Regulatory Impact Statement

Greater Christchurch Regeneration Bill

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Canterbury Earthquake Recovery Authority. It provides an analysis of options for the necessary regulatory powers following the expiry of the Canterbury Earthquake Recovery Act 2011 (the Act), which will occur on 18 April 2016.

In late 2014, Cabinet agreed to a review of the implications of the expiry of the Act for the recovery of greater Christchurch. An initial assessment of the Act was that certain powers are still needed and that the pace of regeneration would slow significantly if these were allowed to expire. International experience suggests that the process of full recovery and redevelopment from a disaster such as the earthquakes typically takes decades, and standard regulatory processes would not be able to cope with the tasks ahead.

This RIS addresses the proposals considered by Cabinet Business Committee on 31 August 2015 on the content of a Bill, taking into account submissions, and further discussions with other stakeholders. A draft RIS was circulated to government agencies in August 2015 to inform their advice on the proposed policies. This final, revised version of the RIS provides a summary of the analysis of options for the Bill, for consideration by Cabinet's LEG Committee.

The Act was a unique response to a complex and catastrophic series of events and, even in retrospect, its impact is difficult to assess. Assessment of the need for continuing specific powers is based largely on reports of their use to date, and the advice of CERA staff and other agencies. To the extent they can be assessed, relative costs and benefits of options have been considered, along with the views of the Minister's Advisory Board on Transition, the Strategic Partners (the four local authorities and Te Rūnanga o Ngāi Tahu) and wider feedback on the Draft Transition Recovery Plan. Many of the Bill's provisions are enabling, and costs and benefits can be calculated only when particular powers are to be exercised.

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Executive summary

1. The Canterbury Earthquake Recovery Act 2011 (the Act) will expire on 18 April 2016. The powers provided by the Act will also expire and any planning documents produced in accordance with it will cease to have effect.
2. The next phase to support greater Christchurch's recovery is one of regeneration, which captures a combination of restoration and the urban renewal and development that the area is now experiencing. There is still a need for a strong legislative basis to support the new focus on regeneration, and many of the powers provided in the Act are still required. There is also a need for greater local leadership, and for an orderly transition to standard regulatory arrangements and delivery of functions.
3. Of the options considered in response to the expiry of the Act, enacting new legislation for the regeneration of greater Christchurch is the best option. The Greater Christchurch Regeneration Bill is the result.
4. The Bill's purpose is: supporting the regeneration of greater Christchurch. It has "purpose and necessity tests" to give reassurance that the use of powers in the Bill can be justified in terms of this purpose. Other provisions also offer general safeguards: a five-year time limit, tighter geographical limits to the scope, reporting and review requirements, and application of the Official Information Act.
5. As part of the transition from central to local leadership, a new jointly controlled entity called Regenerate Christchurch is to be established to provide leadership of the next stage of regeneration. It will be established under the Bill as a special purpose vehicle that is jointly controlled by the Crown and Christchurch City Council, with defined purpose, objectives and functions. It will not include delivery functions.
6. The Bill provides a number of special planning powers and powers relating to land. Regeneration Plans will provide an expedited process for tackling key planning and regulatory issues. They will support the transition to local leadership and standard processes through increased roles for the Strategic Partners (the four local authorities and Te Rūnanga o Ngāi Tahu), and Regenerate Christchurch.
7. Other powers are similar to those currently in the Act, with appropriate amendments. These include powers to amend council plans and other documents, acquisition and disposal of land (including compulsory acquisition and powers to subdivide and amalgamate Crown and Council land), powers to undertake works, close roads, and approve cadastral surveys, and direct property owners to act for the benefit of adjoining owners. Compensation provisions will be needed for demolitions, limited appeal rights will be provided, and people acting under the Bill will be largely protected from liability.
8. Eight Orders-in-Council, which were made under the Act, will still be needed post April 2016, so the Bill provides for them to be continued in force, but there will be no power to issue new Orders-in-Council.
9. The financial implications of the Bill are minor, except for the establishment and operation of Regenerate Christchurch. Operating costs are yet to be agreed between Christchurch City Council and the Government.

Status quo and problem definition

10. The Act was passed shortly after the February 2011 earthquakes. An effective recovery from such a catastrophic event necessitated trade-offs between the need for expedited direction and outcomes set against the benefits of normal decision making and regulatory processes. The Act allowed streamlined decision-making on the basis that the extraordinary scale and urgency of the recovery justified this approach. The Crown acquired and still holds over 7,500 properties in the residential red zone and over 200 in the Christchurch CBD.

11. The Act will expire on 18 April 2016. The status quo option is to allow that to happen, and have the recovery proceed under normal Resource Management Act 1991(RMA) and other relevant legislative processes. In this event, the powers provided by the Act would also expire and any planning documents produced in accordance with it would cease to have the effect specified in the Act. This would have a number of implications for the regeneration of Christchurch and surrounding areas, as is set out in this analysis.

12. In late 2014, Cabinet agreed to a review of the implications of the expiry of the Act for the recovery of greater Christchurch. The initial assessment was that certain powers are still needed and that the pace of recovery would be significantly affected if these were allowed to expire. Special legislation is still necessary to enable central and local government agencies to continue to undertake a range of tasks and functions to support the recovery efforts.

13. The review identified that significant sections of the Act should expire, as they are no longer needed or justified. The key question now is to what extent special powers and streamlined processes are still required to support greater Christchurch as it enters a new phase of regeneration. An increasing level of public and stakeholder consultation and local leadership of decision making is expected and, where possible, a return to normal regulatory processes.

Objectives

14. The impetus for the proposed legislation reflects the transition from earthquake recovery (restoring services and initial reconstruction) into one of regeneration. Regeneration carries a range of meanings, including both regrowth and new growth, and for greater Christchurch it captures a combination of restoration and the urban renewal and development that the area is now experiencing. Distinguishing work needed to address the specific effects of the earthquakes from work needed to regenerate the city's urban form and population is becoming increasingly difficult.

15. The following factors form the starting point for an assessment as to what is needed beyond April 2016:

    - The need for a strong legislative basis to support regeneration.
    - The need to transfer leadership and the delivery of functions to more permanent homes, with local leadership.
    - An orderly transition to standard regulatory arrangements.

16. Options will need to be analysed in terms of their contribution to meeting these objectives, as well as the need to:

    - Advance public and private sector investment confidence,
    - Retain public confidence in the exercise of powers, and
    - Minimise administrative costs and delays to decision making.

Options and impact analysis

Need for a new Act

17. Three basic options are considered in response to the expiry of the Act:

    - The Act expires, and is not replaced.
    - Amend the existing Act to extend its timeframe, along with other changes; or
    - Enact new legislation for the regeneration of greater Christchurch.

18. The initial assessment of the Act review was that certain powers are still needed and that the pace of regeneration would slow significantly if these were allowed to expire. International experience suggests that the process of full recovery and redevelopment from a disaster such as the earthquakes typically takes decades. Construction levels in greater Christchurch are expected to remain well above pre-earthquake levels until at least 2018 in the residential sector and 2022 for non-residential and non-building projects.

19. Standard regulatory processes would not be able to cope with the tasks ahead. The Advisory Board on Transition advised that "regeneration and development will stall without the expedited processes and ability to 'cut through' that the Act has provided". An example is an expedited process for the management of Crown land, which will be central to the central city Anchor Projects and future uses of the residential red zone. This important consideration eliminates the first option. Analysis of specific powers, as set out later in this document, supports that general conclusion.

20. The second option would not reflect the shift in phase from earthquake recovery to regeneration. Without significant amendment, it would not represent a positive step in the transition process to normal arrangements for the greater Christchurch area. The changes that would be needed to make the current Act fit for purpose makes this a less suitable option than a fresh start.

21. A new Act, with refined powers, provides a strong signal of an important milestone in the regeneration process. A new Act, focused on regeneration, renewal and urban development and on the establishment of a new entity with an explicit regeneration mandate, rather than on recovery, and on the transition to local leadership, will clearly signal and facilitate the effort required over the next phase. This is the preferred option.

General provisions

22. The Bill contains a number of general safeguards, which provide a balance between the special powers that will be needed to facilitate regeneration and the potential for any adverse regulatory impacts. These are:

    - The purpose of the Bill (and the tests associated with it)
    - An expiry date
    - Limits on the geographic scope of the Bill
    - Annual reviews
    - Application of the Official Information Act.

23. Each of these general safeguards is outlined below. There are also specific checks and balances built into specific provisions, and these are detailed in the subsequent sections of this Statement.

Purpose of the Bill

24. Two options have been considered for the purpose clause:

    - Supporting the regeneration of greater Christchurch (without linking regeneration in any way to the earthquakes);
    - Supporting the regeneration of greater Christchurch, required as a direct or indirect result of the Canterbury earthquakes.

25. In the Bill, the title, purpose clause, and key provisions are not connected to the earthquakes. This is intended to support the intent to provide greater scope and flexibility to deal with the challenges faced by urban centres in greater Christchurch, which may not be able to be connected to the Canterbury earthquakes.

26. While the Bill would not be required if not for the earthquakes, it is increasingly difficult to unbundle the direct effects of the earthquakes from wider urban renewal and development issues that are related to or have been exacerbated by the earthquakes (such as urban renewal in New Brighton, which has lost significant population due to earthquakes). A purpose clause linked to earthquake recovery is likely to give rise to litigation over whether an effect or action is earthquake related or not, and lead to the possible exclusion of desirable regeneration activity that may or cannot be attributed to the earthquakes.

27. The broader purpose creates a wider range of circumstances under which the powers under the Bill could be used. In doing so, it may be perceived as loosening the constraints on the use of powers under the Bill, as compared to the Act. It also raises some other risks.

    - It may increase the risk of the Bill being found to be inconsistent with the New Zealand Bill of Rights Act 1990. For example, powers to restrict access to a specified area or building had previously been identified as an acceptable limit on rights to freedom of movement, given the purposes of the Act. In light of broader purposes, however, those and other powers could be viewed as an unreasonable

limit on various rights and therefore inconsistent with the New Zealand Bill of Rights Act.

- If the powers in the Bill are not limited to clearly defined purposes, the courts may impose their own, potentially narrower, interpretation on the appropriate use of these powers. For example, there is a general statutory presumption that legislation is not intended to interfere with private property rights unless it is clearly worded as such. If such powers are not limited to a clear purpose, the courts may impose their own, potentially narrower, interpretation on the appropriate use of these powers.
- It could lead other councils to seek similar expedited processes, departing from established regulatory processes, particularly for the RMA. Different regulatory regimes across New Zealand can potentially add to compliance costs for businesses that operate across more than one regime.

28. The second option would see the purposes of the Bill expanded through a definition of regeneration that includes urban renewal and development, and by making regeneration apply to both direct and indirect consequences of the Canterbury earthquakes. This would provide greater scope and flexibility to deal with the various difficulties faced by different urban centres in greater Christchurch, while still requiring a link between regeneration and the Canterbury earthquakes (even if that link is an indirect one).

29. This would reduce the risks set out above to a considerable extent. Allowing for "direct or indirect" consequences raises some uncertainty as to just how this this will be interpreted, and may result in some testing through the courts.

30. A purpose clause is important in all legislation, because it sets out what an Act is intended to achieve and provides guidance to those carrying out their functions under that piece of legislation. The purpose clause of the Act has provided an important overall check on the exercise of powers through the test set in section 10. Section 10 (1) requires that any exercise of the powers in the Act by the Minister or the Chief Executive must be in accordance with the purposes of the Act (the purpose test), while section 10 (2) provides that for a power to be exercised, the Minister or chief executive must reasonably consider it necessary (the necessity test).

31. These general limits on the powers of the Minister and the chief executive of CERA were central to the *Quake Outcasts* case, where the Supreme Court found that the Crown was required to act within the terms of the statutory regime. If the Bill provides powers similar to those in the Act, it should contain a purpose clause with a clear and comprehensive statement of scope and direction for regeneration efforts, with a necessity test to give reassurance that the use of the powers in the new Act can be justified in terms of those purposes.

32. The balance, between providing sufficient flexibility to respond to the full range of scenarios that may arise in the process of regeneration and providing safeguards to protect individual rights, is at its most stark in this clause and has a significant regulatory impact. CERA believes that Cabinet should give this matter careful consideration, given that both approaches have substantive risks.

33. Other proposed changes to the purpose clause are more straightforward. One added purpose recognises the local leadership of the Strategic Partners: the four local

authorities (Christchurch City Council, Environment Canterbury, Selwyn District Council and Waimakariri District Council), and Te Rūnanga o Ngāi Tahu. Another aims to enable community participation in the planning of the regeneration of Greater Christchurch. These reflect the objective of moving influence back to local government.

34. Finally, the need to meet the necessity test has become overly constraining on relatively straightforward activities, such as granting short term leases for land held or minor land works, leading to compliance costs disproportionate to any risks arising from the use of the powers. These unintended consequences for land powers are addressed through the addition of another purpose on the need for the Crown to effectively manage, deal with, and dispose of land acquired by the Crown under the Act, or the Bill.

Time limits and expiry provisions

35. Sunset provisions can provide an important safeguard to ensure that powers will be held only as long as they are needed, particularly if they can override normal powers and processes. The Act contains such a provision, and will expire on 18 April 2016.

36. Assessments of known recovery functions and timeframes suggest that some powers will be needed for at least three years and, depending on decisions about future use or disposal of land and delivery arrangements, there is potential for some powers to be needed for five years.

37. Regeneration needs in terms of urban renewal and development can be expected to have a much more open-ended timeframe – possibly never-ending. However, the need for bespoke legislative powers to support these later stages of recovery and regeneration will diminish as the work becomes increasingly "business as usual".

38. The Crown is still acquiring properties and will be managing clearances and land remediation in the Port Hills residential red zone until at least 2018. The delivery dates for several of the major construction projects in the central city have recently been extended. For example, the Metro Sports Facility is now expected to be fully completed by early 2020 and the Stadium is delayed until at least 2021.

