

The Christchurch Central Recovery Plan



The redevelopment of the central city of Christchurch is an opportunity unlikely to be seen again in several lifetimes. While the redevelopment project promises many exciting investment opportunities it also creates much uncertainty for affected land owners.

The Christchurch Central Development Unit ("CCDU") was tasked with producing a blueprint for Christchurch's Central Business District ("CBD"). After 103 days of operation CCDU revealed the Recovery Plan to the public and legal effect was given to that plan by Gazette Notice dated 31 July 2012.

The Recovery Plan provides a binding framework for the redevelopment of the CBD. The key objective is to regenerate the CBD by creating:

- A smaller Central City Business Zone comprising commercial, retail, hospitality and residential developments ("the Core");
- An open space frame bordering the Core ("the Frame");
- Mixed Use Zone outside of the Frame including a large format retail area;
- Seventeen anchor projects.

Anchor Projects

The seventeen anchor projects are a mixture of civic facilities and other initiatives designed to kick start the central city rebuild.

The operation of the Canterbury Earthquake Recovery Act ("CER Act") has enabled the Minister to truncate the process of designating land under the Resource Management Act 1991. Most of the land required for the anchor projects has been designated and those designations have a ten year lapse period. The main effects of

the designation are that land use consents will not be required for the anchor projects and that owners of designated sites cannot do anything that would hinder an anchor project.

The CCDU has indicated that the following four anchor projects will be given top priority:

- The Convention Centre Precinct;
- Otakaro/Avon River Precinct;
- The Frame;
- Metro Sports Facility.

If you, as a land owner, have received a questionnaire from the CCDU we recommend you obtain legal advice before responding. While there is no legal requirement to respond it is in your best interests to do so. The form of response however and the wisdom of disclosing certain information such as insurance details will differ from case-to-case.

Acquisitions

To implement the first four anchor projects the Crown will acquire approximately 840 properties in the designated sites by either:

- Voluntary agreement - where the purchase price is determined by negotiating with the owner; or
- Compulsory acquisition - where compensation is determined under the CER Act.

The Property Group Limited, as an agent of the Crown has been tasked with negotiating voluntary agreements with land owners.

The voluntary negotiation period expires in December 2012 for the first four Anchor Projects. The negotiation period for other sites is likely to stay open until April 2013 and in some cases it may be longer.

Importantly, the compulsory acquisition process is also underway and runs parallel to the voluntary agreement process. Notices of Intention to take land are expected to be sent during August to October 2012.

The Voluntary Agreement Process

The voluntary agreement process allows land owners to retain some degree of control in the sale process and take advantage of matters that are specific to them and their land. There is a plethora of site specific characteristics that will materially affect the true market value of the property. Some examples include (but are not limited to):

- The form of insurance (indemnity, full replacement) and stage of negotiations with the insurer;
- Whether there are mortgage or other securities registered over the land and the amount of lending that needs to be repaid;
- The status of any commercial tenancies and whether these are continuing and will need to be terminated to allow vacant possession; and
- Any other features of the land (e.g. its position within the blue print).

Negotiations may also include exploring possibilities around land swaps with the Crown and delayed settlement dates to allow tenants to continue trading.

It is essential that landowners approach this opportunity with a co-ordinated and informed strategy. Key advisers such as lawyers, managers, accountants and tax advisers should be involved to map a strategic path for landowners to follow in their dealings with CERA. Equally insurers and financiers need to be consulted as part of the negotiation process.

The specific opportunities and approach that should be taken will be dependent on the specific circumstances of the landowner. Individual landowners will have different financial resources, risk profiles, insurance positions, return on investment requirements and exit strategies. Similarly, each land owner will have a different tax position that will arise from the disposal of land and which will require specific advice. It is critical that all these variables be worked through with your key advisers prior to your negotiations to ensure the opportunities are maximised and risks minimised.

Land owners are encouraged to make the most of the opportunity to negotiate with the Crown and take control of the process rather than have a process forced upon them. In our view it is essential that you take early action to put yourselves in the best position of being informed of all potential issues before commencing your negotiations. There are high stakes involved; including the potential to have land compulsorily acquired at less than the true market value. This is not a situation where a wait-and-see approach is likely to benefit you.

Compulsory Acquisition

The Crown is entitled to compulsorily acquire land and buildings under the CER Act. The process of compulsory land acquisition involves the Crown, serving notice on the land owner and publicly notifying the acquisition. These notices will be registered against the title and have a life of 3 years (with the possibility of a 2 year extension). Once the notice is registered, the Governor-General may by proclamation declare the land taken. The proclamation is then published in the Gazette and publically notified. 14 days after publication, the land becomes absolutely vested in the Crown free from all charges, mortgages and interests. The Crown also succeeds all rights, entitlements and benefits the land owner has, or may have against the insurer of the land, or of any building or other property on the land.

Compensation is available as a result of compulsory acquisition. A landowner can claim compensation by lodging a claim with the Crown within two years of the date of acquisition.

