26. Submission on the Draft Transition Recovery Plan: Greater Christchurch Earthquake Recovery: Transition to Regeneration (July 2015)

Contact: Karleen Edwards

1. Purpose of Report

1.1. This report is to present the Council submission on the Draft Transition Recovery Plan: Greater Christchurch Earthquake Recovery: Transition to Regeneration (July 2015)

2. Recommendation

2.1. That the Council adopt the attached draft submission on the Draft Transition Recovery Plan: Greater Christchurch Earthquake Recovery: Transition to Regeneration (July 2015)

Signatories

Approved By	Karleen Edwards	Chief Executive Officer

Christchurch City Council

Submission on the

Draft Transition Recovery Plan: Greater Christchurch Earthquake Recovery: Transition to Regeneration (July 2015)

July 2015

Final DRAFT

Mayor's Foreword

> *"In great cities, spaces as well as places are designed and built: walking, witnessing, being in public, are as much part of the design and purpose as is being inside to eat, sleep, make shoes or love or music. The word citizen has to do with cities, and the ideal city is organized around citizenship -- around participation in public life."* [1]
>
> *Rebecca Solnit, Author*

Participation in public life is exactly what regeneration is designed to achieve. This is reflected in *Greater Christchurch Earthquake Recovery: Transition to Regeneration* [2] through the recognition of the importance of supporting local leadership, something that is vital to achieving participation and the next transformative phase of our city's future.

As representatives of the city, we offer our reassurance that we are ready to provide the leadership that is required – a style of leadership that is both engaging and inclusive – knowing that our communities are ready, willing and able to partner with us to ensure the regeneration of the city as a whole.

Our Long Term Plan 2015-25 is called Building Resilience: From Recovery to Regeneration. We used the word regeneration to capture the combination of restoration and new growth that the city is experiencing.

Regeneration also represents a 'step-change' from recovery. 'Step-change' means a significant change, a positive change, and in the context of regeneration is a term that embraces the world of opportunity that can be captured by re-imagining our future through a sustainability lens, something the world is grappling to do.

Regeneration is also reflected in the energy, creativity and flair of the transitional movement that has emerged in the post disaster environment creating an exciting sense of possibility. It is this that has put Christchurch on the international stage.

At the same time it allows us as a city to focus on the intention of the anchor projects - and that was always to enliven or catalyse the spaces in between. As a city we all have a direct interest in what is the public realm, the commons, the places where people participate in public life as Rebecca Solnit describes. We also have an indirect interest in the private developments that will use the anchor projects as the springboard for development.

And for us as a city, it is more than developing a vibrant central city, it is about regenerating the range of suburban centres that support the neighbourhoods that have been so badly hit by the earthquakes.

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[1] Rebecca Solnit, *Wanderlust: A History of Walking* (2001)

[2] CERA, *Greater Christchurch Earthquake Recovery: Transition to Regeneration* (July 2015)

As Solnit says 'the ideal city is organised around citizenship' and taking this broader perspective of regeneration will give people a reason to engage in a positive and meaningful way.

The other driver for step-change is building momentum. Setting up *Development Christchurch Ltd* is a signal to our strategic partners that we are ready to do things differently, to partner with the Government, our communities and the private sector in a way that 'business as usual' models cannot.

We don't have the capacity as a city to do everything at once and nor can we do it alone.

We are ready to step up to the challenge.

Lianne Dalziel
Mayor

1. What this is about

In April 2016 the special legislation put in place to help Canterbury recover from the devastating earthquakes (the *Canterbury Earthquake Recovery Act 2011* - or CER Act) will expire. Five years since the beginning of the Canterbury Earthquake Sequence is a good time to take stock and ask what, if any, special arrangements are needed to help secure Christchurch's full recovery and regeneration.

A great deal of thinking has already gone into this question and on 2 July 2015 the Prime Minister, John Key, released a document (*Greater Christchurch Earthquake Recovery: Transition to Regeneration*) which maps out a path for moving away from strong central Government involvement and control in the city back to what we often refer to as the "new normal."

The Government's proposals suggest that as the Canterbury Earthquake Recovery Authority (CERA) winds down, its roles and functions should for the most part be transferred to the appropriate Government department (e.g. the Ministries of Health and Business, Innovation and Employment) or to local government. Similarly, the plan suggests the extraordinary powers contained in the CER Act should for the most part be wound back, leaving a much smaller set of residual powers to deal with some of the legacy issues such as acquiring and or disposing of surplus land.

"Transition" is a process. The Government is seeking feedback on how long this should take and at what point responsibility for the city's leadership and development should completely return to the Christchurch City Council operating under the normal statutory framework of the *Local Government Act 2002* and related legislation such as the *Resource Management Act 1991*.

The Government's preliminary views on these matters have been informed by the Advisory Board on Transition[3], an independent group set up by Cabinet to provide advice to the Minister of Earthquake Recovery, Hon Gerry Brownlee. In its report on the Board, chaired by Dame Jenny Shipley, has strongly endorsed the need for a shift back to local leadership. But it has also drawn attention to the fact that despite great progress, the recovery remains uneven and there is a lot still to be done.[4]

Specifically, it talks of the need for a "step change" in the approach to the regeneration of the Central City in order to realise the vision first articulated by Christchurch residents through "Share an Idea" back in 2011 and then translated into what was called the Blueprint - the *Central City Recovery Plan*. [5]

For some time the Crown and Council have recognised that the ways in which both central and local government interface with the private sector do not always provide the sort of speed and agility and potential for innovation that is required when confronted with the herculean task of rebuilding an entire city centre.

