

To: Minister of Finance
Minister of Canterbury Earthquake
Recovery



IN CONFIDENCE

Transaction design issues relating to the Crown's offer to insured red zone residential property owners

Date	23 September 2011	Priority	High
Report No	REP/11/09/128 59	File Reference	

Action Sought

		Deadline
Hon Bill English <i>Minister of Finance</i>	Consider recommendations and advise CERA of decisions in order to avoid delays to red zone owners whose sales would otherwise be held up by these issues.	27 September 2011
Hon Gerry Brownlee <i>Minister for Canterbury Earthquake Recovery</i>	Consider recommendations and advise CERA of decisions in order to avoid delays to red zone owners whose sales would otherwise be held up by these issues.	27 September 2011

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
James Hay	Legal Advisor	withheld under s.9(2)(a) (wk) (a/r)	<input checked="" type="checkbox"/>

Minister's office comments

Noted
 Seen
 Approved
 Needs change
 Withdrawn
 Not seen by Minister
 Overtaken by events
 Referred to

Comments

Recommendations

Background

- a) **note** the Minister of Finance and the Minister for Canterbury Earthquake Recovery have been authorised to have Power to Act until 25 February 2012 on any of the following matters:
- i) To finalise (including amending if necessary) technical and minor decisions that arise in relation to Cabinet decisions on transaction design.
 - ii) The transaction process, the sale and purchase agreements, and related communications.

The meaning of "insured" in the context of the Crown's offer

- b) **note** that the actual definition of "insured" in the detailed context of the offers made to residential property owners in the red zone has not been sufficiently defined by policy.
- c) **note** that there are many permutations including owners who:
- i) were uninsured in September but obtained insurance for their property before the February earthquake; or
 - ii) had homes under construction as at 4 September that were subsequently completed and fully insured after that date; or
 - iii) purchased a property after 4 September but before the February earthquake and arranged new insurance rather than taking an assignment of an existing policy.
 - iv) cancelled their insurance cover after the September or February earthquakes (but before the details of the Crown offer were known) on the basis that they were of the view that their home was beyond economic repair.
- d) **note** that it is unclear whether these owners fall within the definition of "insured" for the purposes of the Crown offer.
- e) **agree** that for an owner to qualify for the Crown offer the Crown require the owner to have held a contract of insurance under which the property was insured against natural disaster (including earthquake) damage on 22 February 2011 unless prior to that date the insurance policy for the property was no longer in force because the owner had fully and finally settled their insurance claims on the basis that the property was beyond economic repair.

Yes No

Deduction of insurance/EQC payments already received by property owners

- f) **note** that recommendation 54 Cabinet decision [CAB Min (11) 27/12] states that in relation to the method by which the Crown can make purchase price adjustments, to only deduct from the purchase price reinstatement payouts and emergency repairs that are more than 5% of the purchase price, unless where the property owner has evidence that those payments have been spent on remediation works on that property.
- g) **note** that the 5% threshold for the deduction of insurance payments was imposed to reduce administration costs that would be incurred by the Crown if it required all low value claims to be identified and deducted.
- h) **note** that to be able to determine whether the 5% threshold has been exceeded all payments made to property owners must be identified and consequently the costs to administer the threshold are the same as if all payments are deducted. As a consequence there would seem to be no administrative benefit in retaining the 5% threshold.
- i) **note** that the retention of the 5% threshold means that owners who have received payments that are under the 5% threshold (that have not been spent on repairs) will receive an advantage over owners who:
 - i) received payments that total more than 5% of the purchase price;
 - ii) received payments that they have spent on remediation works; or
 - iii) have yet to receive any payments.
- j) **note** that the threshold for deductions may encourage property owners to delay signing an agreement for the sale of their property to the Crown until they have received insurance/EQC payments up to but not exceeding the 5% threshold.
- k) **note** that any agreements that are already in place will need to comply with the current policy.
- l) **note** that there is a small risk that property owners may challenge this change in policy.

Withheld under section 9(2)(j)

- o) **rescind** the Cabinet decision and instead **agree** that:
 - i) the Crown deduct from the purchase price payable under the Crown's offer all payments received by an owner for the reinstatement and repair of a property unless the property owner had evidence that those payments have been spent on remediation works on the property.