39. Decisions are still pending on the future use of the residential red zones and this will have implications (as yet unknown) for how long land, works and planning powers are needed. It is anticipated that redevelopment and disposal of land in the residential red zones could take up to another ten years to deliver.

40. The timeframe of the Bill should signal a progressive transition back to standard processes. Three options for setting the time limit for the Bill have been considered:

    i) **No expiry date.** Parliament would revoke the new Act when it considered the powers were no longer needed. Such a shift in approach from the previous Act (which has a clear expiry date) is likely to be perceived as a reduction in safeguards, and would create uncertainty about how long the Bill's powers could be used. There would be no transition back to standard processes.

    ii) **Expiry on a specified date (five years)**. This date reflects the time period over which special powers are likely to be required. It provides certainty about how long the Bill's powers could be used and signals the timeframe for the transition back to standard processes. It follows the precedent set by the Act.

iii) **Expiry on a specified date (seven years) with a statutory review after four years.** This still gives assurance that the Bill is not open-ended, and that only those powers still required would be retained. A longer term may, however, slow the transfer to local leadership and normal regulatory processes. A comprehensive review is set for a time when it is expected the bulk of the on-going recovery functions will be completed. However, the use of some powers needed for regeneration may still be largely untested by that time, so a review may not be able evaluate their effectiveness.

41. The second option (an expiry date of five years) is a practical time period, based on the experience of the Act. A review of the need to retain any of its powers would be expected in the period preceding its expiry, and Parliament could then decide whether further powers were required. This is the preferred option.

Geographic limits to the scope

42. The Act applies to an area defined as "greater Christchurch" consisting of all of the area managed by the Christchurch City Council, Selwyn District Council and the Waimakariri Council, as well as adjacent costal marine areas. This is shown in Map 1 below.

Map 1: Greater Christchurch as defined by the Act.

43. There is a wide range of possible ways to redefine the geographic scope of the Bill, but only two main options need to be considered:

Greater Christchurch as defined by the Act:

44. Recovery is substantially complete, and urban regeneration is less relevant, within rural areas of Selwyn District and much of Waimakariri District and Banks Peninsula. There is still work remaining in the Waimakariri residential red zone and some of the urban areas, but there is no need to retain special powers over such a wide area, and normal planning processes should resume in these areas. The Act definition is not recommended.

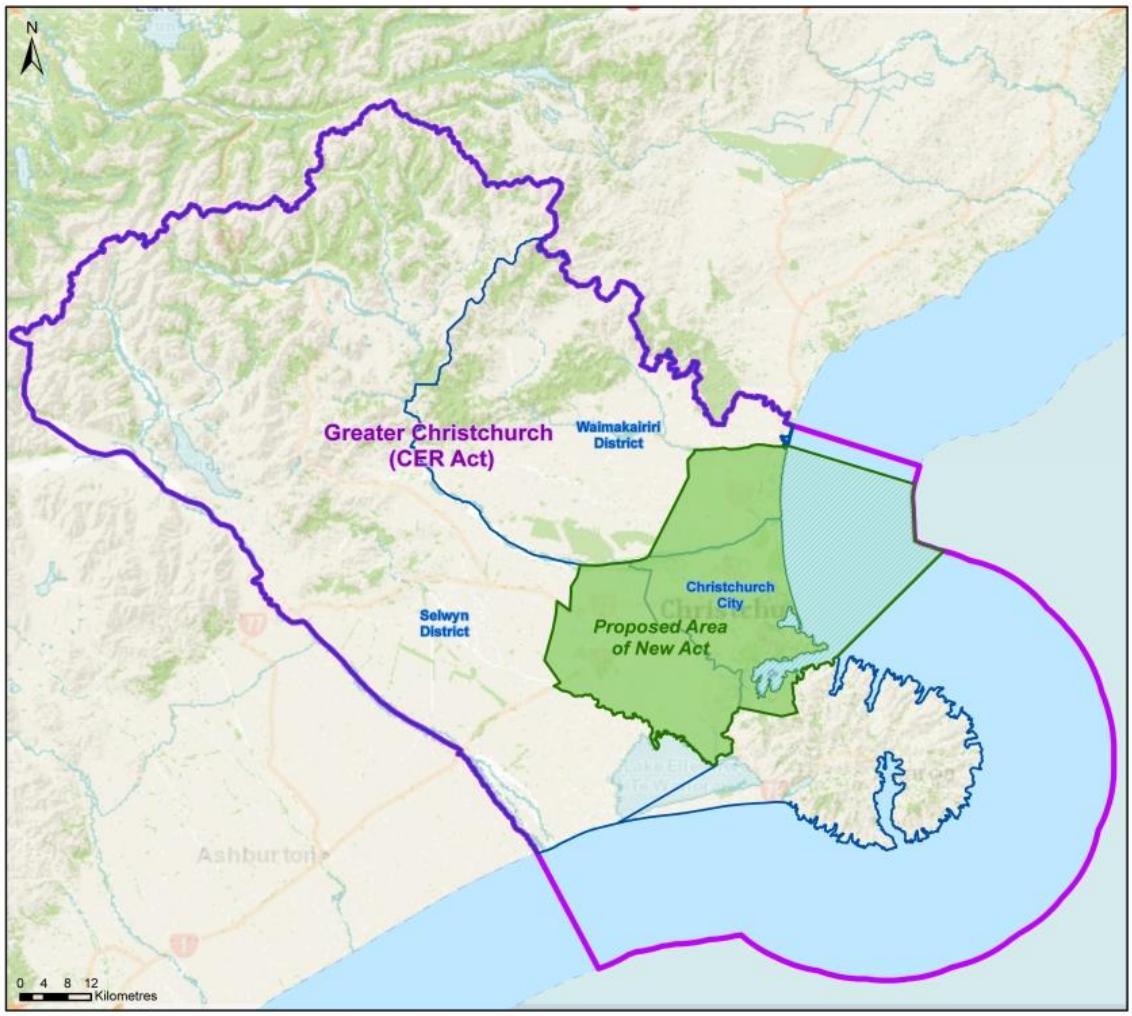
Limit to those areas of Greater Christchurch where bespoke powers are likely to be required:

45. Based on earthquake recovery needs only, it would be possible to restrict certain powers of the Bill to quite limited areas (e.g. demolition powers restricted to the Central Business District and residential red zones.) However, limiting the scope to that extent would be complex and would exclude the use of the powers where they are needed for wider regeneration activities that cannot be clearly attributed to the earthquakes, and to more indirect impacts of the earthquakes.

46. A new area is proposed that focuses on the metropolitan areas of Christchurch City and Lyttelton Basin, and the urban satellites in Selwyn and Waimakariri. This is the area originally identified in the Urban Development Strategy (UDS) of 2007 and in the Land Use Recovery Plan. The UDS recognised that issues extend across arbitrary boundaries and so the boundaries were intended to be flexible, but they have remained unchanged since 2007 and have been formally recognised in the Canterbury Regional Council's Regional Policy Statement. This suggests it is a suitable choice of area for the Bill. It significantly scales back the geographical scope of the Bill, but still includes all areas where there is a reasonable case for needing to use powers for regeneration purposes during the next 5 years. This area also aligns well with local processes carried out under normal regulatory processes.

47. The Coastal Marine Areas adjacent to this area also needs to be in the scope of the Bill, as coastal land reclamation may be required in some places and the boundaries between land and sea are not always stable. For example, the Waimakariri river mouth and the New Brighton Estuary are subject to tidal effects and changing river patterns, while reclamation is likely to be important to the Lyttelton Port area. The resulting proposed scope of the Bill is shown in Map 2.

Map 2 – Proposed new area mapped against area of Act



Reporting and review requirements

48. The Act requires quarterly reports (section 88) and an annual review (section 92) of the exercise of the powers of the Act. The quarterly reports list the use that has been made of specific powers of the Act. The annual review, of the operation and effectiveness of the Act, is to be carried out by the Minister, and a report on the review, including any recommendations for amendments to the Act, must be presented to Parliament as soon as practicable after completion. To date, the annual review and subsequent report have been undertaken by an independent person.

49. It is difficult to assess the value of these reports or even the extent they are currently being read or used. They have provided regular public accountability, a feedback system on the use of the Act, and a consistent record for longer term evaluation and learning. However they do have high compliance costs, and given the uncertainty as to their immediate value, and the removal from the Bill of some of the most contentious powers, the proposal that the reports become annual rather than quarterly is supported.

50. Feedback on the value of the annual review is mixed. A clear mandate to review the use of and need for various provisions of the Bill would build a useful evidence base to track progress towards a return to normal regulatory processes. The annual review might also

be strengthened by specifying an independent entity or reviewer (such as the Auditor General or the Ombudsman) reporting directly to Parliament.

51. The requirement for reports on the operation of the Bill should become an annual requirement, resulting in a single report.

Application of the Official Information Act

52. CERA is subject to the Official Information Act 1982 which enables individuals, businesses and public commentators to obtain information to scrutinise CERA's use of its powers, and any actions taken under it. It is an important safeguard on uses of the Bill and is part of normal government processes. This provision will continue to apply to all the agencies using powers under the Bill and to Regenerate Christchurch as created by the Bill, other than local government agencies which are covered by the Local Government Official Information and Meetings Act 1987.

Responsible Minister and chief executives

53. The Act provides powers that can be exercised only by the Minister for Canterbury Earthquake Recovery or the Chief Executive of CERA. The Bill provides flexibility for its powers to be held by different Ministers or chief executives as assigned by the Prime Minister, to support the transition of responsibility for key recovery functions from CERA to other departments, and accordingly refers generically to "the responsible chief executive" and Minister.

54. Apart from the potential multiplicity of Ministers and chief executives, this is a standard provision which presents no regulatory issues. Failure to provide this flexibility would mean legislative amendment was required each time a function was transferred to another Minister or department.

Ability to transfer Crown contracts

55. Under Section 87 of the Act, the Minister or chief executive may transfer various types of contracts, leases and licences to a council, and the council may accept benefits and liabilities. The Bill extends this power to allow transfer to council companies, Regenerate Christchurch and the Crown company delivering Anchor Projects.

56. This provision allows flexibility in delivery arrangements for recovery activities and therefore supports transition proposals to transfer delivery functions, as needed.

57. This provision has never been used, but it is more likely to be used as CERA's current functions shift to long term arrangements. It will allow the transfer of contracts in ways that might not otherwise be allowed, whether because of the contract itself or general law. There is a regulatory issue, as contractual obligations may be transferred without the consent of the other party, but there should be little resulting risk.

58. Actions would be restricted by the purpose and necessity test, and the broadening of the purpose clause should have little effect on its use. This is not seen as a controversial power.

Offence provisions

59. The Act provides in three different places for offences: failure to comply with notices relating to works (fine not exceeding $200,000, section 42); failure to comply with restrictions or prohibitions on access to buildings or roads (three months imprisonment and/or a fine not exceeding $5,000, section 47); or in the case of a body corporate a fine not exceeding $50,000). The third item, compliance orders, is no longer required and is not included in the Bill, while the first two are still needed to ensure compliance.

60. The appropriateness of penalties and enforcement processes will be assessed relative to comparable offences in the Civil Defence Emergency Management Act 2002 to ensure consistency and fairness.

Regenerate Christchurch

Establishing 'Regenerate Christchurch'

61. As part of the transition from central to local leadership, a new jointly controlled entity is to be established to provide leadership of the next stage of regeneration. The entity has the working name 'Regenerate Christchurch'. It will be established under the Bill as a special purpose vehicle that is jointly controlled by the Crown and Christchurch City Council.

62. Five years after the first earthquake there remain some significant challenges to achieving the vision of a vibrant and prosperous central city in Christchurch. Market intelligence and stakeholder feedback indicates that, even with the successful delivery of the Anchor Projects and other Council investments, further effort in the central city will be needed for some time yet if the vision is to be achieved. There are also areas outside the central city, such as the residential red zone, where dedicated effort is required in order for them to regenerate.

63. Regenerate Christchurch will allow the Crown and Council to jointly respond to these challenges. Its purpose will be to support a vibrant, thriving Christchurch that has equal access to enhanced cultural, economic, environmental, social and lifestyle opportunities for residents, businesses, visitors, investors and developers. Its objectives will be to:

    - Lead regeneration in defined areas of Christchurch;
    - Engage and advocate effectively with communities, stakeholders and decision-makers to achieve its purpose; and
    - Work collaboratively with others in achieving regeneration.

64. Its functions will be to:

    - Develop non-statutory vision and strategies to assist in achieving regeneration outcomes;
    - Provide investment facilitation services to the market;
    - Provide advice to entities delivering regeneration functions on the regeneration outcomes being sought;
    - Develop Regeneration Plans as agreed with the Minister;

- Monitor regeneration outcomes and interventions, and the contribution of delivery entities;
- Provide independent advice to the Council and the Minister on regeneration activities; and
- Focus its activities on the geographical areas of the central city and Christchurch's residential red zones, as well as any other areas that are added to a Schedule to the Act with the agreement of the Minister and the Council.

65. Developing plans and options for the future use of residential red zone land will be a specific function of Regenerate Christchurch. Responsibility for other regeneration areas across the city may be added, as agreed from time to time.

66. Consistent with the above functions, Regenerate Christchurch will have the ability to develop statutory Regeneration Plans and request use of ministerial powers. Regenerate Christchurch will not be responsible for Crown delivery functions, such as delivering the Crown led Anchor Projects.

67. While Regenerate Christchurch will not be a formal Strategic Partner, it is intended that it will have influence on those matters in which it has an interest. The Minister will be required to have particular regard to requests for the use of powers from the Bill. It is also proposed that Regenerate Christchurch must be consulted in relation to the development of any Regeneration Plan, or proposed use of ministerial powers (e.g. equivalent to the existing powers under section 27 of the Act).

