

Residential Red Zone Offer Recovery Plan: Preliminary Draft

May 2015

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Christchurch, New Zealand

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1. Introduction

1.1 What is the purpose of this Recovery Plan?

The purpose of developing the 'Residential Red Zone Offer Recovery Plan' is to assist the Crown (through the Chief Executive of the Canterbury Earthquake Recovery Authority ("CERA")) to determine whether it should make new offers to buy vacant, commercial and uninsured properties in the residential red zone and, if so, how such offers should be structured.

This is the Preliminary Draft Recovery Plan, notified for public consultation on 5 May 2015. This Preliminary Draft is the first opportunity for everyone to provide their views. You do not have to be an affected property owner or live in greater Christchurch to have a say.

This public consultation is an important first step. The Preliminary Draft is in essence a discussion document, which sets out the key contextual information and developments. It focuses on the key questions the Crown will need to consider about the vacant, commercial and uninsured red zone properties, and it asks for your views. It does not predetermine what any final Crown offer will be.

The Crown wants to ensure it has all relevant information, and has considered all possible options, to inform the development of any Crown offer to buy vacant, commercial and uninsured properties in the red zone.

Have your say...

How does this affect you?

What factors are important when considering a new Crown offer?

Should there be a different Crown offer for the different categories?

What offer should the Crown make?

Are there any options other than a Crown offer?

We need your feedback by:

5pm, Tuesday 19 May 2015

Chapter 7 explains how you can provide comments, or click on the link www.cera.govt.nz/redzoneoffer

The need for such a Recovery Plan has arisen because the majority of the Supreme Court in *Quake Outcasts v The Minister for Canterbury Earthquake Recovery* concluded that the broad outlines of a purchase decision should have been included in a Recovery Plan, and that the power to purchase the land "should not have been used unless there had been an antecedent Recovery Plan setting up the red zone".

Any decision on this Recovery Plan will be made in accordance with the purposes in section 3 of the Canterbury Earthquake Recovery Act 2011 ("CER Act"), a link to which can be found at the end of this document.

More than four years on from the start of the Canterbury earthquakes, the owners of vacant, commercial and uninsured properties in the red zone need certainty, to assist them to move forward with their lives.

It is important to get this right.

1.2 What is a Recovery Plan?

The CER Act provides for the Minister for Canterbury Earthquake Recovery (“the Minister”) to direct the development of draft Recovery Plans for all, or part, of greater Christchurch. Recovery Plans can deal with any social, economic, cultural or environmental matter; or any particular infrastructure, work or activity. A Recovery Plan must be consistent with the Recovery Strategy for Greater Christchurch.

A Recovery Plan allows for a robust statutory process, including the opportunity for public consultation, and helps to ensure all relevant information has been considered.

Draft Recovery Plans must be notified, and the public must be invited to make written comments on the document in the manner and by the date specified in the notification.

There are two existing Recovery Plans – the Christchurch Central Recovery Plan and the Land Use Recovery Plan. A draft Lyttelton Port Recovery Plan is being developed.

The scope and process for this Residential Red Zone Offer Recovery Plan are much more tightly focused than for the other Recovery Plans. This Recovery Plan is not likely, for example, to direct changes to Resource Management Act documents or the other instruments relating to local government, transport and conservation matters which can be specifically amended by a Recovery Plan.

The Minister has directed the Chief Executive of CERA to develop this Recovery Plan using a streamlined process. This means the Recovery Plan will be drafted, consulted on, and finalised within a much shorter timeframe than those for the previous Recovery Plans. Affected red zone property owners will know the outcome as soon as possible.

1.3 What is the process for this Recovery Plan?

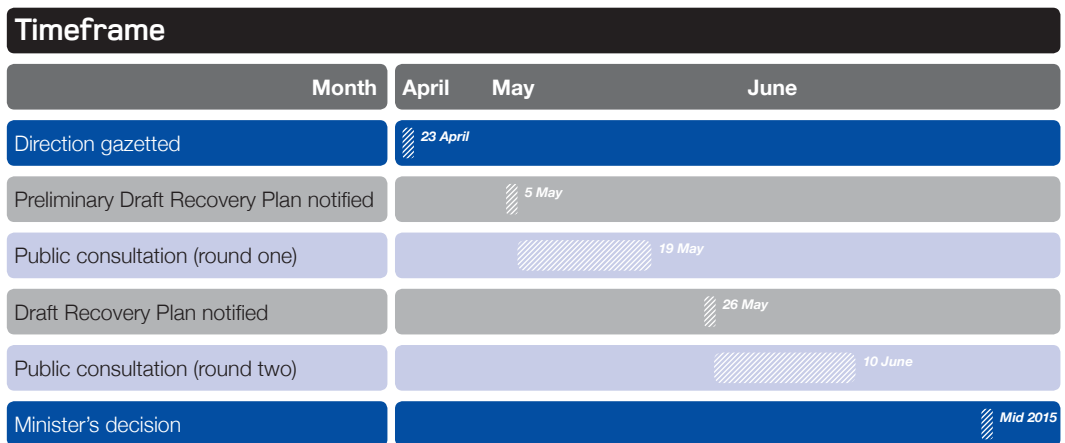
The direction for the Residential Red Zone Offer Recovery Plan was gazetted on 23 April 2015, and this Preliminary Draft Recovery Plan publicly notified on 5 May 2015.

The first round of public consultation will be carried out over the next 10 working days, to seek the public’s views on the key issues and any relevant information to help develop the options. The closing date for the first round of comments is 5pm Tuesday 19 May 2015. Chapter 7 outlines how comments can be made.

CERA will then review all the comments and information received, as well as the information we already have, to help the Chief Executive of CERA develop the Draft Recovery Plan, which will set out the proposed options. Input from the public and all of the earthquake recovery strategic partners will be an important part of this process.

The Draft Recovery Plan will be publicly notified on 26 May 2015. The public will then be invited to provide written feedback, in accordance with section 20 of the CER Act.

That feedback and the Draft Recovery Plan will be considered by the Minister who, in accordance with section 21 of the CER Act, will decide whether to make the Recovery Plan an operative document. If so, that will guide the exercise of power of the Chief Executive of CERA to make decisions about new offers to buy vacant, commercial and uninsured properties in the red zone.



1.4 What is not covered in this Recovery Plan?

The Minister's direction to develop this Recovery Plan stated that a number of issues will not be covered by this Plan. These are:

- Revisiting land zoning decisions (that is, the basis on which properties were zoned as red or green and the decision to make voluntary offers to purchase properties only in the red zone);
- The voluntary 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.

1.5 What geographic areas does this Recovery Plan cover?

This Recovery Plan focuses on areas of greater Christchurch identified as the "residential red zone" by the Crown, including the flat land and Port Hills red zone areas.

1.6 Who has prepared this Preliminary Draft Recovery Plan?

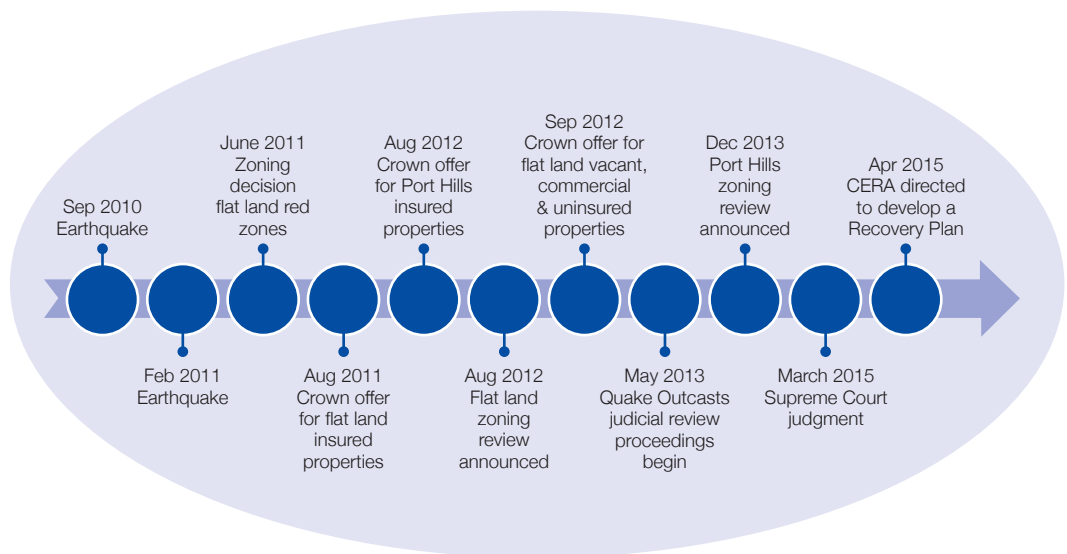
The Chief Executive of CERA has prepared this Preliminary Draft Recovery Plan. The next step is to seek the views of the public through written comment, including greater Christchurch communities and CERA's earthquake recovery strategic partners. This will help inform the development of the Draft Recovery Plan.

