

POLICY REPORT

RECIPE FOR DISASTER

Building policy on shaky ground

Bryce Wilkinson and Eric Crampton
with Jason Krupp

Foreword by Lianne Dalziel



**THE
NEW ZEALAND
INITIATIVE**

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About The New Zealand Initiative

The New Zealand Initiative is an independent public policy think tank supported by chief executives of major New Zealand businesses. We believe in evidence-based policy and are committed to developing policies that work for all New Zealanders.

Our mission is to help build a better, stronger New Zealand. We are taking the initiative to promote a prosperous, free and fair society with a competitive, open and dynamic economy. We develop and contribute bold ideas that will have a profound, positive, long-term impact.

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Foreword



Lianne Dalziel

Human beings, who are almost unique in having the ability to learn from the experience of others, are also remarkable for their apparent disinclination to do so.

Douglas Adams

How many times have we heard the expression that something was a recipe for disaster? In the case of the governance model for Christchurch's recovery from the earthquakes, people could be forgiven for their view that the event was unprecedented and therefore required a new approach.

But there is a wealth of literature based on a range of experiences from all around the world, including our nearest neighbours Australia, that should have alerted decision-makers to the risks of ignoring international best practice.

With this timely report, The New Zealand Initiative has confronted aspects of Christchurch's experience of the Canterbury Earthquake Sequence that must be well-understood if we are to truly learn the lessons of what occurred.

The report tackles the governance structure head on. I have never made a secret of my belief that the model of recovery chosen for Christchurch was fundamentally flawed. No other country in the western world has adopted such a model.

To establish a government department, the Canterbury Earthquake Recovery Authority (CERA), to run a city's recovery, is not something I would want to see repeated, not only for the reasons highlighted in this report, but also for the lack of independence from central government and lack of accountability to the people actually affected by the disaster. To me this is the most significant ingredient in a 'recipe for disaster'.

The New Zealand Initiative also tackles the roles played by the Earthquake Commission (EQC) and the insurers, as well the challenging issue of some of the market failure in the insurance industry post the earthquakes.

Although the report highlights the changes signalled by the Treasury review into EQC, it would be wrong to think there is nothing further that requires investigation. I favour a government initiated but independent inquiry into all the EQC and insurance related matters, even to the extent of the City Council's insurance arrangements. There are lessons to be learned there as well.

The section on post-disaster planning is a particularly welcome contribution to a debate we must have. No one should be afraid to engage, nor should anyone feel they have to defend positions they have adopted. We should take the time to reflect on what the objectives were, what worked and what didn't work.

"The truth is that business as usual is anathema to recovery, but at the same time councils have obligations to meet regardless of disaster, and they must always be alert to those"

In an address I gave on the day of the announcement of the Christchurch Central Development Unit and the 100 day Blueprint process I said 'we need a professional master plan prepared for the CBD and its validity needs to be tested against the future tenants and residents that we need to attract into the four avenues'. I talked about an iterative process that engaged stakeholders in a meaningful way (admittedly this was after I had been given 5 minutes to make a submission on the draft plan as a local Member of Parliament). Feedback loops are important too; the report highlights there was no opportunity for that after the Blueprint was released. Genuine community and stakeholder engagement lies at the heart of good planning in a post-disaster environment. Every experience overseas and here proves that to be true. I often wonder what such an approach might have produced in Christchurch.

The report also raises the question of the role of council in all this. I ventured an analysis of the problem in the same speech, when I said: "for some reason someone forgot to circulate the 'there's been an earthquake' memo". The truth is that business as usual is anathema to recovery, but at the same time councils have obligations to meet regardless of disaster, and they must always be alert to those. The report highlights the loss of accreditation for Building Consent Authority status at the time of the biggest rebuild in the country's history.

One of the subjects I would have liked to have seen explored further is whether the investment decisions made by the government, mainly through the anchor projects, could have had better outcomes if thought had been given to prioritising the outcomes sought. To me getting people living inside the central city and within the four avenues remains a huge priority.

Again, I would like to thank The New Zealand Initiative for this timely and thought-provoking approach to the complexities of responding to and recovering from a disaster and the respective roles of central, local government and equally importantly the community and the private sector. It is an important component of the lessons learned from our experience. Understanding the ingredients and the methods that produce the 'recipe for disaster' will surely enable us to develop a better recipe for the future.

Lianne Dalziel

Mayor, Christchurch City Council

Executive Summary

New Zealand needs to be better prepared for the next large natural disaster.

Every kiwi knows, or ought to know, what to do in an earthquake. The government provides ample advice about securing our homes, maintaining emergency water supplies, preparing an emergency kit, and developing family emergency plans.

But the Christchurch earthquakes of 2010 and 2011 demonstrated that the government itself was inadequately prepared for the substantial recovery task that follows any natural disaster.

While the government responded quickly, and in many cases performed very well under difficult circumstances, those circumstances were unduly difficult.

The government had to create a recovery agency and build its governance arrangements from scratch during the disaster because no agreed off-the-shelf solutions existed.

The Earthquake Commission (EQC) heroically scaled itself up to assess hundreds of thousands of claims, but it was a task that better initial arrangements would have made easier.

Christchurch Council and central government worked to develop new city plans, but better long-term plans could have saved work and frustration.

And government failed to appreciate the importance for recovery of minimising regime uncertainty. Prolonged uncertainty about the policy and regulatory regime – the rules under which people and business can operate – makes it difficult for people and businesses to recover.

Recovering from a natural disaster is hard enough. Doing so while embroiled in avoidable disputes between EQC and your insurer over home repairs is harder. And if you are also trying to determine whether or not you will be allowed to rebuild your business premises downtown during years of changing central plans, things become more difficult still.

This report tallies the successes and failures of the post-earthquake recovery effort, so we can learn from both to do better next time.

The most important way in which government can do better in the next disaster is by providing greater regulatory and policy certainty. Some of that requires better contingency planning before the event.

We concur with the auditor-general that a recovery agency should have access to necessary “off the shelf” internal control and operational functions from Day 1. It should not have to develop them from scratch when the urgent and pressing needs are its external activities.

Similarly, councils can incorporate disaster contingencies in their long-term plans. Christchurch’s post-disaster downtown plan sought to remedy many long-standing issues off the hoof. But long-standing issues should be addressed through better democratic deliberation prior to a disaster. Pre-approved contingency plans would increase regulatory certainty in a post-disaster environment.

Waimakiriri's long-term plans illustrated how plans that provide sufficient room for growth allow councils to quickly zone new land for development after a disaster.

Councils should, also as part of pre-disaster preparedness, designate elements of city plans that would be amended, suspended, or withdrawn in case of natural disaster. During the housing shortage that followed the earthquake, standing Christchurch Council prohibitions on secondary units in existing homes were not removed – preventing a simple way of quickly achieving necessary additional housing. Cities cannot afford these kinds of blocking rules during earthquake recovery.

After the disaster hits, we argue that government should avoid setting precincts and anchor projects as part of any post-disaster recovery. They can consume massive amounts of bureaucratic and ministerial effort, while slowing recovery by thwarting the rebuild plans of affected property owners. If government wishes to pursue anchor projects, planning and building functions should be separated so that delays in anchor project planning do not delay any revised city plan.

Government should, however, be more active in obtaining declaratory judgements from the courts in test cases. Faster resolution of contractual disputes reduces regime uncertainty.

Finally, recovery plans should be more respectful of underlying property rights. Recovery agencies' planning should be constrained by appropriate use of the compensation principles in the Public Works Act. Efforts to reduce the government's costs in acquiring or impairing property can amount to a predatory tax and embody the illusion that what saves the government money saves the communities' money, with the costs to affected owners given short shrift. Uncompensated takings can unsettle investor confidence. Appropriate compensation can also provide a constraint against planning over-reach.

New Zealand learned a lot from the Christchurch earthquakes. Insurance arrangements are improving, and we expect more satisfactory outcomes for claimants in the next disaster. But there is more work to do.

Introduction

The Government has been severely tested by the challenges of the Christchurch and Kaikoura earthquakes, and while some mistakes have been made, I think history will judge our Government well.

— Nick Smith¹

"In Christchurch, due to delays and uncertainty, and lack of access to their properties, CBD businesses that could move quickly relocated to the suburbs. By the time the government finalised its plans for the CBD, many businesses had established elsewhere, so returning held little attraction"

It is now almost seven years since the February 2011 earthquake wrecked Christchurch, New Zealand's second-largest city.² Its recovery story is mixed. A great deal has been achieved – buildings demolished, infrastructure repaired, streets reopened, insurance claims settled, plans developed, and rebuilding well underway. But there have also been many questionable decisions and much contention, delay, anger and frustration.

Much of the central business district is still a wasteland. And too many homeowners were caught in an insurance quagmire that made them passive victims unable to initiate their own recovery.

Private recovery has also been curtailed by other delays and uncertainties. Planning processes, intra- and inter-government conflicts, unclear property rights and infrastructure provision and unclear or inefficient allocation of decision rights all combined to create a 'confusopoly' – too many owners simply did not know what they were allowed to do with their own properties.

Government can and must set the stage for recovery after a major natural disaster. But real recovery results from the sum of people's individual decisions on how and where to invest, live and rebuild post-disaster. Take too long to decide on city plans, precincts, anchor projects and building codes, and government risks throttling recovery by driving people away from the downtown's limbo. Yet, new geological realities are also an opportunity to change city plans, rebuild infrastructure, and fix problems with roading networks or zoning pre-disaster.

In Christchurch, due to delays and uncertainty, and lack of access to their properties, CBD businesses that could move quickly relocated to the suburbs. By the time the government finalised its plans for the CBD, many businesses had established elsewhere, so returning held little attraction.

The government adopted extraordinary powers to commandeer private land for its much-delayed anchor projects, professing to spur private sector reconstruction in the CBD. This added to the property rights uncertainties of CBD landowners.

¹ Nick Smith, "Better managing New Zealand's earthquake risks," Speech to Parliament (25 January 2017).

² Statistics New Zealand, "2013 Census usually resident population counts," Website (2013).

"We don't want to see any city in New Zealand become another Christchurch story. Nowhere is it writ that a natural disaster must be followed by manmade folly"

Some delay, frustration and uncertainty are unavoidable even under the best institutional arrangements and responses. Disaster response, the precursor to recovery, is a major task. Assessing the situation, evaluating recovery prospects, marshalling resources, and developing spatial plans takes time. Substantial changes require community buy-in or they will turn out badly – like in Christchurch.

Many of the policymakers' calls were right. Without the power to circumvent the *Resource Management Act 2001*, the rebuild would have drowned in a sea of red tape – more so than it has. Orders in council gave government the flexibility to adapt the Canterbury Earthquake Recovery Authority's (CERA) powers to changing conditions on the ground. The Red Zone measures helped give certainty to the affected property owners near the Avon River.

But the mixed experiences in Christchurch put New Zealanders on notice to be better prepared for the next natural disaster. The government has identified and fixed some issues, such as changing insurance arrangements after the 2016 Kaikoura earthquake (see Chapter 2).

But there is room for further improvement, especially for a recovery authority (Chapter 3), and better planning processes (Chapter 4). Natural disasters cannot be avoided, but manmade disasters can be – and too many residential and commercial recovery issues in Christchurch were manmade.

Christchurch's experience offers many lessons about what was done well and what to avoid. Based on those lessons, this report offers policy prescriptions for better recovery management.

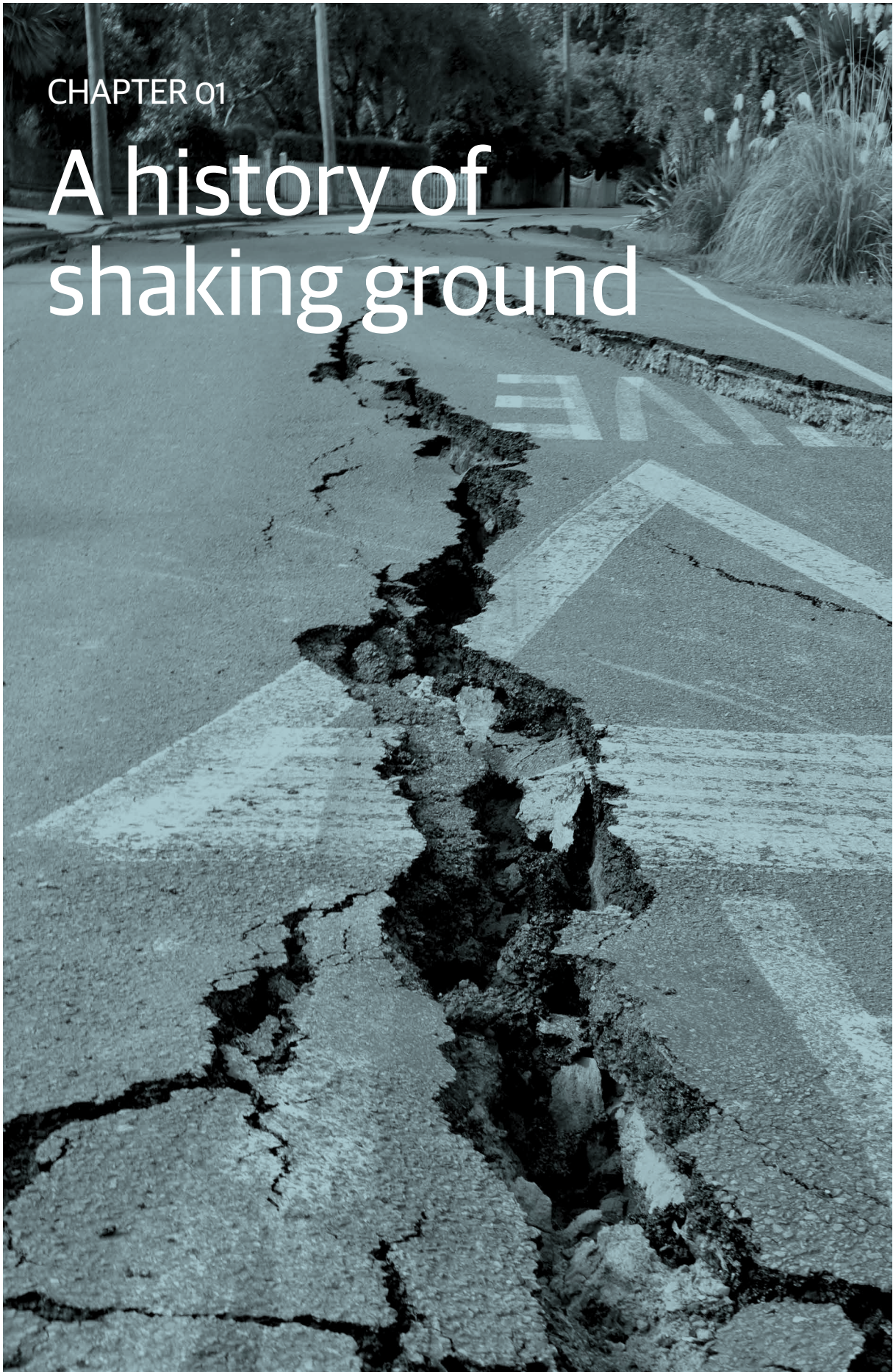
A history of large earthquakes illustrates New Zealanders' ongoing vulnerability. Action should be taken sooner rather than later – and it should be comprehensive. The risk is of partial corrective measures being followed by complacency. This is a recipe for disaster.

We don't want to see any city in New Zealand become another Christchurch story. Nowhere is it writ that a natural disaster must be followed by manmade folly.

Most importantly, nothing in this report implies lack of diligence or effort by politicians and officials. They all responded urgently and expeditiously – and achieved much under difficult circumstances.

CHAPTER 01

A history of shaking ground



*New Zealand is precariously situated, jutting skyward between two colossal tectonic plates, slap bang in the middle of a deep ocean, and vulnerable to tsunamis, earthquakes, storms, floods, and volcanic activity. A deadly natural disaster is [always] possible.*³

— John Edens

Canterbury's earthquakes should not have come as a surprise. Earthquakes have long been common in New Zealand: Wellington's colonisation was put at risk by the earthquakes in 1840, 1846 and 1855, among others.⁴ The 1931 Hawkes Bay earthquake killed 256 people and injured thousands.⁵ Napier's CBD had to be rebuilt from scratch. Canterbury itself has been damaged by earthquakes eight times since European settlement.

The most recent, and most damaging, Canterbury earthquakes comprised five major seismic events, ranging in magnitude from 5.7 to 7.1,⁶ between September 2010 and December 2011 – interspersed by tens of thousands of smaller aftershocks.⁷ The peak ground force acceleration of the February 2011 earthquake was one of the most violent on record globally – roughly the same as that experienced by a Formula One driver at the start of a race.

Major earthquakes can cause land to be displaced, liquefied, flooded and drained, and destroy roads and infrastructure. Fire can be a major problem when water supply is wrecked and roads are impassable. Post-earthquake fires completed the destruction of Napier's CBD in 1931.

Some delay by the authorities in repairing damaged infrastructure is both inevitable and desirable. In Christchurch, before investing nearly \$2 billion in roads, pipes, footpaths and drainage, central and local government needed the earth to stop moving. Ongoing aftershocks make that point unclear.

Policymakers and private investors both face uncertainties about when and where to rebuild. Widespread destruction and constantly shaking ground can exact a heavy psychological toll on residents generally. Many leave temporarily or permanently.⁸

This chapter focuses on the September 2010 and February 2011 earthquakes in Christchurch. The damage these two events caused dwarfed that caused by all the other major aftershocks, and prompted the government's regulatory responses.

³ John Edens, "What's the risk of a natural disaster in New Zealand and around the world?" *Stuff* (23 December 2016).

⁴ We thank a referee for this information.

⁵ The Christchurch earthquake killed 185 people.

