

Powers for the Minister for Canterbury Earthquake Recovery (and the Canterbury Earthquake Recovery Authority by delegation)

Power	Description of power (Who/What)	Application (Why)	Circumstances it would be likely to be applied (When/Where)	Benefits/Risk of allocating the power	Risk Mitigation
Throughout the existence of Minister/CERA					

NB the Act will carry forward current Orders in Council with extended timeframes as appropriate

The following powers will be exercised only as required

<p>Power to obtain information</p> <p><i>* This power will apply through all the activities of Minister/CERA</i></p>	<p>Minister able to obtain or require information from any source, including the commissioning of reports necessary for the recovery</p>	<p>Being able to obtain/generate whatever information is necessary for the purpose of preparing the Plan.</p>	<p>Engineering reports, demographic information, property information, insurance information.</p>	<p>Risks – concern about potential misuse of commercially-sensitive information Benefits – ability for Minister/CERA to obtain information it needs for ensuring recovery can proceed.</p>	<p>Similar to sections 76, 77 and 82 of the CDEM Act.</p>
<p>Power to investigate</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister able to investigate matters relating to the recovery effort</p>	<p>This could include commissioning new information, reports, interviewing people and consulting.</p>	<p>This could be used for a variety of purposes, such as whether buildings should be or should have been demolished.</p>		
<p>Powers of a body corporate</p>	<p>CERA to have powers of a body corporate</p>	<p>To be able to enter into contracts and “do” any activities assigned to it through legislation or Ministerial direction</p>	<p>The role of CERA will not just be a planning and oversight body. If it calls up powers or exercises powers it needs to be able to clearly undertake all aspects of those roles.</p>	<p>Avoids the necessity for an OIC at a later stage to clarify this point.</p>	

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<p>Power to erect temporary buildings</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister able to authorise the erection of temporary structures or buildings on public reserves, private land, roads and streets, and provide for their removal.</p>	<p>For housing or workers' accommodation, temporary offices/utilities.</p>	<p>Would allow temporary buildings to be erected, regardless of any land use restrictions. This would require Minister to ensure standards are met, in order for temporary buildings to occur (eg home owners may seek authorisation for temporary repairs or the erection of temporary dwellings).</p>	<p>Risks – The power is not limited to requisitioned and compensated land and therefore there may be costs for the owner</p> <p>Benefits – cutting through some regulatory barriers to facilitate temporary housing/offices etc</p>	<p>Minister would determine the extent to which safety requirements (health, fire, structural requirements) must still be complied with.</p>
<p>Powers to acquire, develop land</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister able to acquire, hold, develop and dispose of land (compulsorily or otherwise) for the purposes of the recovery. This will apply to both residential and commercial land.</p> <p>This power to acquire could be modified from Public Works Act style compulsory land acquisition powers that expedite process and would: take valuation off critical path, exclude or limit appeals on taking decisions, expressly allow resale and determine appropriate reference point for valuation (point of taking but valuations to not to include value impacts of Minister/CERA action – eg cancellation of rights/rezoning).</p> <p>Will need power of entry and removal.</p>	<p>Giving Minister the ability to shape the rebuilding, and prevent 'hold-out' by owners, and to break a deadlock with the council over land use.</p> <p>Provides mechanism for 'compensation' for loss of some rights – such as interests in land.</p> <p>Minister will also have designation powers and a related power to impose moratoria on specified activities in specified areas</p> <p>[NB Minister as "Minister of the Crown" has power of a requiring authority and designation powers]</p>	<p>Allows Minister to implement the Strategy and Plan/s whilst also avoiding issues of people wishing to remain in areas that have been re-zoned for other purposes.</p> <p>Eg - Libraries/parks/swimming pools – need to be demolished, relocated etc Eg - The land is unable to be remediated – so now only suitable for reserve so Minister may need to use another reserve for rebuild.</p>	<p>Risks</p> <ul style="list-style-type: none"> - delays through legal objections - delays through direct action - over use and mis-use offer back could defeat purpose of redevelopment or have unintended value outcomes <p>Benefits – speed up controversial decisions, to enable re-build ; provides more immediate certainty for the public; relieves the council of difficult public decision and potential liability issues. Enables immediate taking without appeal to facilitate urgent action and takes valuation off critical path (which allows due process and full appeal rights on value issues)</p>	<p>Clear statutory authority to act and purpose</p> <p>Consultation and well-publicised Strategy and Plan/s & supporting information.</p> <p>Have the power to encourage compliance without needing to use it.</p>

