



Cabinet

CAB Min (11) 27/13

Copy No:

Minute of Decision

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Crown Offer to Residential Insured Property Owners in the Canterbury Earthquake Affected Red Zones: Paper 2

Portfolio: Canterbury Earthquake Recovery

On 18 July 2011, Cabinet:

Background

- 1 **noted** that the paper under CAB (11) 430 outlines policy decisions around transaction design and implementation for insured residential property owners in the Red Zones;

Transfer of property to the Crown

Settlement dates

- 2 **noted** that allowing residents to choose their own settlement date may have high transaction costs, and may create unmanageable settlement peaks and troughs in the transaction process;
- 3 **agreed** that the Crown agree a settlement date with each property owner, noting that this may require some scheduling to manage peaks;

Fast-tracking special cases

- 4 **agreed** that settlement processes be fast-tracked in special cases;
- 5 **agreed** to delegate the ability to fast-track special cases to the Chief Executive of the Canterbury Earthquake Recovery Authority;

Continued occupation post settlement

- 6 **noted** that some property owners have asked whether they can stay in their houses in the Red Zones post-settlement with the Crown;
- 7 **noted** that allowing people to stay in their properties following settlement raises Residential Tenancy Act considerations, health and safety issues, and a public liability risk;
- 8 **agreed** that the Crown will require vacant possession on settlement;

Payment of a deposit upon entering a sale and purchase agreement

- 9 **noted** that payment of a deposit is a common feature of a residential conveyance transaction;
- 10 **agreed** that either a deposit of \$50,000 will be paid where the settlement date is less than six months from the date of agreement, or a prepayment of up to 50 percent of the purchase price is offered where the settlement date is more than six months from the date of agreement;

Warranties

- 11 **noted** that warranties are generally incorporated into sale and purchase agreements and place obligations on the vendor before settlement date;
- 12 **agreed** that warranties associated with the following issues be included in the sale and purchase agreements:
- 12.1 that there are no outstanding charges associated with the property;
- 12.2 that the vendor will give notice to the territorial authority, regional council, and other relevant authority, including, where appropriate, the body corporate;
- 12.3 the validity of insurance policies, EQC and insurance claims, and that the statement of apportionments on settlement is correct, including insurance money already received;

Withheld under sections 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act**Withheld under sections 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act**

- 13 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 14 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 15 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 16 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 17 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 18 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 19 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 20 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**

- 21 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
Withheld under sections 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information
- 22 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 23 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 24 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act:**
- 24.1 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**
- 24.2 **Withheld under section 9(2)(f)(iv), 9(2)(g)(i) and 9(2)(j) of the Official Information Act;**

Other issues

Crown contribution toward legal fees

- 25 **Withheld under sections 9(2) (f)(iv) and 9(2)(g)(i) of the Official Information Act**
- 26 **agreed** to contribute up to 50 percent of the legal costs:
- 26.1 to a maximum of \$750 for those insured residential Red Zone property owners who accept the Crown's Option 1;
- 26.2 to a maximum of \$500 for those insured residential Red Zone property owners who accept Option 2;
- 27 **noted** that the cost of providing a contribution towards legal fees to property owners in the Red Zones is estimated to be \$3.850 million;
- 28 **agreed** to charge the costs of contributions towards legal fees against the Canterbury Earthquake Recovery Fund;
- 29 **agreed** to establish a new Non-Departmental Other Expense appropriation "Contributions towards legal fees" in Vote Canterbury Earthquake Recovery;
- 30 **agreed** that the scope of this appropriation be "This appropriation is limited to contributions towards legal fees incurred by property owners in the Red Zones in Canterbury selling properties to the Crown";

31 **approved** the following changes to appropriations to provide for contributions towards legal fees incurred by property owners in the Red Zones in Canterbury, with a corresponding impact on the operating balance:

Vote Canterbury Earthquake Recovery Minister for Canterbury Earthquake Recovery	\$m – increase/(decrease)				
	2011/12	2012/13	2013/14	2014/15	2015/16 & Outyears
Non-Departmental Other Expense: Contributions towards legal fees	3.830	-	-	-	

