

The Treasury

Material Provided to the Public Inquiry into EQC Information Release

August 2021

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- [23] 9(2)(a) - to protect the privacy of natural persons, including deceased people
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- [31] 9(2)(f)(ii) - to maintain the current constitutional conventions protecting collective and individual ministerial responsibility
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- [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: EQC: Waimakariri District Council Memorandum of Understanding Direction

Date:	22 March 2011	Report No:	T2011/515
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Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	Agree to the recommendations in the report.	Friday 25 March 2011
Minister for Canterbury Earthquake Recovery (Hon Gerry Brownlee)	Sign the attached letter consulting with Michael Wintringham, Chair of the EQC, on the proposed draft direction Sign the attached letter and final direction to Michael Wintringham, Chair of the EQC	Friday 25 March 2011

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Andrew Blazey	Manager, Sector Monitoring	[39]	[23] ✓
Peter Mellor	Senior Advisor	[39]	

Minister for Canterbury Earthquake Recovery's Office Actions (if required)

Once signed, send the letter and draft (unsigned) direction 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]

On receipt of confirmation from the EQC on the content of the draft direction, send finalised signed direction (attached) to Michael Wintringham. Given urgency, please also email to Michael Wintringham and Ian Simpson.

Send a copy of the direction to the Treasury so that we can arrange publication in the Gazette.

Arrange for the Minister to table the direction in the House "as soon as practicable".

Enclosure: Yes (attached)

[EQC: draft WDC MOU for land remediation \(Treasury:2034624v1\)](#) [Add to worklist](#)

Treasury Report: EQC: Waimakariri District Council Memorandum of Understanding Direction

Purpose of Report

1. This report provides you with a:
 - a draft direction to consult with the Earthquake Commission (EQC), as required under the Crown Entities Act 2004 (CE Act); and
 - b final direction that EQC sign the Memorandum of Understanding (MOU) with Waimakariri District Council (WDC).

Background

2. On 11 October 2010, Cabinet (CAB Min (10) 36/11 refers):
 - a **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):
 - a **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;
 - b **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;
4. On 16 November 2010, Cabinet (ACE Min (10) 6/1 refers):
 - a **agreed** to provide \$140 million in funding for additional land remediation works.
5. On 9 December 2010, the EQC were issued with an initial direction to allow them to undertake certain functions relating to the land remediation (T2010/2567 refers). However, it was anticipated at that time, that a further direction allowing the EQC to sign an MOU with WDC and Christchurch City Council (CCC) would be required.
6. EQC propose to only continue with the land remediation in the Waimakariri District at this stage as the land remediation in that district was not affected by the 22 February earthquake. Given the scale of land damage in Christchurch, this will allow further policy work to be completed. The attached proposed direction therefore recommends that EQC sign the MOU with WDC only. The MOU, agreed in-principle, is attached.

Legislative Process for Giving a Direction

7. Under section 112 of the CE Act, you will need to issue a direction to the EQC to enable it to sign the MOU, as this work is currently outside the EQC's functions under the Earthquake Commission Act 1993 (EQC Act).
8. Accordingly, the EQC has prepared a draft direction for your consideration, in consultation with the Treasury, which extends its responsibilities, giving effect to Cabinet's decisions relating to land remediation in the Waimakariri District.
9. The CE Act requires that you must consult with the EQC, if practicable, before giving a direction. Given the urgency around finalising the directions and the fact that the EQC has drafted the directions, we consider a lengthy consultation will not be necessary, as was the case with the previous direction you issued. We have been informed that the EQC Board and Chief Executive are satisfied with the content of the draft direction. Therefore, we think that for completeness and recognising the urgency around finalising the MOU, a concurrent process where the consultation and finalisation stages occur in parallel would be prudent.
10. Under the CE Act, it is required that you publish the direction in the Gazette and present a copy of it to the House of Representatives, as soon as practicable. On issuing the agreed direction to the EQC, the Treasury will publish the direction in the Gazette.