68. Regenerate Christchurch needs a legal form. Various options were considered, including company structures, contractual arrangements, trusts, or a Council Controlled Organisation. None of these were considered appropriate either because of their underlying objective, challenging accountability arrangements or risks associated with their set up or operation.

69. After discussions with the Council it was agreed that the most appropriate legal form is a new special purpose vehicle established for five years under the new Act. The legislation will need to specify the objectives, functions, accountabilities and governance arrangements for the entity. The legislation will need to specifically provide for joint nature of Regenerate Christchurch, drawing on accountability and governance precedents from other legislation such as the Local Government Act 2002 and the Crown Entities Act 2004. At the end of the five year period, full control will be transferred to the Council.

70. The new entity will have a board of six members, three appointed by the Crown and three by the Council. The Crown will appoint the chair for the first three years. The Council will exercise its appointment rights simultaneously, by appointing the same person for the next three years. In making appointments both the Mayor and the Minister will have to take into account the mix of skills needed on the board, and Councillors and Members of Parliament will not be eligible for appointment to the board.

71. Regenerate Christchurch will be jointly funded for core operating costs between the Council and the Crown.

Options considered

72. In reaching the decisions described above, two high-level options were considered. The main difference between them is the treatment of the Crown delivery function.

73. The first option would establish a single joint entity that includes delivery functions (including Anchor Projects) and responsibility for all other regeneration activity related to the central city and elsewhere.

74. The second option is a two entity approach that separated delivery functions, in particular delivery of Anchor Projects, from the other key regeneration activity. Anchor projects currently being delivered by CERA would be transferred to a new Crown company (which can be established under existing legislation**).** The second option is the preferred approach, and is set out above.

75. The status quo is not a viable option. CERA, which currently undertakes these functions, will not exist in its current form after April 2016. As signalled in the Draft Transition Recovery Plan, "now is the time to refresh recovery powers, roles and responsibilities". Although the job of recovery is not complete, particularly in the central city and the residential red zones, a core government department is not the best entity to lead the next phase.

76. The first option would have a single entity in which all the Council's and the Crown's interests would be combined. Jointly controlled, at least initially, this entity would be responsible for the delivery of the Crown's major projects and the delivery of all other 'regeneration-type' functions.

77. There are a number of benefits under the single entity approach, including providing a single entity with which the private sector could engage. It also integrates delivery of projects with wider leadership and regeneration functions. However, this approach would be complex to agree and establish within the transition process, particularly governance and accountability arrangements relating to the delivery of major Crown and Council assets. The entity would also have multiple and mixed objectives and functions. This risks one area of activity dominating the entity to the point that it loses focus on other key functions. In particular, there is a risk that delivery of projects overwhelms other key leadership, oversight and advice functions.

78. Because of its mixed objectives and complexity to establish, this option was assessed as being likely to impact on the timely delivery of Anchor Projects. Many stakeholders have stressed that timely delivery is critical to maintaining investor confidence. This option is also complex in terms of future transition to full local leadership of regeneration. On balance option one was not preferred.

79. The second option addresses many of the challenges identified above. Regenerate Christchurch will have clear objectives and functions that are not distracted by operational imperatives. It will be able to provide independent, locally informed leadership and advice on progress with regeneration and plans, options and ideas for improvements. The Crown company delivering Anchor Projects will also have clear objectives and can be established with the capacity and capability to deliver on those objectives. This approach also means that transitional arrangements can be put in place quickly, which is important to help ensure retention of key staff and institutional knowledge, as well as maintaining momentum on delivery.

80. Important to the success of this approach is the degree to which all the entities involved in Christchurch work together and are coordinated. This includes any Council delivery agencies and the new Crown delivery company. A number of integrative mechanisms (e.g. common sections in Letters of Expectation, clear role definition, shared Board membership, obligations to collaborate, and some shared staffing and possible co-location) would help the entities work well together within a common framework. All public sector agencies with related functions will be expected to collaborate with Regenerate Christchurch.

How are any risks mitigated? Are there sufficient checks and balances?

81. In order to be successful Regenerate Christchurch will need to: work well with delivery entities; have the right capacity and capability on the Board and within the organisation; have clarity about the results expected; be able to prioritise their effort to best effect; and have clear accountabilities. These issues will be addressed during the implementation of Regenerate Christchurch and will be included in accountability documents where appropriate.

82. It is intended that the Board of Regenerate Christchurch will be established jointly with Christchurch City Council and accountability documents will be similarly jointly approved. This will help ensure that Regenerate Christchurch meets the objectives of both partners.

83. The activities of Regenerate Christchurch will be monitored by both the Council and an allocated government department (supporting the Minister). It will produce annual reports and will regularly brief its Minister(s) and the Council on a no surprises basis.

Summary Assessment

84. Regenerate Christchurch is proposed to be established as a special purpose vehicle by statute to provide leadership of the regeneration of central Christchurch through engaging the community, promoting the vision for the central city, developing plans and strategies, coordinating activities, independently advising on progress and options for improvement, and monitoring outcomes. Developing plans for the future use of residential red zone land is another specific function of Regenerate Christchurch. Responsibility for other regeneration areas across the city may be added, as agreed from time to time. Regenerate Christchurch will not have delivery functions, such as delivering Anchor Projects, however, all public sector agencies with delivery functions will be expected to collaborate with Regenerate Christchurch and to respond to the guidance and plans it develops.

85. Regenerate Christchurch will be jointly funded and controlled by the Crown and Council for a period of five years, after which the Council will need to decide whether it wishes to continue Regenerate Christchurch and in what form. Because no appropriate model for a joint Crown/Council entity exists in current legislation, the Bill will need to specify joint governance, Board appointment and control arrangements, as well as Regenerate Christchurch's objectives, functions and accountabilities.

Planning powers

86. For regulatory impact purposes, the following tests have been used to assess the powers proposed for the Bill:

- Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?
- If not provided for in the Bill, is there is an adequate equivalent in other legislation? and
- Can any risks associated with the power be mitigated by checks and balances?

87. The first test is informed by reviewing what recovery and regeneration functions are being undertaken now, whether they will be required post April 2016, and whether there are any new functions required to deliver regeneration effectively.

88. The second and third tests require the balancing of potentially competing interests. The adequacy of other legislation is becoming an increasingly fine judgement call, as the justification for expedited processes becomes weaker over time. For some provisions, the justification is not about urgency, but the sheer magnitude of what must still be done. These factors must be considered to answer the questions as to whether the associated public benefits from their continuation outweigh disadvantages in not using other standard regulatory provisions. Alternatively, does the need to achieve regeneration outweigh the value of standard regulatory processes which are designed to appropriately protect private or community property rights and interests?

89. And finally, if the power meets both tests, how are any risks mitigated and safeguards provided? Appropriate types of mitigation could include appeal rights, limits on the application of the power, transparency of decision making to enable accountability and review, and compensation for losses.

90. Assessment of the justification for continuing specific powers is based on reports of their use to date, and the advice of CERA staff and other agencies, including the operational staff directly involved in planning and delivery of recovery and reconstruction functions. To the extent they can be assessed, relative costs and benefits of options have been considered. The views of the Advisory Board on Transition and the Strategic Partners have been taken into account in considering what powers are no longer needed, and those that will still be justified beyond April 2016. Public consultation on the Draft Transition Recovery Plan showed strong support for continuation of planning powers and for protection of the effects of plans already made under the Act.

Regeneration Plans

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

91. Sections 11 to 26 of the Act enable the Minister to direct a responsible entity to develop a Recovery Plan for any social, economic, cultural or environmental matter, or any particular infrastructure, work or activity for all or part of greater Christchurch. Recovery Plans have proved a useful mechanism for undertaking substantial planning processes in a streamlined way, while still allowing for participation by Strategic Partners and the public.

92. The Bill carries forward this concept with some important modifications and a new name - “Regeneration Plans”. Regeneration Plans will still be instruments with statutory weight to override other documents or decisions, providing an expedited process for tackling

key planning and regulatory issues. The modified process for Regeneration Plans increases the role of the Strategic Partners and Regenerate Christchurch, as well as continuing the Act requirements for public consultation. Regeneration Plans will also act as a check on the use of some powers.

93. The Bill also continues most existing Recovery Plans in force, as well providing new powers for them to be amended or revoked.

94. It is also proposed that the Bill clarify that Regeneration Plans may be used, but are not mandatory, for making and implementing significant decisions. In the *Quake Outcasts* case, the Supreme Court held that the Act "covers the field", meaning that the Act is intended to be the vehicle (and the only vehicle) for any major Canterbury earthquake recovery measures, and stated that all significant recovery strategies and measures were to be part of the Recovery Strategy or a Recovery Plan. This has meant that Recovery Plans are seen as being required in more situations than had previously been understood, or assumed in the development of the Act. It is appropriate for Parliament to clarify the intention of the new legislation.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

95. Without a provision for Regeneration Plans, certain remaining recovery and regeneration issues would be extremely difficult to resolve in a timely way. For example, the future land use decisions for the residential red zone land could not be effectively and expeditiously managed via standard planning processes. Standard planning processes are also not suited to an explicit regeneration focus on forward planning.

96. If Recovery Plans are not carried forward, they will simply expire with the Act and will not be able to be effectively implemented. They would remain as reference documents but would lose their statutory weight. The issues differ for each Recovery Plan, but ultimately their automatic expiry on 18 April 2016 would present a number of issues for recovery, as follows:

- *Christchurch Central Recovery Plan (2012)* (CCRP). Expiry of the CCRP could have broader implications for the rebuild including effects on:
    - investor certainty about the regulatory environment, especially the status of the 'Blueprint' or spatial plan for the central city;
    - the strategic vision for the long term redevelopment of the central city, including clarity about anchor project location and delivery;
    - flexibility to address regulatory issues (the CCRP has been amended a number of times).
- *Land Use Recovery Plan (2013)* (LURP). The LURP is an important reference document for the Christchurch Replacement District Plan, which is currently under review. If the LURP lost its statutory effect before the review was completed, this would change the regulatory framework in which the review would take place.
- *Lyttelton Port Recovery Plan.* This Plan is not yet finalised and, although it is scheduled to be completed before April 2016, if it was not continued in force by the Bill, implementation would be limited to an extremely short timeframe with little contingency for delays. Its loss of legal status before resource consents for the

reclamation are considered could affect investment certainty for the Port and Lyttelton township.

97. The Bill includes a process for revoking Recovery Plans, which includes consultation with the Strategic Partners. This will support their effective implementation and also allow for an orderly transition to standard processes.

How are any risks mitigated? Are there sufficient checks and balances?

98. The risk arising from bypassing standard planning processes is that planning decisions are made without appropriately weighing up competing public and private interests, or even allowing them to be identified. This may result in decisions being made that are not regarded as fair or reasonable, override legitimate public and private rights and expectations, or do not make the best use of the land in question. The current Recovery Plan processes include public consultation requirements to provide some checks and balances by allowing individuals and communities to make submissions. The proposals for the Bill retain these safeguards, as well as increasing the role of local leadership by giving recognition to the Strategic Partners and Regenerate Christchurch: they may initiate Regeneration Plans, and the Minister must consult with them and have "particular regard" to their views on the development of new Regeneration Plans, as well as changes to, or proposals to revoke, existing Recovery and Regeneration Plans.

99. The purpose and necessity tests will apply to the making of Regeneration Plans, providing additional protection against the use of powers that would otherwise be subject to RMA processes.

Minister may amend council plans and other documents

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

100. Section 27 of the Act allows the Minister, by public notice, to suspend, amend or revoke resource consents and by-laws as well as plans and policies under the RMA, the Local Government Act 2002 (LGA), and Transport and Conservation legislation. Section 27 has allowed the Minister to make a number of direct changes to RMA documents and other instruments, addressing a variety of small and large issues.

101. An important change is proposed for the scope of this power, in that resource consents have been removed. Amendments to resource consents could undermine valid private interests, and are no longer justified by a need for urgency.

102. A balance needs to be struck with the carrying forward of these powers. On one hand, the continuation of this power in its current form is inconsistent with the objectives of return to standard processes and local leadership. The need for urgency is now much less compelling to justify departures from standard process, particularly when considered in conjunction with the range of planning powers also contained in the Bill (Regeneration Plans, amendments to Recovery Plans and the expedited district plan review process).

103. On the other hand however, the ability to expedite direct changes is still seen as useful, albeit with increased local influence. An examination of the uses of section 27 under the Act shows that in the majority of cases, the initial request came from one or

all of the Strategic Partners, suggesting that this provision has already primarily been used to meet locally identified needs.

104. The recommended provision has therefore been modified in a similar way to Regeneration Plans, by increasing the level of local input into the use of the power.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

105. Without this provision, the ability to quickly address particular issues by making direct changes to RMA documents and processes and other instruments would no longer be available. The Regeneration Plan process would be an alternative way to make changes to RMA documents and other instruments, but it is a more time consuming and complex process. A provision like section 27 has much lower compliance costs where the desired change does not warrant the development of a plan, or where the matter is outside the scope of a Regeneration Plan (e.g. a change to a bylaw or certain parts of a Regional Policy Statement).

106. There is a small risk however, that the existence of a power with the potential to allow the Minister alone to override local planning and decision making could have a chilling effect on community and investor confidence.

107. In order to address these risks, three options were considered to add increasing levels of local control:

- Option 1 – Require the Minister to consult with the Strategic Partners and Regenerate Christchurch on the use of the power, and give them the power to request that the Minister use the power; include a short public notification process to provide transparency;
- Option 2 – Limit the use of the power so that it may be used only on request of the Strategic Partners and Regenerate Christchurch;
- Option 3 – The power is exercised jointly by the Minister, the directly affected Council and ECan, with other Strategic Partners and Regenerate Christchurch consulted.

