

Office of the Minister for Canterbury Earthquake Recovery

Memorandum for Cabinet

**DECISIONS OF JOINT MINISTERS WITH POWERS TO ACT IN RELATION TO THE CANTERBURY EARTHQUAKE RECOVERY**

**Purpose**

1. This paper informs Cabinet of decisions made by Joint Ministers (the Minister of Finance and the Minister for Canterbury Earthquake Recovery) who have been granted Powers to Act by Cabinet in relation to the Canterbury Earthquake Recovery.

**Executive Summary**

2. On 23 June 2011, Cabinet announced a package to support insured, residential property owners whose houses were located in the Christchurch Red Zones [CAB Min (11) 24/15 refers]. Under the package, the Crown offered to purchase the properties at pre-earthquake rating valuations.
3. Cabinet subsequently authorised Joint Ministers (the Minister of Finance and the Minister for Canterbury Earthquake Recovery) to have Power to Act to take decisions to finalise the transaction design process for the Crown's Red Zone offer and to make decisions about the zone classification of Canterbury land [CAB Min (11) 26/16, CAB Min (11) 27/12, CAB Min (11) 27/13, CAB Min (11) 28/16, CAB Min (11) 30/18 and CAB Min (11) 34/18 refer].
4. Under the authority of the Powers to Act granted by Cabinet, Joint Ministers have made a series of decisions as summarised below:

*EQC and private insurer excesses*

5. On 2 August 2011, Joint Ministers confirmed that the Crown will bear the cost of Earthquake Commission (EQC) dwelling excesses but property owners will bear the consequences of choosing private insurance policies that contain excesses for earthquake claims.

*Whether property owners who have settled an insurance claim can still accept Option 1*

6. On 2 August 2011, Joint Ministers agreed that, as property owners will have no incentive to ensure that they receive an appropriate payout from insurers if the Crown will top-up their payment to registered valuation (RV), property owners cannot accept the Crown's Option 1 offer if they settle with their insurance company after receiving the letter of offer.

*Deposits to be paid by the Crown on settlement*

7. On 15 August 2011, to clarify deposit criteria, Joint Ministers agreed to amend Cabinet's decision of 18 July 2011 [CAB Min (11) 27/13 refers] to state that:
  - no deposit will be paid if settlement occurs within six weeks of an agreement being signed; and

- if settlement is greater than six weeks of the agreement being signed, a deposit of the lesser of 50 percent of the purchase price less any insurance payments already made and \$50,000 will be paid.

*Maintenance of insurance*

8. On 2 August 2011, to prevent property owners opting out of insurance policies and to ensure that properties remain insured up until settlement, Joint Ministers agreed to amend Cabinet's decision of 18 July 2011 [CAB Min (11) 27/13 refers] in order to require property owners to maintain private dwelling insurance until settlement, unless their insurer declines to renew their policy.

*Underinsured properties due to incorrect house size*

9. On 2 August 2011, Joint Ministers agreed that underinsured property owners who have relied on information from the Council to inform their insurance policies are exempt from a reduction in the purchase price offered, if the underinsurance is due to factual errors in the RV.

*Default interest payments for non-settlement*

10. On 15 August 2011, Joint Ministers agreed that, if the Crown does not provide valid notice under the Sale and Purchase Agreement that it requires further information in order to complete a transaction and then fails to settle on the agreed settlement date, the Crown will be liable for default interest of ten percent per annum.

*Cancellation of agreements or deferral of settlement*

11. Given the nature of the Red Zone transaction and the number of 'special cases' emerging, Joint Ministers considered that it would be prudent to include in the Sale and Purchase Agreement a discretion for the Crown not to complete a transaction. On 15 August 2011, we agreed that the Crown seek the right to not complete a transaction where:
  - the Crown considers that completion would not be consistent with its intentions (for example, if it considers the contract does not properly respond to the situation or the contract is being gamed) and/or;
  - a situation changes, for example, following another major natural disaster.

*Meaning of "insured" in the context of the Crown's offer*

12. On 28 September 2011, Joint Ministers agreed that for a property owner to qualify for the Crown offer, the Crown will 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*

13. On 18 July 2011, Cabinet agreed, 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 five percent of the purchase price, unless the property owner has evidence that those payments have been spent on remediation works on that property. [CAB Min (11) 27/12 refers].