Proposed Direction

11. The EQC has suggested that the following draft direction (attached) comes into effect on signing:
 - a enabling the EQC to enter into an MOU with WDC; and
 - b enabling the EQC to carry out the additional roles and responsibilities set out in the MOU.
12. The MOU sets out two further mechanisms that will manage potential risks:
 - a **Project Control Group (PCG)** – The PCG will be made up of representatives from the EQC and WDC. This is an important mechanism to ensure that potential upcoming risks are identified and managed. We recommend that in your letter to the Chair you note an expectation that the Crown receives regular updates on the outcome of the PCG meetings.
 - b **Concept Design Report (CDR)** – The CDR will set out the land remediation design for Waimakariri and its share of the Crown's \$140 million funding. The EQC will report on options, cost-benefit analysis, contingencies, risks, funding streams, key milestones and the EQC's recommendation. We note that it will not include a detailed timeframe for the work itself as WDC is responsible for managing the work programme once the CDR is approved. We anticipate that the CDR will provide you with an option and costings for undertaking land remediation in the Kaiapoi Central Business District (CBD), as EQC discussed with you in your meeting with them of 18 February. However, given the significant fiscal impact on the Crown from the 22 February earthquake we recommend that no commitment to undertaking work on the CBD be made until such time that the Crown can consider its obligations in Christchurch and Waimakariri.

13. The EQC Board has also resolved to commence some land remediation work before the CDR is finalised and received Ministers' approval. The work will be centred in North Kaiapoi. The Board has confirmed that there is a low risk in undertaking this work prior to the CDR being finalised and any risk can be managed, and will not restrict the overall design. It will also allow EQC and WDC to begin the preliminary work required. The direction reflects this, however, in the letter we consider that you should note to the EQC that it should undertake the land remediation work prior to the CDR being signed as long as the Board is satisfied that it is consistent with a sensible programme of works and that it does not constrain Ministers' ability to make further decisions on the land remediation works programme.
14. We further note that WDC previously refused to sign an earlier draft of the MOU on the basis that it meant that WDC held all the risk for any unforeseen third party outcomes with the land remediation. WDC therefore requested indemnity from any unforeseen third party outcomes (such as adjacent properties being adversely affected through the land remediation work (where it was a design fault) before it would sign. Following negotiations between WDC and EQC, the EQC Board has determined that the MOU would not be signed without an indemnity being offered. Our advice to EQC was that, as the entity in the best position to manage the risk, it should offer the indemnity.
15. We note the EQC's reluctance with offering the indemnity. However as the entity that was directly involved in the MOU negotiations and having agreed terms for the indemnity, we consider that it is best placed to manage any future risk. Under the terms of the indemnity, WDC will be liable for the first \$1 million and EQC the rest. We understand from a preliminary engineering report that the likelihood of this risk eventuating is minimal. We also note that should the indemnity be called upon, the EQC may request funding from the Crown. However, the EQC is best placed to manage the risk associated with the indemnity and we therefore consider that the indemnity should be entered into by EQC not direct by the Crown.
16. In the letter to the EQC Chair we also recommend that you note that the Board has undertaken the liability and will issue an indemnity to WDC and you therefore expect them to actively manage this risk.
17. We note that the EQC and WDC have spent considerable time agreeing the terms of the MOU and that the EQC Board is satisfied that the Crown's risk exposure is adequately managed.

Officials' Comments

18. We consider, given that Waimakariri was largely unaffected by the February event, Cabinet's early decisions relating to land remediation in that region should not be reconsidered. However, now that Christchurch is facing a significantly different scenario, it is appropriate for land remediation in the city to be re-thought.
19. COMU believes that the draft direction will give effect to Cabinet's decision, with respect to WDC. The Treasury also sought independent advice on the drafting of the MOU, and through this process has been satisfied of the content of the MOU.
20. Commencing land remediation work in the Waimakariri district may result in a precedent for any future land remediation in Christchurch and concern that Kaiapoi is being completed before Christchurch. The Treasury is completing a separate report for you on initial estimates of land remediation in Christchurch. At this stage, rough estimates suggest that remediating the land in Christchurch could cost \$500 million to \$1.5 billion.