1.7 Effect of the Recovery Plan

This Recovery Plan will be developed under the CER Act, and if approved by the Minister will be a statutory document. (A statutory document is prescribed under an act of Parliament and approved by the Governor General or Minister of the Crown.) 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.

The effect of the approved Residential Red Zone Offer Recovery Plan cannot be known at this stage. Its effect will depend on its contents. Its purpose is to guide the Minister and the Chief Executive of CERA in relation to what offer, if any, will be made to the owners of vacant, commercial and uninsured properties in the red zone.

2. Context and Background



Timeline of key decisions and developments 2010-Now

2.1 Crown offers to purchase insured properties in the red zone

What is the 'residential red zone'? How was it implemented?

As a result of the unprecedented and widespread damage caused by the 2010-2011 Canterbury earthquakes, 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.

In particular, without Government intervention, property owners were likely to face significant delays resolving insurance issues. The earthquakes also meant insurers had become wary of insuring properties in greater Christchurch, and the Government was concerned insurers may not renew existing policies. Action was needed to understand the land damage and ensure that insurance would continue to be available in greater Christchurch.

The Government had gathered a significant amount of geotechnical data on the damage that had occurred and the condition of the land, in its role as insurer through the Earthquake Commission ("EQC"). The aim of gathering this information was to enable the Government to meet its liabilities in respect of land damage.

In the worst affected areas, which would become known as the flat land "residential red zone", the land damage was extensive and area-wide. The options for area-wide solutions were either:

-
1. To undertake large scale, extensive civil works to enable remediation. This would involve the removal of all built structures and preparation of the land – similar to what would be required for a new subdivision, including filling, OR
 2. To provide an alternative option to assist property owners.

There was intense public pressure, exacerbated by the June 2011 earthquakes, for the Government to assist property owners urgently in the worst affected areas. Ministers agreed in June 2011 that the first option – large scale, extensive remediation required for these areas, would be uncertain, disruptive, not timely and not cost effective. The level of damage meant that residents' health and wellbeing were affected. The Government agreed to an emergency social policy response which included:

- An area-wide process for categorising properties, which resulted in properties being categorised different 'zones', including green and red; and
- Terms for offers to purchase insured properties in the red zone.

Areas which were outside the red zone were known as green zone. The green zone indicated where rebuilding could generally occur without the need for area-wide repair of land damage. The work carried out to identify the green zones meant insurance has continued to be available for properties.

The area-wide process for categorising properties as green zone or red zone was not a formal Resource Management Act zoning or hazard mapping tool. The aim was to quickly provide the public with information that was easy to understand about the damage to the land, and the performance of land in future earthquakes. The zoning would also identify where the Crown would offer to purchase the affected land and buildings.

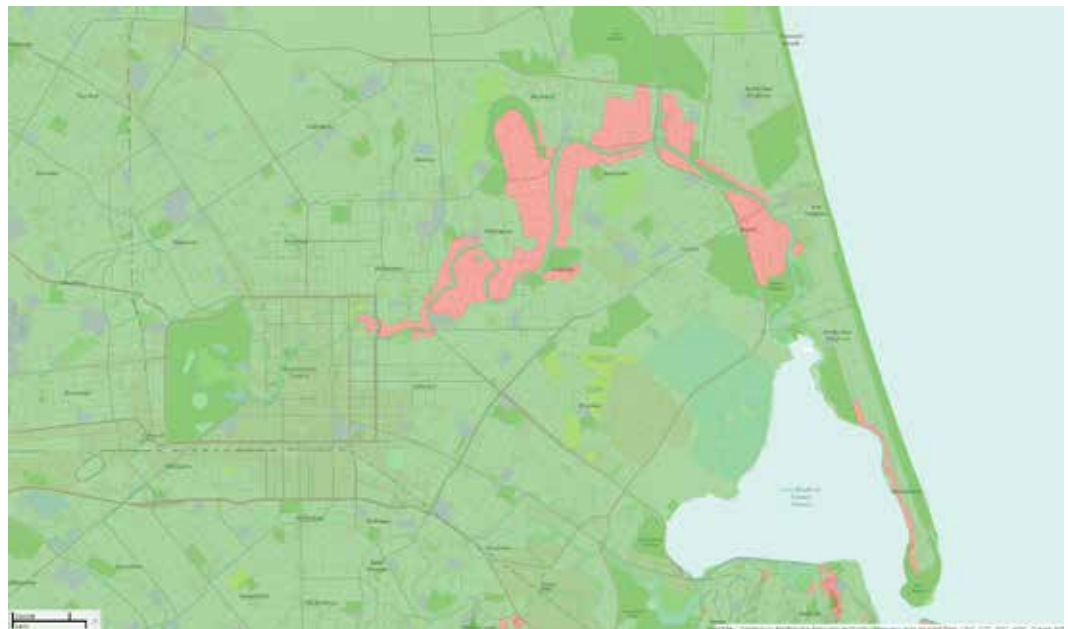
In August 2012, a flat land zoning review was completed. (The purpose of the review was to confirm whether the red/green zoning criteria agreed by Ministers had been consistently applied, and that boundary lines were drawn sensibly when taking on-going infrastructure serviceability into consideration.)

In total, over six square kilometres of land (approximately 7,400 properties) in greater Christchurch, including in the Waimakariri District, were zoned red due to land damage.

These areas extend along the Avon River corridor, Southshore, Brooklands, Kaiapoi, Pines Beach and Kairaki. The maps below show the geographical spread of these 'flat land' areas – the term used to describe all the red zone areas apart from the Port Hills.



Map 1: Kaiapoi, Pines Beach, Kairaki and Brooklands red zone areas



Map 2: Avon River corridor and Southshore red zone areas

What was the basis of the June 2011 Crown offer to buy red zone properties?

In June 2011 owners of insured residential properties (this did not include vacant, commercial and uninsured properties) in the flat land red zone who wanted to sell their property to the Crown were given a choice of two offer packages:

Option 1

The Crown would offer to purchase the property (land and buildings) at the 2007/08 rateable value - less any land and dwelling insurance payments already made. The Crown would also take an assignment of all earthquake related insurance claims.

Option 2

The Crown would offer to purchase the property (land and buildings) but only pay the 2007/08 rateable land value (less any EQC land payments already made). The Crown would also take an assignment of the EQC land claim. The landowners keep the benefit of their private insurance claims for the damage to their buildings.

The 2007 (Christchurch City) or 2008 (Waimakariri District) rating valuations were the basis for the offers. These were the valuations in place immediately preceding the 4 September 2010 earthquake. These rating valuations were chosen as the basis for the Crown's offer because they are an independent figure which could be readily applied, and they determine the value for all properties in an area at the same point in time.

A rating valuation reflects the property's market value at the date of the valuation. This is then broken down to:

- *Land value:* defined as the probable price that would be paid for the bare land. This includes any development work carried out.
- *Improvements value:* calculated by subtracting the land value from the rateable value. It represents the extra value given to the land, for example by any buildings or other structures.

In many cases this value was higher than what had been anticipated for the next valuation due in 2010/2011.

Adjustments to the purchase price of the Crown offer were possible in some situations, for example the addition of a new room which had not been included in the rating valuation.

The Crown offer also covered properties where the owner had insurance at the time of the September 2010 earthquake, but had since settled the insurance claim on the basis that the house was beyond economic repair.

The offer was later 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. Neither of these categories could get land insurance cover. The Crown took into account the fact that the majority of the dwellings under construction were finished or nearly finished before the earthquakes struck, and some were occupied but could not get residential insurance due to the timing of the earthquakes. And most of the not-for-profit organisations provided community support/development functions.

The Crown offer was not compensation or welfare. It was an offer to purchase property.

