

Department of the Prime Minister and Cabinet

Inquiry into the Earthquake Commission Proactive Release January 2019

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Office of the Minister Responsible for the Earthquake Commission

Office of the Minister for Greater Christchurch Regeneration

Chair, Cabinet Economic Development Committee

CANTERBURY INSURANCE: NEXT STEPS

Proposal

- 1 This paper seeks Cabinet endorsement of a package of initiatives designed to increase the fair and final resolution of outstanding Canterbury earthquake related insurance claims.
- 2 It builds on the recommendations in the report of the Independent Ministerial Advisor (IMA) to the Earthquake Commission (EQC), and the work of the cross-agency group established in May of this year to give advice on a number of complex and challenging system-wide issues that inhibit speedy resolution.
- 3 The paper also seeks Cabinet's agreement to financial changes that would support the implementation of these recommendations.

Executive Summary

- 4 In February 2018, I appointed an IMA, Christine Stevenson, to work with the EQC Board and management to make recommendations for operational and other changes that would assist in speeding up the resolution of outstanding claims. Cabinet considered the Independent Advisor's report at its meeting on 21 May 2018.
- 5 EQC has over 3,000 reopened residential property claims arising from the Canterbury earthquake events, with 300 to 500 additional claims opened each month. Settlement of claims is running at a similar monthly pace, but many claimants are still not able to draw a line under these events. Moreover, too many are faced with the prospect of lengthy, costly and stressful court proceedings to resolve their issues.
- 6 The EQC board accepted all recommendations in the IMA report that related to EQC's capability and operations, and are in the process of implementing them. Further, EQC has started a broader change process to refocus its strategy, structure, and culture. This will improve the end-to-end experience for EQC's customers, improve their performance in settling Canterbury claims, and better position EQC to be able to respond to future events.

- 7 While this process has some way to go, I am confident that it will help the organisation deliver fast and fair resolution of outstanding claims for the homeowners involved, and better position the organisation to respond to any future events.
- 8 One tangible expression of progress to date is a collaboration between EQC, Southern Response Earthquake Services Limited (SRES) and the Ministry of Business, Innovation and Employment (MBIE), under the name *Greater Christchurch Claims Resolution Service*. Officials have worked with these agencies to develop an integrated claims management service to more quickly reach fair, fast and enduring settlements of outstanding claims, streamline the settlement process for claimants, and reduce processing costs for insurers. It will be open for other insurers to participate in should they wish.
- 9 This approach is also supported by increased flexibility for EQC to make payments. EQC is working with insurers to extend an existing protocol (Protocol 1) that will enable it to cash settle claims up to \$150,000, and receive reimbursement for the over-cap¹ amount from the private insurer. This will speed up the resolution of claims by reducing the double handling by EQC and the insurer. EQC is also reviewing its internal policies regarding reimbursement of certain claim-related costs (such as for temporary accommodation during repairs, or technical services to support claims), considering how material these payments are to facilitate the settlement of outstanding claims, and any scope it may have to extend such payments within the current EQC Act.
- 10 While these steps should help to increase the speed of settlement of outstanding claims, there will be some cases that remain in dispute. To help resolve these dispute resolution services will be available as a part of the *Greater Christchurch Claims Resolution Service*. Further, we have recently introduced legislation to establish the Canterbury Earthquakes Insurance Tribunal (Tribunal) to provide policyholders with another option to help in the resolution of their claims.
- 11 These steps are intended to help resolve claims without the need for litigation through the courts. However, there are some critical issues of law and interpretation that are impediments to the resolution of claims. Test cases on these matters are likely to have value in expediting the settlement of claims currently in litigation, and avoiding the need for similar litigation in the future.
- 12 EQC and SRES have committed to move appropriate cases through to a prompt hearing, and will keep Crown Law regularly updated as to the progress of relevant litigation, given the public interest element of those cases.
- 13 One key issue in this respect is the need to obtain legal certainty on where liability sits in situations where the quake-damaged property has been subsequently on-sold. Our policy position is that this is a matter best

1 "Under cap" and "over cap" refer to the limit of cover provided over residential buildings in the Earthquake Commission Act. In general terms, the limit is \$100,000 plus GST. Insurers provide various levels of cover for claims above this amount.

determined by the courts. This is one of the priority issues to be tested through a test case, as discussed above.

- 14 At the same time, there is a need to ensure that purchasers of quake-affected properties can openly access whatever information is available about that property, in order to come to a view about whether to purchase a property, on what conditions, and at what price. That will help prevent on-sold liability becoming an increasing problem as more properties are sold and purchased over time. EQC is working with Land Information New Zealand (LINZ) on the practicalities of making property-related claims information held by EQC available through an existing public-facing database.
- 15 Clearly this work will require continued priority on EQC monitoring and EQC policy, until we can be confident that all outstanding claims are likely to be resolved. Officials advise that the Treasury is the most appropriate agency to provide this monitoring and to lead the policy advice. I have agreed my expectations for enhanced EQC monitoring, and for EQC policy advice over the next year, with the Treasury. I have also agreed the resourcing needed to deliver on those expectations with the Minister of Finance, and its funding through a combination of a fiscally neutral adjustment within Vote Finance and from the between-Budget contingency established as part of Budget 2018.