[3] Membership and Terms of Reference of Advisory Board on Transition available on CERA website: http://cera.govt.nz/about-cera/advisory-board

[4] Advisory Board on Transition to Long Term Recovery Arrangements, *First Report to the Minister for Canterbury Earthquake Recovery* (3 June 2015)

[5] https://ccdu.govt.nz/the-plan

The Transition Advisory Board noted that "a consistent theme of success has been where the governing body has put in place independent boards operating as the interface between governing shareholders and management."[6]

This was the type of thinking which prompted Council to work with its commercial arm Christchurch City Holdings Ltd to set up *Development Christchurch Ltd* in March 2015.[7] This signalled to strategic partners that the Council was ready to partner with the Government, its communities and the private sector in a way that 'business as usual' models cannot.

A central plank in the Government's transition plan is a proposal to set up a similar arms-length body, tentatively called "Regenerate Christchurch" that would be responsible for the delivery of the Crown's Anchor Projects.

Over the course of the next two months, as Cabinet considers the shape of replacement legislation for the CER Act, the Minister has asked CERA and the Council to provide him with advice on how these two entities might function and relate - including whether a better outcome for the city might be to integrate them.

Alongside this, the Crown is asking for formal feedback on the other aspects of its draft transition plan, including its proposals that:

- *overall leadership and coordination of the recovery should be the responsibility of local institutions, primarily local authorities and Te Runanga o Ngai Tahu.*

- *support for community-led recovery activities that focus on community resilience will be the responsibility of local authorities (Christchurch City Council, Waimakariri District Council and Selwyn District Council) for their respective communities.*

And on:

- *Whether the proposal to transfer responsibility for the regeneration functions carried out by CERA to a new entity possibly named Regenerate Christchurch, will create the 'step-change' needed to drive community and business confidence and investment in the central city?*

- *And whether there other changes needed to build confidence and encourage investment in the central city recovery?*

As the Government's key partner in the recovery the Council has a unique interest in the matters raised in the draft plan.

[6] Advisory Board on Transition to Long Term Recovery Arrangements, *First Report to the Minister for Canterbury Earthquake Recovery* page 8 (3 June 2015)

[7] http://resources.ccc.govt.nz/files/TheCouncil/meetingsminutes/agendas/2015/May/Council30April2015OpenMinutes.pdf

However, because Council officials are engaged in bi-lateral discussions with the Crown about the best options for Christchurch with respect to commercial delivery and development vehicles this submission confines itself to addressing the principles which should underpin any such entity rather than its final form or scope.

When developing the Council's formal submission the elected representatives have paid close attention to what its own stakeholders - businesses and the community - told us about what's working and what needs to change during the consultation on the Council's own ten year plan and budget.[8]

Among the key messages expressed through this process were:

- the need for the City to be in a position to determine its own direction and future;
- the need for people to be at the centre of that future;
- the need for that future to be affordable and sustainable; and
- the need for local government to find new ways of "working with" rather than "delivering to" its various communities.

These imperatives have shaped the Council's submission. It is also underpinned by the Mayor and elected representatives' view of:

- what "regeneration" means for the city and the principles that flow from this;
- the challenges that lie ahead; and
- the powers, tools and governance arrangements the Council believes are needed to accelerate recovery and regeneration, both in the central city and the suburbs.

[8] http://resources.ccc.govt.nz/files/TheCouncil/meetingsminutes/agendas/2015/June/Council23-26June2015-LongTermPlanFULLAgenda.pdf

2. What "regeneration" means: the purpose of any replacement legislation

There has never been a clear statutory framework with respect to long term recovery and the state's duty of care towards the people of Canterbury. The CER Act simply states: "Recovery includes restoration and enhancement (CER Act 2011)".

The Act contains the following vision for recovery:

> *"Greater Christchurch recovers and progresses as a place to be proud of - an attractive and vibrant place to live, work, visit and invest, mo tatou, a, mo ka uri a muri ake nei - for us and our children after us".*

Clearly recovery is not an end state, but rather a journey that does not occur in a linear fashion - there are major milestones and inevitable set-backs. And of course, recovery does not only refer to the bricks and mortar, but to the wellbeing of people and the social, environmental, cultural and economic environments of Christchurch and the wider Greater Christchurch area.

Critically, psychosocial recovery is a sequence of states, not dissimilar to the grief cycle, that are experienced by individuals and communities following disasters before they feel they can "get back on their feet".

Given the scale of destruction brought about by the Canterbury Earthquake Sequence and the permanent changes to the built and natural environments, it is clear that a crucial aspect of regeneration requires the community's acceptance of, adaption to, and engagement with our future state and the pathway to get there - a shared vision of the future.

In May 2011 the Prime Minister's Chief Science Advisor, Sir Peter Gluckman, wrote the following paragraph about the recovery:[9]

> "*A feeling of self-efficacy and community efficacy assists the population in reactivating their coping mechanisms. Local governance, empowerment and ownership have been shown to facilitate recovery.*
>
> *The inevitable tensions and conflicts in achieving this are obvious (long-term versus short-term, public versus private, local versus national interests) and cannot be avoided – rather, they have to be openly handled with sensitivity.*
>
> *It follows that, from the psychosocial perspective, those involved in directing the recovery should create governance structures that understand and actively include community participation and enhance individual and community resilience. Such approaches will be most likely to be effective in re-establishing coping and functioning communities."*

[9] Professor Sir Peter Gluckman, T*he psychosocial consequences of the Canterbury earthquakes* (10 May 2011)

http://www.pmcsa.org.nz/wp-content/uploads/Christchurch-Earthquake-Briefing-Psychosocial-Effects-10May11.pdf

