

Canterbury Earthquake Recovery Bill

1. The Canterbury Earthquake Recovery Bill ("the Bill") was introduced to Parliament under urgency on Tuesday 12 April. It is expected that the Bill will be passed into law on Thursday after a shortened Select Committee process.
2. The Bill provides the Minister for Canterbury Earthquake Recovery and the new Canterbury Earthquake Recovery Authority (CERA) with extensive powers deemed necessary to facilitate and direct the response and recovery from the recent Christchurch earthquakes.

Powers to assist recovery and rebuilding

3. The Bill provides for the development of a Long-Term Recovery Strategy within nine months. The Strategy is to be developed by CERA in consultation with Christchurch City Council, ECan, the Selwyn and Waimakariri District Councils, Ngai Tahu and "any other persons or organisations that the Minister considers appropriate".
4. The Strategy is to set the overall direction for the recovery effort and will address areas where rebuilding may or may not occur, the location of existing and future infrastructure and the nature of the Recovery Plans to be developed. The process for developing the Strategy must involve public notification, followed by at least one public hearing.
5. A number of Recovery Plans ("the Plans") are to be developed at the direction of the Minister to provide greater detail on matters of implementation. The Plans must be consistent with the Strategy.
6. A mandatory Plan for the Christchurch CBD is also to be developed within nine months and is to be led by CCC in consultation with the community, CERA, and other relevant key stakeholders. The CBD Plan must involve public notification and a hearing. This process is not mandatory for other Plans.
7. However, irrespective of any consultation and/or public hearings which may take place, the Minister ultimately has the power to make any changes he sees fit before a Plan is finalised

Effect of the Strategy and Plans

8. Once approved, no RMA document or other related instrument such as an annual plan, a regional public transport plan or policy, a Conservation Act strategy or plan or the like can be inconsistent with the Plans. Neither can a council make a decision or recommendation which is inconsistent.
9. If a Plan directs that specific provisions must be added, removed or changed in any RMA document, (regional policy statements, proposed regional policy statements, plans and proposed plans), Councils must do so within a specified time. These changes are to occur without further notification or public input.
10. Once in the relevant RMA document only the Minister may subsequently request a change or variation to the provision. This power limits the rights of councils and individuals to seek an amendment and suggests a future administrative difficulty in determining what provisions have been inserted via these provisions and as such may only be amended on request from the Minister.

11. If a Plan changes the status of an activity, any existing application must be assessed against the new activity status. This is a significant change to the current RMA provisions.

Powers affecting councils

12. The Minister has the power to suspend, amend, or revoke the whole or any part of an RMA document or related instrument. The Minister may also suspend or cancel any resource consent or existing use right. No compensation is available for such action.
13. The Bill gives CERA the power to direct any local authority to take or stop taking any action, or to make or not to make a decision in relation to RMA matters such as current resource consents, abatement notices and designation and heritage orders.
14. The Minister also has the power to direct a council to carry out certain functions within a specified timeframe. If the Council does not comply with this direction the Minister may assume the responsibilities, duties or powers of the council.

Other powers

15. Other powers provided for under the Bill include:
 - a. the power to obtain or require information;
 - b. the power to enter onto land, remove fixtures and fittings, perform work on land, (including the construction of structures);
 - c. the power to close roads and divert traffic;
 - d. the power of entry and removal, including demolition powers;
 - e. the power to require land to be temporarily vacated so work can be coordinated;
 - f. the power to compulsorily acquire land;
 - g. the power to subdivide land that has been compulsorily acquired;
 - h. the power to acquire, hold, sell, exchange, mortgage, lease and dispose of land and personal property;
 - i. the power to erect temporary buildings;
 - j. the power to approve certain council or organisation contracts, over a certain threshold, if necessary; and
 - k. the power to issue compliance orders.

Offences

16. Failure to comply with directions from CERA may result in the imposition of penalties. For example, if CERA issue a building owner with a demolition notice, it is an offence for the owner not to respond within 5 days setting out when they will carry out such demolition works. The offence carries with it a fine of up to \$200,000.
17. The Bill also establishes offences for breaches of road stops and closures and breaches of compliance orders (fines and imprisonment).

Appeal rights

18. The Bill significantly limits normal RMA appeal rights. A right of appeal to the High Court remains but only in the following limited circumstances:
 - a. against the Minister's determination relating to compensation for the compulsory acquisition of land;
 - b. against the decision of the Minister in relation to whether an application under the RMA, such as a resource consent, is inconsistent with a Plan;
 - c. against a decision on an application for a resource consent or a notice of requirement for an activity or use that is specified in a Plan as being appealable;
 - d. in respect of any dispute relating to surveys of land.

19. The Bill provides a right of appeal to the Court of Appeal on the above matters. An appeal against a Court of Appeal decision concerning compensation for compulsory acquisition can also be appealed to the Supreme Court.

Orders in Council

20. The Bill permits the Governor General to make Orders in Council on the recommendation of the Minister to exempt, modify or extend the provisions of any enactment such as the Building Act 2004 and the Local Government Act 2002.
21. The Canterbury Earthquake Recovery Review Panel is established under the Bill to provide advice on request in relation to such Orders in Council.

Checks and balances

22. The Bill provides that the powers, rights and privileges are only to be exercised for the purposes specified in the Bill.
23. The Minister must prepare and present to the House a quarterly report which includes a description of the powers exercised by or on behalf of the Minister or CERA.
24. The Bill provides for community consultation via a 20 person appointed forum to which the Minister must have regard. A cross-parliamentary party forum is also established for the purpose of obtaining information or advice in relation to the operation of the Bill.
25. Any exercise of a statutory power under the provisions of the Bill will also be subject to standard judicial review processes.

Conclusion

26. This Bill arms the Minister and CERA with extensive powers. Whether those powers are ultimately acceptable to individuals and the community at large will no doubt depend upon how the powers are exercised. There is little doubt that the legislation sets the scene for the Minister to unilaterally make decisions considered necessary and desirable for the rebuild of the Greater Christchurch area. Community consultation is provided for but is not constituted in such a way that it can delay or derail the Ministers aspirations. Overall, the desire to move quickly and without undue process requirements is the dominant feature of the legislation.
27. The legislation and decisions made under it will have long lasting implications. If you have specific questions on the effect of these provisions on your specific circumstances please contact us.



Lauren Semple
Partner

Direct: 03 471 5428
Mobile: 027 220 1456
Email: lauren.semple@andersonlloyd.co.nz