Acceptance of the offer was voluntary. For property owners who would otherwise experience very difficult living conditions, and may have faced long and complicated negotiations with their insurers, it was intended to provide an opportunity to move on from the worst affected areas with certainty and confidence.

However, many owners told CERA they felt they had little choice but to accept the offer because of the widespread damage and uncertainty around remaining in the red zone areas. At the time the offer was made, the Crown did not know what the uptake of the Crown offer would be.

The red zone has no legal status and does not change the Resource Management Act zoning of a property. The zoning was intended to identify the worst affected areas, and indicate where the Crown would make an offer to purchase properties because the land damage meant it would be difficult for owners to repair or rebuild their houses in the short to medium term. Property owners who have chosen not to accept the Crown offer have retained all rights and responsibilities for their property, as with any other private property owner.

The Crown offer to buy flat land red zone properties expired on 31 March 2013. As at 1 May 2015, of the 7,194 eligible properties, the owners of 7,053 properties (around 98%) had accepted the Crown offer.

The original objectives of the zoning decisions and Crown offers were agreed by Ministers in June 2011. They are:

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.

What about the Port Hills?

The consequences of the earthquakes for the Port Hills were different from those in the low-lying flat land red zone areas, where the land damage was generally from liquefaction and lateral spreading.

In the Port Hills, the worst affected properties were at risk from rock roll, cliff collapse and land slippage. The Crown used geotechnical reports commissioned by the Christchurch City Council to identify the worst affected properties in the Port Hills.

Removing or reducing the risk was difficult or, in some cases, impossible to achieve through engineering solutions. In most cases effective engineering solutions would not be practical or economic to construct, particularly when all factors, such as the effects on other land, are taken into account.

In August 2012 the Crown offer that was made for the flat land red zone was made for insured residential properties (this did not include vacant, commercial and uninsured properties) in the Port Hills red zone areas.

In December 2013, a zoning review was completed. (The purpose of the review was to confirm whether the red/green zoning criteria agreed by Ministers had been consistently applied, and that boundary lines were drawn sensibly when taking on-going infrastructure serviceability into consideration.)

In total, over 700 properties were ultimately zoned red, due to the unacceptable level of risk to life from rock roll and cliff collapse.

Unlike the flat land red zone areas which consist of thousands of adjacent properties, red zone properties in the Port Hills are spread out over a very large area, covering areas from Hillsborough, Sumner and Lyttelton, to Charteris Bay, and everywhere in between. The Port Hills red zone areas (over 197 hectares of land) consist of more than 50 clusters of adjacent properties, each containing between one and 25 properties.

The Crown offer to buy insured residential properties in the Port Hills red zone areas expired on 27 February 2015. As at 1 May 2015, of the 455 eligible properties, the owners of 406 (92%) had accepted the Crown offer.

What does 'life risk' mean?

Scientific modelling by Geological and Nuclear Science (GNS) was used to identify areas in the Port Hills at a high risk from natural hazards of rock roll, cliff collapse and debris inundation. The GNS models assess the risk of a person being killed as a result of geotechnical hazards, based on a combination of the following factors:

1. The likelihood of the hazard eventuating;
2. The likelihood of a person being present; and
3. The likelihood that they will be killed.

Where areas were identified to have a risk of a person being killed worse than 1 in 10,000 per annum, and other criteria were met (e.g. engineering solutions were not desirable), that property was zoned red.

For perspective, the 1 in 10,000 risk is comparable to the risk of a person being killed in a motor vehicle accident in New Zealand.

The map below shows the geographical spread of the red zone areas across the Port Hills.



Map: Port Hills red zone areas

What about underinsured properties?

This Crown offer to purchase was also made to red zone property owners who were underinsured – a total of around 25 properties across the flat land and Port Hills areas.

Many private insurance policies provide a fixed sum or indemnity value (sum-insured) insurance cover, or insure a set floor area. Such policies may be insufficient to cover all of the losses suffered for damage to buildings in a disaster. In terms of EQC cover for land damage, underinsured properties had the same level of cover as fully insured properties.

These property owners were in a very similar position to fully-insured red zone property owners in that they too suffered significant property damage, reduction in asset value and personal stress. The only defining difference was the level of private insurance coverage each group held for their improvements.

The Government decided to adjust the purchase price for underinsured properties where the property's improvements were underinsured by more than 20%. 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. Those who were underinsured by 20% or less were made the full offer.

The Government's concern was that, if 100% had been offered to these underinsured properties, the Crown would risk:

- Subsidising the insurance cover purchased;
- Being perceived as removing the incentive on property owners to insure themselves adequately; and
- Creating a disincentive for the insurance market to offer adequate insurance cover.

What happened after the Crown purchased a red zone property?

CERA is responsible for managing the Crown-owned properties in the red zone. No decisions have been made about the long-term future use, ownership or management of this land.

After properties in the red zone have been sold to the Crown, all built structures are removed and the land is tidied up as soon as is practical. This work is done to minimise risks and costs associated with owning the land, and to improve the environment until decisions are made about the land for the long term.

This interim management of Crown-owned properties supports keeping specific indigenous trees and shrubs, and established healthy trees throughout the red zone, where practical and cost effective to do so. Public safety, measures to address water ponding and run off, dust issues, amenity value and illegal dumping are also factors that are considered.

For the Port Hills red zone areas, the Crown is focused on retaining established trees and indigenous vegetation. This is an important step, as the established root systems provide erosion protection for hill areas.

2.2 What was the Crown offer for vacant, commercial and uninsured red zone properties?

In September 2012 a voluntary Crown offer to purchase was made to the owners of vacant, commercial and uninsured properties in the flat land red zone.

The Crown did not offer to purchase vacant, commercial and uninsured properties in the Port Hills red zone areas at the same time, because there was a separate process underway for the Port Hills.

The offer made in September 2012 became subject to judicial review. As a result, any decision on an offer for the Port Hills vacant, commercial and uninsured properties was put on hold until the Court proceedings were resolved.

For the three categories of vacant land, insured commercial properties, and uninsured properties, the September 2012 offer was set out as follows:

For vacant land

- A purchase price of 50% of the rateable *land* value (2007/08), on the basis that the land was damaged and uninsured.
- In return the owner transferred the land only, as there were no insurance claims to be transferred.

For insured commercial properties

- Modelled on the Crown offer for insured properties - the rateable improvements value, but with a reduced offer of 50% of the rateable land value (2007/08). This reflected that the land was damaged and that there was no EQC cover for commercial properties.
- Two options were available; the property owner could choose to receive a sum equivalent to:
 - 50% of the *land* component, and 100% of the *improvements* of the property's RV, in return the owners transferred the land and improvements to the Crown, plus the insurance claims; OR
 - 50% of the *land* value only, and owners pursue their own insurance claim. In return the land and improvements were transferred to the Crown.

For uninsured properties

- A purchase price of 50% of the most recent rateable *land* value (2007/08 rateable value) for the land.
- The offer recognised that the land was damaged and uninsured. There was no payment for uninsured *improvements*. There were no benefits under any insurance claims to give to the Crown.
- In return, the owners transferred the land and improvements to the Crown. Owners had the option of relocating the improvements before settling with the Crown.

The objectives of this Crown offer were the same as those for insured red zone properties – providing certainty to property owners as soon as practicable; creating confidence for people to be able to move forward with their lives; and using the best available information to make decisions.

Why was 100% not offered?

As with the offer to purchase insured red zone properties, the September 2012 Crown offer was not compensation or welfare. It was an offer to purchase property, and as such needed to take into account what the Crown was purchasing.

The red zone areas were the worst affected by the earthquakes, and the damage to land was extensive and area-wide. The land value was greatly diminished. When it purchased insured red zone properties, the Crown received the value of the insurance recoveries. When it purchased uninsured properties, there were no insurance claims to transfer to the Crown.

The scenarios in the table below show the differences.

Scenario A Insured 3 bedroom residential property	Scenario B Uninsured 3 bedroom residential property
<ul style="list-style-type: none">• When the earthquakes struck, the owner had been paying insurance premiums and had insurance cover.• The owner accepted the Crown offer, and chose option 1. The Crown became the owner of the property and kept any payment for land and building damage from the insurer and EQC.• In return, the Crown paid 100% of the 2007 rateable value of the property (both the improvements and land values), and the cost of demolishing the house.	<ul style="list-style-type: none">• When the earthquakes struck, the property was uninsured.• The owner accepted the Crown offer. The Crown became the owner of the property but there was no insurance money to claim.• In return, the Crown paid 50% of the 2007 rateable value of the land (not for any improvements), and the cost of demolishing the house.

