

Residential Red Zone Offer Recovery Plan - Comments

The Council welcomes the opportunity to make this submission in response to CERA's draft Residential Red Zone ("RRZ") Recovery Plan.

The Council's intention is to be brief, taking into account the changes that have been made since the preliminary draft was published. We note that council staff provided comments on the preliminary draft plan seeking, inter alia, a record of the council's interest in the Recovery Plan given our obligations in relation to infrastructure provision, our financial contribution to Crown property purchases on the Port Hills and our role in aiding the recovery of the citizens of Christchurch from the effects of the earthquakes. We would have preferred a more collaborative approach from the outset as the situation we are confronted with may have been avoided. From our perspective, everyone affected by this draft plan in Christchurch City is a ratepayer and deserving of equal treatment.

1. Do you agree with the Chief Executive's preliminary view on a new offer to buy vacant red zone land?

Yes, as it is the same offer that was made to insured 'RRZ' home owners.

2. Do you agree with the Chief Executive's preliminary view on a new offer to buy insured commercial red zone properties?

Yes, as it is the same offer that was made to insured 'RRZ' home owners.

3. Do you agree with the Chief Executive's preliminary view on a new offer to buy uninsured improved red zone properties?

No, the Council believes CERA is wrong to discriminate against "RRZ" home owners who for whatever reason found themselves uninsured (or were underinsured) at the time of the earthquakes. It is disingenuous for CERA to selectively quote from the Supreme Court's judgement in the "Quake Outcasts" case to support its view that it has the right to distinguish between insured or uninsured homeowners.

The draft Plan asks us to compare two homeowners in the "RRZ", one insured and one uninsured. In that instance it makes no difference to the insured party that their uninsured neighbour is offered the same settlement to vacate their property. They are subject to the offer not because they are uninsured, but because their house is in an area that the Government has "zoned" for the purposes of the offer.

The real distinction is between two uninsured properties - one in the 'green zone' and the other in the 'RRZ'.

The difference is stark. The home in the 'green zone' can be repaired. The family doesn't have to look for somewhere else to live. There are many examples of such homes being repaired for free. Habitat for Humanity pulled together local, national and international volunteers to assist in this endeavor. They received financial assistance from Red Cross and from the Canterbury Earthquake Appeal Trust ('the Prime Minister's Fund', as it was known colloquially at the time). No judgments were made about why these families were uninsured - they understood that they simply needed help.

The attached article appeared in the Press, and Habitat for Humanity's Patron, the Governor-General, joined in as can be seen in the photograph (also attached) from his website.

The Governor-General is quoted as saying:

"Some of [the people Habitat for Humanity are helping] are at their wits' end. For them, there seems to be no way for their problems to be resolved, and then to have these strangers turn up at the doorstep full of compassion and wanting to help them, it's fantastic and moving, and for most of them it does get emotional.

"Most of the volunteers are from Christchurch and they're dealing with their own challenges. The whole thing is very much about communities helping each other."

The problem with the approach proposed in the Draft Recovery Plan of offering only 80% of the unimproved 2007 rating valuation is that offers no such hope of the compassionate support offered to those in a different "zone", which could literally be on the other side of a fence or a road. Both houses could be side by side, in the same street.

The owner of a house in the red zone, with a 2007 valuation of \$300,000, would receive an offer from the Government of just over \$70,000, (80% of the \$90,000 land value), based on this draft Plan). Where is the fairness and consistency in that, two objectives frequently referred to by CERA in its draft Residential Red Zone Recovery Plan?

It is important to remember that the outcome for the owner of the red zone property has been determined by Government policy, not by considerations of fairness and consistency. This is the reason why the offer must be the same as Option 1 - not just the land value, but the entire capital value, including land and improvements. The Government's decision has left these homeowners in a position where even the charitable sector cannot step in to help.

In recommending the Government make a fair offer to uninsured or underinsured "RRZ" home owners, the Court was clearly influenced by the evidence of people who were uninsured. The Court said it was unfair of the Government *"to take into account a factor (that of a conscious choice to remain uninsured) that may or may not have been applicable to each member of the uninsured group"*.

Further, at [88], *"we record at this point that a number of the Quake Outcasts group cannot be described as making a "conscious choice" not to insure their properties. The reasons for this include:*

- (a) A couple who has paid insurance premiums "religiously" but were in the process of having a financial advisor package up a complete insurance offer for everything with a four-day gap before the September 2010 earthquake.*
- (b) A couple who had overlooked changing insurance cover into their name because of stress from a cancer diagnosis and caring for dependent family members. This couple was uninsured at the time of the September 2010 earthquake and their insurance company had refused cover even though they had had insurance with the company since 1972.*
- (c) A claimant who had understood that insurance was in the hands of her bank; and*
- (d) A claimant who had not paid his insurance premiums for the two months prior to the earthquake by oversight".*

Even though there is a relatively small number that were uninsured, there is no reason to do a case by case assessment of whether the case is a "deserving" one. Habitat for Humanity and its funders and volunteers did not judge people in this way, neither should the Government. There is no "moral hazard" in implementing Government policy fairly and consistently across the areas, which the Government, without any of the protections of its own statutory processes and with no consultation, unilaterally determined to be 'RRZ'.

To be fair and consistent the Government, having made an area-wide decision to create the residential red zone, should then have made the same offer to every property owner in the zone, regardless of their insurance status. That is effectively what the Supreme Court has ruled.

