ANNUAL REVIEW OF THE CANTERBURY EARTHQUAKE RECOVERY ACT 2011

June 2012

Reviewer: Simon Murdoch

BACKGROUND

1. Section 92 of the Canterbury Earthquake Recovery Act 2011 specifies that the Minister must carry out a review of the 'operation and effectiveness' of the Act within 12 months after the commencement of the Act, and every 12 months after that; and prepare a report on that review.

Terms of Reference

2. The draft Terms of Reference supplied by the Canterbury Earthquake Recovery Authority (CERA), at my request on 17 April 2012, set out three areas of review:

- the legislation itself "from a drafting and/or technical perspective informed by the experiences of the CERA Legal team"
- the need for "any changes to the legislation that will improve the Act's overall operation and effectiveness"
- "the checks and balances on the various powers provided to the Minister and the CERA CEO".

3. CERA specified that the review was not to engage in "reconsideration" of recovery policy matters which it might come across in meeting the terms of reference.

4. CERA also noted that this, the first of what would be five annual reviews, was taking place within a relatively short interval since the passage of the Act and the starting up of CERA. It would not be dealing with a full year of normal activities under the Act.

Conflict of Interest

5. I advised CERA that I had immediate family living in earthquake-affected parts of Christchurch; one relative by marriage who had been a City Councillor and currently worked for Te Runanga o Ngai Tahu, and another who is a member of the Community Forum established under the Act. I undertook to manage any risks arising from these relationships in respect of the review.

Other factors

6. I advised CERA that I held no legal qualifications, and considered that to carry out the assignment I would need to be supported in ways that recognised this limitation.

Approach

7. Having considered the reference material, I sought to further inform myself about the processes leading to the legislation, and the Parliamentary debate relating to it. This led me to formulate an approach to the task and a methodology.

8. I determined that the underlying question this review should seek to answer would be "Is the Act working, and is it working properly?" and consequently, "what particular matters should be explored, how and with whom?"

9. The following framework became the starting point for the conduct of the review:

Question 1
Are the principal bodies / actors empowered by the Act with executive decision making rights to bring about recovery and rebuild in greater Christchurch

(a) Able to carry out their functions?
(b) Carrying out those functions effectively/efficiently?

Principal bodies / actors are:

- The Minister for Canterbury Earthquake Recovery
- The Chief Executive of the Canterbury Earthquake Recovery Authority (and his delegations / managers)
- The Councils – Christchurch City Council; Waimakariri and Selwyn District Councils; Environment Canterbury
- The Review Panel appointed under section 72 of the Act.

Question 2
Are the consultation arrangements established by the Act

(a) Able to be conducted between the specified parties?
(b) Being conducted effectively / efficiently?

Consultation arrangements are in respect of:

- The overarching Recovery Strategy (parties are the Councils; Environment Canterbury; Te Runanga o Ngai Tahu)
- The specific Recovery Plans / "programmes" (parties are CERA and the Councils)
- The Community Forum
- The Cross-Party Parliamentary Forum.

I understand "consultation" to have a broad spectrum of meanings and interpretation and to operate at ascending levels of intended engagement with a decision-maker, as follows, (sometimes expressed as "rights" of):

- being generally informed
- being able to proffer (informed) comment generally
- having specific views sought
- having specific views taken into account
- contributing (informed) views to specific decisions

- participating in specific decision processes.

Question 3

Are the provisions made in the Act for accountability and transparency

(a) able to be operationalised?

(b) operating effectively / efficiently?

Provisions are:

- quarterly reports to Parliament by the Minister
- access to the OIA
- other mechanisms for public information (e.g. Ministerial or agency correspondence; websites etc.)
- standard performance oversight and evaluation measures which apply to government departments (arising from State Sector Act 1988 or Public Finance Act 1989, e.g. annual reports).

Question 4

If there are impediments to any of the above, what is the nature of the impediment; what is its significance (impact); what action, including legislative amendment, would best remedy or mitigate?

I began with the view that so early in the life of the legislation, notwithstanding its "sunset" provisions, amendments would need to be justified by certainty that the apparent shortcomings were more than teething problems, and would create risks of a certain gravity if left unaddressed. I asked the legal team at CERA and some other practitioners to provide the review with their considered thoughts about a hierarchy of possible technical amendments.

10. Acronyms used throughout:

CER Act	Canterbury Earthquake Recovery Act 2011
CERA	Canterbury Earthquake Recovery Authority
CERA CEO	Canterbury Earthquake Recovery Authority, Chief Executive Officer
CPPF	Cross-Party Parliamentary Forum, established under s 7 of the Act
CF	Community Forum, established under s 6 of the Act
CCDU	Christchurch Central Development Unit.

An Analytical Framework

11. The Act requires the Minister to report to Parliament quarterly on the powers and functions exercised under the Act. There have been three such reports to date, prepared for the Minister by CERA, spanning the first eleven months of the legislation. They cover, and briefly contextualise, the decisions of both the Minister and the CERA Chief Executive. From this record, and from related material, it is possible to assemble an overall picture of the uses to which the Act has been put and the frequency of recourse to its powers, both in respect of its discretionary and mandatory provisions. A table depicting this survey is at Annex 1. This in itself tells us, in a quantitative sense, that the Act is working.

12. There is also a qualitative dimension. I could not, in the time available, examine each and every case of the use of powers; but I asked to sample the caseload, in order to understand how CERA approached the matter in terms of weighing up the particular case, and developing its appreciation of the threshold factors, and any underlying principles against which the particular circumstances of a case ought to be tested. I also asked to see a sample of an instance where CERA, after due consideration, decided against taking recourse to the powers. I chose to focus particularly on cases where the powers, at least in my mind, were at the more "intrusive" end of the spectrum.