⁶ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority: Assessing its Effectiveness and Efficiency" (Wellington: New Zealand Government, 2017). The major shock in Napier was of magnitude 7.8 or 7.9. Wikipedia, "1931 Hawke's Bay earthquake," Website. Earthquake severity is measured on a base-10 logarithmic scale. That means a magnitude 6.7 earthquake is 10 times more powerful than a magnitude 5.7 event, as measured by shaking amplitude. A magnitude 7.1 earthquake is 14 times more powerful than a 5.7 event.

⁷ See, for example, Mark C. Quigley, et al. "The 2010–2011 Canterbury Earthquake Sequence: Environmental Effects, Seismic Triggering Thresholds and Geologic Legacy," *Tectonophysics* 672–673 (2016), 228–274, Abstract and Table 1.

⁸ In Napier, women and children were evacuated the very next day. The men stayed on to work on response.



Source: Eric Crampton

1.1 4 September 2010

Canterbury's first major earthquake struck before dawn on 4 September 2010. The magnitude 7.1 event had its epicentre in Darfield, about 50km inland from Christchurch, and struck at a depth of 12km.⁹ The earthquake occurred on a previously unidentified fault system and was followed by thousands of low-level aftershocks, including a magnitude 4.9 event on 26 December 2010.

Christchurch's distance from Darfield did not spare it. Buildings (particularly heritage structures) and infrastructure were damaged or ruined. Widespread power and water outages occurred. No lives were lost as few people were in the CBD at that hour, but land was extensively liquefied.¹⁰

The Reserve Bank put the repair bill for the September earthquake at \$5 billion – the total would have been higher for a single event.¹¹

Parliament passed the *Canterbury Earthquake Response and Recovery Act 2010* (the 2010 Act) the same month. It established the Canterbury Earthquake Recovery Commission (CERC) with seven commissioners, comprising the Christchurch, Selwyn and Waimakariri mayors, and four appointed commissioners. CERC was to advise the government on the orders in council to facilitate the repair process.¹²

⁹ Royal Commission of Inquiry into Building Failure Caused by the Canterbury Earthquakes, "Final Report: Volume 1" (Wellington: New Zealand Government, 29 June 2012).

¹⁰ Liquefaction results from water-saturated sand being pushed to the surface, cracking built structures above it and caking the area in a thick cakey silt.

¹¹ Miles Parker and Daan Steenkamp, "The Economic Impact of the Canterbury Earthquakes," Reserve Bank of New Zealand *Bulletin* 75:3 (September 2012), 15.

¹² *Canterbury Earthquake Response and Recovery Act 2010*.



Source: Eric Crampton

1.2 22 February 2011

Just after midday on 22 February 2011 another major earthquake struck Canterbury. Although it was smaller than the September 2010 earthquake, with a magnitude of 6.3, its epicentre was only 10km from central Christchurch, and at a shallower depth.

This earthquake compounded the damage to buildings, many of which had yet to be repaired since the September event. The CTV and PGC buildings collapsed, killing 115 and 18 people, respectively. Eight people died in buses after building facades collapsed on them. Rock fall in the suburbs killed others. All up 185 people died.¹³ Falling masonry caused three times more injuries than any other factor.¹⁴

The government declared a national emergency, which lasted 10 weeks.¹⁵ On 29 March 2011, the Canterbury Earthquake Recovery Authority (CERA) was created by order in council under the *State Services Act*.¹⁶ A few weeks later, Parliament passed the *Canterbury Earthquake Recovery Act 2011* (the 2011 Act), repealing the 2010 Act.

¹³ Eileen McSaveney, "Historic earthquakes – The 2011 Christchurch earthquake and other recent earthquakes," Te Ara – Encyclopedia of New Zealand, Website.

¹⁴ New Zealand History, "February 2011 Christchurch earthquake," Website.

¹⁵ John Carter, "State of national emergency expires," Press release (Wellington: New Zealand Government, 1 May 2011).

¹⁶ Canterbury Earthquake Recovery Bill.

The speed of the response was impressive. After the 1931 Hawkes Bay earthquake, the government appointed two commissioners to lead the Napier recovery only 36 days later. The *Hawke's Bay Earthquake Act 1931* was passed 63 days after the event.

The February earthquake caused further liquefaction, particularly in the low-lying areas of eastern Christchurch; damaged roads and water infrastructure and cracked building foundations.

All land in Christchurch was classified green, orange or red (i.e. land was safe to build on, land needed further assessment, or land was not economically viable, respectively). Green-zoned land was further segmented into three sub-categories according to the foundation requirements deemed needed to deal with future liquefaction risk.

Over 50% of the buildings in central Christchurch were severely damaged. Insurance claims were lodged from greater Christchurch for 170,000 dwellings (89% of the 190,000 stock). About 12,000 were total losses.¹⁷

Over 8,000 properties were zoned red, of which 7,200 were residential, 164 commercial, and 525 other types. In 2011, the government offered to buy out owners of red-zoned properties in Waimakariri, the Christchurch flatland, and the Port Hills as repairing the core infrastructure in these areas was deemed uneconomic. The buyout offer aimed at simplifying the insurance process, allowing owners to move to less damaged areas with still functioning core services.¹⁸

1.3 Insult to injury

Thousands of aftershocks hampered the recovery process, made worse by a 1-in-100-year flood that struck the city in 2014.¹⁹ Christchurch is a low-lying city prone to flooding, and the earthquakes caused land to slump further. When the floods hit, earthquake-damaged stormwater infrastructure could not clear the excess rainfall.²⁰

The earth continued to shake in Christchurch until recently. The most recent GeoNet forecast, from September 2017, estimated a 45% probability of one or more earthquakes of 5.0 to 5.9 magnitude in Canterbury in the coming year.²¹ Seismic activity has since moved to the Kaikoura fault.²²

¹⁷ CERA, "Briefing to the incoming Minister" (October 2014), 6 and 7.

¹⁸ New Zealand Human Rights Commission, "Staying in the Red Zones: Monitoring Human Rights in the Canterbury Earthquake Recovery" (2016), 36.

¹⁹ Nicole Mathewson, et al. "One-in-100-year flood swamps Christchurch," *Stuff* (5 March 2014).

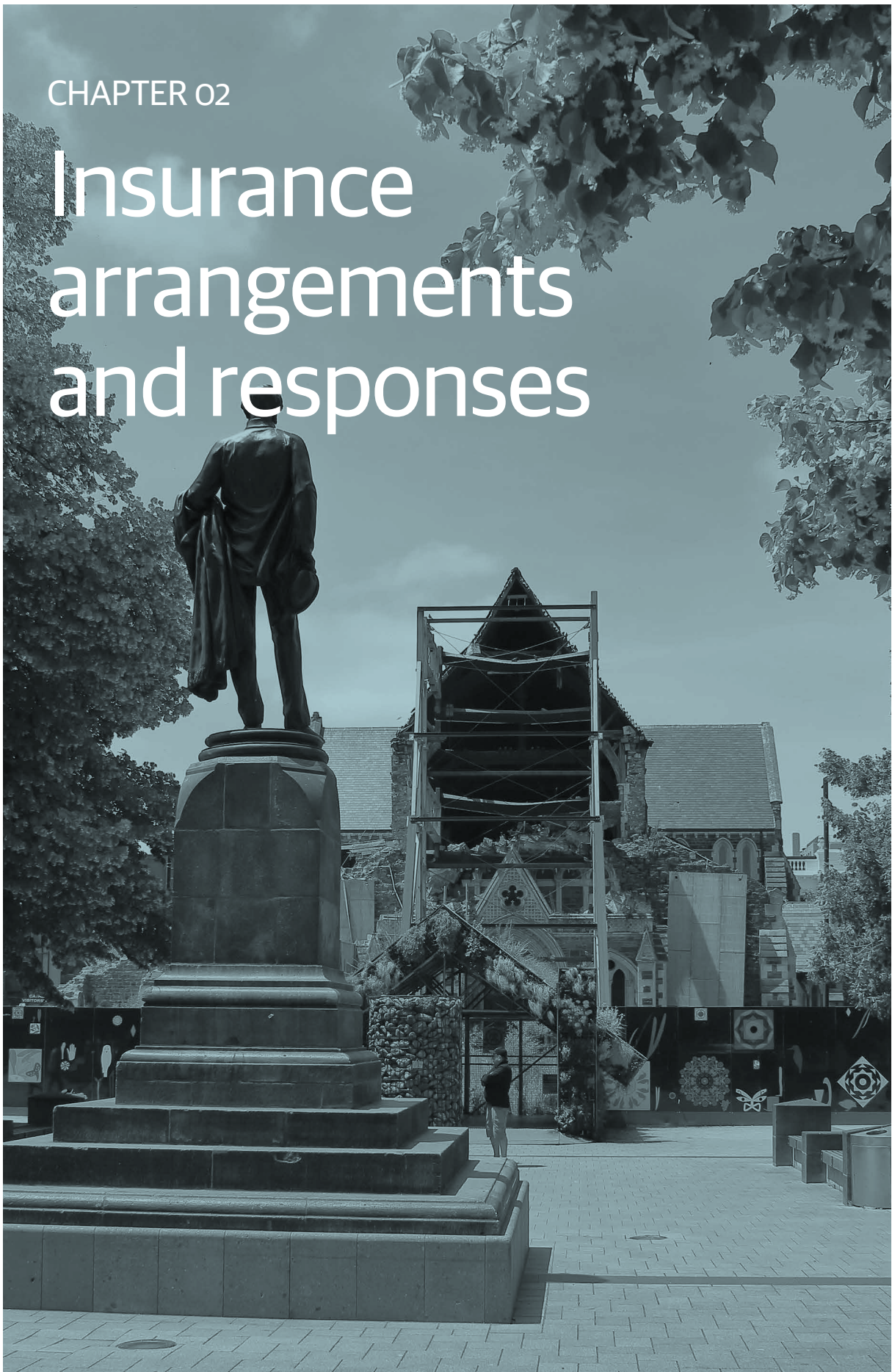
²⁰ Christchurch City Council, "Water flooding," Website.

²¹ GeoNet, "Earthquake forecasts – Canterbury," Website.

²² GeoNet, "Earthquake forecasts – Kaikoura," Website.

CHAPTER 02

Insurance arrangements and responses



Insurance played a pivotal role in the post Christchurch experience – in terms of the timing of the recovery, and the recovery decisions made: number of demolitions, available funds to underpin the central city master plan/ Anchor Projects), the quality of the rebuild (build back better vs build back to as before state). Any business case made for resilience needs to consider the availability or not of insurance. And disaster response planning needs to also consider insurance.

— **Richard Bentley, Centre for Advanced Engineering**²³

This chapter begins by acknowledging the scale of the challenges for insurers, and EQC’s achievements. It then documents shortcomings in EQC’s capacity to handle a major event – some of which were already known and some of which were unforeseen prior to the events. It evaluates the extent of later government changes to the EQC before drawing policy conclusions for the EQC and the insurance sector.

2.1 The scale of the challenge for insurers

The Christchurch earthquakes were a massive wake-up call for insurers, domestic and global. In 2014, Treasury estimated the rebuild cost at \$40 billion, 20% of GDP.²⁴ A more up-to-date estimate is likely to be higher, perhaps \$50 billion.²⁵ The Crown’s contribution is estimated to be \$17.5 billion.²⁶ New Zealanders were heavily insured, largely because of New Zealand’s Earthquake Commission (EQC) scheme (see Box 1).²⁷

The Christchurch earthquakes are likely to be the world’s sixth-largest insurance event since 1980.²⁸ Insurance payouts could reach

²³ Richard Bentley, “Notes from Workshop Discussions on Earthquake Policy December 2014,” Summary notes from workshop (Centre for Advanced Engineering, 7 December 2014). See also Amy Wood, Ian Noy and Miles Parker, “The Canterbury Rebuild Five Years on from the Christchurch Earthquake,” Reserve Bank of New Zealand *Bulletin* 79:3 (February 2016).

²⁴ See Treasury, “Rebuilding Christchurch, Our Second-Biggest City” (Wellington: New Zealand Government, 2014). The Reserve Bank put the cost at \$40 billion in 2015 dollars, with \$32 billion split roughly equally between residential and commercial. Infrastructure spending accounted for the remainder. Amy Wood, et al. “The Canterbury Rebuild Five Years on from the Christchurch Earthquake,” op. cit. More recently, Peter Townsend of the Canterbury Chamber of Commerce put the total cost at \$45 billion to \$50 billion. Peter Townsend, “Post-earthquake Christchurch: The facts, the figures, the forecast,” *Stuff* (12 August 2016).

²⁵ An estimate from a referee.

²⁶ Department of the Prime Minister and Cabinet, “Whole of Government Report: Lessons from the Canterbury Earthquake Sequence,” Foreword (Wellington: New Zealand Government, 2017).

²⁷ Insurance contracts covered “up to 99 percent of homes and 82 percent for contents.” Ibid. 10. Note that EQC cover is not an insurance contract, it is a statutory entitlement.

²⁸ Vero Insurance, “Four Years On: Insurance and the Canterbury Earthquakes” (Deloitte Access Economics, 2015), 9.

"Cash settlement of claims might have been simpler for the EQC, but would have put claimants at risk of being subsequently out of pocket if repair costs escalated because of a shortage of repairers or because the damage was greater than had been assessed"

NZ\$35 billion.²⁹ Global reinsurers underwrote most exposures of private insurers and the EQC.³⁰

Government was deeply involved in insurance issues through its ownership and control of the EQC. As overseer of recovery and regulatory of financial institutions, the government also became involved when one private insurer failed. In a similar capacity, government had to persuade global reinsurers that New Zealand's legal and regulatory environment would remain conducive to commercial investment.

2.2 Achievements

The EQC's workload has been colossal by New Zealand's historical standards, as illustrated by these statistics.³¹ In response to the 2010 and 2011 earthquakes the EQC had by 30 June 2016:

- received over 460,000 claims involving 166,975 buildings, and resolved all but 554;³²
- received over 187,000 claims for content damage and resolved all but 126;³³
- received over 150,000 land exposure claims relating to over 80,000 properties, and resolved all but 22,815; and
- paid out \$9.4 billion on claims.³⁴

Cash settlement of claims might have been simpler for the EQC, but would have put claimants at risk of being subsequently out of pocket if repair costs escalated because of a shortage of repairers or because the damage was greater than had been assessed.

The EQC provided both cash settlement and remedial repair services to claimants. At 31 March 2017, it had managed 'first time' repair work for 67,747 dwellings and provided cash settlement for another 99,218. That left only 90 dwellings to be settled, all of which were in the cash settlement category.³⁵

²⁹ The Insurance Council of New Zealand reports that at 31 December 2016, private insurers had paid out \$19.4 billion. Of this \$10 billion was for settling commercial claims, leaving 5% of commercial claims yet to be settled, and \$9.4 billion was for claims on 26,608 domestic properties, leaving 14% of such claims to be settled. We understand that the likely full cost to private insurers will exceed \$22 billion. In its 2015–16 annual report, the EQC said it had spent \$9.4 billion to date (excluding GST) on claims.

³⁰ For a breakdown, see Reserve Bank, "Financial Stability Report November 2011," 34.

³¹ Earthquake Commission, "2015–16 Annual Report" (Wellington: New Zealand Government, 2016), Part 2, Table 1, 43.

³² However, it still had to resolve around two-thirds of the 10,500 requests for remedial work it had received by 30 June 2016. *Ibid.* 43.

³³ *Ibid.* 45.

³⁴ *Ibid.* Part 1, 9.

³⁵ Earthquake Commission, "By the numbers: Dwelling and Land Claim Numbers," Website.

Box 1: A short history of the Earthquake Commission (EQC) before Christchurch

Prior to 1945, earthquake insurance was voluntary but war damage insurance was compulsory. Few people bought earthquake insurance.³⁶

The *Earthquake and War Damage Act 1944* made earthquake insurance mainstream from 1945. The Act created the Earthquake and War Damage Commission to speed up recovery from major disasters. This was because of the public concern that many wrecked and uninsured buildings after the 1942 Wairarapa earthquake remained wrecked and uncleared two years later.³⁷

Mission creep followed. Coverage was extended to landslips, volcanic eruptions, hydrothermal activity, tsunamis, and storm and flood damage to residential land, while war damage cover was removed.³⁸

Fifty years later, more modest views about the role of government prevailed. Government decided it should focus on humanitarian assistance in a national disaster, and that the commercial and industrial sector could organise its own insurance. This meant the provision of housing and basic amenities such as infrastructure.³⁹

The *Earthquake Commission Act 1993* phased out the EQC cover for commercial property. It also capped the cover for residential dwellings (as distinct from residential land).⁴⁰ Homeowners could top up their cover with private insurance.

Replacement cover replaced indemnity cover. This change simplified claims assessment and settlement since it is easier to assess the cost of repair than to assess loss in value.⁴¹

Until 2001, the EQC's assets in its Natural Disaster Fund were mainly invested in New Zealand fixed interest securities, particularly in government stock.⁴² It could redeem this stock if needed. But its main asset was its government guarantee. The New Zealand Debt Management Office managed these and other government financial risks. In 2001, a ministerial direction permitted the EQC to also invest to a limited degree in bank bills and international equities.⁴³ Tradeable international equities should hold their value if a New Zealand natural occurs disaster, be liquid enough to reduce the need for government cash, and also offer a higher return for the fund in the fullness of time. But most of the fund continued to be invested in government stock.⁴⁴ The EQC further reduced its risks through reinsurance contracts in world markets.

The EQC cover is tied to fire insurance. This is to reduce the risk of homeowner underinsurance, which would increase costly taxpayer-funded post-disaster bailouts. A homeowner with fire insurance must pay the EQC levy. A homeowner can avoid the levy only by not buying fire insurance.

³⁶ Earthquake Commission, "Our history," Website.

³⁷ New Zealand Society for Earthquake Engineering, "Changes to Disaster Insurance in New Zealand," *Bulletin* 26:4 (1993), 437–443.

³⁸ Wikipedia, "Earthquake Commission," Website.

³⁹ Refers to a 1993 public discussion paper. New Zealand Society for Earthquake Engineering, "Changes to Disaster Insurance in New Zealand," op. cit. 438.

