The Treasury

Earthquake Commission (EQC) Act Review Submissions Information Release

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Certain information in this document has been withheld under one or more of the following sections of the Official Information Act, as applicable:

[1] 9(2)(a) - to protect the privacy of natural persons, including deceased people;

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Where information has been withheld, a numbered reference to the applicable section of the Official Information Act has been made, as listed above. For example, a [2] appearing where information has been withheld in a release document refers to section 9(2)(b)(ii).

In preparing this Information Release, the Treasury has considered the public interest considerations in section 9(1) of the Official Information Act.

New Zealand's Future Natural Disaster Insurance Scheme

Proposed changes to the Earthquake Commission Act 1993

Submission by Tonkin + Taylor

September 2015

Tonkin+Taylor

THE TREASURY
Kaitohutohu Kaupapa Rawa

New Zealand Government

New Zealand's Future Natural Disaster Insurance Scheme
Proposed changes to the Earthquake Commission Act 1993

Tonkin + Taylor (T+T) is making this submission in response to the proposed changes to the Earthquake Commission Act 1993. We note that submissions are required to be forwarded to Treasury at Submissions.Eqcreview@treasury.govt.nz no later than 5.00pm on Friday 11 September 2015.

As requested, our responses are written in the template below. We have not answered all sections, just the ones where we have information we would like to contribute. We have expanded and deleted boxes, but have kept the original question numbers.

Where appropriate we have included references and links to supporting evidence or information.

Official Information Act 1982

We acknowledge that our submission is subject to the Official Information Act 1982 (OIA). We have no objection to any information in the submission being released under the OIA.

We also acknowledge that any personal information we supply in the course of making our submission will be used by the Treasury only in conjunction with the matters covered by this document, and are happy for our name to be included in any summary of submissions that the Treasury may publish.

Context and purpose of this submission from Tonkin + Taylor

T+T is making this submission as a group of professional engineers, scientists and planners, drawing on our extensive experience over 45 years in response to, and recovery from, natural hazard events acting for the Earthquake Commission (EQC), and its predecessor the Earthquake and War Damage Commission (EQ&WDC), throughout New Zealand (see box below).

T+T has been given permission by EQC to draw on its experience in making this submission.

We also draw on our in-depth involvement and experience in the response to, and recovery from, the Canterbury Earthquake Sequence (CES), and our wider relevant expertise and experience working for local authorities, companies and individuals. Unlike many large engineering companies, T+T still operate in the residential housing market.

In making our submission we have reviewed and considered the July 2015 Discussion Document New Zealand's Future Natural Disaster Insurance Scheme, Proposed changes to the Earthquake Commission Act 1993.

Our purpose in making this submission is three-fold:

- to assist in the development of a fit for purpose Natural Disaster Insurance Scheme (NDIS) that is easy and practical to implement,
- to address the wider objectives of the review of the Act, and
- to contribute from our experience of lessons identified for the wider benefit of New Zealand for future preparedness, response and recovery from natural disaster events.

T+T's experience and track record

At first light on the morning of 4 September 2010, a team of geotechnical engineers from Environmental and Engineering Consulting firm, Tonkin + Taylor Ltd (T+T) started mapping the land damage that had resulted from the Darfield earthquake. As the engineers for the Earthquake Commission (EQC), T+T have undertaken information gathering and damage assessment for many natural disaster events. T+T has been doing this for over 45 years. The only difference was that this time the information that T+T gathered for EQC was shared (confidentially) across central and local government, the private insurers, and later, with the establishment by T+T of the Canterbury Geotechnical Database (CGD), by any authorised party.

During the Canterbury Earthquake Sequence (CES) 2010-2011, T+T also attended to many other natural disasters, in particular the Nelson Floods in December 2011. The proposed changes to the EQC Act are largely in response to the CES. This submission is, however, based not only upon our observations of the recovery efforts in Canterbury over the last five years, but also from our collective experience with other natural disaster recovery efforts by EQC over the last 45 years, in particular:

Abbotsford landslip 1979

Edgecumbe earthquake 1987

Cyclone Bola 1988

Manawatu floods 2004

Eastern Bay of Plenty floods and landslips 2004

Western Bay of Plenty (Rotoma) earthquake 2004

Tauranga floods and landslips (including Matata) 2005

West Taihape deep seated landslip 2005-2010

Northland floods and landslips (February and July) 2007

Gisborne earthquake 2007

Wellington storms events of 2004, 2006 and 2008

Auckland deep seated landslips of 2008.

Cyclone Wilma 2011

Nelson floods and landslips 2011

Seddon earthquakes 2013

Wellington storm event 2014

Whanganui floods and landslips 2015.

T&T's Submission - Summary

Based on our expertise and our experience our submission covers five key areas that we feel we are uniquely qualified to provide commentary on. These five areas are:

1. Purpose of the Act

In our view, the purpose statement needs to more clearly articulate EQC's mandate, including in relation to the New Zealand NDIS. It needs to be clear how this fits within the wider Government responsibilities around natural hazards and disaster management. We believe that EQC can play a unique and valuable role by extending its research and education activities on natural hazards, and how to reduce their impact, into providing trusted advice and advocacy.

We also see important lead agency roles developing through collaboration between Government, private insurance and other parties on activities to deliver efficient management of natural hazard financial risk and disaster recovery and coordinating and managing information. Our comments about these wider purposes are included in our response to Question 1b.

Our comments specifically on the purpose of New Zealand's future Natural Disaster Insurance Scheme (NDIS) are covered under Questions 1b, 7a, 9b and 17b.

2. Perils covered by the NDIS

The new NDIS should, in our view, provide cover for the consequences (adverse effects) of natural hazards and disasters, rather than providing coverage based on perils. On this basis it should be the consequences of natural hazards or disasters that are covered that are listed in the Act. The current listing of various natural hazards (perils) is confusing and ambiguous and has led to some confusion in the application of the EQC Act 1993. Our comments on the consequences of natural hazards and disasters are covered under Questions 2a and 2b.

3. Property covered by the NDIS

Under current provisions of the EQC Act, unimproved land that becomes lost or damaged as a consequence of natural disasters is not insured. This also applies to properties where the buildings are at various stages of construction but are not "habitable" dwellings. We recommend that land which does not have a habitable building also be covered under the new NDIS. Our comments on unimproved land cover are provided under Questions 4a and 4b.

4. Building covered by the NDIS

In our view the NDIS would better cover only major natural disaster events for residential buildings. Accordingly private insurers could cover the minor events and EQC would only respond to the consequences of major natural disaster events for residential buildings. EQC would therefore provide the

top up cover and not the first $200,000 + GST. Our comments are briefly covered under Question 7a.

5. Land covered by the NDIS

There are significant recovery benefits derived from land cover, which have been thoroughly tested over the last 31 years since land cover was included in 1984. For this reason we recommend that land cover should be retained in some form. However, we suggest that the currently defined land cover be clarified and modified. We also submit that an alternative option for the funding of land cover could come from a levy on rates. Our comments on land cover are covered under Questions 9a and 9b. It is envisaged that EQC alone will continue to provide land cover.

We have also provided commentary under some of the other questions where we feel we have some examples that could assist in the development of the NDIS.

From our experience it is our view that the current scheme, as set out in the EQC Act 1993 and as it has been applied from 1993 to 2015 (excluding Canterbury), works well, and does not require any major structural change. What it does need is clarifying and simplifying. Had the Act been clearer and simpler many of the difficulties experienced in settling claims in Canterbury would have been overcome much earlier.

This submission has been prepared by:

Nick Rogers (lead author)

David Buxton

Tim Coote

John Leeves

Nick Peters

Marje Russ

Shamus Wallace

Kate Williams

This team has more than 150 person years of collective hands on experience with natural disaster damage recovery associated with insurance claims, including cover provided by EQC.

After many significant natural disaster events in the 22 years since the EQC Act was put in place in 1993, tens of thousands of residential customers outside of Canterbury have been put back to a similar physical or financial position that they had before the natural disasters occurred. Accordingly we submit that it is important not to view the success (or otherwise) of the current scheme solely by looking at its effectiveness in the response to the Canterbury Earthquake Sequence (CES).

The CES was a unique cluster of major damaging earthquakes that have never happened in an urban setting anywhere else in the world before. The response to the CES (which is still very much a work in progress) therefore needs to be considered alongside the response to the many other natural disaster events that EQC has responded to since 1993, and for almost fifty years before 1993 as the Earthquake and War Damage Commission (EQ&WDC).

Before discussing possible changes to the current scheme, it is important to understand the background to the current scheme, and what cover it provides.

Background of the current scheme

In 1941 the War Damage Act (WD Act) and the War Damage Commission (WDC) were established in New Zealand to mirror the same provisions established in the same year in Britain. In Britain a levy was charged against the assessed value of all property to replace or repair any property damaged by enemy action.

Because New Zealand's property tax laws differed from those in Britain, the levy in New Zealand was based on the value of a property as identified through its fire insurance policy. So, whilst in Britain the scheme was compulsory and covered all assessed property, the New Zealand scheme only applied to property insured against fire. Accordingly, in New Zealand war damage cover only extended to buildings, not to land or other property (such as fences and walls) as it did in Britain.

Earthquake (EQ) cover was added in 1944, and EQ was added to the WD Act (EQ&WD Act) and to the WD (EQ&WD) Commission. Although there had been seven magnitude 7 earthquakes from 1928 to 1942, which was the rationale for adding the earthquake peril into the Act, the seismic levels nationally reduced considerably. After five years of accumulating premiums but not paying out on any major earthquakes, other natural perils (floods, storms, volcanic activity or tsunamis) that were considered abnormal and unforeseen and extraordinary and widespread were added into an Extraordinary Disaster Fund in 1949.

Landslip was initially omitted as a peril for the Extraordinary Disaster Fund, as it was not considered widespread, abnormal or unforeseen, and many landslips were considered "man-made". However, with no major calls on the Fund since it had been established, landslip as a peril was included in 1970.