A Starting Premise

13. It was clear from my reading of the Parliamentary debates, and indeed, had been directly adverted to by the Minister in his interventions during the Committee stages of the CER Bill, that the decision about CERA's organisational form - a Public Service department, as specified in Schedule One of the State Sector Act 1988 - was intended to set particular standards for CERA in respect of transparency and accountability. To my mind, equally, it was an investment in administrative coherence, sound administrative practice, and capability in its core functions. Taking all of the exceptional factors affecting CERA's operating environment fairly into account, including its intended brief lifespan, I felt this review should be looking for evidence that CERA was bringing good process to bear on its activities, both in its policy formation and advice, and in its operational behaviour as a department.

14. Agencies of state which must maintain a high tempo of policy and operational delivery especially of a highly innovative kind, even bold, over a sustained period of time, can avoid major folly, accidents and mistakes of consequence by developing and following good practice standards and standard operating procedures. They underpin the human capability of an organisation, enhancing coherence and consistency in the delivery of outputs. When the agency has been permitted recourse to special powers, and such statutory powers may be delegated, the steps of good process should be "hard-wired" (i.e. explicit).

Review Contributors

15. As far as possible in the time available, the Review would seek responses to the above questions from relevant entities in central government; local government in greater Christchurch[1]; and where necessary, those other institutional stakeholders in the recovery / rebuild process whose activities require them to have regard to the Act. A list of those approached is at Annex 2. It was not easy for busy people, preoccupied with the work of relief, recovery, and rebuild, to find the time to contribute to this review; most were able to do so, but despite best efforts and intentions, a few were not. No doubt they will make their views known by other means, and can be approached again for the next annual review.

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[1] "greater Christchurch" means the 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 (CER Act).

THE REVIEW

Critical dates

16. It may be helpful to begin by noting the following:

22 February 2011	major earthquake / state of emergency
29 March 2011	Cabinet, by Order-in-Council, establishes CERA
12 - 14 April 2011	CER Bill passes through all Parliamentary stages
19 April 2011	CER Act comes into force (repealing the Earthquake Response and Recovery Act 2010)
1 May 2011	State of National Emergency lifted in greater Christchurch
12 May 2011	CERA CEO appointed
13 June 2011	CERA CEO commences duties
February 2012	Cabinet Committee structure amended (ad Hoc Cabinet Committee established in September 2010 replaced by standing Committee).

17. It should also be noted that in respect of three critical areas of compliance with the Act: the development of the overarching Recovery Strategy; the development of Recovery Plans (which can predate or be concurrent with the overarching Strategy, but must be consistent with it); and the development of a specific CBD Recovery Plan - this review took place at a time when the respective processes for each were close to their final stages[2]. CERA was approaching the end of the beginning of the transition into the recovery and rebuild phases which its Act foreshadows. At the same time, with its local / regional government partners, it was still maintaining a significant effort related to relief and rehabilitation where urgency still prevails, and responsiveness is the best measure of performance. This is evident from a scan of some of the outcomes over the past year. For the CBD the cordon reduced in size from 387ha to 50ha; 1939 buildings were evaluated of which 1200 were either fully or partially demolished. In the residential red zone there were 3956 settlements; 5054 sale and purchase agreements; and 6377 letters of offer to insured owners.

18. This multifaceted activity profile has affected the institutional evolution of CERA. I was told frequently, and could see for myself, that CERA was "in catch-up mode" as far as administrative good order was concerned. The staff had not always had the time and space during 2011 to "hardwire" (i.e. capture and codify as explicit behaviours) the processes and practices they were adopting to ensure compliance with the Act.

[2] Indeed, the "Recovery Strategy for Greater Christchurch" was finalised and launched by the Minister on 30 May 2012.

EXECUTIVE DECISION MAKING

19. In the period covered by this review, the CER Act specifically required two pieces of planning to be advanced: a draft "overarching, long-term" Recovery Strategy for greater Christchurch was to be developed, within 9 months, by the CERA CEO and presented to the Minister for consideration, and in due course, approval; and a draft Recovery Plan for the whole or part of the Christchurch CBD was to be developed under the leadership of the Christchurch City Council, also within 9 months. In regard to this CBD Plan, and other like 'sectoral' plans which the Act anticipated, there was provision for the Minister to direct CERA to review them for consistency with the overarching Strategy, if the latter was not yet approved.

20. These requirements of the Act have been met. I was informed that the overarching Recovery Strategy, in draft, had been lodged with the Minister, and his consideration of it was under way. It had been discussed with both the CPPF and the Community Forum, and was to be the subject of an upcoming Cabinet discussion. The requirements of the Act regarding how it was to be developed by CERA (i.e. "public hearings") had also been substantively met. CERA determined that an approach which was more flexible than a conventional "hearing" would best meet the purpose. It held 8 dedicated community engagement events, and similar engagements with other stakeholders, during June / July 2011; attendance was "open" but CERA canvassed Community Boards and other bodies for attendees and called for submissions. Six hundred and thirteen submissions were received before a draft was prepared. In September / October it invited formal comments on a draft, and 463 written responses were received.