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	Needs to specifically address offer back separately for commercial and residential; process for discussions with Ngai Tahu.				
<p>Powers of entry and undertaking work, also powers to subdivide, with limited liability</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister to have powers to enter onto land, remove fixtures and fittings, perform work on land, construct structures on or under that land, maintain, leave and maintain structures on or under that land and register its interest in those structures. Power to use resurvey and re-subdivide to assist with land remediation. Liability for damage and nuisance (except through negligence) to be excluded	<p>To provide Minister with powers for inspecting and entering dangerous buildings. To facilitate land needs to be remediated, which may need to be on a wider basis than per section and for the benefit of third parties. Also need to appropriately prevent damage to any structures.</p> <p>Expediting the recovery is also important</p> <p>Related to section 222 of the Building Act and 171/173 of the Local Government Act</p>	As part of remediation efforts where more serious remediation steps (including land remediation) are needed	<p>Risks</p> <ul style="list-style-type: none"> - potential damage to property and infrastructure especially adjacent premises <p>Benefits</p> <ul style="list-style-type: none"> - is an existing power that local authorities have for other functions; power that is necessary for mitigating risk to public safety, and damage to property. - allows faster action using techniques that require cross-boundary application to enable people to return to safer land 	Clear process – attempting to make contact with the owner, before entering.

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<p>Power to undertake and commission works (including demolition)</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Building Act style demolition powers for commercial and possibly residential demolition project (both in CBD and suburbs). Extent of compensation (if any) needs to be determined, especially for adjacent undamaged buildings.</p> <p>Also may require Crown indemnities for demolition contractors and exclusions of liability for engineering advisors and adoption of contracts entered into by CCC for the Controller. Query ability to caveat or otherwise secure Crown interests for repayment of demolition costs</p> <p>A power to require land to be temporarily vacated (cf the Local Government Act) so work can be coordinated; this may involve demolition</p>	<p>Enable the rebuilding of Christchurch to occur in a coherent manner</p> <p>Reflects scale required and need to expedite demolition process.</p>	<p>Demolition would occur where building (or surrounding buildings) is/are unsafe, unsalvageable or otherwise inhibiting the rebuilding effort, but where Minister is not acquiring the land.</p> <p>This could be from immediately after handover from the National State of Emergency and until tasks completed (ie including post Strategy).</p> <p>Also where wide-scale land remediation needs to occur.</p>	<p>Risks</p> <ul style="list-style-type: none"> - commissioning & demolition costs. <p>Benefits</p> <ul style="list-style-type: none"> - enables safety issues to be dealt with quickly in managed way - more rapid re-opening and redevelopment of affected areas - coordination of activities, management of risk, reduction of cost and disruption (including transport) - development of better waste options - Liability resulting from claims for loss or damage. - Delay from the above or from cumbersome legislative requirements - Controversy over heritage and other decisions - Crown pays all demolition costs 	<p>Risk Mitigation</p> <ul style="list-style-type: none"> - caveat/lien right to recover demolition costs - specify exclusions and limitations of liability - clarity of statutory powers and processes - exclusions of appeals except on quantum (where allowed and after the event) - effective communications - compensation separated from taking or requirement to vacate
<p>Power to close roads</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister able to close roads and divert traffic</p>	<p>To enable works to occur rapidly/efficiently, without interference. May allow for residents to access property, where needed.</p>	<p>Where necessary to lay underground services, demolish buildings, etc.</p>	<p>Risks – Inconvenience to residents, and other road-users.</p> <p>Benefits – speed, enabling sequencing of works.</p>	<p>Notification and planning.</p>

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<p>Power to stop roads</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister has power to stop roads	To end the legal existence of a road.	For example, where one wishes to replace a road with a reserve or a building site		
<p>Power to restrict access</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister able to restrict access to specified areas and buildings	For safety, public order, and work-flow management.	Most likely when undertaking demolition, or building work.	<p>Risks – inconvenience for public in terms of access to property.</p> <p>Benefits – Speed, crime-prevention, enables privacy for residents in areas that used to be public places but now used for housing.</p>	Notification and planning.
<p>Power to require consent to survey definition of land</p> <p><i>* This power will apply through all the activities of Minister /CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister able to direct Registrar-General of Lands to seek adjacent owner/s consent to new survey definition of parcels of land within a certain time period and, if no consent is forthcoming, to move into truncated dispute resolution process.	Survey redefinition of a parcel, where previously straight line boundary line has become a crooked or stepped boundary line due to deep seated ground movement; or where liquefaction has resulted in reasonably uniform surface movement of land assets in relation to boundaries.	Eg - Properties lying across or immediately adjacent to the fault trace in the plains west of Rolleston. The Rules for Cadastral Survey (Canterbury Earthquake) 2010 which came into force on 31 January 2011 make provision for survey definition of previously straight boundaries that became bent or stepped as a result of the 4 th September 2010 event. Survey definitions in terms of these Rules can, however, be disputed by adjoining owners which would delay any recovery works dependent on survey definition.	The benefit of adding this power is that otherwise the Crown cannot guarantee title under LTA if there is possibility adjoining owners could in future prove their ownership of part of the land.	