108. Options 2 and 3 progressively lessen the power of central government and increase the influence of local government. This is of concern given that the Crown is still bearing a very high level of financial risk from its ownership of red zone land and Christchurch CBD land, as well as other national interests in Canterbury's recovery (such as wider economic development and delivery of public services). Central government therefore needs to retain sufficient power to represent the wider public interests of taxpayers, at this stage of the transition.

109. Option 1 is the recommended option, on the basis that it best balances the achievement of the objectives of local leadership of recovery, efficient use of the power, and protection of the public interest. The Strategic Partners and Regenerate Christchurch will be able to request the Minister to use the power, and the Minister must have "have particular regard" to their request, as well as their views on any proposed use of the section.

How are any risks mitigated? Are there sufficient checks and balances?

110. The proposed provision reduces the scope of the existing section 27 by removing the power to cancel resource consents. It will therefore allow changes to by-laws as well as plans and policies under the RMA, LGA, and Transport and Conservation legislation.

111. The increased statutory role for the Strategic Partners and Regenerate Christchurch (who represent a range of local interests) will provide greater assurance that a wider range of interests have been appropriately balanced in a final decision. This will increase the safeguards protecting a wider range of public and private interests. The purpose and necessity tests will also provide a check on arbitrary use of the power.

Land powers

Acquisition and disposal of land

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

112. Section 53 of the Act gives the Crown the power to acquire, hold, sell, mortgage, exchange, lease and dispose of land and personal property. CERA's chief executive currently holds a large portfolio of land on behalf of the Crown, including over 7,500 purchases in the residential red zone and over 200 in the Christchurch CBD for Anchor Projects. Acquisition of this land enabled thousands of property owners to choose to sell their earthquake affected property to the Crown, handing over some or all of their negotiations with insurers to the Crown. It has also simplified the processes of demolition, remediation and development of land on the scale required.

113. Acquisition, demolition and decisions about future use of Christchurch CBD land is expected to be well advanced by April 2016. In the residential red zones, particularly the Port Hills, the process of acquiring properties and managing clearances and land remediation will go on for some time yet.

114. Land that was acquired by the Crown for recovery purposes now requires a clearer, long-term legal framework that allows for acquisition, holding and disposal of land, in accordance with policy decisions about its future use. The purpose and necessity tests from section 10 against the Act purposes will increasingly constrain the Crown's ability to dispose of land as it becomes more difficult to show that it is necessary to exercise the disposal power for regeneration purposes. There is also concern that interim management arrangements, such as a lease or licence to a third party (e.g. for grazing stock), might not meet the existing tests.

115. The purpose clause provides for the Crown to effectively manage, deal with, and dispose of land acquired by the Crown under the Act or the Bill. It reflects the fact that the Crown has acquired a large number of properties which need to be managed in a pragmatic manner, as well as the need to resolve and implement decisions about future use of land acquired under the Act. This reduces the risk that the purpose and necessity tests will unduly constrain the Crown from acquiring and disposing of land.

Possible issues around disposal of land

116. The Government determined it was in the public interest to buy thousands of private properties in the red zone to co-ordinate the task of clearing and remediating the land, as well as offering to take on related insurance claims. The opportunity to sell to the Crown assisted many individual home owners, as well as reducing the public and private costs of litigation that would have inevitably occurred.

117. However, there is little long term benefit to the Crown from continuing to simply hold the land. There may well be a range of competing options for the use of this land, influenced by what is technically and economically feasible. There are also a range of public interests and community expectations about the treatment of this land that will become increasingly clear as future use decisions are made.

118. The public has a legitimate expectation of fiscal responsibility in the use of taxpayers' money. To date, over $1.5 billion has been spent acquiring residential red zone land. The Crown may eventually wish to sell some land to help meet maintenance and development costs arising from land which is now of little financial value. Some land may be able to be remediated, even to a point of becoming more valuable than it was previously. This could leave some individuals or communities feeling they have been taken advantage of (this was a theme in some submissions on the draft Transition Recovery Plan). The Crown could be seen as having conflicting interests when it is in a position to profit from the sale of land it also has regulatory control over.

119. The disposal of land will require an approach that addresses legitimate expectations for a fair process, without testing every transaction against the purposes of the new Act. A range of potential options could be applied to the disposal of land. For comparison, the following options represent different points on the spectrum from an unconstrained power through to a high level of constraint:

    - Option 1 - allow the Crown the unconstrained right to dispose of land held under the Act or the Bill. The advantage of such an approach is that the Crown would not need to apply a test to each separate disposal. The Crown would be more like any other landowner. This would give it greater flexibility to take advantage of opportunities which might lead to increased returns. However, the original decision to acquire the land was subject to a purpose and necessity test. An unconstrained power of disposal is therefore unlikely to meet the community expectations about the way in which decisions will be made about the future ownership and use of the land.

    - Option 2 - an intermediate test under which the Crown may dispose of land acquired by the Crown under the Act or the Bill as follows:

        - if there is an applicable Recovery Plan or Regeneration Plan in place, then the disposal must be consistent with that Plan (e.g. consistent with the CCRP or a Regeneration Plan for future use of residential red zone lands). The process of developing a Recovery or Regeneration Plan involves public consultation which would ensure that community views and expectations are identified and can be addressed;

- if there is no applicable Recovery Plan or Regeneration Plan in place (e.g. if a Regeneration Plan is not developed for all or parts of the Port Hills), then the responsible Chief Executive could dispose of the land.

- Option 3 - apply both the purpose and necessity tests to each disposal. Given the thousands of pieces of land now held by the Crown, applying such a test to each disposal would be burdensome and, depending on the final purposes adopted for the Bill, will be increasingly difficult to satisfy over time, leaving the Crown unable to dispose of the land. Such a constraint also reduces flexibility to meet community expectations about the future ownership and use of the land.

120. Option 2 achieves a balance between enabling community expectations to be considered while not unduly restricting the Crown as a major landholder. The Crown would be in a similar position to other landowners if no Plan is in place. Under Option 2 land in the CBD would be disposed of in accordance with the Central City Recovery Plan (CCRP) while it remains in force. It is expected that Regeneration Plans will be developed for the residential red zones, in which case, land would be disposed of in accordance with such a plan. Otherwise the land could be disposed of without further constraint.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

121. The Crown needs powers to manage and dispose of its landholdings in the greater Christchurch area. If the Bill does not carry forward bespoke land disposal powers, alternatives include the Land Act 1948 and the Public Works Act 1981 (PWA).

122. Under the Land Act, the Commissioner of Crown Lands has a range of powers to deal with Crown land held under that Act. These include the power to dispose of land by sale or lease, including by public auction or tender. The original ownership and method of acquisition would not be relevant to the use or disposal of that land. Disposal of land taken under the Act through the Land Act could be controversial because it would not address the public and private expectations arising from the unique circumstances surrounding acquisition of this land, as described above.

123. The other alternative is the PWA which deals with land held for public works. The PWA enables land held for a public work to be disposed of if it is no longer required for that or any other public work. The general approach of the PWA is that land no longer required for public works should be offered back to the original owner. The Act makes similar provision for offers back where land has been compulsorily acquired (which has only occurred in a few instances in the Christchurch CBD), and this provision is proposed to be continued. Land acquired by purchase under the Act explicitly avoids the offer-back provision.

124. However, it is not clear that land acquired under the Act can be workably managed under the PWA. It is designed for land that is held for a “public work”, as defined in the PWA, but some current holdings and future use projects may not come within that scope. And, although no compulsory acquisitions have occurred to date in the residential red zone areas, offer back provisions in those areas could compromise future uses.

How are any risks mitigated? Are there sufficient checks and balances?

125. The power to acquire and dispose of land is a standard power of chief executives. The proposed disposal process and the revised purpose, recognising the Crown's need to manage land holdings, are intended to create a lower threshold than the current necessity tests, putting the Crown closer to the position of any other land holder, while still requiring judgement to be exercised about the way in which land should be disposed.

126. Recovery or Regeneration Plans will be a crucial way of ensuring a range of interests have been heard, with provision for the views of Strategic Partners, and will support a sense of common objectives and legitimate disposal of land by the Crown.

Power to transfer land between the new Act and Public Works Act

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

127. Section 53 (4&5) of the Act enables the Minister, by notice in the Gazette, declare land held under the PWA to be held under the Act (subject to offer back requirements under the PWA). In addition, the Minister may declare land held under Act to be set apart for a Government work in terms of the PWA.

128. The ability to transfer land makes it possible for PWA land to be used for recovery related developments (led by CERA) and, alternately, CERA-held land to be used by another department for a Public Work e.g. the establishment of a new school. This is likely to be an important provision for delivery of future land use decisions.

129. This is an administrative provision to align how land is dealt with under either Act. It currently applies only to these two Acts. However, the Crown may need greater flexibility to manage some of the land in the medium to long term, particularly any residual holdings after the Act expires. The Land Act 1948 is used where the Crown owns land but not for any particular purpose. It also provides models for development of the land for settlement that could be useful under the Bill. Incorporating the ability for the Minister to declare land under the Bill to be land under the Land Act would provide additional flexibility.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

130. If the provision were allowed to expire, the Crown would have little or no ability to enable land held under the Public Works Act to be held under the Bill. It might be possible for land held under the Bill to be acquired for a public work under the Public Works Act, but the process for doing so would not be expedited. As a result, the Crown's ability to flexibly manage land-holdings in Christchurch to support future use decisions would be adversely affected.

How are any risks mitigated? Are there sufficient checks and balances?

131. See the discussion on acquisition and disposal above. Similar risks, checks and balances apply, with the purpose and necessity tests applying. Transfers would be by mutual agreement of the responsible Ministers and must still be subject to any consultation provisions required by the respective legislation.

Compulsory acquisition and compensation

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

132. Sections 54 to 67 of the Act allow land to be taken by proclamation, with compensation, and require it to be offered back to former owners in specified circumstances. This allows an expedited process to acquire land for achieving the purposes of the Bill, and a process for determining compensation, within two years of date of acquisition. 761 notices of intention had been issued, and 33 properties acquired, under this provision in the Act as at mid-2015.

133. Post-April 2016, these powers are likely to be used (if voluntary agreement cannot be reached) to acquire land for regeneration purposes.

Possible issues around compulsory acquisition

134. If the compulsory acquisition power was subject to the same protections as in the Act, there could be concerns that those protections are not strong enough under the broader regeneration purposes of the Bill, particularly given compulsory acquisition overrides private property rights. The following options for additional safeguards were considered to address these concerns.

Option 1: Power can be exercised only to give effect to a Regeneration Plan

135. Under this option, the Bill would restrict use of the compulsory acquisition power so that it can be used only when necessary to give effect to a Regeneration Plan (or Recovery Plan). This process ensures adequate consultation with Strategic Partners and likely affected land owners through the public engagement process.

136. Recovery or Regeneration Plans are envisaged or already in place in relation to the central city and future use of the residential red zones. Compulsory acquisition would most likely be used where land is required for a project that is the subject of a Plan. This process should not unduly delay the implementation of regeneration projects.

137. The disadvantage of this option is that it would not enable expeditious compulsory acquisition of an isolated piece of land that would not otherwise have been covered by a Regeneration Plan (for example, the acquisition of a single piece of land in the Port Hills). In that scenario, it may be possible to use the PWA compulsory acquisition process for a proposed public work. However, it is a potentially lengthier process that gives land owners greater objection rights and could not be used for certain developments.

Option 2: Require relevant local authority agreement

138. The Bill could provide that compulsory acquisition powers can be exercised only with the written agreement of the relevant territorial local authority.

139. This requirement would be consistent with the express recognition of local leadership in the purpose section of the Bill. It would also limit the perception that the Crown, or a responsible Minister, could use the power in an unfettered manner.

Option 3: Explicitly require voluntary negotiations

140. The Bill could also explicitly require that the Crown must attempt to voluntarily acquire the land before embarking on compulsory acquisition. This would bring the process under the Bill more in line with the PWA process.

141. This would not represent a substantive additional protection because this is already required in practice to meet the test that the exercise of the power be reasonably considered necessary. However, it may be helpful to make this clear,.

Option 4: Additional compensation above market value

142. The Act currently provides that the Minister must determine compensation having regards to current market value and in accordance with the PWA.

143. In recognition of the expedited process under the Bill, the Bill could provide that the Minister may, at his or her discretion, determine compensation above current market value and above the amount provided under the PWA. There is some risk that this would lead to land owners seeking excessive amounts of additional compensation. However, this is a risk even without the additional wording. Any efforts to seek additional compensation would not delay the compulsory acquisition process, which can continue before compensation is determined. It may set a precedent for future transactions, although this would only be under similar and rather restricted circumstances, and may also be viewed as inequitable by those who have accepted market value.

Option 5: Power can be exercised only with agreement of another Minister

144. Another alternative option is to provide that compulsory acquisition powers can be exercised only with the agreement of the Attorney General or another appropriate Minister.

145. This recognises that compulsory acquisition has an impact on private property rights and safeguards against the possibility that an individual Minister may use the power more broadly than necessary. However, decision-making would stay within central government with two Ministers.

Option 6: Appeal right against acquisition

146. A further option is to provide a right to object to the High Court against the proposed taking of land. This would bring the compulsory acquisition power in the Bill more in line with that set out in the PWA. It also accords with the general principle that when a decision affects a person's rights, that person should be able to have that decision reviewed in some way.

147. However, a right to object could result in prolonged negotiations and appeals that could significantly delay the delivery of key regeneration projects within the five year timeframe of the Bill. It also becomes so closely aligned with the PWA that it would detract from the purpose of having an expedited process in the Bill.

Preferred option

148. The preferred option is a combination of options 1-4. Compulsory acquisition powers in the Bill should be exercised only where (in addition to current protections) there has been negotiation for voluntary purchase first and:

    - where necessary to give effect to a regeneration plan (or a recovery plan under the Act); or
    - if there is no applicable regeneration plan or recovery plan in place, with where the relevant territorial local authority agrees to the compulsory acquisition.

s9(2)(j) of the Official Information Act 1982

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

150. The PWA provides an alternative process for the compulsory acquisition of land. However the grounds for acquisition are not linked to the purposes of the Act and the process is significantly slower. Prolonged negotiations and appeals could significantly delay the delivery of a number of key recovery works within the proposed five year timeframe of the Bill.

