Christchurch City Council

4 December 2015

The Secretariat
Local Government and Environment Committee
Select Committee Services
Parliament Buildings
WELLINGTON 6160

via email: localgovernment.environment@parliament.govt.nz

Dear Sir/Madam

GREATER CHRISTCHURCH REGENERATION BILL

Regeneration is not what governments do for cities;
It's what cities do themselves

Thank you for the opportunity to present this submission. It is divided into two parts; the first covers the background and the major issues; the second, the detailed clause by clause analysis.

The Council is likely to make a supplementary submission.

The Council confirms that it wishes to appear before the Committee.

Yours faithfully

Dr Karleen Edwards
Chief Executive

Hon. Lianne Dalziel
Mayor

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PART ONE

1. Executive Summary

1.01 The Christchurch City Council (the Council) fully supports the stated intention of the Bill – to provide a step-change in local leadership and to progressively pass governance and management of the rebuild to the local community. In particular we support:

- The establishment of a genuinely joint Crown-Council entity, Regenerate Christchurch, which will lead the regeneration of the central city, the residential red zone, New Brighton and other areas as added by Order in Council
- The ability to propose and implement Regeneration Plans;

1.02 We submit that the aspects of the Bill we wish to see changed have arisen from the use of the pre-existing legislative framework which was focused on response and recovery. This has proven inadequate in developing the new framework when addressing the needs of Christchurch City as opposed to the two Districts (Waimakariri and Selwyn). Our submission suggests how this can be easily remedied to achieve our shared vision with the Crown for the next stage in Christchurch's regeneration in the broadest sense.

1.03 This is an incredible opportunity to achieve many objectives – as long as we get the legislative framework right. That shouldn't be difficult now that we have clearly identified the problem – namely the use of the pre-existing Act.

1.04 Christchurch has been looking for a joined-up solution for some time and the joint appointment of the chair of Regenerate Christchurch, the inclusion on the board of the respective chairs of DCL and CrownCo have given significant confidence to the business sector and to the wider community that we are on the right track.

1.05 Regeneration Plans owned by local partners, determining with their communities the outcomes sought for regeneration, will reflect the shift to local leadership the Bill was intended to provide. In Christchurch city, strengthening the role of Regenerate Christchurch will achieve that purpose.

1.06 With the legislative guarantee of ongoing, high quality community engagement – a meaningful exchange of ideas and views – we are looking forward to the next stage in our city's journey. Your role is to give us the tools to do so. We are up to the challenge.

2. Introduction

2.01 In July 2015 the Crown announced its proposals for the transition of the government's role in the recovery of greater Christchurch after the expiration of the Canterbury Earthquake Recovery Act 2011 ('the CER Act') in April 2016.[1.]

2.02 In his speech to the Canterbury Chamber of Commerce outlining the proposals for transition, Prime Minister John Key said a "step-change in local leadership" was needed to reflect the next stage of the recovery. The Prime Minister undertook that the Crown would "work closely with councils and other local stakeholders to progressively pass governance and management of the rebuild to the Canterbury community."[2]

2.03 The commitment to this 'step-change' within the Christchurch City Council's boundaries, (as opposed to Greater Christchurch), was best measured by the announcement of a new entity tentatively called Regenerate Christchurch. This was to be a joint Crown-Council entity designed to "deliver on the ambitions for Christchurch"[3] and support regeneration in the central city, the 'residential red zone' and other areas identified by our Council as requiring regeneration focus.

2.04 The Mayor, on behalf of the city, welcomed the Prime Minister's announcement.[4]

2.05 Considered as a whole, it described a recovery model/mechanism that was enabling of co-operative local governance by central and local government; one that strengthened existing institutions, as well as being more responsive to local needs.

2.06 Support for such a model, integrating local governance models that incorporate existing institutions, legislative powers and planning tools as part of any future recovery regimes, was also a central recommendation in the Council's submission to the Regulations Review committee's Inquiry into Parliament's legislative response to future national emergencies.[5]

2.07 This approach has the distinct advantage of catering for the full transition to local ownership and control in advance of a national emergency. Establishing this model now will offer an opportunity to evaluate this approach for the first stage of recovery in any future event.

2.08 The Greater Christchurch Regeneration Bill ('the Bill') was introduced to the House on 19 October 2015. The Explanatory Note to the Bill states the Bill provides the legal

[1] Draft Transition Plan Recovery Plan *Greater Christchurch Earthquake Recovery: Transition to Regeneration* (July 2015)
[2] Prime Minister John Key *Speech to Canterbury Employers' Chamber of Commerce*, 2 July 2015 www.beehive.govt.nz/speech
[3] Transition Recovery Plan *Greater Christchurch Earthquake Recovery: Transition to Regeneration* (October 2015) p 9
[4] Mayor Lianne Dalziel *Mayor's statement following Prime Minister's announcement"* 2 July 2015 http://www.ccc.govt.nz/the-council/news-releases/show/19
[5] http://www.parliament.nz/en-nz/pb/sc/documents/evidence?Custom=00dbsch_inq_56953_1&Criteria.PageNumber=2

framework to support the regeneration of greater Christchurch, "recognises the importance of local leadership", and establishes Regenerate Christchurch.

2.09 As you will see from our submission, we absolutely support the stated intention of the Bill. We not only believe that it is vital to restore local governance and decision-making, we also believe it is as much in the Crown's interests as it is the city's to see that occur.

2.10 Together we need to continue to build on the platform of what has been achieved, and together create the step-change people are seeking. Although that call has been focused on the Anchor Projects and central city precincts, there are other parts of the city calling out for attention and Regenerate Christchurch offers an opportunity to extend into areas where future-focused urban planning could make a real difference.

2.11 Our over-arching concern, and this will come through the submission, is that the Bill may not achieve the intention so clearly stated by the Prime Minister and the Minister. We believe that this has occurred by the approach that has been adopted in drafting the Bill

2.12 Using the existing legislative framework - the CER Act - as the starting point for drafting the replacement legislation, has seen powers created while the State of National Emergency phase was still in place[6] carried over into the Bill. This is inappropriate. Although the CER Act was framed as a recovery Act, it was also a response Act. That's why many of the provisions sit uncomfortably in a regeneration Bill over four years after the CER Act was passed and why these need to be amended.

2.13 The Council has agreed that some "bespoke" legislative powers would be necessary after the expiration of the CER Act. Aspects of certain Recovery Plans gazetted under the CER Act would always need a life beyond 19 April 2016, for the following reasons:

- there is still a considerable amount of recovery work to be completed, particularly in the central city;
- the Port Hills still require a lot of demolition work to be completed and land needs to be secured as far as practicable against further rockfall and landslide risks;
- A framework is needed to protect the Crown's legacy interests including land-holdings, most of which have been purchased in the central city or 'residential red zones' in the past four years; and
- to ensure completion of projects including the anchor projects.

2.14 The Council's submission on the draft Transition Recovery Plan recommended that powers in any replacement legislation should be limited to those needed to support the regeneration

[6] The National State of Emergency expired 30 April 2011, two weeks after the enactment of the CER Act

of the city or to address specified outstanding issues, on the basis that these powers were not otherwise provided for in existing legislation.

2.15 This is consistent with current LAC Guidelines[7] (2014 edition), that legislation should not create a power that is wider than is necessary to achieve the policy objective (Guideline 16.4).

2.16 The Council is concerned that certain provisions of the CER Act, created as emergency measures in response to the 22 February 2011 earthquake, have been carried over into the Bill. Five years after the earthquakes began and at this stage in the recovery, the need for broad coercive powers that enable unilateral Crown intervention has gone. The Council expects the Bill to reflect this.

2.17 The transition and the drafting of replacement recovery legislation provides the opportunity for the Crown to formalise its exit from what has been an extraordinary role in Greater Christchurch's recovery, to re-establish the place of local government in democratic local decision-making and to work in partnership with the city while still retaining oversight of its significant investment and interests in the city.

2.18 A shift to a locally-led recovery, "effected by returning leadership to the local council and communities"[8] was a strong message from submitters to the draft Transition Recovery Plan. The submission summary report[9] found that "across all feedback points" there was support for "a return to local democracy", and better opportunities for communities to have input into decisions about the recovery of the city.

2.19 The Bill needs to reflect this shared vision and expectations for the next phase of the recovery.

3. Strengthening the Purpose of the Bill

3.01 The Council's submission proposes that this matter can be addressed quite easily by strengthening the purpose clause around regeneration and being explicit about the nature of the recovery powers that are carried over from the CER Act.

3.02 The purpose section of any statute has a fundamental bearing on how that Act will function and the way powers can be used. The Council agrees the Bill's principal purpose should be to support the regeneration of Greater Christchurch. However, the very broad definition of

[7] http://www.lac.org.nz/guidelines/lac-revised-guidelines/

[8] Transition Recovery Plan *Greater Christchurch Earthquake Recovery: Transition to Regeneration* (October 2015) p 9

[9] Draft Transition Recovery Plan: Submission Summary Report 11 August 2015

'regeneration', with no context around it, means there is nothing to link regeneration to the event that made it necessary.

3.03 The Council understands the Crown intention in drafting the purpose clause was to "provide greater scope and flexibility" to deal with regeneration matters that may not be able to be connected to the Canterbury Earthquakes.[10]

3.04 As we have acknowledged, there is considerable recovery work to be completed in the Port Hills and central city, and that certain recovery powers have been carried over to support this outstanding work.

3.05 The Council agrees with this but takes the view the Bill should be more specific in describing the purposes for which those powers can be used. This is particularly so given the range of people and organisations currently having the authority to exercise powers under this Bill.

3.06 The Council is proposing that recovery powers are linked or tied more closely to the harm or matter they are seeking to address and not to any one or more of the purposes of the Bill as is currently provided. For example, to enable the timely and safe removal of buildings and infrastructure in the Port Hills; to facilitate planning and consenting processes for this work; and to reduce risks around rockfall, landmass movement and cliff collapse.