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			Eg - Properties affected by broad liquefaction due to either the 4 September 2010 or 22 February 2011 events. This may include properties in Kaiapoi. The Rules for Cadastral Survey (Canterbury Earthquake) 2010 which came into force on 31 January 2014 confirm common law which would restore these boundaries to their original position. However it may be more practical to move boundaries where reasonably uniform surface movement has occurred.		
<p>Power to require land title changes</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister able to direct Registrar-General of Land (RGL) to issue titles limited as to parcels where property boundaries materially affected by earthquake movement are being redefined (by the deposit of a new survey plan under s167 of the Land Transfer Act) upon the application of a landowner or CERA, without having been approved by adjoining owners or consented to by existing registered lessees, mortgagees (etc).	A modification to the requirements of s 167 of the Land Transfer Act 1952 (LTA) would assist the timely redefinition of property boundaries while preserving the rights of adjoining landowners, by enabling the RGL to issue titles limited as to parcels where necessary.	The Minister or landowner may apply to deposit a plan to redefine property boundaries materially affected by earthquake movement in circumstances where the usual common law principles of boundary definition are not being followed and where adjoining owners or other holders of registered interests are unavailable or unwilling to consent or agree.		Option to tie into compensation and appeals

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<p>Power to require surveys with new survey definitions to be approved by CE of LINZ</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister to have the power to direct the CE of LINZ to approve surveys that have new survey definitions as above</p> <p>The Minister only to exercise this power after consultation with the SG to examine the future or unintended consequences for other landowners.</p>	<p>Currently, any survey that is not consistent with the Rules for Cadastral Survey 2010 is required to be refused approval by those holding the CEs delegation. Provision needs to be made to allow for appropriate surveys to be approved where the only deficiency is a failure to follow common law principles for survey definition.</p>	<p>When a survey with new parcel definitions is required as above</p>	<p>The benefit is that this gives administrative effect to the legal aspects of the decision above.</p>	<p>Clear wording is required to ensure that any surveys that are deficient for other reasons are not captured in this direction</p>
<p>Power to remove right of land owner to consent to title change</p> <p><i>* This power will apply through all the activities of CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister to have power to disapply application of s 205(4) of the LTA which allows an adjacent owner or occupier of land who did not consent to deposit of the relevant plan to lodge a caveat, notifying their claim to title for part of the redefined land.</p>	<p>Such a caveat would not prevent the landowner from transferring, mortgaging or otherwise dealing with their limited title, but would prevent any further development involving subdivision or the provision of fully guaranteed title.</p>	<p>This power could be used to prevent adjoining owners or occupiers in an area under redevelopment to lodge caveats and thereby hold up development/or hold-out on the basis that they have not provided their consent to the redefinition of the parcel.</p>	<p>The risk is that this will be seen as a derogation of the powers that adjacent property owners and occupiers have under statute, raising the question of whether it would be regarded as an interference with their rights and whether it is compensable.</p>	<p>A broad power of disapplication of s 205(4) in a defined and redevelopment area.</p>
<p>Ability to assume regulatory and management responsibilities</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	<p>Minister able to assume specific regulatory responsibilities (in whole or part)</p> <p>Minister able to assume management of specific council services (infrastructure services)</p>	<p>Delays in progress and/or poor performance is threatening integration and sequencing of rebuild; market confidence declining.</p> <p>(This may be able to be managed in drafting as OIC or by the call in power)</p>	<p>Building and resource consents not being issued in a timely manner and there is a need to speed this up.</p> <p>Infrastructure not being rebuilt quickly and in desirable sequence.</p>	<p>Risks – Minister having to take on more functions.</p> <p>Benefits – faster rebuild; restoration of normal community activity; increased market confidence (faster).</p>	<p>Work with councils to improve performance before exercising power.</p> <p>Ensuring Minister has the right expertise available at the right time to avoid delays.</p>