Irrespective of how regeneration is defined for the purposes of the law, the international literature throws up a set of characteristics necessary for regeneration to succeed. These include:

- a sense of vibrancy
- multiple opportunities for interaction (social and economic) and inclusiveness
- revitalisation by attracting economic investment and new employment and creating a much improved living environment
- communities that recognise and benefit from the new possibilities that change brings and taking opportunities to adapt
- Reducing future exposure to hazards and their associated risks (improved resilience)
- optimism
- improvement and growth

That same literature shows that creating the circumstances in which these elements can develop requires;

- clarity/commonality of purpose and shared goals;
- collaboration and partnership through appropriate governance;
- the power to influence outcomes;
- Integrated and sustainable actions and interventions;
- Appropriate land-use and infrastructure provisions and reconstruction of the built environment to provide levels of service from public amenities that the taxpayers/ratepayers expect and can afford.

In the Council's view these principles and propositions are the foundation of change, but the real challenge for Christchurch is to re-position itself as a city with an eye to both the opportunities and challenges of the 21st century. This will require a new sense of both place and purpose, and a new understanding of citizenship, both at the local and national level.

Regeneration is not just a physical process, with built capital to the fore, but more importantly, an improvement and uplift in the social, cultural and creative capital that defines great cities. New proposals such as community currencies, community-led planning and investment, and ways of engaging communities in management and ownership of public spaces - the commons - demonstrate the shift in thinking coming from a revitalized commitment to ensuring citizens can participate in making decisions about the future of our city.

Creativity, innovation and sustainability will be the long term drivers of that shift and it is paramount that Council, as the representative body of the city, supports and nurtures those drivers at the local level.
Whilst Christchurch may be a city at the edge of the world, it can also be a city on the edge of the future. Having an "edge" is having an advantage or a quality, making it interesting or exciting. It's a great place to be.

3. What this means for transition

The Council's understanding of regeneration in the context of post-disaster Christchurch and the principles which flow from this have determined its response to the Crown's Draft Transition Plan. These principles are;

- Conversations about Christchurch's future must take place in Christchurch - it is time for the Council to become a policy maker rather than a policy taker;
- The default position should be that functions are carried out by the Council under normal democratic local government processes;
- Any new or remnant statutory interventions must be demonstrably justified for regeneration purposes and consistent with the principles of local leadership and community engagement;
- Any new/remnant statutory provisions must be subject to the normal appeals and review processes and as a matter of principle should not prevail any longer than can be demonstrably justified;
- The City Council to resume responsibility for the realisation of the regeneration of the central city with support from its recovery partners, the Crown, Ngai Tahu, ECAN and the private sector;
- Actively support partnership and collaboration at all levels (Crown, Iwi, private sector, not for profits, community);
- Any new delivery/development arrangements must be capable of meeting BOTH the immediate objectives of commercial discipline and value for money with respect to large public sector investments in the CBD AND the long term objectives of regeneration and development, acknowledging that investment is not simply about achieving financial outcomes.

4. Common Objectives:

- As partners in the city's recovery and regeneration the Crown and Council have a common interest in achieving the following objectives:

- Timely, affordable, and sustainable delivery of the CCRP objectives (including the anchor projects, An Accessible City, and A Liveable City).

- Enlivening of the spaces between the anchor projects and the central city public realm.

- Confident, optimised and streamlined approaches for private investment in the central city.

- Sustainable outcomes from future use decisions for the residential red zone.

It is also acknowledged that the Crown and Council share the overall objective of a regenerated, economically sustaining city. However, the Council has a wider view of regeneration that encompasses the suburban centres that support local neighbourhoods. As a result, they will have joint interventions and separate interventions that contribute to the recovery but need to ensure that those interventions align through a jointly agreed, joined up and commercially overseen program of interventions.

5. The challenges ahead

The Draft Transition Recovery Plan and the Advisory Board on Transition both provide stocktakes of how the recovery is progressing across a range of different social, health, economic, environmental and business indicators. [10]

According to CERA's latest Wellbeing Survey across the country, quality of life was lower in 2014 than 2010.[11] Christchurch city experienced the largest decline (-15%) compared with Auckland (-11%) and Wellington (-5%). In 2014 there were more highly stressed respondents across the country than in 2010. In Greater Christchurch, people with unresolved insurance claims, living with a health condition or disability, living in temporary housing, and renters were less likely to rate their overall quality of life positively, and more likely to report high levels of stress in the past year.
In the course of public hearings on the Council's Long Term Plan in June, councillors were presented with first hand evidence of these issues and how they are impacting on the lives of individuals and communities.

The Council also heard from investors and developers frustrated by perceived slowness of local government and Crown processes. We also heard from communities and NGOs challenging Council to find new ways of partnering and collaborating with them to find creative solutions to the complex problems they face.

As an organisation the Council is actively looking for ways to respond to these challenges by developing the type of collaborative processes that are necessary for regeneration. The establishment of Development Christchurch, with its brief to support regeneration in both the suburbs and city, recognised the fact that the "business as usual" approach to the rebuild was not sufficient.

As co-investors in the Central City public facilities (the Anchor Projects), the Crown and Council have a shared interest in ensuring that the risks and opportunities which present themselves at this phase of the recovery are recognised and addressed.

We agree with the Transition Advisory Board's assessment that there needs to be a step change in the pace and efficiency with which the CCRP objectives, including the Anchor Projects, are delivered.