14. On 28 September 2011, Joint Ministers decided that there was no administrative benefit in retaining the five percent threshold and agreed to amend Cabinet's decision of 18 July 2011 [CAB Min (11) 27/12 refers] to state that:
- the Crown will 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 has evidence that those payments have been spent on remediation works on the property; and

*Withheld under section 9(2)(j) of the Official Information Act - to enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)*

*Unit titles where the principal insurance policy is held by a body corporate.*

15. On 28 September 2011, Joint Ministers noted that a consequence of the structure of unit title ownership is that if one unit owner accepts Option 1, the remaining unit owners must do the same (or select neither Option).
16. We considered whether the Crown should impose a requirement for unit owners to hold a meeting of their body corporate to discuss which of the Crown Options to select but decided not to intervene at that time. We agreed to give further consideration to the issue if unit title developments are identified in any of the future Red Zones consisting of more than 10 individual principal units.

*Insurance payments held by a body corporate*

17. On 28 September 2011, to facilitate settlement for unit titles owners who were stalled from accepting Option 1 while they waited for their body corporates to meet and agree on the distribution of insurance proceeds, Joint Ministers agreed to the following amendments to the Sale and Purchase Agreement:
- the definition of "Insurance Payment" is changed to only include insurance payments actually received by the Vendor;
  - 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;
  - a further warranty is included in the Sale and Purchase Agreement 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;
  - a new clause is added to give the Crown the ability to provide direction to unit title owners who select Option 1 on the 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.
18. We also agreed on 28 September 2011, that where insurance payments are held by a body corporate, the Crown will 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.

*Decisions on Green Zones in Selwyn and Waimakariri*

19. On 15 July 2011, Joint Ministers clarified the status of the land in the Selwyn District and the Waimakariri District and agreed that those areas be zoned Green.

*Initial Green Zones for the Port Hills*

20. On 5 September 2011, Joint Ministers considered geotechnical advice from officials based on assessments by the Port Hills Geotechnical Group and the EQC Land Damage Assessment Team about the varying degrees of damage to properties in the Port Hills and agreed to identify an initial residential Green Zone for the Port Hills [map attached as **Appendix 1**].

*White Zones in the Kaiapoi town centre*

21. As a consequence, of Cabinet rezoning some of the Kaiapoi Orange zones announced on 23 June 2011 from Orange to Red [CAB Min (11) 30/18 refers] a small number of non-residential properties in the Kaiapoi town centre were zoned Red when they should have been zoned White [map attached as **Appendix 2**].
22. On 21 August 2011, Joint Ministers agreed that the non-residential properties in the Kaiapoi town centre be zoned White.

*Interim process for progressing rebuilding in some White Zones*

23. On 2 September 2011, Joint Ministers were advised by Canterbury Earthquake Recovery Authority (CERA) officials that the Christchurch City Council had put on hold the processing of any building consents for properties within areas zoned White on the grounds that the areas were not Green (with the go ahead to repair and/or rebuild).
24. On 5 September 2011 we agreed that councils should not hold up the building consent process if an appropriate geotechnical report was presented by any of the following parties when requesting a building consent:
  - non-residential property owners within Waimakariri District Council White Zones; or
  - non-residential property owners (e.g. commercial zoned community facilities, schools, reserves) within the Christchurch City Council White Zone but outside the Central Business District and outside the Port Hills White Zone; or
  - residential or non-residential property owners within the Banks Peninsula White Zone
25. We also agreed that if there is another magnitude 5.5 quake or greater, this advice would be reviewed.

**Background**

26. On 23 June 2011, Cabinet announced a package to support insured, residential property owners whose houses are located in the Christchurch Red Zone [CAB Min (11) 24/15 refers]. Under this package, the Crown has offered to purchase these properties at the 2007 ratings valuation (RV)<sup>1</sup>. Property owners can choose either to:

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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.

- 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.

