

# The Treasury

## On-sold Canterbury Properties Information Release

October 2019

This document has been proactively released by **Hon Grant Robertson, Minister Responsible for the Earthquake Commission** on the Treasury website at

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### Cabinet Document Details

Title: **Cabinet Paper CAB-19-MIN-0399: On-Sold Canterbury Properties**

Date: **12 August 2019**

Creator: Cabinet Office

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Key to sections of the Act under which information has been withheld:

[36] 9(2)(h) - to maintain legal professional privilege

[38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice

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# Cabinet

## Minute of Decision

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### Onsold Canterbury Properties

**Portfolio**                      **Earthquake Commission**

On 12 August 2019, Cabinet:

#### Background

- 1        **noted** that on 8 August 2018, the Cabinet Economic Development Committee (DEV) agreed to seek a test case to resolve the Earthquake Commission's (EQC) liability in respect to losses arising from missed damage or failed repairs within on-sold properties [DEV-18-MIN-0150];
- 2        **noted** that, <sup>[36]</sup>
- 3        **noted** that, <sup>[36]</sup>
- 4        **noted** that officials consider a time-limited government package to be an effective option to resolve the social issues that on-sold owners face, as it allows for a timely resolution of claims and it also allows the Crown to re-establish the responsibility of property owners to lodge insurance claims reducing the strength of future claims against the EQC;

#### A time-limited government support package

- 5        **agreed** that the objectives of this package be to:
  - 5.1      provide remedies to support a fair, timely, and enduring resolution of the social issues arising from uncompensated damage to on-sold properties from inadequate EQC commissioned repairs or damage missed from the EQC assessments;
  - 5.2      notify Canterbury residents of the intended purpose of and limitation upon EQC building assessments to highlight the need for independent advice and pre-purchase due diligence;
  - 5.3      reduce the risk and potential cost of litigation for both the EQC and affected Canterbury residents;

- 5.4 reassert that the government's policy under the Earthquake Commission Act 1993 (the Act) is that the home owner (ie. the claimant), not the EQC, is (or was) ultimately responsible for lodging a claim and for any omissions from that claim;

### Clarifying the obligations of property owners under the Act

- 6 **noted** that the EQC's assessments are provided for the primary purpose of assessing insurance claims, while these may involve a partial damage assessments they are not considered to be a comprehensive assessment of the building or its structural soundness;
- 7 **agreed, subject to** the Minister Responsible for the EQC, the Minister for Greater Christchurch Regeneration and the Attorney-General being satisfied as to the appropriateness of the proposed limitation period, that eligible Canterbury home owners be provided 12 months from the announcement date of this package to assess their property and lodge a claim for earthquake damage that was missed from the EQC assessment and/or inadequate EQC-commissioned building repairs;
- 8 **agreed** that eligible claims will be for over-cap damage relating to damage missed from an EQC assessment and/or failed EQC building work on the building only, and that damage to the land and/or contents be excluded from the above package;
- 9 **agreed** that participation be voluntary, but that acceptance of a full and final offer made under the above package will require that the claimant waive their rights to take further proceedings against the EQC;
- 10 **agreed** that the Crown contribution be made as an ex-gratia payment;
- 11 **noted** that the EQC may assist homeowners by notifying them of damage where this is readily apparent, but ownership of the claim and responsibility for any further omissions from that claim will remain with the owner of the property;

### Eligibility

- 12 **agreed** that eligible property owners must have purchased an EQC-assessed Canterbury property that was assessed to be under-cap at the time the property sold;
- 13 **agreed** that, to be eligible, the EQC assessed property must:
- 13.1 have been purchased after 4 September 2010 (the first 7.1 magnitude Canterbury Earthquake); and
- 13.2 have settled, or be subject to a signed purchase offer that does not include a building inspection clause, on the date that this package is announced;
- 14 **noted** that missed damage and/or under cap repairs that do not exceed the EQC insurance cap can be met within the EQC's existing powers and processes;
- 15 **agreed** that the package only cover the over-cap cost to correct missed earthquake damage and/or inadequate repairs that are over the \$100,000 (plus GST) EQC insurance cap;