[10]Current estimates suggest that recovery construction costs will total approximately $30 billion with construction activity forecast to be complete in 2022. ($10 billion variance from the estimated $40billion Total Cost of Recovery is due to non-construction insurance settlements, Crown other recovery costs and construction not requiring a building consent). Consentable construction was an estimated 33% complete at December 2014 (estimated 29% complete at September 2014), with construction activity in Canterbury set to peak in 2016.
Of this total the current value of the Public Sector Rebuild is approximately $6.5 billion of capital investment for 59 major infrastructure projects across eleven organisations. As of 31 December 2014, 24% of the projects had not reached their baseline milestones."
Source Canterbury Earthquake Recovery Lookbook (for the quarter ended 31 December 2014)
http://cera.govt.nz/sites/default/files/common/cera-lookbook-31-december-2014.pdf

[11] The CERA Wellbeing Survey September 2014 Report:
http://cera.govt.nz/sites/default/files/common/cera-wellbeing-survey-september-2014-report.pdf

Through its LTP (and other public processes, such as Victoria Square regeneration) we heard from the public of Christchurch that they want to be involved in decision-making, and that they want more than a fully functioning city centre; they want great suburban centres that can support affected neighbourhoods.

Investors and developers have reported dissatisfaction with the lack of clarity over who is running the city (CCDU or Council), and therefore, who they should be working with. Many have continued to press concerns about regulatory frameworks that are potentially stifling development opportunities in the CBD, but it isn't always clear who has responsibility for these - e.g. CCRP vs District Plan Review.

Our decision to set up Development Christchurch Ltd was a response to these issues - we were clear we needed an arms-length commercial delivery vehicle capable of quickly responding to opportunities in both the CBD and suburban centres.

It is clear that while some elements of the central city rebuild are progressing well and producing the intended catalysing effect, (for example private investors have embraced the Otakaro / Avon river precinct as the most desirable place to rebuild with extensive office redevelopment particularly along the western bank), others are stalled. Significant gaps where recovery is faltering have emerged around Cathedral Square, and the proposed Convention Centre site, the Performing Arts Precinct (although that is now looking more promising) and the north eastern quadrant of the city.

To date, despite strong interest, there has also been only limited success to date in landing new international investment in the city.

6. What needs to change? The powers, tools and governance arrangements the Council believes are needed to accelerate regeneration

Return to local leadership

The Council agrees it is time for a transition back to local leadership and decision-making. As acknowledged by the draft Plan "international research shows that, for recovery to be sustainable in the long term, it needs to be 'owned' and led by local communities and institutions".[12]

This is supported by the guiding principles of the United Nations Development Programme for post-disaster recovery[13] that include inter alia that if new structures to support recovery are created post-disaster, their objective should be achieving "cohesion, co-ordination and consensus" amongst the different disaster stakeholders; and critically, that new structures and/or institutions should strengthen and not undermine existing institutional frameworks.

The Council agrees with the proposals in the draft Plan that the UDS partnership be 'refreshed' to include regeneration and development in greater Christchurch, under a new governance group to support strong local leadership. The draft Plan notes, and the Council agrees, that before the earthquakes, the three local authorities and the regional council (described as Greater Christchurch) had established an effective collaborative arrangement for managing land use and infrastructure planning through the development and implementation of the Greater Christchurch Urban Development Strategy (UDS).

However, as noted in the Advisory Board's first report to the Minister "the impacts and costs of the Canterbury earthquake sequence have been largely borne by the city rather than greater Christchurch. We note that although aligned the city's interests are in some circumstances distinct from the interests of greater Christchurch".

The Christchurch City Council is the local institution with the primary responsibility for the regeneration of the central city and the suburban centres within the Christchurch City boundaries and has the following core statutory responsibilities to its residents:

- To enable democratic local decision-making and action by, and on behalf of, communities; and to
- To meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.

[12] The draft Transition Recovery Plan describes the next period of the recovery from the Canterbury Earthquake Sequence as moving from "recovery" to "regeneration", requiring a shift from centralised leadership to local institutions leading the recovery. The Plan proposes that CERA's role on leading the recovery will wind down "so that local leadership and coordination of the recovery will become the responsibility of local institutions, primarily local authorities and Te Rūnanga o Ngāi Tahu",

[13] United Nations Development Programme, *'Post-Disaster Recovery: Guiding Principles'* (2006)

Achieving greater alignment between Crown and Council as principal recovery partners

As part of its call for a "step change" in the Central City, the Advisory Board on Transition highlights the need for close alignment between Crown and Council. Officials (CERA and Council) work collaboratively on the delivery of projects, but we have not had the mechanisms to fully scope the opportunities and risks - the 360º view.

The Crown and Council have both made significant commitments to the people of greater Christchurch, and through their respective active interventions have shared the social and financial risks, and sought to achieve new opportunities, resulting from the earthquakes.

However a successful regeneration on the scale before us, requires greater clarity around what we are trying to achieve, better governance, and more appropriate skills.

In the past, without a shared understanding of what we were all trying to achieve and who decides the priorities, it has been difficult to align work programmes, share responsibility, measure progress and adjust interventions to keep on track.

The problem is that no one governance forum has had ultimate responsibility for creating the strategic, high level framework on which all Crown/Christchurch City recovery and long term growth decisions would hang.

Collectively, the Crown and Council must develop a more coherent and transparent governance and leadership environment that improves levels of confidence in the community and in the private sector and ensures that there is a coherent strategy and implementation plan for the next recovery and regeneration phases.