#### *Powers to Act*

27. On 11 July, Cabinet authorised Joint Ministers to have Power to Act until 31 October 2011 to take decisions on areas of Canterbury land that can be designated as Green Zones [CAB Min (11) 26/16 refers].
28. On 18 July 2011, Cabinet considered the design of this transaction including any adjustments to the purchase price, the form and type of additional support provided by the Crown, and issues relating to the implementation of the transaction [CAB Min (11) 27/12 and CAB Min (11) 27/13 refer]. At the same time, Cabinet granted Joint Ministers Power to Act to take decisions on any minor and technical issues that arise in relation to transaction design decisions.
29. On 1 August 2011, Cabinet granted Joint Ministers a broader Power to Act until 18 August to finalise the transaction design, sale and purchase agreements, and communications relating to the Crown's offer to purchase insured residential properties in Christchurch's Red Zones so that the deadline for making Crown offers could be met [CAB Min (11) 28/16 refers].
30. On 15 August 2011, Cabinet authorised Joint Ministers to have Power to Act on minor policy, technical, and communications issues in relation to the transaction design and letters of offer to Red Zone residents in Kaiapoi and Pines Beach [CAB Min (11) 30/18 refers].
31. On 19 September 2011, Cabinet authorised Joint Ministers to have Power to Act until 25 February 2012 to finalise, including amending as necessary, technical and minor decisions that arise from previous Cabinet decisions on transaction design as well as decisions pertaining to the transaction process, the sale and purchase agreements, and related communications [CAB Min (11) 34/18 refers].
32. On 19 September 2011, Cabinet also authorised a group of Ministers, comprising the Joint Ministers and the Associate Minister of Finance (Hon Steven Joyce), to have Power to Act until 25 February 2012 (subject to any period of caretaker government following the General Election) to take decisions on reclassifying the Orange Zone areas [CAB Min (11) 34/19 refers].

#### **Red Zone Transaction Design Decisions**

33. On 2 August 2011, Joint Ministers considered questions raised by lawyers responsible for drafting the sale and purchase agreements relating to the transaction design decisions that Cabinet agreed on 18 July 2011, for the purchase of insured residential properties located in the Canterbury Earthquake affected Red Zones [CAB Min (11) 27/12 and CAB Min (11) 27/13 refer]. Those questions were:
  - Who bears the cost of EQC and private insurer's excesses?
  - Can a property owner who has already settled one or more insurance claims still accept Option 1 (and get a top-up for the difference)?

- What size deposit should be paid when the settlement is less than \$50,000?
- Can property owners voluntarily cancel their insurance policy prior to settlement with the Crown?
- Should there be an adjustment when house size is understated in insurance policies?

*EQC and private insurer excesses*

34. On 18 July 2011, Cabinet discussed whether a property owner should be responsible for covering EQC and private insurance excesses but no decisions were recorded in the Cabinet Minute [CAB Min (11) 27/12 refers].
35. The three options considered by Cabinet for determining responsibility for excesses were as follows:
- Excess Payout Option A:** Adjust the purchase price on settlement so that the property owner bears the dwelling excesses.
- Excess Payout Option B:** Adjust the purchase price on settlement so that the Crown bears the dwelling excesses.
- Excess Payout Option C:** Adjust the purchase price on settlement so that the Crown bears the EQC dwelling excess but the property owner bears the private insurance excess.
36. Option A preserves insurance rights more accurately so that property owners bear the dwelling excesses that they agreed to when purchasing their dwelling insurance (or which were imposed by the Earthquake Commission Act 1993).
37. Option B allows property owners to receive the purchase price less any actual cash received, so their total payment (including any EQC or insurance payouts) will be equal to the purchase price.
38. Option C is a compromise: the Crown bears the EQC dwelling excess but property owners bear the consequences of choosing an insurance policy that contains an excess for earthquake claims.
39. On 2 August 2011, Joint Ministers confirmed that Cabinet's preferred option was Option C - the Crown will bear the cost of the EQC dwelling excess but property owners will bear the consequences of choosing an insurance policy that contains an excess for earthquake claims.

*Whether property owners who have settled an insurance claim can still accept Option 1*

40. On 18 July 2011, Cabinet agreed to adjust a property's purchase price by any insurance payments made where these have not yet been spent on remediation works. However, no decision was made on whether property owners would be able to settle with their insurance company and then subsequently accept the Crown's Option 1 to receive a top-up payment.
41. Joint Ministers considered three options for settlement in these circumstances:
- Settlement Option A:** Allow property owners who have settled with their insurance company to still accept Option 1.

**Settlement Option B:** Do not allow property owners who have settled with their insurance company after receiving the Crown's offer to accept Option 1.

**Settlement Option C:** Do not allow property owners who have settled with their insurance company after the announcement of the Crown's offer on 23 June to accept Option 1

42. In situations where property owners have already settled with their insurance company and wish to accept Option 1, the Crown will not have a claim to settle with the insurance company. As long as insurance companies pay property owners an appropriate value for claims, there will be no financial disadvantage to the Crown when property owners settle prior to accepting the Crown's offer. However, property owners will have no incentive to ensure that they receive an appropriate payout from insurers when the Crown will top-up their payout to RV. At the same time, insurance companies will have an incentive to minimise their costs and therefore the claims they pay out. Consequently, the Crown could face a higher cost if a significant number of property owners settle with insurance companies then seek to accept Option 1.
43. Some property owners may have settled with their insurance companies before the Government announced its Red Zone package. Other property owners may settle before receiving the offer from the Crown or, if they are currently located in the Orange or White Zones, before being classified as a Red Zone property. These property owners will have been acting in good faith and should not be penalised by not being able to accept Option 1. However, the purchase price offered to these property owners will be net of any insurance payments received, where these have not yet been spent on remediation.
44. On 2 August 2011, Joint Ministers agreed that property owners cannot accept the Crown's Option 1 offer if they settle with their insurance company after receiving the letter of offer.