151. The Act avoids the potentially significant delays associated with the PWA provisions, by allowing for compensation to be determined at a later stage and limiting appeals. The Act process also allows some additional flexibility in making assessments of compensation by allowing for recovery factors to be taken into account, which may make it easier to reach agreement. At a minimum, the existing compensation claims process needs to be extended to cover the resolution of claims for any land acquired up to April 2016.

152. If the power is used for broader regeneration purposes, the PWA appears to be the applicable regulatory framework for compulsory land acquisition, if it is for a public purpose. If the acquisition is not for a public purpose, then the use of this power should be subject to more stringent tests in order to protect fundamental private property rights, as discussed above.

How are any risks mitigated? Are there sufficient checks and balances?

153. Section 59 specifies that the Ngāi Tahu Claims Settlement Act 1998 is not to be affected by the Act. Actions must be published, and proclamations must be registered with Registrar General of Lands.

154. Actions under these sections would continue to be restricted by the requirement to be able to show that the use of the power was necessary for the purposes of the Bill, because they override fundamental private property rights. However, as already discussed, the broader regeneration purposes of the Bill may give rise to concerns that there are not sufficient checks and balances on the use of this power. The additional protections recommended above are needed to restore these checks and balances.

Ability to subdivide land

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

155. Section 43 of the Act allows the chief executive to subdivide, amalgamate, improve and develop land, with exemption from parts of the Resource Management Act. This provision is being carried forward to support the management of land being held under the Act, including on-going maintenance and preparation for long term future use. The amalgamation power is being carried forward as a new and more comprehensive provision, as discussed below.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

156. Without this provision, standard RMA sub-division processes would apply (section 11 and Part 10 of the RMA). However, the scale and complexity of implementing of CBD and residential red zone decisions is exceptional, including multiple titles and physically altered boundaries. Standard RMA processes could result in significant costs, delays and uncertainty as to outcomes. This could have impacts on the Crown's ability to develop and dispose of land in accordance with future use decisions, and delay regeneration.

How are any risks mitigated? Are there sufficient checks and balances?

157. The processes of acquiring and then disposing of land are the key points at which regulatory interests and potential conflicts arise. Because this land is already held under the Act, there are fewer interests to be considered in the use of this power. It is also likely that most of the land in question will be considered during the development of a Regeneration Plan before significant improvements or subdivisions are undertaken. Broadening of the purpose clause would have little effect on risks associated with the use of this power.

Power to amalgamate Crown and Council land

158. The Crown has acquired many properties in the residential red zones and the Christchurch CBD. Many of these properties will need to be amalgamated into parcels of land that are easier to manage and more suitable for their next purpose. Crown-owned properties and council-owned roads or reserves will need to be amalgamated to make them suitable for future uses. An expedited process is necessary because of the scale of the task facing the Crown, which has to resolve the future use and ownership of over 10,000 properties, as well as contiguous areas of public land with a range of legal statuses. In the CBD particularly, many properties have multiple titles. For example, the site of the proposed Metro Sports facility is made up of 32 separate properties, including some electricity substations, as well as several sections of road.

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

159. Given that most of the affected land is now owned by the Crown, Christchurch City Council or Waimakariri District Council, an expedited amalgamation process is

proposed. Amalgamation of land titles requires that they already have one owner. The existing amalgamation power in section 43 is not sufficient because:

- it applies only to land acquired by the Crown under the Act; and
- relevant Crown land may have a particular status under other legislation (e.g. the Reserves Act) or be restricted in some other way which prevents or impedes the Crown's ability to amalgamate it with land acquired under the Act (or the Bill); and
- relevant Council land may also have a particular status which prevents or impedes the Crown's ability to acquire it, even if the Council is willing.

160. A new provision allowing properties to be amalgamated is proposed, as follows:

- At least one of the pieces of land must have been acquired under either the Act or the Bill,
- It can apply to Council land, but only with the consent of the Council,
- It would not apply to private land,
- Offer back obligations under the PWA, Act or the Bill, and any rights of first refusal under the Ngāi Tahu Claims Settlement Act 1998 would be preserved, and
- The exercise of the power would need to be in accordance with the purposes of the Bill (i.e. be subject to the purpose test, but not the necessity test).

161. The following table summarises the application of the provision:

Initial ownership	**Allow amalgamation under the provision?**	**Necessity test applies?**
Crown/Crown	Yes, as long as at least one piece of land was originally acquired under the Act or the Bill	No
Crown/Council	Yes – as long as at least one piece of land was originally acquired under the Act or the Bill, the Council agrees, and the amalgamation is to give effect to a future use decision that has been made about the land. Council land would be vested in the Crown before being amalgamated.	No
Crown/Private	No. If necessary, the private land must first be acquired by the Crown under appropriate processes, whether standard purchase, the Bill or other mechanism, such as the PWA.	N/A
Council/Council, Council/Private or Private/Private	No. Standard processes should apply.	N/A

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

162. If the proposed enhanced amalgamation power is not available, the Crown would have to follow existing statutory processes, where available, to change the status of land or to remove existing restrictions. It would take time to work through those processes, such as the process for revoking reserve status in the Reserves Act 1977, and the outcome of that process is uncertain. In some cases, there is no clear process for doing so. The scale of the amalgamations, potentially involving multiple pieces of land

with different restrictions or status, would therefore be complex to resolve and, in some cases, may not even be possible. This could significantly impede the Crown's ability to deal with its landholdings in accordance with future use decisions.

How are any risks mitigated? Are there sufficient and balances?

163. Given the expansion of this power to include Council owned land (albeit with Council agreement), and ability to change the status of land to be amalgamated, this power is proposed to be a Ministerial power rather than a chief executive power. This is appropriate because Ministers are subject to a greater level of public accountability than officials.

164. The necessity test will not apply to actions under this provision, as it would only add an unnecessary compliance requirement. Broadening of the purpose clause would have little effect on the use of this power.

165. The requirement that at least one of the pieces of land must have been acquired under the Act (or the Bill) means that the provision will apply only in the CBD and residential red zones, or immediately adjacent land. Many of these zones are small, irregular shaped areas and amalgamation with some adjacent non-red zone land may be required.

166. The proposed provision has been designed to protect any pre-conditions that need to be met before land can be amalgamated, covering residual private interests or Treaty settlements. For example, when it acquired red zone properties the Crown guaranteed that, if the insurance recovered by the Crown on the property is more than the purchase price, the owners would get the difference. Amalgamation under this provision would not prevent the Crown from fulfilling this commitment.

Power to undertake works

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

167. The Act includes a number of powers relating to works, which can be exercised on private land without the owner's consent. They includes powers for the CE to:

- undertake works including construction, alteration, demolition, and disposal of buildings on private and public land; and a process for requiring demolition of buildings by owners on non-Crown owned land (section 38);
- erect, and use temporary buildings on private land (section 44); and
- restrict or prohibit access by any person to any specified areas or buildings (section 45).

168. The Bill provides express legal authority for the responsible chief executive to undertake works. This is still needed for Port Hills and some remaining flat land property clearances. Approximately 60 per cent of property acquired under the Act in the Port Hills residential red zone will still require demolition and clearance after April 2016. This is expected to be on-going until at least 2018. The proposed provision is potentially also required for on-going development of CBD Anchor Projects and implementation of future use decisions in the residential red zone.

169. There is an on-going need for temporary buildings in the red zone and CBD as part of the recovery process. A notable example of the use of this provision is the Re:START Mall, which could not have received a building consent because it was built across existing boundaries, on sites with different owners. There may also be a need for temporary buildings as part of future regeneration projects.

170. A quick and flexible process to restrict access in certain areas is still needed for public safety and to ensure necessary recovery works can take place. This will be needed for the implementation of residential red zone future use decisions and clearance works which will still be on-going on the Port Hills and flat lands after April 2016.

Possible issues around works-related powers

171. Under the Act, the works powers are subject to the following protections:

- they must be exercised in accordance with the purposes of the Act;
- the Chief Executive must reasonably consider the exercise of power necessary;
- if the Chief Executive demolishes a non-dangerous building on private land, the Crown must compensate the building owner for loss from the demolition; and
- there is an appeal right in relation to a determination of compensation.

172. Under the Bill, use of the works powers on private land would be subject to the above protections. (Some of the protections will be removed for works on land owned by the Crown). Again, these protections could be perceived as weak in relation to powers on private land due to the broader regeneration purposes of the Bill, and additional safeguards should be considered to address these concerns.

Preferred option: Limit works powers on private land to where the owner consents

173. Under this option, use of these works powers would be limited on private land to where the owner gives consent for the work.

174. There is a possibility that the Crown will in the future wish to use these works powers on private land for a range of purposes. For example, the Crown may wish to remove an unused derelict building, but have trouble locating the owner. That scenario is not likely to be common. Even if works of such nature on private land were necessary, the Crown could acquire the relevant land and building (voluntarily or compulsorily) and then carry out works on that building as it sees fit.

175. Adding the proposed protection would limit the scope of the power, but the Crown is unlikely to need the broader scope for works on private land without the owner's consent. On balance, adding the protection should address any perception that the Crown could use the power in an unreasonable manner. An exception to the need to gain consent could be provided in the event of an emergency, if there are no provisions under other legislation that could be used.

Other options

176. One option is to include the powers as set out in the Act, to do works on private land without consent, subject to the current protections. This allows the Crown to use the works powers on private land as a backstop option, to avoid having to take legal action to gain access or to prevent rent-seeking behaviour. The responsible Chief Executive must reasonably consider the exercise of power necessary and it must be in accordance with the purposes of the Bill. However, there may still be a perception that the Crown could use the power in an unreasonable manner in light of the broader regeneration purposes.

177. An alternative option (potentially in addition to the above option) is to extend the circumstances in which the Crown is to compensate the land owner. Under the Act, the Crown must compensate the building owner for loss from demolition of a non-dangerous building on private land. This could potentially be extended to any losses suffered by a landowner as a result of use of works powers on their land. This would make the use of the powers more equitable, but is unlikely to fully recognise the effect on a person's private property rights, and is not recommended.

178. Another option is that the Bill restrict use of the works powers to when it is necessary to give effect to a Regeneration Plan. This allows for consultation with the Strategic Partners and the public. However, the powers could not be exercised expeditiously, which would be a significant barrier to on-going earthquake recovery work, particularly in the Port Hills area. This option is not recommended.

179. Another option is to limit works powers on private land to earthquake recovery. Under this option, use of these works powers would be limited to *earthquake recovery* purposes where they relate to private land. This is unlikely to hinder or delay regeneration while still giving some extra reassurance on protection of private property rights.

180. This limitation of works powers to earthquake recovery purposes may have disadvantages. Cabinet agreed to the broader regeneration purpose, partly because it is increasingly difficult to distinguish between responding to the direct effects of the earthquakes from wider urban renewal and development. Limiting use of the works powers on private land to earthquake recovery means that a link to the earthquakes would need to be shown before the power can be used.

181. Under this option it is considered highly unlikely that the Crown will wish to use these powers on private land without the owner's consent for purposes other than clear earthquake recovery purposes.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

182. These provisions give the legal basis for the chief executive to undertake works and related actions on non-Crown owned land, without the permission of the owner if necessary. There is no standard alternative under other legislation.

183. Section 124 of the Building Act 2004 can be used to restrict access to specified buildings where there are structural dangers. However the Act and the Bill provide a wider range of grounds for restrictions, including environmental dangers such as rockfall, and the power to make a general restriction on access to an area of land.

How are any risks mitigated? Are there sufficient and balances?

184. Actions under these sections would continue to be restricted by the requirement to be able to show that the use of the power was necessary for the purposes of the Bill, because they override private property rights. However, as already discussed, the broader regeneration purposes of the Bill may give rise to concerns that there are not sufficient checks and balances on the use of this power. Some of the additional protections suggested above are needed to restore these checks and balances.

Demolitions compensation

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

185. Section 40 of the Act allows for the chief executive to recover the costs of demolishing dangerous buildings from owners, but the Crown is liable to compensate owners of non-dangerous building which are demolished. Under Section 41, the Crown is liable to pay compensation to owners of other properties for negligent damage occurring in the course of demolishing dangerous buildings.

186. Demolitions are still expected post April 2016. These provisions are necessary to allow the Crown to recover costs from owners and to compensate for necessary or inadvertent damage to non-dangerous property. The costs of demolition, and the risk of damage to adjacent properties, are particularly high in the Port Hills because of the topography and access difficulties.

187. This demolition work, and accompanying risks of secondary damage, under the Act is limited to earthquake related purposes. However, if demolitions are being undertaken for the purposes of regeneration rather than safety or earthquake recovery purposes, the need to expedite the work is less justifiable.

188. The Crown does not have general powers to recover these costs, so retaining the current power is necessary to protect historical debt (from demolitions prior to April 2016) and to recover any new debt incurred after April 2016.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

189. If the provision is allowed to expire the Crown would have to seek recourse through the courts in the ordinary manner. This would be more expensive and time consuming for both parties, and inconsistent with current practice. The Crown would also be left with some debts outstanding from earlier demolitions.

How are any risks mitigated? Are there sufficient checks and balances?

190. The cost recovery provisions support the powers of the Crown to demolish privately owned dangerous buildings to protect the public, and ensure that owners of dangerous buildings have incentives to expedite necessary demolitions. The provisions for compensation for secondary damage protect the legitimate interests of private owners, and explicitly apply whether or not the property was insured.

