

The Treasury

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August 2021

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Key to sections of the Act under which information has been withheld:

- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
- [25] 9(2)(b)(ii) - to protect the commercial position of the person who supplied the information or who is the subject of the information
- [26] 9(2)(ba)(i) - to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied
- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
- [33] 9(2)(f)(iv) - to maintain the current constitutional conventions protecting the confidentiality of advice tendered by ministers and officials
- [34] 9(2)(g)(i) - to maintain the effective conduct of public affairs through the free and frank expression of opinions
- [35] 9(2)(g)(ii) - to maintain the effective conduct of public affairs through protecting ministers, members of government organisations, officers and employees from improper pressure or harassment;
- [36] 9(2)(h) - to maintain legal professional privilege
- [37] 9(2)(i) - to enable the Crown to carry out commercial activities without disadvantage or prejudice
- [38] 9(2)(j) - to enable the Crown to negotiate without disadvantage or prejudice
- [39] 9(2)(k) - to prevent the disclosure of official information for improper gain or improper advantage

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Treasury Report: Earthquake Commission - Ministerial Direction for Land Remediation

Date:	9 December 2010	Report No:	T2010/2567
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Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	<p>Sign the attached letter consulting with Michael Wintringham, Chair of the EQC, on the proposed draft direction</p> <p>Sign the attached letter and direction to Michael Wintringham, Chair of the EQC</p>	Friday 10 December 2010

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Andrew Blazey	Manager, Sector Monitoring	[39]	[23] ✓
Diana Solomon	Analyst, Sector Monitoring	[39]	[23]

Minister of Finance's Office Actions (if required)

<p>Once signed, send the letter and <u>draft (unsigned) direction</u> to Michael Wintringham. Given the urgency, we suggest it is couriered to the EQC's head office and also emailed to Michael Wintringham [39] and Ian Simpson [39]</p> <p>On receipt of confirmation from EQC on the content of the draft direction, send <u>finalised signed direction</u> (attached) to Michael Wintringham. Given urgency, please also email to Michael Wintringham and Ian Simpson.</p> <p>Send a copy of the direction to the Treasury so that we can arrange publication in the Gazette.</p> <p>Arrange for the Minister to table the direction in the House "as soon as practicable".</p>
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Enclosure: Yes (attached)

Treasury Report: Earthquake Commission - Ministerial Direction for Land Remediation

Purpose of Report

1. To direct the Earthquake Commission (EQC) to carry out the additional land remediation work as decided by the Cabinet decisions, and to consult with the EQC on the draft direction as required under the Crown Entities Act 2004.

Background

2. On 11 October 2010, Cabinet (CAB Min (10) 36/11 refers):
 - 4 **agreed** that, in order to give confidence to affected communities, banks and insurers to rebuild, the level of remediation adopted for badly damaged land should be set at level 4 in the Tonkin & Taylor report to the EQC, as representing a cautious and prudent level of remediation (in many cases this will be more than the level of remediation required of EQC under the EQC Act);
3. And on 1 November 2010, Cabinet (CAB Min (10) 39/9 refers):
 - 4 **agreed in principle**, subject to the further work referred to in paragraph 6 below, that an arrangement involving councils and EQC (to be established through a Memorandum of Understanding), monitored by the Canterbury Earthquake Recovery Commission, be progressed to manage land remediation activities in Canterbury;
 - 5 **directed** officials from the Canterbury Earthquake Response Policy Team of the Department of the Prime Minister and Cabinet, in consultation with other relevant agencies, to work with the Canterbury Earthquake Recovery Commission, councils and EQC to advance an arrangement to manage land remediation activities in Canterbury;
 - 6 **directed** officials from the Canterbury Earthquake Response Policy Team of the Department of the Prime Minister and Cabinet, in consultation with other relevant agencies, to report back to ACE seeking confirmation of the in-principle decisions referred to in paragraph 4 above following the outcome of the further work, and outlining plans for implementation;

Legislative Process for Giving a Direction

4. Under section 112 of the Crown Entities Act 2004 (CE Act), you will need to issue a direction to the EQC to enable it to carry out the additional land remediation, as this work is currently outside the EQC's functions under the EQC Act 1993 (EQC Act).

5. Accordingly, the EQC has prepared a draft direction for your consideration, in consultation with the Treasury, which extends its responsibilities and enables it to give effect to the Cabinet's decisions (as listed in paragraphs 2 and 3 above).
6. The CE Act requires that you must consult with the EQC, if practicable, before giving a direction. Given the urgency around finalising the directions by tomorrow (see below for further comment) and the fact that the EQC has drafted the directions, we do not consider a lengthy consultation to be necessary. EQC Chair and Chief Executive are satisfied with the content of the draft direction. Therefore, we think that for completeness, a concurrent process where the consultation and finalisation stages occur in parallel would be prudent.
7. Also, under the CE Act, it is required that you publish it in the Gazette and present a copy of it to the House of Representatives, as soon as practicable.