In August 1979 a large landslip occurred in East Abbotsford, Green Island Borough, Dunedin. This landslip developed over several months, but under the EQ&WD Act there was no ability to prevent the houses becoming damaged, and after the landslip occurred there was no compensation for the loss of the property, only for the insured residential buildings.

The Commission of Inquiry into the Abbotsford Landslip Disasteri noted that "one of the most sensitive areas which needs to be considered, and one of the areas of most frequent criticism, was the lack of the availability of a facility for the "insurance of land". The Commission reported in November 1980 and recommended that:

"Cover should be afforded in respect of loss of use of land, and that such cover should be afforded on a compulsory basis to all landowners with premiums collected through the local authority rating mechanism based on the unimproved value of the land".

In June 1984 the EQ&WD (Land Cover) Regulationsii came into effect. These provided for insurance of land against earthquake damage, disaster damage (damage caused by storm, flood, volcanic eruption or hydrothermal activity), and landslip damage. The provisions for land cover set out in the 1984 regulations were included, essentially unchanged, in the Earthquake Commission Act, 1993.

The insurance of land was therefore born out of the recognition that many people suffer financial losses resulting from the loss of land, irrespective of whether the insured residential building is also lost (or damaged).

As stated by the Abbotsford Commission[iii], *"New Zealand is, from a geological point of view, a dangerous place to live, with almost every part at risk from one variety or another of natural disaster whether this be*

earthquake, flood, instability of ground, volcanic eruption or storm. In such circumstances it is not unreasonable for the community as a whole to bear at least a proportion of the cost involved in such disasters".

"*Any consideration of a scheme of indemnity or compensation for any form or class of natural disaster will begin from an assessment of the reasonable expectation of the public and the degree to which those reasonable expectations are met by available facilities".*

Current scheme

Based on our considerable experience in applying the current scheme across a range of perils and natural disasters of varying magnitudes we have not found the assessment process for building and/or land claims to be complex. The current scheme is actually very simple.

The essence of the scheme is:

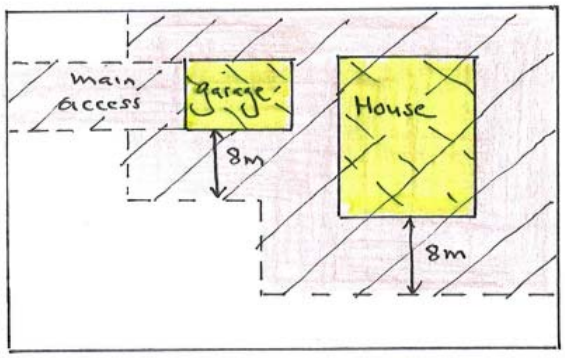
Building cover

Buildings (generally the residential dwelling and garage) that have a private insurance policy in place and which are damaged by any of the natural hazards (perils) listed in the EQC Act are covered by EQC for the cost of the repair of that damage, up to $100,000 plus GST.

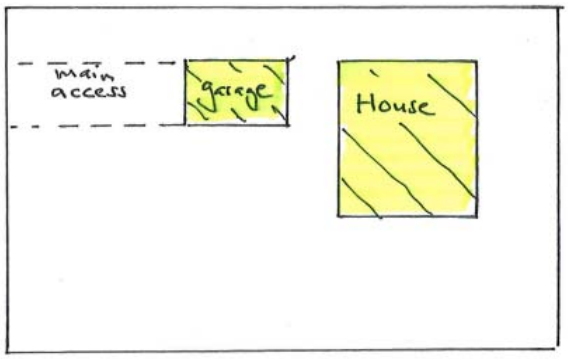
Land cover

Land that is necessary for the utility of the insured residential buildings (generally the land supporting the main access way, the house and garage and land up to 8m around the residential dwelling and garage) which is damaged by the natural hazards (perils) listed in the EQC Act is covered by EQC for the cost of repair of that damage by EQC up to the value of the damaged land.

The essence of land cover is shown in Figure 1.



current scheme



proposed scheme

Key

building cover land cover

Figure 1. Natural Disaster Insurance Covers

Your contact details

For individuals

Your name:	
	Indicate here if you do not wish your name to be included in any summary of submissions that we may publish.

Email address:	
Phone number:	

What city, town or province do you live in?	
Do you own your own home?	

For organisations

Organisation name:	Tonkin + Taylor Ltd
Nature of your business:	Environmental and Engineering Consulting

Contact person name:	Marje Russ
Position:	Director
Phone number:	[1]
Email address:	

In what city, town or province is your organisation's New Zealand headquarters?	Auckland

What is the purpose of the EQC scheme?

Proposal for discussion

1 That the purpose of the EQC Act be to establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand that:

- Supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings
- recognises the importance of housing in supporting the recovery of communities after a natural disaster
- supports improved resilience of New Zealand communities and an efficient approach to the overall management of natural hazard risk and recovery in New Zealand
- contributes to the effective management by the Crown of fiscal risks associated with natural disasters.

What do you think?

1a Do you agree that these purposes are appropriate and complete?

The purpose statement is appropriate (with some minor modifications) in relation to the natural disaster insurance scheme (NDIS) but is not complete. We believe that the purpose should be wider.

1b If not, what changes would you suggest, and why?

We suggest the following text for the purpose statement of the Act.

That the purposes of the EQC Act be to:

a) establish the Earthquake Commission as the national lead agency to build New Zealand's financial resilience to natural hazards through:

- managing the Crown-owned natural hazards disaster insurance scheme
- supporting research and education about natural hazards and how to reduce their consequences
- providing advice on and advocating measures to reduce risks from natural hazards to central and local government agencies and other parties
- facilitating, leading and coordinating activities of the Commission, private insurers and other parties to deliver efficient management of natural hazard financial risk and disaster recovery in New Zealand
- coordinating and managing information that will assist the Commission, private insurers and other parties to deliver efficient management of natural hazard financial risk and disaster recovery in New Zealand
- be the lead agency to develop a national policy on natural hazards, resilience and disaster risk reduction

b) establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand that:

- supports, complements and is closely coordinated with the provision of effective private insurance services to the owners of residential buildings
- recognises the importance of housing in supporting the recovery of communities after a natural disaster
- supports improved financial resilience of New Zealand communities
- supports an efficient approach to the overall management of natural hazard risk and recovery in New Zealand

- contributes to the effective management by the Crown of fiscal risks associated with natural disasters.

Wider scope for the purpose statement

- The objectives for the Review of the Act (as expressed in Section 4.3 of the consultation document) are quite wide-ranging, and are to:
- "support the contribution of a well-functioning insurance industry to economic growth opportunities in New Zealand
- minimise the fiscal risk to the Crown associated with private property damage in natural disasters
- support an efficient approach to the overall management of natural disaster risk and recovery, and
- minimise the potential for property owners to experience socially unacceptable distress and loss in the event of a natural disaster".

The matters to be covered in the review are also widely cast and include institutional design, specifically:
"What roles and expectations should the Crown have of EQC? This includes:

- research capabilities and information
- hazard risk management
- claims management and settlement
- scope of independence or Ministerial direction

"What structure or institutional form should EQC take?"

In our view these wider objectives and aspirations should be captured in the purpose of the Act. The current construction of the purpose statement puts an over-riding (and narrow) focus on establishing a Crown-owned natural disaster insurance scheme for residential buildings. The bullet points proposed in the purpose statement are subservient to this and so will not facilitate or support delivery of the wider objectives. We consider that there are some key issues that should be encapsulated in the purpose, and these are set out below.

Lead role in disaster financial risk management and resilience

We consider that the primary purpose of the national statute (the EQC Act), the Commission and the Crown-owned natural disaster insurance scheme (NDIS) the Act provides for, should be to manage the financial risk that natural disasters present and build financial resilience to natural hazards in New Zealand. This would be a unique and distinctive role for the Commission, sitting alongside and supporting the roles of other national and local government agencies.

Financial risk is closely related to physical risks. The Commission is well-placed to understand these relationships and can provide a strong and trusted lead role in building physical as well as financial resilience. EQC's current role supporting research and education about natural hazards and how to reduce their consequences is mentioned eight times in the discussion document. Strong stakeholder support is reported for this role continuing. In our view, this research and education role should be expressly extended to include advocacy and providing trusted advice. Importantly, this could include inputs to land use planning processes and decision-making to support risk reduction and consequent financial risk. This should be reflected in the purpose of the Act and also in the functions of the Commission.

Leading collaboration

Recent studies in the USA[iv] [v] have highlighted the benefits of public-private partnerships in risk management, and another study[vi] cites the 2010 and 2011 earthquakes in New Zealand as an example where such

partnerships have proven their worth during natural disasters. Conceptual models have also been prepared for resilience-focused collaboration among all sectors of the community for building resilience from an "all-hazards" perspective. It is clear that it is incumbent on everyone, from individuals to government, to embrace a culture of resilience, and that building community resilience will require private and public collaboration. EQC can provide a pivotal role in leading this collaboration.

Information management in disaster recovery

Another important role of EQC in natural disasters is to collect and distribute, through an open access platform, information on natural disaster damage for all stakeholders in the recovery to utilise. As EQC cover is common to all the private insurance companies, we consider EQC is in a good position to act as an information collector/broker. In Canterbury, since September 2010, this collection of information by EQC, which later included the establishment of the Canterbury Geotechnical Database, hosted by CERA, has been an important success factor in the recovery from the Canterbury Earthquakes. The information collected by EQC was of critical importance to many Government Departments, such as MBIE, CERA and MoE, in informing policy decisions and recovery options.

As outlined in the EQC Briefing papers to the incoming Minister in 2011[vii] and 2014[viii], there is no national database of private household insurance cover in New Zealand, and we agree that the establishment of such a database would make a valuable contribution to effective natural hazard risk management in New Zealand.

The purpose for the NDIS include:

Providing an NDIS for residential buildings

We agree that one purpose of the EQC Act should be to establish a Crown-owned natural disaster insurance scheme for residential buildings in New Zealand. We also consider that land cover should be retained.