32 **agreed** that the change to appropriations for 2011/12 above be included in the 2011/12 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

Insurance disputes resolution

33 **noted** that all the main insurance companies are members of the Insurance and Savings Ombudsman (ISO) scheme;

34 **noted** that the ISO can hear disputes up to \$200,000 and higher if the insurer agrees;

35 **agreed** that no additional insurance disputes resolution service is needed for Red Zone residents, and that the ISO remain the main disputes resolution forum for disputes under \$200,000;

Withheld under section 9 (2)(f)(iv) of the Official Information Act

36 **Withheld under section 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**

37 **Withheld under section 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**

38 **Withheld under section 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**

39 **Withheld under section 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**

Deed poll for settling with the banks

40 **noted** that under Option 2, when the Crown takes ownership, the bank holding the mortgage may lose its claim on the insurance payment if the land payment is insufficient to repay the mortgage;

41 **noted** that if banks stall the sale of properties, the property owner may not be able to accept the Crown's offer before it expires;

42 **agreed** that the Crown draft a standard deed poll to set out the bank's rights in relation to insurance payouts on the dwellings;

Delegation of authority

43 **noted** that due to the complexity and various anomalies that can occur within a transaction, it is considered appropriate for the Chief Executive of the Canterbury Earthquake Recovery Authority to be given Power to Act to take decisions on an individual case by case basis;

- 44 **noted** that the Power to Act will have to comply with the government's recovery objectives of certainty, confidence for property owners, and a simple process, and that all delegated decisions must be undertaken on the basis of minimum cost to the Crown;
- 45 **Withheld under section 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**
- 46 **authorised** the Minister of Finance and the Minister for Canterbury Earthquake Recovery to have Power to Act to take decisions on any minor and technical issues that arise in relation to the above decisions.

Secretary of the Cabinet

Reference: CAB (11) 430 CAB Min (11) 27/12

Released by the Minister for Canterbury Earthquake Recovery

Office of the Minister for Canterbury Earthquake Recovery

Memorandum for Cabinet

**CROWN OFFER TO RESIDENTIAL INSURED PROPERTY OWNERS IN THE
CANTERBURY EARTHQUAKE AFFECTED RED ZONES – PAPER 2**

Purpose

- 1 This paper focuses on policy decisions about the transaction design and implementation for residential property owners in the Christchurch Red Zones. It outlines policy decisions that are necessary to enable the Crown to make an offer to insured residential property owners in the Red Zones within eight weeks from the announcements of the zones, on 23 June 2011.

Executive Summary

- 2 Ministers with power to act agreed on 22 June 2011 to identify four zones of land damage for the greater Christchurch area. This paper relates to the Red Zones, the worse affected residential zones, where rebuilding is not likely to occur in the short-to-medium term. In that decision, Ministers also agreed to extend the choice of two offer packages to insured residential property owners in the Red Zones [CAB Min (11) 24/15 refer].
- 3 This is the second in a set of Cabinet papers. It seeks decisions regarding:
 - Settlement dates;
 - Continued occupation post settlement;
 - Fast tracking special cases;
 - Payment of deposit upon entering a sale and purchase agreement;
 - Warranties;
 - Continuation of insurance;
 - Withheld under section 9(2)(f)(iv) Withheld under section 9(2)(g)(i)
 - Crown contribution towards legal fees;
 - Insurance disputes resolution;
 - Withheld under section 9(2)(f)(iv) Withheld under section 9(2)(g)(i)
 - Deed poll for settling with the banks.

The supporting companion Cabinet paper 1 deals with issues relating to purchase price.

Background

4 The 4 September 2010 and 22 February 2011 earthquakes and their aftershocks represent an incomparable natural disaster in New Zealand's history. The aftershocks on 13 June 2011 including another M6.3 only served to emphasise the repeated nature of the events and the fact that an endpoint cannot be predicted. The damage in greater Christchurch is unprecedented, in an area of significant population.