191. Use of this power follows the exercise of the demolition power, which was often used as a matter of urgency in the immediate earthquake response and recovery period. If demolitions are being undertaken for broader regeneration purposes, the need for

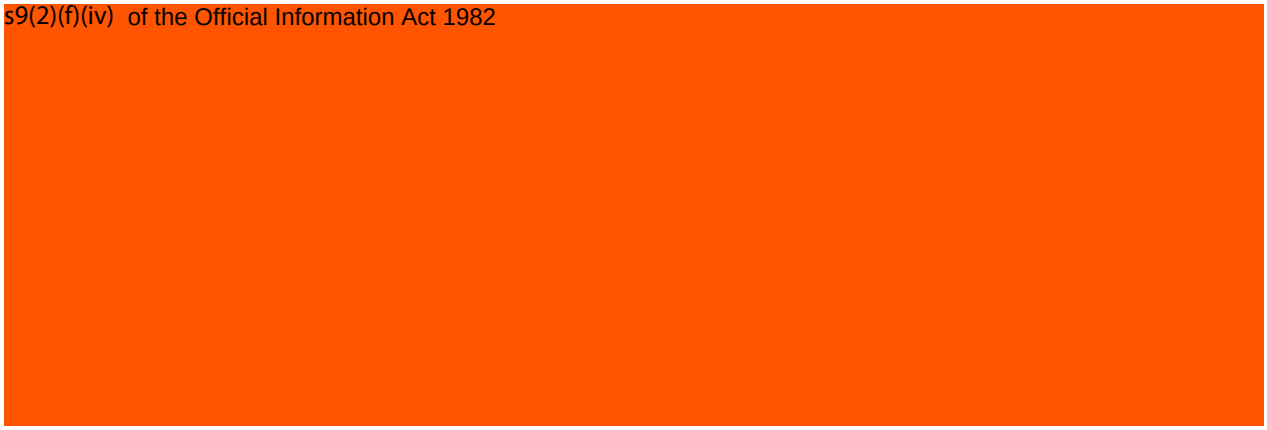
urgency is likely to be much less, and so the use of powers would struggle to meet the necessity test.

Direct property owners to act for the benefit of adjoining owners

192. Cabinet has agreed that the Bill should include a power for the Chief Executive to direct property owners to act for the benefit of adjoining or adjacent land owners. A similar provision (unused) is in the Act. This is primarily to manage delays involving shared or neighbouring property arrangements, such as cross lease, unit title and company share. It could be used to require negotiation and agreement between owners to reach insurance settlement and/or to proceed with repairs or rebuilds.

193. There are difficulties with this approach and the power is considered to be unworkable. Firstly, it may have limited effect, as there can be broader reasons for delays; secondly, there is a risk of legal challenge arising from the need to meet the "purpose and necessity" test in such circumstances; and thirdly, the need to develop a procedure for applying a "benefit" test would be expensive and would duplicate orders and enforcement processes already available under other legal processes. Accordingly, carrying over the power is not recommended.

s9(2)(f)(iv) of the Official Information Act 1982



Road closures

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

196. Section 46 of the Act provides the chief executive with the power to restrict or prohibit public access (including vehicles) to any road or public place, on a temporary or permanent basis.

197. A quick and flexible process to temporarily close roads is still necessary to enable clearance works to be completed on the Port Hills after April 2016. Permanent road closures are likely to be part of redevelopments in the residential red zone and central city Christchurch, and potentially as part of regeneration activities throughout greater Christchurch.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

198. The LGA provides a process for closing roads, but it can only be used by councils, it is time-consuming, and it would add significant delays to recovery works. A streamlined process for permanent road closure is also important for reducing the costs of

implementing future use decisions given the magnitude of change required. For example, one Anchor Project (the Metro Sport Facility) requires permanent closure of sections of three different streets.

How are any risks mitigated? Are there sufficient checks and balances?

199. In practice, there seems to be little risk that this power could be used for regeneration in a way that would have a significant impact on the property rights of a Council as the owner of roads, and little incentive for a chief executive to do so. Relevant roading authorities must be consulted if practicable, and there is a public notice requirement. Actions would also be restricted by the purpose and necessity tests, as well as the proposed reduction in the geographic scope. These checks should help to minimise impacts on the convenience and freedom of movement of road users.

Cadastral Surveys

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

200. Sections 35 to 37 of the Act allow the responsible chief executive to direct the chief executive of Land Information New Zealand and the Registrar General of Land in relation to surveys.

201. There has been significant land movement in some areas of greater Christchurch. This will require extensive resurveying of boundaries. The provision also includes a process for disputing any title adjustments.

202. There is no reason for one chief executive to direct another. The chief executive of Land Information New Zealand will have the power to act without direction.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

203. These provisions have not been used to date, but it would be useful to retain them in case a situation arises where normal survey methodology does not produce the desired results. Land Information NZ is preparing new legislation (Canterbury Property Boundaries Bill) which sets out a comprehensive approach to address the mass movement problems issues. However these provisions are still required in the Bill because of any related boundary definition issues that may arise as Crown land is subdivided, amalgamated and disposed of. For example, it may become necessary to deal with a block within red-zoned land in a way that ignores the numerous, but now redundant, house sites within the block.

How are any risks mitigated? Are there sufficient checks and balances?

204. Actions would be restricted by the purpose and necessity test. The need for this power arises from physical consequences of the earthquakes, and a regeneration purpose will have little effect on its use. There is little incentive for a chief executive to misuse the power, and the interests of private land owners should be addressed by a disputes procedure to resolve landowners' disputes via appeals, with longer filing periods for certain types of appeals than the 10 working days that normally applies.

Appeal rights

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

205. There is no general right of appeal against decisions of the Minister or chief executive acting under the Act. Certain appeal rights are provided under section 69 against matters such as the determination of the amount of compensation following the compulsory acquisition of land, survey adjustments, and decisions on applications for resource consents and notices of requirement that a Recovery Plan specifies are subject to appeal. The limit on appeal rights in the Act were justified because extensive appeal rights would have posed an undue risk of delaying necessary decisions related to the recovery of greater Christchurch.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

206. The limited appeal provisions provided in the Act form a significant component of several expedited decision making processes. No appeals have been filed under these provisions thus far. However, several of these provisions with limited rights have only just begun to reach a stage where appeals might be made – notably determinations of compensation for compulsory land acquisition, while the survey adjustment process has not even started. There is an argument to retain the existing appeal process for compulsory land acquisition on the grounds of consistency and equity for those who have already settled.

207. Appeal rights exist in standard regulatory arrangements applying in comparable circumstances, for example in the Public Works Act 1981 and Resource Management Act 1991, and in the proposed Canterbury Property Boundaries Bill. These would have the potential to slow down decision making processes.

How are any risks mitigated? Are there sufficient checks and balances?

208. This bespoke appeal process attempts to balance the rights of individual land owners and other private interests with regeneration needs. Judicial review has been used effectively to challenge a number of decisions made under the Act, and this has encouraged attention to decision-making. With a purpose clause broadened to regeneration, however, the limited appeal rights may be more difficult to justify as a check on the use of powers. Accordingly, restoring normal appeal rights against the use of the Bill should be considered in some circumstances, such as for regeneration activities or compulsory land acquisition.

Protection from liability for persons acting under the Act

Is this power required for the regeneration of greater Christchurch – what necessary functions does it apply to?

209. Section 83 of the Act gives protection from civil liability to anyone acting under the Act, including councils. The exemption does not extend to bad faith or gross negligence. The provision has been relied on for various CERA activities, especially in early days of assessing damaged buildings. Some high risk work will be going on beyond 2016, notably demolitions in the Port Hills.

If not provided for in the Bill, is there is an adequate equivalent in other legislation?

210. Some risks associated with recovery works cannot be insured. Contractors may refuse to undertake some necessary work without this protection. Parties who suffer harm could potentially seek redress from the Crown or others acting under the Act for harm suffered directly or indirectly as a result of action taken under the Act. Public Service Chief Executives and employees are already immune from liability for civil proceedings for good faith actions in pursuance of their functions, duties and powers under section 86 of the State Sector Act 1988. The risk of being sued could unduly inhibit those acting under the Bill, and not covered by the State Sector Act immunity, from carrying out their responsibilities.

211. As an alternative, the Crown could instead indemnify anyone acting under the Bill against whom court proceedings are brought. This would ensure that those who suffer harm would be able to seek redress. The indemnity would protect those who otherwise be personally liable so any chilling effect on their conduct would be minimised. The relationship with the State Sector Act immunity would need to be addressed. An indemnity would, however, mean the Crown would be exposed to increased cost in defending claims and paying any resulting compensation awarded.

How are any risks mitigated? Are there sufficient checks and balances?

212. It is unlikely that this provision would be required in many cases. As it does not apply in cases of bad faith or gross negligence, there are no incentives to misuse it. An indemnity approach could be considered as an alternative.

Orders in Council

213. Over 30 Orders in Council (Orders) have been passed under the Act and the Canterbury Earthquake Response and Recovery Act 2010. Most are no longer needed and have already expired, or can be allowed to expire in April 2016. The power to issue new Orders in Council (section 71) has been not recommended for inclusion in the Bill.

214. Certain Orders are recommended for to be continued in force by the Bill, rather than being allowed to expire. They are set out in Appendix Two. They have been assessed against the same criteria as the Bill. As well as the checks and balances particular to each Order, continuing them in force via the proposed Bill allows for Parliamentary scrutiny and public submissions during the Select Committee stage.

215. Two of these Orders have end dates; the remainder are being recommended to be continued in force for the life of the Bill, but with the Minister responsible for each Order being given the power to revoke them earlier. As detailed in Appendix Two, none of the Orders is currently expected to be required for the life of the Bill, but the recommended approach allows for unexpected developments. Given that the time limit is not the major safeguard on use of any of the Orders, this pragmatic approach does not increase the regulatory risk.

Consultation

216. The proposed Bill has resulted from extensive consultations with government agencies, teams within CERA, and officers of the Strategic Partners, on the current use of sections of the Act and Orders in Council, and their views of immediate and future needs.

217. The Advisory Board on Transition has been central to providing an overview of regulatory issues and needs following the expiry of the Act. The Board was established to provide advice to the Minister on the implications of the expiry of the Act and the plan for the effective transfer of roles and functions to more permanent agencies. Membership of the Advisory Board includes the three mayors covering the greater Christchurch area; the chairs of Te Rūnanga o Ngāi Tahu and Environment Canterbury; two representatives of the community sector, one representative of the not-for-profit sector and three representatives of the business sector.

218. There has been a wide range of inputs to the decisions on Regenerate Christchurch. CERA officials have been working closely with Council officers. There have also been a number of discussions between the Minister for Canterbury Earthquake Recovery and the Mayor of Christchurch. The report of the Advisory Board on Transition and submissions on the Draft Transitional Recovery Plan were also considered.

219. Legislative powers and provisions for the proposed Bill were set out in the Chief Executive of CERA's draft Transition Recovery Plan (draft Plan) which was developed in consultation with the Advisory Board on Transition, the Strategic Partners, and central government agencies. In particular, the draft Plan proposed that new legislation is needed to support recovery work that will continue after the expiry of the Act in April 2016. It set out examples of powers and provisions that are needed in the proposed Bill.

220. The draft Plan was then publicly notified by the Minister for Canterbury Earthquake Recovery on 2 July 2016. Public written comment on these legislative powers was invited over a 20 day working period. In total, over 2800 submissions were received.

221. In addition, five focus groups were held: three in Christchurch (two with residents, and one with small and medium enterprise business managers and decision-makers), one in Wellington with larger business managers and decision-makers, and one in Auckland with larger business managers and decision makers.

222. A full summary of the public feedback received on the draft Plan was prepared by an independent research company and was provided to the Minister for Canterbury Earthquake Recovery. This is expected to be made publicly available in the near future. Key themes arising out of the submissions have been addressed in the content of this paper.

Financial Implications

223. The main financial impact resulting from the Bill is the establishment and operation of Regeneration Christchurch. As noted above (see page 15), the operational costs will be shared between the Crown and Christchurch City Council. The costs of operating Regenerate Christchurch over the five years of the Bill will be in part met by a transfer

of costs currently incurred by CERA. Any significant new projects will be subject to the scrutiny of business case proposals to the two governing bodies.

224. Other costs and benefits that may be attributed to the Bill will come about through the exercise of the powers that the Bill provides, such as compensation for the compulsory acquisition of land, and not as a consequence of any direct requirements in the Bill. Such costs and benefits should be analysed prior to the exercise of any power.

Implementation plan

225. The new legislation will be an important base for implementing the next stages of recovery and transition. The legislative changes arising from the Bill will not require major implementation other than updating and reprinting forms and public signage with correct legal references. Persons involved in the delivery of recovery functions pursuant to the Bill or under new delegations will be aware of the implications of the new arrangements – for example, what previous powers (including Orders in Council) have gone, and what still remain – having been specifically consulted on the charges to powers that have some impact on their functions and responsibilities.

226. Communications about the Bill will need to convey the sense of the new balance between central and local powers and shifts in accountabilities, underpinned by central government's on-going commitment to expediting regeneration.

Monitoring, evaluation and review

227. The annual review and report provision should provide valuable information for monitoring, evaluation and review purposes.

228. The Bill is scheduled to expire in 2021. Assuming that regeneration activities are still on-going at that time, the impending expiry would trigger a close examination of the continued justification for bespoke powers under any extension of, or replacement for, the Bill.

229. CERA is currently conducting a distinct project compiling important lessons learnt throughout the response and recovery phases. It will deliver a legacy of experience and practical tools to help minimise the impacts of future disasters and improve preparedness and resilience. A report is expected in early 2016.