In our view, the NDIS should provide a safety net for all New Zealanders in the event of a major natural disaster, by firstly maintaining a habitable house and secondly by protecting the equity that all stakeholders (owners and financial institutions) have in residential property. For most New Zealanders, their residential properties are where they have most of their life savings invested. An important purpose of the NDIS is therefore to protect, as far as is practicable, the equity that people have in their residential properties in the event of natural disaster.

In the immediate aftermath of the Darfield Earthquake of 4 September, 2010 the Government promised that no-one would be worse off and homeowners' equity would be protected. Even after the 22 February 2011 earthquake, the Minister in Charge of the Earthquake Recovery and the Minister in Charge of the Earthquake Commission, the Hon Gerry Brownlee said that "*right from September 4 I've repeatedly said that what we have to do is protect the equity that people think they have got in their properties*".

On 17 June 2011, after yet another major earthquake had occurred, the Prime Minister Hon John Key said[ix] that "*I know the biggest concern for many homeowners is property and land damage".* Mr Key further stated that "*The Government has said all along it wants homeowners with insurance to regain as much equity as possible, and we're working hard to achieve that*."

Government clearly considered that one of the most important aspects of the recovery would be to ensure that people (and financial institutions) regained their equity in their properties.

This was also an important factor in the Abbotsford Commissioners' recommendation in 1980 that land cover

be included in the Government backed insurance scheme (refer Question 9).

Private-public insurance partnership

We agree that the NDIS should support, complement and be closely coordinated with the provision of effective private insurance services to the owners of residential property.

The collaboration of the state-owned insurer (EQC) and the private sector has served New Zealand very well over the last 70 years. The reason for establishing a Crown-owned insurer was because, in 1945, adequate natural disaster insurance cover was not available from the private insurers. Even in 1980, it was the view of the Commissioners enquiring into the Abbotsford Landslip Disaster that, from evidence given to the commission, it was clear that *"insurance cover is simply not available from the insurance industry in respect of certain types of natural disaster, and this will always be the position".*

In its deliberations on natural disaster insurance, the Abbotsford Commission foresaw that in balancing the commercial insurance market, the Government backed scheme (to supplement the commercial insurance market) and the community response to natural disaster, indemnity or compensation would need to be:

- affordable
- available
- sound and economically viable
- adequate to meet as many as possible of the reasonable expectations of the public
- free of any undesirable social consequences, and
- as free as possible of anomaly and individual injustice.

The multi-peril, distributed, flat rate insurance scheme that EQC has operated for the past 45 years has ensured that natural disaster insurance is widely available and affordable. Currently in New Zealand residential insurance cover for natural disaster damage is around 95 percent. This is in marked contrast to places such as California and Japan, where the rates of residential insurance cover for earthquake are closer to 10 percent and 25 percent respectively.

We agree that the private sector needs to continue to play a major role in natural disaster insurance in New Zealand. However, we suggest that a modified approach could be considered, with the private insurers covering the first $200,000 (+ GST) of building cover. The private insurers would in effect then cover all minor building damage from high frequency (common) natural disaster events, leaving the Government to cover the more significant but less frequent events. The private insurers are well geared-up to cater for what is, in effect, cosmetic damage to buildings, just as they are for contents insurance. This is further covered in our responses to Questions 6 and 7. EQC alone would continue to cover residential land damaged by natural disasters.

We also consider that EQC should cover storms and floods for residential buildings. This will do away with the ambiguity around landslip and flood debris, just as it currently does with land (see comments under Question 2).

What this would mean is that nuisance would not be covered by EQC. High frequency (common) events would be covered by the private insurance sector, and the Crown would only become involved with low frequency, major events. Land cover would be provided by EQC.

Housing

We agree that the NDIS should recognise the importance of housing in supporting the recovery of

communities after a natural disaster.

In our experience the reinstatement or provision of housing is a critical factor for the successful recovery from natural disasters, preferably by enabling people to remain in their homes, or where this is not possible by being able to access temporary accommodation. We consider "putting a roof over peoples heads" is a key role that EQC could play. This fits in with the concept of EQC covering the major disasters, and picking up where the private sector leaves off. This is also consistent with the suggested purpose of the new NDIS, which is to play a major role in disaster risk management. EQC would therefore be responsible for temporary accommodation, and in this regard could link in with other Crown-owned agencies such as Housing New Zealand and the Ministry of Social Development.

Resilience and efficient recovery

We agree that that the NDIS should support improved resilience of New Zealand communities and an efficient approach to the overall management of natural hazard risk and recovery in New Zealand. We propose however, that the word "financial" be added to this bullet in the purpose statement. The NDIS is a financial management tool and, in this context, we suggest that it is more appropriate to focus the concept of resilience on financial resilience. We have provided comment above about resilience, risk management and recovery in a wider context.

Financial risk management

We agree that the NDIS should contribute to the effective management by the Crown of fiscal risks associated with natural disasters.

The financial risk that natural disasters pose to New Zealand cannot be overemphasised. We agree that a Crown-owned NDIS is the most effective way to manage the fiscal risk that natural disasters pose. Because of its scale, EQC is uniquely placed to purchase reinsurance at very competitive rates. The only other organisation that probably comes close to EQC in this regard is the California Earthquake Authority. EQC is the Crown entity through which the Crown transfers and shares natural disaster risk. Insurers like IAG also have big purchasing power, but have other commercial drivers such as return on investment for shareholders, and the cost of capital, which means that the cost of cover for private insurers is necessarily higher than for a crown agency such as EQC.

On 15 May 2013 the UN Secretary-General Ban Ki-moon[x] warned that economic losses from disasters were out of control. UNISDR Chief Margareta Wahlstrom[xi] reported that disaster risk now stands as a new multi-trillion dollar class of toxic asset of unrealised liabilities. Direct losses from disasters from the start of this century to that date, a period of only 13 years, are estimated to be around USD 2.5 trillion. Globally, enormous efforts are currently underway in the areas of disaster risk reduction (DRR) and community resilience. The UNDP Chief Helen Clark stated that the UN [xii] has estimated that for every dollar spent on DRR there is a 7 fold return on that investment. The UNISDR Global Assessment Report 2013 (GAR 13)[xiii] presents a compelling business case for DRR.

The UN Human Rights Council asserted in 2014[xiv] that *"natural hazards are not disasters in and of themselves. Whether or not they become disasters depends on the exposure of a community, and its vulnerability and resilience, all factors that can be addressed by human (including State) action. A failure (by Governments and other actors) to take reasonable preventative action to reduce exposure and vulnerability and to enhance resilience, as well as to provide mitigation, is therefore a human rights issue".*

The Third World Conference on Disaster Risk Reduction was held in Japan from 14-18 March 2015. Under Priority 3 of the Sendai Framework[xv]: Investing in disaster risk reduction for resilience, the New Zealand

delegation successfully included the critical role that insurance plays in DRR, namely to *"promote mechanisms for disaster risk transfer and insurance, risk sharing and retention and financial protection, as appropriate, for both public and private investment in order to reduce the financial impact of disasters on governments and societies, in urban and rural areas".*

A recent publication by the University of Cambridge Institute for Sustainability Leadership[xvi] takes this further, and provides a link between natural hazards, insurance regulation and human rights. Regulation is required to improve access to insurance. It states that effective insurance regulation supports human rights by enabling financial inclusion, incentivising risk reduction behaviours and facilitating economic recovery after a disaster. The report demonstrates that regulation is an essential part of increasing access to insurance around the world (public, private and mutual) in order to protect human dignity and advance the Sustainable Development Goals.

We strongly support EQC playing a leading role in disaster risk reduction.

What types of perils will EQC cover?

Proposal for discussion

2 That EQC continue to insure against the following perils: earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, and storm and flood (with, in the case of storm and flood, only residential land being covered).

What do you think?

2a Do you agree that EQC should continue to provide cover against the same perils as it currently does?

Yes, in part.

We agree that these perils should be retained, but propose that they should be better defined to remove ambiguity. We also suggest that the NDIS cover the **consequences** of the various perils, rather than the perils themselves. We note that EQC raised this in its Briefing to the Incoming Minister in 2008[xvii], pointing out the fact that whilst EQC *"had to consider the cause of the damage, the thrust of the 2002 Civil Defence and Emergency Management Act, and current industry practice, is to concentrate on the **consequence** of the event, not its cause."*

We also recommend that consequences of other natural disaster perils, not currently defined in the Act, be included (such as meteor strike and lightning strike).

We note that rainfall and flood are not considered natural disasters under commercial insurances. Currently EQC does` not provide building cover for storm/flood. We recommend that the consequences of storm/flood be included for residential buildings as well as residential land in the new NDIS. This is because in many cases it is not possible to distinguish clearly the difference between flood and landslip debris, and in many cases the processes occur contemporaneously. The inundation of Matata by natural disaster debris in 2005 is an example. This was initially considered to be a flood event, even though there was evidence that it was most probably a landslip (debris flow) event. Debris flows are internationally recognised as a type of landslip.

Matata 2005 Property inundated by landslip debris (debris flow) with some flood debris (timber and silt).

Matata 2005 Properties inundated with landslip debris, with flood debris closer to the ocean.

It is common for major “flood” events to have some aspects of landslip debris associated with them, such as the Panguru Floods in 1999 and Nelson Floods in 2011. It can be difficult to distinguish between the two mechanisms. Accordingly, we consider that the ambiguity inherently associated with flood debris is best

removed by the inclusion of flood under any new NDIS. A property owner faced with major inundation of debris should not have to be concerned with the process that deposited the debris. Accordingly we consider that the new NDIS should cover the **consequences** of natural disasters, which appears to be a more rational basis for natural disaster cover rather than the peril itself.

2b If not, what changes would you suggest, and why?

The following natural hazards (perils) often cause similar types of damage because the consequences are essentially the same, or reasonably similar.

Perils

Earthquakes - can cause damage to buildings and/or land due to, amongst other effects, shaking, liquefaction effects (including ejecta and ground subsidence), lateral spreading, tsunami (including inundation and scour), ground rupture and earthquake induced mass movement (including landslip), and fire.

