

# The Treasury

## On-sold Canterbury Properties Information Release

November 2019

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Dated

2019

**ON-SOLD CANTERBURY  
PROPERTIES SERVICES  
AGREEMENT**

The Sovereign in right of New Zealand acting by  
and through the Minister Responsible for the  
Earthquake Commission  
**The Crown**

and

The Earthquake Commission  
**EQC**

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## PARTIES

**THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Minister Responsible for the Earthquake Commission (or his or her authorised delegate) (the "**Crown**")

**THE EARTHQUAKE COMMISSION** a statutory entity continuing under the Earthquake Commission Act 1993 ("**EQC**")

(together, the "**parties**")

## BACKGROUND

- A. On 15 August 2019 the New Zealand Government announced a policy that allows homeowners of on-sold over-cap properties in Canterbury to, subject to certain criteria, receive an ex gratia payment from the Crown towards the cost of having their homes repaired (the "**Policy**").
- B. In accordance with section 5(1)(f)(ii) of the Earthquake Commission Act 1993 and section 112 of the Crown Entities Act 2004, the Minister Responsible for the Earthquake Commission has conferred a new function on EQC in respect of the administration of the Policy (the "**Function**") by way of a direction given by the Minister Responsible for the Earthquake Commission on or about the date of this Agreement (the "**Direction**").
- C. The Direction contemplates that the Function will be implemented in accordance with certain terms and conditions set by the Minister Responsible for the Earthquake Commission. This Agreement records such terms and conditions on which EQC will administer the Policy consistent with the Function.

## TERMS OF THIS AGREEMENT

### 1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

**Agreement** means this agreement and the schedules to this agreement;

**Applicant** means any homeowner who has made an Application;

**Application** means any application to receive an Ex Gratia Payment;

**Business Day** means any day other than a Saturday, a Sunday or a public holiday (as defined in the Holidays Act 2003) in Wellington, New Zealand;

**Commencement Date** means the date on which this Agreement has been executed by both parties;

**Confidential Information** means all information obtained by a party as a result of the negotiations for this Agreement or entering into or performing this Agreement which is either marked as confidential or could reasonably be expected to be regarded as confidential;

**Cost of Repair** means the costs of repairing earthquake damage to an Applicant' building only, calculated in accordance with Schedule 2;

**Criteria** means the criteria set out in Schedule 2;

**Direction** means the direction described in paragraph B of the Background;

**Ex Gratia Payment** means a payment to be made in accordance with the Policy to an Applicant who meets the Criteria;

**Expiry Date** means the date on which the Direction expires;

**Force Majeure Event** means an extraordinary event or circumstance beyond the reasonable control of a party such as an act of God;

**Function** has the meaning set out in paragraph B of the Background;

**GST** means goods and services tax chargeable in accordance with the GST Act;

**GST Act** means the Goods and Services Tax Act 1985;

**Intellectual Property Rights** means all industrial and intellectual property rights, whether conferred under statute, common law, or equity, and includes copyright, and all rights conferred under statute, common law or equity in relation to inventions, know-how, and all other proprietary rights, whether registered or unregistered, and all equivalent rights and forms of protection anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

**Law** includes any rules of common law, statute, regulation, bylaw or other secondary legislation in force from time to time;

**Objectives** has the meaning set out in clause 1.3;

**Performance Measures** means those measures specified in Schedule 3 which will be used by the Crown to assess performance against the appropriation for the Policy in accordance with the Public Finance Act 1989;

**Personnel** means any employee, contractor, agent or representative of EQC, or of any subcontractor of EQC, who provides any part of any Service;

**Policy** means the policy described in paragraph A of the Background;

**Primary Contact** has the meaning set out in clause 7.1;

**Privacy Breach** means any unauthorised disclosure of or access to personal information of an Applicant or any other individual in connection with the Policy or Services;

**Records** means information, whether in its original form or otherwise, including a document, a signature, a seal, text, images, sound, speech or data compiled, recorded or stored, as the case may be:

- (a) in written form on any material;
- (b) on film, negative, tape or other medium so as to be capable of being reproduced; or
- (c) by means of any recording device or process, computer, or other electronic device or process;

**Scope of Works** means the scope of works determined by EQC as being the works required to repair the relevant building;

**Services** has the meaning set out in clause 3.1;

**Services Fee** means, in respect of each three calendar month period during the term of this Agreement, a payment equalling the amount of incremental costs EQC demonstrably incurs to undertake the Services in respect of the Applications, and/or to perform its responsibilities, obligations and role under this Agreement, being costs that it incurs to perform the Services under this Agreement that it would not have incurred in the ordinary course and, without limitation:

- (a) includes incremental personnel costs; and
- (b) excludes fixed costs, office rental, depreciation, amortisation, and any other costs incurred by EQC in the ordinary course.