Proposed Direction

8. EQC has suggested that the following draft direction comes into effect on signing:
 - enabling the EQC to progress work on land remediation in Zone B (as defined in the Tonkin & Taylor Report) that was severely affected by the Canterbury earthquake;
 - enabling the EQC to prepare the concept design report which will play a critical role in ensuring that appropriate arrangements are in place to manage the Crown's funding;
 - enabling the EQC to carry out mitigation works on the severely affected houses in Spencerville; and
 - enabling the EQC to carry out land remediation works as considered reasonably necessary.
9. We agree with the EQC's proposed changes to its scope of business so as to enable it to give effect to the Cabinet's decisions. We consider that the attached draft direction accurately reflects this.
10. There is some urgency to progress and finalise the direction, as the EQC would like to sign the contract (ideally on 10 December 2010) with the successful contractor for the Spencerville mitigation works.
11. Given the Memorandum of Understanding (MoU) between the Crown and the Canterbury Councils is still in the process of being finalised, the proposed draft direction will need some amendments in the future. The MoU would address the Minister's concerns that the significant sum of Crown money would be managed prudently, and suitable arrangements would be put in place by the EQC to manage the Crown funding.
12. The EQC plan to present a follow-up draft direction to you once details of the MoU are close to being finalised. We expect that you will most likely receive this direction in early 2011.

Recommended Action

We recommend that you:

- a **note** the EQC has drafted the directions, in consultation with the Treasury;
- b **note** the EQC have assured us that the Chair and the Chief Executive of the EQC have been consulted and are satisfied with the draft direction;
- c **sign** the attached letter to Michael Wintringham, Chair of the EQC board, consulting him on the proposed changes to the Ministerial direction on the extension of the EQC's role; and
- d **sign** the finalised letter and direction to Michael Wintringham, Chair of the EQC board, which will be sent only once the consultation response confirming the content of the draft direction is received from the EQC.

Andrew Blazey
**Manager, Sector Monitoring
for Secretary to the Treasury**

Hon Bill English
Minister of Finance

Mr Michael Wintringham
Chair
The Earthquake Commission
PO Box 790
WELLINGTON 6140

Dear Michael Wintringham

DRAFT MINISTERIAL DIRECTION FOR CONSULTATION

As you are aware, on 1 November 2010, Cabinet agreed in principle that additional land remediation activity for the severely affected residential area in Canterbury would be progressed through an arrangement involving councils and the Earthquake Commission (EQC). To enable this, I will need to issue a direction to the EQC under section 112 of the Crown Entities Act 2004 so that the EQC can carry out these additional responsibilities.

Attached is the draft Ministerial direction to the EQC to implement these changes. Under the Crown Entities Act 2004, I am required to consult with the EQC before giving the direction, if practicable. Given that the EQC would ideally like to sign the contract with the successful contractor for the Spencerville remediation works by 10 December 2010, could you please provide me with any comments on the draft direction at the earliest? This would allow for me to finalise the direction to the EQC by the deadline of 10 December, preferred by the EQC.

The direction comes into effect on signing, and could be amended, revoked or replaced following the discussions with the Canterbury Councils and the EQC on the Memorandum of Understanding on the land remediation works.

I confirm that the EQC has consulted with the Treasury in drafting this direction. I agree with the intention of this direction to expand the scope of the EQC's responsibilities to give effect to Cabinet's decisions of 11 October (CAB Min (10)36/11) and 1 November 2010 Cabinet (CAB Min (10) 39/9).

Yours sincerely

Hon Bill English
Minister of Finance

Direction to the Earthquake Commission pursuant to section 12 of the Earthquake Commission Act 1993

1. This direction comes into effect immediately upon signing.
2. The Earthquake Commission (*the Commission*) shall perform the following additional functions:
 - a. To investigate options for mitigating future earthquake damage to land damaged throughout the Canterbury region as a result of the Darfield earthquake sequence (*the Canterbury earthquake*). The investigation shall:
 - i. facilitate the reinstatement of residential land and residential buildings which have suffered physical loss or damage as a direct result of the Canterbury earthquake; and
 - ii. take into account that the level of land remediation for the land damaged as a result of the Canterbury earthquake should be such that buildings on the land can remain habitable following a similar earthquake event in the future. This means that in such a similar earthquake event, the land should at worst suffer mostly moderate with some major land damage;
 - b. To prepare a concept design report for land remediation works in respect of the land which is identified as "Zone C" in the Darfield Earthquake 4 September 2010 Geotechnical Land Damage Assessment & Reinstatement Stage 2 Report prepared by Tonkin & Taylor Limited (land remediation works). The Tonkin & Taylor report is available on the Commission's website at <http://canterbury.eqc.govt.nz/publications/2010/11/stage2>;
 - c. To do such other things as may be reasonably necessary to prepare for carrying out the land remediation works; and
 - d. To carry out works to mitigate the lateral spread of the land at Nos 3 to 8 Riverside Lane, Spencerville, which have been damaged as a direct result of the Canterbury earthquake.

Hon Bill English
Minister of Finance

10 December 2010

Mr Michael Wintringham
Chair
The Earthquake Commission
PO Box 790
WELLINGTON 6140

Dear Michael Wintringham

Pursuant to section 12 of the Earthquake Commission Act 1993, I now issue a Ministerial direction to the Earthquake Commission. This direction comes into effect immediately and shall continue until amended, revoked or replaced in the same way that it is given. I intend to publish the direction in the *Gazette* and present a copy of it to the House of Representatives as soon as practicable.

Yours sincerely

Hon Bill English
Minister of Finance

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 - c. To do such other things as may be reasonably necessary to prepare for carrying out the land remediation works; and
 - d. To carry out works to mitigate the lateral spread of the land at Nos 3 to 8 Riverside Lane, Spencerville, which have been damaged as a direct result of the Canterbury earthquake.

Hon Bill English
Minister of Finance

10 December 2010