The decision not to offer a purchase price of 100% of the rating valuation was based on five main considerations:

- Fairness to other property owners, including:
 - insured red zone property owners who had paid their insurance premiums and had insurance cover. These property owners were required to transfer their insurance claims to the Crown if they wanted to accept the offer.
 - uninsured property owners in the green zone, many of whom lost significant equity in their property, and were not eligible for any Crown offer. These property owners may now also face the high cost of remediating their land.
- The absence of insurance claims for damage to land and buildings that the Crown would acquire together with the property.
- The Crown would also need to cover the demolition costs with no reimbursement.
- The risks that paying 100% could reduce the incentive for property owners to insure in the future, or downplay the risk of owning uninsurable land.
- The greatly diminished value of the land.

Taking into account these considerations, the Crown decided that an offer at 50% would be fair and consistent with previous Crown offers and what other red zone property owners had been offered. These considerations were discussed by the Supreme Court.

Uptake of the offer

The uptake of the September 2012 Crown offer was as follows:

CERA indicated that accepting the offer would not prevent owners from bringing judicial review proceedings, and that if the offer was reconsidered and subsequently increased, the Crown would make top up payments to former owners.

Accepted Crown offer	Did not accept Crown offer
<ul style="list-style-type: none">• 55 vacant• 15 commercial• 62 uninsured	<ul style="list-style-type: none">• 25 vacant• 5 commercial• 31 uninsured

Many of the residential property owners who have not accepted the offer have chosen to remain living in the red zone areas.

The Crown has not made an offer to purchase vacant, commercial and uninsured red zone properties in the Port Hills. The owners of those properties were waiting on the outcome of the Port Hills zoning review, which in turn was delayed by the judicial review of the September 2012 Crown offer.

2.3 Judicial review

The September 2012 Crown offer to purchase vacant, commercial and uninsured red zone properties was challenged through the Courts by way of judicial review.

The initial case was brought by Fowler Developments Limited, a company owning eleven vacant sites in Brooklands. A group of 45 individual or joint-owners of vacant, commercial and uninsured red zone properties also brought proceedings in the name of “Quake Outcasts”, a title they chose. These two cases were heard together. The Human Rights Commissioner also joined the proceedings.

In August 2013 the High Court issued a decision which held that the creation of the red zone, and the making of an offer to owners of vacant land and uninsured improved properties in the red zone were unlawful.

The Crown appealed to the Court of Appeal, and the Court’s findings, released in December 2013, were that the Government’s decision to identify the most damaged parts of greater Christchurch as red zone was lawful. The Court of Appeal, however, declared that the original offer of 50% of the rateable land value was not lawful as there was nothing to indicate that the purposes of the CER Act (specifically the recovery objectives) had been considered when making the decision. The Court of Appeal found that a distinction could be made on the basis of insurance status.

The Chief Executive of CERA was reconsidering the offer when the Quake Outcasts and Fowler Developments Limited appealed to the Supreme Court.

In its judgment released on 13 March 2015, the majority of the Supreme Court (three judges out of five) held that the Crown offer to the “uninsured and uninsurable” had not been lawfully made. The Court directed the Minister and Chief Executive of CERA to reconsider the decisions about the Crown offer in light of the matters considered in the Court’s judgment.

The majority also held that the red zone measures should have been introduced under a Recovery Plan but “it is obviously too late for this to occur. In practical terms, a declaration as to the unlawfulness of the June 2011 decisions would not serve any useful purpose and none is made”.

On the basis of that decision, the Minister’s direction to develop the Residential Red Zone Offer Recovery Plan specifically excluded the land zoning decisions.

In its conclusion, the Supreme Court recommended a number of factors should be considered in preparing a Crown offer for vacant, commercial and uninsured red zone properties. These factors are set out in the table below (see Chapter 9 for a link to the full judgment):

“As to the September 2012 decisions and related offers, we have concluded that, although insurance was not an irrelevant consideration, other relevant considerations weighed against this being a determinative factor. Those factors include the fact that the offers to the insured, not-for-profits and to owners of buildings under construction allowed for payment above that which was insured or insurable. In addition, if some of the uninsured or uninsurable individual properties fared reasonably well and suffered little damage, the harm to their owners has arisen, at least to a degree, because of government policy of facilitating voluntary withdrawal, rather than their insurance status. These factors and the other factors discussed above should have been taken into account in deciding whether or not there should have been a differential between the insured and the uninsured and uninsurable and, if so, the nature and extent of any differential.” (paragraph 196)

“We have also concluded that, in making the decision as to any differential treatment of the uninsured and uninsurable, the recovery purpose of the Act which, among other things, is to restore the “social, economic, cultural, and environmental well-being” of Christchurch’s communities, was not property [sic] considered. The area-wide nature of the decisions on the red zones suggests an area-wide community approach to recovery where practical”. (paragraph 197)

“We have also accepted the submission of Quake Outcasts that the failure of process and consultation in June 2011 and the delay in extending offers to the uninsured and uninsurable were relevant to the decisions relating to the appellants.” (paragraph 198)

“Finally, we have concluded that, when making the September 2012 decisions, the current very difficult living conditions in the red zones was a relevant factor that should have been taken into account.” (paragraph 199)

2.4 Additional context & factors

Since the time when the original offers were made to vacant, commercial and uninsured property owners, there is now additional context and factors to consider, including: the high uptake of the Crown offer, the cost of infrastructure provision in the red zone, and more information about the estimated value of red zone land.

Uptake of the Crown offer

The uptake of the Crown offer by insured red zone property owners (98% in the flat land and 92% in the Port Hills) was extremely high, and much higher than originally anticipated. The vast majority of red zone property owners elected to accept the Crown offer and sell their properties.

Over the last three years this has had major impacts on the red zone areas – including increasing their isolation. This raises a number of social and cultural wellbeing concerns for any remaining property owners, particularly those who are also residents, as well as health and safety issues.

We need to consider these impacts for vacant, commercial and uninsured property owners, especially for those still living in the red zone.

Infrastructure provision

The high uptake of the Crown offer has also increased the already disproportionately high costs of infrastructure provision per household in badly damaged and sparsely populated areas. We need to consider to what extent this should be taken into account in developing any new Crown offer for vacant, commercial and uninsured red zone properties.

The Christchurch City Council and Waimakariri District Council (“CCC” and “WDC”) are legally required to supply services to properties in their areas. They are also responsible for the maintenance of roads and infrastructure (including drains) in their respective red zone areas.

- The horizontal infrastructure network (such as pipes, roads, telecommunications and electricity) in the red zone is damaged and needs to be repaired to function optimally. So far, the parts of the network that are necessary to continue service for green zone properties have been or are being repaired, but little has been done to repair parts of the network that only service red zone properties (apart from some repairs in Kairaki and Pines Beach).
- For now, infrastructure provision for remaining occupied red zone properties across greater Christchurch is achieved through temporary measures such as surface pipes, manual removal of waste via trucks, and continued use of inadequate infrastructure. 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.

Provision of infrastructure services (stormwater, wastewater, potable water, roading and solid waste) to isolated properties is always expensive. As well as the damage to infrastructure caused by the earthquakes, there are also very high costs associated with repair and maintenance of red zone infrastructure. These costs divert funds from alternative

uses that could contribute to a focused, timely and expedited recovery for greater Christchurch communities. The costs are shared between ratepayers locally and taxpayers nationally.

The indicative average cost is around \$25,000 per property annually to provide infrastructure services to improved privately-owned red zone properties, compared to approximately \$1,200 per green zone property annually. This is an average cost, and costs for servicing individual properties will vary.

The latest rating valuations for red zone properties have dropped significantly compared to their 2007/08 rating valuation and surrounding green zone properties' 2013 rating valuations. This means that red zone property owners' rates have dropped too; widening the gap between what the user pays and the actual costs of provision.

Current land values – how do these compare?

Since the Canterbury earthquakes, changes in land values across greater Christchurch have varied dramatically. Some areas have increased significantly in value, while others have decreased, presumably due to factors such as the quality of the land, the cost of building with appropriate foundations, and concerns about lack of infrastructure.