*Deposits to be paid by the Crown on settlement*

45. On 18 July 2011, Cabinet:
- noted that payment of a deposit is a common feature of a residential conveyance transaction; and
  - 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.
46. Since that decision, Joint Ministers discovered that some of the properties in the Red Zones had a land value of less than \$50,000. If these land owners were to accept Option 2, the Crown would be paying a deposit greater than the total payment agreed.
47. We also noted that there will be cases in which a property owner has received significant insurance payments but chooses a settlement date more than six months from the date of agreement (entitling the property owner to a prepayment of up to 50 percent of the purchase price of their property). In such cases the property owner could receive a prepayment that is more than half of the total payout for the property.

48. To account for these situations, Joint Ministers agreed on 2 August 2011 to amend the decision on deposit criteria agreed by Cabinet on 18 July [CAB Min (11) 27/13 refers] to state that:
- either a deposit of the lesser of 50 percent of the purchase price less any insurance payments already made and \$50,000 is 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 less any insurance payments is offered where the settlement date is more than six months from the date of agreement.
49. However, on 15 August 2011, Joint Ministers considered further advice and noted that the prepayment amount of 50 percent of the purchase price where settlement is more than six months from the date of agreement could incentivise property owners to delay settlement for six months to receive a higher amount, which would increase the administration costs of the transaction for the Crown.
50. Joint Ministers therefore agreed to further amend the deposit criteria to state that:
- no deposit will be paid if settlement occurs within six weeks of an agreement being signed;
  - if settlement is greater than six weeks of the agreement being signed, a deposit of the lesser of 50 percent of the purchase price less any insurance payments already made and \$50,000 will be paid.

*Maintenance of insurance*

51. Ensuring that property owners maintain insurance until they settle with the Crown is ideal to appropriately place the risk of further earthquakes on insurers and the EQC. However, some property owners will not be able to do so if their insurance company declines to renew their policy. To take this into account, Cabinet agreed on 18 July 2011 that "property owners be required to continue their insurance until the earliest of the expiry of their policy (i.e. at the end of the month or year, depending on the policy) or settlement" [CAB Min (11) 27/13 refers].
52. This means that property owners will be able to choose not to renew their policies even when their insurance company is willing to do so, which will leave the properties uninsured between policy expiry and settlement, as property owners will have no incentive to insure their buildings once they have accepted the Crown's offer. While there might be minimal value left in the dwellings to insure, maintaining insurance cover for these properties keeps public liability (e.g. the house falling down and damaging neighbouring properties) and EQC cover in place. Maintaining insurance may also increase the amount that the Crown receives from insurers in the event of further damage.
53. Officials advised Joint Ministers that many insurance companies are offering reduced cover for damaged properties which covers public liability and is sufficient to get EQC cover. This will reduce the cost of premiums to property owners.
54. On 2 August 2011, Joint Ministers therefore agreed to amend Cabinet's decision of 18 July in order to require property owners to maintain private dwelling insurance until settlement, unless their insurer declines to renew their policy. This will prevent property owners from opting out of insurance policies.