Rainfall (and snowfall) – can cause damage to buildings and/or land due to the effects of storm water runoff (flood water) such as inundation by water and/or flood debris, erosion (and scour) of land, and rainfall induced mass movement, including landslip, and snow induced effects such as building roof collapse, avalanche, and fire.

Volcanic activity – can cause damage to buildings and/or land due to the effects of steam, shock waves, inundation by mud, ash, lava, pyroclastic flows and lahars, and fire.

Wind (including cyclone and tornadoes) – can cause damage to buildings and/or land due to the effects of waves generated by cyclones, and fire.

Meteorite strike – can cause damage to buildings and/or land due to the effects of shock waves and impact effects, including tsunami, and fire.

Lightning strike – can cause damage to buildings due to the effects of high voltage, direct incineration, and fire.

Consequences

Another approach could be to list and cover the **consequences** of natural hazards. In our view this appears to be simpler, and less open to ambiguity, than having to identify the precise process that led to the damage.

The consequences of the natural hazards (perils) listed above that could be covered by the NDIS when they become natural disasters are therefore:

Land cover

Inundation (by water and/or debris)

This is irrespective of whether it is from flood, landslip, liquefaction, wind, tsunami, waves, or volcanic activity (e.g. ash, lahar, pyroclastic flows and lava flows) or any other natural disaster

Loss of land (from rapid erosion and scour)

This is irrespective of whether it is from flood waters, tsunami, landslip, geothermal water/steam, wind or waves.

Land movement (downslope mass movement)

This is irrespective of whether it is from earthquake shaking, landslip, liquefaction or rainfall or any other natural disaster.

Exclusions

Settlement of the ground due to building loads or soil shrinkage

Subsidence as a result of underground mining or gradual erosion.

Heave as a result of soil swelling

Building cover

Fire

(from any natural hazard (peril)

Building damage

(from any natural disaster and the consequences listed above under land cover)

In addition to the above consequences, another category of consequences was identified in Canterbury as a result of earthquake related land subsidence, namely:

Increased Vulnerability (to flooding or liquefaction as a result of earthquake related ground subsidence), which is currently now included under the Act.

Whilst this could be uncommon in future, it is something that needs to be considered as it needs to be either explicitly included or excluded in any future NDIS.

The current scheme and, we assume, the proposed NDIS, already covers a form of increased vulnerability, which is cover for additional loss or damage which is imminent as the direct result on the natural disaster that has occurred. This is colloquially referred to as Imminent Loss, or IL. This is further discussed in our response to Question 9b.

Context for our comments

Increased Vulnerability as a direct result of a natural disaster was determined in a Declaratory Judgement[xviii] by the Full Bench of the High Court to be a peril that is currently covered under the EQC Act 1993 as a result of the CES 2010-2011.

That this is covered under the current scheme will assist in reducing the loss of equity that property owners could otherwise suffer in Canterbury. EQC has developed robust methods of determining both flood and liquefaction vulnerability as a result of earthquake induced ground subsidence.

These methods can now be applied immediately to any other area of New Zealand which suffers sudden subsidence as a result of an earthquake. The most likely areas to be affected by earthquake triggered subsidence in future are Wellington, Nelson, Hawkes Bay, Gisborne and the eastern Bay of Plenty.

The question that needs to be addressed is whether this type of cover should be retained to assist in the recovery from a major earthquake in future.

What types of property will EQC insure?

Proposal for discussion

3 That EQC building cover continue to be available to residential buildings and dwellings in non-residential buildings.

What do you think?

3a Do you agree that EQC building cover should continue to only be available to residential buildings and dwellings in non-residential buildings?

No comment

3b If not, what forms of accommodation or living arrangements do you think should be added or removed, and why?

No comment

Proposal for discussion

4 That EQC land cover only be available for land associated with residential buildings. Therefore, dwellings in non-residential buildings would not receive any EQC land cover.

What do you think?

4a Do you agree that EQC land cover should only be available for land associated with residential buildings?

No.

4b If not, what coverage of land cover would you prefer, and why?

We consider that owners of vacant residential land, and land upon which a building is being constructed (but is not habitable and is therefore not defined as a residential dwelling under the current EQC Act), should also be able to purchase EQC land cover based on a flat percentage of the land value (see our comments under Question 20b and 20c).

Example: Case Study 1 – Paihia Landslip 2007

A large landslip affected nine properties, seven of which were built on. EQC paid out on five with houses as total losses, and two with houses with substantial payments. The owners of the vacant sections received nothing. These sections cannot be built upon as a result of the landslip.

There are many examples like this all over New Zealand.

Extending building cover to include more siteworks and main access way

Proposal for discussion

5 That EQC building cover be extended to include siteworks and the main access to the building.

What do you think?

5a Do you agree that EQC building cover be extended to include siteworks and the main access to the building?

All works required to repair or rebuild a residential building damaged by a natural disaster, including damage as a result of undertaking such works, are already covered under the existing EQC Act. As engineers we have not found this to be a problem.

It appears that this is partial justification for increasing the building cap, and also to capture aspects of land damage and repair that will disappear upon the removal of land cover (which is now only payable when repairs and rebuilding are not practicable).

Limiting land repair solely to effect building repairs and including these costs (siteworks and the main access way) onto building cover will impact the building cap (Question 7a).

5b If not, what do you think should be done instead, and why?

In our view land cover should be retained (refer to our comments under Question 9b).

EQC to no longer provide contents insurance

Proposal for discussion

6 That EQC no longer offer residential contents insurance.

What do you think?

6a Do you agree that EQC should no longer offer residential contents insurance?

No comment

6b If not, what level of contents cover do you think EQC should offer, and why?

No comment

6c For insurers, what do you anticipate the impact would be on premiums your company charges for residential contents insurance, if EQC no longer offered residential contents insurance?

Please note the information in section 1.4 regarding the Official Information Act.

How much insurance will EQC offer?

Proposal for discussion

7 That the monetary cap on EQC building cover be increased to $200,000 + GST.

What do you think?

7a Do you agree with the proposed increase in the building cap to $200,000 + GST?

We have no direct comment on the building cap. In our comments under Question 1 we have suggested that the purpose of the NDIS should be to cater for major events. If this is adopted, then it would be the private insurers that would be liable for the first $200,000 + GST of building cover, and EQC would cover the next tranche (e.g. $200,000 + GST) or a top up. Homeowners could also increase the sum insured through their private insurance.

7b If not, what cap would you prefer, and why?

No comment

7c Do you have strong views on the merits of a $150,000 + GST cap versus a $200,000 + GST cap?

No comment

7d If so, what are they?

No comment (not applicable)

7e For insurers, what do you anticipate the impact would be on premiums your company charges for residential property insurance, if the proposals in this document regarding changes to building cover were implemented? Please provide this information for a monetary cap for EQC building cover of both $150,000 and $200,000.

Please note the information in section 1.4 regarding the Official Information Act.

Reinstatement of EQC cover after an event

Proposal for discussion

8 That EQC building cover reinstate after each event.

What do you think?

8a Do you agree that EQC cover should reinstate after each event? If not, what is your preferred alternative, and why?

No comment

8b Do you agree with retaining the current definition of an event?

No comment

8c If not, what is your preferred definition, and why?

No comment (not applicable)

EQC land cover

Proposal for discussion

9 That land cover be limited to situations where the insured land is a total loss meaning it is not practicable or cost-effective to rebuild on it.

What do you think?

9a Do you agree that the proposed enhanced building cover, combined with restricting land cover to situations where the site of the insured building cannot be rebuilt on, would resolve, for future events, many of the recent difficulties with the interaction between land and building cover?

No.

9b If not, what is your preferred alternative, and why?

We consider that land cover should be retained in the new NDIS.

In undertaking stakeholder engagement the current scheme appears to have been considered almost exclusively against the experience of the stakeholders in the CES. Canterbury certainly threw up some challenges for the current scheme, but the proposed changes risk overlooking the considerable benefits that land cover has provided to New Zealanders who have suffered natural disaster damage for many years, and the increased resilience that has resulted from the EQC managed repair works.

Landslip is the most commonly occurring natural disaster covered by EQC which affects both land and buildings. As set out in our comments under Question 2, landslips can be triggered by rainfall and seismic events, but rainfall induced land slippage is the most common, which typically results in around 1-2000 claims in a wet year. The consequence is land loss/damage and/or inundation with debris, as shown diagrammatically in Figure 2. The latter is illustrated under our comments to Question 2.

Equity retention

New Zealanders continue to have most of their financial capital tied up in their residential property. The experience of T+T over the past 31 years since land cover was introduced in 1984 is that the insurance cover for land as set out in the EQ&WD Act 1944 and the EQC Act 1993 has retained homeowners equity.

The Abbotsford Landslip disaster in 1979 had an almost immediate effect on the natural hazard legislation in New Zealand. The Local Government Act was amended, and when looking back on that decision when a further amendment was proposed in 1981, David Caygill stated[xix] (Hansard, 1981) that:

"*Two years ago the House was persuaded that it should be difficult, if not impossible, for local authorities to issue building permits for building on land that might be subject to subsidence, erosion or slippage, and even, in some cases, inundation. I am sure that Parliament agreed to that two years ago because parliamentarians were anxious to protect property owners from the considerable loss that could result if land disappeared underneath them."*

So, well before the EQ&WD Land Cover regulations came into being, the Local Government Act was being amended with the intent to protect the equity that owners of residential land had in their properties.

The Commission of Inquiry into the Abbotsford Landslip Disaster noted that "*one of the most sensitive areas which needs to be considered, and one of the areas of most frequent criticism, was the lack of the availability of a facility for the "insurance of land".* The Commission reported in November 1980 and recommended that:

"*Cover should be afforded in respect of loss of use of land, and that such cover should be afforded on a compulsory basis to all landowners with premiums collected through the local authority rating mechanism based on the unimproved value of the land".*

The Abbotsford Commission described it as indemnity for ***loss of use of land***. The Commission further described how a claim would arise when a landowner has been effectively and permanently deprived of the use of his (or her) land.