5 On 22 June, Ministers with power to act agreed to four zones of land damage for Christchurch, based on the severity and extent of land damage, the cost-effectiveness and social impacts of land remediation [CAB Min (11) 24/15 refers]. They are as follows:

Green: There are no significant land damage issues which prevent rebuilding in these areas in the short-to-medium term and rebuilding can begin subject to some conditions.

Orange: Further work is required to determine if rebuilding is likely to be possible in the short-to-medium term. There are 9,770 properties in the Orange Zone with a total rating capital valuation of \$3.762b¹.

White: Following the 13 June 2011 earthquakes, which caused further extensive damage, these areas require mapping and further assessments to be undertaken.

Red: Rebuilding is not likely to occur in the short-to-medium term due to the obstacles posed by the significant land and infrastructure damage and the high risk of further damage to land and buildings from low-levels of shaking (e.g. aftershocks), flooding or spring tides. There are 5,176 properties in the Red Zones with a total rating capital valuation of \$1.732b.

6 This paper relates to residential properties identified in the Red Zones announced on 23 June 2011.

7 In designing the processes, we are seeking to give effect to the government's recovery objectives where the government is committed to supporting a speedy recovery for people and businesses in the greater Christchurch area. It accepts the recovery will be a long-term activity and that it is important that recovery is underway quickly. It was with this in mind that the Canterbury Earthquake Recovery (CER) Act 2011 was enacted to ensure that through the Canterbury Earthquake Recovery Authority (CERA) it could among other things:

- Provide appropriate measures to ensure that greater Christchurch and the councils and their communities respond to, and recover from, the impacts of the Canterbury earthquakes.
- Enable a focused, timely and expedited recovery.
- Facilitate, co-ordinate and direct the planning, rebuilding and recovery of affected communities, including the repair and rebuilding of land, infrastructure and other property.

¹ Figures also include non-residential properties.

- 8 The price and the process also takes into consideration the rebuild objectives which were established to assist the Crown in determining where rebuilding can occur or is unlikely to be possible to occur in the short-to-medium term:
- a) **Certainty of outcome** for home-owners as soon as practicable;
 - b) Create **confidence** for people to be able to move forward with their lives;
 - c) Creating **confidence** in decision-making processes (for home-owners, business-owners, insurers and investors);
 - d) Using the **best available information** to inform decisions;
 - e) Having a **simple process** in order to provide clarity and support for land-owners, residents, and businesses in those areas.
- 9 For the purposes of this paper, all references to property owners refers to insured residential property owners² in the Red Zones, as these are the property-owners to whom the current announcements apply.

Transfer of property to the Crown

- 10 This section covers unresolved issues associated with the Crown's purchase of the Red-Zone properties. These issues include when property owners can settle with the Crown, whether they can stay in their home as a tenant post settlement, whether the process can be fast tracked for special cases and whether the Crown will pay a deposit.

Settlement dates

- 11 Many property owners will want to choose a settlement date that is convenient for them. But the Crown also needs to manage the flow of transactions so that the administration of the process is not overwhelmed at any one point of time.
- 12 The Crown must therefore decide how to handle the timing of settlement with individual property owners. There are three options for managing this issue:
- Settlement Option A: The Crown allocates settlement dates and changes settlement dates as required on a case by case basis; or
- Settlement Option B: The Crown agrees a settlement date with each property owner, noting this may require some scheduling to manage peaks; or
- Settlement Option C: The Crown allows each property owner to determine their own settlement dates.
- 13 Settlement Option A would allow the Crown to manage the flow of transactions with a view to maximising administrative efficiency. However, it may create great inconvenience for individual property owners, in particular because the Crown cannot know in advance whether a particular settlement date is appropriate given the circumstances they might face. I think it is reasonable for the Crown to be reasonably flexible in terms of the timing of settlement.

² For the purposes of clarity, this does not include residents of retirement villages

- 14 Both Settlement Options B and C allow for varying degrees of flexibility. However, Option C may lead to unmanageable peaks in flow of transactions, whereas Option B provides an opportunity for the Crown to limit the number of residents who can settle on a particular date. On this basis, I prefer Settlement Option B.

