



# Cabinet

CAB Min (11) 44/5

Copy No:

## Minute of Decision

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### Retirement Villages and Rest Homes in Christchurch Red Zones

**Portfolio: Canterbury Earthquake Recovery**

On 19 December 2011, Cabinet:

#### Retirement villages and rest homes in the Christchurch Red Zones

- 1 **noted** that there are two retirement villages and two rest homes in the Christchurch Red Zones, and one rest home in a White Zone that may later be zoned Red;
- 2 **noted** that the residential property in retirement villages and rest homes is covered by the Earthquake Commission (EQC) under the Earthquake Commission Act 1993;
- 3 **noted** that the owners of the five retirement villages and rest homes in the Christchurch Red and White Zones are insured residential property owners in respect of the residential land and buildings that they own;
- 4 **noted** that the residents of retirement villages and rest homes are not insured residential property owners but generally have a significant portion of their capital wealth tied up in licences to occupy their units;
- 5 **Withheld under sections 9(2)(b)(ii), 9(2)(e), 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**
- 6 **Withheld under sections 9(2)(b)(ii), 9(2)(e), 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act;**

#### Proposal to extend the Crown's Red Zone offer

- 7 **noted** that an extension of the Crown's Red Zone offer to the owners of retirement villages and rest homes would ensure that all of the exit payments are made [**withheld under sections 9(2)(b)(ii), 9(2)(e), 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act**] because receivables from the purchase of the property must, in law, be applied to payments to residents before being applied to any other holder of security;

8 **noted** that an extension of the Crown’s offer would:

- 8.1 support the government’s objectives of certainty and confidence [withheld under sections 9(2)(b)(ii), 9(2)(e), 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act];
- 8.2 protect the Crown’s interests because the Crown would be assigned any unrealised insurance policies and would become the owner of the land;
- 8.3 have limited precedent value in relation to decisions about the treatment of commercial property because commercial property is not eligible for cover by EOS;

**Crown expenditure**

- 9 **noted** that Crown expenditure, if the Crown offer is extended, will be limited to the shortfall between insurance proceeds and the rateable value of the land for the four properties that are total losses, and the shortfall between insurance proceeds and the rateable value of the land and buildings [withheld under sections 9(2)(b)(ii), 9(2)(e), 9(2)(f)(iv) and 9(2)(g)(i) of the Official Information Act], and is estimated at \$5.000 million;
- 10 **noted** that the costs associated with the proposal would reduce the land remediation provision in the Canterbury Earthquake Recovery Fund (CERF);
- 11 **agreed** to extend the Crown’s Red Zone offer to retirement villages and rest homes in Christchurch Red Zones;

**Appropriations**

12 **approved** the following changes to appropriations to provide for the purchase of retirement villages and rest homes in Christchurch Red Zones, 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 & Out years
Non-Departmental Other Expense: Acquisition of Canterbury Red Zone properties	5.000	-	-	-	-

13 **noted** that the cost of providing a contribution towards legal fees to the property owners is \$0.026 million, based on a worst-case cost scenario;

14 **approved** the following changes to appropriations to provide for contributions towards legal fees incurred by the property owners, 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	0.026	-	-	-	-

- 15 **noted** that the management and demolition costs associated with the purchase of the properties is estimated at \$0.864 million;
- 16 **approved** the following changes to appropriations to provide for management and demolition costs incurred by the Canterbury Earthquake Recovery Authority (CERA) with third parties on behalf of the Crown, relating to the acquisition and management of the properties, with a corresponding impact on the operating balance:

	\$m - increase/(decrease)				
<b>Vote Canterbury Earthquake Recovery Minister for Canterbury Earthquake Recovery</b>	<b>2011/12</b>	<b>2012/13</b>	<b>2013/14</b>	<b>2014/15</b>	<b>2015/16 &amp; outyears</b>
Non-Departmental Output Expense:					
Canterbury Earthquake Property Demolitions and Related Costs and Compensation	0.350	-	-		-
Departmental Output Expense:					
Management of Voluntarily Acquired Insured Residential Red Zone Properties	0.015	-		-	-
Non-Departmental Other Expense:					
Management of Voluntarily Acquired Insured Residential Red Zone Properties	0.499		-	-	-
<b>Total Operating</b>	<b>0.864</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