When the EQ&WD Amendment Bill was introduced in 1983, it was clear that it was more than the land beneath a house that was to be covered. When questioned in Parliament about the inclusion of land cover, the Hon. K.R Allen (Minister in Charge of the EQ&WDC) said[xx] that:

"The Government had carefully considered the recommendations about loss of use of land and had come to a satisfactory solution. Cover for loss of land would be written in as an extension of the present cover afforded by the EQ&WDC and would cover the whole country. The amount of land to be compensated for would be the land around a house, and would probably be the minimum size of a section as decided by the local body. It would not cover a whole farm."

Land cover included in the current scheme is unchanged from 1984, which covers the land beneath residential buildings, a **reasonable minimum amount of land** around the buildings (derived from a review of local authority yard requirements and found to be 8m), the **main access way**, (derived from a review of the average maximum length of driveways and found to be 60m), bridges and culverts, and retaining walls. There is no set dollar amount cap on land cover. Rather, it is capped on the basis of land area. The maximum possible land area that can be insured is 4000 m^2. Not the whole farm.

Natural disaster damage is defined in the EQC Act as any loss or damage. Loss is now taken to be a loss of utility, not necessarily a physical loss such as that which occurs when land is lost to the sea by coastal erosion. The definition of damage has been accepted by EQC to encompass all land involved in landslip. The land is not lost, it has just been rearranged, and damaged.

T+T understands that this was based on a legal opinion obtained by the EQ&WDC for the first recorded claim for land damage (85 L 1). It is not land loss, but land damaged by landslip (i.e. land use may still be possible). This appears to be contrary to the recommendations of the Commission of Enquiry into the Abbotsford Landslip Disaster, which reported that:

"*What is really required to be insured, or more accurately the loss in respect of which indemnity is sought, is loss of use of land, land being something which in the legal sense is neither created nor destroyed. When a landslip occurs or some types of action of the sea, erosion, volcanic activity, or similar occurrence takes place, the owner or occupier of land may be effectively and permanently deprived of its use".*

We believe that what the new NDIS should achieve with land cover is to reinstate the utility of the claimants land back to where it was before the natural disaster event, wherever it is reasonable and practicable to do so, or to provide financial compensation for the loss of use of that land where it is neither practical nor reasonable to reinstate that land.

As set out in our comments on the purpose of the NDIS (Question 1), Government clearly wants to preserve the equity that homeowners have in their properties when natural disasters occur, and this includes buildings and land.

Imminent loss

The EQC Act does not consider public safety.

The only consideration for EQC is to define and cost property that is lost or damaged by a natural disaster event covered under the EQC Act, and whether there is any additional **property for which loss or damage is imminent as the direct result of the natural disaster that has occurred**. This imminent loss (IL) provision was also included after the experience of the Abbotsford Landslip Disaster where impending damage to the houses could not be mitigated. IL is unique to EQC. Private insurers do not cover IL.

At the time of the Abbotsford landslip, there was no ability under the EQ&WD Act to mitigate the impending damage to a house, as the damage of loss could only be considered when it eventuated. Accordingly, the impending loss and damage to houses could only be watched. No action could be undertaken to mitigate the loss. As stated by T+T in their Landslip Claim Review (T+T 1992)[xxi], *"the Abbotsford Landslip Disaster vividly demonstrated that it was patently ridiculous to have to wait for a building to be totally destroyed before payment, or salvage, could be effected."*

When the imminent loss provisions were introduced in 1984 along with land cover, the intention was be able to prevent a loss that was about to happen, that was imminent.

Imminent has since been determined by EQC to be 12 months. In the early years of its application, EQC took a fairly liberal (customer focused) view of how this was applied. If there was a reasonable chance of the loss or damage eventuating over the next 12 months, then EQC was comfortable with accepting that insured loss upfront. This was also a pragmatic decision to obviate the need to go back to the property again (and sometimes yet again) to cover ongoing damage.

Since early 2010, before the CES, EQC has adopted the position that the loss or damage must be **almost certain** to eventuate. For the majority of landslips, further significant loss or damage does not occur within twelve months. Accordingly, with the instruction that IL has to be almost certain to occur, the IL provisions of the Act will not alter the loss situation that many properties find themselves in immediately after a natural disaster. Homes perched immediately above precipitous landslips in places such as Wellington, the Port Hills and Parnell will receive no compensation under the proposed scheme.

IL has been problematic in its practical application as it is only available to EQC. Private insurers do not cover a future loss under their policies, but feel obliged to follow EQC where EQC considers a house to be a total constructive loss because if IL.

In the case of an undamaged house being deemed a total constructive loss because of an EQC IL determination, the private insurer is understandably reluctant to pay out the top up cover. This can, and does, lead to disputes between EQC and the private insurers. Under the proposed scheme, where compensation for land is only proposed where the houses are considered to be a total constructive loss, there will be a lot of pressure on engineers to either state that the building is at considerable IL (by the homeowner) or it is not at IL (by the private insurer).

It is our view that this conflict would be much easier to resolve if the private insurer has the initial $200,000 + GST cover and EQC has the balance (top up cover).

Utility

There are many thousands of instances where major landslips come very close to, or hard up against, a dwelling which makes the ongoing utility of that dwelling untenable. Councils frequently order the occupants

out of their homes in these situations.

A minimum amount of land around a dwelling is necessary for the effective utility of the residential dwelling and for the property to be functional and habitable. This was why the land cover regulations specifically included the land around the house, but not the whole farm.

A typical landslip situation that regularly occurs in moderately sloping ground throughout New Zealand, and very commonly occurs in Wellington, is used to illustrate what happens under the current scheme, and what it would look like under the proposed scheme.

This typical situation of a landslip occurring above a dwelling and below a garage, and another landslip below the dwelling, is shown on Figure 2. Such landslips are typically triggered by rainfall events and seismic events.

The consequences are land loss, land damage and inundation of land and buildings with debris.

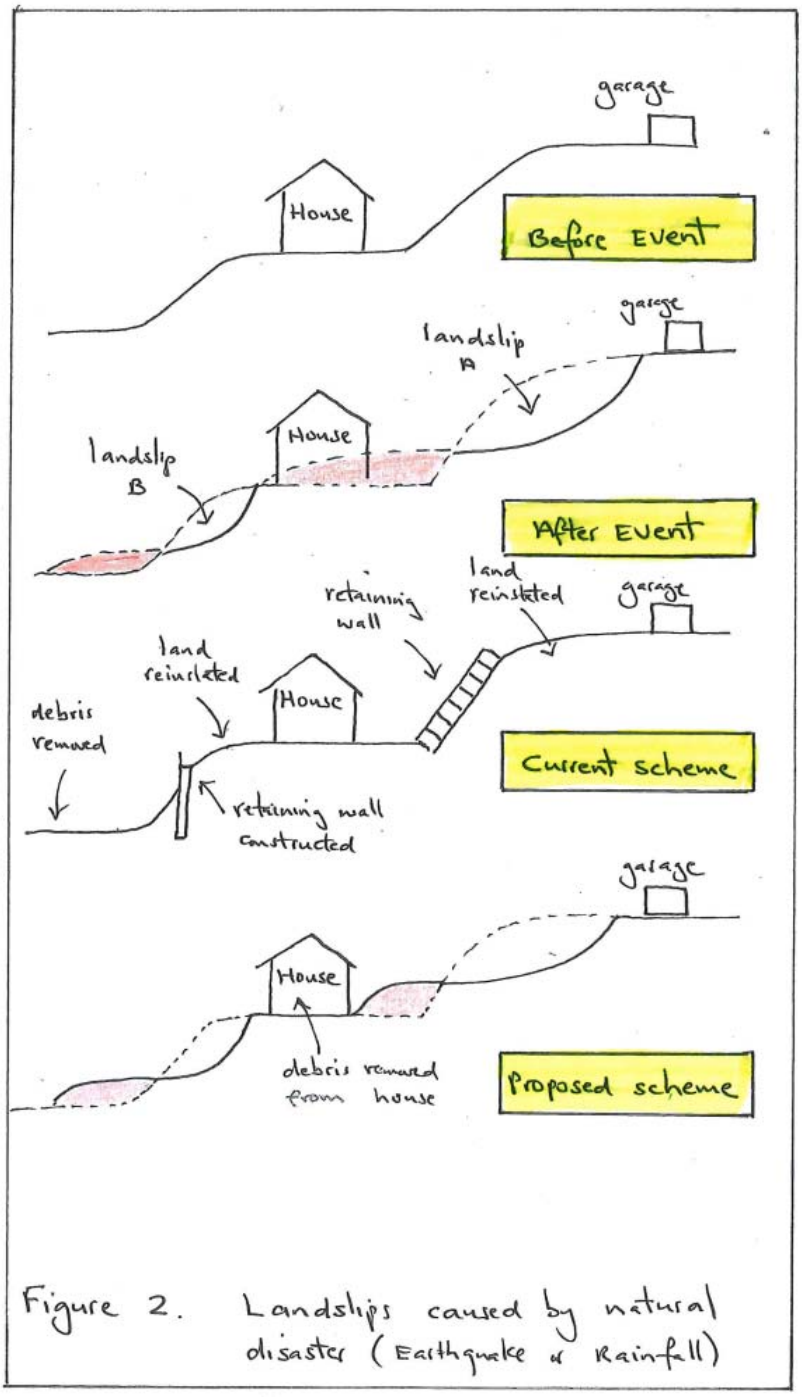
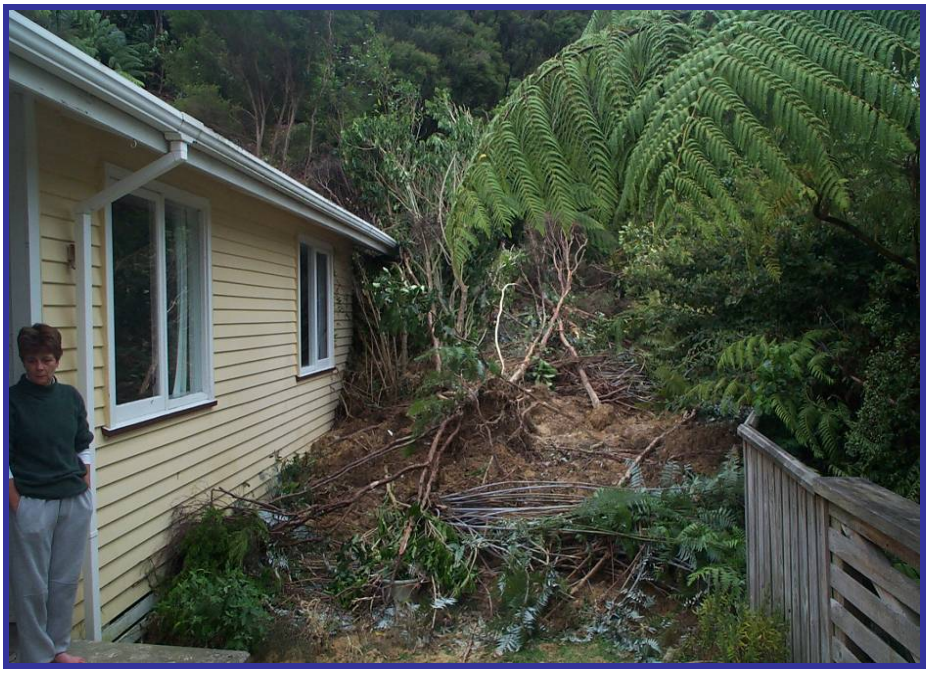


