

Compensation Claims Determination Process

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Disclaimer

The information in this publication may change over time. Please refer to the CERA website at www.cera.govt.nz for up-to-date information, or contact **0800 RING CERA (0800 7464 2372)**.

Introduction

This information booklet has been provided to you by the Canterbury Earthquake Recovery Authority (CERA) to inform you about the process to be followed in determining compensation claims pursuant to the Canterbury Earthquake Recovery Act 2011 (CER Act).

The information contained in this booklet is general in nature and is not a substitute for independent legal advice. You should seek independent legal advice and any other professional advice as appropriate.

Compensation Claims Determination Process

The CER Act provides for the acquisition of land by agreement and by compulsion. While the Crown's preference is to acquire land by agreement wherever possible, it is recognised that in some cases the parties may not be able to reach agreement on terms that are acceptable to everyone. In such cases it may be necessary for the Crown to compulsorily acquire land through the exercise of powers held by the Minister for Canterbury Earthquake Recovery (Minister) under section 55 of the CER Act.

Any person who suffers loss resulting from the compulsory acquisition of land is entitled to compensation from the Crown. Details about this type of compensation have been explained previously in the CERA publication "Landowners Information When Land is Acquired by Compulsory Acquisition".

Compensation is also available if CERA demolishes a non-dangerous building (section 40 of the CER Act) or negligently causes damage to other property during a demolition (section 41 of the CER Act).

Before the Minister makes a final decision on claims for compensation, he must give claimants a reasonable opportunity to make representations to him (or his delegate) in person as to the nature of the claim and the amount of compensation payable.

Once the Minister has made his decision, the claimant has a right of appeal to the High Court, and then subsequently to the Court of Appeal and Supreme Court (sections 68 to 70 of the CER Act).

Given the technical issues likely to arise in compensation claims the Minister has established the Canterbury Earthquake Compensation Panel comprised of three experts who will provide the Minister with advice and recommendations on claims.

The three person Compensation Panel is comprised of Malcolm Parker (Chairperson) from Waikanae near Wellington (former Crown lawyer), John Hardie from Christchurch (barrister) and William Bunt from Wellington (valuer).

This booklet contains information about:

1. The process for determining claims for compensation under the CER Act;
2. The Compensation Panel; and
3. Terms of Reference for the Compensation Panel and Panel Membership Role Description.

Process for Determining Claims for Compensation under the CER Act

1. Claims for compensation under the CER Act can be made in respect of:
 - a. Demolition of a non-dangerous building (section 40);
 - b. Demolition causing negligent physical loss or damage to other property (section 41);
 - c. Compulsory acquisition of land (section 60(a)).
2. A claim for compensation must be lodged within two years of the event giving rise to compensation, using the claim form provided by CERA. The Minister must ensure that claims for compensation are determined within a reasonable period (section 65).
3. The claim form and supporting information will be reviewed by CERA. If there is insufficient information to support the claim, claimants will be advised the claim form has not been properly completed and given the opportunity to provide further information. When submitting a claim, the claimant must advise whether the claimant wishes to appear before the Minister or his delegate to make representations on the claim.
4. Any other interested parties with related claims who have not yet lodged a claim will be identified and encouraged to submit a claim (so that all related claims can be considered together, if possible).
5. Any additional information required to respond to aspects of the claim (e.g. accounting advice on business loss claims or insurance advice), will be sought by CERA and provided to the claimant prior to any appearance before the Minister.
6. A panel of experts (comprised of two lawyers and a valuer) (the Panel) has been established to provide advice and recommendations to the Minister on compensation claims. The Panel is not an independent body. It has been established to support the Minister. Where required, the Panel will sit with the Minister or his delegate when a claimant and/or the claimant's representative(s) (which may include a lawyer, accountant or other expert) appear in person to make representations.
7. A report to the Minister and the Panel will be prepared by CERA officials setting out relevant background, identifying the issues and enclosing all relevant documentation. A copy of the report will be provided to the claimant who will be given an opportunity to comment.
8. If a claimant wishes to make representations to the Minister in person, a date will be set and the claimant will be encouraged to provide written submissions in advance of the meeting (such submissions to include any response to the report referred to in paragraph 7 above).
9. If new matters are raised by the claimant in any written submissions, CERA will assess whether a response is required before the meeting. Any response from CERA will be provided to the claimant prior to the meeting.
10. At the meeting with the claimant, the claimant and/or the claimant's representative(s) will have the opportunity to make oral representations to the Minister and the Panel.
11. CERA officials will not normally take an active part in the meeting, but the Crown's advisors will be in attendance to answer questions from the Minister and the Panel as required (e.g. valuer, insurance expert, accountant). Cases involving more complex issues may require input from CERA officials and advisors.