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<p>Power to direct</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister able to direct any natural person, local authority or council organisation to take any action necessary to achieve the purpose of the Act and the functions conferred on the Minister under the Act.	<p>This could include the power to direct electricity and telecommunications providers to erect temporary infrastructure, or to sequence their activities</p> <p>(This may be able to be managed in drafting as OIC or by the call in power)</p>	This could include direction with regard to sequencing or the provision of particular services in geographic areas	<p>Risks – this could be viewed as too directive.</p> <p>Benefits – this includes certainty for the greater Christchurch resident and business, enhanced co-ordination and efficiency</p>	<p>Work with councils to improve performance before exercising power.</p> <p>After the Plans are in place any direction would be about giving better effect to the Plans.</p>
<p>Power to require action to be stopped</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister able to direct any person, local authority or government agency to stop taking any action (eg cease and desist notice) or making a decision that is contrary to the purpose of the Act and the functions conferred on the Minister under the Act.	<p>To stop actions which undermine the planned strategy.</p> <p>(This may be able to be managed in drafting as OIC or by the call in power – eg amending existing requiring/designation powers or consents)</p>	People progressing building work in an unsequenced way, or in a place that is no longer zoned for the purpose. Could be applied where Minister needs to close a specific area for a purpose of achieving the Plan. This will have costs to users of that area.	<p>Risks – this could be viewed as too directive.</p> <p>Benefits – ensure Plan/s may be implemented without interference.</p>	Work with councils to improve performance before exercising power.
<p>Power to disseminate information</p> <p><i>* This power will apply through all the activities of Minister/CERA, although it will be bounded by the Strategy and the Recovery Plans once these are approved</i></p>	Minister able to disseminate information about infrastructure and other property, and community services, damaged or otherwise affected.	Cf powers under CDEM Act (s.9(2)(f), Conservation Act (s.53) etc			

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Immediate Recovery Actions (Pre-Strategy or Plans)					
Requirement to approve some local authority expenditure	Minister able to approve local government contract, over a certain threshold etc, if necessary (eg Auckland Transition Agency had a similar power); circumstances and thresholds for this power to be determined by OIC or call in power	To stop councils entering into significant commitment which may impact on the delivery of the recovery strategy and plans (This may be able to be managed in drafting as OIC or by the call in power)	Contract being anticipated where the cost of the contract is over a certain dollar threshold (i.e. \$500k) and/or time commitment (greater than 1 year). Eg Council proposes to let contract for the rebuilding of the QEI pool, Minister considers relocation of the pool may be a better option.	Risks - unclear process – councils left hanging and unable to act; delays affect normal business. Benefit – reduces risk of binding contracts being entered into that compromise recovery effort.	Minister to agree and disseminate protocols early on. Participation of all parties in development of Strategy and Recovery Plan/s.
Power to suspend plans and policies	Minister able to suspend, amend, cancel, delay, council's plans and policies (eg development contributions policies)	Where existing plans are in conflict Policies are not aligned with rebuilding effort Sequencing in planning instruments requires delay or alteration to statutory processes. Plans are in conflict and don't give confidence to market/developers (This may be able to be managed in drafting as OIC or by the call in power)	Councils are legislatively required to give effect to existing plans/policy or undertake actions, which don't fit or align with the rebuild effort.	Risks – change to process slow, ensure appropriate resources deployed. Benefit – greater alignment of plans/policies with rebuild; improved confidence	Decisions to be notified publicly.

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Developing and approving the Strategy (and its plans)					
Approval of strategy	CERA to prepare Recovery Strategy. Minister to approve the Recovery Strategy (to provide a high-level purpose for the recovery and guide the development of Plans), following consultation with Cabinet. This could be notified either by Order in Council or Gazette; to have a status that all Plans must give effect to the Strategy.	Minister has overall responsibility for the coordination of the earthquake recovery effort throughout the period of this Act.	Notification ensures that it is clear the version of the strategy that has force.	Risk – might differ from expectations set in existing statutory plans. Benefit – will provide clarity for all involved in recovery.	Public consultation. Consultation with Cabinet enables the Minister to be satisfied that Recovery Strategy achieves Government's intentions for the recovery.
Status of Recovery Plan/s provisions	Recovery Plans approved by Minister will be deemed to be provisions of plans made under other statutes and incorporated into those plans without further formal statutory process.	To ensure provisions in Recovery Plan/s have appropriate legal status and weighting long term (eg consents issued under the Plans live beyond the life of the legislation).	Where a Recovery Plan/s has already involved public participation and approval by the Minister.	Risk – parties affected by the Recovery Plan/s provisions may not be aware of the implications Recovery Plan/s provisions to be read in the context of wider statutory plan provisions which, had they been developed at the same time as that Plan, they would have been part of. Provides for provisions of the Recovery Plan/s to have a life beyond that of legislation.	Deeming allows such provisions to be incorporated into statutory plans in a quick, relatively low-cost way. Deeming powers only apply where a Recovery Plan/s has been subject to a public participation process, and therefore a public notification process. The Recovery Plan/s will be required to identify the provisions that are to be incorporated into other statutory plans.