- 17 **agreed** that the changes to appropriations for 2011/12 in paragraphs 12, 14, and 16 above be included in the 2011/12 Supplementary Estimates and that, in the interim, the increases be met from Imprest Supply;
- 18 **agreed** that the changes to appropriations be met from the CERF established as part of Budget 2011;

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

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

Secretary of the Cabinet

Reference: CAB (11) 675

Office of the Minister for Canterbury Earthquake Recovery

Chair  
Cabinet

**RETIREMENT VILLAGES AND REST HOMES IN CHRISTCHURCH RED ZONES**

**Purpose**

1. This paper seeks Cabinet's agreement to extend the Crown's Red Zone offer to the owners of retirement villages and rest homes in the Christchurch Red Zones.

**Executive Summary**

2. There are two retirement villages and two rest homes in the Christchurch Red Zones and one rest home in a White Zone that will need to be reclassified once land zoning decisions have been made. The residential buildings in the villages and rest homes are covered by the Earthquake Commission under the Earthquake Commission Act 1993 and the owners of the buildings are insured residential property owners in respect of the residential land and buildings they own.

3. The residents of retirement villages and rest homes are not insured residential property owners but generally have a significant portion of their capital wealth tied up in licences to occupy their units.

4. *Withheld under section 9(2)(e)*

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

5. *Withheld under section 9(2)(g)(i)*

6. Extending the Crown's offer to the owners of retirement villages and rest homes would support Government's objectives of certainty and confidence to move on with life.

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

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

7. Extending the Crown's offer would protect the Crown's interests because the Crown would be assigned any unrealised insurance policies and would become the owner of the land.

8. Extending the Crown's offer would have limited precedent value in relation to decisions about the treatment of commercial property because commercial property is not eligible for cover by the Earthquake Commission.

9. Crown expenditure, if the Crown offer is extended, is limited to the shortfall between insurance proceeds and the rateable value of the land for the four properties that are total losses.

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

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

*Withheld under section 9(2)(e)*

10. This paper proposes that Cabinet agrees to extend the Crown offer to retirement villages and rest homes in Christchurch Red Zones.

## Background

11. On 23 June 2011, Cabinet announced a package to support insured, residential property owners whose houses are located in the Christchurch Red Zones [CAB Min (11) 24/15 refers]. Under this package, the Crown has offered to purchase properties at 2007 ratings valuation (RV)<sup>1</sup>. Property owners can choose either to:
  - Option 1: Receive a Crown payout for the land and dwelling, and the Crown takes assignment of the benefits of all insurance policies.
  - Option 2: Receive a Crown payout for the land and the Crown takes assignment of the benefits of land policy. The property owner settles with their insurance company for the dwelling.
12. Cabinet has not yet made decisions about the treatment of other types of property in the Red Zones, such as uninsured property, vacant land, partially constructed buildings and commercial property.
13. Retirement villages and rest homes are operated on a commercial basis but the dwellings occupied by the residents are residential buildings for the purposes of the Earthquake Commission (EQC) Act 1993. The owners of retirement villages and rest homes are insured residential property owners in respect of the residential land and buildings they own.
14. There are two retirement villages and two rest homes in the Christchurch Red Zones.  
Withheld under section 9(2)(f)(iv)      Withheld under section 9(2)(g)(i)
15. The eligibility of the residents or the owners of retirement villages and rest homes for the Crown's Red Zone offer has been the subject of legal argument, and public and media scrutiny since the announcement of Red Zones in June 2011.

## Ownership structure of retirement villages and rest homes

16. Retirement villages have a unique ownership/occupier structure. Residents generally purchase a "licence to occupy" a village unit for a capital sum, which is refundable in part when the resident vacates the unit. The cost of licences varies but is commonly equivalent to the purchase of a small home. Most residents expect their retirement village to be their last residence.
17. In most cases the relationship between the village resident and the owner of the village property is governed by an Occupation Right Agreement (ORA). The ORA sets out, amongst other things, residents' rights with respect to re-housing obligations, payout calculations in the event of damage, and how to end the agreement.
18. When a resident dies or chooses to leave a retirement village, the agreement sets out the payout calculation that the resident will receive. This is a proportion of the original

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<sup>1</sup>Excluding Red Zone properties in the Waimakariri District, for which 2008 was the most recent valuation prior to the September 4, 2010 earthquake.

capital payment for the unit, less fixed financial deductions. These deductions amount to up to 25 percent of the original capital payment.