Introduction

- 16 EQC has over 3,000 reopened residential property claims arising from the Canterbury earthquake events, with 300 to 500 additional claims opened each month. This is a major issue for the affected homeowners, hampering their ability to draw a line under these events and move forward with their lives.
- 17 In February 2018, I appointed an IMA to EQC to work with the Board and management of EQC to make recommendations for operational and other changes that would assist in speeding up the resolution of outstanding claims.
- 18 At its meeting on 21 May 2018, Cabinet considered the report of the IMA, and inter alia:
 - 18.1 noted that I proposed to endorse the recommendations that related to EQC operations and refer them to the EQC Chair for consideration;
 - 18.2 noted that I had requested advice by 30 June 2018 from the Treasury on the merits, practicalities and financial implications of the recommendations to increase EQC's flexibility to make certain payments;
 - 18.3 agreed to extend an expanded Residential Advisory Service (RAS) for one year;
 - 18.4 noted that I had asked officials to discuss with insurers the possibility of clarifying and aligning the limitation period in respect of the Canterbury earthquake related claims across EQC and the various insurers;

- 18.5 noted that I intended that some EQC cases would be fast-tracked to clarify critical issues of law and interpretation that are impediments to resolution of claims;
- 18.6 directed officials to report to Ministers by 31 July 2018 on:
- advice, options and recommendations on whether it is viable and appropriate to continue to work on a new model under which the management of all new Canterbury earthquake-related claims from insurance entities (EQC, SRES, other private insurers) is consolidated into one vehicle from a future date;
 - preliminary advice clarifying the Government's policy position and any potential response with regard to the fair and transparent resolution of on-sold damaged property claims; and
 - options and recommendations for the arrangements for monitoring EQC's financial and service performance, including most appropriate agency, resourcing, and capability, by 31 July 2018 [CAB-18-MIN-0227 refers].
- 19 A summary of the IMA's recommendations, and the status of the response to those recommendations, is attached at Appendix 1.

Changes to EQCs capability and operations

- 20 The Independent Advisor's report included a number of recommendations concerning EQC's capability and operating model. The EQC board has accepted all the recommendations and, as noted in Appendix 1, is executing or has completed their implementation. Overall, implementation of these recommendations is on track, with many of the recommendations having been completed in July 2018.
- 21 These changes include:
- 21.1 introducing a case-managed claim model, where each customer will have a dedicated claims manager to guide their claim through the process, with a consistent operating practice to ensure all claims are managed to high standards;
 - 21.2 increasing resources for settlements, to reduce backlogs and improve quality;
 - 21.3 implementing measures to improve data quality and data and information management; and
 - 21.4 improving communications and engagement with claimants, and relationships with private insurers.
- 22 This work is being undertaken in the context of a broader change programme in EQC. EQC is refocussing its strategy, structure, capability and culture to improve the end-to-end experience for its customers, to improve its

performance in settling Canterbury claims and to better position it to be able to respond to future events.

- 23 This programme will mean significant change for the organisation. The EQC Board and executive are keeping me informed of their progress.
- 24 The Treasury is monitoring EQC's progress with regard to the implementation of the operational IMA recommendations as well as the strategic change programme taking place at EQC. Treasury is of the view that the full range of operational recommendations and the strategic change programme will take a number of months to be fully implemented.
- 25 The Treasury notes that while a number of key operational initiatives are well on track, management resources will be stretched over this period and that this needs to be carefully monitored by the EQC Board in order to anticipate any issues that may eventuate from the scale of change taking place within a concentrated timeframe.
- 26 While this process has some way to go, I am confident that this will help put the interests of people at the forefront of EQC's mission and help push for fast and fair resolution of outstanding claims for the people involved.

Integrated operating model – *Greater Christchurch Claims Resolution Service*

- 27 One expression of the new strategy is in the collaboration by EQC, SRES and MBIE to develop an integrated claims management service called the *Greater Christchurch Claims Resolution Service (CRS)*. The purpose of this service is to more quickly reach fair, fast and enduring settlements of outstanding claims.
- 28 The new service will involve an integrated settlement process between EQC and SRES to streamline settlements and reduce cost to the Crown. This will include a claimant-centered case management approach similar to that provided by the existing Residential Advisory Service (RAS). The services RAS currently provides to Canterbury homeowners will be provided by MBIE through the new CRS, while RAS will continue to provide its non-Canterbury focused services.
- 29 Key attributes of the new service are:
 - 29.1 a single shopfront and physical location, housing both the claimant-facing operations as well as the claims processing functions;
 - 29.2 MBIE led claimant centred case management services, which will include an independent advisor to better support claimants;
 - 29.3 the processing of simple claims (under the EQC cap) by EQC, and complex claims by SRES;
 - 29.4 the coordinated processing of cases by EQC and SRES on behalf of one another, to remove duplication from the existing system; and

- 29.5 the availability of independent specialist advisors (including engineering, building and legal support) to assist claimants to resolve their disputes.
- 30 The service will use existing resources, arrangements, operating overheads and communications collateral from participating agencies (EQC, SRES and MBIE). The recently announced extension and enhancements to the RAS services in Christchurch will underpin the new service. MBIE is currently in the process of establishing a website and homeowner portal to support the launch of the service.
- 31 Importantly, the service will be open to private insurers to join (on a cost-recovery basis) should they wish. That would provide even stronger benefits for claimants, and should allow some gains for those insurers in terms of reduced operating costs. Private insurers have expressed interest in potentially joining this approach, once it proves its viability in practice.
- 32 The service is to be funded from contributions from EQC, SRES² and MBIE for the first year based on initial estimates of the number of disputes. If this model proves its worth, funding arrangements beyond that will need be considered as a part of Budget 2019 (recalling that funding for RAS has only been agreed until 30 June 2019). The governance and accountability arrangements, and implementation details, are still under development. I will report back to Cabinet on these matters in due course.
- 33 I welcome this initiative, and the promise it holds for faster, easier resolution of claims in Canterbury.