**Settlement Agreement** means an agreement between EQC and an Applicant, such agreement to be on the standard settlement terms approved by EQC and the Crown (acting reasonably), subject to amendments to the standard settlement terms which EQC may agree with the Applicant from time to time, provided that any material amendment to the terms impacting on the Policy may only be agreed by EQC and the Applicant with the prior approval of the Crown.

1.2 **Interpretation:** In this Agreement, unless the context requires otherwise:

- (a) references to **clauses** and **Schedules** are to clauses of and schedules to this Agreement;
- (b) **derivations** of any defined word or term shall have a corresponding meaning;
- (c) the **headings** to clauses are inserted for convenience only and shall be ignored in interpreting this Agreement;
- (d) the word **including** and other similar words do not imply any limitation;
- (e) the **plural** includes the **singular** and vice versa;
- (f) a reference to a **statute** includes all regulations and other subordinate legislation made under that statute. A reference to any legislation (including subordinate legislation) includes that legislation as amended or replaced from time to time; and
- (g) if there is any conflict between the terms of this Agreement, the following descending order of precedence will apply:
  - (i) Schedule 2;
  - (ii) the terms of the body of this Agreement (clauses 1 to 17);
  - (iii) the other Schedules to this Agreement.

1.3 **Objectives:** The objectives of entering into this Agreement are set out in Schedule 1 (the "**Objectives**"). The Objectives are high-level statements which reflect the Crown's vision for the implementation of the Policy. The Objectives do not constitute separate binding obligations of EQC but may be used to clarify any ambiguity or uncertainty in any express term of this Agreement.

## 2. TERM

2.1 This Agreement shall commence on the Commencement Date and continue in force until the Expiry Date, unless terminated earlier in accordance with clause 13.

## 3. APPOINTMENT

3.1 **Appointment:** The Crown appoints EQC to undertake the following services:

- (a) receiving and processing Applications;
  - (b) assessing Applications by applying the Criteria;
  - (c) in respect of each Application which meets the Criteria, assessing the Cost of Repairs, finalising the Scope of Works, determining the proposed Ex Gratia Payment in accordance with Schedule 2, and making an offer for such Ex Gratia Payment on the terms of the Settlement Agreement;
  - (d) managing Applicant's compliance with any conditions in the Criteria, including taking reasonable steps to ensure any agreed repairs are completed (provided that the parties agree that the requirement in this subclause (d) is discharged by EQC imposing, and undertaking the actions required of EQC under, the additional conditions set out in clause 18 of Schedule 2);
  - (e) managing any disputes with Applicant as to the application of the Criteria, the Scope of Works, the Cost of Repairs, the proposed Ex Gratia Payment and/or the terms of any Settlement Agreement using practices and approaches consistent with those used by EQC for managing disputes relating to any claims received by EQC in the ordinary course;
  - (f) executing any Settlement Agreement agreed between EQC and Applicant, and paying the relevant Ex Gratia Payment in accordance with the terms of each Settlement Agreement; and
  - (g) any other services agreed in writing by the parties from time to time,
- (together, the "**Services**".)

3.2 **Agency Relationship:**

- (a) In performing the Services, in which case it shall do so on its own behalf), EQC shall act on behalf of and as agent for the Crown in its dealings with Applicant. EQC shall ensure that the terms of each Settlement Agreement record that EQC enters into such agreement both on its own behalf and on behalf of, and as agent for, the Crown and that it will, as agent for the Crown, pay the relevant Ex Gratia Payment.
- (b) In respect of each Settlement Agreement that EQC enters into in accordance with the terms of this Agreement, the Crown shall be bound to the terms of the relevant Settlement Agreement as if the Crown had executed such agreement in lieu of EQC and the Crown shall, in accordance with clause 8.2, reimburse EQC for any Ex Gratia Payment made in respect of such Settlement Agreement.

3.3 **Preservation:** To avoid doubt, this Agreement does not limit EQC's ability to undertake or exercise its statutory duties and powers at any time.

3.4 **Exclusion:** To avoid doubt, the Services exclude EQC itself managing the repair and reinstatement of any property where permitted by the Criteria.

