

OFFICE OF THE MINISTER  
FOR CANTERBURY EARTHQUAKE RECOVERY

The Chair  
AD HOC CABINET COMMITTEE ON CANTERBURY EARTHQUAKE RECOVERY

CANTERBURY EARTHQUAKE: EQC PAYMENTS TO OWNERS OF THE VERY  
WORST AFFECTED LAND

PROPOSAL

- 1 This paper seeks agreement for the Earthquake Commission (EQC) to make payments to the very worst affected owners for the insured value of their land where the cost of proposed land remediation work is greater than the insured value of the land.

EXECUTIVE SUMMARY

- 2 On 11 October 2010 Cabinet agreed to fund additional remediation to land most affected by the Canterbury Earthquake (beyond the statutory minimum land remediation that EQC must provide), as a precautionary and prudent approach in order to give confidence to affected communities, local government, banks and insurers to rebuild. The Crown has agreed an appropriation of \$140 million for the additional land remediation work.
- 3 On 29 November 2010, Joint Ministers (the Minister of Finance, Minister for Canterbury Earthquake Recovery, Minister for the Environment, and the Minister of Labour) with Power to Act agreed to fund the additional land remediation required in respect of six of the very worst affected properties (the Spencerville land remediation pilot).
- 4 Five further properties have been identified where it is not possible or probably not economically viable (ie, the cost of the proposed work is more than the insured value of the land) to complete the proposed work. Under current proposals these owners will not receive any benefit from the large scale land remediation work the Crown has agreed to fund.
- 5 In a normal event (eg, a significant landslide), the EQC would compare the cost of reinstating the affected land with the insured value of the section, and pay the land owner the lesser amount. Under current arrangements the five identified property owners will only receive payments from EQC for the cost of levelling their land, as this will return it to its 'pre-earthquake state' as required under the Earthquake Commission Act 1993 (the EQC Act). This translates to approximately \$20,000 per property. This is much lower than the insured value of the land at \$2.55 million (note that the rateable value of this land is \$6.15 million).

- 6 To address the significant fairness issues this would create for these owners, compared to other affected land owners who will benefit from the proposed large scale land remediation work funded by the Crown, this paper proposes that the EQC be authorised to make payments to these owners for the insured value of their land where the cost of proposed land remediation work is greater than the insured value of the land. This would cost \$2.55 million for the five affected properties identified.
- 7 Before any such payments are made I propose that EQC, in consultation with the Treasury and the Canterbury Earthquake Response Policy Team of the Department of the Prime Minister and Cabinet, provide advice to the Minister of Finance and the Minister for Canterbury Earthquake Recovery on the specific site investigations undertaken in respect of each of the affected properties identified and recommendations for approval.
- 8 In addition to these five properties above, two additional properties are also currently under investigation. As further site investigations are undertaken it is possible that additional properties may be identified where it is not possible or not economically viable to complete proposed additional land remediation work.
- 9 I propose that an appropriation be established now that covers the five properties we are currently aware of, and any other properties that emerge in this category further down the track. Although the final number of properties will take time to emerge, I am confident that the costs of land insurance payments can be managed within an appropriation of \$5 million.

#### BACKGROUND

- 10 On 11 October 2010 Cabinet agreed to fund additional remediation to land most affected by the Canterbury Earthquake (beyond the statutory minimum land remediation that EQC must provide), as a precautionary and prudent approach in order to give confidence to affected communities, local government, banks and insurers to rebuild. The Crown has agreed an appropriation of \$140 million for the additional land remediation work.
- 11 Preliminary investigations by EQC had identified 16 properties where it was considered not possible or probably not economically viable to complete the higher standard of land remediation agreed to by Cabinet on 11 October 2010 (ie, the cost of the proposed work is more than the insured value of the land). This number fell in subsequent investigations (the composition of the affected properties also changed) and now stands at seven.
- 12 Five of the affected properties are from the original list and are located in Fendalton (4) and Kaiapoi (1). In these cases it has been established that it is not possible or probably not economically viable (ie, the cost of the proposed work is more than the insured value of the land) to complete the proposed work<sup>1</sup>.
- 13 Two additional properties in Kaiapoi are also currently under investigation.