Fast-tracking special cases

- 15 In some special cases, the Crown may wish to fast-track settlement processes (e.g. due to ill-health or severe hardship on the part of property owners).
- 16 The Crown has two options:
- Special case Option A: Allow fast tracking for special cases; or
- Special case Option B: Do not allow fast tracking for special cases.
- 17 Special case Option A will change the timing of settlement for a small number of cases but should have minimal other impact on the Crown. Subject to the systems being established, special cases should be able to be fast-tracked.
- 18 I recommend Special case Option A and propose delegating the ability to fast track special cases to the Chief Executive of the Canterbury Earthquake Recovery Authority. This delegation to fast-track special cases will be considered later as part of the delegation of power to act to the Chief Executive, as discussed below.

Continued occupation after settlement

- 19 Some property owners in the Red Zones have asked if they can stay in their houses in the Red Zones after settling with the Crown.
- 20 The Crown has two options:
- Post-settlement Option A: Require vacant possession on settlement; or
- Post-settlement Option B: Allow property owners to remain in possession until their claims with private insurers and EQC have been settled.
- 21 Allowing property owners to stay in their properties following settlement turns the Crown into a landlord or licensor with regard to the Red-Zone properties. This would require compliance with (or an exemption from) the Residential Tenancies Act, as well as consideration of any relevant health and safety issues and the provision of financial resources to manage the tenants/licences. There is also a risk that some residents might refuse to vacate the property at a later date.
- 22 The Crown could also increase its public liability risk by allowing continued occupation, e.g. in a case where a structure owned by the Crown causes damage or injury to another person or structure during an earthquake. Public liability insurance could be maintained through dwelling insurance for properties post settlement. This is discussed further in paragraphs 49-51.
- 23 Requiring vacant possession would remove these administrative costs and potential public liability risk. On this basis, I prefer Post-settlement Option A.

Payment of a deposit upon entering a sale and purchase agreement

24 Some property owners have asked the Crown to pay them a deposit upon signing a sale and purchase agreement. They believe a deposit will help them arrange financing for the purchase of another property. I understand, however, that banks will in fact lend on the basis of the Crown's *commitment* to purchase, as they can trust the Crown to honour its commitment. In any case, the usual purpose of a deposit is to penalise the purchaser should they not proceed with the purchase. There is no risk of the Crown failing to proceed with the transaction in this case. On the other hand, the administration involved in paying a deposit will increase the overall costs of the transaction.

25 However, the advantages of paying a deposit include:

- a) a deposit makes the offer more attractive to property owners; and
- b) a deposit can be used by the property owner to reduce/service existing indebtedness or pay a deposit on a new home.

26 If a deposit is to be paid, there is a decision to be made as to the level of payment. A 10% deposit is the benchmark currently used in the residential property market.

27 The Crown has three options:

Deposit Option A: No deposit is payable to the property owner with the purchase price being paid in full on settlement; or

Deposit Option B: A deposit of \$50,000 is paid to the property owner when the agreement is signed and settlement is less than six months following the date of the agreement; AND

Deposit Option C: In addition to or substitution of a deposit, a prepayment of up to 50% of the purchase price is offered to those who request a settlement date of more than six months following the date of the agreement shortly after it is known what insurance payments have been made to the property owners.

28 Note that if Deposit Options B and C are adopted, and the property owner has a mortgage, the transaction structure will have to ensure that any deposit or prepayment is paid directly to a mortgagee (this will be done through the vendor's solicitor).

29

Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)

30 On balance, I recommend both Deposit Options B and C.

Warranties

31 Warranties are generally incorporated into sale and purchase agreements and place obligations on the vendor before the settlement date to ensure that the vendor acts in good faith prior to settlement and preserves the state of the property as it was at the date of the agreement. Inclusion of warranties in the sale and purchase agreement will enable the implementation of decisions made elsewhere in this and accompanying papers.

Building compliance

- 32 Warranties are usually included regarding the compliance of the building with permits and consents. As these properties will no longer be used for residential purposes, there is no reason that the Crown should insist on including warranties of this nature in the sale and purchase agreements. Damaged properties may no longer comply with consenting requirements, meaning that property owners would be unable to comply with this warranty.