3.07 The practical effect of not matching the use of powers to the purpose for which they are intended (a power can be exercised if it satisfies any one or more of the new purposes) is a Bill that simply extends central government powers rather than a transition to local leadership. This was not intended.

3.08 The purpose clause also does not appropriately address the fact of, or reason for, the transition from central government control to local leadership. The Council believes the Bill should recognise that regeneration will be a continuing activity, beyond the expiry of the Act in 2021. Participation in regeneration decision-making at a truly local level will be an essential element of the quality, consistency, and long-term certainty underlining those decisions.

3.09 This will also enable the government to reduce its on-going role, with the objective that on expiry of the Act the government will be able to return to the decision-making processes and powers that are similar to those exercised in respect of any other local authority in New Zealand.

4. Christchurch City as distinct from Greater Christchurch

4.01 The other aspect of our over-arching concern is the confusion of the roles of those who are described as a ‘strategic partner’ for specific purposes and the stated intention to create a

[10] Regulatory Impact Statement: Greater Christchurch Regeneration Bill para 25

real partnership between the Crown and the Christchurch City Council in terms of Regenerate Christchurch.

4.02 Again this is caused by using the previous legislative framework which was designed to apply across the Greater Christchurch area, without any specific organisational structure focused solely on Christchurch city.

4.03 Within the city's boundaries, it is not appropriate to require any sign-off from the districts or the region unless there is a significant and direct interest in the matter. The same can be said of the districts. Unless there is a direct interest, the city's sign-off should not be required.

4.04 The clauses relating to Regenerate Christchurch need to reinforce its role as a joint Crown/Council entity as well as defining its relationship with Development Christchurch Ltd (DCL) and CrownCo. We need Regenerate Christchurch to promote Regeneration Plans where they consider the objectives of the Bill require such an approach. This gives the Crown the comfort it is seeking over the exercise of statutory powers, and the Council the comfort it seeks over local governance.

4.05 We are absolutely confident that in the future this model will create a new way of urban planning that will meet multiple objectives and ensure place-making becomes the accepted basis for such initiatives.

4.06 There is a sense that the Bill doesn't distinguish sufficiently between the city and the two districts, the region and Ngāi Tahu, nor does it establish the centrality of Regenerate Christchurch.

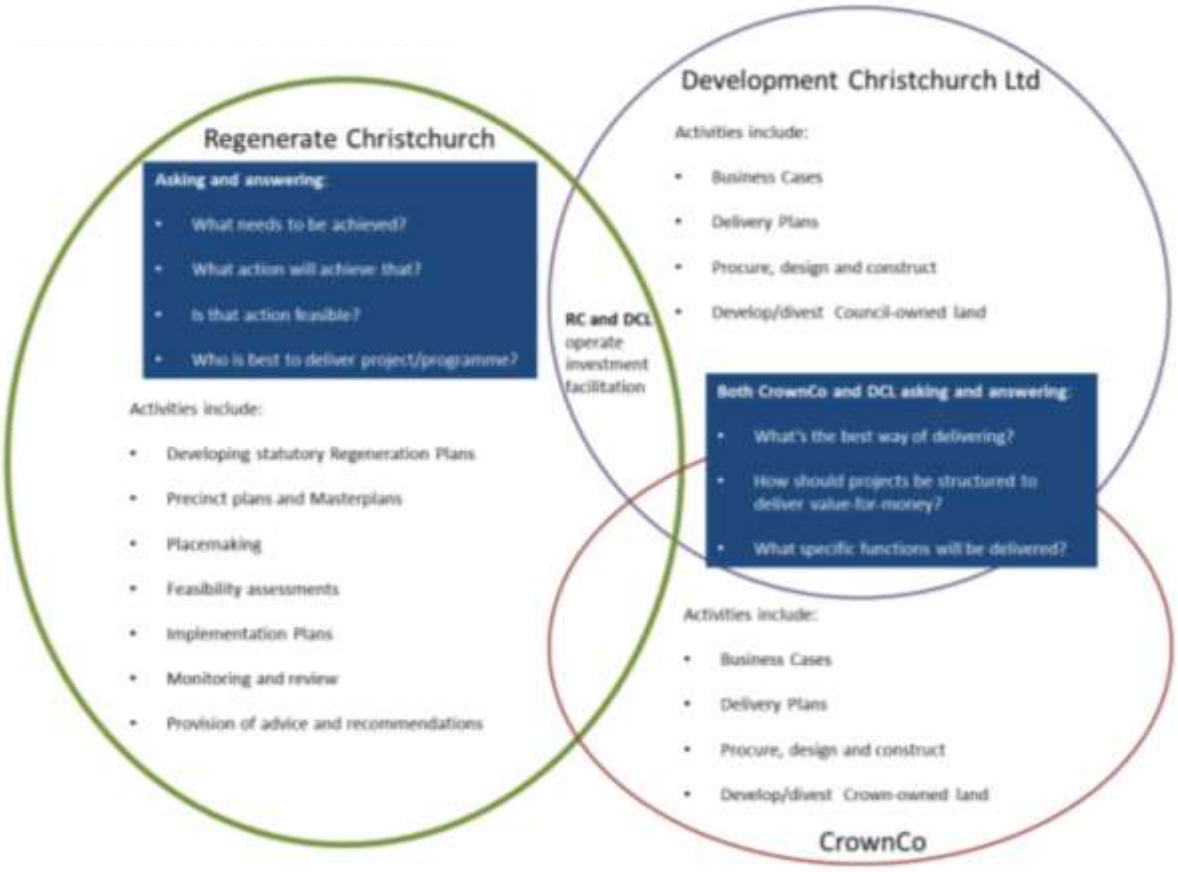
4.07 Christchurch cannot be relegated to the position of strategic partner along with all the others when it comes to our city, nor are we a mere stakeholder in this process. As noted in the Transition Advisory Board's first report to the Minister, "the impacts and costs of the Canterbury Earthquake Sequence have been largely borne by the city rather than Greater Christchurch".[11] Most of the recovery work to date and that outstanding is within the city's boundaries, and the Council is the local institution with the primary responsibility for the regeneration of the city.

4.08 But then again the two District Councils are not entirely separate and our interests on some matters are aligned – although the central city of Christchurch is within the Council boundaries, the residents of Lincoln and Kaiapoi consider Christchurch to be their city too.

4.09 The diagram below sums up neatly the respective roles of the triumvirate – the joint entity, Regenerate Christchurch, and the two delivery agencies, DCL and CrownCo.

[11] Advisory Board on Transition to Long Term Recovery Arrangements: First report to the Minister for Canterbury Earthquake Recovery 3 June 2015

Examples of Activities and Outputs [12]



4.10 It is important that the legislation, when enacted, clarifies these functions and the way they are intended to operate on a collaborative basis. This is what represents the much-awaited 'step-change', both in terms of the central city and also in terms of Christchurch as a whole.

5. Regeneration Plans

5.01 Part Two of this submission addresses a number of matters in relation to Regeneration Plans, but two points are noted here.

5.02 In terms of Christchurch City, we want Regenerate Christchurch to be the arbiter of the need for a Regeneration Plan and to determine which body is the best to lead that process and the specific nature of the community engagement to be undertaken. It is not appropriate, and nor does the Council understand this was the Crown's intent, that the region, the districts, or Ngāi Tahu, be able to propose a Regeneration Plan within the city boundaries without the agreement of the Council. As drafted however, the Bill does provide for this. The Council supports the principle of ensuring that the districts, the region and Ngāi Tahu are engaged in the process of developing a Regeneration Plan is important and there are

[12] CERA Briefing to UDSIC 6 November 2015

instances where it will be appropriate for the leadership to sit with one of them. But that must be a decision that Regenerate Christchurch should make.

5.03 Once Regenerate Christchurch has agreed with the proposal, the process should only conclude with the Minister to the extent that the Regeneration Plan requires the exercise of powers under the Act. This is why the answer has to be limited to 'yes/no', with 'no' only being allowed within specific criteria.

5.04 In other words, the Minister shall gazette the plan, unless he/she is not satisfied that the proponent has adequately consulted and considered the views and preferences of people affected by, or with an interest in, the matter. There could also be a 'catch-all' exception along the lines of it being against public policy.

5.05 This properly supports the transition to local leadership. By allowing the joint agency to lead local decision-making, the Minister's role becomes purely one of protecting the public interest.

6. Land Interests

6.01 Land interests may seem like a mundane subject to include in this first part of the submission, but actually they represent the most exciting part of the regeneration story. We think of them as offering a real sense of possibility to the city.

6.02 The Crown has considerable land interests in Christchurch; to date over $1.5 billion has been spent acquiring residential red zone land, as well as land within the CBD. The Cabinet minute 31 August 2015[13] recorded that the disposal of land should not be inconsistent with any Recovery Plan or Regeneration Plan. The Bill currently provides that the Crown may of land acquired under the CER Act or this Bill, with the Chief Executive only being required to "have regard to" any proposed or applicable Regeneration Plan.

6.03 We consider this as not meeting what was essentially an agreed threshold. But more importantly, it also misses the opportunity to consider all government and Council land holdings for their regeneration potential before any decisions are made to dispose of that land.

6.04 The Bill should be amended to say that in the areas covered by Regenerate Christchurch – central city, Residential Red Zone and New Brighton – disposal of land owned by Crown or Council cannot be inconsistent with a Recovery or Regeneration Plan or (in the absence of one) the objectives of the Act.

6.05 The Residential Red Zone represents the most significant opportunity for the eco-recovery of the city, and to help meet the city's sustainability and resilience objectives. However it must

[13] Cabinet Minute CBC-15-MIN-002 31 August 2015 para 26.2

also be acknowledged that a number of residents are choosing to continue to live in the RRZ and their personal situations must be respected and interests protected wherever possible.

6.06 The potential for the co-location of stop-banks and the Avon-Ōtākaro Cycleway are an obvious combination of flood protection and public amenity. The development of wetlands will improve the quality of stormwater entering the river. It is also acknowledged a number of residents are choosing to continue to live in the red-zoned areas of the city.