21. In respect of the draft CBD Plan, it is a matter of public record that the Minister, having received the document, in two volumes, from the City Council, within the appointed time according to the Act, but in advance of the overarching Recovery Strategy being finalised (approved), determined that it should reviewed by CERA. That review which took place in the early months of 2012 caused the Minister to establish, within CERA, the Christchurch Central Development Unit (CCDU) which he tasked with producing, within 100 days, a "blueprint". I was told this was a necessary, even critical link, to "decant" the high-level material in the original, so that Plan, in its final form, can be drawn upon systematically for operational overview and the integrated tasking of "ground-level" recovery activities by a growing Council / contractor-managed work force.

22. Other sectoral "plans", as anticipated by the Act, have been called for. They are to be subsidiary to (or "nested" within) the overarching Recovery Strategy. I was advised that there is a trend towards using the term "programme" (not "Plan") to more accurately depict the legal status of these iterative documents, as they pass through various layers of process. Draft recovery programmes may include statutory Plans. The Act allows the Minister to decide whether, and how, such plans are to be developed, including public consultation and hearings. I asked for an overview of this activity. I was informed that "Recovery Programmes of Work" covering six sectors are to be articulated in or alongside the overarching Recovery Strategy document. CERA has a lead role in developing some, but a liaison role in others. They are intended as a platform, to enable the future-shaping ideas of the Recovery Strategy to be operationalised, and accordingly they will be more technical and concrete. They will also align with CERA's organisational structure, so that CERA's

managerial focus, and output and performance accountabilities, can be tightly linked to delivery of the nested programmes.

23. Some of the programmes are at an early, conceptual, stage of iteration. Others, such as those pertaining to the Built Environment, and the Residential Red Zones, have, de facto, been the frameworks for significant operational delivery for some months but are now shifting their sights (e.g. the Social Recovery Programme, with its intended emphasis on steps to deepen community resilience). In some, if not most cases, there will be critical interdependencies between and across programmes, and sequencing of outputs will be a vital aspect of achieving overall coherence in the delivery of the recovery / rebuild over time. The initial scoping of the individual programmes must take this into account. They will therefore emerge sequentially and pass through various stages of testing for risk, consultation, and costing / resourcing analysis before the Minister, whose engagement with the exercise is pretty much continuous, seeks Cabinet endorsement and approves them.

24. I was briefed on one such programme, which is at a relatively advanced stage of iteration, the draft Economic Recovery Programme under which there are four focal areas: Capital Investment; the Business Environment; Insurance; and the Labour Market. I was made aware of another, the Education Renewal Programme, which is at the stage of being reviewed by stakeholders, sector networks and other interested parties. The Sports and Cultural programmes are at the scoping stage. The CER Act is specific, indeed even prescriptive, about there being a well-integrated policy and planning "prelude" to the recovery. So far, in what will be an extended process, blending into a dynamic and complex implementation phase, the approach being taken by the Minister and by CERA, via this kind of planning "cascade", seemed to me to accord with this.

25. Besides foreshadowing the coming recovery policy and planning phase, and specifying the requirements in respect of its "foundational" strategic documentation, the Act also established continuity for the many on-going relief and pre-recovery activities across greater Christchurch, originally begun under civil defence emergency powers, and centralised, in a variety of ways, in the CERA legislation. In particular, the CER Act, carrying over from its predecessor, gave the right to Ministers, for purposes of the Act, to make Orders-in-Council which may override existing plans and regulatory requirements, or require compliance with CERA directives over all other existing rights. A set of powers to act were vested in the CERA CEO. As indicated in Annex 1, the powers of the Act were used for these purposes throughout the review period.

26. The strategic partners of CERA (CEOs or their representatives) indicated to me that they were comfortable, overall, with the way in which the Act was enabling decision making. Although recalling instances of feeling "blindsided", they considered, on the whole, they had been well-engaged by CERA in the judgements being made about the necessity to take recourse to the powers of the Act.

27. Alongside the CER Minister and the relevant portfolio Ministers in discharging this right of access to extraordinary powers sits a 4 person expert body, the Canterbury Earthquake Recovery Review Panel. The Panel, which must be supported by CERA, is charged to review draft Orders-in-Council before they can be recommended to Cabinet and the Executive Council. The Panel is required to provide advice, in the form of a report with

recommendations, to which Ministers must have regard in their proposal to Cabinet for an Order-in-Council. The Act also requires the Minister to publicly notify the Panel's recommendations and table them in Parliament.

28. There was considerable debate in the Committee stages of the CERA legislation about the balance to be struck between the extent of the intended "centralised framework of enhanced (executive) powers"[3] required for the recovery and rebuild, and the normal balances and checks upon the Executive which apply in New Zealand law and constitutional practice. In that context, besides exerting influence over the Executive in regard to the substantive exercise of the extraordinary powers by the Executive, the Panel is also important as a watchdog. From my discussions and observations the Panel has been influential; it's testing of the "case" for an intervention has been thorough, and consistent. Officials have been sent back to think again; Ministers have been advised to accept variations to the proposals initially put to them. There has been no Parliamentary debate about the tabled reports.

29. The Panel has established a set of operating practices which enable it to carry out its business within the time constraints which apply in the Act. I was able to look at a sample of its 19 reports, and to talk with the Convenor, Sir John Hansen, who fulfils one of the specifications in the Act for the expertise of the Panel, by virtue of his judicial experience. He expressed satisfaction that the Panel has been properly supported, and able to function efficiently. The secretariat to the Panel is provided by a CERA official whose efforts were commended to me. The statutory time limit (3 days) for the Panel to conduct its scrutiny of a draft OIC and report is but one part of a 14-step process path which has both a Christchurch and a Wellington end, and which CERA cannot fully control. Delays 'up the line' can impact on the Panel, as too on the CPPF. Early initiation by the sponsoring agency can help, even when it is a renewal / rollover which is being sought.