<sup>1</sup> Note that in the Tonkin & Taylor Stage 2 Report, the Fendalton properties are not separately identified from land Zone B.

*The Spencerville properties*

- 14 On 29 November 2010, Joint Ministers (the Minister of Finance, Minister for Canterbury Earthquake Recovery, Minister for the Environment, and the Minister of Labour) with Power to Act agreed to fund the additional land remediation required in respect of the six affected properties in Spencerville (up to a maximum of \$1.1 million) after noting that:
- the latest information from EQC was that these properties could be remediated within the insured value of the land
  - remediation of these properties would help to achieve community understanding and buy-in to the concepts to be applied elsewhere in Canterbury, and
  - resource consent applications were about to be lodged for the land remediation work (resource consents have now been lodged).

**FIVE AFFECTED PROPERTIES IN FENDALTON AND KAIAPOI**

- 15 In a normal event (eg, a significant landslide), the EQC would compare the cost of reinstating the affected land with the insured value of the section, and pay the land owner the insured value of the land if this was the lesser amount.
- 16 In total the insured value of the land (as defined under the Earthquake Commission Act) for the five affected properties identified in Fendalton and Kaiapoi is \$2.55 million (Fendalton \$2.38 million, Kaiapoi \$165,000). This is not the 'market value' or the rateable value of the land. In total, the rateable value of the land is approximately \$6.15 million (Fendalton \$5.99 million, Kaiapoi 160,000).
- 17 Under current arrangements the five affected owners will only receive payments from EQC for the cost of levelling their land as this will return it to its 'pre-earthquake state' as required under the EQC Act. Preliminary estimates are that this would be around \$20,000 per property.
- 18 I am informed that it is EQC's consulting engineer's view that unless additional land remediation is undertaken it will be very difficult for the affected owners to achieve Building Code compliance should they attempt to rebuild. If councils are not satisfied any natural hazards have been mitigated sufficiently they will either not issue building consents or issue building consents under section 72 of the Building Act 2004, which means a natural hazard notice will be placed on the title of the property. This will reduce the property's value and often make it uninsurable for that risk. Banks will be unlikely to provide mortgage finance.
- 19 If nothing is done, the affected property owners will be substantially disadvantaged compared to other land owners affected by lateral spreading of land who will benefit from the proposed additional land remediation work funded by the Crown. While these owners may receive payments for the insured value of their homes (the buildings), they will face a significant loss of equity with respect to their land. Some of these owners may not have sufficient equity to

pay for the additional land remediation work required to rebuild and may be forced to relocate.

- 20 I am informed that the affected owners in Fendalton want to rebuild and are currently discussing their options with engineers.

**PREFERRED APPROACH FOR ADDRESSING THE ISSUE**

- 21 The following options have been identified to address this issue.

- Option 1: The Crown could pay for the affected land to be remediated to the higher standard agreed to by Cabinet.
- Option 2: The Crown could offer to purchase the affected properties.
- Option 3: The Crown could authorise EQC to make payments to affected owners for the insured value of their land where the cost of proposed land remediation work is greater than the value of the land (or where additional land remediation work is not possible).

*Option 1 – Crown pays for affected land to be remediated*

- 22 It is possible to undertake perimeter land protection work in respect of some of the properties. The latest information from EQC is that this could be achieved for the Fendalton properties at a cost of approximately \$700,000 per property (approximately \$2.8 million in total). However advice received from EQC is that this work may not possible for the property identified in Kaiapoi.
- 23 This option would cost more than making payments to owners for the insured value of their land and may not be possible in respect of some of the affected properties. For these reasons, this option is not recommended.

*Option 2 – Crown offers to purchase affected properties*

- 24 Purchasing the affected properties would create substantial fiscal costs as well as a number of risks for the Crown and officials inform me that at least some of the affected owners do not wish to relocate and want to rebuild. If the Crown were to purchase the properties the affected owners may expect to be paid the rateable value of the land (approximately \$6.15 million for the five properties identified).
- 25 Other costs associated with the retention and possible sale of the land would also be incurred. The land itself would not be suitable for social housing purposes given the likely costs involved in developing it for this use (for this to occur the Crown would need to pay both for the land and costs for addressing land stability). Careful communication would also be needed to limit any potential risks that other property owners affected by the earthquake would use this as a precedent for the Crown purchasing other damaged land.
- 26 For the reasons outlined above, this option is not recommended.