6.07 There may be one Regeneration Plan; there may be multiple Regeneration Plans, so it is vital that land disposal decisions are not separate from but integral to the planning process.

6.08 In terms of the land in the CBD, again the regeneration opportunities abound. We need to ensure Regenerate Christchurch has the chance to assess those before any decisions are made.

6.09 Enabling the development opportunities to be explored before any disposal is considered will ensure value for the city and increased value for the landowner whether that is the Crown or the Council.

6.10 It is not just land acquired by the Crown under the CER Act, or this Bill however, that might be relevant to achieving regeneration outcomes. The Council recommends that the committee considers a further provision be included in the Bill requiring State-Owned Enterprises and all Crown and Council entities to consult Regenerate Christchurch (or the relevant monitoring unit within DPMC) when considering the disposal of land.

6.11 This would allow regeneration/development opportunities to be explored, taking into account all legal obligations under the Ngāi Tahu Claims Settlement Act 1998, the Public Works Act 1981 and the CER Act– and for a recommendation to go to the landowner before the decision is made.

6.12 Regenerate Christchurch would require an additional function to support this; namely to provide advice on the regeneration opportunities arising out of the disposal of any Crown or council-owned land

7. Resolving outstanding insurance and EQC claims

7.01 A lack of certainty about outstanding insurance outcomes is a significant obstacle to regeneration for affected residents and communities. This is supported by the most recent CERA Wellbeing Survey[14] which found that those less likely to rate their overall quality of life positively include those who have unresolved property claims.

7.02 The Council asks the Crown to consider introducing a legislative mechanism that would require public (the Earthquake Commission and Southern Response?) and private insurers to determine a "target" or end date for the settlement of outstanding claims. (The recent report of the Office of the Auditor General[15] notes that while the Earthquake Commission is

[14] CERA Wellbeing Survey April 2015 Report

[15] Office of the Auditor General *Earthquake Commission: Managing the Canterbury Home Repair Programme - follow-up audit*

working to ensure outstanding settlements are completed "as soon as is reasonably practicable", a new end date for their repair programme has yet to be set.)

7.03 The Council further asks that advocacy and technical support, and mediation services are made available to enable this to occur.

PART TWO

8. Canterbury Earthquake Recovery Act 2011

8.01 The previous paragraphs have highlighted the Council's position that although it supports the stated intention of the Bill, in some areas it has not achieved the 'step change' promised by the government. One of the reasons for this is that much of the CER Act has been carried forward into the new Bill.

8.02 While the Council believes there is nothing wrong in principle with using prior legislation as a precedent, the Canterbury Earthquake Recovery Act 2011 was an emergency measure containing powers that in ordinary times would never be considered appropriate.

8.03 An example of this is section 52 of the CER Act. This enabled the Chief Executive of CERA to direct a property owner to act for the benefit of adjoining or adjacent owners, a provision that has been repeated in the Bill (clause 57). According to the Regulatory Impact Statement accompanying the Bill (RIS), the provision has never been used, is considered to be unworkable, and carrying it forward was not recommended.

8.04 As noted in the introductory information, "legislation should not create a power that is wider than is necessary to achieve the policy objective". From April 2016 the objective will be the transition from recovery to regeneration.

8.05 The Council therefore submits:

That the Parliamentary Counsel Office be instructed to review all provisions and powers in the Bill that may have been appropriate in the emergency or recovery only phases of the earthquakes but which should not be available for regeneration purposes.

9. The Purposes of the Bill (clause 3)

9.01 The Council agrees the Bill's principal purpose should be to support the regeneration of greater Christchurch. However, the very broad definition of 'regeneration', with no context around it, means there is nothing to link regeneration to the event that made it necessary.

9.02 The Bill gives a Chief Executive the power to carry out work on private land, which he or she may exercise without the owner's consent (clause 48). It can be used if the Chief Executive considers this to be reasonably necessary for the purpose of enabling the Crown to effectively manage, deal with, or dispose of its own land.

9.03 In the context of the CER Act, this particular power was intended to be used to address the risks posed by dangerous buildings and the effect of delay or inaction on the part of property owners. Clearly the Crown should not now be entitled to exercise a coercive power, as this

one is, simply for the purpose of improving the value of land it has acquired under the CER Act or its replacement.

9.04 In the Council's view this demonstrates the danger of linking such powers to broad purposes. Powers in the Bill should be attached to specific sub-clauses so that the reason for them is clear and their use is more appropriately prescribed.

9.05 Powers such as those in subpart 2 of the Bill (clauses 47-58) should either be linked to specific areas of the city where there remains sufficient concern about the ability to maintain momentum, or to the purposes contained in clause 3(a) and (b) only.

9.06 It is not appropriate however that a number of powers are exempt from the requirement in clause 11 that they must be exercised in accordance with one or more purposes of the Bill.

9.07 The Council therefore submits:

That the exercise of the powers exempted from the requirements in clause 11 be limited to appropriate situations, such as an imminent threat to life or property.

As stated in the introductory paragraphs, the practical effect of not matching the use of such powers to the purpose for which they are intended (a power can be exercised if it satisfies any one or more of the new purposes) is a Bill that reflects an extension of central government powers rather than a transition to local leadership.

9.08 That clause 3 of the Bill be amended to state after "This Act supports the regeneration of greater Christchurch through the following purposes":

(a) Enabling a focused and expedited regeneration process that recognises:

i. Regeneration will be an ongoing activity beyond the expiry of the Act;

ii. Local participation in, and local decision-making about, regeneration will be essential to its quality, consistency, and long term certainty;

iii. A reduction of the Crown's ongoing role; and

iv. On expiry of the Act the Council's decision-making processes and powers will be the same as for any other local authority in New Zealand.

Clauses 3(b) - (e) would remain as they are currently drafted.

10. Development and Implementation of Planning Instruments (subpart 1 - clauses 12-23)

Locally-led and Community-based Regeneration

10.01 Recovery Plans are planning instruments developed for the purposes of the CER Act. One of those purposes was to provide appropriate measures for ensuring that greater Christchurch responded to and recovered from the earthquakes (section 3(a) of the Act). Another was to enable the Minister and CERA to ensure the recovery (section 3 (c)).

10.02 In the new Bill recovery is now regeneration, defined broadly by the government as 'restoration and enhancement' and 'urban renewal and development'. Recovery Plans have been replaced by Regeneration Plans but in the Bill they have largely been treated the same, with many of the provisions currently in the CER Act being carried forward.

10.03 Principally these require Councils not to act inconsistently with a Plan and to amend a number of their planning instruments (including RMA documents, annual plans, and long-term plans) if directed by the Plan to do so.

10.04 The expected need for this support will be, for example, in facilitating decision-making on the future use of residential red zone land. Particular planning processes or instruments are likely to be necessary to ensure the proposed Regeneration Plan, to be developed by Regenerate Christchurch, can proceed in a timely manner.

10.05 However, it is likely that proposals for restoring or enhancing earthquake-affected areas and amenities will be more locally-led and community based. They may be on a smaller scale than a Regeneration Plan and capable of implementation through the existing planning and consultation requirements of the Resource Management Act 1991 and the Local Government Act 2002.

10.06 But where a process could potentially threaten the outcome, a local Council should have the ability to seek appropriate specific regulatory intervention. Ministerial support may make it possible to achieve an even greater emphasis on locally-led and community-based regeneration.

10.07 The LGA 2002 provides a framework and powers for local authorities to decide which activities they undertake and how they will undertake them (section 3(b)). In performing their role local authorities must act in accordance with a number of principles. (section 145(1)).

10.08 One of these is to take a sustainable development approach to what they do, taking 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.

10.09 These are principles (and objectives) that largely align with how regeneration is defined in the Bill (restoration and enhancement, and urban renewal and development to improve the medium and long-term cultural, economic, environmental, and social condition and the resilience of communities). Clearly the mandate already exists for local government to be

able to lead regeneration in greater Christchurch and, to support the sentiments in the Transition Recovery Plan (TRP), the Bill should recognise the role local government has.

10.10 In fact, the Council believes the definition of 'regeneration' should be expanded. Any urban renewal or development is likely to need a consideration of local infrastructure and public services. These are two of the core services provided by local government under the LGA 2002.

10.11 With regard to process, the LGA sets out the obligations imposed on local authorities when making decisions. These include the involvement of Māori, consultation with interested and affected persons, and prudent financial management.

10.12 Arguably these obligations allow a greater level of community participation than would be achieved by, admittedly the minimum, requirements for consultation set out in the Bill.

10.13 The Council believes the Bill should acknowledge that regeneration can take a number of different forms and not necessarily, or only, through the development of a Regeneration Plan. For example a local community may want the Council to develop a plan for the restoration of its commercial/retail/residential area. The plan might be prepared and the views and preferences of people interested in, or affected by the proposal, sought. These could include one or other of the Council's strategic partners and, possibly, a government department.

10.14 The outcome could determine at that stage whether or not the plan goes any further, particularly if there are financial implications. Depending on the significance of the matter, further consultation in accordance with the LGA may be required.

10.15 Ultimately there could be an issue threatening the successful implementation of the plan such as an unreasonable property owner or the removal of a designation, both of which could cause lengthy delays. Staff may recommend that regulatory intervention is necessary to resolve the matter.

10.16 Whatever the cause, the Council should be able to put a case to the Minister that justifies (or not) the use of his or her (or a Chief Executive's) powers under the Act, for example Bill clauses 42 (2)-(4), 47-50, 52 and/or 53. The strength of the Council's case should be the only criteria to be considered by the Minister in making a decision.

10.17 The Council has reservations about these powers being carried forward into the Bill and the opportunity they provide for the Minister or a Chief Executive to justify their use in the interests of expediency. However, if they are to remain then they should also be available to Councils, as local control and accountability is restored over the next six years.

10.18 The Council therefore submits:

The definition of 'regeneration' in clause 4 be amended by adding to (b), urban renewal and development, the words "including the provision of local infrastructure and public services" after "development".

The following clauses be added to the Bill:

43A strategic partners may request Minister to exercise section 42 powers.