Conclusions and recommendations

Proposed option or provision	Summary Regulatory Impact Assessment
Need for a new Act (Page 6)	Significantly revised legislation is needed. Enacting new legislation to mark the shift from recovery to regeneration and the transition to local leadership is a more suitable option than amending the Act.
Purposes (including the "purpose and necessity tests") (Pages 7 – 9)	The purpose clause needs to support regeneration, but a link to the earthquakes should also be considered. A purpose and necessity test should be included to provide a check on the exercise of powers.
Time limits and expiry provisions (Pages 9 – 10)	An expiry date of five years provides a suitable time period to ensure that powers will be held only as long as they are needed. An end date of 30 June 2021 would align with a financial year.
Geographic limits to the scope (Pages 10 – 12)	A new area focused on the metropolitan areas of Christchurch and its urban satellites (shown as Map 2 – the scope of the Urban Development Strategy plus adjacent Coastal Marine Areas) best meets the objectives of the Bill.
Reporting and review requirements (Pages 12 – 13)	Reports on the operation of the Act should become an annual requirement only.
Application of the Official Information Act (Page 13)	No regulatory issues; this is part of normal government processes.
Responsible Minister and chief executives (Page 13)	No regulatory issues; this provision is in accord with standard chief executive powers.
Ability to transfer Crown contracts (Page 13)	Still needed; an uncontroversial provision with minor regulatory issues only.
Offence provisions (Page 14)	Two offence provisions are still needed. The appropriateness of penalties and enforcement processes should be assessed relative to comparable offences in the Civil Defence and Emergency Management Act 2002.
Regenerate Christchurch (Pages 14 – 17)	Regenerate Christchurch is to be jointly governed by the Crown and Christchurch City Council. Key governance arrangements, purpose, objectives, functions and accountabilities need to be set out in the Bill. It should not have delivery functions, which should be transferred to a new Crown company.
Regeneration Plans (Pages 18 – 20)	Provision for Recovery Plans is still required, and their scope should be expanded to become Regeneration Plans. There should be an increased role for Strategic Partners. Clarity is needed that Plans are not mandatory for

	significant decisions.
Minister may amend council plans and other documents (Pages 20 – 22)	This provision is still required for recovery and regeneration purposes, and should have appropriate safeguards with the strengthened role for Strategic Partners and public consultation requirements.
Acquisition and disposal of land (Pages 22 – 25)	The Crown still needs powers to acquire and dispose of land, particularly given its large land holdings. The purpose and necessity tests should apply to acquisition decisions. Instead of applying the necessity test to disposals, it is recommended that the chief executive may dispose of land in accordance with any applicable Recovery Plan or Regeneration Plan, or otherwise unfettered.
Transfer land between new Act and Public Works Act (Page 25)	This new provision is needed to support regeneration. The purpose and necessity tests should apply to transfer decisions.
Compulsory acquisition and compensation (Pages 26 – 28)	The power to take land by proclamation, with compensation, is still required. It should be exercised only to give effect to a Recovery Plan or Regeneration Plan.
Ability to subdivide land (Pages 28 - 29)	This power is still required for regeneration and has appropriate safeguards.
Power to amalgamate Crown and Council land (Pages 29 – 31)	An expedited amalgamation process is needed to manage the large number of properties owned by the Crown and the councils. The necessity test should not apply to actions under this provision, but at least one of the pieces of land should have been acquired under the Act or the Bill.
Powers to undertake works (including erection of temporary buildings and ability to restrict access) (Pages 31 – 33)	There is an on-going need for these powers, which should continue to be subject to the purpose and necessity test. Options should be considered for limiting their use on private land, such as where the owner consents.
Demolitions compensation (Pages 33 – 34)	Thus provision is still required to support demolition work. The power should be limited to earthquake recovery.
Direct property owners to act for the benefit of adjoining owners (Pages 34 - 35)	s9(2)(f)(iv) of the Official Information Act 1982
Road closures (Page 35)	This provision will be required for regeneration, but should be subject to the purpose and necessity test.
Cadastral Surveys (Page 35)	This provision may still be useful for regeneration, but should be subject to the purpose and necessity test.

Appeal rights (Pages 36 – 37)	Limiting appeal rights is still required to support recovery. Normal appeal rights could be considered for regeneration activities and for compulsory land acquisition.
Protection from liability for persons acting under the Act (Pages 37 – 38)	Contractors still need protection from civil liability when acting under the Bill. An indemnity approach could be considered.
Orders in Council to be extended: 1. Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 2. Canterbury Earthquake (Local Government Act 2002 – Retaining Walls) Order 2013 3. Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011 4. Canterbury Earthquake (Earthquake Commission Act) Order 2012 (with amendments) 5. Canterbury Earthquake (Historic Places Act) Order 2011 (with amendments) 6. Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 7. Canterbury Earthquake (Social Security Act) Order (No 2) 2010 8. Canterbury Earthquake (Rating) Order 2012. (Page 38 and Appendix 2)	These are still required for the purposes for which they were originally made, and have appropriate safeguards.

Appendix One: Powers in the Act not being carried forward

A number of powers in the Act will not be required for regeneration beyond April 2016, and should be allowed to expire. These include:

- Powers that have either not been used to date or are unlikely to be used from now on, for example:
  - *Minister's power to direct councils to take actions (sections 48-50)* – These broad powers have not been used and revoking them is consistent with the objective of returning to standard arrangements.
  - *Inclusion of resource consents in scope of Minister's power to amend council plans and other documents* (*section 27)* – This power has never been used to amend a resource consent and its expiry is unlikely to affect regeneration. It is also undermining of private property rights.
  - *Chief Executive able to give or deny permission to council contracts* (*section 28)* – This power has never been used and its expiry is unlikely to affect regeneration.
  - *Orders in Council from 2010 continue* (*sections 89-91)* – These Orders in Council are unlikely to be needed and in most cases have already been replaced.
  - *Power of courts to extend or shorten timeframe (section 82)*. – The Act allows courts to extend or shorten specified timeframes, including those in the rules of court and a court order, where the court thinks it is necessary because of the circumstances relating to the earthquakes. This power has not been used and the Ministry of Justice advises that it is not required beyond April 2016.
- Powers that have been used to date, but the recovery phase they relate to (emergency response) has ended and they are no longer needed. For example:
  - *Power to require information* (section 29)
  - *Powers of entry* (sections 33, 34) – These provide emergency response powers allowing access where it is not possible to get permission.
  - *Urgent demolitions* (section 39) – This provides a fast-track mechanism for demolitions in an emergency.
- Powers that are likely to be needed beyond April 2016 but can be provided effectively through other mechanisms. For example:
  - *Chief Executive's ability to delegate powers under the Act* (section 10(3)) – This power has been provided through an amendment to the State Sector Act 1988.
  - *The Community Forum* (section 6) – The Community Forum is recommended to be allowed to expire, on the grounds that it served a useful purpose as a source of information and comment during the initial stages of recovery, but that normalised processes are now appropriate. These include formal

consultation engagement with Strategic Partners on the use of Ministerial powers for Regeneration Plans.

- *The Cross Party Forum* (section 7) – The Cross-Party Forum is recommended to be allowed to expire, on the grounds that normal communication processes are now appropriate. Statutory provision is not required for the responsible Minister to convene other Members of Parliament.

- Powers that may be useful beyond April 2016 but the benefit of their continuation does not outweigh the costs, or there are more appropriate ways to provide the power. For example:
  - *Recovery Strategy* (sections 11 to 15) – The current statutorily prescribed Recovery Strategy for greater Christchurch will be allowed to expire. This will allow local leadership to determine how to set the long term strategy for greater Christchurch's regeneration through standard RMA and LGA processes. If it is subsequently decided that any new strategy needs legal status, this could be achieved through the Regeneration Plan provisions in the Bill.
  - *The ability to amend enactments through Order in Council* (section 71, and the Review Panel for reviewing proposed Orders in Council 72 to 76) – This broad power has been valuable for recovery by allowing, for example, the development of bespoke arrangements for reviewing district plans, allowing the use of reserve land for temporary accommodation, and amending school enrolment schemes. This power was deemed necessary following the earthquakes because it was impossible to predict all the possible issues that would arise in responding to such a significant disaster, and the need for urgency justified an expedited process. These reasons are no longer compelling.

Appendix Two: Orders in Council

The following eight Orders have been recommended for extension:

1. Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014

Why is this Order required post-April 2016? What necessary functions does it relate to?

1. The Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014 provides a streamlined and expedited process for Christchurch City Council's district plan review, and establishes a specialist hearings panel.
2. The Order relates to Resource Management Act planning processes, and associated connections to Recovery Plans, to enable a fully operative replacement district plan to be achieved in a timely manner, providing certainty for the recovery and future development of Christchurch.
3. The Order significantly reduces the time required to prepare the Replacement District Plan by streamlining processes, and having decisions made by a small specialist panel. It focuses public participation at the front end of the planning process, and removes merit-based appeals from the standard process. Appeals on points of law to the High Court are retained.
4. A quality planning outcome is unlikely to be reached within the April 2016 timeframe of this Order. The hearing panel has had to spend longer than expected on the initial assessment, with significant rework required on the proposal. There is still a significant volume of work to be heard by the hearings panel.
5. The provisions of the Order are required post April 2016 to enable a continued streamlined planning process and a quality, fully operative district plan, as soon as possible. An end date will be needed to ensure the process is not extended unnecessarily.

What would happen if this Order is allowed to expire? What alternatives could apply?

6. Without this provision, a quality replacement district plan is unlikely to be delivered in a timely manner. Decisions not made before the expiry of the Order would revert back to the standard resource management process, including the introduction of merit based appeals and associated increases in timeframes, costs and uncertainty. It would be difficult to retain the existing hearings panel, and efficiency gains from the streamlined process would be lost.
7. The scale and significance of the Christchurch Replacement District Plan for the rebuild, and the likelihood of slippage under the status quo, necessitates continuation of a tailored provision. The Order is needed until final decisions on the replacement district plan are made, and appeals on these decisions can be progressed.
8. Available alternatives include:

- The Christchurch City Council retains the existing hearings panel for the remaining parts of the Replacement District Plan after 18 April 2016, and the Christchurch City Council makes final decisions on the plan.
- Ministerial intervention powers, under either the RMA or LGA, could be used to appoint / retain the hearings panel.

9. Any alternative risks appeals on the substantive merits of proposals, and the associated time and cost implications, and relies on the willingness of the appointer to retain the existing hearings panel.

How are any risks mitigated? Are there sufficient checks and balances?

10. The Order significantly truncates standard resource management processes, but does still allow certain public appeals. The hearings panel membership was appointed under a transparent and robust process, and was agreed by the Christchurch City Council. The continuation of the provisions of the Order avoids the risk of a poor quality plan, the inability to retain the existing hearings panel to complete the hearing and decision making process, and significant delays in achieving an operative plan. Reverting to the standard process would increase uncertainty and cost, and delay rebuild and recovery work.
11. Any risks of additional costs through extending the replacement district plan process provisions can be managed in consultation with the operational agencies (Christchurch City Council and CERA) currently involved in supporting the hearings panel.
12. The extension of the Order is required until a specified date in late 2016, ensure the completion of the Replacement District Plan and hearings panel processes and to allow further time for appeals. Checks and balances from the existing Order (including the ability to appeal to the High Court on points of law) are being retained.

2. Canterbury Earthquake (Local Government Act 2002 – Retaining Walls) Order 2013

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

13. The Canterbury Earthquake (Local Government Act 2002 – Retaining Walls) Order 2013 gives access to private land to repair or rebuild publically owned retaining walls without owner's consent.
14. This Order extends section 181 of the Local Government Act 2002 to enable the Christchurch City Council to construct works (retaining walls) on private property for the support of public land or infrastructure. It also enables the Council to enter private land to maintain existing retaining walls.
15. The Order allows the Council to construct works with prior written consent, but without the need for an easement which involves time, survey costs and legal costs to prepare and register.
16. The Order is in place is to complete the construction, repair and rebuild of Council owned retaining walls on private land that were damaged by the Canterbury earthquakes, and to protect the integrity of the Council's assets.

What would happen if this Order is allowed to expire? What alternatives could apply?

17. Without this Order, an easement would have to be granted and consent sought from private landowners in order to construct or repair retaining walls on private property and, if this was not forthcoming, legal action under the Public Works Act would be required. The scale and magnitude of work required (projected to be up to 225 retaining walls on private land) justifies a specially tailored provision.

18. It is therefore essential that this Order stays in place until June 2018 to ensure that all Council owned retaining walls can be repaired, rebuilt or constructed pursuant to the streamlined section 181 process. Continuing the Order also ensures the Council can obtain the necessary easements over those properties where continuing access is needed for the ongoing maintenance of retaining walls.

How are any risks mitigated? Are there sufficient checks and balances?

19. Land owners lose the right to prevent access to their property while works are taking place, but this is counter balanced by the benefit of having their land or adjoining land retained and stabilised, and mitigates the risk of damage to public safety.

20. Land owners also have the onus of engagement with the Council. There is a one month notice period and then if there is no engagement by the owner the Council may proceed with the work. Despite this, Schedule 12 of the Local Government Act provides an established process for recourse by the land owner through the District Court and provides compensation for any detriment to the land, if this is claimed. There is also a comprehensive communications programme administered by the Council to ensure residents are fully informed about proposed works. This power is not expected to be required after June 2018.

3. Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

21. The Canterbury Earthquake (Reserves Legislation) Order (No 2) 2011 empowers councils to use reserves for purposes that would otherwise be constrained or prohibited under the Reserves Act 1977 or a reserves management plan.

22. This power was used by the Christchurch City Council to allow two temporary public accommodation villages to be erected in recreation reserves subject to the Reserves Act 1977 (Linwood Park and Rawhiti Domain). It is also expected to be needed to allow a site office for part of the Christchurch Hospital development.

23. The initial intention was for these villages to be in place for two years, but they are still in operation. The life of the Christchurch temporary accommodation villages may be extended from April 2016 to June 2017, due to the continuance of demand for temporary accommodation. This extension means it is necessary to continue to override the normal processes of the Reserves Act.

What would happen if this Order is allowed to expire? What alternatives could apply?