According to the 2013 CCC and WDC rating valuations, the red zone areas (flat land and Port Hills) have an average rateable land value of 9% of the 2007/08 rateable value. In 2014, CERA commissioned independent valuation work that indicated the average value of red zone vacant land is 28.6% of the 2007/08 rateable value, and land for red zone commercial properties is 26% of the 2007/08 rateable value.

The 2013 rating valuations undertaken for the CCC and WDC show that the current average value of land in areas where it is now known to be more complex to build, for example Technical Category 3 (TC3) land and the Port Hills, has dropped. For example, TC3 properties have an average current land rateable value of 70% of the 2007/08 rateable land value. There is no government assistance for property owners in the green zone who have lost equity as a result of the earthquake.

While TC3 land has dropped in value generally, there is still a market for it, and the latest valuations provide a useful benchmark for assessing a fair offer to uninsured land owners in the red zone. There is little market for red zone land – and it is difficult to assess the true market value because there have been no sales except to the Crown.

For residential buildings in the red zone, new rating valuations undertaken in 2013 show a significant decrease in value – 8% of the 2007 CCC rateable improvements value, and 5% of the 2008 WDC rateable improvements value.

Another way of measuring the value of residential improvements within the red zone is by calculating salvage value. On average, the salvage value (for example, doors, windows, kitchens and bathrooms) of improvements in red zone properties is estimated at \$3,500 per property.

The Crown needs to consider to what extent these values need to be taken into account in developing any new Crown offer to vacant, commercial and uninsured property owners. Without a Crown offer, these property owners now have significantly reduced equity and may find it very difficult to sell.

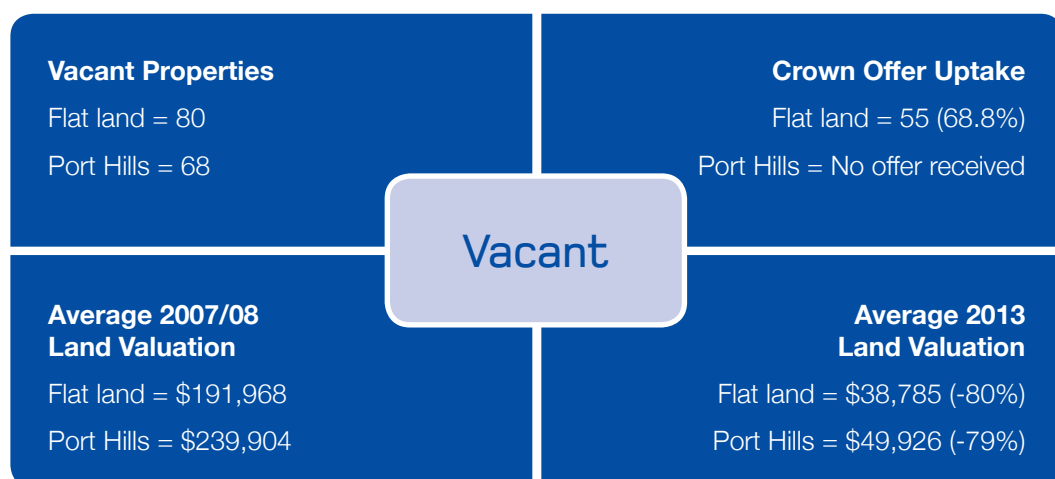
Human Rights Commission 2013 report

The Human Rights Commission published a report in December 2013 on ‘Monitoring Human Rights in the Canterbury Earthquake Recovery’ (see Chapter 9 for the link to the full report). The report highlighted the need for a “people-centred earthquake recovery process, one that involves people affected by the earthquakes in problem identification, solution design and decision-making”.

The process for the Recovery Plan will enable community involvement at each stage – identifying the issues, providing information to assist with designing the options, and inviting views on the proposed options for any final Crown offer for vacant, commercial and uninsured red zone properties.

We are beginning the discussion with this Preliminary Draft, and inviting input from everyone – the property owners, the wider community, community groups and organisations.

3. Vacant: What Should the Crown Offer Look Like?



There are 148 vacant properties in the red zone. Of these, 80 vacant properties are located in the flat land areas, and 68 are located in the Port Hills areas.

It is not possible to insure vacant land in New Zealand, or any other country, either through the EQC scheme or privately. Vacant land owners can be distinguished from other property owners living in the red zone, as they were not affected by devastation to houses on their land.

This is not to say that they have not suffered considerable loss and, in some cases, distress as a result of the reduction of value in the land and the lost opportunities the land offered.

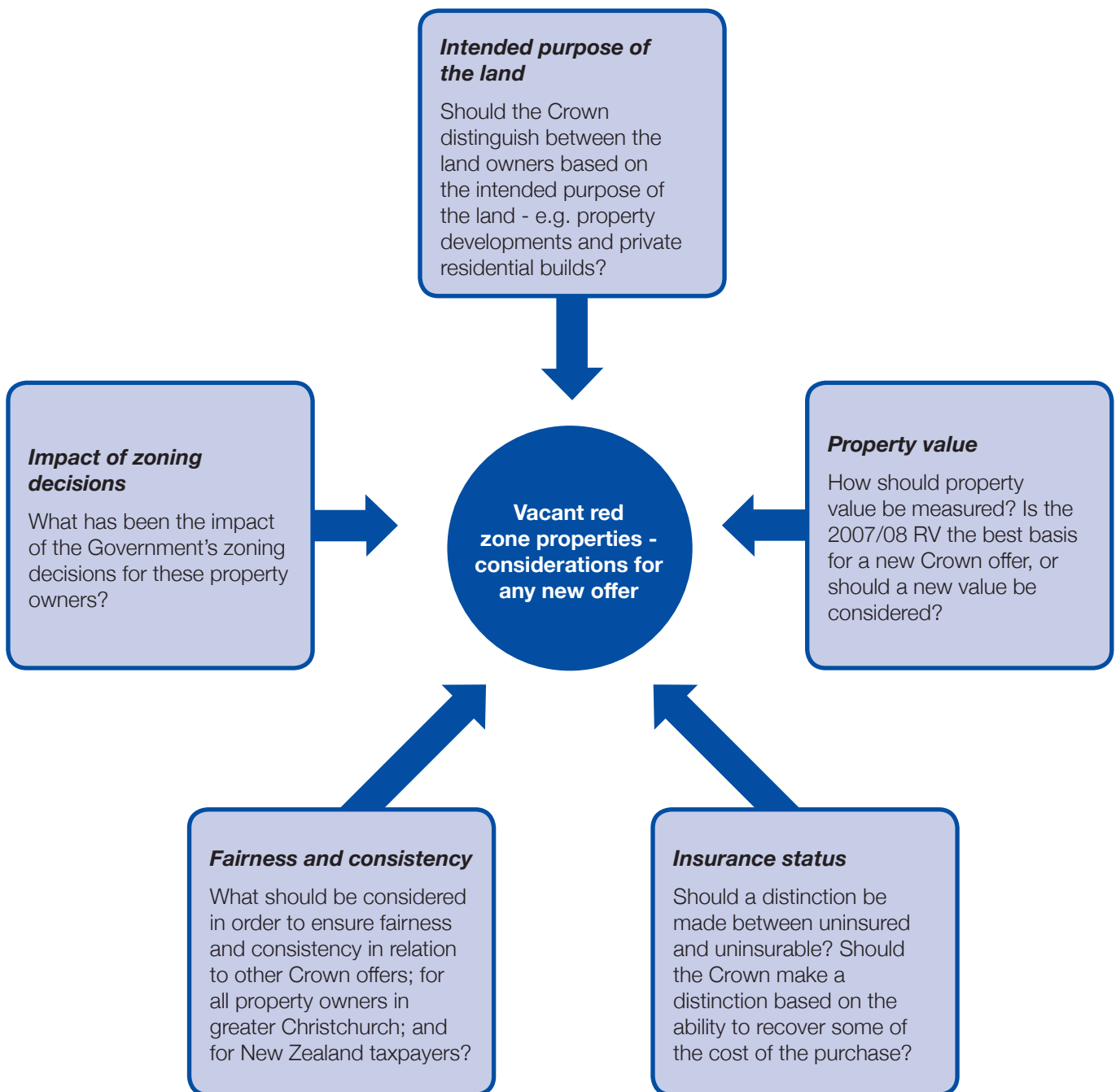
The owners of vacant land in the residential red zone may also have had different intentions for their property. A commercial developer, for example, might own a number of vacant properties, intending to develop them to sell for profit. On the other hand, an individual person might own one vacant section intending to build a family or retirement home. Other situations could fall somewhere in between; for example an individual might own land to build a house to sell, but might not consider themselves to be a property developer.