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

[197] We have also concluded that, in making the decision as to any differential treatment of the uninsured and uninsurable, the recovery purpose of the Act which, among other things, is to restore the "social, economic, cultural, and environmental well-being"²²⁵ of Christchurch's communities, was not property considered. The area-wide nature of the decisions on the red zones suggests an area-wide community approach to recovery where practical.

The situation is now dire for those who cannot afford to accept the offer. The 'RRZ' land clearances have created an untenable position for many who remain not as a matter of choice, but because they cannot afford to accept the offer. As noted by the Supreme Court:

[180] The plight of those left behind in the red zones has thus been exacerbated by the actions of the Crown in making purchase offers to insured red zone property owners. As a result of the acceptance of those offers (which were designed to be attractive), there is no motivation for service providers to continue to provide proper services to those areas and the Crown's decision legitimises the retirement of such services to the red zones. The remaining individuals in the red zone have been effectively left in a dilapidated urban area that will worsen as it is further abandoned. This cannot enhance their recovery from the earthquakes.

[184] As a result, the context in which the September 2012 offers were made was substantially different to that pertaining in June 2011. Indeed, even in June 2011, one of the criteria identified in the Brownlee paper was that the health or well being of residents was at risk from remaining in areas with land damage for prolonged periods. This new context, and the health and safety concerns set out in the Brownlee paper, were relevant factors and should have been taken into account."

It is not unsurprising that there is anecdotal commentary about people becoming suicidal faced with the prospect of remaining in these areas, as if their failure to have their property insured at the time of the earthquake, made them entirely responsible for their fate.

It is time for the Government to put things right for the health and wellbeing of the affected community and stop attributing blame for being uninsured.

The only fair result is for the Government to offer the owners of all uninsured and underinsured improved red zone properties 100% of the 2007 capital rateable value (land and improvements).

4. Do you agree with the Chief Executive's preliminary view on a new offer to buy Rāpaki Bay red zone properties?

The Council hasn't had an opportunity to formulate a view on the Rāpaki Bay offer, but believe that the principle that should apply is consistency with our position on the offer that ought to be made to uninsured homeowners and is in accordance with the Crown's obligations under Te Tiriti O Waitangi.

5. Do you agree with the Chief Executive's preliminary view on a new offer to buy insured privately-owned red zone properties?

Yes. It may be that people would wish to review their position in light of the issues discussed above with reference to matters set out in Para [88] of the Supreme Court Judgment.

6. Is there anything else you think should be taken into account?

In a footnote to the Supreme Court judgment is a statement of which we as a city and indeed a nation should not be proud:

"We note that an internal CERA paper dated June 2011 enumerated one of the "cons" of developing a recovery plan as being that there may be a "[c]ommunity expectation that their views may change decisions"

The Supreme Court stated:

"[187] The requirement of the Act that such important decisions should involve community input is not just a matter of procedural form, but a matter of substance. The legislative history made it clear that Cantabarians were to have input into the rebuilding of their communities. As was recognised by Megarry J in John v Rees, any argument that the consultation would have made "no difference" carries little weight."

And we agree. The thought that the Crown had closed its mind to anything the community thought about what was an appropriate way to address the challenges of these damaged areas that were people's homes, neighbourhoods and communities is hard to accept, especially in the context of the purposes of the Canterbury Earthquake Recovery Act 2011.

There is only one way to right this wrong, and that is to offer everyone the same 2007 rating valuation based on the improved capital value of the property that was someone's home.



On 23 March 2012, the Governor-General, Lt Gen The Rt Hon Sir Jerry Mateparae, visited Christchurch to assist with a Habitat for Humanity project involving earthquake affected residents. (gg.govt.nz)

Governor-General helps out in Aranui

[FRANCESCA LEE](#)

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Habitat for Humanity's project to repair earthquake-damaged houses in Christchurch is about communities helping each other, New Zealand Governor-General Sir Jerry Mateparae says.

The Governor-General, who is patron of Habitat, came to Christchurch yesterday to help the charity's volunteers put up a new ceiling in a house in Aranui.

"As a patron, having some skin in the game is important for me. I wanted to come see Habitat but I didn't just want to view the work they were doing. I would prefer to give them a hand.

"Some of [the people Habitat for Humanity are helping] are at their wits' end. For them, there seems to be no way for their problems to be resolved, and then to have these strangers turn up at the doorstep full of compassion and wanting to help them, it's fantastic and moving, and for most of them it does get emotional.

"Most of the volunteers are from Christchurch and they're dealing with their own challenges. The whole thing is very much about communities helping each other."

Home owner Brian McKay said he was humbled by all the people who had come to help him.

"It's amazing what these guys are doing, and to have the Governor-General putting gib [board] up is absolutely amazing. I wouldn't have thought of that in my wildest dreams."

Habitat is repairing 50 houses in the green zone; in Aranui, South Brighton, North Beach, Riccarton, Hoon Hay and Redwood.

Project manager Paul Galbraith said the aim was to help people with no insurance, people with disabilities, and the elderly. "We can do that thanks to funding provided by someone who has asked to remain anonymous."

Habitat has repaired 16 homes and is working on another four.

Youth worker Jess Wynyard, 23, who has worked in Aranui for two years, said it was really nice to give something back to the community. "Having the opportunity to help out some of the people who need it is the biggest thing."

Galbraith said Habitat aimed to complete repairs for all 50 houses by June or July this year, but it depended on how many volunteers they had. The charity was looking for more plasterers, carpenters, plumbers, electricians, brick layers, and roofers, but anyone was welcome to help.