Withheld under section 9(2)(j)

Yes No

Issues relating to unit titles where the principal insurance policy is held by a body corporate

Consequences of one owner accepting Option 1 of the Crown's offer

- p) **note** that recommendation 11 Cabinet decision [CAB Min (11) 27/12 refers] states that in relation to unit title owners in the residential red zones to allow individual unit owners to accept Option 1 of the Crown offer, but to only allow Option 2 if all owners agree.
- q) **note** that requirement for unanimity amongst owners required for a unit title owner to select Option 2 means that if one owner selects Option 1, the remaining owners must either do the same (or select neither Option).
- r) **note** that consideration has been given to the imposition of a requirement on unit owners to hold a meeting of the relevant body corporate at which the issue of which Option each owner intends to select is discussed.
- s) **note** that officials do not recommend Crown intervention at this time because such intervention would be contrary to the goals identified for unit title properties:
- i) to allow unit title owners to accept Option 1 in the Crown offer without the need to consult with or seek unanimous agreement from fellow unit title owners;
 - ii) to adhere to the Crown's goal that the offer be simple; and
 - iii) to avoid the Crown becoming involved in negotiations between members of a body corporate
- t) **agree** that no further government action is required for unit title owners at this time (recommended) ~~disagree~~
- u) **note** that further consideration of these issues may be required if unit title developments are identified in any of the future red zones that consist of more than 10 individual principal units.

Insurance payments held by a body corporate

- v) **note** that where the principal insurance policy for a unit title property is held by a body corporate all payments are generally required to be made to the body corporate.
- w) **note** that the Unit Titles Act requires all insurance payments to be applied in or towards reinstatement of the unit title development unless the body corporate decides otherwise by special resolution at a general meeting and that resolution is not objected to.

- x) **note** that until the required resolution is passed and objections received have been resolved, no payments can be made to individual owners. At a practical level this means that where payments are held by a body corporate, individual owners will not be able to enter into an Option 1 agreement until the required resolution for the allocation and payment of insurance proceeds has been passed and is able to be given effect to as until that time any adjustments to the purchase price will not be able to be calculated.
- y) **note** that the need to comply with these requirements where payments have been made to a body corporate is contrary to the goals identified for unit title properties:
- i) to allow unit title owners to accept one of the two Options in the Crown offer without the need to consult with or seek unanimous agreement from fellow unit title owners;
 - ii) to adhere to the Crown's goal that the offer be simple; and
 - iii) to avoid the Crown becoming involved in negotiations between members of a body corporate
- z) **note** that there are already owners that have been stalled by the need to comply with these requirements and they are becoming increasingly frustrated.
- aa) **agree** that for unit holders who chose Option 1 any insurance payments held by a body corporate should not be deducted from the purchase price and that the following amendments be made to the Sale and Purchase Agreement:
- i) The definition of "Insurance Payment" is changed to only include insurance payments actually received by the Vendor.
 - ii) The definition of "Benefits" is amended to include an explicit reference to the right to receive future payments of EQC/insurance proceeds from the body corporate.
 - iii) A further warranty is included in the sale and purchase agreements stating that the vendor has not accepted any insurance payments from the body corporate between the date of the Agreement and the settlement date and that the vendor will provide evidence that the body corporate continues to hold the full amount of the insurance payments disclosed to the Crown as at the date of the Agreement.
 - iv) A new clause is added to give the Crown the ability to provide direction to unit title owners who select Option 1 on conduct of the body corporate claim (in addition to any individual insurance claims that such owners may have) through a power of attorney. Providing such a power will mitigate the risk of the body corporate claim being mismanaged during the period up until settlement.
- bb) **agree** that where insurance payments are held by a body corporate the Crown register a caveat to ensure that notice of any resolutions to apply insurance moneys for purposes other than reinstatement of the unit title development be given to the Crown during the period up until settlement.

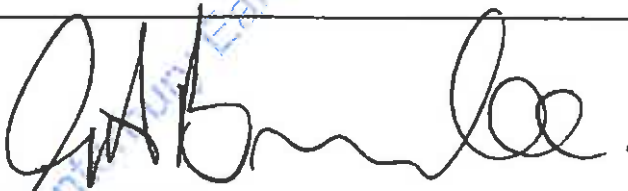
Yes

cc) note that the policy changes recommended are likely to have the following effect on the cost to the Crown:

Withheld under section 9(2)(j)

- ii) there will be an unquantified but modest cost to the Crown of registering caveats on properties where payments are held by the body corporate and associated administrative costs. These costs are not expected to exceed \$2 million.