The Council invites the Crown to signal in the draft Transition Plan its intent to support the ongoing recovery and regeneration functions and activities by developing an enduring collaboration between the two parties. This collaboration must be founded on mutual respect, standards of good faith and confidence that working together will bring the greatest benefits for the Christchurch.

The aim would be that outstanding recovery functions and future regeneration and growth decisions made by the Crown and the Christchurch City Council on matters of common interest to them are made together and are directly aligned.

This would be done through:

- Developing a common and shared view of the remaining problems—at this stage in the recovery—through information sharing and joint engagement on issues (including identification of where the Crown and the Council may be operating from different assumptions or aiming for different objectives).

- Confirming the solutions decided amidst the various existing programme level governance structures, to make sure that there is agreed understanding and no surprises between the Crown and the Council and across the programmes.

- Considering collectively the effectiveness of interventions put in place and programmes of work underway to see if they are on track and what more needs to be done (or changed) to maintain momentum;

- Being clear about the role of governors (the Crown and Council) and the role of those charged with the commercial responsibility of delivering on the agreed commercial outcomes, and attracting the appropriate skills for the latter;

- Agreeing on a process for resolution where assumptions and/or programmes of work are not aligned to effect the best outcomes for all.

It should be noted that these principles and partnership arrangements were explicitly set out in the 2013 Cost Share Agreement between Crown and Council. However no structures were put in place to support these aspirational statements.

Some precedents for such collaborative arrangements between two or more partner agencies - focussed on specific shared outcomes - do exist and we look to work with the Crown to clarify how to leverage these to best effect.

In addition to a specific Crown-Council relationship to manage joint responsibilities, CCC endorses the view of the Advisory Group for Transition that the Urban Development Strategy Partnership and supporting programmes of work are relevant for more regionally focused issues.

7. Council's views on the proposed new statutory framework

The "extraordinary" powers provided to the Minister for Canterbury Earthquake Recovery, and to the Canterbury Earthquake Recovery Authority (CERA) under the CER Act 2011 reflected the urgency and scale of the damage caused by the earthquakes.

The CER Act expires 18 April 2016. The draft Transition Recovery Plan proposes that new legislation is needed to support recovery work after this date.

The Council agrees some legislative powers will be necessary after the expiration of the CER Act to support the next stage of the recovery and regeneration of the city, but suggests the need for extraordinary Crown intervention has lessened. The extraordinary or bespoke powers in the CER Act were to enable the focused, timely, and expedited recovery of greater Christchurch. Five years after the earthquake and at this stage in the recovery, the Council submits such powers should be limited to those required to support the regeneration of the city and address outstanding issues such as acquiring and disposing of surplus land where these are not otherwise provided for in existing legislation.

In addition the Council proposes that new recovery legislation reflect the transition back to local leadership and decision-making foreshadowed in the draft Transition Recovery Plan.

The CER Act concentrated recovery decision-making within central Government and in particular within the Executive. Operational responsibility for the recovery has also largely been at the national level, having the effect of placing local institutions, including the Christchurch City Council, in a largely supportive role.

The transition and the drafting of replacement recovery legislation provides the opportunity for the Government to exit from its extraordinary role in greater Christchurch, to re-establish the place of local government in planning and decision-making and to work in partnership with the city while still retaining oversight of its significant investment and interests in the city.

Legislative framework to support shared objectives

The Crown and the Council have shared objectives in the recovery of Christchurch. The draft Transition Recovery Plan proposes new recovery legislation will include the power for Minister(s) to direct the development of Recovery Plans (likely to be called Regeneration Plans).

The Council proposes this power be limited to be only at the request of Strategic Partners. Regeneration Plans may, for example, provide a robust mechanism for Council to develop Plans in partnership with local communities to guide the regeneration and development of suburban areas, and allow for an expedited process to achieve recovery objectives.

Allowing the leadership and development of Regeneration Plans to become "local" is an important step towards restoring local decision-making and evidence of genuine partnership between local and central government.

In addition, the Council proposes the legislation provide for the Council to have the ability to ask relevant Minister(s) to exercise powers on their behalf. This could include, but not be limited to, the ability to amalgamate and consolidate land to facilitate regeneration and the exercise of section 27 (1) to support the implementation of a Regeneration Plan.

The Council notes it is proposed that section 27 powers be retained in the replacement legislation. The Council proposes these powers should only be exercised at the request, and for the benefit, of the affected local authorities for a purpose that complies with the new Bill.

Further, Council proposes the following design elements in the case of section 27 powers being invoked:

1. There is an appropriate high threshold for exercising the power;'

2. The power can only be exercised on the request of the relevant local authority to the Minister;

3. The role of the Ministers is to protect the public interest in determining whether the threshold test has been met. That is, a simple yes or no decision;

4. That the Minister has time limitations on making the decision to assist certainty of outcome - the Council proposes within 30 days from request being made;

5. That if the answer is no, the local authority has the power to proceed under the RMA.

The Council believes there should also be a requirement that the powers must be exercised jointly by the relevant Minister in conjunction with the Minister of Local Government. This would be consistent with the transition towards the normal local government decision-making framework.

8. Council's views on the options for urban development/commercial delivery entities.

As stated earlier because Council officials are engaged in bi-lateral discussions with the Crown about the best options for Christchurch with respect to commercial delivery and development vehicles this submission confines itself to addressing the principles which should underpin any such entity rather than its final form or scope.