Expanding the mandate of Southern Response

- 34 This model will require coordinated processing of claims by EQC and SRES on behalf of each other (and potentially other insurers, in due course).
- 35 In order for SRES to take part in the new service, its mandate under its constitution will need to be amended. Accordingly, the Minister of Finance and I, as shareholding Ministers, intend to extend the mandate of SRES to include assisting EQC in the processing of claims EQC receives both from its own customers and those of insurers other than SRES, and contributing towards the establishment costs of the CRS.

Alignment of MBIE's appropriations to support this new service

- 36 In order for MBIE to establish the CRS there are a number of fiscally neutral changes to appropriations that need to be made, in order to provide adequate funding for CRS and to better align accountability across portfolios.
- 37 I propose to use the Greater Christchurch Recovery appropriation to fund CRS, as the scope of activities being undertaken through the new service will be broader than those being undertaken by the RAS (who will also transfer some of their appropriation to the CRS which will take over approximately 80% of

² Subject to its mandate being broadened as discussed in paragraph 35.

RAS's existing clients). Both EQC and SRES will be making a financial contribution to the establishment of CRS.

- 38 MBIE will also contribute funding in the Greater Christchurch Recovery appropriation earmarked for the provision of mediation services through the Tribunal. As the provision of mediation services is not expected until the second quarter of 2019, a proportion of the operational spending is available for CRS, without impacting on the delivery of mediation services to the Tribunal.
- 39 In order to support the establishment of the CRS and to better align appropriations with accountability, I recommend that the appropriation Minister for both the "Greater Christchurch Recovery" and the "Residential Advisory Service" departmental output expense appropriations under Vote Building and Housing is changed from the Minister for Building and Construction to the Minister for Greater Christchurch Regeneration. I have consulted with my Ministerial colleague in relation to this transfer.

Consolidated claims management

- 40 There continues to be a high degree of uncertainty about the quantum of future liabilities of insurance entities (EQC, SRES and private insurers) from Canterbury earthquake-related claims, as a result of ongoing discovery of quake-damage to properties, continued remedial repairs, and legal uncertainty regarding liability.
- 41 Given these circumstances I accept the advice of officials that it is not viable at this time to consider consolidating the management of all new Canterbury earthquake-related claims from insurance entities into one vehicle, without undue risk being borne by the Crown.
- 42 Nonetheless, it is important for the Crown, and insurers to continue to build their understanding of the uncertainties referred to above. The Treasury will continue to work with EQC as it improves the quality of its data so that the Crown has a better understanding of the financial outcomes arising from the Canterbury earthquakes. EQC will share this data where appropriate with the private insurers.

EQC's flexibility to make payments

- 43 Improved settlement initiatives are supported in part by measures to increase EQC's flexibility to make payments in order to more quickly resolve claims. The IMA's report included two recommendations aimed at increasing EQC's flexibility to make payments. These were:
- 43.1 extend the existing Protocol 1 agreement between EQC and private insurers; and
- 43.2 develop a proposal to allow EQC to reimburse certain legitimate claim-related costs in certain circumstances.

Extending Protocol 1

- 44 The IMA recommended that EQC works with private insurers to extend the existing Protocol 1 to allow EQC to make cash settlements above the EQC cap, which would then be recovered from the private insurers. Protocol 1 is an agreement between EQC and private insurers that has been in place since November 2011, which enables EQC to continue to repair residential buildings above its statutory cap of \$100,000 (excluding GST) if this is deemed to be the most practical and cost-effective solution, and the insurer agrees to reimburse the over-cap amount.
- 45 EQC is working to finalise agreements with insurers to extend Protocol 1 to allow EQC to cash settle claims up to \$150,000 (excluding GST), provided it is certain of receiving reimbursement from the private insurer. This will speed up the resolution of claims by reducing double handling between EQC and the private insurer. Negotiating and finalising a satisfactorily robust legal agreement with the insurers, without adverse financial implications for EQC and the Crown, is the remaining practicality.

Reimbursing certain claim-related costs

- 46 The other recommendation was that EQC and Treasury work together on advice on whether to allow EQC to reimburse certain legitimate claim-related costs in certain circumstances.
- 47 EQC has internal policies covering temporary accommodation and contents storage costs where the initial repair was completed as part of the Canterbury Home Repair Programme (CHRP) and the owners need to move out of their home to enable completion of remedial repairs.
- 48 I am advised by officials that existing policies do not appear to be significantly restricting the resolution of claims. EQC is however currently reviewing the temporary accommodation policy to determine if its scope should be broadened to incorporate the reimbursement of any other legitimate claim-related costs. This includes seeking advice on how material these payments are in facilitating the settlement of claims, and the scope to extend such payments within the current EQC Act. EQC is also providing staff training to ensure that the policy is being applied consistently.
- 49 Officials anticipate that the review of the temporary accommodation policy will be completed in August. If legislative change is needed to allow for such payments, this could be considered in the context of stage 2 of EQC Act reform.
- 50 EQC has also reviewed its claim lodgement process and as a result has now removed the need for homeowners to provide their own engineering report before reopening a remedial claim. The revised process makes lodging a claim much easier for homeowners, calling for details and photos only as opposed to expensive engineering reports. The change to the lodgement process is

unlikely to result in an increase in the overall expected assessment costs for EQC, although it will affect the timing of these costs.