24. If the Order in Council expires in April 2016, the location of the two villages would become unlawful in terms of the Reserves Act and people who require temporary accommodation while their homes are being repaired or rebuilt would be unable to use

these facilities. It is expected that these villages will be required for a further two years. Extension of the Order enables the villages to continue to operate regardless of the Reserves Act 1977.

25. Council officers and the Department of Conservation advise that extension of the Order in Council is the most straightforward way to enable the continuation of the temporary housing in that location. Other temporary purposes may also still be needed.

How are any risks mitigated? Are there sufficient checks and balances?

26. This Order was used during the early emergency phase. Since that time, Christchurch City Council's planning policy has been to require that establishment of any new housing areas to be considered through normal processes. The extension of this Order is particularly requested to maintain the situation of the existing Linwood Park and Rawhiti Domain temporary villages, until mid-2017.

27. The Order could, however, be used for other purposes. It is not clear that such use would need to be justified in terms of achieving the purposes of the Act, so there may be a small risk in extending this Order. It is not expected to be required after mid-2017.

4. Canterbury Earthquake (Earthquake Commission Act) Order 2012

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

28. The Canterbury Earthquake (Earthquake Commission Act) Order 2012 exempts the Earthquake Commission (EQC) from the statutory 1-year limit on settling via reinstatement, and secondly allows invoicing of claimants to recover excesses if settling claims by reinstatement.

29. The first part of the Order is being allowed to expire.

30. The second part of the Order (the ability to invoice the excess after reinstatement) is still required because it is likely that not all home reinstatement/repairs will be completed by April 2016. It is likely that EQC will still be engaged in disputes/litigation associated with Canterbury claims beyond April 2016. As at March 2015, approximately 180 cases are being litigated, and it is expected that some proportion of other disputed claims will become subject to litigation. Any of these cases that are ultimately resolved by an agreement to reinstatement might well be completed after April 2016.

31. EQC still needs the ability to collect excesses after claims have been settled via reinstatements rather than cash settlements. There are some technical issues for EQC that means invoicing in advance is not possible because of the formula approach to the excess amount i.e. the final cost needs to be known.

What would happen if this Order is allowed to expire? What alternatives could apply?

32. If this order is not extended, there is a risk that EQC may not be able to issue invoices for excesses on reinstatement work that was started prior to the Order expiring and for work on the small number of properties potentially remaining which may still be settled through reinstatement. This aspect of the Order therefore should be extended to maintain equity with:

    - Claimants with respect to other disaster events;

- Christchurch claimants who have received a cash settlement which had the excess deducted; and also

33. Other than completing as many repairs and issuing invoices as possible prior to the expiry of the Order, there are no other options for recovering excesses.

How are any risks mitigated? Are there sufficient checks and balances?

34. There are no significant risks to claimants from retaining this part of the Order. The Order is expected to be required for a further three years (i.e. until April 2019), limiting the period for which claimants could face a contingent liability.

5. Canterbury Earthquake (Historic Places Act) Order 2011

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

35. The Canterbury Earthquake (Historic Places Act) Order 2011 sets out a streamlined New Zealand Historic Places Trust (now Heritage New Zealand) process for determining applications to modify sites of archaeological interest, balancing the need to support the recovery and rebuilding of Canterbury with the need to protect sites of archaeological interest. Modifications are proposed to the original Order to align it with the processes of the Heritage New Zealand Pouhere Taonga Act (Heritage NZ Act), which came into effect in May 2014.

36. There is still a very high demand for emergency archaeological assessments because of recovery related earthworks, as well as a need to extend current authorities for work not yet completed. Heritage New Zealand Pouhere Taonga issued 877 emergency authorities for Christchurch, Selwyn and Waimakariri Districts in 2013/2014 and 530 in 2014/2015 (year to date). It is forecast that this number will slowly decrease to 350 in 2015/2016 and to 100 in 2016/2017.

37. The Order allows a 3 or 5 working day processing time (rather than 20), reduced information requirements for applications, and limited appeal rights. Appeal rights are restricted to applicants only, and to tangata whenua if the site is of interest to Māori.

38. Since the original Order was put in place, the primary legislation has been replaced by the Heritage NZ Act, and it is proposed to update the Order to align with this new Act. An authority is no longer required when a building is being partially demolished or relocated, and adopting the new regime for non-emergency applications (requiring processing in 20 working days (in most cases), rather than 3 months as in the earlier Act).

What would happen if this Order is allowed to expire? What alternatives could apply?

39. If the Order expires, four global authorities covering Christchurch City and Lyttelton will expire, as well as some project specific authorities that are expected to still be required after 18 April 2016. New authorities would be required, causing otherwise unnecessary compliance costs for all parties.

40. The Order was made with respect to the Historic Places Act 1993. The new Heritage NZ Act contains a very similar “fast track” process for use in emergency situations, but the Canterbury Earthquake sequence was too long ago to be covered by these provisions.

41. The standard provisions of the Heritage NZ Act would therefore apply, requiring an assessment within 20 – 40 working days, depending on the degree of likely significance of the site. Given the amount of earthquake related work still to be done, the time and compliance costs for both applicants and Heritage NZ of a normal process would result in a significant delay on recovery work.

42. Another option would be to simply extend the existing Order – this would freeze in place the Historic Places Act 1993, requiring any non-earthquake related applications to go under the old non-emergency process, as well as the more restrictive processes for partial demolitions and relocations.

How are any risks mitigated? Are there sufficient checks and balances?

43. The key elements of the standard process, including an appeal process, remain but with much shorter time frames. Key Māori stakeholders, Ngāi Tahu, were involved with the 2011 Order, and have supported the process. Sites of interest to Māori have a 5 working days limit, and appeal rights for tangata whenua.

44. The major risk is that incorrect assessments are made as to the historic significance of a site that would not have been made if the normal time frames were allowed. Heritage NZ has mitigated this risk by using highly experienced assessors for these sites. There is no evidence that mistaken assessments have occurred to date, and no complaints have been received.

6. Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

45. The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 adds various temporary activities (e.g. depots, storage facilities and accommodation) to the lists of permitted activities.

46. This Order is required to extend the life of all permitted activities which have previously relied on the Order, such as temporary accommodation, and any further activities which meet the limited activities covered by the Order (and have not been otherwise addressed in a RMA district or regional plan).

47. The Order currently allows for a streamlined approval process for temporary accommodation for persons displaced from their normal place of residence or business, and for temporary depots or storage facilities reasonably incidental to any construction work undertaken for the purpose of the earthquake recovery.

48. The provisions of the Order are required post April 2016 to enable the continued lawful use of reserve land in Christchurch for two temporary accommodation villages and for the removal/ disestablishment of those facilities and any remediation of the sites when they are no longer required. Demand for temporary accommodation in Christchurch is expected to remain high until mid-2017 and three villages in Christchurch are likely to remain well utilised until this time.

What would happen if this Order is allowed to expire? What alternatives could apply?

49. Without this Order, resource consent would be required for the continued operation of the villages post April 2016, as well as for their removal and any site remediation necessary on their expiry. This would add cost and uncertainty to the operation of the villages and their removal post April 2016.

50. The scale of ongoing need for temporary accommodation in Christchurch justifies continuation of a tailored provision. Based on the projected reduction in demand for temporary accommodation, the Order could be limited to the Christchurch City Council area and allowed expire in July 2017, although there may be other some other needs for this power.

51. The Order needs to stays in place, at least until the remaining temporary accommodation villages in Christchurch are no longer required, as demand for temporary accommodation reduces, and the villages are able to be removed and the sites remediated.

52. The available alternatives, and the arguments against them, are as follows:

    - Public submission through the Christchurch Replacement District Plan to make the activities permitted in the Plan: submissions are likely to be made as part of an all-of-government submission regardless of the Order continuing, but the outcomes cannot be predetermined and are subject to decision by an independent hearings panel.
    - Not providing temporary accommodation services in Christchurch after April 2016: Ministers have agreed to extend Temporary Accommodation services in Christchurch (subject to them being able to be lawfully continued) and there is still a demonstrable need.
    - Using the resource consent process to enable the activities to continue: uncertainty about timing and outcome may make continued service provision difficult and could result in increasing costs of service provision.

How are any risks mitigated? Are there sufficient checks and balances?

53. The Council retains the ability to manage the reserve land after the temporary accommodation has been removed. The Council can continue to prepare objectives and policies for the Open Space for its future use following the removal of the villages. Any activity undertaken in reliance of the Order does not create existing use rights, and is only temporary in nature.

54. The cost of reduced recreational space is offset by the benefit of having temporary accommodation available to households who need it. By August 2015, a total of 890 households had transitioned through the government temporary accommodation villages. This power is not currently expected to be required after 2017, and could be limited to the Christchurch City Council area, but there do not appear to be great risks in allowing it to continue until the expiry of the Act.

7. Canterbury Earthquake (Social Security Act) Order (No 2) 2010

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

55. The Canterbury Earthquake (Social Security Act) Order (No 2) 2010 allows the definition of 'premises' for Accommodation Supplement purposes to include unoccupied earthquake-damaged properties in Canterbury. This enables home owners who are unable to live in their houses because of earthquake damage to be eligible for the Accommodation Supplement.

56. Normally an applicant for the Accommodation Supplement must be occupying the house where they are paying accommodation costs. The current Order enables the definition of 'premises' in the Social Security Act 1964 to be expanded to include those homes which can't be lived in, but where the homeowner is still incurring the costs of that residence, such as mortgage, insurance, and rates.

57. Until all earthquake repairs to residential properties are completed it is possible that there will be people unable to live in, or being required to vacate, their homes while still having to meet financial obligations for that property. Approximately 15-20 people have relied on this Order to be eligible for assistance at any one time.

What would happen if this Order is allowed to expire? What alternatives could apply?

58. If the Order is allowed to expire, some homeowners who are unable to live in their earthquake damaged homes, but are still having to pay home ownership costs, will not be entitled to receive an Accommodation Supplement.

59. This could be seen to be inequitable given this support has been given to others in the same circumstances previously. The fiscal cost is within forecast assumptions. Prevailing rules for Accommodation Supplement eligibility do not allow for the distinct circumstances arising from the earthquake repair/rebuild programme.

How are any risks mitigated? Are there sufficient checks and balances?

60. Extension is required until the end of the Bill. There are no regulatory risks with this Order – it affects a very small number of earthquake affected homeowners and allows them to apply for financial support they would otherwise not be entitled to. They are still assessed on the remaining criteria that other applicants need to fulfil (e.g. income and other expenses). The fiscal cost is small, and allowed for within existing forecasts.

8. Canterbury Earthquake (Rating) Order 2012

Why is this Order required post-April 2016? (What necessary functions does it relate to?)

61. The costs of providing infrastructure and services resulting from construction activity will be significantly higher than normal for at least another two years for residential reconstruction and longer for non-residential projects. Recovering these costs from existing ratepayers would impose an unfairly high cost burden on them. It would be particularly unfair on owners whose buildings are demolished, but who face undiminished rates until the next financial year, while those whose values increase due to construction or subdivision face no increase in rates.

62. The Canterbury Earthquake (Rating) Order 2012 allows the Christchurch City Council to choose whether to reassess rates during the financial year rather than only at the start of the year. The Council exercised this option for the 2015/16 financial year.

63. If rates are adjusted more rapidly, this better reflects changes in property value due to construction, demolition or subdivision occurring at greater than normal levels since the earthquakes, which is fairer to ratepayers. For example, with the Order in place, a property owner whose building is demolished can have their rates adjusted straight away to a reduced amount.

64. This rationale differs somewhat from the original intention of the Order, which was to allow the Council to provide rates relief to owners of demolished and uninhabitable properties, but it is a valid reason for extending the Order

65. Advice from the Council is that, if rates could not be adjusted for net growth during the year, the 2015/16 increase to existing ratepayers would have been 8.94%, rather than the 7.98% increase made possible by adjusting rates throughout the year under the Order.

What would happen if this Order is allowed to expire? What alternatives could apply?

65. Without this Order, rates adjustments could only be made annually, at the beginning of the next financial year, as currently provided for in the Local Government (Rating) Act 2002. There are no other alternatives to achieve the same effect.

66. The Council could still remit rates for demolished properties in the absence of an Order. This would require an amendment to the Rates Remission Policy, including public consultation. It would not be able to recover the lost revenue from other sources.

How are any risks mitigated? Are there sufficient checks and balances?

67. Households and businesses whose property values increase on completion of construction are worse off under this Order, in that they pay increased rates sooner, when they may also be facing additional building and relocation costs, etc. On the other hand, those whose property values drop (e.g. after demolitions) are better off. Any property owner who cannot afford to pay rates can seek a remission under the current Rates Remission Policy, as remissions can be applied to rates adjusted during the financial year.

68. It is proposed to extend the Order for a period of two years only, ending 30 June 2018 to align with the financial year.

Current Orders in Council to expire with Act

The following Orders will not be needed after April 2016, as the earthquake recovery purposes for which they were enacted are now complete:

- Canterbury Earthquake (Building Act) Order 2013
- Canterbury Earthquake (Canterbury DHB Land Exchange) Oder 2014
- Canterbury Earthquake (Ratings Valuation Act - Christchurch City Council) Order 2013

- Canterbury Earthquake (Local Government Act 2002 – Christchurch City 3-Year Plan) Order 2013
- Canterbury Earthquake (Local Government Act 2002) Order (No 2) 2011
- Canterbury Earthquake (Resource Management Act – Electricity Network Recovery) Order 2011
- Canterbury Earthquake (Reserves Act – Electricity Network Recovery) Order 2011
- Canterbury Earthquake (Resource Management Act - Burwood Resource Recovery Park) Order 2011
- Canterbury Earthquake (Resource Management Act Port of Lyttelton Recovery) Order 2011
- Canterbury Earthquake (Resource Management Act) Order 2010
- Canterbury Earthquake (Resource Management Act) Order 2011