Figure 2. Landslips caused by natural disaster (Earthquake or Rainfall)

There is no iminent loss threat to either the dwelling or the garage.

What this actually looks like is shown in the following photographs.



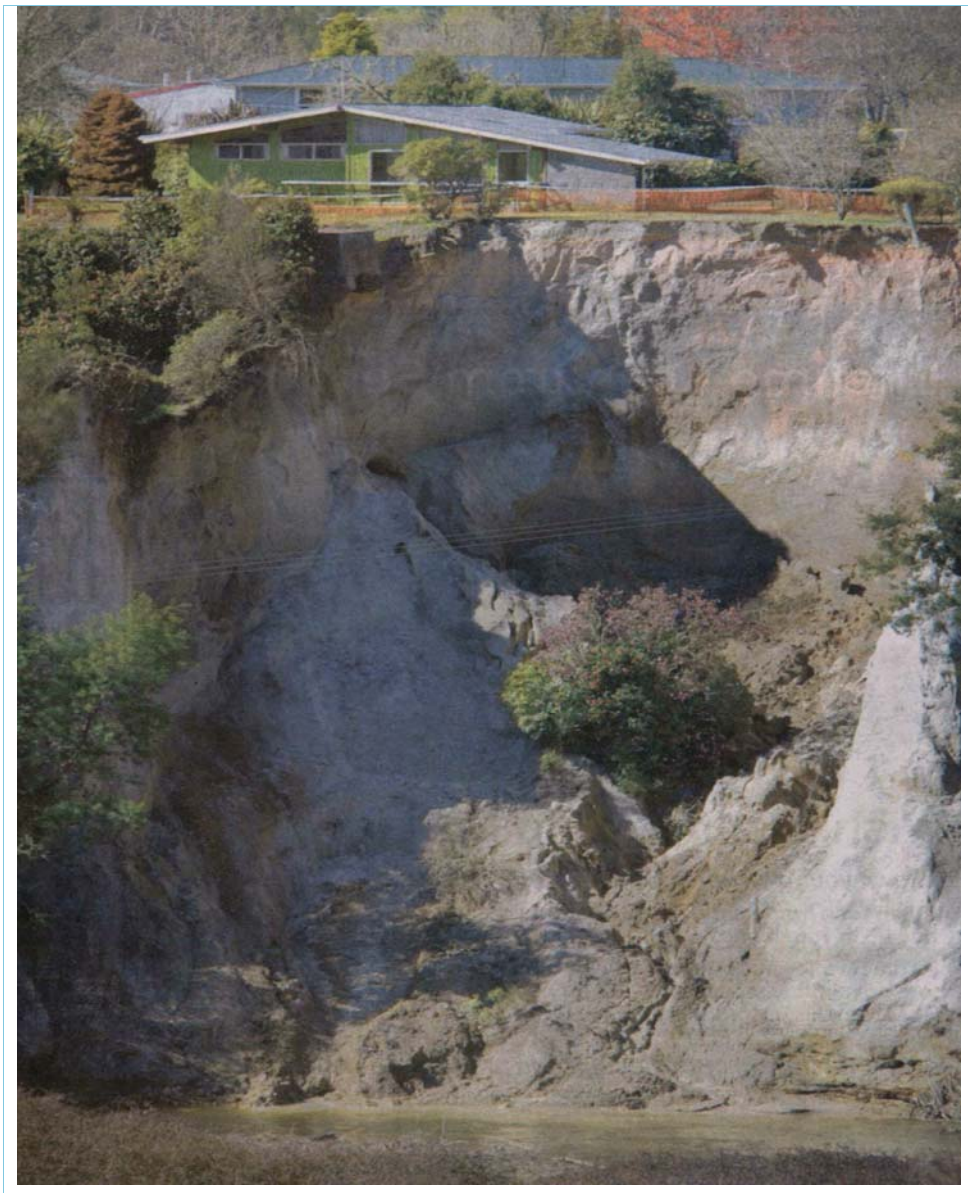
No cover under proposed NDIS - Lower Hutt.

No cover under proposed NDIS - Wellington.

The following are further examples of properties which have suffered major land loss or debris accumulation due to natural disasters but where the houses are undamaged. In many cases the local authority has ordered the evacuation of the properties, but not all of them. Under the proposed changes there would be no insurance cover for these properties, unless additional damage (IL) as the direct result of the natural disaster is almost certain to occur within twelve months. That is not the case in the following examples. The homeowners (and financial institutions affording mortgage finance) would sustain a considerable loss of equity.

No cover under proposed NDIS – Eastern Bay of Plenty 2004.

No cover under proposed NDIS – Northland 2007.



No cover under proposed NDIS – Taurmarunui 2006.

No cover under proposed NDIS – Northland 2007.

No cover under proposed NDIS – Northland 2007.

No cover under proposed NDIS – Northland 2007.

No cover under proposed NDIS– Parnell, Auckland 2014.

No cover under proposed NDIS – Whanganui 2015.

No land cover under proposed NDIS – Port Hills 2011.

No land cover under proposed NDIS – Port Hills 2011.

No cover under proposed NDIS – Hunterville 2006.

To ensure that after natural disasters strike the utility of the residential property is retained, and that any negative effect on the equity of the homeowner in residential property is minimised, we submit that land cover should also be retained.

However, we recommend that land cover be restricted to actual land.

Retaining walls, bridges and culverts should be covered (if at all) as buildings. Only retaining walls that are buildings under the Building Act 2004 should be covered. This will overcome the current problems with the definition of a retaining wall.

Land cover should apply to land 8m around the dwelling and garage only, and the land supporting the main access way (irrespective of length), and the land supporting the essential services (including water tanks, septic tanks, sanitary sewer and stormwater and other service connections on private residential land).

We recommend that there be no land cover for other appurtenant structures (such as sheds, clothes lines, dog kennels etc) as this creates significant anomalies. As land with sufficient utility would remain around the dwelling (as suggested above) then such appurtenant structures could be relocated within this area if desired by the owner. Additionally the loss of land around appurtenant structures located at a distance from the dwelling would not result in a loss of utility to the site for the essential residential purposes.

Another aspect that could be considered is insuring that land supporting the main access way to the point where it joins the Council maintained roadway (i.e. the insured length be aligned to the length that the property owner is responsible for maintaining and reinstating). Currently there are many situations where the main access way is damaged outside what EQC considers to be the “landholding” leaving the property owner with a sometimes significant loss for which they are not compensated.

Minimum lot size

Land cover compensation is currently based on the value of the area lost or damaged, an area of 4000m2, or the minimum area allowable under the district plan (known colloquially as the minimum lot size), whichever is the smallest. The minimum lot size varies considerably from district to district, and is different throughout a district. Using the minimum lot size as a basis for settlement does not appear optimal. Accordingly, we suggest that this minimum lot size be deleted, as the land area should be restricted to the area around the dwelling and the garage only, i.e. the total insured land area.

Land cover and resilience

We consider that land cover should be based on the cost of reinstatement, up to the value of the entire insured land area, and not on the value of the land that is damaged, if that is less. This is consistent with the concept that a property needs a certain amount of land to be able to be fully utilised. If that cannot be practically or economically reinstated, then the property as a whole should be paid out. This also better resolves the issue of disparate property values throughout New Zealand.

Example: Case Study 2 – Panguru Floods 1999 - Land Reinstatement

The cost of reinstating land is relatively constant throughout the country. For example, the cost of retention is generally the same in Panguru (Northland) as it is in Parnell (Auckland). The value of land in the two areas, however, is markedly different ($20/m2 in Panguru vs $2000/m2 in Parnell).

Accordingly, land lost in Parnell will generally be reinstated under existing EQC land cover, whereas land lost in Panguru will invariably not be reinstated. Under the current Act the claimant in Panguru will therefore be cash settled the value of the land lost and is usually unable to supplement these funds in order to reinstate the land.

Under EQC land cover the land in Parnell gets reinstated and therefore gets more resilient, whereas the land in Panguru is left even more prone to land slippage under future rainfall events. A change to the NDIS and EQC Act could be that land cover will be paid out based on the cost of reinstatement of that land, up to the value of the total insured area.

Only where land is actually lost (as opposed to damaged) and cannot be reinstated should compensation be based on land value. Covering land for reinstatement will also aid in the much faster and more efficient claims settlement process in many situations, as the claim settlement will generally be focused on reinstatement from the outset. Currently qualifying land areas need to be quantified and valued and then compared against a conceptual remedial solution which has often been prepared by an engineer and then costed by an estimator.