19. As retirement village residents are not the owners of the property they occupy and have no legal interest in the land, they cannot deal with the Crown for the purposes of the Red Zone offer – they are not insured residential property owners.
20. Rest home residents do not pay a capital sum for occupation. Rest home services are usually funded by District Health Boards, though some residents may pay a top-up or weekly fee if they are not assessed as eligible for a full subsidy. Rest home residents do not have a property interest in the buildings that comprise the rest home.

### The retirement villages and rest homes in the Red and White Zones

#### *Kate Sheppard Gardens Retirement Village*

21. Kate Sheppard Gardens Retirement Village is located in New Brighton in a Red Zone. The village comprised 148 units.

22. Withheld under section 9(2)(b)(ii)

Withheld under section 9(2)(e)

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

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

#### *Kate Sheppard Lifecare*

24. Kate Sheppard Lifecare is a rest home and retirement village complex. The village comprised 12 studio apartments and the rest home supported 165 beds

Withheld under section 9(2)(b)(ii)

withheld under section 9(2)(e)

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

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

#### *St Ives Rest home*

26. St Ives Rest Home is located in Richmond in a Red Zone.

Withheld under section 9(2)(b)(ii)

Withheld under section 9(2)(e)

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

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

*Redcliffs Rest Home*

28. Redcliff's Rest Home is situated in Redcliffs in a White Zone. Its final zoning is unlikely to be determined before 2012.

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

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

Withheld under section 9(2)(b)(ii)

*Avonview Retirement Village*

29. Avonview Retirement Village is located in Dallington in a Red Zone. The complex comprises a rest home and 34 residential units.

30.

Withheld under section 9(2)(b)(ii)

31.

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

32.

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

33.

34.

withheld under section 9(2)(e)

**Proposal to extend the Crown Offer**

35. I propose that Cabinet agree to extend the Crown's Red Zone offer to retirement villages and rest homes in Christchurch Red Zones.

36. Extending the Crown offer will support the Crown's Red Zone objectives of certainty of outcome and confidence to move on with life

Withheld under section 9(2)(b)(ii)

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

37.

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

withheld under section 9(2)(e)

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

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

*Withheld under section 9(2)(e)*

*Withheld under section 9(2)(b)(ii)*

38. Additionally, I note that retirement villages and rest homes are unique in the property framework in that their residential buildings are explicitly covered by EQC legislation even though the buildings are used for a commercial purpose. For this reason they are distinguishable from commercial property for which no such cover is available. There is limited precedent value in this proposal for later decisions about the treatment of non-residential property.

39.

Withheld under section 9(2)(b)(ii)

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

40.

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

*withheld under section 9(2)(e)*

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

Withheld under section 9(2)(i)

### Operational Requirements

41. On the grounds that these purchase transactions will be unique, I propose that Cabinet authorise the Chief Executive of CERA to take minor or technical decisions to vary the terms of the Crown offer as necessary to facilitate the purchase of the retirement villages and rest homes in the Christchurch Red Zones.

### Consultation

- 42. The Department of Building and Housing and the Treasury support the content and recommendations in this paper.
- 43. The Department of the Prime Minister and Cabinet was informed.

### Financial implications

44. The total rateable value of the four retirement complexes in the current Red Zones and the one complex in the White Zone is approximately \$68.700m, however, the Crown's exposure if the Red Zone offer is extended to retirement villages and rest homes is limited to the shortfall between insurance proceeds and the registered valuation of the land and/or buildings that comprise the properties.

45.

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

Withheld under section 9(2)(b)(ii)

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

*withheld under section 9(2)(e)*

46.

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

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



47. An appropriation for the purchase of Red Zone properties already exists. Approval is sought to increase this appropriation by \$5,000m.
48. Transaction costs and management costs total \$0.890m

### Human rights implications

49. 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

50. There are no legislative implications arising from this paper.

### Publicity

51. I do not propose to announce these decisions but I intend to write to each of the affected Red zoned retirement villages and rest homes to outline them.
52. I propose to release this Cabinet paper on the CERA website subject to an OIA review.