James Hay
Legal Advisor
23 September 2011

Hon Bill English Minister of Finance
Date: / / 2011
 Hon Gerry Brownlee Minister for Canterbury Earthquake Recovery Date: 27/09/2011

Released by the Minister for Canterbury Earthquake Recovery

To: Minister of Finance
Minister of Canterbury Earthquake Recovery



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Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
James Hay	Legal Advisor	Withheld under s.9(2)(a) (wk) (a/h)	<input checked="" type="checkbox"/>

Minister's office comments

Noted
 Seen
 Approved
 Needs change
 Withdrawn
 Not seen by Minister
 Overtaken by events
 Referred to

Comments

Recommendations

Background

- a) note the Minister of Finance and the Minister for Canterbury Earthquake Recovery have been authorised to have Power to Act until 25 February 2012 on any of the following matters:
- i) To finalise (including amending if necessary) technical and minor decisions that arise in relation to Cabinet decisions on transaction design.
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The meaning of "insured" in the context of the Crown's offer

- b) note that the actual definition of "insured" in the detailed context of the offers made to residential property owners in the red zone has not been sufficiently defined by policy.
- c) note that there are many permutations including owners who:
- i) were uninsured in September but obtained insurance for their property before the February earthquake; or
 - ii) had homes under construction as at 4 September that were subsequently completed and fully insured after that date; or
 - iii) purchased a property after 4 September but before the February earthquake and arranged new insurance rather than taking an assignment of an existing policy.
 - iv) cancelled their insurance cover after the September or February earthquakes (but before the details of the Crown offer were known) on the basis that they were of the view that their home was beyond economic repair.
- d) note that it is unclear whether these owners fall within the definition of "insured" for the purposes of the Crown offer.
- e) agree that for an owner to qualify for the Crown offer the Crown require the owner to have held a contract of insurance under which the property was insured against natural disaster (including earthquake) damage on 22 February 2011 unless prior to that date the insurance policy for the property was no longer in force because the owner had fully and finally settled their insurance claims on the basis that the property was beyond economic repair.

Yes No

Deduction of insurance/EQC payments already received by property owners

- f) note that recommendation 54 Cabinet decision [CAB Min (11) 27/12] states that in relation to the method by which the Crown can make purchase price adjustments, to only deduct from the purchase price reinstatement payouts and emergency repairs that are more than 5% of the purchase price, unless where the property owner has evidence that those payments have been spent on remediation works on that property.
 - g) note that the 5% threshold for the deduction of insurance payments was imposed to reduce administration costs that would be incurred by the Crown if it required all low value claims to be identified and deducted.
 - h) note that to be able to determine whether the 5% threshold has been exceeded all payments made to property owners must be identified and consequently the costs to administer the threshold are the same as if all payments are deducted. As a consequence there would seem to be no administrative benefit in retaining the 5% threshold.
 - i) note that the retention of the 5% threshold means that owners who have received payments that are under the 5% threshold (that have not been spent on repairs) will receive an advantage over owners who:
 - i) received payments that total more than 5% of the purchase price;
 - ii) received payments that they have spent on remediation works; or
 - iii) have yet to receive any payments.
 - j) note that the threshold for deductions may encourage property owners to delay signing an agreement for the sale of their property to the Crown until they have received insurance/EQC payments up to but not exceeding the 5% threshold.
 - k) note that any agreements that are already in place will need to comply with the current policy.
 - l) note that there is a small risk that property owners may challenge this change in policy.
- Withheld under section 9(2)(j)
- o) rescind the Cabinet decision and instead agree that:
 - i) the Crown deduct from the purchase price payable under the Crown's offer all payments received by an owner for the reinstatement and repair of a property unless the property owner had evidence that those payments have been spent on remediation works on the property.

Withheld under section 9(2)(j)

Yes No

Issues relating to unit titles where the principal insurance policy is held by a body corporate