#### 4. PERFORMANCE OF SERVICES

4.1 **Performance:** In performing the Services and complying with its other obligations under this Agreement, EQC must:

- (a) act with reasonable care, skill, prudence, foresight and diligence;
- (b) provide all Personnel, processes and resources required to perform the Services;
- (c) comply with the Crown's reasonable directions given from time to time regarding matters such as the interpretation of the Criteria, the method of calculating the Cost of Repair and determining any proposed Ex Gratia Payments, and any other matter which may have a material impact on the implementation of the Policy, the reputation of the Crown, or the estimated total cost of the Ex Gratia Payments;
- (d) comply with all of its obligations under Law (including, but not limited to, the Earthquake Commission Act 1993, the Privacy Act 1993, the Health and Safety at Work Act 2015 and the Crown Entities Act 2004);
- (e) meet or exceed the Performance Measures;
- (f) promptly notify the Crown in writing of:
  - (i) any breach of EQC's obligations under this Agreement;
  - (ii) any matter relating to the Policy or Services which may have a detrimental impact on the Policy or Crown's reputation (including any Privacy Breach); and
  - (iii) any matter that may impact on EQC's ability to perform its obligations in accordance with this Agreement,

where known to EQC.

#### 5. PRIVACY

5.1 **Sharing of personal information:** EQC shall ensure that, in respect of any personal information collected in relation to Applicant and/or the Policy, both EQC and the Crown are entitled to use such information for the purposes of assessing Applications and otherwise administering the Policy in accordance with the Privacy Act 1993 and the Earthquake Commission Act 1993.

#### 6. PERSONNEL AND SUBCONTRACTING

6.1 **Personnel:** EQC must ensure the Services are provided using appropriately experienced, skilled and qualified Personnel who are capable of providing the Services and is responsible for all acts and omissions of the Personnel as if they were the acts or omissions of EQC.

6.2 **Subcontracting:** EQC must not subcontract all or substantially all of its obligations under this Agreement to any other person without first obtaining the Crown's written consent (such consent not to be unreasonably withheld or delayed).

## 7. PRIMARY CONTACTS AND REPORTING

7.1 **Primary Contacts:** Each party will appoint a primary contact and notify the other party of that primary contact ("**Primary Contact**").

7.2 **Replacement:** Each party may replace its Primary Contact from time to time provided it gives prior written notice of such replacement.

7.3 **Meetings:** The parties will meet together:

- (a) promptly following a notice from one party to the other that it has any concerns in relation to the Policy or either party's compliance with the terms of this Agreement; and
- (b) otherwise at a frequency and in a format agreed by the parties from time to time.

7.4 **Reporting:** EQC must provide reports at the frequency and containing the detail set out in Schedule 4. Each report must:

- (a) be of sufficient detail to enable the Crown to assess EQC's performance under this Agreement and the progress of implementing the Policy; and
- (b) clearly present any issues arising in relation to the Services, the Policy or in respect of the relationship between EQC and the Crown in respect of this Agreement.

7.5 **Legislative reporting obligations:** No information provided to the Crown by EQC under this Agreement is a substitute for EQC's reporting requirements under the Earthquake Commission Act 1993, the Crown Entities Act 2004, or any other relevant legislation and EQC will continue to comply with all reporting requirements. The information and reporting requirements under this Agreement in no way limit the Crown's discretion to request information from EQC in accordance with the Crown Entities Act 2004.

## 8. PAYMENT

8.1 **Payment for Services:**

- (a) In consideration for EQC providing the Services to the Crown, the Services Fee shall be payable by the Crown for the period ending on 31 December 2019 and for each subsequent three calendar months falling during the term of this Agreement (each a "**Quarter**").
- (b) Within 10 Business Days of the end of each Quarter during the term of this Agreement, EQC shall provide the Crown with a calculation of the Services Fee for that Quarter, including the basis for such calculation and a valid tax invoice in accordance with clause 8.1(c). In addition EQC shall provide any other evidence or information that the Crown may reasonably request from time to time regarding such calculation.
- (c) The Services Fee is expressed before the addition of any amount on account of GST. If the Services Fee for a particular Quarter is consideration for a taxable supply (as that term is defined for purposes of the GST Act) in respect of which EQC is required to account for GST then the Crown shall pay, at the same time and in the same manner as the relevant Services Fee, an additional amount equal to the amount of such GST, provided that no such additional payment shall be required unless and until EQC has provided a valid tax invoice to the Crown in respect of the relevant taxable supply.

- (d) The Crown shall:
  - (i) within 20 Business Days of receipt of an invoice under this clause 8.1; or
  - (ii) if the Crown requests within 5 Business Days of receipt of such invoice additional information in accordance with clause 8.1(b), within 20 Business Days of receipt of all such information requested;pay the Services Fee for the relevant Quarter.