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12. Evidence will not be given on oath and cross-examination will not be permitted. However, the Minister or his delegate and the Panel members will be able to ask questions of the claimant, the claimant's representative(s) or the Crown's advisors.
 13. CERA officials, in conjunction with the Panel, will prepare a further report to the Minister summarising the representations made at the meeting and any additional issues that may have arisen subsequent to the first report referred to in paragraph 7. The Panel will prepare a draft recommendation to the Minister.
 14. The claimant will be provided with a copy of the further report and the Panel's draft recommendation to the Minister for comment. After consideration of any comments from the claimant, the further report and a final recommendation will be provided to the Minister.
 15. Where a claimant declines the opportunity to meet with the Minister and the Panel to make representations, the Panel will prepare a draft recommendation to the Minister, which will be provided to the claimant for comment. After consideration of any comments from the claimant, a final recommendation will be provided to the Minister.
 16. The Minister will make his decision, subject to any further questions he may have of the Panel and/or the claimant.

The Canterbury Earthquake Compensation Panel

The Canterbury Earthquake Compensation Panel is comprised of three experts, Malcolm Parker (Chairperson) from Waikanae near Wellington (former Crown lawyer), John Hardie from Christchurch (barrister) and William (Bill) Bunt from Wellington (valuer).

Malcolm worked in the Crown Law Office for over 20 years as Crown Counsel for the Natural Resources Team and was a previous partner of East Brewster Parker & Co – Rotorua. He has specialist knowledge of the Public Works Act 1981. Malcolm is now a barrister sole.

John is highly experienced in combining mediation work with legal areas. He has a thorough knowledge of contract, tort, commercial, estate and environmental law. John also worked for the Government dealing with weathertight home issues since the inception of the Weathertight Homes Tribunal and Mediation Service in 2002. He is currently a mediator and barrister sole.

Bill has significant experience in valuation work, with over 30 years in the industry including valuation of commercial and industrial assets, leasehold and development land plus a wide range of hotel and leisure related properties. Bill's expertise includes acquisition advice and compensation and betterment assessments. Bill has provided services to various territorial authorities, Transpower and the Land Transport Safety Authority. Bill currently works for CBRE New Zealand in Wellington.

Terms of Reference for the Canterbury Earthquake Compensation Panel and Panel Membership Role Description

Purpose

The Canterbury Earthquake Compensation Panel (the Panel) has been established to advise and make recommendations to the Minister on compensation claims made under the CER Act.

Background to role

When a claim for compensation is made under the CER Act, the Minister is required to determine whether compensation is payable and the amount of compensation to be paid (section 64(1) CER Act). The Minister is required to determine compensation within a reasonable period (section 65 CER Act).

Functions of the Panel

The role of the Panel is to review all claims for compensation referred to it and to provide advice and make a recommendation to the Minister on whether compensation is payable and, if so, the level of compensation to be paid. The Panel members will also attend the meetings between the claimants and the Minister (or the Minister's delegate) to hear the claimants' representations and ask the claimants any questions as is necessary.

The Minister will determine the claims for compensation.

The specific functions of the Panel will be to:

- review and consider all written documentation and evidence provided to it;
- consider representations from claimants and their representatives;
- consider what is eligible for compensation in terms of section 61 of the CER Act;
- reach a joint decision to recommend to the Minister whether or not compensation is considered to be payable and the amount that should be paid;
- prepare a draft written recommendation to be provided to the claimant for comment;
- finalise the recommendation and provide it to the Minister; and
- answer any questions the Minister may have.

Members of the Panel are expected to:

- contribute their experience, skills and knowledge to the discussions;
- work collaboratively and by consensus;
- declare any conflict of interest, or potential conflicts of interest, that may arise;
- offer advice that is objective and unbiased; and
- adhere to the highest ethical standards.

The Chair of the Panel is expected to, in addition to the above:

- chair meetings;
- organise the agenda with the assistance of a CERA secretariat; and
- ensure Panel recommendations are communicated in writing to the Minister.

The quorum for the Panel is two, but it is expected that the Panel will normally be three members.

Accountabilities

The Panel has no statutory function under the CER Act. However, Panel members are accountable to the Minister.

Replacement of Panel members

Panel members may be replaced if:

- a. they are no longer able to assist due to other commitments;
- b. the Minister considers in his sole discretion that there is a conflict of interest (perceived, potential or actual) which cannot be managed; or
- c. the Minister considers in his sole discretion that a member is not performing the role for which they were appointed to a satisfactory standard.

In the case of an unmanageable conflict of interest or non-performance, CERA will discuss resignation with the Panel member and act to identify a replacement Panel member.

Key relationships

The Panel will be supported by the CERA offices in Christchurch in regards to scheduling hearings, administrative issues and preparing written advice and recommendations on the payment of compensation claims to the Minister. They will not have any other significant relationships.