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Developing and Approving Recovery Plans (Plans)					
Power to define process for plans	Minister able to direct who will prepare Recovery Plans and the process to be followed based on criteria : <ul style="list-style-type: none"> - Needs of the recovery plan, - needs of people affected, - the need to act expeditiously, - impact and the effect of the Recovery Plan/s 	Need to engage other agencies (eg council or private providers) that are likely to have the primary functions, resources or skills to prepare and implement all the possible areas where a Recovery Plan/s may be needed to coordinate works or programmes. Minister/CERA not the owner or operator of many key infrastructural assets.	Providing direction and coordination for the establishment of a new urban areas or the redesign of those that are damaged. Ensuring the timely and coordinated restoration, modification, relocation or extension of infrastructure. Enables some issues to be dealt with expeditiously of delay would frustrate wider recovery effort.	Means that aspects that can be planned for and implemented quickly. Enables those who know most about a particular recovery need or asset to prepare the plan. Risk of overlaps between plans, or lack of cohesion.	Criteria provided for Minister to determine who and how plan shall be prepared. All plans must be consistent with the vision and objectives of the Recovery Strategy Plans must take into account other plans to the extent practicable. Minister must maintain a Schedule of Plan/s
Power to approve commencement of plans	Minister able to approve whole or part of a Recovery Plan/s should have immediate effect	Some parts of a Recovery Plan/s may need to have immediate effect, for example on the consent process, depending on the nature of the issue addressed	When the broader Recovery effort requires immediate action in one area.	Recovery Plans need to be able to have immediate effect so that the direction provided in the plan can immediately influence consent decisions and achieve outcomes on the ground Recovery plans with immediate effect will impact on existing rights	Public and sector engagement in development of plan/s, where possible

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Approval of Recovery Plans	Minister approve Recovery Plans and effect to be given by Order in Council Minister may first seek independent advice on the proposed plans	The Minister has overall responsibility for the coordination of the earthquake recovery effort. Approval of plans ensures they align with the Recovery Strategy.	Approval is required for all Recovery Plans to have status provided by legislation.	A means to ensure Recovery Plans align with the Recovery Strategy. Provides transparency and aligns with Minister's accountability	

Implementing the Strategy and its plans

Power to call up functions and powers	Minister able to 'call-up' functions and associated powers from local authorities or council organisation or natural persons.	Only used if necessary to achieve the purposes of the Act or where a body is not performing its role/functions in the recovery process.	A local government agency is performing poorly in the reconstruction of buildings/assets for which it is responsible, and this is affecting the sequencing of rebuilding.	Risks – resources diverted to taking over the performance of the power. Benefits – speed, implementing Plan/s according to Recovery Strategy.	Participation of all parties in development of Strategy and Recovery Plan/s. Develop clear process as to how the power is used.
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Monitoring the Strategy and Plans

Monitoring effect of legislation overall progress and progress of strategy and plans	Minister to monitor overall effect of the legislation CERA and councils to monitor the Recovery Strategy and Plans, and report to Minister	A power to give a "yellow card" before a "red card" ie the power to call up.			
Monitoring progress of individual plans	Other entities involved in preparation of Recovery Plans expected to have a role in monitoring effect of Plans	Report to Minister/CERA			

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Transitioning back to BAU					
Direction of changes and amendments to statutory plans	Those responsible for preparing Recovery Plans may recommend that the Minister direct that statutory plans be changed or amended according to the applicable statutory processes to give effect to the Recovery Plan/s (to the extent practicable)	To ensure provisions in the Strategy and Recovery Plans have appropriate legal status and weighting long term (beyond the life of the legislation).	Where a Recovery Plan/s prepared by any entity is prepared with provisions that would otherwise have been incorporated into a given statutory plan has been approved by the Minister and; <ul style="list-style-type: none"> a) Has not been prepared by Minister/CERA or a council; or b) Has been prepared by Minister/CERA or a Council but not subject to a public participation process. 	Provides for provisions of the Recovery Strategy and Recovery Plans to have a life beyond that of legislation. Recovery Strategy and Recovery Plans provisions able to be read in the context of wider statutory plan provisions which, had they been developed at the same time as that plan, they would have been part of.	Risk - Incorporation process into statutory plans via normal mechanisms could take considerable time and cost Mitigation – Orders in Council could provide for a truncated process.

Released by the Minister for Canterbury Northquake