## 8.2 Reimbursement Payments:

- (a) Within 10 Business Days after the end of each Quarter during the term of this Agreement, EQC shall provide a summary to the Crown of all Ex Gratia Payments made during that Quarter and a payment request which has been signed by a Commissioner on behalf of the EQC Board. EQC shall, in addition, provide any other evidence or information that the Crown may reasonably request from time to time regarding the Ex Gratia Payments.
- (b) The Crown shall:
  - (i) within 20 Business Days of receipt of a payment request under clause 8.2(a); or
  - (ii) if the Crown requests within 5 Business Days of such payment request additional information in accordance with clause 8.2(a), within 20 Business Days of receipt of all such information requested,reimburse EQC for all Ex Gratia Payments that were made during the relevant Quarter in accordance with the terms of this Agreement.
- (c) The parties agree that
  - (i) payments made in accordance with this clause 8.2 are not a taxable supply for GST purposes, and accordingly no additional amount shall be paid by the Crown in respect of GST in relation to such payments; and
  - (ii) an Ex Gratia Payment made by EQC to an Applicant in accordance with this Agreement is a "payment in the nature of a grant or subsidy made on behalf of the Crown" as that phrase is used for purposes of section 5(6D) of the GST Act.

## 9. RECORDS AND AUDIT

- 9.1 **Records:** Without limiting its other obligations under this Agreement or at Law, EQC must create and maintain, and must ensure that each subcontractor creates and maintains, full, accurate and accessible Records of the Applications, any Scope of Works, any Settlement Agreements and the provision of the Services under this Agreement, to the standards required under the Public Records Act 2005. EQC must ensure the Records created and maintained under this clause are, during the time period contemplated in subclause (b) below:
  - (a) maintained in an accessible form; and
  - (b) retained for the term of the Agreement and 3 years after expiry or termination of this Agreement; and
  - (c) provided to the Crown in an accessible form on the Crown's request from time to time.

9.2 **Audit:** The Crown may at any time notify EQC that the Crown wishes to audit EQC's provision of the Services, the payment of the Ex Gratia Payments or its compliance with the terms of this Agreement, provided that the Crown may only conduct an audit once in any 12 month period unless it has reasonable grounds to suspect EQC has not complied with this Agreement, in which case the Crown may conduct an audit even if it had conducted an audit within the previous 12 month period. The Crown or the auditor (as the case may be) may make copies of any records or other information acquired by it for the purposes of any audit.

9.3 **Notice of audit:** The Crown will notify EQC of the date on which the audit will commence, which must be at least five Business Days after receipt of a notice under clause 9.2. EQC will allow the Crown or its auditor access to:

- (a) EQC premises, or any premises at which or from which EQC provides the Services;
- (b) all systems, information, data, accounts, documents and Records relevant to the provision of the Services operated or held by or on behalf of EQC or its Personnel; and
- (c) any EQC Personnel,

on and from the date notified by the Crown during EQC's normal business hours for the purpose of conducting the audit. The Crown will comply with EQC's reasonable security and confidentiality requirements in conducting any audit under this clause 9.3.

9.4 **Assistance and costs:** EQC will assist the Crown with any audit conducted under clause 9.3 and will ensure its Personnel and subcontractors also assist the Crown in a timely manner, including by making their relevant premises, systems, personnel, information, data, accounts, documents and Records available to the Crown or its nominee if requested. The Crown will meet its costs of any audit.

9.5 **Non-compliance:** Without limiting any of the Crown's other rights or remedies, if any audit conducted under clause 9.3 discloses any failure to comply with this Agreement by EQC, EQC will promptly remedy the non-compliance.

## 10. INTELLECTUAL PROPERTY RIGHTS

10.1 **New Intellectual Property:** Any Intellectual Property Rights which EQC creates in the performance of its obligations under this Agreement, shall vest in EQC.

## 11. CONFIDENTIAL INFORMATION

11.1 **Restrictions:** Except as permitted by this clause 11 or otherwise expressly permitted in this Agreement, each party shall keep the other party's Confidential Information:

- (a) absolutely secret and confidential at all times and will not disclose that Confidential Information to any person or use that Confidential Information for any purpose other than the purpose of this Agreement; and
- (b) secure and ensure it has in place adequate security measures to safeguard the Confidential Information from access, loss, use, modification or disclosure by unauthorised persons.

11.2 **Exceptions:** A party may disclose Confidential Information:

- (a) to:
  - (i) its Personnel, professional advisers, auditors or bankers for a proper purpose provided that party ensures that each such person complies with the restrictions in this clause 11 as if such person were a party to this Agreement; or
  - (ii) a Minister or any of the Minister's advisers;
- (b) if and to the extent disclosure is required by Law or any Government Agency, Minister of the Crown or parliamentary officer or body, provided that party gives the other party notice of the requirement as soon as practicable before such disclosure is made;
- (c) if and to the extent the information:
  - (i) was known to the receiving party before the information was disclosed to it;
  - (ii) is disclosed to the receiving party on a non-confidential basis by a third party who has the right to make such disclosure without requiring the information to be kept confidential by the receiving party;
  - (iii) is generally available to the public through no fault of the receiving party; or
  - (iv) is developed by the receiving party independently of the information disclosed by the disclosing party; or
- (d) if required in connection with third party legal proceedings relating to this Agreement.