Example: Case Study 3– Wanganui Floods 2015 - Land Reinstatement

A landslip has occurred at the rear of a dwelling sited at the base of a slope. The area to the rear of the dwelling is extensively inundated, including up against the dwelling. The cost to remove the debris will clearly be less than the value of a minimum sized lot. The property owner lacks the means to fund the debris removal in the interim and is reliant on an insurance payout.

Current situation: EQC wishes to settle in cash and EQC is reluctant to release funds as it is unsure of the exact claim entitlement. The debris remains in place for a number of weeks while:

- a loss adjuster assesses the site and appoints an engineer
- the engineer assesses the damage and prepares a report. The report includes detailed plans

showing the land areas affected, quantifying these land areas. The report also includes a conceptual remedial solution.

- a valuer is appointed to value the specific land areas set out in the engineer's report and a cost estimator is appointed to price the remedial solution
- the loss adjuster collates the information, assesses if the payment will be based on remedial costs or land value and provides a settlement recommendation
- EQC reviews the settlement recommendation and provides payment to the property owner
- the property owner is only now in a position to have the debris removed.

Possible future situation if land is covered for reinstatement: EQC still wishes to settle in cash, and following an initial assessment by the loss adjuster it is clear to EQC that it will be liable for the debris removal. Funds can be promptly released to the property owner or direct to a contractor, without EQC having the risk of paying out more than the customer entitlement. Input from a cost estimator and engineer may still be required, however this would be more focused on the remedial works required, rather than on determining the customer's entitlement.

Unsafe to occupy

Whether or not a property is safe for habitation following a natural disaster is something that needs to be addressed under the proposed NDIS. The High Court has determined that EQC is not liable for a loss of utility where the house is undamaged and there is no IL threat, but Council have determined that there is an unacceptable life safety risk. So, in this situation there is no natural disaster damage but Council have ordered that the property be evacuated.

The homeowner has paid insurance but because of a natural disaster cannot live in the house, may not even be able to access the property, and cannot sell the property. This does nothing to make houses habitable following natural disasters, let alone protect equity.

A more common situation is where there has been some damage to the property, and Council have declared the property to be unsafe, but the IL threat is debatable.

Example: Case Study 4– Nelson Landslip 2011

A shallow landslip occurred on a steep slope affecting the back yards of two properties.

In both cases the landslip scarp was 6 metres from the houses.

For Property A the engineers considered the house was in danger and Council issued a S 124 notice under the Building Act 2004 and the house was evacuated.

For Property B other engineers considered that there was no imminent loss (IL) threat of the landslip regressing.

Under the current scheme both properties would receive the same compensation for the land lost, but Property A would also receive the cost of preventing the imminent loss from being realised.

Under the proposed scheme, Property A could potentially receive total compensation for the house and minimum lot size land value, but Property B would receive nothing (i.e. a marked disparity in compensation).

Relocation of buildings

Relocation of buildings on site is seldom a practical option, but if the residential building can be relocated, then the land cover may not apply. This option should be retained as it has been particularly helpful on large Maori landholdings with multiple dwellings, and on rural properties.

Example: Case Study 5 – Motukaraka Landslip

Two kaumatua houses and the land on which they were located were damaged by a very large and deep seated landslip. The houses were only slightly damaged, but the landslip was too deep to be economically stabilised and would reactivate with further rainfall. The septic tanks were also located on the landslip, as were the water supply tanks. By taking the imminent loss provisions into account for the buildings, and the value of the damaged (both actual and imminent loss) land, it was possible to relocate the buildings elsewhere on the papakaianga trust land.

Under the proposed changes, the buildings would have been repaired where they were and the private insurer may have then withdrawn cover.

9c Do you agree that restricting land cover to situations where the site of the insured building cannot be rebuilt on is appropriate, given the EQC scheme's focus on providing homeowners the resources to repair, rebuild or re-establish homes elsewhere?

No

9d If not, what is your preferred alternative, and why?

Land cover should be retained.

The existing land cover provisions have been extensively tested over the past 31 years since land cover was introduced in 1984, and have worked well in the Edgecumbe earthquake (1987), the Manawatu floods (2004), the Northland floods and landslips (2007), the Eastern Bay of Plenty floods and landslips (2004), the Tauranga floods and landslips (2005) (including the Matata debris flow), and the Wellington (2006) and Auckland floods and landslips (2008), the Gisborne earthquake (2007), the West Taihape landslip (2005-2010), the Nelson floods (2011), and the Whanganui floods and landslips of 2015. The land cover provisions have also worked well for settling landslip claims in the Port Hills as a result of the Canterbury earthquakes. The land cover provisions just need some minor modifications to remove ambiguity.

9e Do you have any concerns regarding the proposed change to the configuration of building cover in light of

the move by most insurers to provide sum insured home insurance policies?

Yes

9f If so, what is your preferred alternative, and why?

We consider that given the move to sum insured by the private insurers EQC should provide the top up cover for residential buildings and that the private insurers cover the first $200,000 + GST.

Better aligning EQC and private insurers' standard of repair

Proposal for discussion

10 That EQC's current statutory repair obligation already appears broadly consistent with industry practice.

What do you think?

10a Do you agree with the Government's assessment that EQC's legislated standard of repair is broadly consistent with current industry norms?

No comment

10b If so, do you have views on why EQC's standard of repair is seen as markedly different from current insurance industry norms?

No comment

10c If not, do you have suggestions for reforms that you consider would move the EQC standard of repair closer to current insurance industry norms for residential property?

No comment

Simplifying EQC's claims excess

Proposal for discussion

11 That EQC has a standard claims excess of $2,000 + GST per building claim.

What do you think?

11a Do you agree that EQC's building claims excesses should be standardised and simplified to a flat dollar amount?

No comment

11b If yes, do you agree that $2,000 + GST is the appropriate claims excess on building claims?

Our experience of assisting with natural disaster recovery efforts for over 30 years suggests that, for many households, a one off payment of $2000 + GST would be difficult.

11c If not, what would you prefer, and why?

No comment

Proposal for discussion

12 That EQC have no claims excess on land claims.

What do you think?

12a Do you agree that EQC should have no claims excess on land claims?

No.

12b If not, what would you prefer, and why?

In many cases land damage constitutes inundation with a thin amount of debris. Most people can cope with removal of this amount of debris, and its removal is often undertaken by other agencies or community groups in any event (fire service for flood debris, student army for liquefaction ejecta etc). We consider that an excess is required to prevent people getting agencies in to do what should reasonably be expected that homeowners can do themselves.

We consider that a minimum excess on land claims of $1,000 + GST would ensure that EQC does not get diverted onto repairing "cosmetic" damage to land in the event of a natural disaster.

Regularly reviewing main monetary settings of cover

Proposal for discussion

13 That the EQC Act require monetary caps, premium rates and claims excesses on EQC cover to be reviewed at least once every five years.

What do you think?

13a Do you agree that monetary caps, premium rates and claims excesses on EQC cover should be

reviewed at least once every five years?

Yes. As engineers working in the construction industry we are very aware of cost escalation. It could well be that the caps and excesses may need to be revisited even more frequently, say every 2 years.

13b If not, what alternative would you prefer, and why?

No comment

How will homeowners access EQC insurance cover?

Proposal for discussion

14 That EQC cover continues to automatically attach to fire insurance policies on residential buildings, as defined in the EQC Act.

or

15 That EQC cover automatically attach to insurance policies on residential buildings, as defined in the EQC Act, on a peril by peril basis; so if a peril covered by EQC is excluded from the private policy, it is also excluded from the EQC cover.

What do you think?

14a Do you agree that EQC cover should continue to automatically attach to fire insurance policies on residential buildings?

Yes, but only for building cover.

We consider that land cover would be better funded from a levy on rates. This is what was envisaged by the Abbotsford Commission, which recommended that:

> "*Cover should be afforded in respect of loss of use of land, and that such* ***cover should be afforded on a compulsory basis to all landowners with premiums collected through the local authority rating mechanism based on the unimproved value of the land".***

What transpired was that when land cover was introduced in 1984, not only was no premium taken from rates, but no premium for land was added to the fire insurance levy either. Accordingly, land cover has been coming out of the Fund for which no income was being received. To make matters worse, land has been appreciating in value at a much greater rate compared to premium increases.

The advantage of using the rating system for land cover is that the value of the land will be linked to the premiums (through a flat percentage of the land value), which will overcome the current inequity between the residents of Parnell and Panguru (refer to case study 3). Also, those who will receive more compensation for land loss will also be paying higher premiums.

15a Do you agree that EQC cover should automatically attach to insurance policies on residential buildings, and EQC cover should exclude any natural disaster peril that is excluded from the fire insurance policy it attaches to?

No.

Refer to comments under Question 2.

15b If you do not agree with either of these options, what alternative arrangement do you prefer, and why?

We prefer land cover to be funded from a levy on rates.

Refer 14a

Proposal for discussion

16 That EQC continue to have the ability, but not the obligation, to directly provide EQC cover to homeowners who request it.

What do you think?

16a Do you agree that EQC should continue to be able, but not be obliged, to directly provide EQC cover to homeowners who request it?

Yes

16b If not, what alternative arrangement would you prefer, and why?

No comment

Who will handle EQC claims in future?

Proposal for discussion

17 That all EQC claims be lodged with claimants' private insurers.

What do you think?

17a Do you agree that EQC claimants should be required to lodge all EQC claims with claimants' private insurers?

Yes

All claims for natural disaster damage are currently lodged with the private insurers. There is only one policy, and that is with a private insurer, for contents or fire insurance. That is how most EQC claims are triggered. Customers normally phone their private insurer, who lodges the claim, then refer them or direct them to EQC who then assign an EQC claim number.

17b If not, what alternative arrangement would you prefer, and why?