We also need to think about whether a different approach should be taken for vacant land in the Port Hills red zone areas, because of the unique life risk issues in these areas.

In considering the shape of any final Crown offer, we need more information on this category of properties.

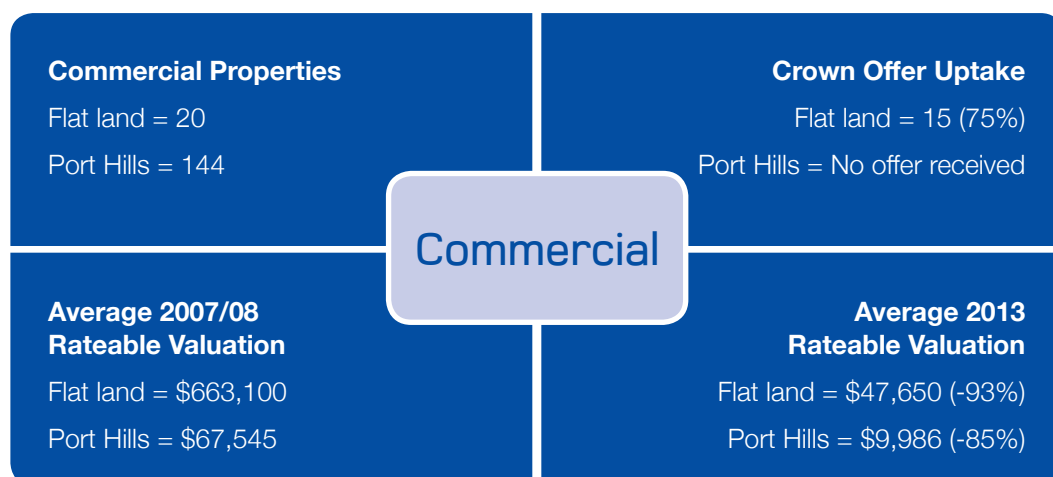
The questions on the next page are about starting the discussion. We want to hear your views on what the Crown must consider in deciding about any new Crown offer for vacant red zone properties.

Key things to think about:



We need your feedback by 5pm, Tuesday 19 May 2015

4. Commercial: What Should the Crown Offer Look Like?



There are 20 commercial properties located in the flat land areas. 144 commercial properties are located in the Port Hills areas – 140 of these are storage units or garages.

It is not possible to insure commercial land in New Zealand, or any other country, either through the EQC scheme or privately. The owners of commercial red zone properties were able to insure their buildings under private insurance contracts, but were not eligible for EQC cover. The owners were therefore not able to insure the land. All of these owners had insurance for their buildings and were able to claim from their insurance company or be paid 100% of the improvement value under the Crown offer.

Aside from the 140 storage units and garages, the other 24 properties are mainly small operators, reliant on local support and patronage. Most are corner stores, takeaway shops, veterinary clinics and cafes. The businesses are predominately owner-operated and service local communities. As such, their customer base may have been diminished, at least for the red zone areas, even if the businesses are still able to operate.

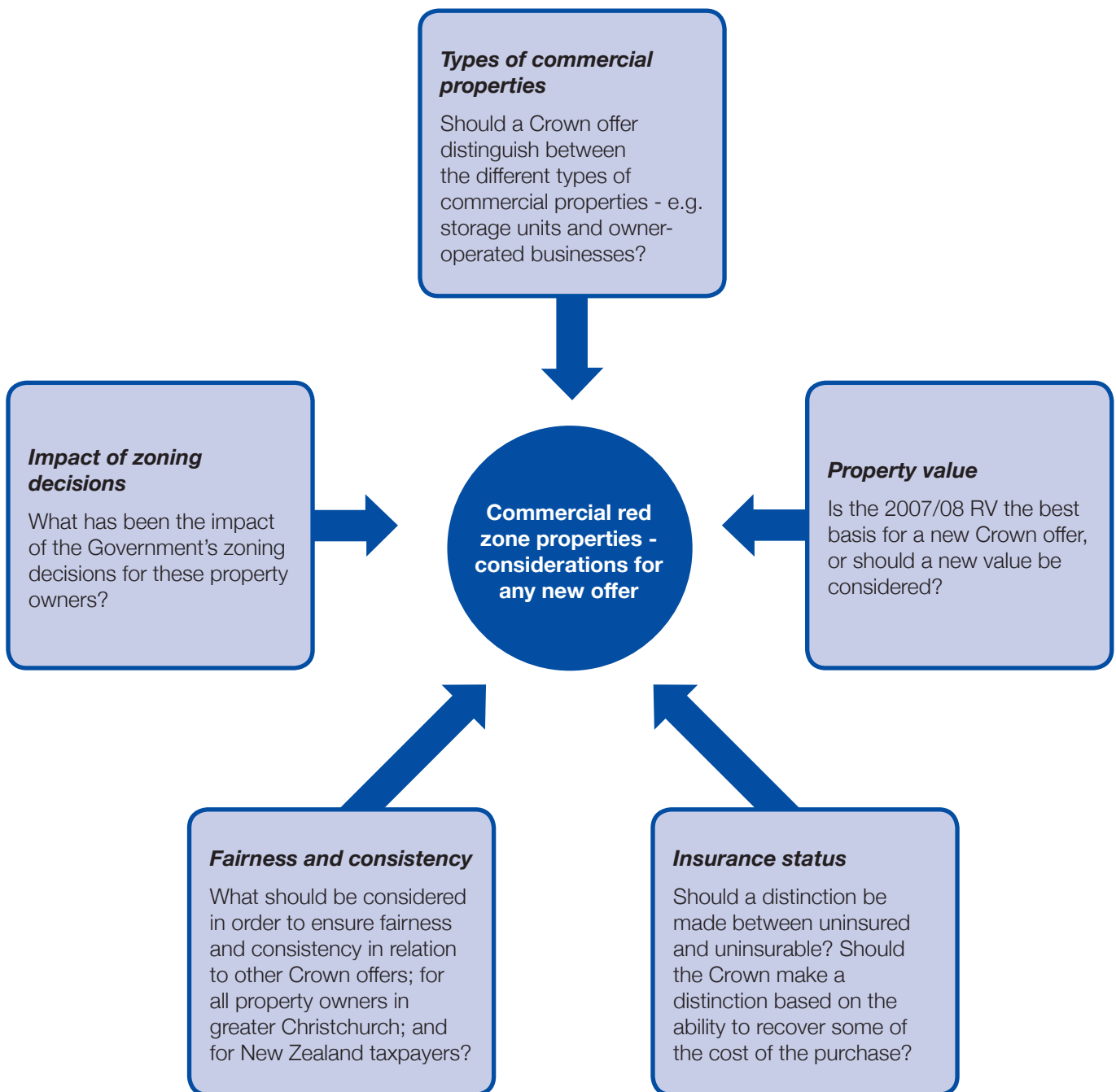
As these are commercial premises there are different considerations about these owners remaining in the red zone, compared with residents of private homes.

We need a better understanding of this category of properties. For example, the impacts of the earthquakes and the Government's decisions around the red zone and Crown offer are likely to be quite different for owners of a storage unit, compared with an owner-operated cafe.

We also need to think about whether a different approach should be taken for commercial properties in the Port Hills red zone areas, because of the unique life risk issues in these areas.