- 51 While these steps are expected to enhance the experience of EQC claimants and support the resolution of outstanding claims, there will be some cases however where the claim remains in dispute.
- 52 Dispute resolution services will be available as a part of the CRS. Further, we have recently introduced legislation to establish the Tribunal, to give policyholders another option to help in the resolution of their claims. EQC is also changing some of its processes to help accelerate claim resolution in order to remove claims from the litigation pathway.
- 53 These steps are intended to help resolve claims without the need for litigation. Litigation adds time and cost to resolving disputes, and most cases settle without providing precedential guidance.

Use of test cases to resolve legal ambiguity

- 54 There are a number of issues where litigation in the form of test-cases, or declaratory judgments, would help resolve legal ambiguity regarding liability. Legal clarification of these issues would enable insurers to make informed settlement decisions based on an understanding of where liability will generally fall, and help to support increased settlements being reached between parties.
- 55 The key issues for legal clarification include:
 - 55.1 whether EQC is liable for substandard repairs carried out under the CHRP or a failure to identify necessary repairs;
 - 55.2 if liable for the cost of remedying substandard repairs can that liability extend beyond EQC's \$100,000 cap;
 - 55.3 is the situation different if the property has been on-sold (i.e. does EQC owe a duty of care to the purchaser of a poorly repaired house);
 - 55.4 are any other parties liable in contributory negligence for poorly carried-out repairs;
 - 55.5 how will the Limitation Acts apply in the event one is pleaded as an affirmative defence by insurers; and
 - 55.6 what standard is to be applied to the expression "as new" on reinstatement.
- 56 [3]
- 57 A test case generally refers to a court proceeding about a dispute that by its nature involves a set of factual or legal circumstances common to a number of other disputes. Resolution of the case will help determine a controversial or complex issue or set of issues, and have a precedential effect.

58 In cases where the facts are not in dispute, or can be agreed for the purpose of obtaining a ruling, applications for declaratory judgments may be a quicker option. However, both test cases and declaratory applications compete for court time, so coordination between parties is important.

59 [3]

60 EQC and SRES agree that it is important to resolve these legal issues, and have agreed to fast track test cases and declaratory judgments related to them. They are currently reviewing their existing litigation to move appropriate cases through to a prompt hearing, in order to obtain legal clarity.

61 Lawyers representing claimants in dispute with EQC and SRES also agree that test cases and declaratory judgments would be beneficial, and are interested in progressing these. There is also general consensus among lawyers practising in the area that it would be useful to seek legal certainty on these particular issues.

62 Due to the nature of litigation, test cases can take some time to progress through the courts. This process can be accelerated through cooperation between the relevant parties, including a shorter than normal period for preparation, and agreement on informal discovery.

63 In a suitable case where the issue is one of law rather than contested facts, and the likelihood of appeal high, it may be possible to “leap frog” the High Court and go to the Court of Appeal direct with that Court’s leave. Alternatively, it is possible to ask the High Court to convene a “full” bench of three Judges to give a more authoritative decision and avoid appeal. Crown Law will discuss these options with EQC and SRES.

64 To ensure that progress is made on resolving these legal issues, I have asked EQC and SRES to keep Crown Law regularly updated as to the progress of relevant litigation, on the basis of it having a public interest component. That will enable Crown Law to monitor and report on progress to Ministers.

65 These test cases will also require the support of the courts system. [3]

This will
require a coordinated approach between EQC, relevant claimant lawyers and
the Christchurch High Court.

66 [3]

- 67 These test cases will be funded from EQC's and SRES's litigation funds. A further financial contribution from the Crown (beyond this litigation funding) does not appear to be required at this time, but there could possibly be the need to make a contribution (for example an agreement not to seek costs) to assist a private litigant to bring or defend a suitable application.
- 68 Officials are also exploring alternative options to progress claims, including engagement with external experts with broad experience operating in Canterbury's circumstances that can consider other ways to set or agree legal precedent before it becomes a test case, or declaratory judgment.

Treatment of on-sold property

- 69 On-sold over-cap customer claims (on-solds) arise when:
- 69.1 the purchaser of a property reverts to EQC with issues about work carried out through an EQC managed repair; or damage un-scoped by EQC, in respect of a claim that had been settled on an under-cap basis with the original owner; and
 - 69.2 further work required to fix the identified issues takes the claim over-cap; and
 - 69.3 the purchaser is unable (in part or at all) to recover the over-cap (and other) costs associated with the damage from the original owner's insurer.
- 70 New owners of affected properties face many of the same issues as ongoing owners of affected properties. The key point that distinguishes on-sold claims from other reopened claims is that the new owner is likely to have more limited ability to recover losses from the original owner's insurer, and there is legal uncertainty as to the extent of the EQC's obligations.
- 71 Three broad streams of response have been identified to pursue our objective of claims being resolved on a fair, timely and final basis.
- 72 First, there is need to obtain legal certainty on where liability sits in on-sold situations. This is a matter best determined by the courts, and is one of the priority issues to be tested through a test case, as discussed in paragraph 55.
- 73 Second, going forward, there is a need to ensure that purchasers of quake-affected properties can openly access whatever information is available about that property, in order to come to a view about whether to purchase a property, on what conditions, and at what price. A key part of this is to make available property-related claims information held by EQC.