Consequences of one owner accepting Option 1 of the Crown's offer

- p) note that recommendation 11 Cabinet decision [CAB Min (11) 27/12 refers] states that in relation to unit title owners in the residential red zones to allow individual unit owners to accept Option 1 of the Crown offer, but to only allow Option 2 if all owners agree.
- q) note that requirement for unanimity amongst owners required for a unit title owner to select Option 2 means that if one owner selects Option 1, the remaining owners must either do the same (or select neither Option).
- r) note that consideration has been given to the imposition of a requirement on unit owners to hold a meeting of the relevant body corporate at which the issue of which Option each owner intends to select is discussed.
- s) note that officials do not recommend Crown intervention at this time because such intervention would be contrary to the goals identified for unit title properties:
- i) to allow unit title owners to accept Option 1 in the Crown offer without the need to consult with or seek unanimous agreement from fellow unit title owners;
 - ii) to adhere to the Crown's goal that the offer be simple; and
 - iii) to avoid the Crown becoming involved in negotiations between members of a body corporate
- t) agree that no further government action is required for unit title owners at this time (recommended)
- agree / disagree
- u) note that further consideration of these issues may be required if unit title developments are identified in any of the future red zones that consist of more than 10 individual principal units.

Insurance payments held by a body corporate

- v) note that where the principal insurance policy for a unit title property is held by a body corporate all payments are generally required to be made to the body corporate.
- w) note that the Unit Titles Act requires all insurance payments to be applied in or towards reinstatement of the unit title development unless the body corporate decides otherwise by special resolution at a general meeting and that resolution is not objected to.

- x) note that until the required resolution is passed and objections received have been resolved, no payments can be made to individual owners. At a practical level this means that where payments are held by a body corporate, individual owners will not be able to enter into an Option 1 agreement until the required resolution for the allocation and payment of insurance proceeds has been passed and is able to be given effect to as until that time any adjustments to the purchase price will not be able to be calculated.
- y) note that the need to comply with these requirements where payments have been made to a body corporate is contrary to the goals identified for unit title properties:
- i) to allow unit title owners to accept one of the two Options in the Crown offer without the need to consult with or seek unanimous agreement from fellow unit title owners;
 - ii) to adhere to the Crown's goal that the offer be simple; and
 - iii) to avoid the Crown becoming involved in negotiations between members of a body corporate
- z) note that there are already owners that have been stalled by the need to comply with these requirements and they are becoming increasingly frustrated.
- aa) agree that for unit holders who chose Option 1 any insurance payments held by a body corporate should not be deducted from the purchase price and that the following amendments be made to the Sale and Purchase Agreement:
- i) The definition of "Insurance Payment" is changed to only include insurance payments actually received by the Vendor.
 - ii) The definition of "Benefits" is amended to include an explicit reference to the right to receive future payments of EQC/insurance proceeds from the body corporate.
 - iii) A further warranty is included in the sale and purchase agreements stating that the vendor has not accepted any insurance payments from the body corporate between the date of the Agreement and the settlement date and that the vendor will provide evidence that the body corporate continues to hold the full amount of the insurance payments disclosed to the Crown as at the date of the Agreement.
 - iv) A new clause is added to give the Crown the ability to provide direction to unit title owners who select Option 1 on conduct of the body corporate claim (in addition to any individual insurance claims that such owners may have) through a power of attorney. Providing such a power will mitigate the risk of the body corporate claim being mismanaged during the period up until settlement.
- bb) agree that where insurance payments are held by a body corporate the Crown register a caveat to ensure that notice of any resolutions to apply insurance moneys for purposes other than reinstatement of the unit title development be given to the Crown during the period up until settlement.

Yes no

cc) note that the policy changes recommended are likely to have the following effect on the cost to the Crown:

Withheld under section 9(2)(j)

- ii) there will be an unquantified but modest cost to the Crown of registering caveats on properties where payments are held by the body corporate and associated administrative costs. These costs are not expected to exceed \$2 million.

James Hay
Legal Advisor
23 September 2011

Hon Bill English Minister of Finance
Date: 28 / 9 / 2011
Hon Gerry Brownlee Minister for Canterbury Earthquake Recovery Date: / / 2011

Released by the Minister for Canterbury Earthquake Recovery

Purpose of report

- 2 This report discusses issues that have arisen in connection with the implementation of the Crown's offer to purchase insured, residential properties in the Canterbury red zones. It seeks your approval of recommended amendments to policy decisions that are required to give effect to the Crown's offer.