We are not so certain that lodgement is the issue. All claims are currently, and should continue to be, lodged with the Private Insurer as Policy Holder. The title of this section (17) correctly identifies the wider issue

The issue is who will handle them, and we see this as a capacity issue. The capacity, and ability to expand as required, clearly best sits with the private sector.

Capacity and scalability

Under business as usual (up to 1,000 claims), and for moderate events (up to 10,000 claims), there appears to be sufficient capacity in the private sector to cater for claims to be handled in a timely manner. Most events (e.g. Nelson Floods 2011) have been closely monitored, so EQC will have good data around this. This public sector (management) – private sector (resources) model of handling natural disaster claims has allowed the operational costs of the Scheme to be minimised, so that between natural disaster events the Crown does not carry personnel costs. Most private sector groups can rapidly gear up to meet demand. For example, to assess 70,000 properties in Canterbury that had claims for land damage a Land Damage Assessment Team was managed by T+T who sourced 400 staff from 40 private firms. The day before the earthquakes occurred

EQC had no unutilised engineering staff costs. The LDAT office was established by T+T within a week of the first earthquake and staff were then progressively released as the claims were settled.

For the building damage repairs the Fletcher EQR team is a good example of a public-private partnership that has been similarly successful from an operational standpoint. EQC did not have to have any unutilised estimating, contracting or project management staff costs between events.

Every claim though, is handled by a loss adjuster. The professional, qualified and experienced loss adjusting market is very small in New Zealand. It is also rapidly aging, and it is getting smaller.

With every natural disaster there is competition for loss adjusters from all sectors, commercial, residential, Crown and Councils. In planning for a future major natural disaster we recommend that additional resources be identified and secured through MOU's or other mechanisms from outside of New Zealand. Structural engineers are also in high demand from the commercial sector when earthquakes occur, and similar outsourcing will almost certainly be required in a similar sized event to any of the Canterbury earthquakes.

Deadline for reporting claims

Proposal for discussion

18 That the current three-month time limit for claims notification be retained, but EQC be able to accept claims up to two years after an event, unless doing so would prejudice EQC.

What do you think?

18a Do you agree that the current three-month time limit for claims notification should be retained, but EQC should be able to accept claims up to two years after an event, unless doing so would prejudice EQC?

We have no view, but in our experience whether or not EQC is prejudiced will come down to engineering judgement.

Many people have holiday homes that are only visited once a year, or go overseas for extended periods for work or holidays. From our experience it is not uncommon for claims to be lodged some 6 to 12 months after a natural disaster event.

From an engineering perspective it is often very difficult to assign damage to an event after more than three months. With time cracks have often filled and vegetation has re-established so that some of the critical evidence of "freshness" is lost. Accordingly it can be very difficult to assign particular damage to a particular event after even three months. After two years it would usually be impossible to distinguish the damage from that which could be five or more years old. The longer the time period, the more uncertain the assessment will become.

18b If not, what alternative arrangements would you prefer, and why?

Ensuring the scheme meets its expected costs

Proposal for discussion

19 That the new EQC Act contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks.

What do you think?

19a Do you agree that the new EQC Act should contain pricing and transparency principles requiring the scheme to adequately compensate the Crown for its expected costs and risks?

No comment

19b If not, what alternative arrangements would you prefer, to ensure the scheme's future financial sustainability, and why?

No comment

Allow but do not require differentiated EQC premiums

Proposal for discussion

20 That the current legislative flexibility to charge flat-rate or differentiated EQC premiums be retained.

What do you think?

20a Do you agree that the current flexibility to charge flat-rate or differentiated EQC premiums should be retained?

No

20b If not, what alternative arrangement would you prefer, and why?

In our view EQC premiums for building cover should be a flat rate. The distributed insurance model that assumes that everyone in New Zealand is subject to a similar level of consequential damage from some natural hazard (peril) or another has served us very well, and differentiated premiums based on risk around particular perils will do nothing to ensure that we retain such high levels of natural disaster insurance cover. In our view a flat rate across New Zealand is seen as rational.

Take inundation as an example. The risk of inundation due to the earthquake hazard in Wellington is roughly matched by the risk of inundation due to the volcanic hazard in Auckland, which in turn is roughly matched by the risk of inundation due to the flood hazard in the Manawatu.

In our submission we suggest that EQC premiums for land cover should come from the rating system, and be at a flat percentage of the value insured.

Accordingly, what we are recommending is that natural disaster insurance cover premiums should be value based, and not risk based. Once a claim had been incurred, we recommend that EQC have the ability of raising the excess, as they have done in the past.

Context for our comments

The California Earthquake Authority (CEA) is, like EQC, a publicly managed, privately funded, organisation offering natural disaster (in their case earthquake only) insurance. Like EQC, earthquake insurance can only be purchased through a homeowners insurance policy from a private insurer (although CEA require

this be from a CEA participating insurance company).

CEA's mission is *"to encourage and support effective action to reduce the risk of earthquake damage and loss"*

Its vision is "*to promote and support long-term community resilience by risk education, loss mitigation and insurance protection.*"

The purpose of CEA is to help communities **prepare for**, and **recover from**, earthquakes.

In looking at making changes to the EQC Act, we need to be very aware of the benefits of what we have with the current scheme, or we risk losing them.

In 2014 the California Senate Insurance Committee hosted two informal hearings on earthquake risk, bringing together stakeholders, regulators and thought-leaders. There is a general consensus that Californians are overexposed and underinsured. Only 10% of Californian households have earthquake insurance. Modelling shows that if the 1906 earthquake were to occur today, the total economic loss to the region would be approximately USD 260 billion.

Like NZ with the EQC, Californian law requires insurers that sell homeowners insurance to also offer earthquake insurance. However, insurers had dramatically underestimated their exposure to an earthquake like Northridge that struck in 1994. The insurance loss was USD 14 Billion, some four times the earthquake premiums collected by all earthquake insurers in California from 1969 to 1994. Insurers either reduced their sales of new policies or stopped writing entirely. A state residual market entity (the CEA) was therefore deemed necessary to overcome the impact of Northridge on the insurance industry.

CEA was not created to increase earthquake coverage, but to ensure that homeowners insurance remained available. CEA's primary function is not as a guarantor against earthquakes, but rather as a stabilization mechanism in the homeowners insurance market. Expanding the earthquake insurance coverage is seen as an ancillary benefit.

That Wellingtonians have affordable natural disaster insurance is, at least in part, because in New Zealand with EQC we have a distributed, multi-peril model. If the Wellington earthquake risk was to be solely borne by Wellingtonians, then at some stage Wellington would mirror California, with only 10% of the population insured for earthquake because of affordability. California has been trying to spread its earthquake risk across the entire nation, in order to reduce the size of the premiums and increase the uptake. Not surprisingly, the Earthquake Insurance Affordability Act (Senate Joint Resolution 28) has not gathered much support outside of California.

A major difference between NZ and California is that in California lenders do not require homeowner insurance at all, let alone earthquake insurance, whereas in New Zealand lenders on residential property require fire insurance at least, which brings in natural disaster insurance cover. However, in the US this too is changing. Federally backed mortgage securitizers Freddie Mac and Fanny Mae now require homeowners insurance and, in flood prone areas, flood insurance.

In our view it is essential that any new NDIS maintains the high level of insurance cover for residential property in New Zealand, so that we do not become exposed to unacceptable financial and social risk from the consequences of natural disasters.

20c Do you agree with the Government's intention to continue charging EQC premiums at a universal flat rate?

Yes, a flat percentage of the value insured.

This is based on the reasonable premise that all properties are at a similar risk of a similar amount of damage. Looking at the consequences of a range of perils, rather than the perils themselves, assists with this perspective.

However, once that risk is realised through a claim for natural disaster damage, then it is reasonable that the particular property be reassessed to see if the same excess should apply. This was essentially the system that EQC applied from 1984 to 1993, when after a claim was settled the properties were evaluated to see if they were not likely (Class A), likely (Class B), or very likely (Class C) to be subject to natural disaster damage in future. EQC would increase the excess depending upon the post disaster classification.

EQC currently have the ability to put a Section 28 Notice on titles where it has paid out the maximum liability, to ensure that a subsequent owner does not put in a claim for the same damage. This ability to withdraw cover should be retained.

How will EQC finance its risk?

Proposal for discussion

21 That the Natural Disaster Fund be retained in broadly its current legislative form.

What do you think?

21a Do you agree that the Natural Disaster Fund should be retained in broadly its current legislative form?

Yes.

We also note that if there had only been one earthquake (Darfield) instead of four major earthquakes from 2010-2011, the NDF would not have become depleted (we understand that there is about $800 million of reinsurance cover still unutilised for September 2010). We believe that the NDF could be augmented by a levy on rates which will help fund land cover.

21b If not, what changes would you like to see considered?

No comment

Proposal for discussion

22 That the Act enable EQC to use other forms of risk transfer, in addition to traditional reinsurance.

What do you think?

22a Do you agree that the Act should enable EQC to use other forms of risk transfer, in addition to traditional reinsurance?

In our view this makes sense. Just like private insurers (e.g. AMI), reinsurers are also vulnerable to natural disaster risk and the Crown needs to have its fiscal risk spread as widely as possible as part of its overall approach to disaster risk management. We note that the CEA has recently issued Catastrophe Bonds.

Do you have any other feedback?

Other feedback

23a Are there any issues not discussed in this document that you would like to bring to the Government's attention at this stage?

Yes

23b What submissions would you like to make on those issues?

Integrated Natural Disaster Management

The whole area of natural disaster management in New Zealand needs to be much more joined up than it currently is. There is a better understanding that recovery efforts need to be instigated at the same time as response, and that information needs must be coordinated. EQC should play a major role in risk reduction, and preparedness (readiness). There is, however, currently a major disconnect between the management of natural hazards by regional and local territorial authorities, and the management of the risks that the consequences of natural hazards present. There is a clear need for a Natural Hazards/Risk Reduction National Forum, to ensure that there is much better clarity and connectedness of agencies and organisations before the next major natural disaster occurs.

End Notes

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