are unique considerations for the red zone land at Rāpaki Bay and we need to think carefully about whether a different, specific Crown offer needs to be made for the ten properties.

### Should a different offer be made?

The Preliminary Draft Recovery Plan discussed the status and history of the red zone land at Rāpaki Bay. The ten privately-owned red zone properties include Māori freehold land (seven properties) and General land owned by Māori (three properties).

Māori freehold land is protected by Te Ture Whenua Māori Act 1993, which promotes the retention of Māori land and its use for the benefit of its owners and family (whānau and hāpu). Such land cannot be sold unless the Māori Land Court agrees to change its status to General land.

Before agreeing to change the status, the Māori Land Court first needs to be satisfied that this would not result in Māori land alienation, that is, the land changing from Māori ownership. This means that if a property owner wanted to accept a Crown offer, to satisfy the Māori Land Court the Crown and the owners would need to reach an agreement about the long-term use and governance of this land.

That agreement was not part of any previous Crown offer. If any property owner in the red zone areas wished to sell their property to the Crown, they signed over their rights and responsibilities for that property, as per a standard property purchase agreement.

This meant it was not possible for the owners of the insured Māori freehold land at Rāpaki Bay to accept the Crown offer (which expired on 27 February 2015), if they wished to do so. The owners of the insured General land at Rāpaki Bay were eligible for the Crown offer, and one property owner accepted it. The other owners felt unable to do so due to their ancestral connection to the land and the uncertainty around the long-term use and governance of the land, if it changed to Crown ownership.

The public feedback was generally in agreement that the issues are “complicated”, and that the land somehow needs to remain in Māori ownership and a Crown offer should acknowledge the special status of the land.

Without a different offer, the property owners of the Māori freehold land could not legally sell their land to the Crown and, as such, would be at a disadvantage compared with other red zone property owners. They would be left in limbo: unable to reside or build on their properties (due to the on-going life risks from rockfall in the area), unable to move on because their capital is tied up with their red zone property and facing significant insurance and consenting issues. This situation would be unfair and inconsistent with the Crown’s recovery objectives.

The Chief Executive has therefore assessed that a new specific Crown offer needs to be made for these properties.

### What about the General land?

There are no legal impediments to the property owners of red zone General land at Rāpaki Bay selling their land to the Crown, if they wish to. But there are significant cultural and historical reasons why some do not feel able to accept a Crown offer.

One option is not to extend a specific offer to the owners of the General land at Rāpaki Bay. The owners could then choose to apply to the Māori Land Court to change the status of their land to Māori freehold, which would mean they

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could be eligible for a specific Crown offer. However, taking into account factors such as the length of time since the earthquakes, uncertainty around the Crown offer for Port Hills properties and on-going life risk issues at Rāpaki Bay, this would not meet the Crown's objectives of enabling a focused and timely recovery for these property owners.

On balance, the Chief Executive has assessed that the General land should be included in a new Crown offer for all privately-owned red zone properties at Rāpaki Bay. Te Rūnanga o Ngāi Tahu has indicated support for this approach.

### What specific information should the Crown take into account?

The next thing to consider is what information the Crown should take into account for a new specific Crown offer for these ten red zone properties. Based on the public feedback, and existing information CERA has about the Rāpaki Bay red zone area, the key pieces of information are as follows.

- **The history of Rāpaki Bay and the property owners' ancestral and cultural connections to the land:** The properties were all part of Māori Reserve Number 875, established from the Port Cooper purchase agreement signed between Ngāi Tahu and the Crown in 1859. By 1886 the land had been partitioned into individual titles. Since then, the land has been passed down from generation to generation.
- **The earthquake damage and on-going life risks:** All of the properties were zoned red because of the extreme risk of rockfall. Boulders were dislodged during the earthquakes from the mountain directly above Rāpaki Bay and are an on-going threat to the properties. As such the properties have been assessed as unsafe for residential use. The owners would not be permitted to build/rebuild on the land in its current state due to council planning and consenting restrictions in high life risk areas.
- **The owners of the Māori freehold land cannot sell their land to the Crown unless an agreement is reached about its long-term use and governance:** The legal restrictions mean that the Māori Land Court and Te Puni Kōkiri would need to be satisfied that the acceptance of any Crown offer would not result in Māori land alienation. This would require an agreement being reached in advance between the Crown and the owners about the long-term use and governance of the land. Otherwise, the owners of the Māori freehold land could not accept a Crown offer.
- **Future uses of the red zone land at Rāpaki Bay are very limited:** This assessment is based on the earthquake damage, the rockfall issues in the area, and the type of land. CERA engineers have assessed that mitigation by engineering would be ineffective because of the size and speed of boulders, and in any case the cost is likely to be prohibitive. In addition, any long-term owner would need to accept the liability and costs associated with this land, including managing access due to the associated high life risks.