Background

- 3 As insured residential property owners in the red zone engage in the transaction process some issues with the transaction design have arisen that were unforeseen. There is a need to resolve these issues in a timely manner so that delays to owners that they are currently causing can be minimised as much as possible. This is particularly important for owners that have been approved for fast track settlements.
- 4 On 19 September 2011, Cabinet authorised the Minister of Finance and the Minister for Canterbury Earthquake Recovery to have Power to Act until 25 February 2012 on any of the following matters:
 - a) To finalise (including amending if necessary) technical and minor decisions that arise in relation to Cabinet decisions on transaction design.
 - b) The transaction process, the sale and purchase agreements, and related communications.
- 5 This paper covers issues that have arisen as the Crown and its appointed agents have engaged in the transaction process with insured red zone residential property owners. They are:
 - a) The need for an actual definition of "insured" in the context of the Crown's offer;
 - b) A reconsideration of the methodology for purchase price adjustments for property owners that have already received insurance/EQC payments for reinstatement;
 - c) The consequences of one owner accepting Option 1, where a property is part of a unit title development and the principal insurance policy is held by a body corporate; and
 - d) The treatment of insurance/EQC payments held by a body corporates when determining any purchase price adjustment.

Comment / Discussion

The meaning of "insured" in the context of the Crown's offer

- 6 On 27 June 2011, Cabinet agreed that insured residential property owners would have the choice of two offer packages.
- 7 The actual definition of "insured" in the detailed context of the offers made to residential property owners in the red zone has not been sufficiently defined by policy.

- 8 The sale and purchase agreements require property owners to provide a warranty that they were insured at the time of each earthquake event that caused damage and/or loss to the property.
- 9 There are many permutations including owners who:
- a) were uninsured in September but obtained insurance for their property before the February earthquake; or
 - b) had homes under construction on 4 September that were subsequently completed and fully insured after that date;
 - c) purchased a property after 4 September but before the February earthquake and arranged new insurance rather than taking an assignment of an existing policy and as a consequence did not hold insurance for the property at the time of one or more of the earthquakes. A decision has already been made that the Crown offer is available to the current owners of the property;
 - d) cancelled their insurance cover after the September or February earthquakes (but before the details of the Crown offer were known) on the basis that they were of the view that their home was beyond economic repair and did not see any benefit in continuing to pay insurance premiums despite the fact that they had yet to settle their claims with their insurer.
- 10 It is recommended that for an owner to qualify for the Crown offer the Crown require the owner to have held a contract of insurance under which the property was insured against natural disaster (including earthquake) damage on 22 February 2011 unless prior to that date the insurance policy for the property was no longer in force because the owner had fully and finally settled their insurance claims on the basis that the property was beyond economic repair.

Deduction of insurance/EQC payments already received by property owners

- 11 On 18 July 2011, Cabinet agreed that the Crown would only deduct from the purchase price payable under the Crown's offer payments received for the reinstatement and repair of a property where those payments were more than 5% of the purchase price, unless the property owner had evidence that those payments have been spent on remediation works on the property.
- 12 The threshold of 5% of the purchase price was imposed to reduce the transaction costs that would be incurred if all low value claims were identified and deducted.
- 13 However to determine whether the 5% threshold has in fact been exceeded all payments made to property owners must be identified. Accordingly the costs of administering this policy decision are the same as if all payments are required to be identified and deducted.
- 14 At an implementation level the 5% threshold results in obvious inequities as some owners will effectively receive the rateable value of their property plus 5%. In some cases this amount may be significant. The 5% threshold may also encourage owners to delay signing a sale agreement until they have received insurance/EQC payments up to but not exceeding the 5% threshold.

15 Any agreements that are already in place will need to comply with the current policy. There is a risk that property owners who have yet to sign agreements may challenge this change in policy on the basis that it is contrary to their letters of offer and as such they may be able to maintain an argument on the grounds estoppel (the Crown made a representation that the owner relied on) or perhaps even judicial review. However this small risk must be balanced against the advantage that owners who have received payments that are under the 5% threshold will have over owners who:

- a) received payments that total more than 5% of their rateable value (under the current policy the full amount of the payments received are deducted if the threshold is exceeded);
- b) received payments that they have spent on remediation works; or
- c) have yet to receive any payments.

Withheld under section 9(2)(j)

18 It is recommended that all previous decisions by Cabinet relating to the deduction from the purchase price of insurance/EQC payments for reinstatement received by property owners be rescinded, and the following is approved instead:

- a) the Crown deduct from the purchase price payable under the Crown's offer all payments received by an owner for the reinstatement and repair of a property unless the property owner had evidence that those payments have been spent on remediation works on the property.