30. Two broader points were made to me about the OIC process. CERA is likely to be sponsoring OIC proposals on behalf of a range of operational end-users including the Christchurch City Council, at a rising rate, as recovery and rebuild plans begin to be implemented and the OIC critical path will probably come under greater pressure. In order to avoid delays which compress the windows of review by the Panel and CPPF, on the one hand, or create costs for operational end-users on the other, CERA will need to engage effectively with the relevant portfolio agencies, and ensure that the process remains properly resourced and managed. Other Panel members, and stakeholders, were conscious of the coming shift towards recovery and rebuild, and the imminence of critical decisions to implement the CBD Plan, and the component parts of the overarching Recovery Strategy, (e.g. Port Hills recovery) for which regulatory over-rides might be sought, thus triggering, potentially, in the period ahead, a different level of engagement for the Panel.

31. Under s 38 of the Act, the CERA CEO is given a broad power to carry out works, including demolitions. He may exercise these powers where he reasonably considers it necessary, and in accordance with the purposes of the Act; and by virtue of s 10(3) he may delegate them to CERA employees or secondees (this, I was told, excludes contractors). At the point of this review, a discrete delegations policy was being finalised, for approval /

[3] Amy Adams MP; 12 April 2011; Second Reading debate.

adoption by the CERA management. In practice, the CEO had issued a delegation to only one other employee (the General Manager, Operations) who in turn sought CEO agreement to a sub-delegation to his senior manager. Both the CEO and the General Manager Operations (based on Audit Office advice, which he sought) have instituted compulsory report-back systems to enable them to maintain awareness of the conduct of those carrying out activities for which their powers have been utilised, as well as to ensure that financial controls are rigorous.

32. The CEO holds the view that CERA, institutionally, should act with conscious self-restraint in availing itself of these powers, and I found this view was repeated to me by his managers and CERA's legal advisers. I was told of examples of bids to have the powers used being rejected, or sent back for further reflection. I was also told by other parties that the mere existence of the powers had, in itself, engendered a more palpable pragmatism towards the direct negotiation of outcomes to disputed or contested issues without defaulting to CERA's powers or the courts. At the same time it was widely acknowledged that there have been particular complexities for all parties about demolitions, and especially where historic buildings are concerned.

33. Informed by the oral judgement in the one legal challenge[4] that has occurred (July 2011; Whata J in the matter of Hampton vs CERA, review of a decision to demolish a category 2 historic dwelling for safety reasons) I enquired into CERA's standards and methodology for exercise of these powers. In his judgement, Mr Justice Whata had referred to the need for CERA to investigate thoroughly; make cogent assessments, both broad and specific, and apply, on behalf of all concerned, appropriate tests of the threshold for their intended intervention. In the more recent files which I examined I found recorded exchanges amongst CERA advisers and decision makers which, broadly speaking, reflected these standards. CERA legal advisers were co-located with the CERA Demolitions team during the period in 2011 when, under pressure of real events and concerns for public safety, these standards were evolving, and, as a consequence, their advice tended to be oral. I consider that CERA should now be looking to consolidate, perhaps to better "codify" its practices; to create a means of periodic self-review in this facet of its responsibilities; and to develop an education process for its operational staff and, potentially, other relevant stakeholders.

CONSULTATION

34. In respect of the two statutorily-based consultative entities – the Cross-Party Parliamentary Forum and the Community Forum – the requirements of the Act in respect of establishment and composition have been met. The former, which met 15 times last year, has had one meeting this year, partly on account of a changed composition following the election and the convening of the new Parliament. It is worth noting that orientation and familiarisation visits have been put on for new members in the context of full Caucus visits to Christchurch. The latter held 8 meetings in 2011, and has had 4 so far this year.

[4] Another case (CIV-2012-409-500) concerning the use of Ministerial powers (revocation, under s 27(1)(a), of a proposed change – "PC1"- to the Canterbury Regional Policy Statement) is set down for hearing in July 2012.

Cross-Party Parliamentary Forum (CPPF)

35. This body, comprised of all local Members of Parliament, exists, in law, to provide the Minister with information and advice about the operation of the Act. There is no requirement on the Minister, in law, to have regard to that information or advice in carrying out his duties. It began as one of the several bridges between the tiers of governance and politics which had initially sprung up in the emergency phase. Its wider public interest purpose going forward, as I understood it, would be to sustain at the national political level, a degree of bipartisanship about the recovery of greater Christchurch, and, since that may be a very long-run process, over several electoral cycles, and possibly different governments, a degree of policy continuity.

36. Whilst CPPF is clearly at the narrow end of the spectrum of consultative engagement compared to the other bodies specified in the Act in terms of its "rights", in practice the Minister intended a less narrow interpretation. This extends to having created a role for CPPF in the set of checks and balances on his use of regulatory powers under the Act, which was not required of him in the Act. Draft Orders-in-Council are routinely made available to CPPF members, at the same point in the process as they are placed before the Review Panel, and any response comments of CPPF members are reported to the Minister or CERA in the context of finalising the case for, and content of, the OIC in question. In other words CPPF members' views are being sought, with the intent of being taken into account.

37. Those 2011 participants with whom I spoke expressed a fair degree of satisfaction about the arrangements which allow CPPF members to have a voice in the advice processes leading to the making of Orders-in-Council under the Act. This included being satisfied that their inputs were receiving due consideration, because they received direct feedback. Members felt that the written backgrounders they received with a draft OIC, whilst clearly not as comprehensive as a full Cabinet paper, were adequate in terms of their being enabled to grasp the essentials of the "case" which was being made for recourse to extraordinary powers.