⁴⁰ Ibid. 328. The cap for residential cover was set at \$100,000 in 1993 and has not been changed since.

⁴¹ We are grateful to Ian Mclean for this point.

⁴² Earthquake Commission, "Managing the Natural Disaster Fund," Website.

⁴³ Earthquake Commission, "Statement of Intent June 2011–June 2014" (Wellington: New Zealand Government, 2011). This was the effect. In fact, the EQC had an arrangement with the Reserve Bank that linked the value of these investments to the value of the Crown's overseas assets.

⁴⁴ For example, in 2007 the New Zealand Government stock accounted for \$3.3 billion of \$5 billion of non-current assets. International equities contributed \$1.6 billion to this total. Earthquake Commission, "2006–07 Annual Report" (Wellington: New Zealand Government, 2007).

"It also warned that claims processing in a major event would face several bottlenecks. Over-cap claimants would need to deal with two insurers; private insurers waiting for EQC decisions could cause delays; and settlement would require multiple assessments by two teams of loss adjustors"

2.3 Difficulties

A 2009 EQC-commissioned external review of the EQC's operational capability preparedness identified many problems that emerged following the Canterbury earthquakes.⁴⁵

The review warned that the government and the EQC operated under different assumptions about the EQC's role in a major disaster. The EQC assumed that its role was to settle claims in cash, but the government might wish the EQC to take on a larger role.

It also warned that claims processing in a major event would face several bottlenecks. Over-cap claimants would need to deal with two insurers; private insurers waiting for EQC decisions could cause delays; and settlement would require multiple assessments by two teams of loss adjustors. There was also potential for disputes between claimants and the EQC.

The review suggested creating a 'Plan B' for the EQC's Catastrophe Response Programme. It would allow procedures to be changed after a major event to facilitate timely claims processing.

Those issues proved substantial in the Christchurch earthquakes.

One prolonged difficulty arose from the EQC's unclear statutory obligation to provide replacement cost cover within its cap. The EQC's governing Act, the *Earthquake Commission Act 1993*, defines it in part as "replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition *when new*, modified as necessary to comply with any applicable laws" (emphasis added).⁴⁶

Restoring to the pre-earthquake condition an aged and possibly ill-cared-for dwelling on long-standing uneven and unsteady foundations differs from restoring it to "substantially the same as when new." The EQC's position is that 'substantially the same' does not mean 'exactly the same'. Floors uneven before the earthquake may not need to be levelled.⁴⁷ So the EQC came to be perceived as restoring to a 'pre-quake condition' rather than 'substantially the same as its condition when new'.⁴⁸

The EQC was further perceived as using an increasingly lax standard to judge floor levels, based on evolving Ministry of Business, Innovation and Employment (MBIE) guidelines.⁴⁹

EQC claims assessment teams consisting of ex-police investigators

⁴⁵ Earthquake Commission, "Review of EQC's Catastrophic Response Operational Capability" (Wellington: New Zealand Government, 2009).

⁴⁶ Earthquake Commission, "How EQC settles claims - Q & As," Website.

⁴⁷ Ibid.

⁴⁸ See, for example, John McCrone, "EQC called to account over 'when new' repairs," *The Christchurch Press* (14 May 2016); Miles Parker and Daan Steenkamp, "The Economic Impact of the Canterbury Earthquakes," op. cit. 6; and Chris Hutching, "EQC declaration sets 'as new' standard for repairs and cash settlements," *National Business Review* (28 April 2016).

⁴⁹ The EQC has denied this charge. Regardless, evolving guidelines, if meaningful, have potential implications for claims already assessed.

"Some houses assessed initially as under the EQC cap were found to have suffered damages costing multiples of the cap to repair. Claimants had to get their own engineering assessments showing the damage exceeded the cap, then get the EQC to agree the damage exceeded the cap. Only then could they make progress with their private insurer, though the EQC argues that private insurers need not have waited for the EQC assessment"

paired with licensed builders also may not have built confidence among claimants. While a 2012 review did not find fault with the practice,⁵⁰ stories of highly inadequate assessment were far from uncommon.

Some houses assessed initially as under the EQC cap were found to have suffered damages costing multiples of the cap to repair.⁵¹ Claimants had to get their own engineering assessments showing the damage exceeded the cap, then get the EQC to agree the damage exceeded the cap. Only then could they make progress with their private insurer, though the EQC argues that private insurers need not have waited for the EQC assessment.

In the event, it took a two-and-a-half-year lawsuit by some hundred insurance claimants to reach an agreement in April 2016 that EQC repairs should reinstate a home substantially to a "when new" condition.⁵² The cost implications of that agreement are not clear at the time of writing. The EQC says the costs are not significant, and its position has always been that repairs would meet the "when new" standard. However, claimants say repairs did not meet the "when new" standard.

Resolutions of disputes over statutory entitlements were also necessary.⁵³ Between 4 September 2010 and 30 June 2016, the EQC was served with 361 litigation proceedings. Sixty-five percent had been closed by 30 June 2016. Two claims were determined by the High Court. The EQC filed and obtained three High Court declaratory judgments independently, reducing legal uncertainties.⁵⁴

Quality control of repair work also proved challenging. According to the EQC's 2014–15 Annual Report, 8–10% of repaired homes required remedial work.⁵⁵ The EQC had received about 10,500 requests for remedial work by 30 June 2016 and had resolved about a third of them.⁵⁶ EQC's survey of customer satisfaction in 2014/15 immediately after repairs have been completed found that 84% were satisfied or very satisfied.⁵⁷

The earthquakes also revealed additional unforeseen difficulties.

The geological complexity of revealed risks caused delays. Experts were needed to assess ongoing vulnerabilities from rock fall, liquefaction and

⁵⁰ Earthquake Commission, "Review Report: Christchurch 2012 Recruitment Processes" (Wellington: New Zealand Government, 2009).

⁵¹ For some of these stories, see Philippa Coory, *The Truth about the EQC* (2017). Owners had to fight the EQC for years to get it to agree that the damage exceeded its \$100,000 cap; private insurers then often assessed the repairs as costing several hundred thousands of dollars.

⁵² John McCrone, "Quake repairs: Can we trust insurers?" *The Christchurch Press* (21 March 2014).

⁵³ See James Greenland, "The Canterbury earthquakes and their legal aftermath" (NZ Law Society, 22 February 2016).

⁵⁴ Earthquake Commission, "2015–16 Annual Report," op. cit. Part 2, 14.

⁵⁵ In the circumstances this might not be exceptional. Earthquake Commission, "2014–15 Annual Report" (Wellington: New Zealand Government, 2015).

⁵⁶ Earthquake Commission, "2015–16 Annual Report," op. cit.

⁵⁷ Office of the Auditor-General, "Earthquake Commission: Managing the Canterbury Home Repair Programme – Follow-Up Audit" (Wellington: New Zealand Government, November 2015, 5).

flooding.⁵⁸ More experts were needed to assess rebuild options. The EQC's partial cover for land was complex and ill understood by claimants.

The sequence of multiple earthquakes revealed uncertainty about the EQC's statutory obligations: Was the EQC liable for damages up to its cap after each earthquake, or for cumulative damages up to the cap? The High Court determined in 2011 that the EQC cap was to be reinstated with each significant earthquake, greatly increasing the Crown's exposure and requiring apportionment of damage across several earthquakes.⁵⁹

The sequence of earthquakes also delayed private insurers' settlement. Reinsurers do not pay out until the insured event is over. One industry rule of thumb is to deem an event over once six months have elapsed without a major shock. Christchurch experienced major shocks on 4 September 2010, 26 December 2010, 22 February 2011, 13 June 2011, and 23 December 2011. That rule of thumb would mean private insurers would pay out on assessed cumulative damages only after May 2012; the EQC had settled many claims by then.⁶⁰

Finally, the settlement of commercial sector claims, outside of the EQC's remit, was hindered by legal uncertainty caused by the Christchurch City Council. The council tightened building standards after the September 2010 earthquake, and refused to consent to repairs that did not meet 67% of the earthquake code. The prior rule required older buildings to meet 33% of the code. Repairing a building to the terms of the insurance contract would then not meet code, but meeting the code would benefit the claimant – and be very expensive for insurers if they had to pay. The Supreme Court decided in 2014 that councils could not require owners to strengthen to over 33% of the code.⁶¹

Over-stretched insurers struggling with the volume of claims and complexity of issues had spill-over effects for claimants. Thousands of homeowners experienced prolonged stress and uncertainty.⁶² Box 2 illustrates how things could go wrong between the EQC and the homeowner.

⁵⁸ Around 8,000 homes were red zoned due to land instability. A further 17,000 homes were on land deemed so unstable as to require a soil engineer to determine home-by-home what new foundations would be required for a rebuild. According to the EQC's 2015–16 Annual Report, the land claims on around 20,000 properties were claims “that have never before been recognised as insured damage anywhere in the world”. These related to increased flooding and liquefaction vulnerability. See “EQC Annual Report 2015/16: Part 2”, 45.

⁵⁹ See the Earthquake Commission, “Apportionment Fact Sheet” (Wellington: New Zealand Government, n.d.) and Scott Miles, et al. “Building Back Better: Case Study of the 2010–2011 Canterbury, New Zealand Earthquake Sequence” (The World Bank, 2014), 7.

⁶⁰ See, for example, the two-part discussion “Why did the Christchurch Earthquake insurance claims take so long to pay out?” *Kiwiblog* 16 May 2015 and 17 May 2015.

⁶¹ See John Lucas, “Removing the roadblocks to claims success,” Presentation (Wellington: Insurance Council of New Zealand, 9 August 2013) and the comment on the Supreme Court's ruling by David Friar, Tim Clarke, and Belinda Green, “Supreme Court confirms building owners are not required to upgrade to 67% of NBS share” (Auckland District Law Society, 20 February 2015).

⁶² For a highly dissatisfied residential policyholder's perspective, see Sarah Miles, *The Insurance Fiasco: The Insurance Aftershock and its implications for New Zealand and Beyond* (2012), and Philippa Coory's compilation of 75 claimants' experiences. Philippa Coory, *The Truth about the EQC* (2017). Again, these claims will not be representative of the typical experience.

Box 2: "Would not use again"... Us and the EQC⁶³

The worst consumer experience of our lives was trying to deal with the EQC during and after the Christchurch earthquake cycle.

I have summed it up like a buyer report as "would not use again" because that's how we feel having finally escaped the EQC's clutches.

To get over the \$100,000 EQC cap required borrowing, hiring a lawyer, a foundation expert, and structural engineers.

We have both worked as business journalists, run our own PR firm, and in my case provided political and media advice to a global CEO in a disaster zone.

We 'get' law, process, bureaucracy, politics and systems.

Against that high-end skills background, nothing in our lives has been remotely as bad, absurd and 'through the looking glass' as the experience of trying to make sense of the EQC's process, systems and decisions.

Trying to unpack how an EQC estimate of our earthquake damage went from under \$30,000 to a complete write-off is difficult.

Outside Canterbury, people are surprised when they hear that almost seven years after the quakes began you are still not fixed or resolved.

While private insurers can and do play hard they do at least have a process that makes sense.

Dealing with the EQC on the other hand is a visit to a Kafkaesque world where lies, lunacy and incompetence appear to be entry-level skills.

Our 1920s cottage in an uptown area had some damage in the first big Canterbury earthquake in September 2010.

In the 22 February killer quake, where we were 3km from the epicentre, it was clear from the way our hardwood table levitated in front of my partner we had been badly hit.

In Between the major quakes, we were constantly getting aftershocks while dealing with traumatised teens. And very old parents in my case.

Somewhere along the way when the EQC scaled up its staffing it decided it was a real good idea to deploy former cops as an aid to assessing damage.

In effect what it did was change the consumer of EQC's processes from a client to a suspect.

The visits to assess damage were an exercise in absurdity from the start.

Teams of two would turn up primed with lists on things they did not want to see or acknowledge.

One pair had been issued with iPads they manifestly could not work. Most of the damage we tried to report was not programmed into these.

Very early we realised we had been mistaken for silly old hippies and scaled down accordingly in response terms. We also smelled very large rats very quickly.

Show them a crack in the rubble foundation and they would chant 'pre-existing' with all the enthusiasm of Accident Compensation Corporation (ACC) staff trying to evade a claim. They also seemed to have been trained to not see things they did not want to see.

Our cottage has rimu floors, panelling, rimu doors with brass fittings, and lots of little leadlight windows dotted around.

When you tried to point these often damaged items out regardless of the EQC staff they would just refuse to see or acknowledge them.

Raise a concern about slumping floors as the bearers and piles shifted and the foundations cracked more you would be told "We'll sort it" but never with any costings or specifics.

In our final very polite stand-off with EQC once we realised the aim was to assess as little as possible I told them: "You are saying effectively granny just needs some lippy and blusher while we are saying we think she has at least a broken leg." Mutual sulking ensued.

We slid out of the next stage of the repairs by Fletchers EQR.

We had both developed chronic fatigue so we stalled. Then humoured them by agreeing to be classed as "vulnerable" claimants until we realised they meant it literally.

In the end we dive bombed them with our high-end lawyer, got over cap, and within a year are close to sorted with our insurer.

It's been hardball at times but at least logical and commercial.

As to EQC? Most of what we think is too litigious to go into.

Would not use again.

⁶³ This account was provided by a Christchurch insurance claimant who wishes to remain anonymous.



"A survey of a random sample of clients with earthquake insurance claims closed between January and June 2016 in Canterbury found that only 34.5% were satisfied with the overall claims-handling experience, down from 44% in 2014, and well below the EQC's targets"

This represents only one side of the story – and the worst cases are not the most representative. But these stories are easy to find.

A survey of a random sample of clients with earthquake insurance claims closed between January and June 2016 in Canterbury found that only 34.5% were satisfied with the overall claims-handling experience, down from 44% in 2014, and well below the EQC's targets.⁶⁴ We believe it was unfair to expect a rising satisfaction rate from the EQC since the claims settled later would involve the more difficult cases. But the satisfaction rate was very poor.

The auditor-general took a close interest in the EQC's management of its Home Care programme. Her 2015 report followed up on a 2013 report that found its performance was mixed. It commended EQC for its speed in getting going and for limited cost escalation for repair work. Against this she considered that its management costs were high and its communications with homeowners needed improving. Her 2015 report found that it had improved on all these aspects. She found it difficult to reach a conclusion as to overall efficiency, effectiveness or cost.⁶⁵

Insurance was much less of an issue in the 1931 Hawkes Bay earthquake. Few owners of commercial buildings in the CBD were insured and the wooden housing stock was relatively undamaged.⁶⁶ The government loaned money for private rebuilding rather than give compensation. It did however grant money to households to rebuild a fallen chimney.

⁶⁴ Earthquake Commission, "2015–16 Annual Report," Part 2, op. cit.

⁶⁵ Office of the Auditor-General, "Earthquake Commission: Managing the Canterbury Home Repair Programme – Follow-Up Audit," 2015, op. cit, 7.

⁶⁶ Art Deco Trust, "Napier's Art Deco Experience," Website.

2.4 The path forward

In late June 2017, the government announced major changes to the EQC cover, building on a July 2015 Treasury discussion document assessing EQC’s governing legislation and submissions on that document.⁶⁷ The changes also built on practice trialled in the Kaikoura earthquake in 2016.

After the Kaikoura earthquake, the EQC’s board entered into agency agreements with certain private insurers to manage claims on its behalf. Homeowners could lodge all claims directly with private insurers, who would also assess damage.

The problems the Treasury’s discussion document identified included lack of clarity on the extent of EQC coverage; unnecessary confusion and complexity for claimants dealing with both their private insurer and the EQC; and the challenge for the EQC of scaling up for a major disaster. Recommendations have been largely, but not entirely, adopted in the government’s changes.

The EQC will no longer offer contents insurance. Policyholders will lodge all claims with their private insurer. The EQC cap on building cover will be lifted to \$150,000 +GST. Land cover will be separate from the building cap and only for “natural disaster damage that directly affects the insured residence or access to it.” The EQC’s claims excess for building cover will be \$1,000 (up from the current \$200–\$1,150 depending on the claim size).⁶⁸ These changes might take effect from 2020.

We broadly welcome these changes.

Dropping contents cover removes an unnecessary distraction for the EQC during a natural disaster.⁶⁹ The amounts are relatively small (5% of all claims – see Table 1), but assessing contents is time-consuming given the risk of fraud. Private insurers already have the skills and capacity.

Table 1: Canterbury earthquakes: Ultimate claims costs to the EQC (31 December 2015)

Land	\$1,595 million	16%
Building	\$7,708 million	79%
Contents	\$474 million	5%
Total	\$9,777 million	100%

Source: Earthquake Commission, “General reports: Insurance liability valuation” (31 December 2015), Part 3 section 7.2.

⁶⁷ Treasury, ‘New Zealand’s Future Natural Disaster Insurance Scheme: Proposed changes to the Earthquake Commission Act, 1993 Discussion Document’ (Wellington: New Zealand Government, 2015).

⁶⁸ Steven Joyce and Gerry Brownlee, “Reforms to EQC Act announced,” Press release (Wellington: New Zealand Government, 26 June 2017).

⁶⁹ Successive EQC boards had requested this change. The EQC also supported lodgement of claims with private insurers.

"Private insurers are now the first port of call for claimants. This will greatly simplify processes and improve consumer experience"

Private insurers are now the first port of call for claimants. This will greatly simplify processes and improve consumer experience. Private insurers can call on loss adjustors affiliated with their parent companies internationally; reputational risk from poor claims experiences may prove a greater constraint for insurance companies competing for customers.

Following the Kaikoura earthquake, the Insurance Council reported:

ICNZ has held meetings with the external dispute resolution organisations (IFSO and FSCL), the Ombudsman and the Privacy Commissioner to develop a standard process for managing complaints. The result is that complaints will be managed through the insurers and their external dispute schemes, without customers having to worry about intricate jurisdictional boundaries. The Privacy Commissioner and the Ombudsman will train insurers and will remain open to complaints if there are any residual issues that insurers, IFSO and FSCL cannot resolve.