### Coverage

- 16 **agreed** that any payment cover either the over-cap cost to repair earthquake damage missed from EQC assessments or the cost to correct non-compliant EQC repairs;

- 17 **noted** that payment for repairs will be subject to terms and conditions that may, for example, cap payment at the current cost to replace or reinstate the building or may include requirements to ensure that covered building repairs are completed;

### Exclusions

- 18 **agreed** that the EQC be able to discount or exclude a claim on any property to the extent that that property is covered by a private insurance policy or any other relevant compensatory regime;
- 19 **agreed** that the EQC be able to discount or exclude any claim that has settled at a significant discount to the assessed market value of a comparable property without unrepaired earthquake damage on account of its condition (e.g. properties with unrepaired earthquake damage sold on an “as is where is” basis);
- 20 **agreed** that any damage that the EQC has already paid out on, but which was unrepaired by the previous owner, be excluded from this package;

### Future issues with the durability of repairs

- 21 **noted** <sup>[38]</sup>

### Public awareness

- 22 **agreed** that the EQC work with Treasury, Crown Law, and the Ministry of Business, Innovations and Employment (MBIE) to consider options to raise awareness of the limitations on EQC assessments;

### Delegated authority

- 23 **authorised** the Minister Responsible for EQC and the Minister for Greater Christchurch Regeneration to establish any other technical terms, conditions, criteria, or exclusions necessary to give effect to the package;

### Financial implications

- 24 **agreed** to establish the following new multi-year appropriation, for the period 12 August 2019 to 30 June 2022:

| Vote    | Appropriation Minister                             | Title   | Type                           | Scope   |
|---------|--|---|--------------------------------|---|
| Finance | Minister Responsible for the Earthquake Commission | Earthquake Commission - On-sold Christchurch Properties | Non-Departmental Other Expense | This appropriation is limited to expenses incurred in providing a timely, fair and enduring resolution of on-sold over-cap claims resulting from the Canterbury earthquake sequence |

- 25 **approved** the following changes to appropriations to give effect to the policy decisions in paragraphs 7-10 above, with an impact on the operating balance and net core Crown debt as set out in paragraphs 26 – 30 below:

| Vote Finance<br>Minister responsible for the<br>Earthquake Commission  | \$m – increase/(decrease) |         |                       |
|--|---------------------------|---------|-----------------------|
|  | 2019/20 to 2021/22        | 2022/23 | 2023/24 &<br>Outyears |
| Non-Departmental Other<br>Expense:<br>Earthquake Commission - On-<br>sold Christchurch Properties<br>(funded by revenue Crown) | 300.000                   | -       | -                     |

- 26 **noted** that the policy decisions in paragraphs 7-10 above will result in a liability to the government on announcement;
- 27 **noted** that at this point in time, the final amount of the liability to the government under this policy is unclear;
- 28 **noted** once this liability and corresponding expense can be reliably measured it will be reflected in the Financial Statements of the government;
- 29 **noted** that the provision and corresponding expense will be initially recognised during the 2019/20 fiscal year, and therefore will impact on OBEGAL in that year;
- 30 **noted** that the provision will be adjusted over time as more information becomes available on the number of claims and cost of repairs and that therefore, if necessary, the amount of the appropriation may need to be adjusted accordingly in future years;
- 31 **agreed** that the change to appropriations for 2019/20 above be included in the 2019/20 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 32 **agreed** that the expenses incurred under paragraph 25 above be managed outside of Budget allowances;

### Ministerial direction

- 33 **agreed** that the Minister Responsible for the EQC direct the EQC, under section 112 of the Crown Entities Act 2004, to confer on it a new function to allow it to administer the operational aspects of the policy in the paper under CAB-19-SUB-0399.

Martin Bell  
for Secretary of the Cabinet

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#### Hard-copy distribution:

Prime Minister  
Deputy Prime Minister  
Minister Responsible for the Earthquake Commission  
Minister for Greater Christchurch Regeneration  
Attorney-General