*Option 3 – Crown makes payments up to the insured value of the affected property*

- 27 The Crown could authorise EQC to make payments to affected owners for the insured value of their land where the cost of proposed land remediation work is greater than the insured value of the land (or where additional land remediation work is not possible).
- 28 This option would involve making payments to owners in Fendalton of approximately \$595,000 per property on average, and a payment of \$165,000 to the affected owner in Kaiapoi. This option would cost \$2.55 million for the five properties identified (ie, the insured value of the land).
- 29 Consideration has been given to insisting that payments be used towards land repair but this is not viable as in most cases there is a shortfall. In the case of the Kaiapoi claim I am advised this would be in the hundreds of thousands of dollars.
- 30 If EQC had been required to undertake the proposed additional land remediation work under the EQC Act, I am informed that this is the option it would have adopted.
- 31 While justified on the basis that payments relate to the insured value of the land, the size of the payments to the owners in Fendalton may create optic risks for the Crown that will need to be managed.
- 32 There is a risk that some owners may choose to use the money for purposes other than land remediation and leave the affected land unremediated or under-remediated (where it is possible to remediate the land to achieve a viable building platform). There is also a risk that the affected land may become derelict, and could become a future issue for councils and/or neighbouring residents. Mitigating these risks is advice I have received from EQC that some of the affected owners wish to rebuild and do not wish to relocate.
- 33 On balance, this option is recommended for all affected properties identified.
- 34 However, before any such payments are made I propose that EQC, in consultation with the Treasury and the Canterbury Earthquake Response Policy Team of the Department of the Prime Minister and Cabinet, provide advice to the Minister of Finance and the Minister for Canterbury Earthquake Recovery on the specific site investigations undertaken in respect of each of the affected properties identified and recommendations for approval.

**OTHER ISSUES**

- 35 In addition to the five properties discussed earlier, two additional properties in Kaiapoi are also currently under investigation. As further site investigations are undertaken it is possible that additional properties may be identified where it is not possible or not economically viable to complete proposed additional land remediation work.

36 There are two options for dealing with this uncertainty:

- a The Minister of Finance and the Minister for Canterbury Earthquake Recovery could be authorised to approve payments to other affected property owners consistent with the approach outlined above on an as-needs basis.
- b The Government could establish an appropriation now that covers the five properties we are currently aware of, and any other properties that emerge in this category further down the track. Although the final number of properties will take time to emerge, I am confident that the costs of land insurance payments can be managed within an appropriation of \$5 million.

37 On balance, I recommend we establish an upfront appropriation to deal with all properties where it is not possible or not economic to undertake proposed additional land remediation work. While there is always a chance that we may set the appropriation at either too high or too low a level, it would be extremely time-consuming and inefficient for Ministers to approve additional appropriations on a property-by-property basis, especially given that the status of individual properties may change further during the course of further site investigations and assessment.

#### CONSULTATION

38 The Treasury, the Department of Building and Housing and the Earthquake Commission have been consulted.

#### FISCAL IMPLICATIONS

39 The estimated cost of the proposal for the five affected properties is \$2.55 million (ie, the insured value of the land for the affected properties identified). As the engineering work progresses, however, it is possible that other properties may be assessed as being beyond economic repair. I recommend that we establish an upfront appropriation of \$5 million to cover these five properties and any others that emerge during the course of the engineering works.

40 If agreed, the cost of this proposal will be charged against the 2010 general between Budget contingency.

#### HUMAN RIGHTS

41 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

#### LEGISLATIVE IMPLICATIONS

42 There are no legislative implications arising from the proposals in this paper.

### REGULATORY IMPACT ANALYSIS

- 43 The Regulatory Impact Analysis (RIA) requirements do not apply to this paper as the paper does not propose options that would involve creating, amending, or repealing either primary legislation or delegated legislation.

### PUBLICITY

- 44 Any publicity around the proposals in this paper will be undertaken as part of the wider communications strategy for the Canterbury earthquake response in relation to additional remediation of land.