11.3 **Misuse or breach:** EQC will notify the Crown in writing immediately upon becoming aware of any:

- (a) potential, threatened or actual misuse or unauthorised disclosure of Confidential Information by any person to whom EQC makes any disclosure in accordance with clause 11.2(a); or
- (b) breach of EQC's obligations under this clause 11,

and will take all reasonable steps to mitigate the effects of such disclosure and fully co-operate with the Crown in preventing or limiting such misuse, unauthorised disclosure or breach.

11.4 **Official Information Act 1982:** The parties acknowledge that they are both subject to the Official Information Act 1982. Each party agrees to co-operate fully in providing the other party with any documents or other information that the other party is required to provide pursuant to a request made under that Act, or pursuant to questions raised in Parliament or in any Select Committee concerning this Agreement. In the event that either of the parties is subject to a request for information under the Act on matters which relate to the subject of this Agreement or are in connection with the Policy, each party will whenever practicable consult with the other party in relation to such request.

## 12. ANNOUNCEMENTS

12.1 **Announcements:** Before making any media release or public announcement in connection with the Policy, EQC shall consult with the Crown's Primary Contact regarding the content and timing of such release or announcement.

### 13. TERMINATION

13.1 **Termination:** If the Minister revokes the Direction, this Agreement automatically terminates.

13.2 **Consequences of termination or expiry:** Any termination or expiry of this Agreement is without prejudice to and will not affect any rights, remedies, powers or obligations of a party that have accrued before termination or expiry. To avoid doubt, the Crown shall pay to EQC the amounts contemplated under clause 8 incurred by EQC including where payment is made after the termination of this Agreement.

### 14. DISPUTE RESOLUTION

14.1 **Dispute notice:** If there is a dispute between the parties in relation to this Agreement, either party may give the other party notice of the nature and details of the dispute.

14.2 **Negotiation:** Within 10 Business Days of receipt of the notice of dispute, the Primary Contacts shall meet to endeavour to resolve the dispute. If the Primary Contacts are not able to resolve the dispute within 10 Business Days of first meeting to discuss the dispute, either party may escalate the dispute to the Chief Executive of EQC and the Secretary to the Treasury (or his or her nominee) for resolution.

14.3 **No proceedings:** Each party agrees that:

- (a) its sole rights and remedies in respect of a failure by the other party to meet its obligations under this Agreement shall be those rights and remedies set out in the Earthquake Commission Act 1993 and the Crown Entities Act 2004;
- (b) it shall not take any legal proceedings against the other party in relation to this Agreement other than in accordance with the Earthquake Commission Act 1993 or the Crown Entities Act 2004 and shall resolve all disputes in accordance with clause 14.2.

### 15. FORCE MAJEURE

15.1 **Force Majeure:** A party shall not be liable for any breach of this Agreement to the extent such breach is due to a Force Majeure Event, provided that it keeps the other party fully informed of the situation, uses reasonable endeavours to mitigate the effect of the Force Majeure Event and resumes full performance as soon as reasonably practicable. The foregoing does not apply to any failure to pay to EQC any Services Fee or reimbursement payment under clause 8.2.

### 16. NOTICES

16.1 **Notices:** Each notice or other communication given under this Agreement (each a **notice**) shall be in writing, marked for the attention of the Primary Contact, and delivered personally or sent by post or email to the address of the relevant party set out below or to any other address from time to time designated for that purpose by at least five Business Days' prior notice to the other party. The initial addresses of the parties are set out below:

- (a) The Treasury  
PO Box 3724  
Wellington 6140

The Earthquake Commission  
PO Box 311  
Wellington 6140

16.2 **Receipt:** A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, five Business Days after posting; and
- (c) **Email:** sent by email, at the time the email enters the recipient's designated information system,

provided that any notice received after 5 pm or on a non-Business Day shall be deemed to have been received on the next Business Day.

## 17. GENERAL

17.1 **Amendments:** No amendment to this Agreement will be effective unless it is in writing and signed by the parties.

17.2 **Assignment:** No party may assign, novate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other party.

17.3 **Entire agreement:** This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between the parties relating to the matters dealt with in this Agreement.

17.4 **No agency:** This Agreement does not create any relationship between the parties of principal and agent (other than as expressly specified in this Agreement), partnership, joint venture, or employer and employee. Neither party will have authority to act for or incur any obligation on behalf of another party, except as expressly provided for in this Agreement.