- 74 With the approval of the current owner, EQC already makes available to a prospective purchaser information about a property and its claims history. Legislation is currently being considered by select committee that would enable EQC to make all property-related information that it holds publicly available.
- 75 EQC and Land Information New Zealand (LINZ) are currently working together to identify how they might make available property-related claim information held by EQC through a public facing database. The intention of the database will be to enable house purchasers (or their representatives) to access publicly available information held on a property as part of due diligence during the purchasing process.
- 76 EQC and LINZ are working on both an interim option, as well as a longer-term option, that would support the information provision changes contained within the Earthquake Commission Amendment Bill.
- 77 EQC and LINZ will ensure that the proposed database contains accurate information, and that it also includes sufficiently robust privacy and disclaimer information.
- 78 Third, there is a real need to ensure that purchasers are aware of the importance of adequate (and heightened) purchase due diligence in earthquake-affected areas. To that end, MBIE is developing consumer information about the particular issues around purchasing property in earthquake-affected areas in Canterbury.
- 79 To make this process more successful, officials will support a technical workshop process for those involved in the sale and purchase of homes (conveyance lawyers, real-estate agents, property inspectors) to raise awareness of the issues and actions being undertaken around the on-sold property issue. This would happen alongside the completion of the updated database and alongside the implementation of integrated claims management model.
- 80 I do not see merit in pre-empting result of test cases by assuming liability for on-sold properties, for example through a Ministerial Direction to EQC, as referenced in the report of the IMA. This is because there is high uncertainty surrounding the extent to which EQC can be liable in negligence for a failure to identify damage or a failure to repair identified damage to a reasonable standard. There is also high uncertainty about the likely scale of the on-sold issue (and hence about the fiscal impact of assuming liability).
- 81 Further, such action could be detrimental to well-functioning insurance markets in the future, through setting precedent and clouding clear lines around insurance entitlements under contract law. It may also negatively affect the on-going negotiations between EQC and private insurers to reconcile their respective contributions to already settled claims.

Arrangements and resources for EQC monitoring, policy, and other Treasury functions related to Greater Christchurch Regeneration

- 82 The Treasury's involvement and activity in EQC and Greater Christchurch Regeneration portfolios relates to three general categories:
- 82.1 residual Canterbury insurance claims resolution, including monitoring SRES and EQC;
 - 82.2 EQC's non-Canterbury matters, including a statutory inquiry, EQC legislation review and EQC's programme of strategic and operational change; and
 - 82.3 Greater Christchurch regeneration, including the proposed 'global settlement', the Christchurch Regeneration Acceleration Facility, and commercial monitoring of Ōtākaro Limited.
- 83 As the Minister Responsible for EQC, I am concerned to ensure that the arrangements for monitoring EQC will best support the Government's interests and objectives in this agency, and the resources applied to EQC monitoring and policy advice are commensurate with the Government's priorities.
- 84 By their nature, Government policy related to EQC, and EQC's own strategies and operations, carry significant (and largely unavoidable) fiscal risks. These risks vary in their level of visibility and the scope for mitigation.
- 85 As a result, there is a need to ensure adequate focus on the Crown's exposure to EQC-related fiscal risks, monitoring of those risks, and strategies for their management through a more proactive stance towards EQC monitoring.
- 86 Officials have assessed three broad options for EQC monitoring:
- 86.1 **Option 1 – Treasury-lead:** the Treasury is the primary monitoring department for EQC, with responsibility for policy advice, and financial performance and service performance monitoring advice. In practice this would require a sustained focus by the Treasury on service performance monitoring.³
 - 86.2 **Option 2 – Treasury-MBIE joint responsibility:** the Treasury continues to have responsibility for EQC investment monitoring, advice on the implications for the Crown's balance sheet, and monitoring material fiscal risks; and MBIE has responsibility for performance monitoring (including financial performance, service performance, and other non-financial monitoring advice). The Treasury also supports the Board appointments advice process.
 - 86.3 **Option 3 – MBIE-lead:** MBIE is the primary monitoring department for EQC, with the Treasury providing a second-opinion role in relation to EQC financial performance (and consequent implications for the

³ Treasury note that they have already taken steps to reorient their focus towards service performance monitoring, but are concerned that this focus is not sustainable.

Crown's finances). The Treasury also supports the board appointments advice process.

- 87 On balance, officials are of the view that the first option would, in principle, be more likely to give the best result.
- 88 Officials do not consider the last option to be viable. The significance of EQC's financial performance and financial risks for the Crown requires the Treasury to have a first opinion role on these matters, rather than a second opinion responsibility.
- 89 While aligning EQC service performance monitoring with MBIE (Option 2) may have some advantages in terms of focus on immediate operational issues (in particular in Canterbury), aligning this with the Treasury's wider responsibilities for EQC policy and insurance system policy (Option 1) has the potential to be more effective in highlighting and addressing strategic issues concerning EQC's role in the overall residential insurance market.⁴
- 90 Experience also suggests that dual monitoring can be problematic and needs a high degree of senior leadership commitment, supported by clear protocols, to be successful. Such arrangements appear to be often subject to review and amendment, suggesting that they are not always stable.
- 91 More pragmatically, there would likely be material transitional cost and transactions costs in establishing new functions and capability in MBIE, and coordinating on shared responsibilities, under Option 2.
- 92 On that basis I recommend that the Treasury continues to have responsibility for providing policy advice and monitoring advice in respect of EQC.
- 93 I am concerned to ensure that these responsibilities are clearly specified, appropriately resourced and muscular enough to give confidence to Ministers that this work is in hand. Clearly this will require continued priority to be placed on EQC monitoring and EQC policy, until we can be confident that all outstanding claims are likely to be resolved.
- 94 This needs to be seen in the context of broader work on Canterbury regeneration. It is clear that this programme of work will require a high level of cooperation between agencies, the various Councils in the region, and Ōtākaro. DPMC is the lead agency for much of this work, but it has become clear that both DPMC and the Minister for Greater Christchurch Regeneration need more support from the Treasury to advance the work programme, particularly on matters relating to the proposed 'global settlement' with the Council.
- 95 The net result is that there is a significantly increased demand for Treasury resources for matters pertaining to the EQC and Greater Christchurch