38. A common observation about the meetings of CPPF in 2011 was that, overall, in terms of content and atmosphere, they had "fallen off". Expectations had been quite high because of the collaboration practices which had grown up amongst the Greater Christchurch MPs following the September and February earthquakes. I was told that after the passage of the CER Act, CPPF began to meet regularly in Wellington when Parliament was in session. But that otherwise practical decision meant it was not easy, more so as the 2011 General Election campaign drew closer, to remove participants from the adversarial elements of parliamentary politics. Members felt the political urgency of events in Christchurch itself more acutely, and it became harder, without formal rules (i.e. behaving as a quasi-Select Committee) for CPPF to manage the information, on and off the record briefings, which they, as individuals, eagerly sought and which the Minister was disposed, within bounds, to share with them. The subject matter itself had begun to change, being more about broader policy questions than the situational awareness of the immediate relief operations of the first half of 2011. Those with whom I spoke all felt that 2012 could, and should, be a better year for CPPF.

39. The Minister, in mid-2011, had established a dedicated phone line, as an informal channel for CPPF members, direct to his Office, for out-of-session inquiries, particularly those relating to matters affecting individual constituents, and for other general information updates about events on the ground in Christchurch. It appeared to be generally understood that this service had its limits and could not be over-used. At that time, the capacity of CERA itself to function as the central clearing house for such matters and to generate a regular stream of authoritative background information was constrained. As the exigencies of the relief phase give way to the recovery policy and planning phase, and as CERA has strengthened its overall outreach and public communications capability, the need for this "hotline" has reduced, but for some CPPF members, it remains a valued option.

40. The CPPF is serviced from the Office of the Minister by a senior staff member whose efforts were commended to me. As stated, it has been meeting at Parliament, in sitting time, for practical reasons, and to enable optimal participation. CPPF does not keep minutes per se, but there is a follow-up action list generated for each meeting. For its meetings proper, an agenda is set by requests of the participants. The meetings do receive briefings, both oral and written, from the Minister and the CERA CEO or his alternates. Members felt those had generally been frank and full. I was informed that the Minister rejects no proposed item, but will inform a meeting if he is unable to engage in substantive discussion on an item, and give a reason to the meeting. For example, such a reason might be that a matter is at a delicate stage of commercial negotiation. In regard to the public use of information from its proceedings, some issues have arisen, in particular the delicate question of when an MP, particularly a constituency MP, could draw upon CPPF-generated knowledge to deal with the information needs of an individual constituent who might then act upon it.

41. Some members with whom I spoke felt the time had come for some ground rules to be established more formally for CPPF, and enforced.

42. I also received several suggestions for procedural enhancements to CPPF, which I discussed with CERA and other officials who were, in fact, largely aware of them already from their own contacts and observations, and who intend, in the first place, to raise them with the Associate Minister.

Community Forum (CF)

43. The CER Act is clear about where this body sits in terms of engagement with Executive decision makers; the Minister and CERA CEO must have regard to any information or advice given by the Forum. Given its regularity of meetings (the Act requires it to meet at least 6 times a year, but it has actually had 12 meetings in 11 months), I expected to find a settled (well-functioning and supported) operation, and I asked to see examples of the Forum's voice, and its influence in practice, in both the advice going to the Minister, and in the deliberations of the CERA CEO and his direct reports. I also looked for method in the organised gathering of feedback from participants.

44. I found more a "work-in-progress". Although the CER Act suggests a body no less than 20 strong, the CF is, in fact, a group of 39 appointees (from 240 nominations to the Minister) who serve voluntarily, many at their own expense. All members came on board naturally feeling a high burden of responsibility to ensure that they both represented their

constituent bodies and their particular local, urban, suburban or even neighbourhood concerns and interests. But equally it was appreciated that on the crosscutting ("big picture") issues arising during the shift to the current recovery policy and strategic planning phase, a consensus view, or at least a clear sense of what majority and minority positions were held by the Forum, would be needed for the Minister to be able to meet his obligations under the Act. None of this would be easy, with so large a group, even in more benign circumstances than those with which people in Christchurch must make do. A procedural means to achieve this kind of coherence in the CF voice needed to be designed.

45. Both CERA officials and the participants I spoke with explained that the CF had taken some time to establish an agreed modus operandi. This hiatus was supported by the Minister, and it appears to have been time well spent, as it has resulted in an appropriate level of structure and organisation which is "owned" by the participants themselves, as well a new approach to recording and reporting. In this way, and particularly by creating an internal governance modality via its Organising Committee, the CF has set itself up to engage effectively with, and be engaged meaningfully by, CERA on behalf of central government, as well as other statutory stakeholders.

46. In practice the CF has already made substantial inputs to the overarching Recovery Strategy and to some of the nested Programmes in the scoping phase. Those participants whose views I was able to sample, including its chair Mr Trevor McIntyre, were guardedly optimistic that CF would be able to grow into a valuable role, as it was put to me, to become more a "go to" entity for specific issue-related input. There are apprehensions about the collective capacity of their group to deal with a significant burden of technical (including financial) information, and there is a certain residual wariness about losing "grassroots" confidence if, in the interests of providing CERA and the Government with a statement of the "community position" on an issue, the Forum appears to have made one set of citizen interests a "winner", but another a "loser". CF members have also therefore been concerned about its relationships to other "umbrella" groups e.g. CanCERN[5] and with the network of established community and citizen bodies working to and with other statutory / strategic partners, especially in both obtaining their information, and sharing Forum views openly with them.