Inclusion and condition of chattels

- 33 As discussed in the accompanying paper, the sale and purchase agreement will need to set out what chattels, and in what condition, are included in the agreement. A warranty should be included which requires those chattels to remain on the property on settlement.

Outstanding charges and obligations

- 34 The property owner should be responsible for all outstanding charges associated with the property, such as rates, prior to settlement day. Without such a warranty, the Crown will become responsible for these post-settlement.
- 35 Vendors are generally responsible for notifying the territorial authority, regional council, and other relevant authority, including, where appropriate the body corporate. By convention, this is done by the vendor's solicitor and could similarly be completed on the settlement of the Crown's purchase of the Red-Zone properties. While this could be undertaken by the Crown agent responsible for implementing this offer, it is likely to be simpler if the vendor's solicitor continues to notify the relevant authorities as they usually would.

Additional warranties

- 36 The unique nature of this deal suggests that further warranties should be included in the sale and purchase agreement. In particular, warranties on the validity of insurance, claims and that the statement of apportionments on settlement is correct including insurance money already received.

- 37 I propose that warranties associated with the issues are included in the sale and purchase agreements:

37.1 inclusion and condition of chattels

37.2 that there are no outstanding charges associated with the property

37.3 that the vendor will give notice to the territorial authority, regional council, and other relevant authority, including, where appropriate the body corporate

37.4 the validity of insurance, claims, and that the statement of apportionments on settlement is correct including insurance money already received.

Insurance

- 38 This section covers the insurance aspect of the Crown's offer to purchase these properties.

Continuation of Insurance

Continuation of insurance by property owner

- 39 Under the sale and purchase agreement, the Crown will, at the date of the agreement, take assignment of the benefits of the private insurance claims and EQC claims that have already been made in respect of the properties. After that date the Crown will take a further assignment of claims made immediately upon those claims being made (or being able to be made). That gives the Crown control over every assigned claim at the earliest appropriate date.
- 40 As a result, the Crown needs to decide whether to require property owners to continue their insurance policies (and therefore their EQC cover) until settlement or only until their current policy expires.

Withheld under section 9(2)(g)(i)

Withheld under section 9(2)(f)(iv)

- 41 While the properties are all going to be demolished, there are three reasons to consider ongoing insurance:
- (a) Should there be a future event, the Crown could decrease the cost of making these offers by getting further payments from private insurers and EQC.
 - (b) The need for public liability insurance to cover risk of damage caused by Red-Zone properties (i.e. damage caused by the dwelling collapsing on a neighbouring property).
 - (c) To ensure ongoing EQC land cover until settlement.
- 42 The Crown has two options regarding the property owners' obligations to continue their insurance:

Owner insurance Option A: Require property owners to continue their insurance until the earliest of expiry of their policy (ie at the end of the month or year, depending on the policy) or settlement; or

Owner insurance Option B: Require property owners to continue their insurance until settlement.

- 43 Property owners whose insurer declines to renew their policies will not be able to comply with Owner Insurance Option B. In that case, the Crown would need to decide whether to deny those property owners the benefit of the Crown's offers or to waive the obligation to maintain insurance. If the Crown waives the insurance obligation, property owners who complied with the obligation may feel unfairly treated.
- 44 Under Owner Insurance Option A, the Crown will bear the risk of being uninsured for future earthquakes after the property owner's policy expires and the property owner will bear the public liability risks.
- 45 I recommend Owner Insurance Option A.

Withheld under section 9(2)(g)(i)

Withheld under section 9(2)(f)(iv)

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Withheld under section 9(2)(i)

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Withheld under section 9(2)(f)(iv)

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Withheld under section 9(2)(g)(i)

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Withheld under section 9(2)(j)

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Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)

56

Withheld under section 9(2)(l)

57

Other Issues

58 This section covers other issues associated with the implementation of the Crown's offer to insured residential Red-Zone property owners.