*Underinsured properties due to incorrect house size*

55. On 18 July 2011, Cabinet agreed, in relation to making adjustments to the purchase price for under-insured properties, where a property is under-insured by more than 20 percent, to reduce the purchase price on a pro rata basis relative to the percentage that the property is underinsured [CAB Min (11) 27/12 refers]. This 20 percent threshold was agreed to ensure that only those that are significantly underinsured will have their purchase price reduced, while still incentivising property owners to ensure they have appropriate insurance cover.
56. In some cases, however, a property's RV may be based on an incorrect house size, leading to an incorrect valuation. Owners of properties with incorrect valuations may have used the information from their RV to inform their insurance policy and are consequently underinsured. In some cases the incorrect information may have come from an official source such as a Council.
57. Joint Ministers considered two options for property owners who have unintentionally underinsured because of an incorrect house size listed in their RV:
- Option A: Treat the property owner as underinsured and therefore reduce the purchase price on a pro rata basis relative to the percentage that the property is underinsured, where the property is under-insured by more than 20 percent.
- Option B: Do not reduce the purchase price.
58. We considered that there are likely to be a small number of properties that are unintentionally uninsured so that the fiscal impact on the Crown of exempting such owners from a purchase price reduction is likely to be small but there may be significant benefits for owners.
59. On 2 August 2011, Joint Ministers agreed that underinsured property owners who have relied on information from the Council to inform their insurance policies are exempt from a reduction in the purchase price offered, if the underinsurance is due to factual errors in the RV.
60. On 15 August 2011, Joint Ministers considered further matters raised by lawyers responsible for drafting the sale and purchase agreements relating to the transaction design decisions that Cabinet agreed on 18 July 2011. The matters raised related to:
- deposit payments to insured Red Zone residential property owners (this has been addressed in paragraphs 46 to 51 above)
  - default interest payments for non-settlement
  - giving the Crown the ability to cancel an agreement or defer settlement

*Default interest payments for non-settlement*

61. The Crown's Sale and Purchase Agreement provides the Crown with the ability to give the Vendor notice five days or more before settlement if it does not have all of the requisite information from insurers, EQC and the Vendor to enable it to settle. However, if the Crown does not provide that notice, and fails to settle on the agreed settlement date, the Crown will be liable for default interest.

62. Considering the non-commercial nature of the Red Zone transaction and the default interest rate of ten percent that is used in common practice in residential conveyance transactions, Joint Ministers agreed on 15 August 2011, that a default interest rate of ten percent per annum will be payable by the Crown for not providing notice and failing to settle on the agreed settlement date.

*Cancellation of agreements or deferral of settlement*

63. On 15 August 2011, given the nature of the Red Zone transaction and the number of 'special cases' emerging, Joint Ministers considered that it would be prudent to include in the Sale and Purchase Agreement a discretion for the Crown not to complete a transaction. We also considered that a 'break' clause would also prevent attempts to game the situation by, for example, removing fixtures from a dwelling prior to settlement.
64. As a consequence, Joint Ministers agreed on 15 August 2011, that the Crown seek the right to not complete a transaction where:
- the Crown considers that completion would not be consistent with its intentions (for example, if it considers the contract does not properly respond to the situation or the contract is being gamed) and/or;
  - a situation changes, for example, following another major natural disaster.

*Meaning of "insured" in the context of the Crown's offer*

65. On 28 September 2011, Joint Ministers noted that the actual definition of "insured" in the detailed context of the offers made to residential property owners in the Christchurch Red Zones had not been sufficiently defined. We noted that there are circumstances in which it is unclear whether an owner can be regarded as "insured" for the purposes of the Crown offer, such as, where the owners:
- were uninsured in September 2010 but obtained insurance for their property before the February 2011 earthquake; or
  - had homes under construction as at 4 September 2010 that were subsequently completed and fully insured after that date; or
  - purchased a property after 4 September 2010 but before the February 2011 earthquake and arranged new insurance rather than taking an assignment of an existing policy; or
  - 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.
66. To clarify this situation we agreed that for an owner to qualify for the Crown offer, the Crown will 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*

67. On 18 July 2011, Cabinet agreed 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 five percent of the purchase price, unless the property owner has evidence that those payments have been spent on remediation works on that property. [CAB Min (11) 27/12 refers].

68. The five percent threshold for the deduction of insurance payments was imposed to reduce the administration costs that would be incurred by the Crown if it required all low value claims to be identified and deducted.
69. On 28 September 2011, Joint Ministers noted that to be able to determine whether the five percent threshold had been exceeded all payments made to property owners needed to be identified and consequently the costs to administer the threshold were the same as if all payments were deducted. There was therefore no administrative benefit in retaining the five percent threshold.
70. We also noted that:
- *Withheld under section 9(2)(j) of the Official Information Act; and*
  - *Withheld under section 9(2)(j) of the Official Information Act.*

71. *Withheld under section 9(2)(j) of the Official Information Act.*

72. *Withheld under section 9(2)(j) of the Official Information Act.*

73. *Withheld under section 9(2)(j) of the Official Information Act*

*Unit titles where the principal insurance policy is held by a body corporate.*

74. On 18 July 2011 Cabinet agreed to allow individual unit title owners in the residential Red Zones to accept Option 1 of the Crown offer, but to only allow Option 2 if all owners agreed [CAB Min (11) 27/12 refers]. A consequence is that if one unit owner

accepts Option 1, the remaining unit owners must do the same (or select neither Option).