However, Council wishes to restate the objectives and characteristics which shaped the formation of Development Christchurch Ltd and emphasise the need to ensure whatever final arrangements are settled upon, these must be retained

In responding to the shift from recovery to regeneration the Council believes that the regeneration agency should have clarity of expectations, intent and mandate, including the following 'must do' factors;

- Reassert the Crown and CCC's commitments to delivering existing recovery-based programmes and projects as a sponsor, investor, regulator and enabler
- Enable the public sector to become a better client in presenting a more outward facing entity to engage with the private sector, not-for-profit, community and whole-of-government stakeholders.
- Leverage the Crown and CCC's financial and non-financial levers into additional private sector investment, whilst respecting the constraints in respect of any additional call on taxpayers and ratepayers
- Commit to the principle of a 'sense of place' with a shared value in transitioning the established recovery outcomes to longer term regeneration,
- Commit to promoting a stronger development system over time, with a stronger private sector and community presence in driving successful regeneration
- Acknowledges that as the Crown completes its deliverables under its existing recovery-based commitments it will both cede leadership on regeneration back to the city and seek to 'normalise' its risk exposure to Christchurch

Critical Success Factors for a "regeneration" agency

The Council believe that there are some key success factors that must be in place for a regeneration agency:

- Strong Alignment between the Crown, Council and the regeneration agency
- Clear vision, expectations and purpose
- Strong Leadership and effective advocacy
- Strong mandate with commitment to appropriate resourcing
- Commitment to early, effective engagement with well-defined outcomes, affordability
- thresholds, and risk appetite

- An acceptance of returns and benefits beyond simple commercial ones with an active intent to pursue them - e.g. quadruple bottom line reporting
- Ability to act, including:

    - Transactional capacity
    - Access to land, funding and policy levers
    - Capability and resourcing
    - Delegated authorities
    - Credible commercial and delivery mechanisms
    - Enabling regulatory framework
    - Access to enabling statutory power (not embedded)
    - Long Term view of investment returns

It should be noted that these have all been embraced by the Council in its decision to establish Development Christchurch.

Appendix A

CER ACT TRANSITION - STATUTORY FRAMEWORK

INTRODUCTION

Background

Section 93 of the Canterbury Earthquake Recovery Act 2011 (the CER Act) provides for its expiry five years after the date of its commencement, on 19 April 2016.

The government has determined this is a time to refresh recovery powers, roles and responsibilities and that new legislation is needed to support recovery work that will continue after the CER Act expires.

The government has also decided its role in recovery should now evolve from a dedicated central government agency (the Canterbury Earthquake Recovery Authority (CERA)) to winding down or transferring CERA's responsibilities to other government agencies. CERA will step back as local institutions move into the 'driving seat'.

This paper is in response to and includes information from Cabinet Minute (15) 22/8 - Greater Christchurch Earthquake Recovery: Transition to Regeneration, the first report of the Advisory Board on Transition (Advisory Board), and the Draft Transition Recovery Plan (the Plan).

Cabinet Minute ((15) 22/8)

On 29 June 2015 the Cabinet agreed in principle to new legislation, the Greater Christchurch Regeneration Bill. Its geographical scope has been reduced to only the areas that still require additional powers - Christchurch City and its urban satellites, together with the adjacent coastal marine areas, and excluding rural Selwyn, Waimakariri and Banks Peninsula. The proposal is that the new legislation would expire after five years, with a review at three years.

A number of provisions in the CER Act are to be carried over into the Bill without major change. These include the power to acquire (compulsorily and voluntarily) and dispose of land using the processes and protections of the current Act.

Orders in Council still needed to support recovery will be extended until expiry of the new Act (with the ability for responsible Ministers to revoke the Orders before then).

Other provisions are to be carried over with changes to reflect a different phase of recovery and transition to greater local leadership. A new updated purpose clause (yet to be drafted) is to reflect the current and future stages of recovery, and enable earthquake-related reconstruction, enhancement and regeneration.

Also, rather than vesting powers in the Minister for Canterbury Earthquake Recovery alone the Bill will distribute responsibility among a number of Ministers and chief executives as assigned by the Prime Minister.

Recovery Plans are to be renamed 'Regeneration Plans'. The government's view is that the existing Recovery Strategy should be allowed to expire when the CER Act expires. This would allow a revised Greater Christchurch Urban Development Strategy to act as a guide for the next stage of recovery, developed under local leadership

Draft Transition Recovery Plan

The Plan was developed by CERA at the direction of the Minister under the provisions of the CER Act. It was publicly notified on 2 July, with submissions due by 30 July. Following is a summary of the matters contained in the draft Plan.

New recovery arrangements are proposed, in particular the overall leadership and coordination of the recovery to become the responsibility of local institutions, primarily local authorities and Te Runanga o Ngai Tahu.

The Urban Development Strategy will be 'refreshed' to include concepts of regeneration and development, under a new 'visible' governance group. Consideration is to be given to how local leaders will engage with central government officials and Ministers or their representatives on UDS issues.

Support for community-led recovery activities that focus on community resilience will be the responsibility of local authorities (CCC, WDC and SDC) for their respective communities. Statutory provision will be made for existing Recovery Plans (and for their revocation) and for the Community Forum to continue.

It is proposed that several elements of the recovery will remain with central government because 'they are very similar to central government's day-to-day responsibilities'.

CERA's residential rebuild work will transfer to the Ministry of Business, Innovation and Employment (MBIE), along with leading and monitoring procurement of the public sector rebuild.

The Ministry of Social Development (MSD) functions will include (or continue to include) responsibility for emergency housing, temporary accommodation support and 'wrap-around' support for the most vulnerable (Canterbury Earthquake Temporary Accommodation Service and Earthquake Support Coordination Service and Temporary Accommodation Assistance).