Crown contribution towards legal fees

59 It is convention that the Crown pays the property owner's legal costs when it is compulsorily purchasing land. While this is not a compulsory purchase, a contribution towards a property owner's legal fees, would assist property owners in seeking their own independent legal advice.

60 The Crown has three options with regard to legal fees:

Legal fees Option A: Crown does not contribute to property owner's legal fees; or

Legal fees Option B: Crown pays a proportion of property owner's legal fees i.e. 50%, capped at \$500; or

Legal fees Option C: Crown pays a proportion of property owner's legal fees i.e. 50%, capped at \$750 for those who accept Option 1 and \$500 for those who accept Option 2. The higher value for those who accept Option 1 reflects the increased complexity associated with the insurance claims on the dwelling.

61 The cost to the Crown of Legal fees Option B is estimated at \$2.55 million for current Red-Zone properties and the cost for Legal fees Option C is estimated at \$3.83 million. This figure will increase as the land assessment process concludes in the orange and white zones. This expenditure will be a charge against the Canterbury Earthquake Recovery Fund. It is necessary to establish a new appropriation in 2011/12 for this expenditure.

62 I consider it appropriate for the Crown to contribute a portion of property owner's legal fees to those residential property owners who accept the Crown's offer for the following reasons:

- It is important that property owners seek independent legal advice before entering into an agreement with the Crown. Paying a contribution should encourage property owners to seek this advice; and
- It preserves a property owners' equity as this is potentially undermined by burdensome legal fees.

- 63 However we need to curb any incentive on lawyers to increase their legal fees. Placing a cap on the amount that the Crown is willing to pay will reduce the incentive for lawyers to increase their legal fees.
- 64 The increased complexity associated with Option 1 means that those property owners who accept the first option are likely to face higher legal costs. Consequently I propose that we provide additional support for legal fees for those property owners who accept Option 1.
- 65 I support Legal fees Option C.

Insurance disputes resolution

- 66 In some cases where property owners take Option 2, there may be disagreement between the property owners and the insurance companies about the size and form of insurance payments. Such disagreements could substantially delay the process, particularly if there are a large number of disputes, which will prevent people from being able to make an informed decision about the Government's offer and hindering their ability to decide on a future with certainty and confidence.
- 67 All of the main insurance companies are members of the Insurance and Savings Ombudsman (ISO) scheme, which was established to resolve disputes between insurance companies and insured parties. The ISO can make disputes up to \$200,000 plus GST³, although this can be increased if the insurer agrees. Alternatively claimants can seek to resolve claims through the courts. Disputes over \$200,000 would go directly to the High Court.
- 68 The Crown has two options:
- Disputes Option A: No change to the status quo. The ISO remains the main dispute resolution forum for disputes under \$200,000.
- Disputes Option B: A new insurance dispute resolution mechanism is established.
- 69 The ISO is funded by the industry and has increased its capability to deal with disputes in response to the Canterbury earthquakes. As the ISO is already established, it would be most appropriate to continue to use this forum for dispute resolution for Red-Zone properties under \$200,000.
- 70 I support Disputes Option A.

71

Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)

72

³ This limit is set by private contract rather than statute and therefore cannot be change by an Order-In-Council.

73

Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)

74

75

Deed poll for settling with the banks

76 In some cases, property owners may wish to take Option 2 but this will be insufficient to pay back the mortgage owed to the bank. When the Crown takes ownership, the bank holding the mortgage may lose its claim on the insurance payment. In such situations, the bank may be unwilling to allow the Crown to purchase the property until it is assured of its rights regarding the insurance payout on the house. A deed poll to be signed by insurers can be prepared to clarify the rights of the bank.

77 The Crown has two options:

Deed poll Option A: Draft a standard deed poll to set out the bank's rights in relation to insurance payouts on the dwellings

Deed poll Option B: Enable banks to draft their own deed polls

78 Preparing a standard deed poll, in consultation with the major banks, will prevent duplication of effort and will ensure that all parties are treated the same, regardless of which bank holds the mortgage.