47. The CF now meets twice monthly, and has dedicated secretarial support, as well as access to CERA facilitation services. The new Cabinet provided for an Associate Minister for Earthquake Recovery, and the Minister has delegated to her his roles in respect of the Forum - a step which has been welcomed, as it should mean that more systematic two-way communication is possible, and that the senior Minister can operate at a more strategic level with the Forum, as befits his overall responsibilities at this point in the Christchurch recovery.

48. CERA, for its part, has taken the necessary internal steps to gather, hold, and utilise CF views in its policy advice, both to Ministers and its own senior decision makers. I saw examples from CERA files, and during the hiatus, CERA was able to begin to rethink how it could help CF to manage the role it has set for itself. As with the CPPF, there are knowledge management and transparency challenges, to be worked through.

[5] CanCERN – Canterbury Communities' Earthquake Recovery Network

TRANSPARENCY AND ACCOUNTABILITY

49. The most resonant point, of many, made to me about CERA's organisational form and its institutional character, was that Parliament had "purpose-built" a central government entity not headquartered in Wellington, which had the benefit of operating close to, and in full view of, its principal client (no gap between its operations and its policies), but, at the same time, leaning heavily on a backbone of whole-of-government infrastructure, capability, and resources, under the authority of Cabinet[6]. Many of its accountability and transparency obligations stem from this, and are subject both to Parliamentary scrutiny, and other established forms of performance review in the state sector. Consequently I treated them in a more limited way.

50. A key point to make about CERA, in this context is that transparency is intimately linked to a wider strategy of communications and engagement, which is in turn, linked to CERA's broad understanding of the importance of consultation, at many levels. All of its public information, including its accountability documents, are intended to underpin a continuous, and proactive outreach to affected communities, and beyond. Although it was not my task to evaluate this, the debates during the Committee stages of the Act indicate an underlying expectation of CERA to meet the high public interest, at an individual and collective level, to know what is going on and what is going to happen. I could not help but be struck by the sheer breadth, and intensity, of the "conversation" about recovery in greater Christchurch; the information needs it generates; and the investment which CERA must make, and is certainly making, both to support it for its social value, but also to extract from it useable knowledge, of a professional kind, to shape its own policy and operational decisions, as well as those in which will interact with public sector partners, and the wider "recovery partners" construct which encompasses the private sector.

51. CERA had initially relied on the Ministry of Social Development for its accountability and compliance systems, and policies. But it has progressively brought a number of them in-house, and has begun to 'customise' them to its needs. In particular the Office of the CEO is responsible for services to the Minister, both to meet his Executive responsibilities (briefing papers; submissions; Cabinet papers; replies to correspondence), and his Parliamentary or other statutory accountabilities (Financial review; Annual Report; Questions in the House; Official Information Act). This unit also coordinates and services, the CEO in his community-facing role (e.g. correspondence: 625 substantive letters in the period, June - May) and, in part, also the two portfolio Ministers. The operational units of CERA look to this Office for internal governance, to enable the CEO to keep oversight of their more specialised outputs, and provide assurance in respect of the quality of policy and rigour of delivery.

52. Those I spoke with in Wellington, such as the Treasury, said that CERA's level of technical compliance with accountability requirements was at expectations, and both they and CERA's own senior managers sensed that these responsibilities were being more effectively discharged as time passes and CERA consolidates, in terms of systems and

[6] It is salutary to note that during 2011 the Ad Hoc Cabinet Committee for Canterbury Earthquake Recovery met 22 times and considered 69 papers submitted under various portfolios, of which 17 were directly generated by CERA. The Cabinet Office also noted that in addition to items referred on to full Cabinet from this Committee, items had also been generated from other Cabinet Committees.

personnel, where the balance between secondees, contract or temporary staff and fixed term employees has been moving in the direction of greater stability. The Minister agreed.

TECHNICAL AMENDMENTS TO THE ACT

53. Section 92(2) requires that the annual report on the CER Act must include any recommendations for amendments to the Act.

54. As stated earlier (Question 4, page 3), I asked the legal team at CERA and other practitioners to provide the review with their considered thoughts about a hierarchy of possible technical amendments to the CER Act. The CERA legal team provided a memo with various suggestions about sections of the Act which might be improved. Other practitioners who mentioned particular difficulties with the Act were concerned with some of the same sections.

55. Within the limits of my technical competence, I formed the view that three of the suggested amendments potentially cross a threshold of risk to the purposes of the Act sufficiently as to require consideration as matters which might require urgency. The sections of the Act that need to be looked at as a matter of urgency are sections 38-42; section 51 and section 58.

56. In order to better determine this need, CERA should utilise the customary interagency officials' advice process, which involves closer scrutiny by a range of interested agencies and relevant portfolio Ministers, arriving, where justified, at robust amendment propositions for Cabinet. The Minister may seek to have a higher priority attached to this advice process so the work can be done expeditiously.

CONCLUSIONS

57. The CER Act 2011 is working, properly in large part, in that

- it is allowing decisions to be made, with appropriate authorisation, in the interests of recovery and rebuild, and to minimise any unwarranted delays arising from bureaucratic log-jams or legal process impasses.
- Its provisions to enable strategic planning to be carried out, in order to create a robust policy platform for the coming recovery and rebuild operations, have been or are being met.
- Recourse has been taken to its special powers progressively, and with evident circumspection by statutory decision makers, under the active oversight of the Review Panel and with the knowledge of the Cross-Party Parliamentary Forum in respect of Orders-in-Council.
- The two statutory consultative bodies, which were to be appropriately engaged by executive decision makers, have been able to function reasonably efficiently, but the value each could bring to the recovery and rebuild process, once it gathers momentum, may be further enhanced.
- The expectation that CERA, as a department of central government, would conduct its business with due attention to norms of accountability and

transparency is being met more fully as CERA consolidates its systems, practices and capabilities.