17.5 **No third party rights or enforcement:** A person who is not a party to this Agreement shall not have any rights under or in connection with this Agreement.

17.6 **Survival:** Following termination or expiry of this Agreement, clause 11, together with other provisions that are by their nature intended to survive, will remain in effect.

17.7 **Costs:** Each party will pay its own costs incurred in connection with the preparation, negotiations and entry into this Agreement.

17.8 **Counterparts:** This Agreement may be signed in counterparts, each of which when taken together will constitute one and the same instrument. Each party may enter this Agreement by signing any such counterpart.

17.9 **Governing law:** This Agreement will be governed by and will be construed in accordance with New Zealand law.



## **SCHEDULE 1 -OBJECTIVES**

- Provide remedies to support a fair, timely, and enduring resolution of the social issues arising from uncompensated damage to on-sold properties from inadequate EQC commissioned repairs or damage missed from the EQC assessments;
- Reduce the risk and potential cost of litigation for both EQC and affected Canterbury residents.

## SCHEDULE 2 -CRITERIA AND CALCULATION OF COST OF REPAIR AND EX GRATIA PAYMENTS

### PART 1: PURPOSE

The purpose of the Government support package is to provide ex gratia payments to eligible owners of On-Sold properties, to cover the Over-Cap portion of the cost to repair natural disaster damage arising from the Canterbury Earthquake Sequence associated with:

- A. **Failed Repairs:** a failed, inadequate, or non-compliant repair carried out by EQC to settle Claim(s) that have not met the replacement value standard set out in section 2(1) of the Act; and/or
- B. **Missed Damage:** damage that is attributable to the Canterbury Earthquake Sequence, but which was not identified and assessed before EQC settled the Claim(s),

(together, "**Earthquake Damage**").

### PART 2: GENERAL CRITERIA

To be eligible for an ex gratia payment, the Applicant(s) must meet all of the following criteria:

1. The Applicant(s) must be the current owner of the Property.
2. The Application(s) for an ex gratia payment must be made on or before **14 August 2020**.
3. The Applicant(s) must have purchased the Property within the specified time period. To meet this requirement, they must have:
  - a. made their Offer to purchase the Property after the natural disaster damage arising from the Canterbury Earthquake Sequence occurred to the Property; and
  - b. made their Offer to purchase the Property on or before **15 August 2019**.
4. If the Applicant(s)' Offer was subject to a Building Condition, the Applicant(s) must have satisfied or waived that Building Condition on or before **15 August 2019**.
5. The Original Owner(s) of the Property must have lodged at least one Claim with EQC.
6. Before the Applicant(s) made their Offer to purchase the Property the Claim(s) lodged by the Original Owner(s) to which an ex gratia payment relates must have already been assessed by EQC and determined to be Under-Cap.

#### Notes:

The Applicant(s) are not required to have the benefit of any Claim(s) with EQC or claim with a private insurer assigned to them in order to receive an ex gratia payment.

If the Applicant(s) purchased the Property from a Related Party (for example the previous trustees of the trust that still holds the Property), then the criteria will be assessed against the first Related Party that owned the Property instead of against the Applicant(s).

### **PART 3: CALCULATION OF EX GRATIA AMOUNTS AND PAYMENT**

7. Subject to the following, the ex gratia payment to an eligible Applicant(s) will be the Over-Cap portion of the cost to replace or reinstate any Earthquake Damage to the residential building(s) at the Property on a replacement value basis, in relation to the Claim(s) lodged by the Original Owner.
8. In relation to the residential building(s) at the Property, this includes any costs which would be reasonably incurred in respect of:
  - a. demolition and removal of debris, to the extent that is essential to enable the building to be replaced or reinstated;
  - b. replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws;
  - c. complying with any applicable laws in relation to the replacement or reinstatement of the building; and
  - d. other fees or costs payable in the course of replacing or reinstating the building, including architects' fees, surveyors' fees, and fees payable to local authorities.
9. The value of any ex gratia payment(s) offered to an Applicant(s) will be determined by EQC based on the information available to it, including any reports and assessment(s) EQC has or will carry out or procure, and information provided by the Applicant(s) or any other party.
10. Where EQC determines that the cost to reinstate the residential building(s) at the Property on a replacement value basis would be uneconomical, then EQC may instead determine the cost to replace that residential building(s) on a replacement value basis.
11. Where EQC determines that the cost to replace the residential building(s) at the Property on a replacement value basis is above any limit set by the Crown for the purpose of this clause, or where EQC considers that an alternative approach to the ex gratia payment would be appropriate in the circumstances, then EQC may formulate an alternative proposal for the amount of the ex gratia payment and conditions attaching to it, and implement that alternative proposal after consulting with the Treasury and receiving the Crown's approval.
12. Subject to these criteria, EQC will pay the ex gratia payment to the Applicant(s), or where a settlement under the Act for the Property is to be paid to a mortgagee or other third party, to that mortgagee or third party.
13. EQC may choose to replace or reinstate the residential building(s) at the Property only where the Applicant(s) has not had the benefit of any Claim(s) with EQC assigned to them, and in those cases EQC will hold the ex gratia payment and apply it to the replacement or reinstatement for the benefit of the Applicant(s).
14. No excess will be deducted from the ex gratia payment.