75. On 28 September 2011, Joint Ministers considered whether the Crown should impose a requirement for unit owners to hold a meeting of their body corporate to discuss the issue of which Option to select. For now, we have agreed not to intervene. This will:
- allow unit title owners to accept Option 1 of the Crown offer without the need to consult with or seek unanimous agreement from fellow unit title owners;
  - adhere to the Crown's goal that the offer be simple; and
  - avoid the Crown becoming involved in negotiations between members of a body corporate.
76. We have agreed to give further consideration to these issues if unit title developments are identified in any of the future Red Zones consisting of more than 10 individual principal units.

*Insurance payments held by a body corporate*

77. 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. The Unit Titles Act 2010 requires all such 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.
78. 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.
79. On 28 September 2011, Joint Ministers noted advice from officials that there were unit owners stalled and frustrated by the need to comply with these requirements. To address this situation we agreed that for unit holders who choose Option 1, any insurance payments held by a body corporate should not be deducted from the purchase price of their unit. To facilitate this we agreed to the following amendments to the Sale and Purchase Agreement:
- the definition of "Insurance Payment" is changed to only include insurance payments actually received by the Vendor;
  - 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;
  - a further warranty is included in the Sale and Purchase Agreement 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;
  - a new clause is added to give the Crown the ability to provide direction to unit title owners who select Option 1 on the 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.

80. We also agreed that where insurance payments are held by a body corporate the Crown will 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.

## Green Zone Decisions

### *Decisions on Green Zones in Selwyn and Waimakariri*

81. On 15 July 2011, Joint Ministers noted that the zone mapping released by the Government on 23 June did not include the Selwyn District Council area or the Waimakariri District Council area other than the Kaiapoi Ward, as the land in these districts was not badly affected by the major earthquakes, and was not mapped by Tonkin & Taylor. Rather than showing up as unzoned on the Landcheck website, these areas appeared White leading to reluctance from some insurers to complete assessments for properties in those areas and confusion for residents.
82. To clarify the status of the land in the Selwyn District and the Waimakariri District Joint Ministers agreed that those areas be zoned Green.

### *Initial Green Zones for the Port Hills*

83. On 5 September 2011, we were provided with geotechnical advice from officials based on assessments by the Port Hills Geotechnical Group (PHGG) and the EQC Land Damage Assessment Team (LDAT) about the varying degrees of damage to properties in the Port Hills.
84. The PHGG, which comprises six geotechnical engineering companies led by the Christchurch City Council, had developed geotechnical hazard maps showing areas where properties, infrastructure and lifelines on the Port hills were damaged from the Christchurch earthquakes and their aftershocks. The maps identified, on a macro scale, areas of increased risk from newly identified geotechnical hazards, as well as areas where there was no damage or where there was minor to very low risk from geotechnical hazards.
85. The EQC LDAT had undertaken site-specific assessments of land damage in the Port Hills area and had developed a property-by-property land damage map showing individual residential properties classified by damage type.
86. The PHGG and EQC LDAT met to review zone boundaries from their respective reports, after which, the land damage map from the PHGG prepared on the macro scale hazards was combined with the site-specific EQC LDAT residential land damage map by Tonkin and Taylor to produce one coherent and consistent map allowing decisions to be made regarding zoning.
87. Based on advice from officials Joint Ministers agreed on 5 September 2011, to identify an initial residential Green Zone for the Port Hills [map attached as **Appendix 1**].

## White Zone Decisions

### *White Zones in the Kaiapoi town centre*

88. On 15 August 2011, Cabinet agreed to new residential Red Zones in Kaiapoi [CAB Min (11) 24/15 refers]. This involved rezoning some of the Kaiapoi Orange zones

announced on 23 June from Orange to Red [CAB Min (11) 30/18 refers]. As a consequence, a small number of non-residential properties in the Kaiapoi town centre were zoned Red when they should have been zoned White [map attached as **Appendix 2**].

89. As the Crown's offer of purchase only applies to insured residential properties, changing this non-residential area from Red to White is a technical change that aligns the zoning more correctly with the approach taken in other parts of Christchurch.
90. On 21 August we agreed that the non-residential properties in the Kaiapoi town centre be zoned White. We wrote to property owners explaining their new zoning status.