- While several sections of the Act which might be improved by technical amendment were identified, not all appear to pose a sufficiently high level of imminent risk to the purposes of the Act to justify urgency. For those which may do, the customary interagency officials' process could be quickly utilised to provide further considered advice to the Minister and to Cabinet.

Annex 1: Exercise of Mandatory and Discretionary Provisions of the Canterbury Earthquake Recovery Act 2011, as at June 2012

Mandatory provisions

Section	Operation / Action for review	Exercised
s. 6	Minister must arrange for a community forum to be held	Exercised
s. 7	Minister must arrange for a cross-party parliamentary forum to be held	Exercised
s. 11 (1)	Chief Executive must develop a Recovery Strategy and submit the document to the Minister	Exercised
s. 12 (1)	Process for development of a draft Recovery Strategy must include 1 or more public hearings	Exercised
s. 12 (2)	Draft Recovery Strategy must be developed within 9 months	Exercised
s. 13 (1)	Public notification of the draft Recovery Strategy	Exercised
s. 17 (1) & (4)	A draft Recovery Plan for the CBD must be developed within 9 months (CCC)	Exercised
s. 20 (2)	Minister must ensure that all other draft Recovery Plans are publicly notified	Not yet exercised
s. 21 (3) & (4)	Minister must give reasons for any action taken [in relation to approval of Recovery Plans], and give notice in the *Gazette*	Not yet exercised
s. 27 (3)	Minister must, if applicable, notify persons directly affected by action taken [to suspend or cancel any resource consent; any use protected under the RMA; any certificate of compliance]	Not yet exercised
s. 50 (5)	Minister must present a copy of any call-in to the House	Not yet exercised
s.54 (2) & (3)	Minister must serve and lodge notices of intention to take land	Not yet exercised
s. 55 (5)	Proclamations to take land must be published in the *Gazette*	Not yet exercised
s. 56 (1)	Proclamations must be lodged with the Registrar-General of Land	Not yet exercised
s. 64 (1)	Minister must determine if compensation is payable and the amount	Exercised
s. 65	Minister must ensure that claims for compensation are determined within a reasonable period	Exercised
s. 72 (1) & (3)	Minister must appoint Review Panel and convener of Panel	Exercised
s. 72	Chief Executive must provide administrative support for Review Panel	Exercised
s. 73 (2)	All draft Orders in Council must be reviewed by the Review Panel	Exercised
s. 73 (6)	Minister must publicly notify Review Panel recommendations	Exercised
s. 73 (7)	Minister must present a copy of the Review Panel's recommendations on a draft OIC to the House	Exercised
s. 88 (1)	Minister must prepare and present to the House quarterly reports on the operation of the Act.	Exercised
s. 92 (1) & (3)	Minister must carry out a review of the operation and effectiveness of the Act, and present the report to the House	This report

Discretionary provisions

Section	Operation / Action for review	Exercised
s. 10 (3)	Chief Executive may delegate functions and powers under this Act or any other Act	Exercised
s. 14 (1)	Minister or Chief Executive may review Recovery Strategy and propose amendments or replace it	Not yet exercised
s. 16 (1)	Minister may direct 1 or more entities to develop a Recovery Plan	Not yet exercised
s. 17 (3)	Minister may require the CCC to enable other specified persons to provide input into the Recovery Plan for the CBD	Not yet exercised
s. 18 (4)	Minister may direct a further review and amendment of a Recovery Plan	Not yet exercised
s. 19 (1)	Minister may determine how Recovery Plans are to be developed	Not yet exercised
s. 21 (1)	Following the development of a draft recovery Plan the Minister may make changes or withdraw all or part of the draft Plan	Underway
s. 21 (2)	Minister may approve a Recovery Plan	Not yet exercised
s. 22 (1)	Minister may review a Recovery Plan and amend or replace it	Not yet exercised
s. 27 (1)	Minister may suspend, amend, revoke whole or any part [of a number of instruments under the RMA, Local Government Act, Land Transport Management Act and other Acts]	Exercised
s. 27 (2)	Minister may suspend or cancel any resource consent; and use protected under the RMA; any certificate of compliance	Not yet exercised
s. 27 (4)	Minister may revoke any changes or variations approved to a plan under [various Acts] or impose a moratorium on further changes or variations	Not yet exercised
s. 28 (1)	Chief Executive may, by notice to a council, specify the types of contracts for which the consent of the CE of CERA must be obtained	Not yet exercised
s. 29 (1)	Chief Executive may require any person to give any information required	Exercised
s. 30 (1)	Chief Executive may disseminate information and advice	Exercised, but without reference to this section.
s. 31	Chief Executive may commission any reports as he or she considers appropriate	Exercised but without reference to this section.
s. 32	Chief Executive may investigate any matter	Exercised, but without reference to this section.
s. 33 (1)	Chief Executive or any person acting under may enter on, or break into, any premises or place	Exercised
s. 35 (1)	Chief Executive may direct the CE of LINZ to approve a cadastral survey dataset	Not yet exercised
s. 36 (2) & (6)	Chief Executive may direct the Registrar-General of Land to seek the consent of the adjoining landowners to the new survey definition, and to disallow the application of s205(4) of Land Transfer Act	Not yet exercised
s. 38 (1) & (3)	Chief Executive may carry out or commission works [including erection, reconstruction, demolition removal and disposal of any building] or fixtures and fittings	Exercised