⁴ Many of the issues currently being considered in this paper (e.g. legal ambiguity on liability, limitations, treatment of on-sold over-cap properties, integration of claims management), and for that matter the issues in the current EQC Amendment Bill, are evidence that there could be better alignment between the EQC Act and the broader regulatory regime that insurers operate within.

portfolios. The Treasury is unable to further de-prioritise other areas of work without significant negative impact on other government priorities, its stewardship obligations, or the operating model required to maintain the necessary capability.

- 96 The Treasury has requested additional funding of \$1.699 million in 2018/19 to undertake the priority work in the EQC and Greater Christchurch portfolios. \$1 million of this will be sought from a transfer of forecast surplus funding within Vote Finance, and the remaining \$0.669 million from the between-Budget contingency. This is a temporary funding request for the 2018/19 year only. Any longer term resourcing requirements for the continuation of any of the work subject to this temporary funding may be sought as part of Budget 2019, in consultation with Ministers to determine what the organisation's highest priorities should be in 2019/20 and beyond.
- 97 I have agreed my expectations for enhanced EQC monitoring, and for EQC policy advice over the next year, with the Treasury. I have also agreed the resourcing needed to deliver on those expectations with the Minister of Finance in line with the funding outlined in paragraph 96. This will enable Treasury to employ additional resources in the following areas:
- 97.1 enhanced monitoring of EQC, SRES and Ōtākaro;
 - 97.2 increased support for Greater Christchurch regeneration; and
 - 97.3 provide increased advice on EQC insurance policy, including continuation of the work initiated by the Task Force, Phase 1 of the EQC Act review and management of policy issues out of the EQC Inquiry.

Further Work

- 98 The cross-agency group that Cabinet had directed to work on the issues covered in this Cabinet paper will cease at the end of August. The following key work streams will be picked up by contributing agencies:
- 98.1 **MBIE**: implementation of the Greater Christchurch Claims Resolution Service;
 - 98.2 **Treasury**: advice on the functioning of insurance markets generally, together with enhanced monitoring and policy advice regarding EQC and SRES; and
 - 98.3 **Crown Law**: monitoring and reporting on legal issues, including the progress of test cases.

Financial Implications

- 99 There are a number of technical financial changes that are required to give effect to the CRS.
- 100 The Treasury monitoring and programme of work outlined in this paper will cost \$1.699 million for the remainder of 2018/19. This will provide for up to ten

additional FTEs, plus funds for legal and other costs. Functionally, the resource allocation is expected to be made to:

- 100.1 enhance monitoring capability (2 FTEs) (EQC/SRES/Ōtākaro);
- 100.2 increase support for Greater Christchurch Regeneration (2 FTEs); and
- 100.3 provide advice on EQC insurance policy (6 FTEs), including continuation of the work initiated by the Task Force, Phase 1 of the EQC Act review and management of policy issues out of the EQC Inquiry.

101 Out of this \$1.699 million, it is proposed that \$1 million be reprioritised from the Tax Working Group MCA, for which the Minister of Finance is responsible. The Minister of Finance has been consulted on this proposed transfer and is comfortable that the Tax Working Group will require less than \$3 million of the \$4 million appropriated to complete its review – allowing for this \$1 million transfer.

102 It is proposed that the \$0.699 million balance be funded from the between Budget contingency established as part of Budget 2018.

Legislative Implications

103 There are no legislative implications from this paper.

Human Rights Implications

104 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Gender Implications

105 The recommendations in this paper will, as part of their purpose, support the rights of all New Zealanders and aim to improve the experience of all New Zealanders in relation to EQC claims management.

Disability Perspective

106 The recommendations in this paper will, as part of their purpose, support the rights of all New Zealanders and aim to improve the experience of all New Zealanders in relation to EQC claims management.

Regulatory Impact Assessment

107 A regulatory impact assessment is not required for the proposals in this paper.

Consultation

108 This paper was prepared by the Greater Christchurch Group of the Department of Prime Minister and Cabinet. The Treasury, the Ministry of Business, Innovation and Employment, the Ministry of Justice, Land Information New Zealand and the State Services Commission were consulted.