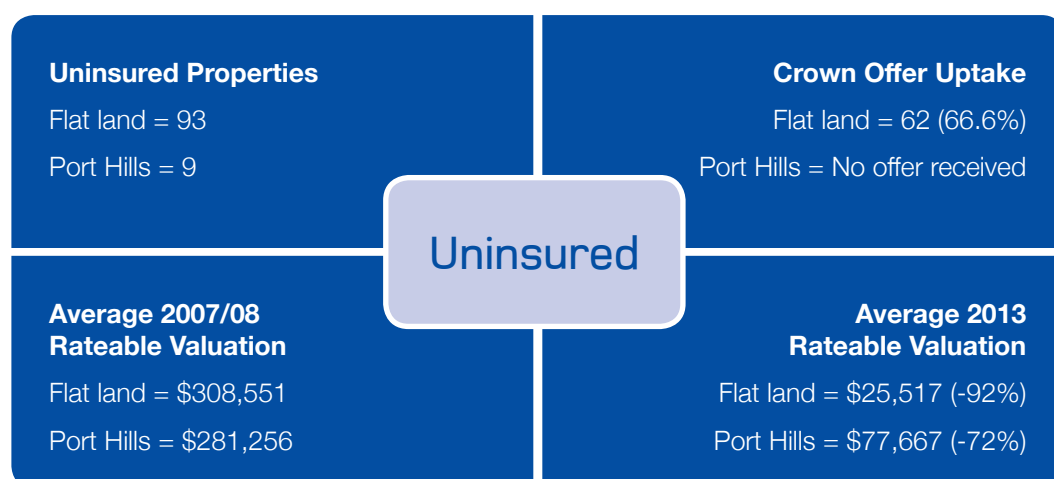
The questions on the next page are about starting the discussion. We want to hear your views on what you think the Crown must consider in deciding about any new Crown offer for commercial red zone properties.

Key things to think about:



We need your feedback by 5pm, Tuesday 19 May 2015

5. Uninsured: What Should the Crown Offer Look Like?



There are 102 uninsured properties (this category includes only the uninsured improved properties, i.e. they have either a residential or commercial building, and are not vacant land) in the residential red zone. Of these, 93 uninsured properties are located in the flat land areas, and nine are located in the Port Hills areas.

Property owners with no insurance in the red zone are in a different situation to similar property owners in the green zone. 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.

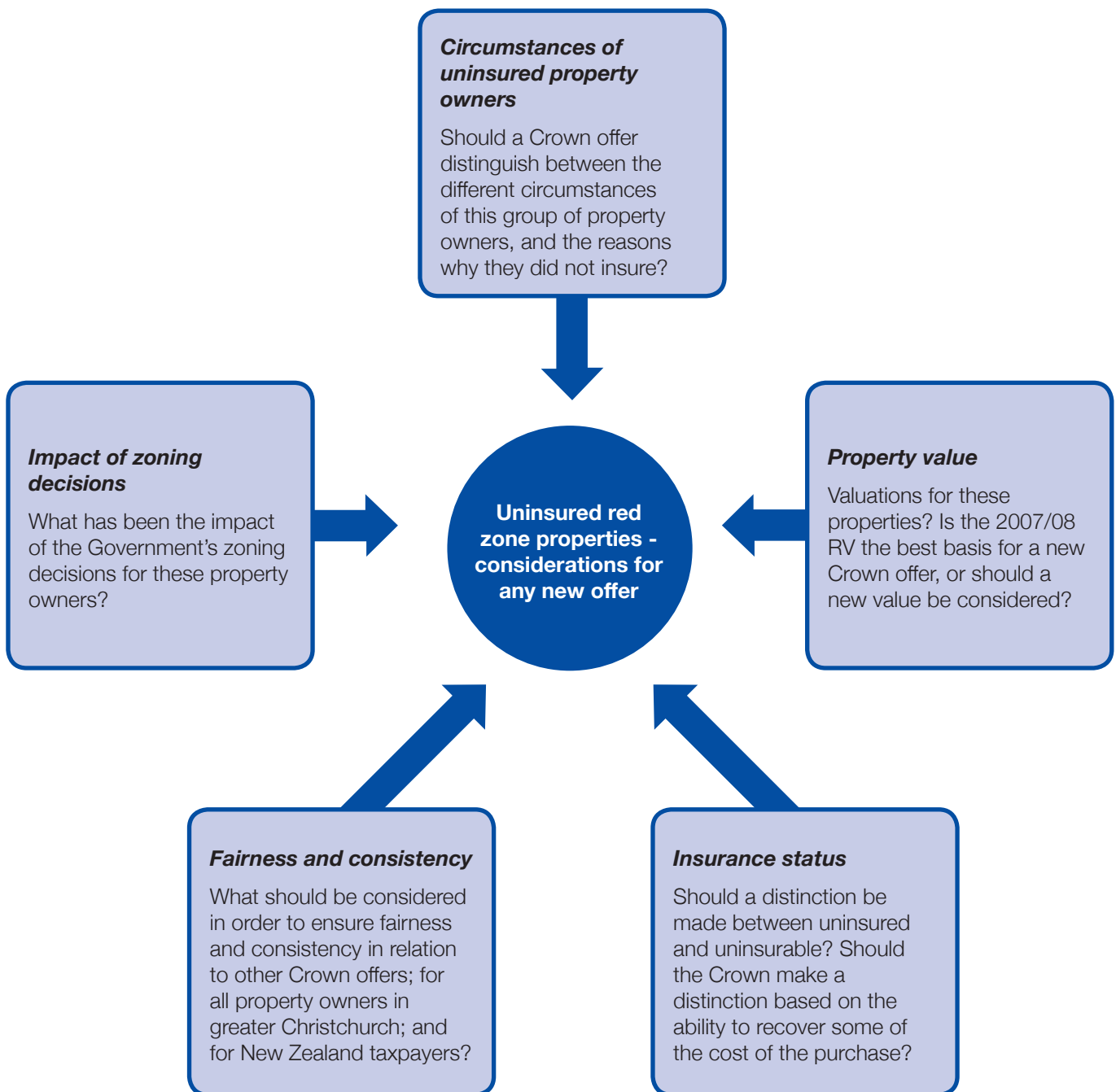
We need a better understanding of the differences among this category. This might include the following:

- Those who did not have insurance – and on what basis?
- Should consideration be given to the individual reasons why property owners did not have insurance? For example – those who made a conscious decision not to insure compared with those who, for various reasons, let their insurance lapse?
- Were there any property owners in this group who could not insure?

We also need to think about whether a different approach should be taken for uninsured properties in the Port Hills red zone areas, because of the unique life risk issues in these areas.

The questions on the next page are about starting the discussion. We want to hear your views on what you think the Crown must consider in deciding about any new Crown offer for uninsured red zone properties.

Key things to think about:



We need your feedback by 5pm, Tuesday 19 May 2015

6. Other Affected Property Owners

6.1 Rapaki Bay

There are ten red zone properties at Rapaki Bay in the Banks Peninsula, which were all part of Māori Reserve Number 875. That Reserve was established from the Port Cooper purchase agreement signed between Ngāi Tahu and the Crown in 1859. By around 1886 the Reserve had been partitioned into individual titles.

Where the land is Māori freehold land, it is subject to the Te Ture Whenua Māori Act 1993. This Act is the guiding legislation for the Māori Land Court, recognising that the land is a taonga tuku iho (handed down from each generation). The Act promotes the retention of Māori land and its use for the benefit of its owners and family (whānau and hāpu).

All of the properties were zoned red, as part of the Port Hills red zone areas, because of the unacceptable risk to life from rockfall. Boulders dislodged from the mountain above Rapaki Bay during the earthquakes damaged one house irreparably, and are an on-going threat to the properties. As such the properties have been assessed as unsafe for residential use.

Five of these properties are either vacant and/or uninsured, and therefore are part of the main focus of this Recovery Plan. There are also five other insured red zone properties, which were eligible for the Crown offer which expired on 27 February 2015. The owners of four of these properties did not accept the Crown offer. The remaining property (General land) has been settled with the Crown.

A unique consideration for the red zone properties at Rapaki Bay is that they are all either General land owned by Māori or Māori freehold land. Māori freehold land can only be legally sold in accordance with the Te Ture Whenua Māori Act 1993.

This means that if the owners wish to accept a Crown offer, the land status will need to be changed by the Māori Land Court, before the Crown can purchase the property. Before agreeing to change the status, the Māori Land Court first needs to be satisfied this would not result in Māori land alienation – i.e. land changing from Māori ownership. To satisfy the Court, the Crown and the property owners would need to reach an agreement about the future long-term use and governance of this land.