Withheld under section 9(2)(j)

Issues relating to unit titles where the principal insurance policy is held by a body corporate

19 This section covers unresolved issues associated with the Crown's offer to purchase unit title properties where the principal insurance policy is held by a body corporate. These issues include:

- a) The consequences of one owner in a development accepting Option 1 of the Crown's offer; and
- b) Whether insurance payments held by a body corporate should be deducted from the purchase price.

Consequences of one owner accepting Option 1 of the Crown's offer

- 20 On 18 July 2011, Cabinet decided, in relation to unit title owners in the residential red zones to allow individual unit owners to accept Option 1 of the Crown offer, but to only allow Option 2 if all owners agree.
- 21 In making this decision, Cabinet determined that:
- a) It would not be possible for some unit owners to accept Option 1 (effectively transferring their share in the principal policy to the Crown) while others accept Option 2 (and seek to advance their own dwelling claims under the principal policy for reinstatement on another site).
 - b) For Option 2 to be given practical effect, 100% of unit owners must agree to accept Option 2, with the body corporate's dwelling claims under the principal insurance policy being assigned to all of the owners jointly.
 - c) It would allow unit owners to accept at least one of the Options under the Crown offer without the need to obtain their neighbours' consent.
- 22 The rationale for this policy was:
- a) To allow unit title owners to accept Option 1 without the need to consult with or seek unanimous agreement from fellow unit title owners;
 - b) To adhere to the Crown's goal that the offer be simple; and
 - c) To avoid the Crown becoming involved in negotiations between members of a body corporate.
- 23 The practical result of the above policy decision has now become clear. Namely, an individual unit title owner may accept Option 1, and (in principle) settle the sale of his or her property, without any regard to the decisions of other unit title owners in the same development in respect of the offer. In practical terms, the unanimity amongst remaining owners required for a unit title owner to select Option 2 means that if one owner selects Option 1, the remaining owners must either do the same or select neither Option.
- 24 Currently, there is no mechanism for preventing unit owners from selecting Option 1 and settling their sale to the Crown without having consulted with their fellow unit title holders.
- 25 Consideration has been given to the imposition of a requirement on unit owners to hold a meeting of the relevant body corporate at which the issue of which Option each owner intends to select is discussed. This could be achieved either by way of a condition in the sale and purchase agreement or requiring the owner's solicitor to certify that the meeting has occurred, or both.
- 26 However, officials do not recommend Crown intervention at this time because such intervention would be contrary to the goals identified in paragraph 24 above. The current policy allows owners to accept at least one option even if one of their neighbours does not wish to accept the Crown's offer.

27 Officials will:

- a) To the extent possible, ensure that unit owners and their lawyers are made aware of the consequences of accepting Option 1 and are encouraged to attempt to gain consensus with other unit owners as to which option should be taken.
- b) Develop a communication package to ensure that upon acceptance by the Crown of an Option 1 agreement for a unit title development all the other owners within the development are notified that Option 2 is no longer available.

28 Further consideration of these issues may be required if unit title developments are identified in any of the future red zones that consist of more than 10 individual principal units.

Insurance payments held by a body corporate

- 29 On 18 July 2011, Cabinet agreed that the Crown would deduct from the purchase price payable under the Crown's offer payments received for the reinstatement and repair of a property where those payments were more than 5% of the purchase price, unless the property owner had evidence that those payments have been spent on remediation works on the property.
- 30 Currently the sale and purchase agreements require an owner's share of any payments made to a body corporate, whether or not that share has been received by the Vendor, to be deducted from the purchase price in order to comply with the current policy on this issue as identified in paragraph 31 above.
- 31 EQC and the private insurers have advised that where the principal insurance policy for a unit title property is held by a body corporate all payments are generally required to be made to the body corporate and when making these payments EQC and the insurer do not allocate or provide any methodology for allocation of the payment between the units within a development. This is because:
 - a) When any units are damaged the body corporate makes a single claim in its own name, not individual claims for individual units;
 - b) If, say, two units out of five units have been assessed as being beyond economic repair, the insurer pays the body corporate repair costs for 2/5ths of the development and not 100% of two units; and
 - c) Included in any payments will be amounts for the repair of damage to common areas and external walls.
- 32 Section 136(4) of the Unit Titles Act requires money paid by EQC or an insurer to be applied in or towards reinstatement of the unit title development unless the body corporate decides otherwise by special resolution at a general meeting. A special resolution requires 75% of the votes of the unit owners attending a general meeting. A quorum of a meeting is 25% of owners or 2 owners whichever is the greater. There is also a requirement for all mortgagees having an interest in the development to be given notice so that they may be given the opportunity to object to the resolution.
- 33 There may be situations where the quorum requirements can not be satisfied or one or more owners vote against a share of an insurance payment being paid to an individual owner

because they have yet to decide whether to accept the Crown's offer or do not intend to accept the Crown's offer.