(1) A strategic partner may request the Minister to exercise all or any of the powers in section 42(2) to (4).

(2) The strategic partner may make a request under subsection (1) even if the strategic partner is not the proponent of a Plan.

43B process for requests by strategic partners

(1) The strategic partner must comply with sections 36 and 37 (except section 36(2)(d)) as if the strategic partner were a proponent.

(2) Section 40 does not apply to any request under subsection (1).

(3) Without limiting section 41, the Minister may decline to exercise any power under section 42 in response to a request under section 43A if the strategic partner has not satisfied the Minister there is sufficient support in the relevant community for the exercise of the power.

Note there could also be a 'catch-all' exception along the lines of it being against public policy.

53A Minister may approve exercise powers of Chief Executive by strategic partners

(1) A strategic partner (other than Te Rūnanga o Ngāi Tahu) may request the Minister to approve the application of **sections 47, 48, 50, 52** and **53** to the strategic partner.

(2) Where the Minister grants approval under **subsection (1)**:

(a) every reference in those sections to the Chief Executive or the Crown is a reference to the strategic partner.

(b) the strategic partner must give notice of the approval in the Gazette and in a newspaper circulating in greater Christchurch.

(3) If the power in **section 52** is exercised by a strategic partner, the reference in **section 80** to the Crown is a reference to the strategic partner.

(4) Section 15 of the Interpretation Act 1999 applies to every approval under this section as if it were a notice.

11. Proponents of Regeneration Plans

11.01 Clause 12 of the Bill names the parties that may propose the development of a Regeneration Plan, and the amendment or revocation (all or part) of a Recovery Plan or Regeneration Plan. The proponents include the Minister and "responsible entities".

11.02 A 'responsible entity' is defined in the Bill as 'a Council organisation, a Chief Executive of a department of the public service, an instrument of the Crown, or a Crown entity'. An

instrument of the Crown, apart from being a department of the public service or a Crown entity, is also a state-owned enterprise.

11.03 The Council does not agree that a Council organisation should be able to propose a Regeneration Plan. Neither should a government department or a state-owned enterprise. It is understood officials are already considering the removal of 'responsible entity from clause 12(2)(d).

11.04 The Council believes that on expiry of the CER Act it will be neither necessary nor appropriate for the Minister or a Chief Executive to have the statutory power to direct or initiate the development of Regeneration Plans. They should be owned by local partners, determining with their communities the outcomes sought for regeneration in greater Christchurch.

11.05 The Minister's role should be limited to approving or declining a draft Plan that one of the partners, or Regenerate Christchurch, has developed. The discretion to decline or approve should be exercised only if conditions prescribed by the legislation (including the requirements of the LGA) have not been met.

11.06 Regenerate Christchurch is one of the parties named as a proponent in clause 12. Each proponent is required to seek the views of the others when proposing a Regeneration Plan. Only Regenerate Christchurch is restricted to responding to a request for its views if, and to the extent that, the proposed Plan relates to the regeneration of an area in which Regenerate Christchurch is to function (defined in schedule 4).

11.07 The intention has always been that Regenerate Christchurch will work collaboratively with other local partners and communities in seeking regeneration outcomes. It will have a key role to play and must have the same statutory powers and obligations as the others partners. Central to this will be developing a strategic partnership between Regenerate Christchurch, local authorities and Ngāi Tahu.

11.08 In fact as stated in the introductory paragraphs, so far as the Christchurch City district is concerned, the Council expects Regenerate Christchurch to have the ability to determine whether or not a Regeneration Plan is needed, which of the strategic partners should lead the process, and the specific nature of the community engagement to be undertaken.

11.09 The Council therefore submits:

Clauses 12(2)(c) and (d) be removed from the Bill.

Clause 13(3) be also removed.

12. Proposing, developing and obtaining approval for a Regeneration Plan

12.01 The Bill must provide for the future amendment (or revocation) of existing Recovery Plans and for the strategic partners (and Regenerate Christchurch) to have the ability to develop Regeneration Plans. However it's the Council's view that as currently provided for, the level

of Ministerial intervention in the development and implementation of such Plans needs to be significantly reduced. If the broad nature of the 'purposes' clause is to remain, then the extent of the powers to be exercised pursuant to those purposes must be more constrained.

12.02 A flowchart has been prepared and is attached to this submission, illustrating the process set out in the Bill.

12.03 The government has made a commitment to the strategic partners and Regenerate Christchurch being the local decision-makers. The effect of that must be to limit the exercise of the Minister's discretion. He or she should be satisfied only that it is reasonably unlikely that the benefits to be obtained by a draft Plan could be substantially obtained through any other process undertaken under the Act, another enactment, or by any other means. Also, that those benefits would outweigh reducing the role of local decision-making in the regeneration of greater Christchurch.

12.04 The Council makes the point that the Bill provides the Minister with the ability to propose a draft Plan, put it out for comment, consider the feedback, and then finalise the draft before deciding whether or not to approve it. The last step in particular makes little sense and potentially poses a legal risk - what are the additional considerations the Minister is to have regard to at that point and for which he or she must retain an open mind?

12.05 It should also be noted that the Bill stipulates that a range of important local authority instruments, including annual plans, long-term plans, transport plans and conservation plans, must not be inconsistent with a Regeneration Plan (similar to the CER Act). Having had many opportunities to direct changes to and eventually approve a Plan, it is inappropriate for the Minister to also have the power to decide whether or not decisions made by the Council under the RMA are consistent with that Plan (clause 31(3)).

12.06 The Council therefore submits:

The process for preparing and consulting on Regeneration Plans is too prescriptive and runs the risk that it will shut down innovation and processes.

The Bill should provide that the Minister, in approving a finalised proposal, must be satisfied only that the proponent, (or its delegate - a local authority and/or a hearings panel appointed by it) has adequately consulted and considered the views and preferences of people affected by, or with an interest in, the matter.

This would allow greater flexibility, and potentially a better consultative process. There would also be less risk of the government having to go back to Parliament with amending legislation, as it has had to do recently to correct an overly prescriptive process for the Auckland Unitary Plan hearings.

13. The Effect of Plans on the Exercise of Powers (clause 9(1))

13.01 This provides that when a power is being exercised there is no need to consider a Recovery Plan or Regeneration Plan unless the Act expressly requires it.

13.02 The principal beneficiary of this provision will be the Crown, principally with regard to its dealings with Crown-owned land. The Council questions the point of such Plans being promulgated under the Act if it isn't to enable it to guide their implementation and associated decision-making. Given there are only a few Plans existing or likely to be developed, the Council suggests the powers requiring consideration of a Plan be identified and made subject to that provision.

13.03 The Council therefore submits:

Clause 9(1) be removed from the Bill.

14. The Minister's Power to Suspend, Amend or Revoke Certain Documents (clause 42)

14.01 Previously in this submission the Council has suggested that if it is recognised that the strategic partners and Regenerate Christchurch are the local decision makers (and not the Minister), the effect of that should be to limit the exercise of the Minister's discretion to approve draft Regeneration Plans. This point could equally be made with regard to the Minister's powers under clause 42.

14.02 In other words, increased opportunities for more local decision-making, balanced against the Minister retaining a limited power to exercise his or her discretion to suspend, amend, or revoke the documents set out in the clause.

14.03 Section 27 of the CER Act allows the Minister, by public notice, to suspend, amend, or revoke resource consents and bylaws as well as plans and policies under the RMA, the LGA 2002, and transport and conservation/reserves legislation.

14.04 This provision has been carried forward in clause 42 of the Bill, but without the inclusion of resource consents. Also, a consultation process has been introduced in clauses 36-41 for when the exercise of the power is proposed.

14.05 In the Regulatory Impact Statement accompanying the Bill, officials noted that 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 (para.105). Also, there would be lower compliance costs. However, there was a "small" risk 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".

14.06 Three options were considered by officials for mitigating this risk. Firstly, consultation with the strategic partners and Regenerate Christchurch, as well as enabling them to request the

Minister to exercise the power. Secondly, limiting the power to being used only at the request of strategic partners and Regenerate Christchurch. Thirdly, the power to be exercised jointly by the Minister, the directly affected Council and Environment Canterbury, with other strategic partners and Regenerate Christchurch consulted.

14.07 The Council was concerned to read the comments in para. 108 of the RIS. "Options 2 and 3 progressively lessen the power of central government and increase the influence of local government". This statement directly contradicts the government's intention to strengthen local leadership and decision-making.

14.08 Giving the Minister the power to suspend, amend, or revoke a wide range of documents that have been developed under statutory processes and have the force of law might well have been appropriate in the rescue, response and even recovery phases post-earthquake. However unless the ability to exercise the power is tempered with a greater emphasis on local decision-making, the Council believes it is unsuitable for a 5 year regeneration process beginning 5 years after the event.

14.09 Neither do the mitigation measures do much to allay any fears the community and investment interests might have about the level of continuing central government control. In such circumstances the best solution may be to limit the exercise of the Minister's powers.

14.10 Finally, the fact that compensation is expressly excluded for decisions made under clause 42 suggests the Crown expects the Minister's actions (pursuant to the clause as currently drafted), will prejudice existing rights. That may be understandable in situations where urgency is required, but hard to justify in a regeneration context.

14.11 The Council therefore submits:

Clause 42 of the Bill be amended by removing sub-clauses (1), (3) and (5).

15. Disposal of Crown-owned Land (clauses 75-77)

15.01 The Regulatory Impact Statement identified a number of issues with regard to the disposal of land by the Crown, principally in the residential red zones, but in the CBD as well. These included acquisition of the land being in the public interest (assisting home-owners and reducing potential litigation costs, but having little benefit to the Crown), the spending of $1.5b of taxpayers' money, and the prospect that some of the land could be remediated and

sold at a value greater than the original cost (it was acknowledged that this could leave some individuals or communities feeling they have been taken advantage of).

15.02 Again, three options were considered by the Crown. An unrestrained right to sell land held under the CER Act or the Bill, any sale to be consistent with an applicable Recovery Plan or Regeneration Plan, or both the purpose and necessity tests in the Bill applied to each sale.