...

The IFSO and FSCL provide free dispute resolution services (so no need to lawyer up at your cost) and their decisions are binding on the insurer but not on the insured.⁷⁰

It makes sense to evaluate the experience of claimants following the Kaikoura earthquake before recommending the EQC to make additional changes.

But the EQC and its reinsurers will need to undertake rigorous audit assessment to ensure private insurers are not providing benefits to clients at the EQC's expense under the revised structure.⁷¹ In normal reinsurance dealings with similar incentive problems, insurers are constrained by the need to secure reinsurance. But insurers might not fear a similar withdrawal of compulsory EQC coverage. The EQC's experience with the new arrangements after the Kaikoura earthquake in 2016 will help guide managing this risk in practice.⁷²

The EQC helps keep insurance coverage affordable even in highly risky places, so few families are left destitute while rebuilding after a disaster. In doing so, it helps mitigate the need for government to bail out homeowners after a disaster. The flat rate for EQC coverage regardless of earthquake risk means insured homeowners in safer places effectively pay for insurance coverage in riskier places. But that comes with its own problems, such as encouraging overbuilding in risky places.

The government should consider two additional proposals.

Speedy dispute resolution after a major natural disaster can reduce uncertainty about who can do what with their property. The EQC and the Insurance Council sought – and received – declaratory

⁷⁰ Tim Grafton, "Lessons from Canterbury quake claims taken on board," *The Dominion Post* (2 February 2017).

⁷¹ The EQC's MoU with private insurers provides for training in making accurate EQC assessments, assurances and audits. Earthquake Commission, "Memorandum of Understanding Relating to Kaikoura Earthquake Claims Management" (Wellington: New Zealand Government, 2016).

⁷² See Earthquake Commission, "Simpler process for settling Kaikoura Earthquake claims," Website.



"Not until December 2014 did insurers know whether they would be liable for increased costs under the revised Christchurch building standards, and that uncertainty delayed commercial reconstruction"

judgments from the courts. But some important test cases took a long time to initiate and to be resolved. Not until December 2014 did insurers know whether they would be liable for increased costs under the revised Christchurch building standards, and that uncertainty delayed commercial reconstruction. Every substantial event will reveal contingencies not anticipated in insurance contracts.

After a major disaster, the government should be quicker to fund test cases seeking declaratory judgments. This can help to quickly provide legal certainty and allow speedier reconstruction. Test cases should be chosen for their implications spanning multiple parties.

The Canterbury earthquakes also exposed a policy related insurance issue that does not involve the EQC – the claims of homeowners whose insurer failed to meet its obligations.

AMI, a mutual owned by its policyholders, did not hold sufficient reinsurance for the February event or the reserves to cover its exposure. Politicians were inevitably pressured to shift the losses from policyholders to taxpayers.

AMI was split into two companies. The viable part was transferred to IAG, and Southern Response was established to settle insurance claims in Christchurch. The government covered the amount by which claims exceeded the insurer's assets. But claimants on Southern Response, in a 2012 survey, were the least satisfied with their insurer's performance.⁷³

⁷³ Paul Gorman, "Most satisfied with insurer's conduct," *The Press* (31 May 2012).

Bailouts like Southern Response should be avoided as they send the wrong signals to private insurers and their customers.⁷⁴ Mechanisms are needed to make such situations less likely to happen and easier for politicians to resist when they happen.

The Reserve Bank regulates banks and insurance companies and is responsible for prudential supervision. Predictably, in the same year RBNZ tightened insurance companies' solvency requirements for earthquakes. Government too passed legislation for additional powers.⁷⁵

These measures do not exhaust the regulatory options. A liability regime could be imposed on insurers parallel to the Reserve Bank's Open Bank Resolution for insolvent banks.⁷⁶

If the law required policyholders in failed insurance companies to share proportionally in insurance shortfalls, they might put more weight on the insurer's ratings relative to the premium cost. Accurate claims assessment might be faster since government would not be legally liable for the shortfall between assets and damages. Clients could more quickly move on with their lives.

This would not stop policyholders from lobbying politicians after a catastrophic loss. And government might wish to explicitly share in the losses. Crown support to AMI policyholders may reach \$1.48 billion of the \$3.459 billion in gross costs faced by Southern Response.⁷⁷ The Crown's share of claims settlement for AMI policyholders will then range from 29% to 43%, depending on the proportion of the \$1.48 billion that Southern Response requires.

Most policyholders may not appreciate the extent of the Crown subsidy. An Open Bank Resolution (OBR) framework would usefully make it clearer.

2.5 Summary lessons

1. Government should follow through with proposed changes to insurance that make private insurers the first port of call for claimants in major events, but strengthen audit procedures appropriately;
2. Government should quickly seek declaratory judgments in key test cases arising after a major disaster; and
3. Government should consider mechanisms like the Reserve Bank's OBR for failed insurers.

⁷⁴ The forced taxpayer bailout of depositors in the failed South Canterbury Finance Company is a particularly bad precedent.

⁷⁵ See Richard Dean, "Insurer Solvency Standards – Reducing Risk in a Risk Business," Reserve Bank of New Zealand *Bulletin* 74:4 (December 2011) and the *Insurance (Prudential Supervision) Amendment Act 2013*.

⁷⁶ Reserve Bank, "Open bank resolution," Website.

⁷⁷ Southern Response Earthquake Services, "Statement of Intent for the period from 1 July 2017 to 30 June 2018 and the subsequent one year" (29 June 2017). Crown support included two \$500 million equity injections, followed by \$250 million and \$230 million. Drawdowns on the final injections had not begun at time of writing, and may not exhaust the potential support provided.

CHAPTER 03

CERA



As the Canterbury Earthquake Recovery Authority's role evolved over time, uncertainty and confusion amongst the recovery community grew ... recovery partners and the public began to see the Canterbury Earthquake Recovery Authority as 'owning' the recovery and being responsible for solving all problems.⁷⁸

This chapter evaluates the legislative provisions that established CERA as a special purpose recovery agency in March 2011,⁷⁹ and CERA's performance after it commenced duties two and a half months later,⁸⁰ to see what lessons can be applied to any future major natural disaster.

Box 3: CERA - Anatomy of a recovery authority

CERA was established as a new government department on 29 March 2011. This structure ensured high access to Earthquake Recovery Minister Gerry Brownlee and a high degree of ministerial control. CERA's creation was informed by the powers granted to the Queensland Reconstruction Authority after the Queensland floods in 2011 in Australia.

The main purpose of CERA was to coordinate the government's response to the February earthquake; lead the recovery process; and restore the cultural, social and economic wellbeing of the region expeditiously.⁸¹ For this, CERA was to develop a Recovery Strategy – a long-term, wide-ranging strategy for the greater Christchurch region. This strategy was to prevail over all existing rights and documents.

CERA's many powers included the authority to:

- require councils to act as directed, and or to provide information on request;
- amend or revoke RMA documents and city plans;
- close or otherwise restrict access to roads and other geographical areas;
- demolish buildings, or otherwise enter and deal with people's land and property (with notice, in the case of marae and dwelling places); and
- require compliance of any person with a direction made under the 2011 Act.⁸²

Officials could enter premises without permission, settle disputes, conduct building works, and force owners to sell their properties.⁸³ CERA was not required "in many cases" to compensate property owners for losses from demolitions or other works; in fact, it could recover demolition costs from owners of dangerous buildings.⁸⁴

CERA was disestablished on 18 April 2016 under its governing Act. Its tasks were handed over to other departments, and CERA itself was absorbed into the Department of the Prime Minister and Cabinet.⁸⁵

⁷⁸ Department of the Prime Minister and Cabinet, "Whole of Government Report," op. cit. 7.

⁷⁹ Recovery focuses on restoring infrastructure, encouraging rebuild, and returning to normalcy.

⁸⁰ Simon Murdoch, "Annual Review of the Canterbury Earthquake Recovery Act 2011" (June 2012), 5.

⁸¹ *Canterbury Earthquake Recovery Act 2011*, Part 1, section 3.

⁸² This list is taken verbatim from Mark Odlin, "Summary and analysis of the Canterbury Earthquake Recovery Act 2011," Buddle Findlay (4 May 2011).

⁸³ *Canterbury Earthquake Recovery Act 2011*.

⁸⁴ Mark Odlin, "Summary and analysis of the Canterbury Earthquake Recovery Act 2011," op. cit.

⁸⁵ Stacey Kirk and Tim Fulton, "PM department to absorb CERA," *Stuff* (2 September 2014).

"The longer the authorities take to determine what will be permitted, the more firms and households will relocate to another region"

3.1 Strengths of Act 2011

The 2011 Act got many things right. The magnitude of the destruction from the February 2011 earthquake required setting up a special purpose, bespoke recovery agency.⁸⁶

The *Civil Defence and Emergency Management Act 2002* provides for immediate response rather than long-term recovery and reconstruction.⁸⁷ Stepping outside a business-as-usual regulatory framework for recovery required legislative changes. Other countries have set up special purpose recovery authorities. These include Australia (fires⁸⁸ and floods⁸⁹), Japan and the United States.

Extraordinary powers for recovery are needed in a major disaster, and the 2011 Act also provided for them. It was also informed by the weaknesses of the 2010 Act, providing more checks and balances on the scope of those extraordinary powers. Setting a five-year termination date for the agency with those extraordinary powers was another strength.

A tight timetable to produce a draft Recovery Strategy for the Minister's consideration is highly desirable but it must be realistic given the situation. Property owners and businesses must know the overall plan for restoration of services and infrastructure as quickly as is reasonable. They must know what they may do with their properties and businesses to plan their own recovery. The nine-month timetable was tight, and may not have been realistic given the wisdom of hindsight about aftershocks.

The longer the authorities take to determine what will be permitted, the more firms and households will relocate to another region. Relocation for this reason increases the dislocation costs of a natural disaster.

The specified provisions for the Recovery Strategy in section 11 of the 2011 Act were well aligned with those needs. They focused on clarity about spatial matters and restoring infrastructure.

⁸⁶ Recovery is different from emergency response. New Zealand's *Civil Defence Emergency Management Act 2002* provides for the latter. Response precedes recovery, but response decisions can affect recovery. So there is an overlap.

⁸⁷ See, for example, Rachel Brookie's summary of James Rotimi's analysis of the shortcomings in New Zealand's pre-disaster legislation for natural disasters of national significance. Rachel Brookie, "Governing the Recovery from the Canterbury Earthquakes 2010–11: The Debate over Institutional Design," Working Paper 12/01 (Institute for Governance and Policy Studies, Victoria University of Wellington, June 2012), 38.

⁸⁸ Victorian Bushfire Reconstruction and Recovery Authority, "Legacy Report" (Melbourne: Government of Victoria, 2011).

⁸⁹ Queensland Reconstruction Authority, "Queensland Strategy for Disaster Resilience," Website.

"A well-designed compensation principle is a check on overusing regulatory powers"

3.2 Weaknesses of Act 2011

Notwithstanding its strengths and necessity, the 2011 Act had its flaws.⁹⁰ Even a review by the Department of the Prime Minister and Cabinet conceded this, albeit cryptically.⁹¹

Three high level weaknesses were:

- Too broad a scope for exercising powers. Extraordinary powers to take or impair private property should not have been available for the nice-to-have elements of recovery plans (see Chapter 4);
- Allowing recovery plans detached from commercial and financing considerations (see Chapter 3); and
- Not emphasising in sections 16 and 17 the importance of property rights and freedom of action to facilitate early commercial recovery.⁹² Early commercial recovery restores jobs and income.

Parliament's Regulations Review Committee made 11 recommendations in late 2016 after reviewing emergency response regulations.⁹³ An important thrust was to limit emergency powers to those needed by the specific event, minimise delegated discretionary powers, and subject later orders in council to *ex ante* and *ex post* vetting, ensuring access to judicial review. The scope would be limited by built-in sunset clauses and a 'positive list' of the specific enactments in the primary legislation; those enactments could be revoked by a later order in council.

Broad power to impair what people can do with their property without compensation empowers 'we know best' planners. This is especially true when the plan does not require appropriate compensation of those whose properties are impaired through zone or precinct designations. A well-designed compensation principle is a check on overusing regulatory powers. Closer alignment between the venerable compensation provisions in the *Public Works Act* might be better.

Legislation enabling any future CERA should deliberate on whether it should be a government department or a state agency.⁹⁴ The former serves its minister; the latter has an independent board. CERA was established as a government department, in part, because it was the more practicable option under tight time constraints. But perhaps

⁹⁰ See, for example, Rachel Brookie, "Governing the Recovery from the Canterbury Earthquakes 2010–11," *op. cit.* and Regulations Review Committee, "Inquiry into Parliament's Legislative Response to Future National Emergencies" (Wellington: New Zealand Parliament, 2016).

⁹¹ Department of the Prime Minister and Cabinet, "Whole of Government Report," *op. cit.* 94.

⁹² Eric Crampton suggests that in the future, a natural disaster declaration should automatically suspend business-as-usual restrictions on resource consents that clearly impeded spontaneous recovery. He provides three illustrative examples. (Eric Crampton, "The Plan against The Rebuild," pp 300-308 in Barnaby Bennett et al, eds, *Once in a Lifetime: City-building after Disaster in Christchurch*. (Christchurch: Free Range Press, 2014).

⁹³ Regulations Review Committee, "Inquiry into Parliament's Legislative Response to Future National Emergencies," *op. cit.*

⁹⁴ Rachel Brookie, "Governing the Recovery from the Canterbury Earthquakes 2010–11," *op. cit.* 26–27.

with more forethought, pre-disaster planning could devise transitional arrangements that allow a temporary recovery team to morph into a state agency a few weeks later.

Overall, the 2011 Act was fit for purpose – but not a model template.

3.3 Outcomes from CERA's activities

CERA's early legislated tasks included overseeing safety aspects, particularly demolition; assessing the situation; and preparing the recovery strategy. It set about these tasks immediately.⁹⁵ The draft recovery strategy was prepared well inside the nine-month timeframe.

CERA was also heavily involved with the Christchurch City Council in preparing a recovery plan for central Christchurch. This draft plan was prepared within its 100-day timeframe, but was not acceptable to the Recovery Minister (see Chapter 4).

Engineers and other experts were consulted on which areas were too unsafe and uneconomic to sustain rebuilding. On 23 June 2011, the government designated around 5,000 properties in the red zone. That number was later increased and the government made a generous compensation offer based on pre-earthquake land values.⁹⁶

CERA oversaw the demolition of 1,240 CBD buildings, and red-zoned 8,000 residential properties.

CERA also led the Christchurch infrastructure rebuild. It coordinated the Stronger Christchurch Infrastructure Rebuild Team, a \$2.2 billion partnership between the city council, central government, NZ Transport Authority, and major contractors, to rebuild the city's horizontal infrastructure.⁹⁷ CERA assessed that 71% of the central city horizontal infrastructure repairs had been completed by September 2014. For the broader Christchurch region it was about 50%.⁹⁸

The red (and other) zoning decisions were difficult, controversial, and somewhat broad-brush given the limited preliminary information. But such decisions were necessary to reduce uncertainty about who could rebuild or restore what and where.

Similarly, some of the CBD demolition decisions ran roughshod over property owners and insurers on assessment, consultation, contractor choice, cost and compensation. Many of the demolished buildings were repairable, including several that were intact or minimally damaged. Yet they were demolished as their presence was deemed inconsistent with the new recovery plan for the CBD. In such cases, private property was taken for planning purposes using extraordinary powers.⁹⁹

⁹⁵ A referee with direct knowledge commented that the leadership of CERA's chief executive and senior management was outstanding early on, competent, devoted and focused on the immediate and urgent tasks.

⁹⁶ The initial offer discriminated against uninsured property owners, as does section 61 of the 2011 Act. That proved to be troublesome. A court decision overturned that aspect. More than 97% accepted the Crown's offer. CERA, "Briefing to the incoming Minister," op. cit. 6.

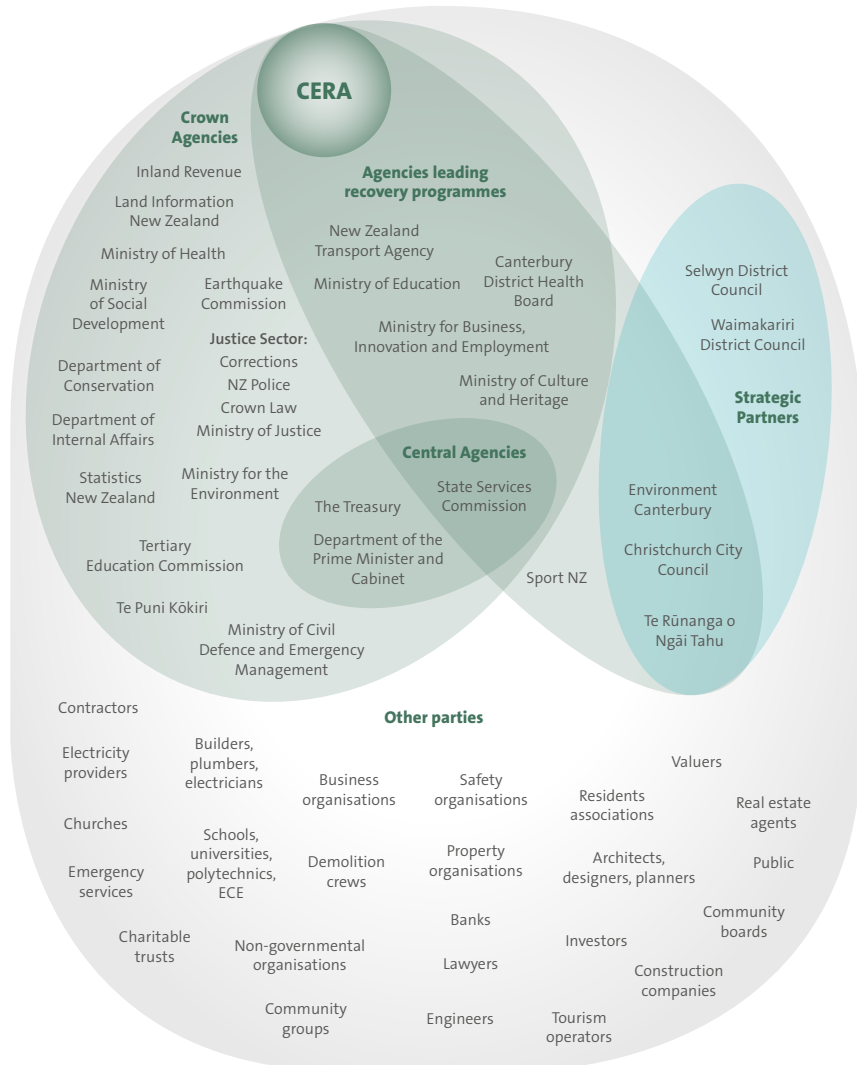
⁹⁷ Christchurch City Council, "Roads and underground services," Website.