### Regulatory impact and compliance cost statement

53. A regulatory impact statement is not required at this time as there are no regulatory changes.

### Gender implications

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

### Disability perspective

55. There are no disability implications associated with the proposals in this paper.

### Recommendations

56. It is recommended that Cabinet:

#### *Retirement villages and rest homes in the Christchurch Red Zones*

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

1. **note** that there are two retirement villages and two rest homes in the Christchurch Red Zones and one rest home in a White Zone Withheld under section 9(2)(f)(iv)
2. **note** that the residential property in retirement villages and rest homes is covered by the Earthquake Commission under the Earthquake Commission Act 1993.
3. **note** that the owners of the five retirement villages and rest homes in the Christchurch Red and White Zones are insured residential property owners in respect of the residential land and buildings they own.

4. **note** that the residents of retirement villages and rest homes are not insured residential property owners but generally have a significant portion of their capital wealth tied up in licences to occupy their units.

5.

Withheld under section 9(2)(b)(ii)

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

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

Withheld under section 9(2)(e)

*Proposal to extend the Crown's Red Zone offer*

7. **note** that an extension of the Crown's Red Zone offer to the owners of retirement villages and rest homes would ensure that all of the exit payments are made to the residents because receivables from the purchase of the property must, in law, be applied to payments to residents before being applied to any other holder of security.

8. **note** that an extension of the Crown's offer would support Government's objectives of certainty and confidence for the elderly residents

9. **note** that an extension of the Crown's offer would protect the Crown's interests because the Crown would be assigned any unrealised insurance policies and would become the owner of the land.

10. **note** that an extension of the Crown's offer would have limited precedent value in relation to decisions about the treatment of commercial property because commercial property is not residential buildings eligible for cover by the Earthquake Commission.

*Crown expenditure*

11. **note** that Crown expenditure, if the Crown offer is extended, is limited to the shortfall between insurance proceeds and the rateable value of the land for the four properties that are total losses and the shortfall between insurance proceeds and the rateable value of the land and buildings and is estimated at \$5,000m.

12. **note** that the costs associated with this decision would reduce the land remediation provision in the CERF.

13. **agree** to extend the Crown offer to retirement villages and rest homes in Christchurch Red Zones.

Material in paras 7, 8, 11

Withheld under section 9(2)(a)

Released by the Minister for Canterbury Earthquake Recovery

## Appropriations

14. **approve** the following changes to appropriations to provide for the purchase of retirement villages and rest homes in Christchurch Red Zones, 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 & Out years
Non-Departmental Other Expense: Acquisition of Canterbury Red Zone properties	5.000	-	-	-	-

15. **note** that the cost of providing a contribution towards legal fees to the property owners is \$0.026m, based on a worst-case cost scenario.

16. **approve** the following changes to appropriations to provide for contributions towards legal fees incurred by the property owners 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	0.026	-	-	-	-

17. **note** that the management and demolition costs associated with the purchase of the properties is estimated at \$0.864m.

18. **approve** the following changes to appropriations to provide for management and demolition costs incurred by the Canterbury Earthquake Recovery Authority with third parties on behalf of the Crown, relating to the acquisition and management of the properties, 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 Output Expense:					
Canterbury Earthquake Property Demolitions and Related Costs and Compensation	0.350	-	-	-	-
Departmental Output Expense:					
Management of Voluntarily Acquired Insured Residential Red Zone Properties	0.015	-	-	-	-
Non-Departmental Other Expense:					
Management of Voluntarily Acquired Insured Residential Red Zone Properties	0.499	-	-	-	-
<b>Total Operating</b>	<b>0.864</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

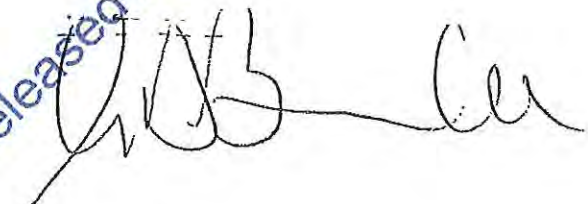
19. agree that the proposed changes to five appropriations for 2011/12 in recommendations 14, 16 and 18 be included in the 2011/12 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.
20. agree that the changes to appropriations be met from the Canterbury Earthquake Recovery Fund established as part of Budget 2011;

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

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

Withheld under section 9(2)(j)

*Released by the Minister for Canterbury Earthquake Recovery*



Hon Gerry Brownlee  
Minister for Canterbury Earthquake Recovery

15, 12, 2011