15.03 Option 2 was preferred. According to the RIS, it achieves a balance between enabling community expectations to be met while at the same time not unduly restricting the Crown as a major landowner. If no Plan is in place, the Crown would be in a similar position to other landowners. If, as expected, a Regeneration Plan is developed for the residential red zone, land would be disposed of in accordance with that Plan.

15.04 Despite the officials' recommendation, the Bill proposes that when the Crown is disposing of land it merely has to "have regard to" any applicable Plan. The Council's view is that this test does not meet an agreed threshold and that the Bill must be amended to ensure that any sale is not inconsistent with a Plan.

15.05 If the Bill is not amended as suggested the effect is that the Crown, as land owner, will have the power to determine the development of residential red zone land, and not Regenerate Christchurch. It should also be made clear that the disposal of land includes a Crown lease.

15.06 Supporting the Council view is a Cabinet minute in April 2015 which recorded that the disposal of land should not be inconsistent with any Recovery Plan or Regeneration Plan. The Council was aware of and relied on this minute when it made its decision to join with the Crown in establishing Regenerate Christchurch.

15.07 If the Cabinet decision was subsequently altered (without the Council's knowledge) and the Minister, having been made aware of the Council's reliance on the earlier decision, is not prepared to take the steps required to rectify the matter, the government should at least provide some procedural protection for Regeneration Christchurch.

15.08 This could require, for example, a process by which the Crown must give adequate notice to Regenerate Christchurch of its intention to dispose of any land. Regenerate Christchurch may reasonably consider that the proposed disposal is inconsistent with a Regeneration Plan and identify the risks that may arise from that, in which case the Crown must publicly notify its intention. The notice must invite written comments and other input from the public as well as stating the position Regenerate Christchurch has taken on the matter.

15.09 A public consultation process, such as that described above, would be consistent with submissions to the draft Transition Recovery Plan that provided that "any decisions about the future use of land must be made in full consultation with citizens and with the agreement of the relevant local authority".[16]

15.10 The point for the Council is that given its reliance on the initial Cabinet minute, the Minister must be prepared to undertake a fair and transparent consultation process for disposing of

[16] Draft Transition Recovery Plan: Submission Summary Report 11 August 2015

land subject to a Regeneration Plan. Alternatively, the government must ensure that no disposal is inconsistent with the relevant Plan.

15.11 The Council therefore submits:

Clause 75 be removed from the Bill and replaced with the following:

"Any decision made by the Chief Executive on the disposal of land under this section must not be inconsistent with any applicable Plan or the fact that a Regeneration Plan that may be applicable has been proposed."

16. Establishment of Regenerate Christchurch (subpart 5, clauses 89- 110, schedules 4 & 5)

16.01 The Bill establishes Regenerate Christchurch as a joint Crown-Council entity to drive the regeneration of the central city, New Brighton and the residential red zone.[17] Described as a "unique partnership … that offers a new way of thinking about how central and local government could operate in the future"[18], Regenerate Christchurch best illustrates the "step change in local leadership" envisaged by the draft Transition Recovery Plan.

16.02 Earlier this year the Council agreed to the establishment of a new statutory entity for this purpose, to be called Regenerate Christchurch. The provisions in the Bill relating to the entity largely reflect the agreements reached between the Council and the government.

16.03 However there are a number of matters that the Council wishes to comment on:

Clause 91: Functions of Regenerate Christchurch

16.04 Clauses 90 and 91 set out the purpose, objectives and functions of Regenerate Christchurch. Since the Bill was drafted, Council staff and government officials have continued work on the Letter of Expectations and Heads of Agreement that will set out how the entity will operate.

16.05 Those documents will also include reference to the purpose, objectives and functions of Regenerate Christchurch and the Council expects these to be aligned and reflected

[17] It is expected that the Christchurch RRZ will be the subject of a Regeneration Plan, once the new legislation is in place. The Bill proposes that Regenerate Christchurch (to be controlled jointly by the Council and the Crown) will have the responsibility for developing this.

[18] Minister Brownlee, 25 September 2015

accurately in the Bill. The documents have yet to be submitted for approval by the Council and the Minister.

16.06 Clause 91 sets out the functions of Regenerate Christchurch. Subclause (b) states that it is to "provide investment facilitation services to the market".

16.07 The Council's view is that this was never to be a function of Regenerate Christchurch and that such services will be provided by Development Christchurch Ltd.

16.08 The Council therefore submits

Clause 91(b) be removed from the Bill

16.09 It was expected that the prescribed functions for Regenerate Christchurch would include providing guidance and advice to the Council and the Crown on the divestment of assets and in particular land, to ensure its ultimate use was consistent with regeneration objectives and outcomes.

16.10 The Council therefore submits

16.11 Clause 91 be amended to include a sub-clause providing that Regenerate Christchurch provide guidance to the Crown and the Council on the divestment of assets to ensure consistency with agreed regeneration objectives

Clause 13 (3): Regenerate Christchurch to be consulted on all proposed Regeneration Plans

16.12 It was expected that Regenerate Christchurch would have, with respect to Regeneration Plans, the same status as strategic partners; and that this would include Regenerate Christchurch being consulted on any proposed Plans. As has already been noted, clause 13 (3) has the effect of reducing Regenerate Christchurch's role to commenting only on Plans if the matter relates to the regeneration of an area specified in Schedule 4. It is the submission of the Council that clause 13(3) be removed from the Bill.

16.13 The Council therefore submits:

Clause 13(3) be removed from the Bill.

Clause 93 (4): Regenerate Christchurch area

16.14 The Council expected that any proposal for the addition of an area to those contained in schedule 4 would require Ministerial approval and his or her recommendation that an Order in Council be made to effect this. It did not expect the Minister would also have to be satisfied that the area "has a relatively greater need for regeneration, including enhanced services and opportunities" (clause 93(4)).

16.15 As drafted, this sub-clause does not reflect the joint Crown-Council partnership for Regenerate Christchurch. This is clearly the responsibility of Regenerate Christchurch to determine, and the clause should be removed from the Bill. The Council believes that government officials are already considering this.

16.16 The Council therefore submits:

Clause 93(4) must be removed from the Bill.

Schedule 5: New Brighton

16.17 The Council believes the area to be defined as New Brighton for the purposes of this Bill should be wider than the very limited description in schedule 4. A Regeneration Plan for New Brighton (or Plans, if there is more than one), could cover from Southshore through to North Beach and the schedule should reflect this. While it currently enables some limited consideration of issues beyond the commercial centre, the definition does not reflect the range of residential and environmental issues and potential opportunities for the suburb.

16.18 In particular, the economic health of the centre depends upon a functioning residential catchment and strong transport connections, particularly with a focus on leisure and education. It is therefore critical that any regeneration planning beyond the commercial centre takes a comprehensive view across the catchment and appropriately reflects the connections with catchment communities in South and North New Brighton and Southshore. It should also reflect environmental constraints and opportunities of the wider river, estuarine and dune context, including corridors to Travis Wetland.

16.19 By taking a more holistic approach, there is a greater potential for identifying an appropriate range of actions that enable New Brighton to establish and catalyse regeneration of the area. If the delineation of New Brighton remains unchanged in the Bill, the potential for regenerating the area will accordingly be significantly reduced.

16.20 The Council therefore submits:

The definition of 'New Brighton' in Part 2 of Schedule 4 be removed and replaced with the following:

"New Brighton, being the area bounded by the pink line on the attached map".

16.21 The Council and the government have agreed they will prepare and enter into a Letter of Expectations and a Heads of Agreement in respect of Regenerate Christchurch. Both documents are close to being ready for approval by the parties.

16.22 However, if the Minister considers it unlikely agreement can be reached within "a reasonable time" (clause 97(6)), he or she can provide a Letter of Expectation to Regenerate Christchurch "on behalf of both parties".

16.23 From the Council's perspective the cause of the disagreement may be something quite fundamental. In such situations it might be expected that the parties could agree on a process for resolving the issue that is more equitable than having one of the parties simply declare that a disagreement exists and then determining the outcome on behalf of both of them.

16.24 A dispute resolution process has been included in the current draft of the Heads of Agreement. This could be used as a basis for resolving disputes in a timely manner with regard to the Letter of Expectations.

16.25 The Council therefore submits:

Clause 97(6) be amended to read:

If, 30 working days after notice has been given under subsection (5), Christchurch City Council and the Minister remain unable to agree on a joint Letter of Expectations, the matter in dispute will be dealt with by the parties in accordance with the dispute resolution provisions contained in the Heads of Agreement.

16.26 Clauses 102-108 deal with the transfer of assets, liabilities and employees both into and out of Regenerate Christchurch.

16.27 Clause 102 sets out a process for the transfer of assets and liabilities owned or managed for the Crown by CERA, which will go out of existence once the new Bill is enacted. The Council is concerned the process gives no particular status to Regenerate Christchurch as the successor organisation to CERA in the transition from recovery to regeneration in the city.

16.28 Under 102(3), any of the following may be a transferee: Regenerate Christchurch, Christchurch City Council, a Council organisation and CrownCo. This is a discretionary power (may, not must) and conceivably any other entity such as a government department, or state-owned enterprise, could be a transferee. Any transfer is subject to the Minister's approval.

16.29 Nowhere in clause 102 is there any obligation on CERA's Chief Executive to consult with or get the agreement of Regenerate Christchurch or its joint stakeholders, the Council and the government. Nor is there any indication that as the future leader of regeneration in the city,

Regenerate Christchurch is to have the benefit of any work CERA has been involved in but which is not yet completed, say, in the CBD or the residential red zone.

16.30 The Council's position is that quite apart from the government's intention to transfer assets and liabilities to other government agencies, the government should be instructing CERA to negotiate a transfer plan with Regenerate Christchurch. This would provide an orderly and timely identification and transfer of work currently underway in the central city and the residential red zone. It should be completed prior to the Bill being enacted and subject to the agreement of the government and the Council, not the Minister unilaterally.