The level of compensation under the CER Act is determined by the Minister having regard to the current market valuation of the land at the date of acquisition as determined by a registered valuer. The Public Works Act 1981 provides the frame work and principles for compensation under the CER Act, including the principle of open market sale by a willing seller to a willing buyer. The CER Act notably contains a long list of matters that are to be excluded when compensation is calculated i.e. easements and existing resource consents. The Crown has engaged registered valuers to undertake valuations of the 840 properties they intend to acquire for the four anchor projects and it is likely these will form a basis for the Crown's offer.

If a land owner is dissatisfied with the compensation offered then the Minister's decision can be appealed to the High Court. There is no right to object to the compulsory acquisition except by judicial review of the Minister's decision meaning the land owner must establish that the Minister acted outside his authority. There is also no right of an owner to have their land offered back in the event it is no longer required.

What is critical to understand is that the Minister is entitled to take ownership of a property before the level of compensation has been determined. Given the Crown takes the land free of all interests including mortgages, then the landowner could find themselves in a position where they no longer hold the land, have no compensation funds in hand, but still retain a liability under the mortgage. For this reason and for many others, compulsory acquisition is likely the position of last resort for many land owners. It is for this reason land owners are urged to be as proactive as possible in obtaining an outcome for their land, rather than have one forced upon them.

Development Opportunities

The redevelopment of the city also provides a unique opportunity to invest or reinvest in Christchurch. The new Central City Business Zone contains approximately 40 hectares of land, which is a reduction of the previous area of 92 hectares. The plan puts a strong emphasis on urban design with a management group having delegated authority to approve all applications for new buildings. Approval must be within 5 working days and is on a non-notified basis.

There are a number of restrictions and limitations on how land may be redeveloped and used within the Central City Business Zone. Development controls include buildings covering 100% of the site and right up to the road boundary, a maximum height of 28 metres (7 or 8 stories), a minimum height of 2 stories and car parking up to a maximum of 50% of the premises. Different rules apply to land in the Gateway and Mixed Use Zones.

The plan provides a large retail precinct in the areas bordered by Hereford Street, High Street, Lichfield Street and Oxford Terrace. An outline development plan ("ODP") is required before development can begin in this area. An ODP must cover a minimum land area of 7500m² (1/3 of a block). An ODP must be approved within 5 working days and is non-notified. Any landowner in a large retail precinct can

submit an ODP. Potentially therefore an ODP could be approved without an affected landowner having any input.

CERA's Powers

It is important to note CERA maintains a degree of backstop control over development. If affected owners refuse to comply, for example with an approved ODP, the CER Act gives the Chief Executive of CERA the power to require adjoining owners to work together for the benefit of the plan. The implication being that CERA would order compulsorily acquisition or amalgamation of titles to ensure that developments progress and do not stall unnecessarily.

Development Structures

The plan supports all types of development including residential, commercial and light industrial projects. If you own land affected by the plan you need to be proactive about assessing your options and opportunities. You may wish to explore development opportunities on your own, with your neighbours or perhaps with the help of private or public investors. If you are a landowner and do not wish to be part of a development opportunity then may want to consider entering into negotiations to sell your land either to an adjoining land owner or to the Crown before a compulsory acquisition is forced upon you.

If you are considering a development opportunity, obtaining the right advice on the correct development structures at inception is critical. In some situations a simple partnership or closely held company may be the best option, in other situations joint venture companies or limited liability partnerships might be preferable. There may also be opportunities for syndication whereby large groups of investors pull their financial resources to develop a project. The benefit of this might be to allow smaller investors to become part of the rebuild.

The choice of structure will have a number of different commercial considerations such as funding requirements, ability to enter and exit, control and governance issues to name a few. The choice of structure will also have differing tax outcomes. It is crucial to obtain advice and understand how your interest in any new entity will effect you both commercially and from a tax position. This will be particularly important where the development of land is being undertaken as this may have an impact on any future property acquisitions you make outside of the development activity.

Again, it is imperative that you engage your key advisers in determining a co-ordinated and informed approach to these opportunities.

Conclusion

The Recovery Plan has provided the blue print for development in the Central City Zones. Land owners affected by Anchor Project designations are urged to contact us to discuss their unique circumstances. The plan provides great scope for private and public development. Those who are proactive in their approach and seek early legal advice will be well placed to capitalise on opportunities.

Please contact a member of our team to discuss how the plan affects you and the ways we can assist with development and investment opportunities.

MDS Law Advisory Team



Lindsay Lloyd Partner, Property
lindsaylloyd@mdslaw.co.nz
DDI: 03 371 0480 Mob: 029 298 7521



Mark Abbot Partner, Property
markabbot@mdslaw.co.nz
DDI: 03 371 0482 Mob: 029 288 2810



Mark Tutty Partner, Commercial
marktutty@mdslaw.co.nz
DDI: 03 371 0483 Mob: 029 235 3705



Katherine Ewer Partner, Tax
katherineewer@mdslaw.co.nz
DDI: 03 371 0485 Mob: 029 298 7521



John Wright Associate, Property
johnwright@mdslaw.co.nz
DDI: 03 371 0463 Mob: 021 743 899



Sarah Fields Associate, Property
sarahfields@mdslaw.co.nz
DDI: 03 371 0488 Mob: 021 224 2961