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## How could a new specific Crown offer be constructed?

There are no simple solutions that would meet the requirements of everyone involved. Any specific Crown offer for these properties requires multiple considerations about the legal constraints, fairness and consistency with other Crown offers, the historical and cultural status of the land at Rāpaki Bay, and the high life risks due to the on-going threat of rockfall in the area.

The Chief Executive has identified four main options, taking into account the public feedback as well as discussions CERA has had over the past three years with some of the red zone property owners at Rāpaki Bay and the Māori Land Court, Te Puni Kōkiri and Te Rūnanga o Ngāi Tahu. The options are as follows:

### An assurance about future use

The owners are given an assurance by the Crown that they will be consulted on the future use of the land when the time comes, and on that basis can accept a Crown offer.

This option would likely be unacceptable to the owners and the Māori Land Court as it would alienate the land from Māori ownership, at least in the short to medium term.

There is currently uncertainty about future use of Crown-owned red zone land and the timing of any decisions. An assurance that the owners would be consulted when the time comes may not be sufficient – either for the owners to accept the Crown offer, or for the Māori Land Court to agree to change the land status if the land is Māori freehold land.

### Land swap

The owners are gifted an ‘equivalent’ land swap if they want to accept a Crown offer. The Crown would need to work with the Māori Land Court to identify suitable land elsewhere, including whether it was purchasable from the current owner.

This option would likely be unacceptable to the owners and the Māori Land Court, as the land at Rāpaki Bay has specific cultural and spiritual significance – ‘swapping’ this land for land in another area would mean the owners would break their ancestral connections to the land at Rāpaki Bay.

In any case, it would be very difficult to identify a suitable piece of ‘equivalent’ land elsewhere.

The Māori Land Court would likely not agree to change the status of the Māori freehold land.

## What options have been considered?

### Nothing is done until broader future use decisions are taken

A different Crown offer for the Rāpaki Bay property owners is not made. The owners of the vacant or uninsured General land could in theory accept a broader Crown offer for vacant or uninsured land. But the owners of the Māori freehold land could not (the Māori Land Court would be unlikely to agree to change the status of the land).

This option would be incompatible with the Crown’s recovery objectives and the purposes of the CER Act, as it would not facilitate the property owners of the Māori freehold land in moving forward with their lives.

The owners of the Māori freehold land would be left in limbo until the Crown made decisions on future use.

### Māori reservation

The owners and the Crown reach an agreement about the long-term use and governance of the land. If the property owners wish to accept a Crown offer, the Crown will agree to apply to the Māori Land Court to turn the land into Māori reservation.

This would most likely be acceptable to the property owners and the Māori Land Court. Te Rūnanga o Ngāi Tahu has also indicated support for this option. It would enable the land to remain in Māori ownership in perpetuity, preserving the ancestral connections and history of the land.

It would also assist the property owners with moving forward with their lives, in line with the Crown’s recovery objectives.



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## Chief Executive's preliminary view

**Offer to purchase each of the ten privately-owned red zone properties, being the four insured properties and the six vacant or uninsured improved properties.**

**The purchase price should be on the same basis as the offers for vacant, uninsured improved and insured red zone properties.**

**The offers for these ten properties should also include an agreement from the Crown about the future long-term use and governance of the land. For each of these ten properties the Crown should agree with the property owners to apply to the Māori Land Court to set aside the land as Māori reservation, if the owners wish to accept a Crown offer.**

The quantum of this specific offer would recognise the ancestral connections and history of the land at Rāpaki Bay and would not result in Māori land alienation, in accordance with Te Ture Whenua Māori Act 1993. If the Māori Land Court agrees that the land should be set aside as Māori reservation the land will not be able to be sold and will be in trust for future generations.

It would provide an opportunity for the property owners to move forward with their lives and re-establish themselves elsewhere, if that is what they wish to do.

It would take into account the life risk issues unique to the Port Hills red zone and, in particular, the rockfall issues at Rāpaki Bay (with many of the properties assessed as unsafe for residential use).

It would take into account factors other than the insurance status, including the key criteria of property owners' health and wellbeing, the impact of awaiting resolution of the Crown offer process and the effects of living in the red zone.

Agreeing to set aside this land as Māori reservation would be an early decision on 'future use' of red zone land. The Chief Executive has given careful consideration to the history, status and feasible uses of the land at Rāpaki Bay and has assessed that such an early decision is needed. Without this specific Crown offer the red zone property owners at Rāpaki Bay are unlikely to be able to move forward with their lives.