⁹⁸ CERA, "Briefing to the incoming Minister," op. cit. 7.

⁹⁹ Scott Miles, et al. "Building Back Better," op. cit. 8, 12.

CERA's coordination task was complex. It had to coordinate with no less than 15 central government and six local government entities on the auditor-general's list.¹⁰⁰ In 2012, it was coordinating and leading the activities of 33 public and private entities in Canterbury.¹⁰¹ By 2014, it had 445 employees.¹⁰²

Figure 1: CERA'S sphere of influence



Source: Office of the Auditor-General, “Canterbury Earthquake Recovery Authority: Assessing its Effectiveness and Efficiency” (Wellington: New Zealand Government, 2017), Figure 11. Curiously, this diagram does not include CERA’s interface with insurers.

Besides the major central government control agencies, CERA needed to interact with the central government; transport, health, education, housing and welfare agencies; and the EQC.

Local governments in the region were deeply involved because they owned damaged core infrastructure. Land use planning, building

¹⁰⁰ Office of the Auditor-General, “Roles, Responsibilities, and Funding of Public Entities after the Canterbury Earthquakes,” Parliamentary paper (Wellington: New Zealand Government, 2012), Figure 1.

¹⁰¹ Office of the Auditor-General, “Canterbury Earthquake Recovery Authority,” op. cit.

¹⁰² CERA, “Briefing to the incoming Minister,” op. cit. 9.

consenting, and community support roles also brought local government into close contact with CERA.¹⁰³

CERA also steered Christchurch's inner city plan and started work on anchor projects. The latter were still underway at the time of CERA's termination. We comment on the plan in Chapter 4 and on anchor projects later in this chapter.

3.4 Other assessments of CERA's performance

Extensive reviews of CERA's performance and the recovery more generally have been undertaken and published by, among others, CERA itself, independent reviewers, the State Services Commission, the Treasury, the Office of the Auditor-General, and the Department of the Prime Minister and Cabinet. The government has set up a website (www.eqrecoverylearning.org) to facilitate learning.

One thrust of these reviews is that CERA performed efficiently and effectively during the emergency and restoration of services phases. For example, the auditor-general commended CERA for:

- using its powers to coordinate and lead the work to make the CBD safe;
- working with other organisations to maintain the cordon around the CBD and demolish dangerous buildings;
- establishing arrangements for temporary housing for families whose homes had been destroyed in the earthquakes; and
- gathering and analysing information about land damage in residential areas.¹⁰⁴

A 2012 assessment funded by the UK Engineering and Physical Sciences Research Council was most complimentary about the efficiency and effectiveness of CERA and the recovery effort to that point:

Despite some legitimate criticism and some dissatisfaction, the way Christchurch's recovery and reconstruction is being planned and managed is exemplary and we can learn much from reflecting both on New Zealand's major successes and their few mistakes.¹⁰⁵

The report particularly praised the response of science and engineering experts, and the quality and scope of the database information system managed by Tonkin & Taylor.

But the report called for greater pre-disaster 'rehearsing' of response and recovery plans, and better identification of key indicators for recovery. It also questioned the wisdom of making CERA solely responsible for the demolition programme, given the criticisms the role attracted.

Later assessments broadly agree that CERA's effectiveness waned as recovery moved into reconstruction. Having started in a can-do, hands-on

¹⁰³ Ibid. 2.54.

¹⁰⁴ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit.

¹⁰⁵ Stephen Platt, "Reconstruction in New Zealand Post 2010–11 Christchurch Earthquakes," ReBuilDD Field Trip February 2012 (Cambridge Architectural Research, 1 August 2012), 58.

"CERA become a catch-all agency, which meant its role became less and less clear as recovery progressed"

operational mode (e.g. with demolition), CERA found it hard to get out of that mode. This was to the detriment of its key oversight, communication and coordination responsibilities.

A CERA report published in 2016 itself commented:

The culture of the agency had become about fixing problems, irrespective of their timelines, rather than brokering solutions so others took on the responsibilities, built capacity and found the resources to fix them. If, over the whole recovery process, CERA had empowered other agencies to step up and deal with issues on the recovery journey, it would have reduced its own workload and assisted in building trust and capability earlier in inheriting agencies.¹⁰⁶

The same report urged any future lead recovery agency to take a more strategic approach that recognised changes across recovery phases, relationships, progress indicators, and performance accountability.

A near universal criticism is that CERA did not manage public perceptions well. The auditor-general's 2017 assessment:

Despite investing significant resources in communications, including initiatives to engage the community, CERA was not as effective or efficient in communicating with the community as it intended or needed to be. Results from surveys indicate that CERA became less effective in communicating and engaging with stakeholders and the community over time.¹⁰⁷

The Department of the Prime Minister and Cabinet's July 2017 synthesis report found "a perception" that central government had taken over from the Christchurch community, creating feelings of "disempowerment and disillusionment."¹⁰⁸ It did not assess whether this perception was sound.

To be fair, this was not due to a lack of effort or expense by CERA.¹⁰⁹ Central government overrode the Christchurch City Council's draft central city plan with little public consultation. In addition, the government loaded diverse duties onto CERA with insufficient regard for governance considerations. In the auditor-general's words, "CERA become a catch-all agency, which meant its role became less and less clear as recovery progressed."¹¹⁰

The auditor-general's successive reports on CERA all noted the deficient administrative "systems, functions, and controls," which created difficulties for its staff and risked misuse of funds.¹¹¹

¹⁰⁶ CERA, "Benefits of a Strategic Approach to Recovery: CERA's Lessons on the Journey from Emergency to Regeneration" (18 April 2016), 15.

¹⁰⁷ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit. 31.

¹⁰⁸ Department of the Prime Minister and Cabinet, "Whole of Government Report," op. cit. 8.

¹⁰⁹ See, for example, the details in the Auditor-General's 2017 assessment and in Stephen Platt's account. Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit. [2.21] and Stephen Platt, "Reconstruction in New Zealand Post 2010–11 Christchurch Earthquakes," op. cit. 56.

¹¹⁰ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit. 9.

¹¹¹ Ibid. 8.



CERA's performance in leading and coordinating tasks was also questioned. There was little clarity about who would fund what, and the roles and responsibilities of the coordinating parties. Another criticism was the tensions with other agencies. For example, in a 2016 report the auditor-general criticised the vagueness of governance roles and responsibilities in repairing pipes and roads in Christchurch. The report said CERA should have been more active in governance and more decisive in resolving disputes over funding and the targets for restoring service. Taking 19 months to get funding resolved prolonged the uncertainty for about 30 wastewater and stormwater projects for over eight months.¹¹²

There is a droll contrast between the auditor-general's view of CERA's governance problems and the studied blindness to this issue in the conclusions of the Department of the Prime Minister and Cabinet. The former saw a real need for central government to pay much more attention to governance issues, while the latter focused on public perceptions.¹¹³ That contrast is also reflected in Minister Brownlee's reception of the auditor-general's report, which he called "unbalanced".¹¹⁴

¹¹² Office of the Auditor-General, "Effectiveness and Efficiency of Arrangements to Repair Pipes and Roads in Christchurch – Follow-Up Audit" (Wellington: New Zealand Government, May 2016), 3 and 4.

¹¹³ Ibid. 8–9; Note the recognition of the issues on pages 26–28. Department of the Prime Minister and Cabinet, "Whole of Government Report," op. cit. 93.

¹¹⁴ Nick Truebridge and Adele Redmond, "Tensions between Cera and Christchurch City Council delayed rebuild, report says," *The Press* (8 February 2017).



Support for the auditor-general's concern comes from a 2013 survey by the New Zealand Council for Infrastructure Development. It surveyed infrastructure players, central and local government, business leaders, and other regional stakeholders on the progress of the Christchurch rebuild. Leadership, governance and alignment between central and local government scored the lowest.

None of the reviewers interviewed by journalist Michael Wright on CERA's termination in 2016 gave the agency 10 out of 10.¹¹⁵ Even the minister responsible for its performance for the five years of its existence gave it only 7.5 out of 10.

To list less-than-perfect outcomes is not to blame CERA itself. No one can achieve Mission Impossible. CERA took on the tasks it was given. Christchurch City Council was a partner but it struggled with its operational and strategic role (see Box 4). If the rebuild project were a two-piston engine, neither of its cylinders was firing at full capacity; significant time and effort that otherwise could have been spent more productively was invested in repairing a broken relationship.

¹¹⁵ For an overview of the range of informed opinion on the matter, see Michael Wright, "Five years of Cera: Success or failure," *Stuff* (16 April 2016).

Box 4: Local government disasters conundrum

Local government is an important player in recovery. How Christchurch City Council dealt with the earthquakes needs attention.

Good legislative practice requires checks and balances in all legislation, as with the 2011 Act. Treasury too has a mandate to ensure all central government spending is managed well.

This is not the case with local government.

Ratepayers, via the ballot box, hold councils to account. The Department of Internal Affairs and the Office of the Auditor-General periodically review the sector's compliance with legislation.

However, both checks are difficult to carry out in a post-disaster environment. In Christchurch, the earthquakes necessitated redoing several district and regional plans from scratch. The 2011 Act circumvented many of the usual planning checks and balances, such as consultation requirements, to fast track the process. In addition, in the post-disaster environment ratepayers are ill equipped to hold their council to account, particularly when the council's business-as-usual operations and reporting channels have been severely disrupted by the disaster.

A council could thus struggle to cope with its traditional and new responsibilities, but this may only come to light well after the fact, hampering recovery efforts.

A simple example: Prior to the earthquakes, Christchurch Council did not allow homeowners to build secondary units into their homes unless they housed a family member. In Wellington and elsewhere, it is common for owners to build an apartment or flat with a separate entrance and kitchen into their homes. This increases effective density and housing supply, allows more efficient use of existing homes, and provides a rental income stream for homeowners.

After the earthquakes, allowing secondary units would have eased the imminent housing shortage. Insurers would not insure new builds as aftershocks continued, but would insure home renovations and repairs – including the addition of secondary units. But the units remained effectively banned by council¹¹⁶ – with anecdotal accounts that the ban remained because of political pressure from richer homeowners in the Ilam suburb of Christchurch who feared the emergence of student ghettos.¹¹⁷

Christchurch City Council was publicly shown to be lacking in 2013. That was the year in which Environment Canterbury boss Dame Margaret Bazley called it “totally incompetent” (and worse),¹¹⁸ and entirely independently, International Accreditation New Zealand stripped the council of its building consents accreditation. Doubts about the competence of its inspectors and lack of sound auditing were factors, but the government was also concerned that slow consenting was slowing the rebuild.¹¹⁹

The council's chief executive, Tony Marryatt, resigned shortly after,¹²⁰ and a Crown manager was appointed to manage building consents in the city.

Christchurch's failure was a concern because of the urgency to get construction underway.

¹¹⁶ Eric Crampton, “The Plan Against the Rebuild,” Chapter 6, in Barnaby Bennett, et al. (eds), *Once in Lifetime: City-Building after Disaster in Christchurch* (Christchurch: Freerange Press, 2014), 300–308.

¹¹⁷ Eric Crampton, “Eric Crampton is outraged that Christchurch City Council is making it illegal to help getting more housing available quickly. What is your experience?” www.interest.co.nz (13 June 2012).

¹¹⁸ Rachel Young, “Christchurch City Council ‘totally incompetent’,” *Stuff* (7 June 2013).

¹¹⁹ Bernard Hickey, “PM Key says IANZ decision to strip Christchurch Council of its powers is unprecedented,” www.interest.co.nz (1 July 2013).

¹²⁰ Chris Hutching, “Investigation launched into Tony Marryatt's actions,” *The National Business Review* (10 July 2013).

Other notable problems with the council emerged in 2011 (poor communication with the public)¹²¹ and 2014 (poor disclosure of the city's precarious financial position).¹²²

In 2012, Rachel Brookie found the council's "institutional capacity ... diminished by flawed relationships, ineffective process and political infighting" and noted calls to replace councillors with government commissioners.¹²³ This would have aggravated the perceptions of central government takeover, given the 2012 Environment Canterbury precedent.¹²⁴

Not every council performed as poorly as Christchurch. Selwyn and Waimakariri are well regarded for speeding up recovery after the 2011 earthquake.¹²⁵ Their ability to quickly open land for housing development took significant pressure off Christchurch – and supply met demand. House prices in Christchurch, Selwyn and Waimakariri rose between 2% and 4% in the year to March 2017 compared to 13% for New Zealand.¹²⁶ Appointing statutory managers to these district councils would not have improved the outcome, and could have made it worse.

And central government takeovers are no panacea. The Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011 passed in March 2011 enabled the council to permit temporary accommodation – a version of secondary units – for displaced people and businesses that otherwise would not have complied with the District Plan.¹²⁷ But the secondary units were not viable because of requirements that only directly displaced people could be accommodated in secondary units, not construction workers, and that the structures needed to be removed within a limited period.¹²⁸

Central government should decide when to step in and when to let councils lead, probably case-by-case. And recovery should include building up the capability of local councils as they will eventually assume full responsibility.

3.5 Our appraisal

The 2011 Act was broadly well conceived, and CERA devoted a great deal of resources and energy to fulfil its assigned tasks. The challenges from all directions were great, and much was achieved.

The problems documented by CERA, the auditor-general and many others have sparked discussions of an evolutionary rather than a revolutionary nature. Few would disagree with the need for greater pre-disaster readiness, clearer assignment of roles, better measurement and monitoring of vital recovery matters, and a more strategic response to complex multiple events.

Yet there are deeper matters. One is finding the best balance between the roles of government and of private individuals, firms and organisations. Recovery is impaired if government does not do enough, or if it does too much.

¹²¹ Lois Cairns, "'Lack of trust' stifled council communication," *Stuff* (25 July 2012).

¹²² Lois Cairns, "Christchurch in financial strife," *Stuff* (7 May 2014).

¹²³ Rachel Brookie, "Governing the Recovery from the Canterbury Earthquakes 2010–11," *op. cit.* 29.

¹²⁴ Paul Gorman and Tracy Watkins, "ECan councillors sacked," *Stuff* (30 March 2010).

¹²⁵ One News, "Selwyn District completes earthquake repairs," TVNZ (5 July 2014).

¹²⁶ QV, "Residential house values," Website.

¹²⁷ Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011.

¹²⁸ John Fountain, "We have seen the enemy, and them is us," *Strategic Econ* (23 May 2012).

" The goal should be to build capacity in local communities, where needed, and empower them, where possible"

Government must secure public safety and oversee effective emergency and temporary arrangements for water, food and housing. Unsafe structures must be demolished and debris cleared. Realistic and acceptable plans to restore vital networks must be established and implemented, zoning decisions such as red zones made, and people informed and updated.

Central government must oversee all this but not control everything. The goal should be to build capacity in local communities, where needed, and empower them, where possible.

While cordons around dangerous buildings are warranted, placing the entire CBD under military cordon for an extended period is not. The extended cordon on High Street meant substantial losses for owners of heritage buildings who had made costly strengthening improvements.¹²⁹ Two years after the cordon, one owner who had invested \$150,000 in strengthening works and whose building remained inaccessible because of risk imposed by neighbouring buildings, said, "In hindsight, we'd have been better off not to do it. We could have just walked away, but it did save lives."

The implicit lesson for owners in similar parts of Wellington is strengthening works are pointless if risks posed by neighbouring buildings block access for years after any earthquake. CERA's actions after the Christchurch earthquakes provide perverse incentives for building owners elsewhere.

Government must also do its best to ensure its processes, laws and regulations facilitate and expedite private recovery. The end purpose is a functional downtown with enduring commercial activity. Putting people in limbo with their own property is to be avoided. People will move to where the jobs are and firms will locate where customers and workers are. If laws and regulations induce people to live and work elsewhere, recovery will be impaired. Delays in getting resource consents for urgent repair or rebuild can induce people to relocate.

On the other hand, too much government involvement impairs private recovery. One impulse after every natural disaster is to 'rebuild better'. But who will pay? If resource or building consents for repair or rebuild are made too costly, people will relocate.

CERA's core function of unblocking regulatory impediments to the rebuild languished in the face of its burgeoning multiple responsibilities. Substantial barriers existed for homeowners seeking to move houses from the red zone to other parts of Christchurch, and were well canvassed in Christchurch media. But when CERA head Roger Sutton appeared on TVNZ's *Close Up* in May 2012 and was presented with the issue, he said, "The first I heard of this and the difficulties was today."¹³⁰

CERA thought the Recovery Minister had wide powers to cut through red tape, and over 60 orders in council were made during CERA's existence. The official view is that using the extensive powers was "restrained".¹³¹ Owners who lost property from demolition decisions or use

¹²⁹ Abbie Napier, "Time to make a decision," *Christchurch Mail* (1 August 2013).

¹³⁰ Eric Crampton, "The Plan Against the Rebuild," op. cit. 305.