109 The Earthquake Commission has been informed.

Recommendations

I recommend that the Committee:

EQC operations and capability

- 1 **note** that the Earthquake Commission's Board has accepted and is executing all the recommendations in the report of the Independent Ministerial Advisor into the Earthquake Commission that related to its operations and capability;

Integrated operating model

- 2 **agree** that the Earthquake Commission, Southern Response Earthquake Services Limited and the Ministry of Business, Innovation and Employment will trial an integrated operating model to streamline the claims settlement process for claimants and reduce administrative costs for insurers;
- 3 **note** that the integrated operating model is intended to be funded from contributions from the Earthquake Commission and Southern Response Earthquake Services Limited, along with the Ministry of Business, Innovation and Employment through additional funding for the Residential Advisory Service and deferred spending on mediation services for the Canterbury Earthquakes Insurance Tribunal;
- 4 **approve** the following fiscally neutral adjustment to provide for the integrated operating model as described in recommendation 2 above, with no impact on the operating balance:

Vote Building and Housing Minister for Greater Christchurch Regeneration	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Departmental Output Expenses: Residential Advisory Services (funded by revenue Crown)	(2.000)	-	-	-	-
Greater Christchurch Recovery (funded by revenue Crown)	2.000	-	-	-	-
Greater Christchurch Recovery (funded by revenue other)	4.000	-	-	-	-

- 5 **agree** that the proposed changes to appropriations for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 6 **agree** that the appropriation Minister for each of the “Residential Advisory Services” and “Greater Christchurch Recovery” departmental output expense appropriations under Vote Building and Housing be changed from the Minister for Building and Construction to the Minister for Greater Christchurch Regeneration;
- 7 **approve** that the shareholding Ministers in Southern Response Earthquake Services Limited intend to amend the company's constitution to enable its involvement in the integrated operating model;

Consolidated claims management

- 8 **note** that there continues to be a high degree of uncertainty about the future liabilities of insurance entities (the Earthquake Commission, Southern Response Earthquake Services Limited and private insurers) from Canterbury earthquake-related claims, as a result of ongoing discovery of quake-damage to properties, continued remedial repairs, and legal uncertainty regarding liability;
- 9 **note** that as a result, it is not viable at this time to consider consolidating the management of all new Canterbury earthquake-related claims from insurance entities (the Earthquake Commission, Southern Response Earthquake Services Limited, other private insurers) into one vehicle, without undue risk being borne by the Crown;

EQC flexibility to make payments

- 10 **note** that a new arrangement is being finalised between the Earthquake Commission and private insurers to allow the Earthquake Commission to make cash settlements for Canterbury claims above the cap, and then recover the over-cap amount from the private insurers;
- 11 **note** that the Earthquake Commission is currently reviewing its internal temporary accommodation policy to determine if its scope should be broadened to incorporate the reimbursement of any other legitimate claim-related costs;
- 12 **note** that the Earthquake Commission has already removed the need for homeowners to provide engineering reports for remedial claims to be reopened;

Test cases

- 13 [3]

- 14 **note** that the Earthquake Commission and Southern Response Earthquake Services Limited are working to identify test cases as a matter of priority, with view to decision(s) of the High Court with precedential value being available in 2019;
- 15 **note** that the responsible Minister(s) are able to ask the Earthquake Commission and Southern Response Earthquake Services Limited to keep Crown Law regularly up dated as to the conduct of relevant litigation with a public interest component, on the basis of common interest legal professional privilege;

On-sold properties

- 16 **agree** that questions of liability of insurers and other parties in respect of on-sold properties, including issues of contributory negligence and treatment of over-cap remedial repair costs, are best resolved through the courts;
- 17 **note** the Ministry of Business, Innovation and Employment is developing consumer information about the issues around purchasing property in earthquake-affected areas in Canterbury;
- 18 **note** that the Earthquake Commission and Land Information New Zealand are working together to identify how they might make available property-related claim information held by the Earthquake Commission through a public facing database;

Arrangements for monitoring of the Earthquake Commission

- 19 **agree** that the Treasury continues to have responsibility for providing policy advice and monitoring advice in respect of the Earthquake Commission to the Minister Responsible for the Earthquake Commission (acting as the Minister of Finance for the purposes of the EQC Act);
- 20 **agree** that the Treasury should undertake additional work on the following activities, subject to the financial recommendations 22 and 23 below:
 - 20.1 enhance its monitoring of EQC, Southern Response Earthquake Services Limited and Ōtākaro;
 - 20.3 increase its support for Greater Christchurch regeneration; and
 - 20.3 provide increased advice on EQC insurance policy, including continuation of the work initiated by the Task Force, Phase 1 of the EQC Act review and management of policy issues out of the EQC Inquiry;
- 21 **note** that I have agreed with the Minister of Finance the resourcing and capability needed to perform this enhanced role;
- 22 **agree** to increase expenditure to provide for costs associated with the policy decision in recommendation 19 above, with the following impact on the operating balance:

Vote Finance	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Operating Balance Impact	0.699	-	-	-	-
No Impact	1.000	-	-	-	-
Total	1.699	-	-	-	-

- 23 **approve** the following changes to appropriations to give effect to the policy decision in recommendation 19 above:

Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2018/19	2019/20	2020/21	2021/22	2022/23 & Outyears
Multi-Category Expenses and Capital Expenditure: Departmental Output Expense: Tax Working Group – Provision of Support and Advice (funded by Revenue Crown)	(1.000)	-	-	-	-
Departmental Output Expense: Provision of Financial Operations Services and Operational Advice (funded by Revenue Crown)	1.699	-	-	-	-
Total Operating	0.699	-	-	-	-

- 24 **agree** that the proposed changes to appropriations for 2018/19 above be included in the 2018/19 Supplementary Estimates and that, in the interim, the increase be met by Imprest Supply;
- 25 **agree** that the operating balance impact in recommendation 22 above of the expenses incurred under recommendation 23 above be a charge against the between-Budget contingency, established as part of Budget 2018;
- 26 **note** that this funding will fund this programme for the remainder of 2018/19 and that a budget initiative may be submitted in Budget 2019 to fund the continuation of this programme in 2019/20 and beyond;

Further work

- 27 **note** that MBIE will be the responsible agency for the delivery of the Greater Christchurch Claims Resolution Service;
- 28 **note** that Treasury will be responsible for advice on the functioning of insurance markets generally, together with enhanced monitoring and policy advice regarding EQC and SRES;
- 29 **note** that Crown Law will be responsible for monitoring and reporting to Ministers on legal issues, including the progress of test cases.