79 I support Deed poll Option A.

Announcements

80 Details of the announcements associated with the red zone properties are outlined in the accompanying paper on setting the purchase price.

Next steps

81 As discussed in the accompanying paper, subsequent advice will be prepared for Cabinet for decisions on:

81.1 Mechanics for implementing decisions on the Red Zones;

81.2 Details of the packages;

81.3 Further support available for home-owners;

- 81.4 Issues for business owners;
- 81.5 Issues for the uninsured; and
- 81.6 Orange Zones

Consultation

- 82 Treasury, Land Information New Zealand, and Crown Law were consulted on a draft of this paper.
- 83 Department of the Prime Minister and Cabinet were informed of this paper.

Financial implications

- 84 I estimate the cost of maintaining insurance policies for purchased properties to be \$4 million over one year. This figure will increase as the land assessment process concludes in the orange and white zones. Further work is required to establish whether public liability insurance is available and affordable for these properties. I propose we delegate authority to the Minister for Canterbury Earthquake Recovery and the Minister of Finance approve any appropriations necessary for the purchase of home dwelling or public liability insurance. This expenditure will be a charge against the Canterbury Earthquake Recovery Fund.
- 85 I estimate the cost of providing a contribution towards the legal fees of landowners in the red zone (as of July 2011) to be up to \$3.830 million. This figure will increase as the land assessment process concludes in the orange and white zones. This expenditure will be a charge against the Canterbury Earthquake Recovery Fund. It is necessary to establish a new appropriation in 2011/12 for this expenditure.

Delegated Authority

- 86 Due to the complexity and various anomalies that can occur within a transaction, I consider that the Chief Executive of the Canterbury Earthquake Recovery Authority (CERA) be given power to act on individual cases.
- 87 That power to act will have to comply with the government recovery objectives of certainty, confidence for property owners and a simple process. In addition all delegated decisions must be undertaken on the basis of minimum cost to the Crown

88

Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)

Human rights implications

- 89 The proposals in this paper are not inconsistent with the New Zealand Bill of Rights Act 1990, or the Human Rights Act 1993.

Legislative implications

- 90 There are no legislative implications arising from this paper.

Regulatory impact and compliance cost statement

- 91 A regulatory impact statement is not required at this time as there are no regulatory charges.

Gender implications

- 92 There are no gender implications associated with the proposals in this paper.

Disability perspective

- 93 Any recovery plan coming from the proposals in this paper will be developed with regard to the New Zealand Disability Strategy.

Publicity

- 94 Refer to Paper 1.

Recommendations

It is recommended that Cabinet:

- 1.1 note this paper outlines policy decisions around transaction design and implementation for insured residential property owners in the Red Zones.

Transfer of property to the Crown

Settlement dates

- 1.2 note that allowing residents to choose their own settlement date may have a high transaction costs and may create unmanageable settlement peaks and troughs in the transaction process;

- 1.3 agree that the Crown agree a settlement date with each property owner, noting this may require some scheduling to manage peaks;

Fast-tracking special cases

- 1.4 agree that settlement processes can be fast-tracked in special cases;

- 1.5 agree to delegate the ability to fast track special cases to the Chief Executive of the Canterbury Earthquake Recovery Authority;

Continued occupation post settlement

- 1.6 note that some property owners have asked whether they can stay in their houses in the Red Zones post settlement with the Crown;

- 1.7 note that allowing people to stay in their properties following settlement raises Residential Tenancy Act considerations, health and safety, and a public liability risk;

- 1.8 agree that the Crown will require vacant possession on settlement;

Payment of a deposit upon entering a sale and purchase agreement

- 1.9 note that payment of a deposit is a common feature of a residential conveyance transaction;
- 1.10 agreed that either a deposit of \$50,000 will be paid where the settlement date is less than six months from the date of agreement, or a prepayment of up to 50% of the purchase price is offered where the settlement date is more than six months from the date of agreement;