The Ministry of Health (MoH) will be the lead central government agency responsible for psychosocial recovery, setting health and wellbeing policy and funding the Canterbury District health Board (CDHB). The CDHB will continue to be responsible for delivering specialist psychosocial support services (including mental health services);

CERA's responsibility for demolitions and clearances is to transfer to Land Information New Zealand (LINZ), including managing and coordinating demolitions and clearances.

In the residential red zones, CERA's current management of land owned by the Crown will transfer to LINZ, and include performing land ownership functions (holding, acquisition, disposal, amalgamation, and subdivision).

Importantly it is also proposed in the Plan that a business unit within DPMC will be responsible for administering the new legislation and for providing advice as required to Ministers. This will include advice on the future uses of the residential red zones, and the development of any legal or planning framework to implement those decisions, policy and legal advice on the regeneration of greater Christchurch, and monitoring and reporting on the overall progress of recovery.

Once CERA is disestablished, DPMC will continue to hold responsibility for part funding and/or joint governance of horizontal infrastructure repairs.

The Plan concludes that a new approach is needed to ensure that central government agencies 'remain focused on', and are held accountable for, the most critical recovery issues particularly where addressing those issues will require 'working across government agency boundaries and with other recovery partners in greater Christchurch. It is proposed that DPMC will have the job of collating and reporting on how relevant agencies are performing across what CERA has identified as being the priority areas - 'improving people's wellbeing, repairing and replacing housing, repairing and replacing infrastructure and facilities, revitalizing central Christchurch, and maintaining economic performance in Canterbury.

STATUTORY POWERS

Proposed to Expire on 19 April 2016

The Plan proposes not including in the new Bill a number of powers in the CER Act. These include powers the Minister currently has to direct the Council to perform a function and to carry out that function if the Council refuses to comply with the direction, and to direct the Council to take or stop taking a particular action. Also, powers held by the chief executive of CERA to authorise entry to property and to require the Council to seek the chief executive's consent before it signs certain types of contract.

The Council agrees these powers should expire.

Proposed to be Retained in New Legislation

General

The Council also agrees that in order to carry out the functions proposed to be transferred from CERA to other government agencies, the chief executives of those agencies will need some of the powers currently available to the chief executive of CERA. For example the chief executive of LINZ may need to exercise the power to acquire property on behalf of the Crown, determine compensation for the demolition of buildings and other structures, and to carry out works on non-Crown land and compulsorily acquired land. The power to compulsorily acquire is to remain with the Minister.

Other powers proposed to be contained in the Bill include the power to close and stop roads, authorise temporary buildings, subdivide, amalgamate, develop or improve Crown land and restrict or prohibit access to specified areas.

The Council wishes to ensure that any powers being carried over are exercised only by the appropriate government agency in accordance with appropriate safeguards relating to the purposes of the new Bill. The Council will need to be satisfied that the scope of the proposed purpose clause, and the checks and balances required to ensure that powers are properly exercised, are sufficient to deal with the number of extraordinary powers being retained. There remain concerns about the value of the property at the time of transfer - the Residential Red Zone, for example, has been revalued to a margin of its former value for a range of reasons we won't detail here. But this is a significant concern.

Section 27 CER Act

The Plan proposes that the provisions of section 27(1) of the CER Act be included in the new Bill. This provides the Minister with the power, by public notice, to suspend, amend or revoke the whole or any part of a range of documents, so far as they relate to any area within greater Christchurch.

These include RMA documents (e.g. the Council's district plan, or a regional policy statement or plan), any plan or policy of the Council under the Local Government Act 2002, a regional land transport plan under the Land Transport Management Act 2003, or general policies and management plans made and approved under the Conservation Act 1987 and the Reserves Act 1977.

The Minister may also, by public notice under section 27(2), suspend or cancel, for an activity within greater Christchurch, any resource consent, protected or allowed use, or certificate of compliance under the Resource Management Act 1991. To date the Minister has not exercised this power and it is proposed not to carry that forward.

CERA is giving consideration to including in the new Bill additional requirements and safeguards for the exercise of these powers. For example, the Minister must consult with the Strategic Partners and the Community Forum about the use of section 27 powers. Strategic Partners may request the Minister to exercise his or her powers on their behalf.

It is also proposed that the powers be further mitigated by the requirement that the Minister 'must have particular regard' to the views of the Strategic Partners and the Community Forum and that section 27 powers will no longer apply to resource consents, uses under the RMA or certificates of compliance. This almost assumes a community forum appointed by the Minister has equal standing to a duly constituted statutory body.

The Council's response is that this would still not prevent a Minister who has been asked, or who has decided, to exercise his or her powers under section 27 from seeking the views of other parties but then using his or her discretion to decide on a different course of action. Having particular regard to views may, in effect, be no different to the position that currently exists under the CER Act.

The Council's believes that the criteria used to define what 'having particular regard to' may be insufficient to significantly change the exercise of the Minister's discretionary power. A legal interpretation is that whilst the views of others are to be considered in substance and carefully weighed in coming to a conclusion, they are not requirements that must be fully met nor advice that necessarily needs to be followed.

If section 27 powers are to be retained in the replacement legislation the Council proposes that these powers should only be exercised at the request, and for the benefit, of the affected local authorities for a purpose that complies with the new Bill.

Further, Council proposes the following design elements in the case of section 27 powers being invoked:

1. There is an appropriate high threshold for exercising the power;'

2. The power can only be exercised on the request of the relevant local authority to the Minister;

3. The Minister's role is to protect the public interest in determining whether the threshold test has been met. That is a simple yes or no decision;

4. That the Minister has time limitations on making the decision to assist certainty of outcome –say 30 days from request being made;

5. That if the answer is no, the local authority has the power to proceed under the RMA.

The Council believes there should also be a requirement that the powers must be exercised jointly by the relevant Minister in conjunction with the Minister of Local Government. This would be consistent with the transition towards the normal local government decision-making framework.