**On balance, this is the Chief Executive's preliminary view.**

### Have your say...

**Do you agree with the Chief Executive's preliminary view?  
Head to Chapter 12 to find out how you can provide your views.**

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## Insured privately-owned red zone properties

There are still some privately-owned properties in the red zone which were insured at the time of the 22 February 2011 earthquake and their owners decided not to accept the original Crown offer. We estimate there are around 109 insured properties, based on the information CERA has to date. Although these properties are outside of the direct scope of this Recovery Plan, if a new Crown offer is made these properties may be affected.

These property owners did not accept the offer for various reasons. It is, however, possible that since then the reality of living in the red zone might not have equated with their expectations and they may now wish to sell. The public feedback provided insights on life in the red zone since the Canterbury earthquakes and the high uptake of the Crown offers.

Since the June 2011 Crown offer expired, the owners of seven properties have approached CERA asking whether they can accept the expired Crown offer. There may be others who wish to leave the red zone and sell their property, but are finding it difficult to do so, given the greatly diminished value of their land and the lack of a market for red zone property.

When considering options for these insured property owners the Chief Executive needs to think about many of the same factors discussed in the previous few chapters, including fairness and consistency with those who have already accepted a Crown offer and met the timelines and other requirements involved; and the health and wellbeing of property owners still residing in the red zone areas.

### What are the options?

The possible options could include:

- The Crown makes another offer for all insured red zone properties;
- Wait until future use decisions can be made about Crown-owned red zone land; or
- The Crown considers buying insured red zone properties, only if requested by the owners.

Many of the insured red zone property owners who have chosen not to accept a Crown offer have indicated they feel strongly about their decision and do not wish to have any further contact with CERA. A blanket Crown offer, based on the feedback to date, is unnecessary and could be seen as exerting pressure on property owners. However, for those who do wish to sell their property to the Crown and leave the red zone as soon as possible, it could be a long time to wait for decisions about the future use of Crown-owned red zone land and implementation of those decisions.

### Chief Executive's preliminary view

**The Crown could consider buying the properties, only if offered for sale by the owners. For fairness and consistency, the Crown's purchase should be on the same basis as the original Crown offers for insured properties.**

This would enable property owners who wished to sell their property to the Crown and leave the red zone an opportunity to do so.

In addition, if new Crown offers are made to buy vacant, insured commercial and uninsured improved red zone properties, the administrative cost of this offer would be only a small part of the larger administration required. The additional cost to the Crown and New Zealand taxpayers would therefore be minimal.

**On balance, this is the Chief Executive's preliminary view.**

### Have your say...

**Do you agree with the Chief Executive's preliminary view? Head to Chapter 12 to find out how you can provide your views.**

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## **Underinsured**

The original Crown offers for insured red zone properties applied to underinsured red zone properties. The Government decided to adjust the purchase price for underinsured properties where the property's improvements were underinsured by more than 20% – a total of around 23 properties across the flat land and Port Hills red zone areas where a Crown offer has been accepted and the property has been sold to the Crown.

Where a property was in this situation, the purchase price for the improvements value was reduced on a pro rata basis, relative to the amount of insurance.

Although these properties are outside of the direct scope of this Recovery Plan, if new Crown offers are made for vacant, insured commercial and uninsured improved red zone properties at a higher level than the September 2012 offer these properties may be affected. If, for example, the Crown were to offer more than 50% of the rateable improvements value for uninsured improved red zone properties, the Crown would also need to consider each of these 23 underinsured properties, to ensure a fair and consistent approach.

## 12. What next?

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This Draft Recovery Plan has considered the views and information the public provided, the matters raised in the Supreme Court's judgment, the Crown's recovery objectives and obligations, the funding implications of new Crown offers, and the options for new Crown offers.

On the basis of all that information, the Draft Recovery Plan outlines the CERA Chief Executive's assessment that new Crown offers need to be made, and as soon as practicable. The Chief Executive has identified five key criteria that must be taken into account for new Crown offers, and on that basis his preliminary views on the quantum of new Crown offers.

The next step is to find out what you think.

### Have your say...

**Taking into account the key criteria, do you agree with the Chief Executive's preliminary views on new Crown offers for:**

- (1) Vacant red zone land?**
- (2) Insured commercial red zone properties?**
- (3) Uninsured improved red zone properties?**
- (4) Other affected red zone properties, including at Rāpaki Bay and insured privately-owned properties?**

**Why or why not?**

**Is there anything else you think the Crown needs to consider?**

Before the Minister makes his decision on the Residential Red Zone Offer Recovery Plan he needs to ensure he has all the relevant information and understands the public's views.