### **PART 4: EXCLUSIONS AND LIMITATIONS**

15. EQC may decline any Application for an ex gratia payment, or discount a payment by an amount it considers appropriate in the circumstances, where:
  - a. the sale of the Property by the Original Owner(s) or any subsequent owner(s) was on an "as is, where is" basis or discounted from the market value to reflect that the natural disaster damage from the Canterbury Earthquake Sequence had not been repaired;
  - b. the Applicant(s) has access to insurance cover or any other compensatory regime that would cover the Over-Cap portion in full or in part (or would have, but for an act or omission of the Applicant(s) or a Related Party);

- c. EQC has (or would have in the circumstances) declined to pay or discounted the Under-Cap portion of the Claim(s) for the Property in accordance with clause 3 of Schedule 3 of the Act;
- d. the cost of reinstating or replacing some or all of the Earthquake Damage has been met by a previous settlement by EQC or a private insurer, but the damage had not been replaced or reinstated at the time of the Applicant(s)' Offer;
- e. the Applicant(s) has previously entered into a full and final settlement agreement with EQC with respect to the Earthquake Damage; or
- f. the Applicant(s) has filed proceedings relating to the Earthquake Damage in any Court after **15 August 2019** naming EQC as a defendant, or joined EQC as a party to such proceedings after that date.

16. The ex gratia payment(s) will not meet:

- a. the cost of repairs to residential land, personal property, or any other property that falls outside the definition of a residential building in the Act;
- b. any costs which fall outside of the replacement value as defined in section 2(1) of the Act, for example the cost of an assessment of the Earthquake Damage obtained by the Applicant(s);
- c. any costs that are routinely met by EQC as part of the coverage provided under the Act;
- d. the excess or deductible portion of any private insurance entitlement available to the Applicant(s) in relation to the Property; or
- e. any costs referred to in clause 2 of Schedule 3 of the Act.

#### **PART 5: FURTHER CONDITIONS**

17. The Applicant(s) must agree to complete the replacement or reinstatement of the residential building(s) as a condition of receiving an ex gratia payment.

18. Before any offer is made to the Applicant(s) under the package, the Applicant(s) must:

- a. provide all documentation, quotes, assessments, or other information that EQC may reasonably require to either assess the Application or satisfy itself that the agreed repairs will be completed at a reasonable cost;
- b. sign a full and final settlement agreement in a form determined by EQC, including a waiver of any rights to take proceedings against EQC and the Crown;
- c. consent to EQC providing details of the proposed replacement or reinstatement of the residential building to the Council, to be held as part of the Council's records for the Property;
- d. provide a statutory declaration in a form approved by EQC confirming: that they meet the criteria above; that they will expend the payment on the reinstatement or replacement of the residential building on the Property; they will comply with all of the other conditions of the ex gratia payment; and any other matters reasonably required by EQC; and

e. comply with any of the additional conditions set out in the below table which apply:

<b>Over-Cap portion of the cost to replace or reinstate the residential building(s) under clause 7</b>	<b>Additional condition</b>
\$15,000 or above (including GST, if any)	The ex gratia payment(s) will be made to eligible Applicant(s) in two or more tranches, at times reasonably determined by EQC.
\$150,000 or above (including GST, if any)	The Applicant(s) must grant an encumbrance (or other instrument or interest) to EQC, in a form determined by EQC, which secures the agreement to reinstate or replace the residential building and other conditions of the ex gratia payment against the title to the Property.