Depending on the final form of the legislation, requesters could include the UDS partners (as a group or individually on a territorial basis for example), the Christchurch City Council (in respect of matters affecting Christchurch City), and Environment Canterbury (within the reduced geographical scope of the new Bill).

Section 10 CER Act

At present section 10 of the CER Act requires the Minister (for Canterbury Earthquake Recovery) and CERA's chief executive to ensure the exercise of their powers is in accordance with the purposes of the Act (s.10 (1)) and they reasonably consider it to be necessary (s.10 (2)). The Cabinet minute of 29 June 2015 suggests the purpose of the new Bill will reflect the current and future stages of recovery and to enable earthquake-related reconstruction, enhancement and regeneration. To date there has been no indication of the Government's thinking on more particular definitions of these terms. The Council believes this is critical to a full understanding of the extent of the powers proposed to be included in the new Bill, and the checks and balances required.

The government proposes clarifying in the new Bill that the standard powers of a chief executive are derived from the State Sector Act and therefore not subject to the necessity test in section 10(2). It also states that the requirements should not apply to works the LINZ chief executive may wish to carry out on Crown-owned land. The Council acknowledges this, and points out that the government is in the same position as any other property owner and, outside the CER Act, has the ability to undertake works on its own land subject to normal regulatory controls.

However in this regard, where land has been purchased (voluntarily or compulsorily), there is a threshold the necessity test was clearly designed to impose and that should not go. The Government is proposing that neither of the section 10 requirements should apply to Crown-owned land acquired under the provisions of the CER Act. In other words, land acquired as being necessary for the purpose of earthquake recovery could be disposed of for a completely different purpose unrelated to recovery, for example residential red zone land. The government has indicated that separate requirements and safeguards are to apply, but until these are clarified the Council is not in a position to support the removal of the current requirements. The fact that people had to agree there was no right of first refusal on the resale of their land creates an obligation on the Crown.

Recovery Plans

It is proposed that the Minister will retain the power to direct that Recovery Plans be developed (currently provided for in sections 16 - 26 of the CER Act). This would continue the statutory obligation on the Council not to make decisions on a number of RMA matters, and to amend existing RMA documents, that are inconsistent with a Recovery Plan developed at the Minister's discretion. Section 26(3) of the CER Act states that a Recovery Plan is to be read with and forms part of documents such as the Council's 2015/25 Long Term Plan and is to prevail where there is any inconsistency between them.

The Council's view is that it is no longer necessary for the Minister to have the discretionary power to direct the Council to develop a Recovery Plan. At this stage of the recovery, the Council believes it is in a better position than the government to determine how to deal with "any social, economic, cultural or environmental" solution sought by the Council's community and "any particular infrastructure, work or activity" that may be required. The words quoted are from section 16(2) of the CER Act.

One of the principles of local government is to ensure prudent stewardship and the efficient and effective use of a local authority's resources in the interests of its district or region, including by planning effectively for the future management of its assets (section 14(1)(g) of the Local Government Act 2002). Also, in taking a sustainable development approach, a local authority is to take into account the social, economic, and cultural interests of people and communities, the need to maintain and enhance the quality of the environment, and the reasonably foreseeable needs of future generations (section 14(1)(h)).

By ascertaining the views and preferences of its community, and then preparing and adopting its audited 2015/25 Long Term Plan, the Council has demonstrated it has the ability and the resources to tackle the regeneration and development of the city.

As with the section 27 powers, if the government decides to provide Ministers with the power to direct whether or not a Recovery (or Regeneration) Plan is to be developed, any decision to do so must be made jointly between the relevant Minister and the Minister for Local Government and available to be exercised at the request of strategic partners. There may be room to discuss whether or not this group should be extended to include the proposed business unit within the DPMC, in its own right or acting on behalf of a relevant government agency.

Section 38 CER Act

In addition to earlier comments made with regard to the power to carry out works on non-Crown land (section 38 of the CER Act)) the Council's position is that the power should be pared back to provide a more limited range of works appropriate to regeneration or development rather than just 'works', without limitation. However, the Council also points out there is already a safeguard included in section 38 which provides that building and resource consents are required for any works undertaken (subject to any Orders in Council).

Expiry of Extraordinary Powers

The Council notes that the new legislation will not expire until 2021, subject to a review being undertaken in 2019. On expiry, some of the powers introduced in the CER Act will have been in place for ten years, with the risk that by then they will have become normalised, or embedded. This may be particularly so given that extraordinary powers have been distributed across a wide range of government agencies and departments.

The Council urges the government to consider ways in which this risk can be mitigated, and a clear pathway established for extraordinary powers to be managed out of existence well ahead of the expiry date of the legislation.

Maintaining momentum in the central city

Cabinet Minute (15) 22/8 par 20 invited the Minister for Canterbury Earthquake Recovery to work with the Mayor of Christchurch to investigate establishing an entity (s), possibly named "Regenerate Christchurch" , to deliver and develop the Crown and City Council's objectives for the regeneration of Christchurch City.

The time frame for this work extends beyond the current submission process. Because Council officials are engaged in bi-lateral discussions with the Crown about the best options for Christchurch with respect to commercial delivery and development vehicles the Council's submission confines itself to addressing the principles which should underpin any such entity rather than its final form or scope.