s. 39 (2)	Chief Executive may put up a hoarding or fence to prevent people from approaching works, and warning notices	Exercised
s. 43 (1)	Chief Executive may subdivide, amalgamate, improve and develop all or any land acquired by the Crown	Not yet exercised
s. 44 (1)	Chief Executive may erect or authorise the erection and use of temporary buildings on any public reserve, private land, road or street	Exercised
s. 45	Chief Executive may restrict or prohibit access by any person to any specified area or building	Exercised
s. 46	Chief Executive may prohibit or restrict access to any road or public place	Exercised
s. 48 (1)	Minister may direct any council to take or stop any action, or make or not make a decision	Not yet exercised
s.49 (1)	Minister may require any council to perform or exercise specific responsibilities, duties, or powers	Not yet exercised
s. 50 (1)	Minister may assume the responsibilities, duties or powers by notice of a call-in [if council has failed to comply with notice under s. 49]	Not yet exercised
s. 51	Chief Executive may require any owner, insurer or mortgagee of a building to carry out a full structural survey of the building	Exercised
s. 52 (3)	Chief Executive may direct any [owners of adjoining properties] to act for the benefit of adjoining owners	Not yet exercised
s. 53 (1)	Chief Executive may purchase or otherwise acquire, hold, sell, exchange, mortgage, lease and dispose of land and personal property	Exercised
s. 53 (4)	Minister may declare land held under this Act to be set apart for a Government work	Not yet exercised
s. 54	Minister may acquire land compulsorily by notice in *Gazette*	Not yet exercised
s. 55 (1)	Minister may take land in the name of the Crown	Not yet exercised
s. 55 (4)	Governor-General may, on recommendation of the Minister, by Proclamation declare land is taken in the name of the Crown	Not yet exercised
s. 57	Minister may seek an order from the High Court directing vacant possession of land taken by Proclamation	Not yet exercised
s. 71 (1)	Governor-General, on recommendation of the Minister, may make Orders in Council [to grant exemptions from, modify or extend provisions of certain Acts]	Exercised
s. 77	Chief Executive may make a compliance order if any person has not complied with a lawful direction under the Act	Not yet exercised
s. 87	Minister or Chief Executive may transfer to a council any of the Crown's benefits and liabilities under any contract, agreement … or other instrument	Not yet exercised

Annex 2: People Interviewed for first annual review of CER Act

Minister and Minister's office

Hon Gerry Brownlee, Minister for Canterbury Earthquake Recovery
Tim Hurdle, Senior Advisor

Canterbury Earthquake Recovery Authority

Roger Sutton, Chief Executive
Benesia Smith, Director, Office of the Chief Executive, currently acting as General Manager Corporate Services
Warwick Isaacs, General Manager Operations, currently seconded to CCDU
Steve Wakefield, General Manager Economic Recovery
Richard MacGeorge, General Manager Infrastructure
Diane Turner, General Manager Strategy, Planning and Policy
Mike Shatford, General Manager Communications
James Hay, General Manager Corporate Services; currently seconded to CCDU
Michelle Mitchell, General Manager Community Wellbeing
Bronwyn Arthur, Chief Legal Officer, currently seconded to CCDU
Susan Newell, Acting Chief Legal Officer
Jill Thomson, Advisor, Legal
Deb Moore, Advisor, Legal
Jacinda Lean, Manager Ministerial and Chief Executive Support, Office of the Chief Executive
David Corlett, Advisor Policy
Jo Fitzgerald, Manager Marketing and Channels
Ivan Iafeta, Deputy General Manager, Community Wellbeing

Christchurch City Council

Chris Gilbert, Manager Legal Services
Ian Thomson, Senior Solicitor
Judith Cheyne, Solicitor on secondment from Simpson Grierson

Selwyn District Council

Paul Davey, Chief Executive
Douglas Marshall, Corporate Services Manager

Waimakariri District Council

No issues to raise, email from: Jim Palmer, Chief Executive

Environment Canterbury

Bill Bayfield, Chief Executive
Dame Margaret Bazley DNZM ONZ, Chair
Honorary Professor Peter Skelton CNZM, Commissioner

Te Runanga o Ngai Tahu

Aaron Rice-Edwards, Programme Leader Ru Whenua

Earthquake Commission

Helen Bowie, Consultant, Chapman Tripp, seconded to EQC

Insurance Council of New Zealand

Chris Ryan, Chief Executive

Department of the Prime Minister and Cabinet

Richard Braae, Policy Advisor

The Treasury

Tom Hall, Manager Earthquake Recovery
Jo Hughes, Manager Financial Markets
Jeremy Salmond, Manager and Treasury Solicitor

State Services Commission

John Ombler, Deputy State Services Commissioner

Community Forum members under section 6 of CER Act

Trevor McIntyre
Jocelyn Papprill
John Peet
Siong Sah (John) Wong

Members of Parliament / members of Cross-Party Forum under section 7 of CER Act

Hon Jim Anderton (until November 2011)
Hon Lianne Dalziel
Dr Kennedy Graham
Nicky Wagner

Review Panel appointed under section 72 of CER Act

Sir John Hansen KNZM, Chair
Dame Jenny Shipley DNZM
Murray Sherwin