## PART 6: DEFINITIONS

In this schedule, the following terms have the meanings given for each:

**Act** means the Earthquake Commission Act 1993;

**Applicant(s)** means all person(s) who meet the criteria of this policy;

**Application** means an application to EQC for an ex gratia payment under the Government support package for owners of On-Sold properties, in a form determined by EQC;

**As is, where is**, in relation to the sale of a property, means the sale was on the basis that damage to the property from the Canterbury Earthquake Sequence had not been repaired, and this was disclosed to potential purchasers;

**Building Condition** means a condition in the agreement for sale and purchase of the Property which could have allowed the Applicant(s) to cancel or otherwise avoid that agreement based on an inspection of the physical condition of the residential building;

**Canterbury Earthquake Sequence** means any earthquake in Canterbury on or after 4 September 2010 and on or before 31 December 2012, and includes any aftershock within this period;

**Cap** means the limit of cover for a Claim set out in section 18 of the Act (as enacted at the time of the Claim);

**Claim** means a claim under section 18 the Act for natural disaster damage to a residential building from one of the earthquakes in the Canterbury Earthquake Sequence that was made within the time limit under clause 7 of Schedule 3 of the Act (as enacted at the time of the claim);

**Council** means the territorial authority in the place where the Property is located;

**Earthquake Damage** has the meaning given in Part 1 of this Schedule;

**Natural disaster damage** has the meaning given in the Act;

**Offer** means:

- a. a binding offer by the Purchaser to purchase the Property which was subsequently accepted by the vendor; or
- b. the acceptance by the Purchaser of a binding offer from the vendor to sell the Property, and which resulted in the Applicant(s) becoming the owner of the Property;

**On-Sold** means a property that has been subject to a Claim, then subsequently sold;

**Original Owner** means the owner of the Property at the time the Claim was made, before the Applicant(s) purchased the Property;

**Over-Cap** means the cost to remediate the natural disaster damage relating to a Claim on a replacement value basis exceeds the Cap, and the **Over-Cap portion** means the part of that cost that is above the Cap;

**Personal property** has the meaning that was given in the Act when originally enacted;

**Property** means the property that is the subject of the Application;

**Purchaser** means the Applicant(s), or the purchaser of the Property who nominated the Applicant(s) to complete the purchase;

**Related Party** means any person associated with the Applicant(s) within the meaning in section 2A of the Goods and Services Tax Act 1985, or any other person whose sale of the Property to the Applicant(s) (or to another Related Party of the Applicant(s)) was not on an arm's length basis; and

**Replacement value** has the meaning given in the Act;

**Residential building** has the meaning given in the Act;

**Residential land** has the meaning given in the Act; and

**Under-Cap** means the cost to remediate the natural disaster damage relating to a Claim on a replacement value basis does not exceed the Cap, and the **Under-Cap portion** means the part of that cost that is below the Cap.

### SCHEDULE 3 – PERFORMANCE MEASURES

**Category: Non-Departmental Output**

**Service Fee paid to EQC**

Measure	Standard
EQC will initiate direct contact with the Applicant within 10 Business Days of receipt of the Application.	100%
A decision on the outcome of the Application will be conveyed to the Applicant within one month of receiving all required documentation and reports.	100%
EQC will provide reporting to Treasury as specified in Schedule 4 of the On-Sold Canterbury Properties Services Agreement.	Achieved

**Overall Appropriation**

**On-Sold Canterbury Properties Appropriation**

Measure	Standard
Applications for ex gratia payments will be assessed against the criteria specified in the On-Sold Canterbury Properties Services Agreement and a decision on the outcome of the Application will be conveyed to the Applicant within one month of receiving all required documentation and reports.	100%

## SCHEDULE 4 – REPORTING

EQC will provide to the Crown within 10 Business Days of the end of each calendar month falling during the term of this Agreement, the following information in respect of that calendar month:

### Information on Applications

- Number of new Applications received that month
- Total number of Applications received to date (in aggregate)

### Progress on determining Applications

- Number of Settlement Agreements signed that month
- Total number of Settlement Agreements signed up to the last day of the relevant calendar month (in aggregate)
- Total number of Applications up to the last day of the relevant calendar month which EQC has yet to decide whether to decline the Application, or make a settlement offer
- Total number of Applications up to the last day of the relevant calendar month which EQC has yet to decide whether to decline the Application, or make a settlement offer and which EQC received more than 90 days prior to that date

### Information necessary for the Crown accounts accounting purposes

- Total value of Settlement Agreements signed that month
- Total value of Settlement Agreements signed up to the last day of the relevant calendar month (in aggregate)
- GST status of Applicant whose Settlement Agreement had been signed that month

### Recoveries

- Total value of any payments received that month by EQC from parties involved in the original repair work or building assessment work on Applicant's properties
- Total value up to the last day of the relevant calendar month of any payments received by EQC from parties involved in the original repair work or building assessment work on Applicant's properties (in aggregate).

In addition, EQC will provide to the Crown within 10 Business Days of the end of every third calendar month during the term of this Agreement, the following information in respect of those three calendar months:

- An anonymised summary of cash payments made by EQC under Settlement Agreements for the relevant three month period
- The total value of cash payments made by EQC under Settlement Agreements for the relevant three month period.