Your feedback will be provided to the Minister along with the Draft Recovery Plan. The Minister will decide, in accordance with section 21 of the CER Act, whether to make any changes to the Recovery Plan or make it an operative, statutory document. If so, that will guide the CERA Chief Executive in making decisions about new Crown offers for these properties.

This is the final opportunity for the public to provide written comments on this Recovery Plan.

Everyone is invited to have a say.

**For more information call 0800 RING CERA (0800 7464 2372)**

**You can provide comments on this Draft Recovery Plan in a number of ways:**

Visit [www.cera.govt.nz/redzoneoffer](http://www.cera.govt.nz/redzoneoffer) to comment using an online form.

Alternatively, written comments can be emailed to: [info@cera.govt.nz](mailto:info@cera.govt.nz)

Or posted on: [facebook.com/CanterburyEarthquakeRecoveryAuthority](https://www.facebook.com/CanterburyEarthquakeRecoveryAuthority)

Or posted to: Draft Residential Red Zone Offer Recovery Plan  
Freepost CERA  
Canterbury Earthquake Recovery Authority  
Private Bag 4999  
Christchurch 8140

**Feedback is due by 5pm, Thursday 9 July 2015**

# 13. Glossary

Term	Definition
<b>Canterbury earthquakes</b>	This includes any earthquake in Canterbury on or after 4 September 2010 and includes any aftershock.
<b>CER Act</b>	Canterbury Earthquake Recovery Act 2011.
<b>CERA</b>	Canterbury Earthquake Recovery Authority
<b>EQC</b>	The Earthquake Commission
<b>Flat land red zone</b>	Term used to describe the residential red zone areas in greater Christchurch, including Waimakariri District, but excluding the Port Hills.
<b>Greater Christchurch</b>	The term 'greater Christchurch' refers to districts of the Christchurch City Council, the Selwyn District Council and the Waimakariri District Council, and includes the coastal marine area adjacent to these districts.
<b>Infrastructure</b>	Includes roads; storm water, drinking water and sewerage pipes; telecommunications; and electricity.
<b>Māori Land Court</b>	The specialist court that hears matters relating to Māori land. It also has jurisdiction to hear cases under the Māori Fisheries Act 2004, the Māori Commercial Aquaculture Claims Settlement Act 2004 and a number of other statutes.
<b>Minister for Canterbury Earthquake Recovery</b>	The Minister who holds the Canterbury Earthquake Recovery portfolio.
<b>Port Hills red zone</b>	Term used to describe the residential red zone areas in Christchurch that are in the Port Hills, which include Rāpaki Bay (i.e. excluding the flat land red zone).
<b>Rating Valuations and Rateable Values</b>	A rating valuation reflects the property's market value at the date of the valuation. This is then broken down to land value and improvement value. The value of the land is defined as the probable price that would be paid for the bare land. This includes any development work that may have been carried out. The value of improvements is calculated by subtracting the land value from the capital value, and represents the extra value the buildings and other developments give to the land.
<b>Recovery Strategy</b>	Recovery Strategy for Greater Christchurch: Mahere Haumanutanga O Waitaha; prepared under the CER Act by CERA, a statutory document which sets out the principles, priorities, vision and goals for the recovery.
<b>Residential red zone or 'red zone'</b>	An area of residential land which suffered severe land damage due to the Canterbury earthquake sequence, and where the Crown offer was made to owners of insured properties. The residential red zone was the term used to distinguish between the suburbs and the Christchurch central business district red zone cordon.
<b>Strategic partners</b>	Te Rūnanga o Ngāi Tahu, Environment Canterbury, Christchurch City Council, Selwyn District Council and Waimakariri District Council.
<b>Technical Category and TC3</b>	A land classification developed by the Ministry for Business, Innovation and Employment that requires site specific geotechnical investigations to determine appropriate foundation type for residential construction. There are three categories, with TC3 land requiring the most extensive investigations.

# 14. Links to further information

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## Recovery Strategy for Greater Christchurch

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The Recovery Strategy for Greater Christchurch: Mahere Haumanutanga O Waitaha is the overarching, long-term strategy for the reconstruction, rebuilding, and recovery of greater Christchurch.

<http://cera.govt.nz/sites/default/files/common/recovery-strategy-for-greater-christchurch.pdf>

## Canterbury Earthquake Recovery Act 2011

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The Canterbury Earthquake Recovery Act 2011 (CER Act) was enacted on 19 April 2011. The purpose of the CER Act is to support and facilitate the recovery of greater Christchurch following the Canterbury earthquakes.