¹³¹ Department of the Prime Minister and Cabinet, "Whole of Government Report," op. cit. 8.



rights from planning decisions would beg to differ. More could have been done to free people up.

The Christchurch Central Recovery Plan (see Chapter 4) was part of the overreach. It called for building 16 public anchor projects to encourage private sector investment in the CBD. The Christchurch Central Development Unit (CCDU), a CERA department, was responsible for commissioning the city's new stadium, convention centre, Metro Sports Facility, Bus Interchange, Te Papa Ōtākaro/Avon River Precinct, Canterbury Earthquake Memorial, and four city frames.¹³²

Good progress on the anchor projects was made in the planning and land acquisition stages, core areas of expertise for CERA, but delivery on these projects encountered major delays and project management issues. Treasury found “major issues with project definition, schedule, budget,

¹³² Gerry Brownlee, “Launch of the Central Christchurch Development Unit” (Wellington: New Zealand Government, 18 April 2012).

"Regime uncertainty happens when that households and businesses cannot tell which rules and regulations will apply to them, and whether those rules might change. They then have a very difficult time planning their own recovery"

quality and/or benefits delivery, which don't appear to be manageable or resolvable without such changes being made" in CCDU's work as part of a 2015 review of the government's major projects.¹³³

As of January 2017, none of the CCDU anchor projects had met their target dates, with the stadium and the sports facility likely to be at least four years overdue.¹³⁴ This is not surprising as CCDU lacked commercial expertise and reported to the minister even though it was a CERA department.¹³⁵ But it is surprising that the minister chose structures that would limit the role of commercial expertise.

'Good progress' in land acquisition does not necessarily equal good processes, or good outcomes. Landowners found their properties under notice for compulsory acquisition for projects that might never eventuate, stymieing their own plans for their own properties. In one prominent case, the government sought to acquire a narrow strip of land through the middle of an existing commercial property, forcing complicated negotiations over the extent of the imposed impairment.¹³⁶ Basic respect for property rights was a casualty of the 2011 Act.

The opportunity cost of anchor projects is also underappreciated. The generous time and attention paid to anchor projects by the minister, and the Wellington bureaucracy, meant other issues did not receive due attention. Planning anchor projects may be beyond the administrative capabilities of the New Zealand government during earthquake recovery in any major city.

So are these largely unsatisfactory anchor projects necessary? The notion that government needed to lead in construction activity presumes private firms and investors will hold back. But why would they? They are keen to effect recovery themselves.

The notion that anchor projects were necessary to encourage private investment in the CBD implied a sluggish investment environment and business uncertainty about customer demand. The case for this is slim, and the case for inadequately assessed but expensive anchor projects is even slimmer.

An alternative hypothesis is that private rebuild was hampered by doubts about government performance. The commercial community needs a high degree of freedom to rebuild and clarity on provision of vital public infrastructure. It also needs reasonable confidence that its rebuild decisions will not be overturned without compensation by unpredictable government planning and rebuild decisions – otherwise called 'regime uncertainty'.¹³⁷

Regime uncertainty happens when that households and businesses cannot tell which rules and regulations will apply to them, and whether those rules might change. They then have a very difficult time planning their own recovery.

¹³³ Treasury, "Major Projects Performance Information Release," Release document (July 2016), 4.

¹³⁴ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit. 57.

¹³⁵ Ibid. 44.

¹³⁶ Georgina Stylianou, "Land prices shrink Christchurch's south frame," *The Christchurch Press* (16 January 2015).

¹³⁷ See Robert Higgs, "Regime Uncertainty: Why the Great Depression Lasted So Long and Why Prosperity Resumed after the War," *The Independent Review* 1:4 (1997).

"Government decision-making was marred by undue delays due to governance flaws, wasteful government spending due to inadequate controls and discipline, and government overreach in the rebuild"

The recovery strategy left plenty of scope for regime uncertainty. Gerard Cleary, special counsel at law firm Anthony Harper, assessed CERA's recovery strategy to be more of a high-level vision than a strategy, and falling short of meeting its legislative requirements:

... a key shortcoming of the Recovery Strategy is the almost complete absence of the matters anticipated by s.11(3) of the Act. Specifically, the strategy contains no hard detail as to the location of redevelopment or future infrastructure necessary to support the rebuild.¹³⁸

That is the sort of detail investors and developers need, but which only government can provide. Cleary says the omission is understandable given the ongoing aftershocks and the magnitude of the task. His conclusion is that nine months was too tight a timeframe.

Nowhere in the official material did we find provisions for clarity and security of private property and reasonable freedom of action to property owners. Searches of the Department of the Prime Minister and Cabinet's synthesis report for terms like 'property rights', 'takings', 'regime (un)certainty', 'commercial expectations', and 'commercially realistic' all produced zero results.

In summary, despite the many positives, government decision-making was marred by undue delays due to governance flaws, wasteful government spending due to inadequate controls and discipline, and government overreach in the rebuild.

3.6 Summary lessons

4. Ensure any post-disaster emergency legislation incorporate provisions for takings based on the *Public Works Act* rather than bespoke measures. Efforts to reduce the government's costs in acquiring or impairing property can easily cause greater costs in the longer term.
5. Ensure governance structures for any recovery agency are fit for purpose, appropriately defined, and constrained.

¹³⁸ Gerard Cleary, "Adopting and implementing a legislative framework for recovery," Chapter 3, in Barnaby Bennett, et al. (eds), *Once in Lifetime: City-Building after Disaster in Christchurch* (Christchurch: Freerange Press, 2014), 140–141.

CHAPTER 04

Post-disaster government planning



Recovery measures should be pre-planned and implemented (with necessary modifications) from the first day of the response (or as soon as practicable) and should be coordinated and integrated with response actions.¹³⁹

"Good government planning protects infrastructure corridors, lowers infrastructure repair costs, and prevents incompatible use of neighbouring land. Bad planning might set arbitrary maximum building heights – like the proposal in Christchurch CBD to allow buildings higher than the six-storey limit only if they met tighter energy efficiency standards"

Everybody has to plan for recovery post-disaster. Every affected individual in the community will have one, no matter how informal and unarticulated. Their ability to execute that plan depends on what others are doing. They will modify their plans as information about opportunities and costs unfolds.

Individual plans and reactions depend on the actions of government and major firms. Particularly, government's post-disaster planning, communication, and credible commitments affect everyone.

Almost everyone agrees about a central role for government post-disaster.¹⁴⁰ Debates are only about its nature and extent. For example, rebuilding better or rebuilding faster?

The Christchurch earthquakes revealed that government planning arrangements for recovery from a major natural disaster are weak compared to emergency management response arrangements.

In a post-disaster recovery environment, planning needs are greater because the status quo doesn't cut it. For example, the externality that a building owner imposes on the public post-earthquake could be life threatening with a weakened facade. And spatial planning will be inevitably needed to replace infrastructure such as roads and water pipes.

As already mentioned, it is critical to find the right balance. Good government planning protects infrastructure corridors, lowers infrastructure repair costs, and prevents incompatible use of neighbouring land. Bad planning might set arbitrary maximum building heights – like the proposal in Christchurch CBD to allow buildings higher than the six-storey limit only if they met tighter energy efficiency standards.¹⁴¹ Whether those rules are defensible in normal times is questionable. But focusing on developing them when Council offices struggled to handle building consents suggests poor prioritisation.

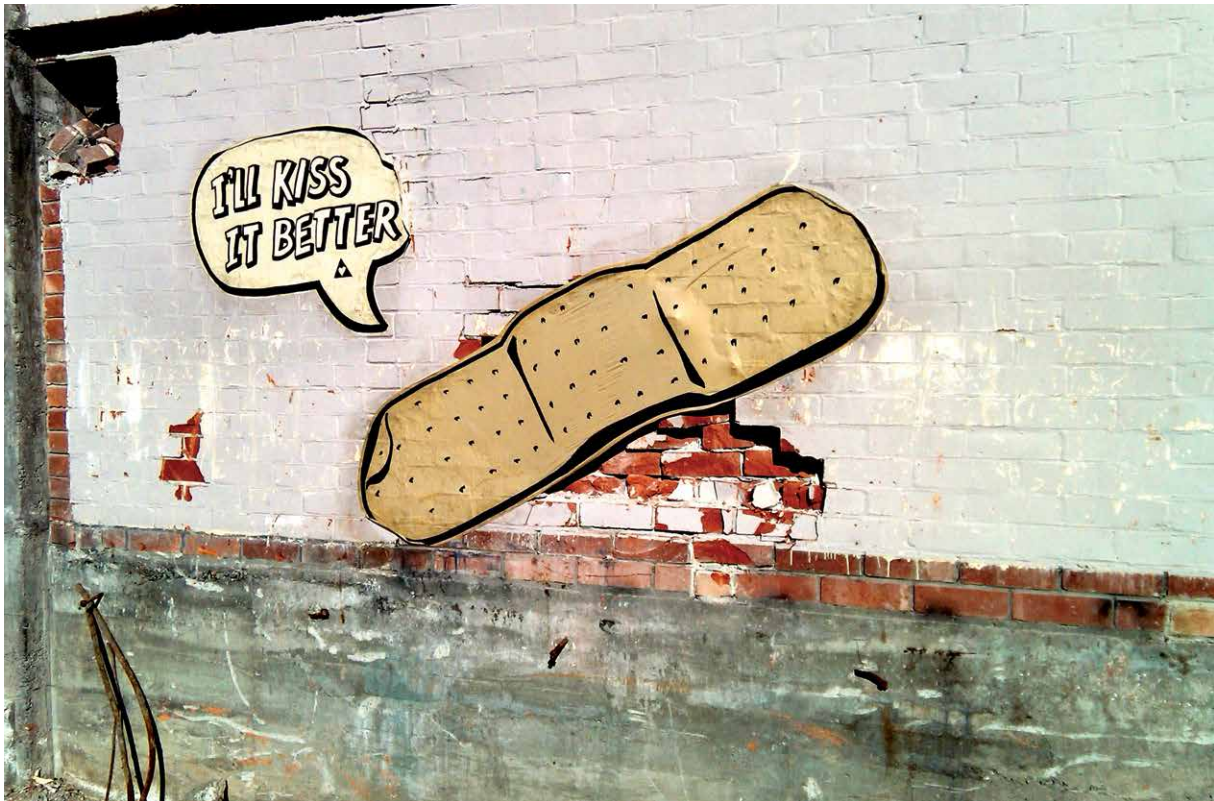
Lastly, planning – in a business-as-usual or post-disaster scenario – needs to consider local needs, preferences and idiosyncrasies. It is local residents who must live, work and invest in the region, and who bear most of the ongoing costs. Handover must be built into the process because while a recovery agency may override local planning, local authorities will resume functioning at some point.

Post-disaster planning is not straightforward; a measure of both science and art is needed to strike the balance. Although difficult, this fine balance is what the public expects from government after a disaster. It also provides a yardstick to measure the planning arrangements instituted after the February 2011 earthquakes.

¹³⁹ National Civil Defence Emergency Management Plan Order 2015, Section 154: Principles, subsection (4).

¹⁴⁰ Productivity Commission, "Better Urban Planning" (Wellington: New Zealand Government, 2017), 49–50.

¹⁴¹ Sam Sachdeva and Marc Greenhill, "Height limits likely hot topic," *Stuff* (11 August 2011).



Source: Eric Crampton

The key measures of a good post-disaster government plan are:

- to oversee adequate provision of local public goods;
- to ensure core infrastructure is repaired or replaced where it is economical to do so;
- to ensure actions that by state agencies are well-coordinated and related decision rights are allocated to people competent and resourced to handle them; and
- to facilitate private recovery activities rather than frustrate them by:
 - ensuring government plans are promptly developed and followed in accord with community needs;
 - ensuring (adjusted) spatial plans give clarity about infrastructure provision and protect against incompatible neighbouring private uses, but are not prescriptive about uses within those broad parameters;
 - regular reporting on indicators of progress with aspects vital to recovery; and
 - minimising red tape to allow freedom to rebuild and relocate, with an assurance that the fruits of such recovery investments will not be taken away without compensation for some good or bad plan reason.

"The most obvious weakness was the time to develop the reconstruction plan for the inner city – 16 months – during which property owners were unclear about their property rights. Rebuilds and repairs could not commence because owners had no idea whether their land would be acquired by the government for public works or other publicly funded projects"

4.1 Planning to plan

Examining the 2011 Act shows the government knew of many of these considerations. CERA was given nine months to draft a long-term recovery strategy for the region, specifying where private building was allowed, where public infrastructure would be placed, and which areas would be rebuilt.¹⁴² Consultation with local authorities, local iwi and other stakeholders was a requirement, before being opened to public consultation.¹⁴³ Importantly, the Recovery Strategy could override all standard planning legislation and processes, such as the *Resource Management Act 1991*.

The 2011 Act also required developing a recovery plan for the Christchurch CBD, which suffered the most property damage. This was to be done in consultation with Christchurch City Council and the affected community over nine months. This was based on the recovery authority created in response to the Queensland floods in Australia, and adapted for New Zealand.¹⁴⁴

4.2 Planning in practice

The other half of the story is the execution.

New Zealand's planning legislation is convoluted, unsatisfactory and endlessly amended. Glaring omissions, specifically relating to urban areas and natural hazards, make its outcomes poor in practice.¹⁴⁵ Its bias against growth is evident from the problems facing the fastest growing regions. Red tape, overly broad consultation requirements, lack of central government direction, and poor synchronisation between various planning laws have resulted in serious traffic congestion and/or a severe housing affordability crisis in some places.¹⁴⁶

These weaknesses can be seen in the post-earthquake plans, even though the 2011 Act sidestepped these regulatory logjams. For brevity, this report focuses on the CBD rebuild. Many lessons learned apply to other post-disaster planning situations.

4.3 Long time coming

The most obvious weakness was the time to develop the reconstruction plan for the inner city – 16 months – during which property owners were unclear about their property rights. Rebuilds and repairs could not commence because owners had no idea whether their land would be acquired by the government for public works or other publicly funded projects.

Even when Blueprint, the central government plan for the inner city, was launched, it was underdeveloped and did not contain sufficient

¹⁴² *Canterbury Earthquake Recovery Act 2011*, Section 11(3) a–d.

¹⁴³ *Ibid.* Section 20.

¹⁴⁴ *Ibid.* Sections 25 and 26.

¹⁴⁵ Productivity Commission, "Better Urban Planning," *op. cit.* 97.

¹⁴⁶ Patrick O'Meara, "Housing in many NZ cities 'severely unaffordable'," *RadioNZ* (23 January 2017).

"The risk of regime uncertainty was flagged early in the response phase"

planning detail to relieve this uncertainty. Although some residential and business flight is to be expected in the wake of a disaster, the prolonged regime uncertainty in Christchurch did not help. Many major property owners, having received insurance payouts, acquired new buildings in other parts of the country rather than rebuild in Christchurch.¹⁴⁷ The unseen flip side of capital flight is the discouragement of incoming capital.

The risk of regime uncertainty was flagged early in the response phase. Two months after the February earthquake, economist Gareth Kiernan warned that the "longer those surviving firms are away from the centre of town, the more difficult it will be to convince them to return."¹⁴⁸ A 2011 survey of business owners in the CBD also warned of regime uncertainty.¹⁴⁹ Specifically, respondents wanted assurances on:

- anticipated time frames to clear the city/commence rebuilds;
- anticipated time frames to reopen city streets/blocks to assist planning;
- anticipated time frames to demolish significant buildings whose ongoing presence precluded the recovery of specific city blocks;
- economic recovery strategies for small- and medium-sized businesses;
- precincts and implications of compliance and zoning regulations; and
- opportunities for a say in the CBD redevelopment to ensure common purpose and focus.

Judging by their track record, CERA, Christchurch City Council, and central government could not satisfy these needs. Regime uncertainty festered.

Another point is that the 'government knows best' bias can permeate bureaucracies. One insider privy to government discussions said:

Officials had a framework of demand certainty in their minds – use anchor projects to re-establish reasons for people to come back to the centre and develop the land. Officials had no concept of regime certainty – I don't recall security of property supporting investment being mentioned, and if it was it was a footnote. Zero awareness of limitations of bureaucracy; zero concern about overreach.¹⁵⁰

4.4 A sequence of delays

So why did it take so long to achieve the plans prescribed by the 2011 Act when CERA was empowered to sidestep bottlenecks?

Under normal situations, local government is tasked with developing district and regional plans. It did so after the February earthquake too, only the post-disaster environment was extraordinary. Christchurch City Council's headquarters are in the inner city and staff had to deal with the impact of the disasters on their personal lives.

¹⁴⁷ Liz McDonald, "Central city investors head north," *Stuff* (8 August 2014).

¹⁴⁸ Gareth Kiernan, "Christchurch's CBD Challenge," Blog post in Infometrics (8 April 2011).

¹⁴⁹ Brenda Snook and Toni Hannah, "New Beginnings – Christchurch CBD: Evolution from an Earthquake" (Christchurch: The Field Connection, 2011), 17.

¹⁵⁰ Confidential personal correspondence.

Table 2: Timeline of major planning events

April 2011	CERA Act 2011 is passed
May 2011	Share-an-Idea consultation begins
August 2011	Christchurch City Council Draft City Plan for the CBD is released for consultation
November 2011	General election; National Party forms a coalition government
December 2011	The revised Christchurch Draft Central City Plan is presented to Minister Brownlee
April 2012	Minister Brownlee announces the establishment of a Christchurch Central Development Unit (CCDU) within CERA to prepare a redevelopment Blueprint for the CBD within 100 days.
July 2012	The Christchurch Central Recovery Plan is launched, and comes into law
June 2013	Cost-sharing agreement between central and local government is announced; central city red zone status is removed
October 2013	CERA's An Accessible City transport plan is launched

Source: Bennett, Barnaby, et al. (eds). *Once in Lifetime: City-Building after Disaster in Christchurch* (Christchurch: Freerange Press, 2014), 10–11.