16.31 The same issue arises with the transfer of assets and liabilities from Regenerate Christchurch sometime before 30 June 2021 (when it will no longer be a statutory entity).

16.32 The Bill provides that the successor organisation must be a Council-controlled organisation owned or controlled by the Christchurch City Council (clause 99). It would be expected that this would require both parties to negotiate and agree on the assets and liabilities to be transferred to the new CCO.

16.33 Instead clause 104 identifies a number of possible transferees - the Christchurch City Council, a Council organisation, CrownCo, or a department specified in schedule 1 of the State sector Act 1988. Once again the Minister has the ultimate right of approval (104(1).

16.34 The Council's view is the same as for transfers from CERA to Regenerate Christchurch. Regenerate Christchurch should be required to negotiate a transfer plan with the Council-owned CCO established as the successor organisation, prior to 30 June 2021. Any residual assets and liabilities not being transferred in accordance with the plan could then be disposed of as the government and the Council (as joint controllers of Regenerate Christchurch) agree. They should not become, by default, the assets and liabilities of the CCO, as currently provided for in clause 106.

16.35 The Council therefore submits

Clauses 102-108 of the Bill be re-cast to ensure both CERA and Regenerate Christchurch, and both Regenerate Christchurch and its successor organisation, negotiate a plan for the orderly and timely transfer of assets and liabilities between them. The government (as sole asset owner) is likely to want to approve the transfer of CERA assets and liabilities, the board of Regenerate Christchurch both transfers, and the Council the transfer of Regenerate Christchurch assets and liabilities.

16.36 Finally, clause 36(1) of schedule 5 requires that Regenerate Christchurch, before agreeing to the terms and conditions of employment for its Chief Executive, must consult with the State Services Commissioner. This must surely include consultation with the Council's Chief Executive as well.

16.37 The Council therefore submits:

Clause 36(1) of the Bill be amended by adding "and the Chief Executive of the Christchurch City Council" after "Commissioner".

17. Conclusion

17.01 To a large extent the Council's submission has focused on the purposes of the Bill and the powers to be exercised pursuant to them. The essential element is that there is a danger in linking some of the more coercive powers to such broad purposes as those set out in clause 3. This has arisen principally because many of the recovery provisions in the CER Act have been carried forward to a Bill centred not on recovery, but on regeneration.

17.02 The Council's response is that if these powers are to remain in the Bill, then they should be attached to specific sub-clauses so that the reason for them is clear and their use is more appropriately prescribed.

17.03 Virtually anything can fit within the purposes set out in clause 3(a) and (b). This is probably deliberate, to protect the government from legal challenge should it be argued that a proposed regeneration activity had in fact been under consideration before rather than after the earthquakes.

17.04 The Council's view is that if this is to be the government's position, then there need to be some constraints put on the exercise of certain powers in the Bill. This could be achieved by linking those powers to imminent health and safety risks, or by making them subject to geographic limitations.

17.05 For example in Clause 36(2)(c) the proponent is to explain how it expects the exercise of the power in section 42 to meet one or more of the clause 3 purposes. It could also be required to state why that purpose could not reasonably be achieved without the exercise of the power.

17.06 Clause 47 enables a Chief Executive to order the demolition of a building on private land without the owner's consent. This power should only be exercised in respect of dangerous buildings and, perhaps, non-dangerous buildings under threat from dangerous buildings or natural hazards such as rock fall or subsidence.

17.07 In clause 53 a Chief Executive may authorise the construction of a temporary building on private land. Ironically the land-owner's consent is required for this, but not if it was a permanent building. Purposes 3(a) and (b) are too wide -the Council believes that the exercise of the power should be restricted to situations where there is imminent threat to human life or damage to property.

17.08 This is not an exhaustive list but the examples given clearly demonstrate the point the Council is making, that specific powers should be exercised only for specific purposes.

17.09 The other issue the Council has focused on is a need for the Bill to recognise that not all regeneration initiatives will require the development of a Regeneration Plan and the very lengthy and prescriptive process required to get Ministerial approval. Locally-led and community-based regeneration is likely to be a tangible benefit of the next phase of recovery from the earthquakes.

17.10 Most initiatives will be able to be dealt with in accordance with existing local government planning and decision-making processes. However Ministerial support might be necessary

to resolve an issue in a timely manner and there should be a simple process for obtaining this made available in the Bill for local Councils to use.

17.11 The transition to local leadership must encourage initiatives of this nature, as well as the larger scale Regeneration Plans provided for.

17.12 As noted previously, this is an incredible opportunity to achieve many objectives - as long as we get the legislative framework right. The Council has approached its submission with that in mind, providing a critique of the Bill that it believes is constructive.

17.13 It applauds the government's commitment to the establishment of Regenerate Christchurch as a jointly-controlled entity to lead regeneration in the city. In making submissions on this, the Council wishes only to ensure that the Bill properly reflects the understandings reached between government officials and Council staff in earlier discussions. The Council is confident that further work on the relevant clauses will achieve that outcome.

17.14 Attached to this submission is a schedule containing a clause-by-clause analysis of many of the provisions of the Bill. This is not an exhaustive list and for the most part doesn't include clauses that have been specifically covered in the submission itself. However, the schedule is a useful summation of the many points the Council is making.

17.15 For the next step in the development of the legislation, Council asks that the Committee authorise the appropriate government officials to discuss with delegated Council staff the detailed wording of the Bill, pursuant to SO 242(2) of the Standing Orders of the House of Representatives.

18. Attachments

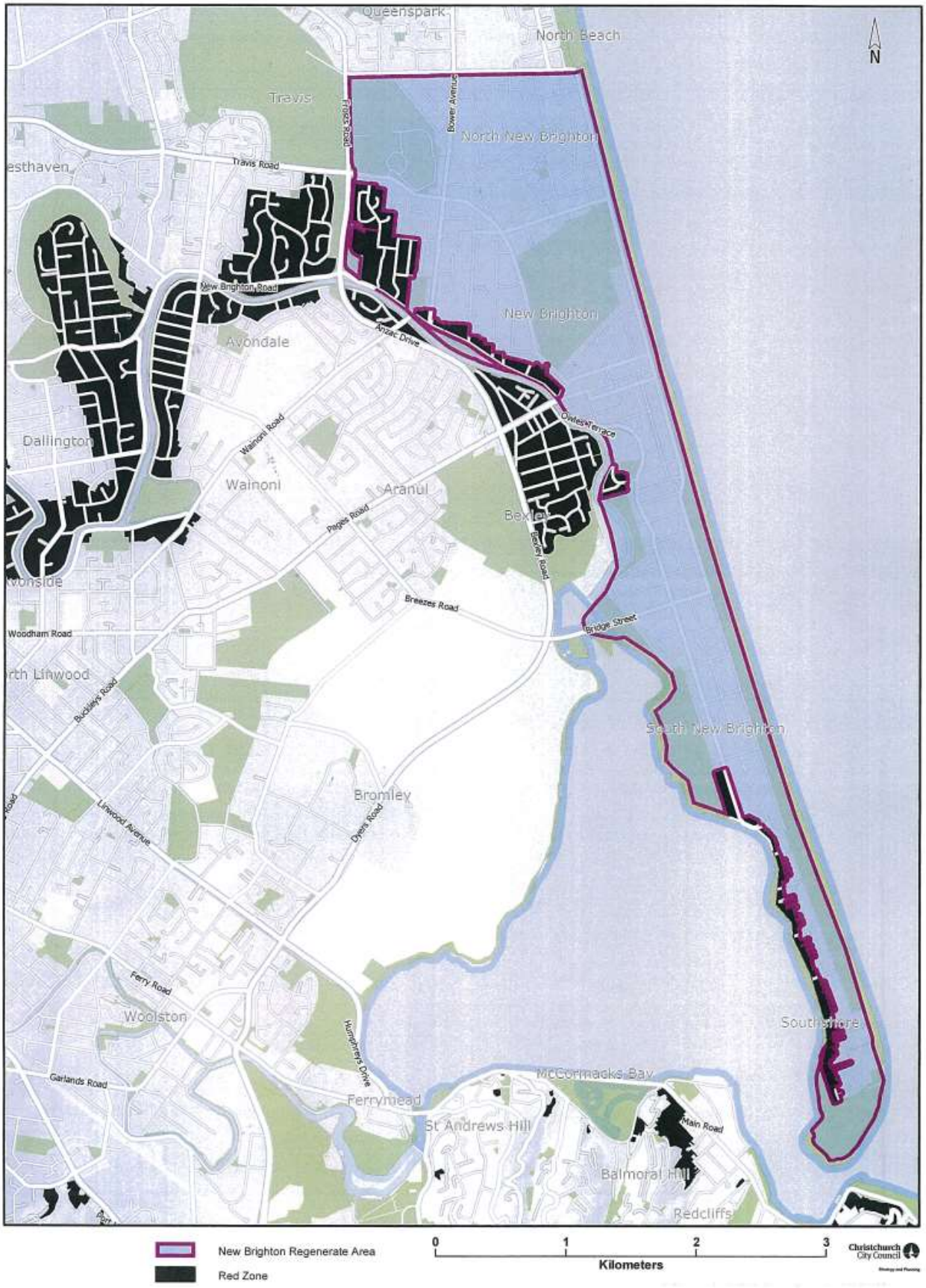
Attached to this submission are the following documents:

(1) Map of the New Brighton area referred to in paragraph

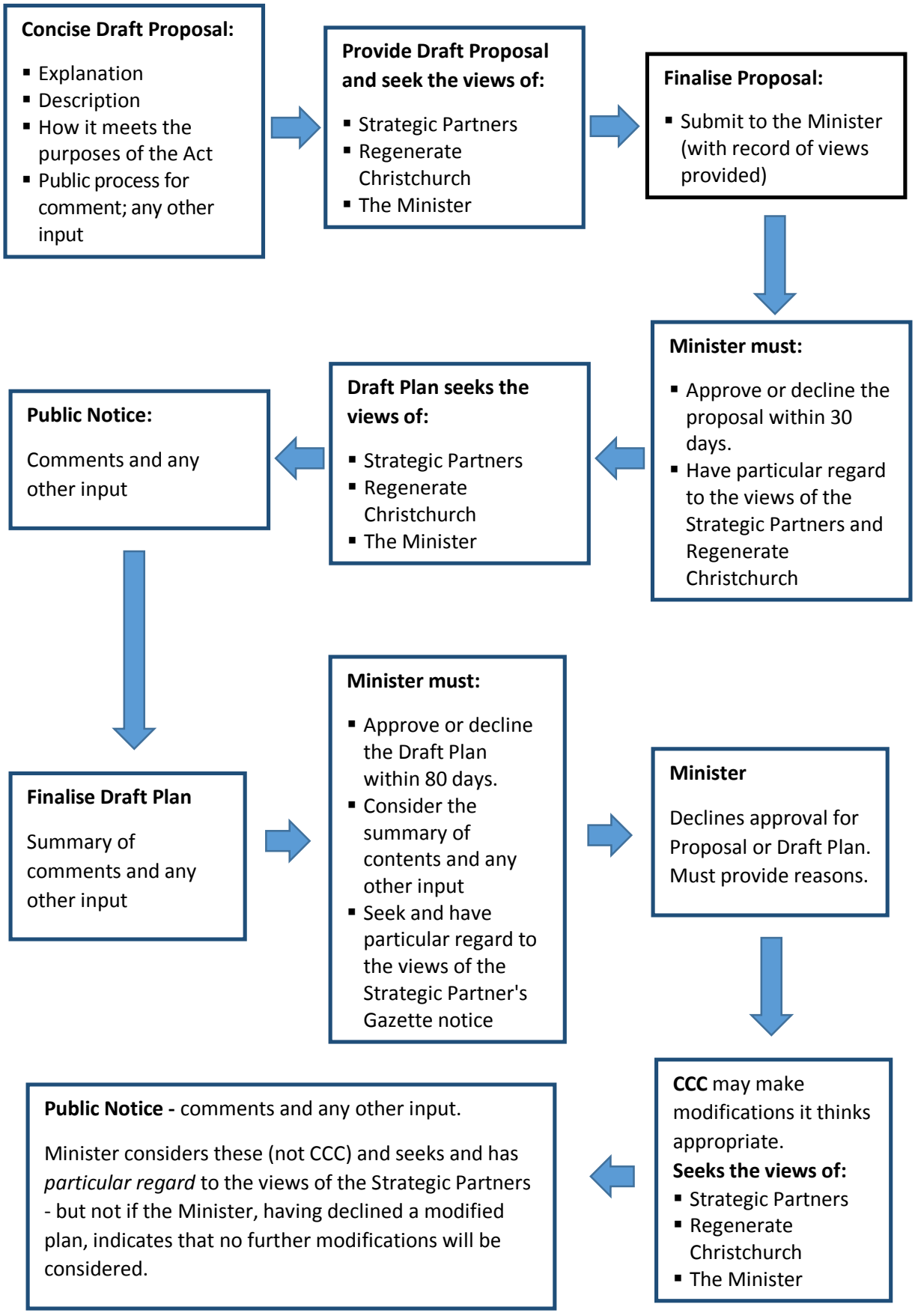
(2) Flowchart setting out the process in the Bill for developing and obtaining Ministerial approval of Regeneration Plans and the amendment or revocation of Regeneration Plans and Recovery Plans.

(3) A clause-by-clause analysis of provisions in the Bill, to be read alongside the particular matters referred to in the body of the submission.

Regenerate Christchurch| New Brighton



Process in the Bill for developing and obtaining Ministerial Approval of Regeneration Plans and the amendment or revocation of Regeneration Plans and Recovery Plans.



Greater Christchurch Regeneration Bill

Attachment 3

Clause by Clause Analysis (in addition to comments in the Submission)

Clause	Text	Comment	Recommended Amendment
3. Purposes	(c) enabling community participation in the planning of the regeneration of greater Christchurch. (d) recognising the local leadership of ... and providing them with a role in decision making under this Act.	The Bill suggests a very 'top down' approach to regeneration. This role of decision making seems to sit principally with the Minister rather than with the authorities listed.	
4. Interpretation	Christchurch central city means the area bounded by Bealey Avenue, Fitzgerald Avenue, Moorhouse Avenue, Deans Avenue, and Harper Avenue.	Question the inclusion of Hagley Park. This is outside the area of the Christchurch Central Recovery Plan.	Amend Bill text to read: Christchurch central city means the area bounded by Bealey Avenue, Fitzgerald Avenue, Moorhouse Avenue, Deans Avenue and Harper Avenue, ***excluding Hagley Park.***
9. Effect of Plans on exercise of powers under Act	Unless expressly required in this Act, when exercising a particular power under this Act, the person exercising it need not consider any Recovery Plan or Regeneration Plan relating to the matter.	What is the reason that a person exercising powers would not at least consider a Regeneration Plan relevant to the matter. Perhaps they may be provided with an opportunity to exercise a power in a way that is inconsistent with a Regeneration Plan but they ought to at least consider the Plan before exercising their power.	Amend Bill text to include the following: If the Council's submission that clause 9(1) be removed is not adopted, then omit "consider" and replace it with "act consistently with the Plan". This would provide a more direct statement of the effect.
10. Effect of Act on other powers		Should this apply to Strategic Partners who may well have powers under the LGA and RMA?	
11 Powers to be exercised for purposes of this Act	(1) A Minister or a Chief Executive must ensure that when he or she exercises or claims his or her powers, rights, and privileges under this Act, he or she does so in accordance with one or more of the purposes of the Act. (2) A Minister or a Chief Executive may exercise or claim a power, right, or	The Council is concerned at the list of sections that are exempt from this provision. If the exclusions are to apply, the Crown should always act under the Act in accordance with one of its purposes; and that if the "reasonably considers it necessary" test is too onerous, the Crown should explain why that is so.	Amend 11(2) by inserting "only" before "where".

	privilege under this Act where he or she reasonably considers it necessary. (3) This section is subject to sections 47, 53, 59, 60, 61, 62, and 75.	The purposes are very broad. Ideally a particular purpose should be identified by the person exercising the power.	
12(2) Proponents of Regeneration Plans	Any of the following may be a proponent: (a) A strategic partner (b) Regenerate Christchurch (c) The Minister (d) A responsible entity A responsible entity means a council organisation, a Chief Executive of a department of the Public Service, an instrument of the Crown or a Crown entity.	As worded any department or loosely defined Crown body can initiate a regeneration plan.	Responsible entities should not be able to initiate regeneration plans.
16 Contents of proposal	This prescribes the information to be contained in a proposal.	Significant work may be required with regard to this provision.	'Gateway test' is over specified. For example 16(2)(b),(c) in particular would be expected to emerge as the plan develops. Proponents should have to identify the impacts they intend, to allow the Minister and others to assess them, e.g. the implications for and the effects (if any) of the Proposal on any RMA documents by virtue of Section 32 and each instrument described in Section 34(1).
17. Proponents must seek views and finalise Proposal.			Proponents should have to "consult" as well as "seek views".
18. Minister may approve Proposal.		Engagement is critical to credibility. This is at the Proposal (not Plan) level so it is appropriate to consider options.	The Minister should have to consult Strategic Partners and Regenerate Christchurch as well as to have particular regard to their views.

Clause by Clause Analysis (in addition to comments in the Submission)

21 Approval of Plan or amendment	(1) The Minister must approve or decline a draft Plan or amendment that has been finalised in accordance with section 20(5) no later than 80 working days after receiving the draft Plan.	80 working days is a very long time and runs counter to the purpose of the Act of enabling an expedited regeneration process.	Given Ministerial involvement in earlier stages of plan development process, the timeframe should be reduced to no more than 40 working days. Minister should have to consult (i.e. engage with) Strategic Partners and Regenerate Christchurch.
31 Councils not to act inconsistently with Plan	Any persons exercising powers or performing functions under the Resource Management Act 1991 must not make a decision or recommendation relating to all or part of greater Christchurch that is inconsistent with the Plan on any of the following matters... (f) the preparation, change, variation, or review of an RMA document under Schedule 1.	The Christchurch Replacement District Plan is currently being considered by the Independent Hearings Panel and Schedule 7 of the Bill provides for this process to extend to 16 December 2016. It is therefore possible that some decisions by the IHP will occur following the development of new Regeneration Plans. This in turn may have consequential implications for other parts of the district plan.	This provision should be reviewed.
32 Councils to amend documents if required	(1)... a council must amend an RMA document... if a Plan directs so, ... (2) ... as soon as practicable after the Plan comes into effect without using the process in Schedule 1 of the Resource Management Act 1991 or any other formal public process.	This appears contrary to the principles of natural justice and could breach property rights if there is no ability to submit on or appeal the changes to a district plan or other RMA document. The process should include appeals, noting that this could affect Independent Hearing Panel-generated documents. The Minister may be causing to be altered, very new, carefully-considered and sometimes hotly contested DPR documents from the IHP.	Clause 32 allows regeneration plans to direct changes to RMA documents; but RMA decisions are for local authorities to make. Having been made, then normal processes should apply. Those dissatisfied should have their ordinary rights of appeal.
34. Relationship to other instruments	(1) The following instruments, so far as they relate to greater Christchurch, must not be inconsistent with a Plan:	There are mechanisms in the LGA and other legislation governing changes to these documents. It is assumed that this provision	If the provision is to remain, then at the very least:

	(a) annual plans, long-term plans … (b) regional land transport plans … (3) If required by a Plan, an entity that is responsible for an instrument must amend the instrument to give effect to the provisions of the Plan.	overrides other legislation? - or is e.g. the special consultative procedure still to be used? If there is an inconsistency but the Plan doesn't require the entity responsible to amend the relevant document, is there still a requirement to do so?	- the Minister should have to consult those who have to make the amendments before determining the process. The Minister cannot know what else is going on at the affected entities, and often processes can be combined or aligned for greater efficiency - the Act should be explicit that it prevails over the amendment. In 34(4) the process should be public (i.e. the same as for 32(3).
38. Minister may decide to proceed with Proposal			38(2) Amend by adding "consult with and" have particular regard to the views of Strategic Partners and Regenerate Christchurch.
40. Approval of proposal for exercise of power	In considering whether to exercise the power in section 42 [ie to suspend, amend or revoke an RMA document, council plan etc], the Minister must - (a) Consider any comments provided in accordance with section 39(c) [ie from members of the public]; and (b) Have particular regard to the views of the strategic partners and Regenerate Christchurch	'Consultation' has a well-established jurisprudence and Courts are well able to assess whether consultation appropriate to the circumstances occurred. "Having regard to views" is much less clear. So long as the decision-maker can show any awareness of the views, it is virtually impossible to establish that 'regard' or 'particular regard' has not been paid to them.	40(b) The Minister must "consult with and" have particular regard to the views of Strategic Partners and Regenerate Christchurch. Amend the first statement to read "in considering whether to exercise the power in section 42, the Minister must, in response to a Proposal under clause 36 …
42. Minister may suspend, amend, or revoke RMA document, Council plan, etc	(2) The Minister may, …, suspend, amend, or revoke all or part of any of the following, so far as they relate to any area within greater Christchurch: (a) an RMA document; (b) a plan or policy of a council under the Local Government Act 2002, except a funding	The ministerial power to legislate should only be able to be used at the request of a proponent, not at the initiative of the Minister. Clause 36 anticipates this, but drafting is loose and only clause 39(c) links clause 42 to a Proposal.	Consider limiting this ministerial legislative power to the first 3 years only. 42(3)(b) - amend to read "impose a moratorium on further changes or variations for a specified period not exceeding 2 years".

	impact statement in an annual plan or a long-term plan; (c) a regional land transport plan … … (e) a bylaw…	A request could be made outside a Regeneration Plan, and it would be inappropriate for it to be made by any organisation other than a Strategic Partner.	Amend clause 36(1) by adding after "Section 42" the words "as contemplated in an approved Plan".
	(3) The Minister may … (b) impose a moratorium on further changes or variations for a specified period.	This clause provides for potentially a very long term moratorium.	Suggest a time limit on any moratorium - e.g. two years maximum to enable local democratic decision making to move in a different direction if they consider it appropriate.
47. Works	(1) The Chief Executive may carry out or commission works. (4) Works under this section may be undertaken on public or private land and with or without the consent of the owner or occupier.	It reads as though a Chief Executive has significant powers that may be used without consultation or consent of the land owner or occupier. Section 11(1) requires that any powers be exercised in accordance with one or more purposes of the Act, but this is very wide. Given that the purpose is about regeneration and not response/recovery, the Council questions the need for such powers without an appeal process. These include powers to interfere with property rights, require works to be carried out, and exclude people from their property. The powers are exercisable at Departmental Chief Executive and not ministerial level. This means less public accountability; a fact acknowledged in respect of surveys and amalgamations in the RIS at para 163. The powers are said to be needed in respect of:	Give the power to the Minister, not a Chief Executive, for greater accountability. Put geographical limits on the use of these powers.

		Port Hills (and some flat land) with 60% of the Port Hills residential demolition scheduled for after April 2016; Anchor projects; Future uses in residential red zone (RIS, para 168). However, there are no geographic limitations on these powers in the Bill. The powers and the compensation provisions should be split, and different, for recovery and regeneration purposes; with better protections and compensation where the building or demolition is for regeneration. Demolition costs are costs of the owner; clauses 49(3) and 51(1). That may be appropriate in a recovery phase, but not for regeneration purposes. Where new projects are being developed, demolition and site clearing is usually a cost of that project.	
48.	(1) This section applies if the Chief Executive proposes to carry out or commission works under section 47 on or under private land. (2) The works include… (a) the erection, reconstruction, placement, alteration, or extension of all or any part of any building on or under land: (8) A notice under this section must be given at least 1 month in advance, but there is no right of appeal or objection against the notice.	The exclusion of occupancy may cause an issue for landlords.	The clause should clarify whether rent is still payable or not. The power should be exercised only in situations where safety is an issue.

Clause by Clause Analysis (in addition to comments in the Submission)

51. Compensation for demolition of buildings	If the Crown demolishes a dangerous building - (a) The Crown is not liable to compensate the owner or other occupier of the building; and (b) The Chief Executive may recover the cost of demolition from the owner.	There is no compensation for the owner of a dangerous building. Damage to other non-dangerous property caused by demolitions is payable by the Crown only for "negligent physical loss or damage" that "results directly from the demolition of a building". The Courts would no doubt conclude this it is not the loss or damage that is negligent, but rather the act or omission that caused the loss or damage. The adjoining owner should not have to prove negligence to get compensation. Especially in a regeneration situation where an emergency is no longer a factor, the Crown should be liable if it damages other property during a demolition without the claimant having to prove negligence.	
53. Temporary buildings	(1) Despite any other enactment, the Chief Executive may erect or authorise the erection and use of temporary buildings on any land including any public reserve, private land, road, or street and provide for their removal. (2) No building consent or resource consent is required for the erection or use of any temporary building under subsection (1). (3) If practicable, the Chief Executive must consult the relevant road controlling authority before exercising a power under this section in relation to a road. (4) Temporary buildings may be erected under this section on private land only with the consent of the owner or occupier.	There is no definition of a temporary building in this Bill. This potentially allows for any interpretation of 'temporary' to apply. The temporary building may be structurally unsound if no building consent is required, leading to undue risk for occupier. The Chief Executive would be better to obtain the consent of a road controlling authority rather than simply consult with that entity as there may be significant traffic safety issues. This type of provision will be important for emergency situations, more so than for longer term regeneration purposes.	Need for urgent action is over. There should be consultation with the Council in all cases where it is landowner and where Council roads are involved there should be a traffic management plan. There is an expectation from residents the unannounced obstruction of roads for construction works is at an end. Exercise of the power should be confined to situations where safety is an issue. The Crown should have to consult before using reserves in non-urgent circumstances.
54. Access to areas or buildings		The exercise of this power should be confined to urgent safety matters.	Appropriate notice should be required, specifying the reason and duration of the exclusion.

			Notice must be given to the Council.
55. Prohibiting and restricting public access, closing and stopping roads, etc	(1) The Chief Executive may, for such period as he or she considers necessary, totally or partially prohibit or restrict public access, with or without vehicles, to any road or public place within greater Christchurch. [and similar provisions for closing a road, diverting or controlling traffic, stopping a road or part of a road. No right of appeal (6)]	Section 11(1) requires that any powers be exercised in accordance with one or more purposes of the Act, but this is very wide. Given that the purpose is about regeneration and not response/recovery, the need for such powers without an appeal process is questioned Emergency services probably have enough powers not to require this.	If this clause is to remain it should require notice to be given to the road controlling authority always, not just "if practicable".
57 and 58		These clauses should be removed from the Bill. They have never been used and are considered to be unworkable (RIS).	
59. Acquisition and other dealing with property	(1) Subject to the Minister's approval, the Chief Executive may, in the name of the Crown,— (a) purchase or otherwise acquire, hold, mortgage, and lease land and personal property; and (b) sell and exchange personal property. (2) Nothing in section 11 applies to the exercise of a power under this section.	Allows Chief Executive with Ministerial approval, to buy, sell and swap real and personal property. Clause 11 tests don't apply. This means that the Minister and CE can use these powers outside the purpose of the Bill and without the need to consider whether the use of the power is reasonably necessary. The Crown should not be empowered to take land without compensation.	
86. Appeal	(1) There is no right of appeal against a decision of the Minister or the Chief Executive acting, or purporting to act, under this Act, except as provided in sections 87 and 88.	Restrictions on appeal rights in this context are not new, but there is a live issue as to whether the restrictions are still justifiable, especially given the passage of time and the broader purposes of this Bill.	The Crown should consider whether or not RMA appeals should be possible as of right, not just in the limited situation in clause 81(1)(b).

		Both the RIS and the DDS recognise this, and the DDS at paragraph 3.4.1 summarises the views of the MoJ that while eliminating appeals speeds processes, it also reduces community participation. The only change is that where an appeal is possible the tight 10 day restriction is removed. Appeals that are allowed are to the High Court perhaps. It should be made explicit that appeals to the High Court are "full" appeals with the right to call evidence, not on some judicial review basis. Thereafter, appeals to the Court of Appeal are final in all cases except compensation.	
100. Regenerate Christchurch exempt from income tax	Regenerate Christchurch is to be treated as a public authority for the purpose of section CW 38 of the Income Tax Act 2007.	As RC is tax exempt, the same should apply to successor organisation which is a CCO. If it does not then significant deeming provisions will be needed if anything material is transferred from RC to the CCO.	
112. Continuation, amendment and validation of certain Orders in Council	Each Order in Council specified in Schedule 7 and made under section 71 of the CER Act or continued by section 89(2) of that Act: Continues in force Is amended in the manner specified in Schedule 7 May be revoked in accordance with section 113. And (3) An order continued by subsection (1) (a) Is declared to have been lawfully made and to be and always have been valid; and	Certain Orders in Council are continued in force despite the repeal of the Acts under which they are made. All OICs are deemed to be valid and always have been valid. This removes the basic right to challenge an Order on the grounds of ultra vires. It may be a breach of the NZBOR Act that would be difficult to justify. It also breaks the LAC guidelines and extinguishes any current Court action.	Perhaps the Crown could reconsider parts of this provision.

	(b) May not be held invalid just because i. It is or authorises any act or omission that is, inconsistent with any other Act; or ii. It confers any discretion on, or allows any matter to be determined or approved, by any person. (4) So far as it is authorised by the CER Act and continued by this Act, an order has the force of law as if it were enacted as a provision of this Act.	Clause 112 (4) takes the unusual step of declaring the OICs to have the force of law as if they were Acts.	