### RECOMMENDATIONS

- 45 It is recommended that the Committee:

#### *Background*

- 1 **Note** that on 11 October 2010, Cabinet agreed to fund additional remediation to land most affected by the Canterbury Earthquake (beyond the statutory minimum land remediation that the Earthquake Commission (EQC) must provide), as a precautionary and prudent approach in order to give confidence to affected communities, local government, banks and insurers to rebuild [CAB Min (10) 36/11]
- 2 **Note** that five properties have been identified where it is not possible or probably not economically viable to complete the proposed works (ie, the cost of the proposed works is more than the insured value of the land), and under current proposals these owners will not receive any benefit from the proposed large scale land remediation work funded by the Crown
- 3 **Note** that two further properties in Kaiapoi are also currently under investigation and as further site investigations are undertaken it is possible that additional properties may be identified where it is not possible or not economically viable to complete proposed additional land remediation work

#### *EQC payments to owners of the very worst affected land*

- 4 **Note** that in a normal event (eg, a significant landslide), the EQC would compare the cost of reinstating the affected land with the insured value of the section, and pay the land owner the lesser amount
- 5 **Note** that under current arrangements the five affected property owners will only receive payments from EQC for the cost of levelling their land as this will return it to its pre-earthquake state as required under the Earthquake Commission Act 1993, ie approximately \$20,000 per property

- 6 **Note** that this will create significant fairness issues for the owners of the very worst affected land compared to other affected land owners who will benefit from the proposed large scale land remediation work funded by the Crown
- 7 **Agree** that the EQC may make payments to the very worst affected owners for the insured value of their land where the cost of proposed land remediation work is greater than the insured value of the land
- 8 **Agree** that before any such payments are made the EQC, in consultation with the Treasury and the Canterbury Earthquake Response Policy Team of the Department of the Prime Minister and Cabinet, provide advice to the Minister of Finance and the Minister for Canterbury Earthquake Recovery on the specific site investigations undertaken in respect of each affected property identified and recommendations for approval

*Establishment of appropriation for payments*

- 9 **Agree** to establish a new non-departmental other expense appropriation, "Earthquake Commission – Land Insurance Payments", in Vote Finance
- 10 **Agree** that the scope of this appropriation be: "This appropriation is limited to insurance payments to the owners of damaged land in the Canterbury region where the cost of land remediation is greater than the insured value of the land"
- 11 **Approve** the following change to appropriations for land insurance payments to owners of the five identified properties and any other properties that emerge in this category as the engineering work progresses, with a corresponding impact on the operating balance:

Vote Finance Minister of Finance	\$m – increase/(decrease)				2014/15 & Outyears
	2010/11	2011/12	2012/13	2013/14	
Non-departmental other expense: Earthquake Commission – Land Insurance Payments	5,000	-	-	-	-

- 12 **Agree** that the proposed change to the appropriation for 2010/11 above be included in the 2010/11 Supplementary Estimates and that in the interim, the increase be met from Imprest Supply



- 13 **Agree** to charge the cost of the land insurance payments against the 2010 general between Budget contingency.



Hon Gerry Brownlee  
Minister for Canterbury Earthquake Recovery

Date signed: 13/12/2010

Released under the Official Information Act 1982

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# Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery

ACE Min (10) 8/4

## Minute of Decision

Copy No: 25



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## Canterbury Earthquake: EQC Payments to Owners of the Very Worst Affected Land

Portfolio: Canterbury Earthquake Recovery

On 14 December 2010, the Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery (ACE), having been authorised by Cabinet to have Power to Act [CAB Min (10) 45/28]:

### Background

- 1 noted that on 11 October 2010, Cabinet agreed to fund additional remediation to land most affected by the Canterbury Earthquake (beyond the statutory minimum land remediation that the Earthquake Commission (EQC) must provide), as a cautionary and prudent approach in order to give confidence to affected communities, local government, banks and insurers to rebuild [CAB Min (10) 36/11];
- 2 noted that on 29 November 2010, Cabinet:
  - 2.1 noted that investigations by EQC had identified 13 properties where it was considered not possible or probably not economically viable to complete the higher standard of land remediation agreed to by Cabinet on 11 October 2010;
  - 2.2 noted that Ministers with Power to Act (Minister of Finance, Minister for Canterbury Earthquake Recovery, Minister for the Environment, and Hon Kate Wilkinson) had agreed that the Crown will provide \$1.1 million in funding for the additional land remediation required in respect of six of the worst affected properties (in Spencerville);
  - 2.3 directed officials to provide advice to ACE on a preferred option for dealing with the seven other affected properties;