It was therefore not possible for the owners of the insured Māori freehold land to accept the expired Crown offer, if they wished to do so. Some of the owners of the red zone General land at Rapaki Bay also felt unable to accept the Crown offer, 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 question now is how these properties should be considered, as part of any final Crown offer. The owners of the five vacant and/or uninsured properties at Rapaki Bay will be considered under this Recovery Plan. We also need to keep in mind that the other four

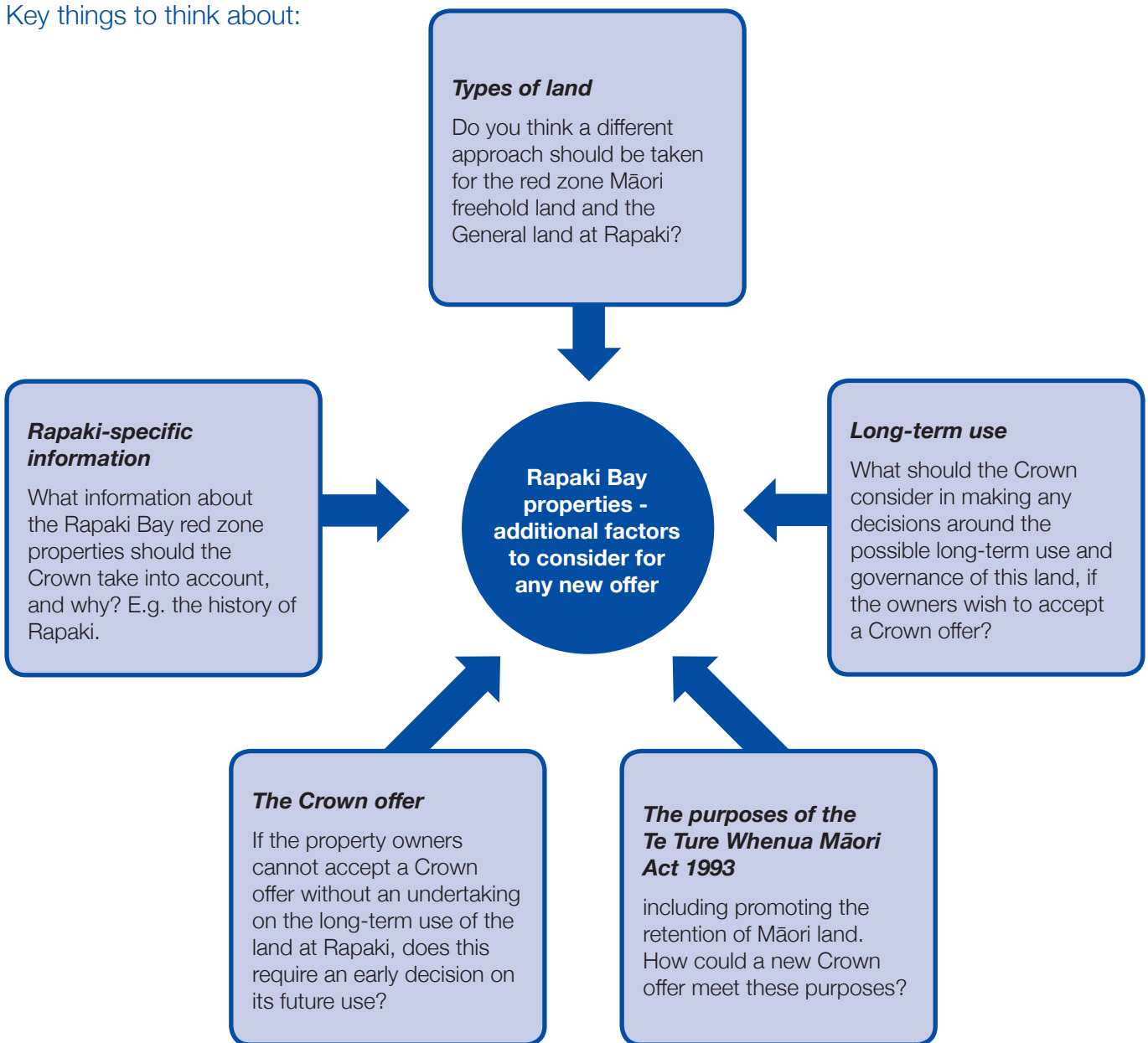


Map: Rapaki Bay, with the red zone area highlighted

insured privately-owned red zone properties at Rapaki Bay may be affected by a new Crown offer. If, for example, the Crown were to include an undertaking about the long-term use of the land at Rapaki Bay, we would also need to consider these four insured properties, to ensure a fair and consistent approach.

As well as the questions in the previous three chapters for vacant, commercial and uninsured properties, there are some specific considerations for the red zone properties at Rapaki Bay. The additional questions below are about starting the discussion.

Key things to think about:



We need your feedback by 5pm, Tuesday 19 May 2015

6.2 Underinsured

The 100% Crown offer applied to underinsured properties – a total of around 25 properties across the flat land and Port Hills areas. The Government decided to adjust the purchase price for underinsured properties where the property's improvements were underinsured by more than 20%. 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.

These property owners may be affected by a new Crown offer for vacant, commercial and uninsured properties. If, for example, the Crown were to offer more than 50% of the rateable value of improvements for uninsured red zone properties, the Crown would also need to consider each of these 25 underinsured properties, to ensure a fair and consistent approach.

6.3 Others affected

There are still some property owners living in the red zone who were insured and decided not to accept the initial Crown offer. That was their choice and as the offer was voluntary they were entitled to make that choice. It is, however, possible that the reality of living in the red zone has not equated to their expectations and they may now wish to sell. The August 2011 Crown offer has expired. Although these people are not directly covered by the subject matter of this Recovery Plan, this is a related issue. Should the Crown again offer to purchase these properties? If so, should the offer be on the same basis as was first made?

7. What Next?

The previous chapters of the Preliminary Draft Recovery Plan have helped to set the scene. They set out the various developments and decisions that led up to this point: the Canterbury earthquakes, the reasons why the Government created the red zone and Crown offers; the Supreme Court judgment; and some of the important factors we need to consider for vacant, commercial and uninsured red zone properties.

The next step is to find out what you think. To develop a new Crown offer, we need to ensure we have all the relevant information and understand the public's views.

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

You can provide comments on this Preliminary Draft in a number of ways:

- » Go online at: www.cera.govt.nz/redzoneoffer
- » Via email to: info@cera.govt.nz
- » By post to: Preliminary Draft
Residential Red Zone Offer Recovery Plan
Freepost CERA
Canterbury Earthquake Recovery Authority
Private Bag 4999
Christchurch 8140

Feedback is due by 5pm, Tuesday 19 May 2015

8. Glossary

Term	Definition
Canterbury earthquakes	This covers the earthquakes between 2010 and 2012, including the major earthquakes of 4 September 2010, 22 February 2011, and 13 June 2011.
CCC	Christchurch City Council
CER Act	Canterbury Earthquake Recovery Act 2011
CERA	Canterbury Earthquake Recovery Authority
EQC	The Earthquake Commission
Flat land red zone	Term used to describe the residential red zone areas in greater Christchurch, including Waimakariri District, but excluding the Port Hills.
Greater Christchurch	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.
Infrastructure	Includes roads; storm water, drinking water and sewerage pipes; telecommunications; and electricity.
Māori Land Court	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.
Minister for Canterbury Earthquake Recovery	The Minister who holds the Canterbury Earthquake Recovery portfolio. Currently this is Hon Gerry Brownlee
Port Hills red zone	Term used to describe the residential red zone areas in Christchurch that are in the Port Hills (i.e. excluding the flat land residential red zone)
Rating valuations and rateable values	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.
Recovery Strategy	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.
Residential red zone or 'red zone'	An area of residential land which suffered severe land damage due to the Canterbury earthquake sequence, and where the August 2011 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.
Strategic partners	CERA, Te Rūnanga o Ngāi Tahu, NZ Transport Agency, Environment Canterbury, Christchurch City Council, Selwyn District Council and Waimakariri District Council
Technical Category and TC3	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.
Waimakariri District	Includes Kaiapoi, Kairaki and Pines beaches, and surrounding areas
WDC	Waimakariri District Council

9. Links to Further Information

Recovery Strategy for Greater Christchurch

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

<http://cera.govt.nz/recovery-strategy/overview/read-the-recovery-strategy>

Canterbury Earthquake Recovery Act 2011

The Canterbury Earthquake Recovery Act 2011 (CER Act) came into force 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

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 for red zone property owners in the Port Hills. Note it does not include an offer for owners of vacant, uninsured or commercial 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 properties), and insured commercial/industrial properties. Note this paper does not apply to the Port Hills red zone.

Supreme Court Judgment

The Crown offer for vacant, commercial and uninsured 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

Human Rights Commission Report

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

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>

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