- 34 Until the required resolution is passed and the objection period has either expired or any objections received have been resolved, no payments can be made to individual owners. At a practical level this means that where payments are held by a body corporate, individual owners will not be able to enter into an Option 1 agreement until the required resolution for the allocation and payment of insurance proceeds has been passed and is able to be given effect to as until that time any adjustments to the purchase price will not be able to be calculated.
- 35 The need to comply with these requirements where payments have been made to a body corporate is contrary to the goals identified for unit title properties:
- a) To allow unit title owners to accept Option 1 without the need to consult with or seek unanimous agreement from fellow unit title owners;
 - b) To adhere to the Crown's goal that the offer be simple; and
 - c) To avoid the Crown becoming involved in negotiations between members of a body corporate
- 36 The requirements will also result in significant delays to the completion and settlement of Option 1 agreements. In some cases the actions or inactions of their neighbours may mean that owners are prevented from selling their property to the Crown under either option. There is also little understanding by owners of the processes involved. There are already owners that have been stalled by the need to comply with these requirements and they are becoming increasingly frustrated.
- 37 If the identified goals are to be achieved then it is recommended that, for unit holders who chose Option 1, any insurance payments held by a body corporate should not be deducted from the purchase price and that the following amendments be made to the Sale and Purchase Agreement:
- a) The definition of "Insurance Payment" is changed to only include insurance payments actually received by the Vendor.
 - b) The definition of "Benefits" is amended to include an explicit reference to the right to receive future payments of EQC/insurance proceeds from the body corporate.
 - c) A further warranty is included in the sale and purchase agreements stating that the vendor has not accepted any insurance payments from the body corporate between the date of the Agreement and the settlement date and that the vendor will provide evidence that the body corporate continues to hold the full amount of the insurance payments disclosed to the Crown as at the date of the Agreement.
 - d) A new clause is added to give the Crown the ability to provide direction to unit title owners who select Option 1 on conduct of the body corporate claim (in addition to any individual insurance claims that such owners may have) through a power of attorney. Providing such a power will mitigate the risk of the body corporate claim being mismanaged during the period up until settlement.

38 Where insurance payments are held by a body corporate it also recommended that the Crown register a caveat. By registering a caveat the Crown will be entitled under section 213 of the Unit Titles Act 2010 to receive notice of any resolution that is passed which directs the application of insurance payments other than towards reinstatement of the unit title development. The registration of caveats will increase costs to the Crown and will add complexity to the administrative process.

39 There are some risks associated with the above approach should the Crown elect to adopt it:

a) Some other unit title owners within a body corporate might hold out and prevent a resolution from being passed (however the Crown could apply to the High Court for an order directing how insurance monies are to be paid under s74 of the Unit Titles Act). This risk already existed for the Crown for any payments made to the body corporate post settlement.

b) Some bodies corporate or unit title owners may seek to deprive the Crown of insurance monies which should properly be paid to the Crown as owner or future owner of a unit title. Unit title owners within a unit title development would presumably be incentivised to maximise their own payout (and therefore minimise the payout to the Crown). While the passing of a resolution can not be prevented where the Crown does not hold 75% of the votes, section 213 allows an application for relief to be made and it is difficult to imagine the circumstances in which an application for relief against such a decision would not be successful. This risk already existed for the Crown for any payments made to the body corporate post settlement.

40 To assist owner's lawyers with the implementation of the above recommendations officials will develop a practice note for lawyers explaining how the above is intended to operate.

Fiscal Implications

41 The policy changes recommended are likely to have the following effect on the cost to the Crown:

Withheld under section 9(2)(j)

b) there will be an unquantified but modest cost to the Crown of registering caveats on properties where payments are held by the body corporate and associated administrative costs. These costs are not expected to exceed \$2 million.

Next Steps

42 We recommend that the Minister of Finance and the Minister for Canterbury Earthquake Recovery agree the recommendations in this report.

43 Until these decisions are made, CERA is unable to communicate policy positions on these issues to those involved in the transaction process. This is causing tension with the public, EQC and the insurers and delays to the settlement process. Therefore it is important that decisions on these issues are made as soon as possible.