[CAB Min (10) 43/21]
- 3 noted that:
  - 3.1 five properties have been identified where it is not possible, or probably not economically viable, to complete the proposed works (ie, the cost of the proposed works is more than the insured value of the land);

- 3.2 under current proposals, these owners will not receive any benefit from the proposed large scale land remediation work funded by the Crown;
- 4 noted that two further properties in Kaiapoi are also currently under investigation and that, as further site investigations are undertaken, it is possible that additional properties may be identified where it is not possible, or not economically viable, to complete proposed additional land remediation work;

**EQC payments to owners of the very worst affected land**

- 5 noted that in a normal event (eg, a significant landslide), the EQC would compare the cost of reinstating the affected land with the insured value of the section, and pay the land owner the lesser amount;
- 6 noted that under current arrangements, the five affected property owners will only receive payments from EQC for the cost of levelling their land, as this will return it to its pre-earthquake state as required under the Earthquake Commission Act 1993, ie approximately \$20,000 per property;
- 7 noted that this will create significant fairness issues for the owners of the very worst affected land compared to other affected land owners who will benefit from the proposed large scale land remediation work funded by the Crown;
- 8 agreed that the EQC may make payments to the very worst affected owners for the insured value of their land where the cost of proposed land remediation work is greater than the insured value of the land;
- 9 agreed that before any such payments are made, the EQC, in consultation with the Treasury and the Canterbury Earthquake Recovery Policy Team of the Department of the Prime Minister and Cabinet, provide advice to the Minister of Finance and the Minister for Canterbury Earthquake Recovery on the specific site investigations undertaken in respect of each affected property identified and recommendations for approval;

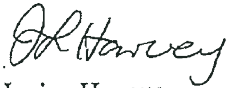
**Establishment of appropriation for payments**

- 10 agreed to establish a new non-departmental other expense appropriation "Earthquake Commission – Land Insurance Payments", in Vote Finance;
- 11 agreed that the scope of this appropriation be: "This appropriation is limited to insurance payments to the owners of damaged land in the Canterbury region where the cost of land remediation is greater than the insured value of the land";
- 12 approved the following change to appropriations for land insurance payments to owners of the five identified properties and any other properties that emerge in this category as the engineering work progresses, with a corresponding impact on the operating balance:

Vote Finance Minister of Finance	\$m – increase/(decrease)				2014/15 & Outyears
	2010/11	2011/12	2012/13	2013/14	
Non-Departmental Other Expense: Earthquake Commission – Land Insurance Payments	5.000	-	-	-	-



- 13 **agreed** that the above change to the appropriation for 2010/11 be included in the 2010/11 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 14 **agreed** to charge the cost of the land insurance payments against the 2010 general between Budget contingency.



Janine Harvey  
Committee Secretary

Reference: ACE (10) 25

**Present:**

Rt Hon John Key  
Hon Bill English  
Hon Gerry Brownlee (chair)  
Hon Anne Tolley  
Hon David Carter  
Hon Phil Heatley  
Hon Kate Wilkinson  
Hon John Carter  
Hon Rodney Hide

**Officials present from:**

Officials Committee for ACE

**Also in attendance:**

Canterbury Earthquake Recovery Commission official

**Distribution:**

Ad Hoc Cabinet Committee on Canterbury Earthquake Recovery  
Office of the Prime Minister  
Chief Executive, DPMC  
Director, PAG, DPMC  
Benesia Smith, PAG, DPMC  
Andrew Annakin, PAG, DPMC  
Steve Brazier, Director, SRG, DPMC  
Secretary to the Treasury  
Vicky Robertson, Treasury  
Chief Executive, MED  
Mark Steel, MED  
Murray Sherwin, Chair, Canterbury Earthquake Recovery Commission  
Chief Executive, Department of Building and Housing  
Controller and Auditor-General

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