Warranties

- 1.11 note that warranties are generally incorporated into sale and purchase agreements and place obligations on the vendor before settlement date;
- 1.12 agree that warranties associated with the following issues are included in the sale and purchase agreements:
- Inclusion and condition of chattels;
 - That there are no outstanding charges associated with the property;
 - That the vendor will give notice to the territorial authority, regional council, and other relevant authority, including, where appropriate the body corporate;
 - The validity of insurance, claims, and that the statement of apportionments on settlement is correct including insurance money already received;

Transfer of insurance to the Crown

Continuation of insurance

- 1.13 Withheld under section 9(2)(f)(iv) Withheld under section 9(2)(g)(i)
- 1.14 Withheld under section 9(2)(i)
- 1.15 agree that property owners are required to continue their insurance until the earliest of expiry of their policy (ie at the end of the month or year, depending on the policy) or settlement;
- 1.16
- 1.17 Withheld under section 9(2)(g)(i) Withheld under section 9(2)(i)
- 1.18
- 1.19 Withheld under section 9(2)(f)(iv)
- 1.20

1.21

Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)

1.22

Withheld under section 9(2)(j)

1.23

1.24

Other issues

Crown contribution toward legal fees

- 1.25 note that it is convention that the Crown pays the property owner's legal costs when it is compulsorily purchasing land;
- 1.26 agree to fund 50% of the legal fees to a maximum of \$750 for those insured residential Red-Zone property owners who accept the Crown's Option 1, and a maximum of \$500 for those who accept Option 2;
- 1.27 note that the cost of providing a contribution towards legal fees to property owner in the Red Zones is estimated to be \$3.830 million;
- 1.28 agree to charge the costs of contributions towards legal fees against the Canterbury Earthquake Recovery Fund;
- 1.29 agree to establish a new Non-Departmental Other Expense appropriation "Contributions towards legal fees" in Vote Canterbury Earthquake Recovery;
- 1.30 agree that the scope of this appropriation be "This appropriation is limited to contributions towards legal fees incurred by property owners in the Red Zones in Canterbury selling properties to the Crown";
- 1.31 approve the following changes to appropriations to provide for contributions towards legal fees incurred by property owners in the Red Zones in Canterbury, with a corresponding impact on the operating balance:

	\$m – increase/(decrease)				
	2011/12	2012/13	2013/14	2014/15	2015/16 & Outyears
Vote Canterbury Earthquake Recovery Minister for Canterbury Earthquake Recovery					
Non-Departmental Other Expense: Contributions towards legal fees	3.830	-	-	-	-

- 1.32 agree that the proposed change to appropriations for 2011/12 above be included in the 2011/12 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;

Insurance disputes resolution

- 1.33 note that all the main insurance companies are members of the Insurance and Savings Ombudsman (ISO);
- 1.34 note that the Insurance and Savings Ombudsman can hear disputes up to \$200,000 and higher if the insurer agrees
- 1.35 agree that no additional insurance disputes resolution service is needed for Red-Zone residents, and that the ISO remains the main disputes resolution forum for disputes under \$200,000;

1.36 Withheld under section 9(2)(g)(i)

1.37

1.38 Withheld under section 9(2)(f)(iv)

1.39

Deed poll for settling with the banks

- 1.40 note that under Option 2, when the Crown takes ownership, the bank holding the mortgage may lose its claim on the insurance payment if the land payment is insufficient to repay the mortgage;
- 1.41 note that if banks stall the sale of properties, the property owner may not be able to accept the Crown's offer before it expires;
- 1.42 agree that the Crown draft a standard deed poll to set out the bank's rights in relation to insurance payouts on the dwellings;

Delegation of Authority

- 1.43 note that due to the complexity and various anomalies that can occur within a transaction, I consider that the Chief Executive of the Canterbury Earthquake Recovery Authority (CERA) be given power to act on individual case by case basis;
- 1.44 note that the power to act will have to comply with the government recovery objectives of certainty, confidence for property owners and a simple process. In addition all delegated decisions must be undertaken on the basis of minimum cost to the Crown;

1.45

Withheld under section 9(2)(f)(iv)

Withheld under section 9(2)(g)(i)



Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

15, 7, 11

Released by the Minister for Canterbury Earthquake Recovery