Still, the council proceeded with the mandate, launching Share-an-Idea, a public submission process that saw over 100,000 ideas submitted in six weeks. This input was used to prepare a draft plan for the CBD, which was put out for public consultation and then submitted to the government. It set out a vision for a modern ‘city in a garden’, complete with a planning rulebook. The plan featured public transit (light rail), cycle lane access, and environment friendly construction. These were to be complemented by major public projects, including an Olympic-size swimming centre, an indoor stadium, a convention centre, a library, and a performing arts venue.

Minister Brownlee and CERA reviewed the council’s draft Recovery Plan and its impact and funding implications, and decided it needed amending to be approved. The proposals were too light on implementation aspects, too prescriptive, and could increase land prices and discourage businesses from returning to the CBD.¹⁵¹

For better or worse, central government instead launched a further planning process, which produced a master plan for the CBD in just over three months. Based on the Share-an-Idea inputs, the now supersized plan consisted of several precincts, where certain types of businesses were expected to cluster. Anchor projects would form cornerstone developments, led by CERA, Christchurch City Council, and various ministries (see Box 5). It was estimated that the government would need to purchase 840 properties from owners, voluntarily or forcibly, to achieve its aim.

It took almost a year and a half to launch the CBD plan.

¹⁵¹ Roger Sutton, “Government response to the August draft of the Central City Plan” (CERA, 28 September 2011). It is also interesting to contrast this on-point critique with the later development of the south and east frames, the intention of which was to reduce downtown land supply – and bolster downtown land prices.

Box 5: Central City Plan vs Blueprint

Christchurch's Central City Plan

Following input from the Share-an-Idea consultative process, Christchurch City Council proposed turning the central city into a compact, green, modern city over a 20-year period. The final draft, Central City Plan, featured a city characterised by height-restricted development and high levels of public transport and pedestrian and cycle access. Efforts to make the city pedestrian friendly included grassing over Cathedral Square, developing laneways and courtyards, and encircling the city with a network of parks.

The plan was to turn Christchurch into a 'green city' with energy efficient buildings along tree-lined 'eco-streets'. Retail, cultural and health activities were to be clustered in 11 potential precincts. Commuter rail would link the city with New Brighton on the east and the airport on the west.

The council also committed to building key projects: the redevelopment of the Christchurch Convention Centre and the City Library, building a park on each side of the Avon River and the Metro Sports Facility, etc.

To attract development, the council rebated developer contributions on commercial projects within the CBD for five years, and paid a per-employee grant for businesses that returned their operations to the CBD. This offer was available to business locating the first 20,000 staff in the CBD.¹⁵²

Central government's Blueprint

The Blueprint used many themes from the draft Central City Plan, particularly a compact core for the central city, and mixed use: residential, commercial, retail and hospitality activities within the same area.

Under Blueprint, the CBD would be bound by 'frames' on the north, east and south and Ōtākaro/Avon River on the west to concentrate development. Just as with the draft Central City Plan, development would be encouraged by anchor projects. CERA, central ministries, Christchurch City Council, and the private sector undertook building various anchor projects.

The Blueprint was not short of scale and scope. It included: the anchor projects; the frames; Earthquake Memorial; Te Puna Ahurea Cultural Centre; Papa o Ōtākaro/Avon River Precinct; the Square; Retail Precinct; Convention Centre Precinct; Health Precinct; Justice and Emergency Services Precinct; Performing Arts Precinct; Central Library; Residential Demonstration Project; Metro Sports Facility; Stadium; Cricket Oval; Bus Interchange; and Innovation Precinct.

A noticeable difference between the draft Central City Plan and Blueprint was that central government abandoned many of the eco-building and height restrictions in the CBD, and the light rail network proposal. No developer incentives were offered under Blueprint.¹⁵³

But both plans suffered from too strong an emphasis on top-down control, which stymied bottom-up recovery efforts. Few questions were raised about whether the degree of control made sense, or whether the opportunity costs of the continued delay were worthwhile.

¹⁵² Christchurch City Council, "Central City Plan: Draft Central City Recovery Plan for Ministerial Approval" (2011).

¹⁵³ Christchurch City Council, "Christchurch Central Recovery Plan" (2011).



Source: Eric Crampton

Almost immediately the new plan ran into political problems. Central government's decision not to release Blueprint for public consultation drew criticism from the public, with some labelling it anti-democratic. This was more so because the city council's process had been highly consultative. As Jane Smith notes, "Perhaps the greatest disadvantage has been the lack of community involvement in the recovery since the CERA Act overrode the general legislative requirements to consult with the public over significant government and local authority projects."¹⁵⁴

The consultation process also drew criticism from the business community for not being sufficiently aware of commercial realities.

For example, the Innovation Precinct began as an excellent private-sector initiative. Technology entrepreneurs Wil McLellan and Colin Andersen saw an opportunity to co-locate displaced technology firms within shared premises to facilitate the cross-pollination of technology and business ideas.¹⁵⁵ The project drew support from Google, which lent it the services of Craig Nevill-Manning – a Kiwi engineering director at Google and experienced in ICT facility design.¹⁵⁶

But then, as the *Christchurch Press's* John McCrone reported, "The heavy micro-managing hand of bureaucracy descended."¹⁵⁷ The Innovation Precinct struggled to find tenants and faced significant delays. Only in June 2016, five years after the February earthquake, did the precinct secure its first anchor tenant.¹⁵⁸ ICT entrepreneur Stephen Judd commented:

¹⁵⁴ Barnaby Bennett, et al. (eds), *Once in Lifetime: City-Building after Disaster in Christchurch*, op. cit. 149.

¹⁵⁵ See John McCrone's excellent summary. John McCrone, "Is the city's blueprint dream evaporating?" *Stuff* (3 January 2014).

¹⁵⁶ Eric Crampton, co-author of this report, helped Wil McLellan get in touch with Google through its chief economist, Hal Varian, who had been a recent visitor to Canterbury's economics department. Google's assistance during the recovery is underappreciated.

¹⁵⁷ John McCrone, "Is the city's blueprint dream evaporating?" op. cit.

¹⁵⁸ Steven Joyce and Gerry Brownlee, "First anchor tenant opens in Christchurch Innovation Precinct," Press release (Wellington: New Zealand Government, 21 June 2016).

"New Zealand relies heavily on the set way of doing things. This presumably stems from an instinct to rely on the familiar under duress. This is understandable but not appropriate for restoring the economic and social functions of a disaster affected region"

The whole idea of an expensive shiny Innovation Precinct is flawed from the get-go. I expect it was someone's pet idea, and the reason plans are so late is that everyone knows it won't work but it can't be killed ... I feel this was about the precinct idea in general, but the tech sector is my turf and I know what particular part of the plan isn't working.¹⁵⁹

CCDU, the unit tasked with creating and fulfilling Blueprint, also struggled to articulate the new planning rules governing the CBD redevelopment.¹⁶⁰ The more blue sky in a city plan, the more complex and problematic it becomes.

Complex or not, it is a process that needed to be managed well, a test in which we feel CERA and CCDU did not do well. Their failure trapped CBD property owners in a planning grey area.

For instance, the owners of the Copthorne Hotel were ready to rebuild 757 days after the February earthquake. But CCDU could not or would not tell them whether a hotel was consistent with its vision of the Arts Precinct – where the hotel sat. Christchurch urgently needed hotel spaces, but the Copthorne was stymied.¹⁶¹

Would-be investors in the CBD were discouraged from starting inner city projects – an irony considering the rationale for precincts and anchor projects was to bolster confidence and attract investment. Other planning delays, such as with CERA's transport plan, and protracted cost-sharing negotiations between central and local government further increased uncertainty for property owners.¹⁶² All this was compounded by operational issues at CERA and CCDU (see Chapter 3).

4.5 A frank appraisal

New Zealand's poor planning arrangements infected the post-disaster plans in Christchurch – even though the 2011 Act specifically allowed central government and recovery authorities to sidestep the everyday constraints of the planning system.

Measured against the framework at the beginning of this chapter, the CBD planning process failed to facilitate private sector recovery. The plans were too prescriptive, blue sky, and remote from investor preferences and needs.¹⁶³

Nor was red tape adequately dealt with. New Zealand relies heavily on the set way of doing things. This presumably stems from an instinct to rely on the familiar under duress. This is understandable but not appropriate for restoring the economic and social functions of a disaster affected region.

¹⁵⁹ Barnaby Bennett, et al. (eds), *Once in Lifetime: City-Building after Disaster in Christchurch*, op. cit. 99.

¹⁶⁰ Sam Sachdeva and Michael Wright, "Councillor slams blueprint detail delay," *Stuff* (30 September 2012).

¹⁶¹ See Alan Wood, "Precinct plan puts hotel hopes in limbo," *Stuff* (19 March 2013) and Eric Crampton, "The Plan Against the Rebuild," op. cit. 307.

¹⁶² Sam Sachdeva and Michael Wright, "Councillor slams blueprint detail delay," op. cit.

¹⁶³ See, for example, Bob Jones, "Bob Jones says Chch CBD cannot be rebuilt," *Stuff* (28 September 2011).

"Rather than succumb to the temptation to take on too much, and fail, post-disaster planning should return to the fundamentals. A post-disaster city is not a game of SimCity"

The contrast between the convoluted planning processes today and in the 1930s gives cause for thought. A plan to rebuild the Napier CBD was issued for public discussion in December 1931, 10 months after the earthquake. Only a short time was given for submissions despite Christmas holidays. The Town Planning Board approved the rebuild plan in March 1932. Head Commissioner JS Barton said in June 1932 that while the destruction of the CBD was a golden opportunity to improve everything, two priorities curtailed such ambitions: the lack of finance given the Great Depression, and the imperative to restore business activity if the town was rebuilt at all.¹⁶⁴

A few facts illustrate the response to this imperative. Tin Town, comprising 32 temporary business premises and 22 commercial offices, was opened on 16 March 1931.¹⁶⁵ By March 1932, 19 new permanent shops were opened in the CBD. Two months later, Barton pledged opening 130 new permanent shops by year end. In January 1933, Napier held a town carnival to celebrate the rebuilt CBD. Tin Town was closed. In May 1933, the commissioners' role ended and a newly elected local council resumed normal powers. The rebuilding of the business sector continued through the 1930s.

The standout contrast between Napier and Christchurch is in the much greater focus in Napier on facilitating the resumption of commerce, and stopping blue sky thinking from snarling that objective. Christchurch's anchor projects represent a stark failure of process and concept.

In post-disaster environments, planning must be simplified, and decision-making decentralised. Besides the usual information and incentive problems that plague bureaucracy, agencies have limited ability to handle the substantial problems arising in a natural disaster. Rather than succumb to the temptation to take on too much, and fail, post-disaster planning should return to the fundamentals. A post-disaster city is not a game of SimCity.

4.6 Summary lessons

6. Focus on establishing regime certainty early in any recovery programme. Clarity about the basic rules of the game is critical for residents and for business. The best can be the enemy of the good, and a lengthy quest for the perfect plan can kill a city.
7. Anchor projects and precinct designations intended to restore certainty about eventual demand for downtown tenancies can easily instead create regime uncertainty for property owners in the affected area. They also consume massive amounts of bureaucratic and ministerial effort when other important decisions must be made. Both should be avoided.

¹⁶⁴ JS Barton, "The Re-Planning of Napier," *Community Planning* 2:3 (1932), 73–78.

¹⁶⁵ Tin Town also provided the inspiration for Christchurch's container business Re:Start Mall on Cashel Street. Tin Town opened just over a month after Napier's earthquake. The Cashel Street Re:Start Mall opened in October 2011 and may be wound up in 2017. Jamie Small, "Christchurch's Re:Start container mall may stay open until September," *The Christchurch Press* (24 January 2017).

CHAPTER 05

Ideas for doing better next time



The responsibility is not just to rebuild but to learn every possible lesson so as to improve our resilience as a country to future earthquakes.¹⁶⁶

"Our contribution is distinctive in its concern to guard against regulatory overreach and regime uncertainty, and that recovery planners should focus on 'how to facilitate private recovery and investment' instead of 'where we do we want private investment to occur.'"

So far, this report has focused on assessing the problems Christchurch citizens faced in three broad policy areas: insurance (EQC), recovery agency arrangements, and post-disaster planning.

This chapter draws lessons for responding better to a future major natural disaster, be it an earthquake, flood, cyclone, or volcanic eruption.

Our assessment draws on the facts, findings and lessons from many other reports. The government's website www.eqcrecoverylearning.org provides a cornucopia of material.

We acknowledge the National-led government's ongoing and active interest in this topic. A speech in January 2017 by the then Minister for the Environment listed 10 initiatives. These included a new earthquake prone building act; adding natural hazards to resource consent considerations in the RMA; a post-quake building reform act to better handle competing interests in damaged buildings; better training for engineers; more consistent building assessments; and better insurance arrangements. A National Policy Statement on natural hazards is being drafted.

Our recommendations align well with the thrust of the government's actions, and other mainstream suggestions. But our contribution is distinctive in its concern to guard against regulatory overreach and regime uncertainty, and that recovery planners should focus on "how to facilitate private recovery and investment" instead of "where we do we want private investment to occur."

5.1 Insurance (EQC)

Our analysis in Chapter 2 largely supports the assessments by officials and the insurance industry on desired changes, in particular:

- The EQC to no longer provide cover for content;
- Homeowners to interface solely with their private insurer, not the EQC, for any claims;
- Private insurers to do all claims assessment and sort out apportioning issues between themselves and the EQC without involving homeowners in the disputes;
- EQC cover to better align with private cover to reduce settlement and assessment disputes;
- EQC cap to be set at an adequate 'roof over the head within current living area' level using existing minimalist lot area rules; and
- Homeowners to be told to look to private insurers for top-up cover for insurance cover that 'makes them whole' or approaches that. (Mortgage lenders will make adequate insurance cover a condition of lending.)

If homeowners aren't given greater clarity, there is potential for disputes on whether the EQC will restore to a pre-earthquake or a "substantially as when new" condition. For example, an under-cap repair could nevertheless

¹⁶⁶ Nick Smith, "Better managing New Zealand's earthquake risks," op. cit.

Gap Filler transformed depressing post-quake vacant lots into arts space. This site, where the Cycle Trading Company was before the quake, became a Manchester Street monopoly board piece. Christchurch engineer Helen Trappitt came up with the idea, Dulux provided the paint, Blair Cunningham Construction waived the costs for the green monopoly houses and March Construction provided the excavator as board piece. Civil society filled the holes the earthquake left.



Source: Eric Crampton

cost substantially more if repaired to the private insurer's contracted terms than if completed to EQC's specifications. There, the private insurer should be liable for the cost difference. We also worry there may be contractual disputes if an earthquake causes substantial fire, for example if gas mains rupture. EQC may be liable for earthquake damage but not fire damage. Apportionment of damage may prove difficult. These kinds of issues should be resolved soon.

5.2 Parliamentary review

There is a broad agreement that the 2011 Act had many merits and some flaws (see Chapter 3). The Regulations Review Committee's recommendations could have reduced some of CERA's governance and operational issues. Delegated discretionary powers should not be used to take private property to benefit ill-justified anchor projects, bypassing customary checks and balances.

But the recommendations do not fix all the problems with CERA (Chapter 3) or planning (Chapter 4). The 2011 Act did not embody ongoing recovery or respecting and protecting private property rights.

Section 16(2) of the 2011 Act prescribed a recovery plan so general as to allow too much blue sky/SimCity/precinct thinking. That may have been partly why Christchurch got two recovery plans, neither of which focused on the essentials for efficient recovery.

A related shortcoming was the absence of a commensurately tight budget for the plans, one that precluded schemes such as the anchor projects from being slipped in and advanced without standard evaluation and contracting process disciplines.

Beyond this, Parliament should establish a blueprint for post-disaster recovery legislation. Minor tweaks can be made after a disaster. The legislation that creates a future CERA should allow it to focus on planning and overseeing recovery, and not get mired in operating activities, particularly when it is also a regulator.

5.3 Structural fit

Setting up CERA as a government department was expedient. Doing so avoided the *Crown Entities Act's* time-consuming requirements, including setting up an independent body and recruiting an independent board. It also ensured a high level of ministerial oversight of the agency. This choice of structure was largely undebated in 2011 given the urgency.

A Crown entity would allow greater independent oversight of a recovery authority's activities than with CERA. A common critique of CERA's governing legislation was that it vested too much power in the earthquake recovery minister. CERA was subject to yearly independent audits, but these did not curb its waning effectiveness.

The auditor-general's suggestion that the State Services Commission should formally assess and report on the organisational form of a future recovery organisation is welcome.¹⁶⁷ Officials and politicians should not have to decide that on the fly next time around.

Special care should be taken to specify the aims of a recovery agency. Poor specification saw the scope of CERA's activities expand significantly. This overloaded CERA and diluted its effectiveness.

5.4 Off-the-shelf

The Department of the Prime Minister and Cabinet has recommended that a recovery authority should establish service agreements to facilitate its internal control systems and processes.¹⁶⁸ The auditor-general has suggested charging the Ministry of Civil Defence and Emergency Management with ensuring this is already available when needed.¹⁶⁹

5.5 Local government

The disaster recovery literature emphasises incorporating local government into the process as soon as practical. Local government houses much of the technical expertise and place-specific knowledge needed for recovery. It is also best placed to consult with affected communities on what to rebuild, what are the priorities, and where trade-offs must occur. It also resumes responsibility when the recovery phase is over.

However, local government may not be well placed to manage these processes immediately after a disaster. A council's operations and staff are likely to be as affected by the disaster as private individuals and property owners. Staff would be dealing with response issues, anxious citizens, and vital infrastructure, and remain in a business-as-usual mode to administer rules and regulations.¹⁷⁰

¹⁶⁷ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit. 8.

¹⁶⁸ Department of the Prime Minister and Cabinet, "Whole of Government Report," op. cit. 36.

¹⁶⁹ Office of the Auditor-General, "Canterbury Earthquake Recovery Authority," op. cit. 8.