#### *Interim process for progressing rebuilding in some White Zones*

91. On 2 September 2011, Joint Ministers were advised by CERA officials that the Christchurch City Council had put on hold the processing of any building consents for properties within areas zoned White on the grounds that the areas were not Green (with the go ahead to repair and/or rebuild). This was leading to frustration for property owners, especially in areas where there was little or no obvious land damage or risk from geotechnical hazards, or in cases where the owner was prepared to invest in a remediation and rebuild process.
92. Officials advised us that there was no legal basis for councils to withhold building consents on the basis that a property is situated within the White Zone. Some of the properties in that zone may be suitable for repair and/or rebuilding.
93. Following advice from CERA we agreed on 5 September 2011, to an interim process that would enable some property owners in the White Zone to commence their rebuilding process. We agreed that councils should not hold up the building consent process if an appropriate geotechnical report was presented by any of the following parties when requesting a building consent:
  - non-residential property owners within Waimakariri District Council White Zones; or
  - non-residential property owners (e.g. commercial zoned community facilities, schools, reserves) within the Christchurch City Council White Zone but outside the Central Business District and outside the Port Hills White Zone; or
  - residential or non-residential property owners within the Banks Peninsula White Zone
94. We also agreed that if there is another magnitude 5.5 quake or greater, this advice would be reviewed.

#### **Consultation**

95. The Treasury was consulted on this paper.
96. The Department of the Prime Minister and Cabinet was informed.

#### **Financial implications**

97. There are no financial implications resulting from this paper.

### Human rights implications

98. 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

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

### Publicity

100. I propose to publicly release this paper on the CERA website in order to provide the public with information on Joint Ministers' decisions.

### Regulatory impact and compliance cost statement

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

### Gender implications

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

### Disability perspective

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

### Recommendations

104. It is recommended that Cabinet:

#### *Background*

1. **note** that on 11 July 2011, Cabinet authorised Joint Ministers (the Minister of Finance and the Minister for Canterbury Earthquake Recovery) to have Power to Act from 11 July 2011 to 31 October 2011, to take decisions on areas of Canterbury land that can be designated as Green Zones [CAB Min (11) 26/16 refers];
2. **note** that on 18 July 2011, Cabinet authorised Joint Ministers to have Power to Act from 18 July 2011 onwards, to take decisions on any minor and technical issues that arise in relation to transaction design decisions [CAB Min (11) 27/12 and CAB Min (11) 27/13 refer];
3. **note** that on 1 August 2011, Cabinet authorised Joint Ministers to have Power to Act from 1 August 2011 to 18 August 2011, to finalise the transaction design, sale and purchase agreements, and communications relating to the Crown's offer to purchase insured residential properties in Christchurch's Red Zones so that the deadline for making Crown offers could be met [CAB Min (11) 28/16 refers];
4. **note** that on 15 August 2011, Cabinet authorised Joint Ministers to have Power to Act from 15 August 2011 onwards, on minor policy, technical, and communications issues in

relation to the transaction design and letters of offer to Red Zone residents in Kaiapoi and Pines Beach [CAB Min (11) 30/18 refers];

5. **note** that on 19 September 2011, Cabinet authorised Joint Ministers to have Power to Act from 19 September 2011 to 25 February 2012, to finalise, including amending as necessary, technical and minor decisions that arise from previous Cabinet decisions on transaction design as well as decisions pertaining to the transaction process, the sale and purchase agreements, and related communications [CAB Min (11) 34/18 refers];
6. **note** that on 19 September 2011, Cabinet authorised Joint Ministers to have Power to Act from 19 September 2011 to 25 February 2012, in conjunction with the Associate Minister of Finance (Hon Steven Joyce), to (subject to any period of caretaker government following the General Election) take decisions on reclassifying the Orange Zone areas [CAB Min (11) 34/19 refers];

*Transaction design decisions*

7. **note** that on 2 August 2011, Joint Ministers:
  - 7.1 agreed that the Crown will bear the cost of EQC dwelling excesses but property owners will bear the consequences of choosing private insurance policies that contains excesses for earthquake claims;
  - 7.2 agreed that property owners cannot accept the Crown's Option 1 offer if they settle with their insurance company after receiving the Crown's letter of offer;
  - 7.3 agreed to amend Cabinet's decision of 18 July 2011 [Recommendation 15, CAB Min (11) 27/13 refers] in order to require property owners to maintain private dwelling insurance until settlement, unless their insurer declines to renew their policy, to prevent property owners from opting out of insurance policies;
  - 7.4 agreed that underinsured property owners who have relied on information from the Council to inform their insurance policies are exempt from a reduction in the purchase price offered by the Crown, if the underinsurance is due to factual errors in the RV;
8. **confirm** the decision taken by Joint Ministers in relation to recommendation 7.3 above which amends the earlier Cabinet decision taken on 18 July [Recommendation 15, CAB Min (11) 27/13 refers].
9. **note** that on 15 August 2011, Joint Ministers:
  - 9.1 agreed to amend the deposit criteria for settlement agreed by Cabinet on 18 July 2011 [Recommendation 10, CAB Min (11) 27/13 refers] to state that:
    - 9.1.1 no deposit will be paid if settlement occurs within six weeks of an agreement being signed;
    - 9.1.2 if settlement is greater than six weeks of the agreement being signed, a deposit of the lesser of 50 percent of the purchase price less any insurance payments already made and \$50,000 will be paid.
  - 9.2 agreed that a default interest rate of ten percent per annum will be payable by the Crown for not providing notice and failing to settle on the agreed settlement date;
  - 9.3 agreed that the Crown would seek the right not to complete a transaction where:



9.3.1 the Crown considers that completion would not be consistent with its intentions (for example, if it considers the contract does not properly respond to the situation or the contract is being gamed) and/or;

9.3.2 a situation changes, for example, follow another major natural disaster.

10. **confirm** the decision taken by Joint Ministers in relation to recommendation 9.1 above which amends the earlier Cabinet decision taken on 18 July [Recommendation 10, CAB Min (11) 27/13 refers].

*Meaning of "insured" in the context of the Crown's offer*

11. **note** that on 28 September 2011, Joint Ministers agreed:

11.1 that for an owner to qualify for the Crown offer, the Crown will 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*

11.2 to amend Cabinet's decision of 18 July 2011 [Recommendation 54, CAB Min (11) 27/12 refers] to state that:

11.2.1 the Crown will 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 has evidence that those payments have been spent on remediation works on the property;

11.2.2 Withheld under section 9(2)(j) of the Official Information Act

*Unit titles where the principal insurance policy is held by a body corporate.*

11.3 to give further consideration to intervening to impose a requirement for unit owners to hold a meeting of their body corporate to discuss the issue of which Option to select if unit title developments are identified in any of the future Red Zones consisting of more than 10 individual principal units;

*Insurance payments held by a body corporate*

11.4 that for unit holders who choose Option 1, any insurance payments held by a body corporate should not be deducted from the purchase price of their unit;

11.5 to make the following amendments to the Sale and Purchase Agreement:

11.5.1 the definition of "Insurance Payment" is changed to only include insurance payments actually received by the Vendor;

- 11.5.2 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;
- 11.5.3 a further warranty is included in the Sale and Purchase Agreement 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;
- 11.5.4 a new clause is added to give the Crown the ability to provide direction to unit title owners who select Option 1 on the 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.
- 11.6 that where insurance payments are held by a body corporate the Crown will 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;

12. **confirm** the decision taken by Joint Ministers in relation to recommendation 11.2 above which amends the earlier Cabinet decision taken on 18 July 2011 [Recommendation 54, CAB Min (11) 27/12 refers].

*Decisions on Green Zones in Selwyn and Waimakariri*

13. **note** that on 15 July 2011, Joint Ministers decided that, for clarification, the land in the Selwyn District and the Waimakariri District areas be zoned Green [map attached as **appendix 1**];

*Initial Green Zones for the Port Hills*

14. **note** that on 5 September 2011, Joint Ministers decided to identify an initial residential Green Zone for the Port Hills [map attached as **appendix 2**];

*White Zones in the Kaiapoi town centre*

15. **note** that on 21 August 2011, Joint Ministers decided that the non-residential properties in the Kaiapoi town centre be zoned White.

*Interim process for progressing rebuilding in some White Zones*

16. **note** that on 5 September Joint Ministers agreed:

16.1 that councils should not hold up the building consent process if an appropriate geotechnical report was presented by any of the following parties when requesting a building consent:

16.2 non-residential property owners within Waimakariri District Council White Zones;  
or

- 16.3 non-residential property owners (e.g. commercial zoned community facilities, schools, reserves) within the Christchurch City Council White Zone but outside the Central Business District and outside the Port Hills White Zone; or
- 16.4 residential or non-residential property owners within the Banks Peninsula White Zone.
- 16.5 to review their advice about the building consent process in White Zones if there is another magnitude 5.5 quake or greater.

**Next Steps**

- 17. **invite** the Minister for Canterbury Earthquake Recovery to publicly release this paper including on the Canterbury Earthquake Recovery Authority's website.

Hon Gerry Brownlee  
**Minister for Canterbury Earthquake Recovery**

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Released by the Minister for Canterbury Earthquake Recovery