Authorised for lodgement

Hon Dr Megan Woods

Minister Responsible for the Earthquake Commission

Minister for Greater Christchurch Regeneration

Appendix 1: Summary of Independent Advisor's Recommendations and Status of Response

Theme	Recommendation	Status	Comment
EQC operational structure	a. EQC hires another settlement team so that the case load for each team is approximately 100, which supports good familiarisation with each claim, and faster handling	Completed	
	b. EQC considers how they will manage drainage issues within the new case management approach	Completed	Additional resources have been hired to manage drainage issues
EQC Operational Practice	a. A consistent operational practice model is urgently developed to ensure claims are dealt with to high standards across the Canterbury Business Unit	On track	
EQC Quality of Data	a. EQC immediately establish an expert data quality group led by the General Manager Technology	Completed	
	b. EQC take a small team of experienced EQC staff, pull out all of the physical claims files relating to the remaining claims, and have the team sort, review, confirm and capture the key data	On track	Due to be completed by August 2018
	c. EQC publishes its ILVR semi-annually in a prominent place on its website, which include context and explanations for any large movements in the ILVR since the previous set of numbers	Completed	
EQC Claimant Reference Panel	a. EQC establish a Claimant Reference Group, comprised of claimants and community representative advocates who are paid for their time and expertise, and with whom EQC senior management meets regularly	On track	First meeting held in July
EQC Communication with Claimants	a. all information on their file be available to claimants on request	On track	
	b. the case management approach must include the development of communication standards for EQC with claimants, which set out that communications are respectful, empathetic, honest, timely, and that EQC staff do what they say they will do	On track	Due to completed by August 2018
	c. the EQC's Canterbury specific webpage be reviewed to ensure it is easy to read and is updated on a regular basis	On track	Relevant content reviewed and updated. Website scheduled to be overhauled by end of

Theme	Recommendation	Status	Comment
			September 2018.
EQC Relationship with private insurers	a. EQC senior management schedule regular, formal meetings with each private insurer to remove any barriers to resolving claims	Completed	Meeting with insurers are ongoing
	b. EQC share information about all claims with the relevant private insurer with the aim of settling claims more quickly	On track	
EQC flexibility to make payments	a. EQC works with private insurers to extend the existing Protocol 1 to allow EQC to make cash settlements above the EQC cap, which would then be recovered from the private insurers	On-track	
Temporary accommodation and other costs	a. EQC and Treasury work together on a proposal that could be put to the Minister for her to determine whether she supports a Ministerial Direction that would allow EQC to reimburse certain legitimate claim-related costs in certain circumstances		EQC reviewing its internal temporary accommodation policy to determine if its scope should be broadened to incorporate the reimbursement of any other legitimate claim-related costs.
Residential Advisory Service and Psycho-social support	a. the RAS is extended for two more years to 30 June 2020 and its role is expanded to provide a “one-stop-shop” for claimants, incorporating psycho-social support for claimants	Completed	
Limitations	a. The Treasury and MBIE undertake policy work on whether the limitation period in respect of the Canterbury earthquakes could be clarified and made consistent across EQC and the various insurers		This is to be progressed via test cases
Test cases and litigation process	a. EQC continues to work with lawyers and claimants to identify appropriate test cases on issues of law where precedents would be helpful for resolving other claims and to fast track these where possible	On track	Options are being explored to fast track suitable test cases
	b. the Government give ongoing consideration to ensuring that further litigation process innovation is supported where appropriate	On track	
EQC Ability to Discharge Cases	a. The Treasury includes the discharge of claims as part of its policy work on the EQC Act	On track	
Claims	a. The Treasury continues to work with the insurance		Not viable at this time to

Theme	Recommendation	Status	Comment
management consolidation	industry and EQC to test the viability of a new model which could see the management of all new Canterbury earthquake-related claims from insurance entities (EQC, Southern Response, other private insurers) consolidated into one vehicle from a future date.		consider consolidating the management of all new claims into one vehicle, without undue risk being borne by the Crown. Integrated claims management model being trialed (EQC / SRES / RAS)
On Sold Properties	a. EQC management engage with Treasury to seek clarity on the Government's policy position and any potential response with regard to the fair and transparent resolution of on-sold damaged property claims.	On track	This is to be progressed via test cases
	b. Treasury work with EQC so that there is an agreed policy and legislative position for large scale insurance events in the future	On track	
Performance Metrics	a. EQC develop a more comprehensive set of layered measures, both quantitative and qualitative, for the main stages of the claims process	On track	
	b. EQC publishes these metrics on its website no less often than quarterly	On track	
Monitoring Arrangements over EQC	a. that increased focus and resource should be directed to the monitoring function in Treasury related to service delivery; performance and future service risk, confidence by the public, institutional capability and its implementation of change	On track	
	b. MBIE and Treasury work on providing the Minister with advice on which government department in future is best placed to undertake such monitoring	Completed	
	c. Treasury and MBIE meet jointly with the Minister at least quarterly to update her on their progress on the work arising from the recommendations in this report	On track	
	d. EQC reports to the Minister on their progress with the implementation of the recommendations from this report that relate to EQC, to ensure that they are implemented in a timely fashion	On track	