Conflict of Interests

An interest arises where a person has a financial, familial or other personal interest in a matter that could give rise to bias or the appearance of bias in the work of an agency. Considering the nature of the work of the Panel, the members will be asked to certify from time to time that neither they, nor their family are affected by the compensation claim in question, and that any related companies have not been involved in any matters relating to the claim in question. Should a conflict of interest arise, the affected Panel member will step aside from deliberations in relation to the claim in question.

Approach

Panel members are expected to undertake this work with impartiality, basing advice and recommendations on the materials and representations provided to them and the requirements of the CER Act (and the compensation requirements of the Public Works Act 1981). Panel members are expected to come to a joint decision with all Panel members on recommendations, which will be documented.

Important contact information

Phone numbers

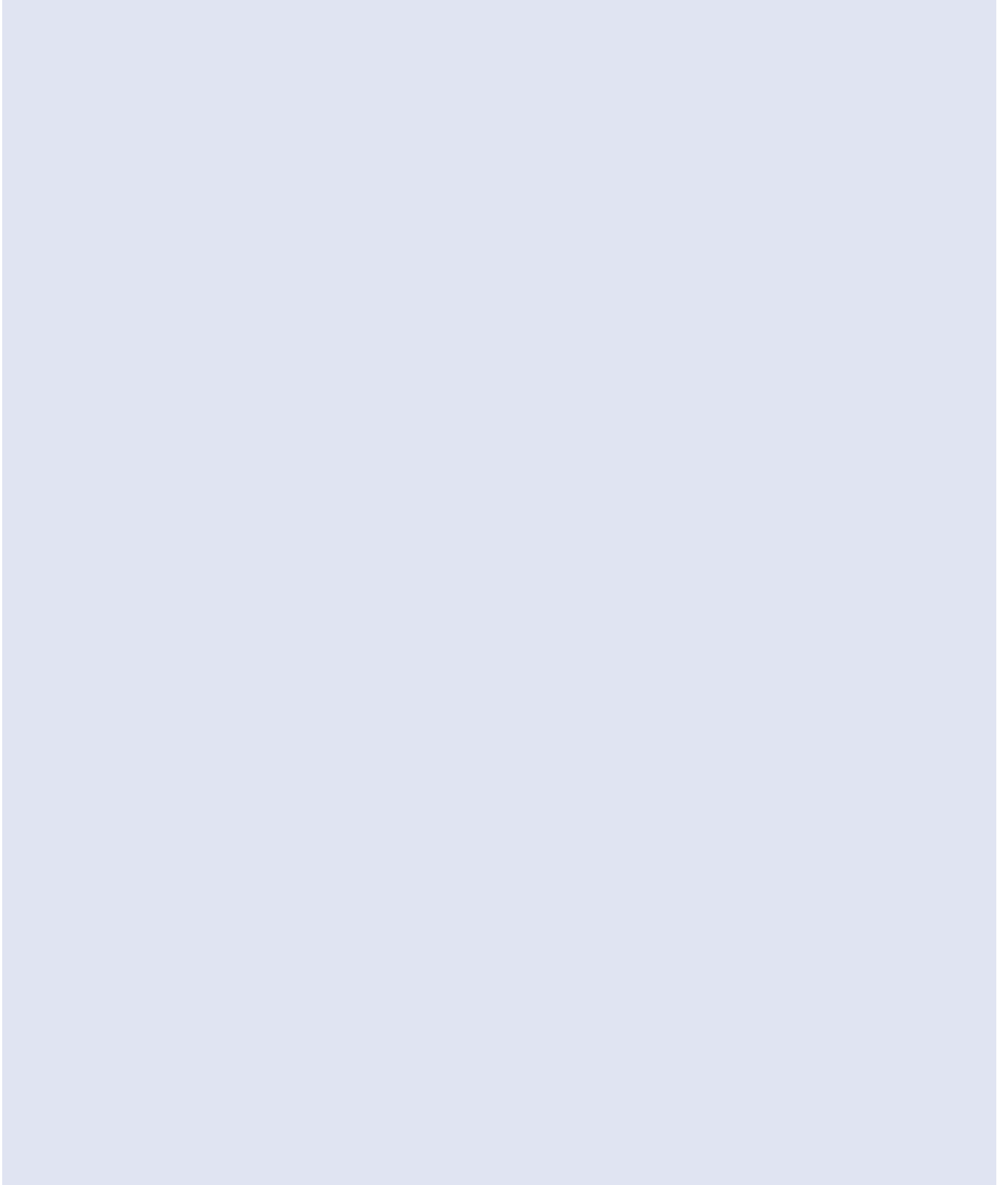
CERA (general enquiries)	0800 7464 2372
The Property Group Limited (Crown Agent).....	03 363 5901
Canterbury Support Line (8am–11pm, 7 days).....	0800 777 846

Websites

All information.....	www.cera.govt.nz
CCDU	www.ccd�.govt.nz/land-acquisition

Emails

CERA	info@cera.govt.nz
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The Property Group Limited (Crown Agent).....	ccdu@propertygroup.co.nz



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