<http://www.legislation.govt.nz/act/public/2011/0012/latest/DLM3653522.html>

## Land zoning and Crown offer decisions

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A whole range of information and Cabinet papers can be found on the CERA website at the following link

<http://cera.govt.nz/cabinet-papers>. Some relevant papers are listed below.

- **Cabinet paper – Land Decisions, June 2011**

Sets out the policy decisions that were made in relation to land damage from the Canterbury earthquakes, including the formation of the red, green and orange zones.

- **Cabinet paper – Canterbury orange zones, October 2011**

Sets out a process and timeframe for rezoning the remaining orange zones in Canterbury, including Southshore West, Kaiapoi West and Brooklands.

- **CERA briefing, Red zone residential properties under construction and non-residential properties owned by not-for-profit organisations, May 2012**

Extends the Crown offer to purchase red zone properties under construction and non-residential properties owned by not-for-profit organisations.

- **CERA briefing, Considerations for the Crown offer to eligible property owners in the Port Hills Red Zone, August 2012**

Sets out the elements of a Crown offer to red zone property owners in the Port Hills. Note it does not include an offer for owners of vacant, insured commercial or uninsured improved properties.

- **Cabinet Business Committee paper – Red zone purchase offers for residential leasehold, vacant, uninsured and commercial/industrial properties, August 2012**

Sets out the purchase offer for properties that were previously ineligible for a Crown purchase offer: insured residential leasehold properties, properties with no insurance (vacant land and other uninsured improved properties), and insured commercial/industrial properties. Note this paper does not apply to the Port Hills.

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## Supreme Court's Judgment

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The Crown offer for vacant, insured commercial and uninsured improved red zone properties was challenged by way of judicial review and was appealed to the Supreme Court. In its judgment released on 13 March 2015, the Supreme Court held that the Crown offer had not been lawfully made and directed that the Minister for Canterbury Earthquake Recovery and the CERA Chief Executive reconsider the decision in light of the requirements and factors outlined in the judgment. This judgment has led to the Minister's direction to develop the Residential Red Zone Offer Recovery Plan.

**[https://www.courtsofnz.govt.nz/cases/quake-outcasts-and-fowler-v-minister-for-canterbury-earthquake-recovery/at\\_download/fileDecision](https://www.courtsofnz.govt.nz/cases/quake-outcasts-and-fowler-v-minister-for-canterbury-earthquake-recovery/at_download/fileDecision)**

## Human Rights Commission Report

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This report provides a human rights analysis of key issues that have emerged in the recovery relating to housing, health and property. It highlights particular human rights challenges in these areas, instances of good progress, and areas in which challenges remain. It was released in December 2013.

**<http://www.hrc.co.nz/your-rights/social-equality/our-work/canterbury-earthquake-recovery/>**

## Direction to develop Residential Red Zone Offer Recovery Plan

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Under section 16 of the Canterbury Earthquake Recovery Act 2011 the Minister for Canterbury Earthquake Recovery may direct a responsible entity to develop a Recovery Plan. This Direction specifies the matters to be dealt with in the Residential Red Zone Offer Recovery Plan and that the responsible entity to develop the Recovery Plan is CERA. It was published on 23 April 2015 in issue no.41 of the *New Zealand Gazette*.

**<https://gazette.govt.nz/notice/id/2015-go2411>**

## Preliminary Draft Residential Red Zone Offer Recovery Plan

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The Preliminary Draft Recovery Plan was the first opportunity for the public to provide views on whether the Crown should make new offers to buy vacant, insured commercial and uninsured improved properties in the residential red zone, and if so, how any offers should be structured. The public had from 5-19 May 2015 to provide written comments.

**<http://cera.govt.nz/preliminary-draft-residential-red-zone-offer-recovery-plan>**

## Summary of Public Submissions on the Preliminary Draft Residential Red Zone Offer Recovery Plan

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This is a summary of all the public feedback received on the Preliminary Draft Residential Red Zone Offer Recovery Plan. This was prepared for CERA by an independent research company.

**<http://cera.govt.nz/draft-residential-red-zone-offer-recovery-plan>**

**Comments can be made**

**Online at:** [www.cera.govt.nz/redzoneoffer](http://www.cera.govt.nz/redzoneoffer)

**Via email to:** [info@cera.govt.nz](mailto:info@cera.govt.nz)

**Posted on:** [facebook.com/CanterburyEarthquakeRecoveryAuthority](https://facebook.com/CanterburyEarthquakeRecoveryAuthority)

**By post to:**

Draft Residential Red Zone Offer Recovery Plan  
Freepost CERA  
Canterbury Earthquake Recovery Authority  
Private Bag 4999  
Christchurch 8140