¹⁷⁰ Lianne Dalziel, "Rebuilding a broken city," *Stuff* (18 April 2012).

"Clearly, 'first best' would be competent and empowered local authorities and communities prior to any natural disaster. That is another story, albeit one of great interest to The New Zealand Initiative"

As with the 2011 Act, any legislative reform should assess local government capabilities related to recovery efforts. Councils with the capability and capacity to take on these tasks should be allowed to do so. Where local authorities cannot perform these functions, central government or a recovery authority should temporarily assume these roles. A precedent exists in the Civil Defence and Emergency Management legislation, where central government can confer powers on a person to perform or exercise those powers, or to cease to do so.¹⁷¹ Exercising such powers risks undermining feelings of local participation and democracy, and local institutional resilience. The experience with CERA and Blueprint illustrates how difficult these situations are.

Clearly, 'first best' would be competent and empowered local authorities and communities prior to any natural disaster. That is another story, albeit one of great interest to The New Zealand Initiative.

5.6 Planning after the worst

The central city Christchurch planning process was overly prolonged and the outcome overly ambitious. It was simultaneously insufficiently democratic and insufficiently respectful of property rights. The flaw was in a poor conception of how to facilitate private recovery. Investment was not freed up but directed into anchor projects. A plan inconsistent with commercial realities is doomed.

Much complexity and regime uncertainty arose from planning overreach. The concepts of precincts and anchor project indicated a lack of faith in the driver of all great cities – organic development.

Government direction must limit the scope of recovery agencies and secure their strategies and plans from becoming overly ambitious and uncommercial. Agencies should facilitate rather than suppress reconstruction.

Given the need for urgency and freedom to rebuild, recovery plans should not be too blue sky or prescriptive. Natural disasters may provide the opportunity to 'rebuild better', but post-disaster is not the time to start from scratch. Urban redevelopment such as changes to major traffic routes should be planned before a seismic event. After the event, that blueprint would be assessed and adapted for the specific opportunities offered by the new geological realities.

A tight timetable that is enforced and a limited budget for planned spending would prevent plans from becoming unwieldy and unrealistic. An open central government chequebook invites a local authority to develop 'nice to have' features at the expense of central government. Independent audits to ensure realistic funding provisions could guard against plan overreach.

We do not know what went wrong this time, given CERA's involvement in the central city plan and its closeness to the Recovery Minister. It looks like a communication failure, but perhaps central government was insufficiently clear at an early enough stage about what would be acceptable.

¹⁷¹ *Civil Defence Emergency Management Act 2002*, section 84.



Source: Eric Crampton

"Councils should consider greater pre-emptive disaster planning. Selwyn and Waimakariri were able to grow rapidly by bringing forward elements of their long-term plan, which incorporated room for growth"

A different structure for central government input may be welcome. Perhaps a recovery plan, with inputs from a process similar to Christchurch's successful Share-an-Idea, could be drafted by a planning body comprising central and local government representatives with an independent chair. A draft could go to the Recovery Minister before it is put to the local community for submissions.

Widely respected public representatives, at least some with commercial nous, could sit on the joint planning body. They could keep the wider public informed of progress and provide feedback to the planning body. Engaging the commercial community may reduce the risk of putting before the public commercially unrealistic if not counterproductive plans. This could help avoid a situation where central government rejects a plan that has been developed through the local community.

Alternatively, and preferably, councils should consider greater pre-emptive disaster planning. Selwyn and Waimakariri were able to grow rapidly by bringing forward elements of their long-term plan, which incorporated room for growth: Waimakariri had roughly 11 years of planned growth in three years.¹⁷² Adequate infrastructure and plans for growth reduce post-disaster planning difficulties.

¹⁷² Donald Ellis, Personal correspondence (June 2017).

5.7 Government as a builder

"Delays with anchor projects and their business cases, such as the Christchurch Convention Centre, spilled over into the planning process. Landowners affected by these projects had no regime certainty. This blocked both development and repair activities"

A post-disaster environment may pressurise central and local government to invest in development projects to bolster local economic activity and sentiment. This was largely the rationale behind the anchor projects in Christchurch. But delays and uncertainties over rules achieved the opposite.

The problems stem from CCDU being uncommercial, inside CERA, and both a rule maker and developer. These are fundamental design errors. Delays with anchor projects and their business cases, such as the Christchurch Convention Centre, spilled over into the planning process. Landowners affected by these projects had no regime certainty. This blocked both development and repair activities.

As a first best solution, central government should resist the urge to build anchor-type projects. Beyond infrastructure procurement, such as road construction services, central government has little commercial property expertise. These activities should be left to the private sector instead.

Mechanisms to make it easier for politicians to resist the pressure to spend beyond essential tasks include better protection for property rights, ensuring such projects cannot bypass standard public sector disciplines for cost-benefit justifications, and contracting processes.

Political pressure may make it impossible for central government to refrain from post-disaster stimulus. Public sentiment may compel the government to sanction stimulus projects. Such projects should be assigned to an agency with commercial expertise and independent of the planning or recovery agencies. This is to prevent delays in the government's building plans from wrecking the wider development and slowing the rebuild process. Ōtākaro, an agency tasked with delivering the Crown's anchor projects, did this to some degree. However, it was only set up in 2016 after CERA and CCDU's mandate had expired – five years after the February 2011 earthquake.

Ultimately, the principle should be that if government is to be a builder, it should be so on an equal footing with private sector developers.

5.8 Summary lessons

8. Councils should set long-term urban plans with disaster contingencies.
 - a. Planning adequately in advance for unexpected housing needs allows growth plans to be brought forward for new housing if disaster hits.
 - b. Some urban planning rules, like Christchurch's prohibition on secondary flats, are particularly costly post-disaster. Councils should check their existing planning laws for rules likely to be too costly to maintain in a post-disaster environment, and set triggers to automatically update remove them if a natural disaster occurs.
 - c. Urban redevelopment projects, like rerouting major traffic corridors or reconfiguring a downtown, should enjoy democratic deliberation prior to a natural disaster. They would need to be revisited after a disaster, as geological realities may intervene. But they then provide a focal point around which post-disaster plans can be established, and help provide regime certainty. And if they are planned in advance, appropriate cost-sharing arrangements between central and local government can also be set in advance.
9. EQC issues should never be relegated to the distant future, hoping the earthquake strikes under the some future government. The government should proceed with planned improvements to the EQC structure, but should watch for contractual uncertainties that will cause problems in the next disaster.
10. Post-disaster plans should recognise the importance of organic development within cities, and the importance of regime certainty to allow that development. Anchor projects and precinct designations can hinder that organic recovery.
11. Appropriate compensation for post-disaster takings, whether outright land confiscation or regulatory takings, can provide a constraint against planning over-reach.
12. Government should establish a framework for any post-disaster recovery agency, so the plans are ready to pull from the shelf and implement if disaster occurs.
13. If government proceeds with anchor projects in a post-disaster environment, there should be a separation between the planning functions and the building function. Delays in sourcing a contractor to provide an anchor project should not place the whole plan in limbo.

Conclusion

It is useful to compare the risks to life from earthquakes to other risks. Our history points to an average loss of three lives a year from earthquakes, as compared to 300 a year from road accidents, 120 a year from drowning and 30 a year from house fires.¹⁷³

"A fundamental failure was regime uncertainty due to government overreach in the transition from recovery to reconstruction. CERA got too involved in operational activities instead of focusing on overall strategy, management and coordination, and building capacity in the agencies that were going to take over its activities when it was wound up"

The Christchurch earthquakes presented local and central government and the insurance industry with massive challenges. The difficulties are reflected in the unfortunate experiences of many residents along the way, and the ongoing litigation.

Six years on, the nuanced picture is one of major achievements in the early phases, but increasing difficulties with the later recovery and reconstruction phases.

Many authoritative and insightful reports have been published on the experience, each drawing useful lessons. Much has been learnt. The changes in insurance arrangements as between the Christchurch and Kaikoura earthquakes are a standout example.

Yet, the Department of the Prime Minister and Cabinet's 2017 compilation of the lessons learnt misses important failures.

A fundamental failure was regime uncertainty due to government overreach in the transition from recovery to reconstruction. CERA got too involved in operational activities instead of focusing on overall strategy, management and coordination, and building capacity in the agencies that were going to take over its activities when it was wound up.

Situating CCDU within CERA was a governance mistake. CCDU's expertise was operational, not procurement or commercial. It had to become familiar with well-established methods for tapping into commercial expertise and capability.

But its very existence resulted from planning overreach. Precincts and anchor projects are not essential to recovery or reconstruction. They are add-ons of a contentious, distracting and counterproductive nature. Extraordinary situations and powers should not be used to allow anchor projects to bypass normal public sector scrutiny and approval processes. Nor should they be used to greatly impair land-use rights of affected property owners without compensation.

The critical call to make in revising spatial plans is the balance between organic, spontaneous private development and proscribed private development. Sustainable recovery depends on the location decisions of multitudinous individuals and firms. Where do they each decide to live and invest? Those decisions depend on what they are allowed to do, what essential infrastructure the authorities will supply, and what they perceive others will be doing.

¹⁷³ Nick Smith, "Better managing New Zealand's earthquake risks," op. cit.

"Precincts curb organic development; anchor projects compound regime uncertainty. A strong recommendation of this report is that in future natural disasters, there should be a presumption against the anchor project concept"

When the answers to these questions are unclear, individuals, firms and developers suffer from regime uncertainty. Precincts curb organic development; anchor projects compound regime uncertainty. A strong recommendation of this report is that in future natural disasters, there should be a presumption against the anchor project concept.

So why did the plans for Christchurch take this prescriptive path? Arguably, prescriptive planning has become part of the planning industry culture. Private investment is seen as something to be moulded to fit into a plan's prescriptions. But if it doesn't, the plan is at risk. So good planning should be focused the other way round. It should ascertain what are the broad investment needs of the commercial sector and focus on meeting those needs. Regime certainty will be one of those needs.

If this diagnosis is right, how can government overreach be prevented? We suggest strengthening legislative checks and balances on using extraordinary powers to deal with a natural disaster by:

- limiting the scope of recovery plans to guard against prescriptive blue sky/SimCity visions;
- restricting the use of extraordinary powers to take or impair land use rights to activities necessary for public safety, demolition, zoning designations, and essential infrastructure; and
- prescribing that consultation must include finding out from private developers, and the commercial community more generally, what is necessary to accelerate private recovery.

To be clear, the 2011 Act was largely fit for purpose. These are suggestions for tweaking it for the better. They propose no fundamental change.

In particular, we applaud the decision to establish a recovery authority with broad powers to circumvent the red tape tangle of New Zealand's planning system.

We also concur with empowering local communities through consultation and engagement. A striking conclusion from all the official reviews is that despite enormous efforts, more and better engagement was needed. Better indicators of progress needed to be identified, monitored and communicated. Public expectations of what would be achieved, and by when, need to be aligned with sober realities. Recovery is slow and painful. To rebuild a city takes more than a day.

POLICY RECOMMENDATIONS

Disaster preparedness

1. Central and local government should strive to provide early certainty about responses to natural disasters to better encourage recovery.
2. Central government should establish a pre-existing framework for any post-disaster recovery agency, so that the plans are ready to pull from the shelf and implement in the event of disaster. Governance structures must be fit for purpose, appropriately defined, and constrained.
3. Councils should set long-term plans with disaster contingencies.
 - a. Planning adequately in advance for unexpected housing needs allows growth plans to be brought forward for new housing if disaster hits.
 - b. Councils should identify in advance rules in existing plans that could unduly impede recovery and rebuild in a post-disaster environment. They should put triggers in place to automatically amend, suspend or remove them in the event of a natural disaster.
 - c. "Nice to have" urban redevelopment ideas, like rerouting major traffic corridors or reconfiguring a downtown, should be identified and consulted on prior to a natural disaster as part of normal planning processes. They would need to be revisited after a disaster, as geological realities may intervene. But they help provide regime certainty by setting pre-agreed baseline expectations. Appropriate cost-sharing arrangements between central and local government can also be set in advance.
4. Central government should follow through with proposed EQC changes that make private insurers the first port of call for claimants in major events, but strengthen audit procedures appropriately.
5. Central government should consider mechanisms like the Reserve Bank's Open Banking Resolution framework for failed insurers.

Post-disaster response

1. Recovery depends on decisions by multitudinous firms and individuals as to where to live, work and rebuild. Prolonged uncertainty about government plans can exacerbate the costs of a disaster. Early clarity post-event about what people can do with their property to recover is critical for residents and for business. The best can be the enemy of the good, and a lengthy quest for the perfect plan can kill a city.
 - a. Post-disaster plans should recognise not only the importance of clarity about infrastructure rebuild (roads and other essential utilities) but also the importance of regulatory (regime) certainty to aid organic development within cities.
 - b. A recovery agency should again be set up expeditiously. Again its structure should be to allow competent local authorities to play a full role while playing a more supportive role where needed.
 - c. Anchor projects and precinct designations should be avoided.
 - d. If government does proceed with anchor projects in a post-disaster environment, there should be a separation between the planning functions and the building function. Delays in sourcing a contractor to provide an anchor project should not place the whole plan in limbo.
2. Government should ensure any post-disaster emergency legislation incorporates provisions for takings based on the *Public Works Act* rather than bespoke measures
3. Government should quickly seek declaratory judgments in key test cases arising after a major disaster.

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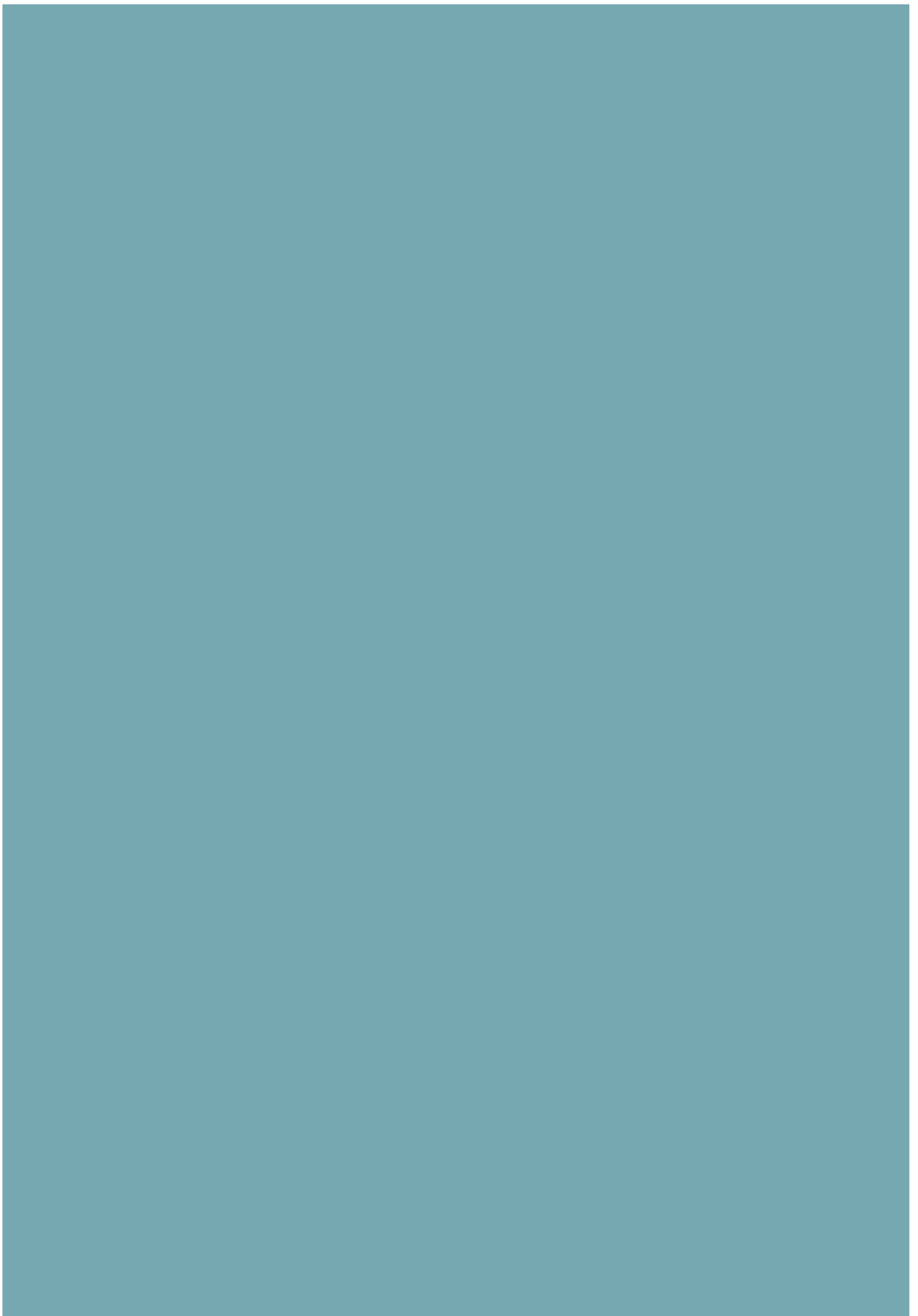
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Sadly, earthquakes are unavoidable. But New Zealand can avoid repeating the policy mistakes that slowed Christchurch's recovery and made life miserable for too many Christchurch residents.

A natural disaster is not an opportunity to play SimCity. Life is not a video game, and real cities do not have pause buttons allowing planners infinite time to think before the next move. Investors and property owners cannot be left to wait for years while government agencies bicker about which activities will be allowed where, which precincts will be developed, and which properties will be expropriated for anchor projects that might never eventuate.

And homeowners left in insurance limbo for years, not knowing whether the Earthquake Commission would let them pass their claim to their private insurer, faced often impossible situations.

Setting stable rules while on shaky ground is too hard a task. A sound framework set in advance of a disaster would make it easier post-event to quickly set the rules that allow homeowners and businesses get on with their lives. And that would better foster recovery.

Repeating Christchurch's mistakes would be a recipe for disaster. This report shows how to do better next time.

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