21. Therefore should the remediation work in Waimakariri proceed it will be important to have an effective communications strategy to emphasise:
 - Waimakariri was largely unaffected by the February earthquake and therefore commencing land remediation is prudent given the amount of work required to now be completed across the region;
 - Christchurch requires significant reassessment of needs and feasibility; and
 - the time required to obtain the geotechnical assessment and property assessments to make policy and planning decisions.
22. We note that delaying land remediation in Waimakariri would be unpalatable for the Kaiapoi residents.
23. The final CDR will refer to the remediation for the Kaiapoi CBD, as EQC discussed with you in a meeting on 18 February 2011. However, we note that WDC is working with Tonkin and Taylor (T&T) (the CDR authors) separately on the engineering requirements for Kaiapoi CBD. Therefore, the Crown will not need to approve the CBD work in the CDR at this time, but only consider it in terms of the Waimakariri residential land remediation work stream.
24. There is a risk with remediating commercial land, as it is outside of the EQC's mandate could set a precedent given the land remediation likely to be required in the Christchurch CBD. Given the Crown's fiscal exposure relating to the earthquake, we recommend that there be no further commitment from the Crown to undertake remediation of the Kaiapoi CBD at this stage.
25. This will allow WDC to complete the analysis of the CBD remediation requirements with T&T (akin to the CDR which focuses on residential land) and to consider its options first. It may be appropriate for WDC to continue to work with EQC on including the CBD remediation in the work plan once the CDR is final.
26. We also note that Cabinet's initial decision to provide \$140 million to land remediation only related to residential work and so any change that included remediating commercial land would require separate funding.

Recommended Action

We recommend that you:

a **note** that following the 22 February earthquake, the EQC consider that work with only the Waimakariri District Council (WDC) should commence as it was largely unaffected by the new event, and to allow a full assessment of options relating to Christchurch City;

b **agree** that EQC separates the work in Christchurch from Waimakariri and therefore progress with the MOU with WDC only;

Agree/disagree.

Minister of Finance

Agree/disagree.

Minister for Canterbury Earthquake Recovery

c **note** that should the land remediation in the Waimakariri district commence then communications strategy is necessary to manage the potential precedent risk;

d **note** the EQC has drafted a direction under section 112 of the Crown Entities Act 2004, in consultation with the Treasury;

- e **note** the EQC has assured us that the Chair and the Chief Executive of the EQC have been consulted and are satisfied that the draft direction will give effect to Cabinet's decisions to undertake land remediation;
- f **note** that the direction reflects that EQC will undertake land remediation work in the North Kaiapoi area before finalising the Concept Design Report (CDR);
- g **note** that WDC is separately working on a report that will consider land remediation options for the Kaiapoi Central Business District (CBD);
- h **agree** that the Crown does not make a decision on funding land remediation in the Kaiapoi at this stage;

Agree/disagree.
Minister of Finance

Agree/disagree.
Minister for Canterbury Earthquake Recovery

- i **note** that EQC has offered to indemnify the WDC against unforeseen claims that might be made against the Council by any third party, subject to the Council assuming the first \$1,000,000 of such a liability. The EQC Board deemed that it was necessary to ensure the continuation of the land remediation of the project;
- j **sign** the attached letter to Michael Wintringham, Chair of the EQC board, consulting him on the proposed the Ministerial direction on the extension of the EQC's role; and
- k **sign** the finalised letter to Michael Wintringham and the direction to the EQC, which will only be sent 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

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

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

Dear Mr 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).

You separately advised me that following the earthquake of 22 February it is practicable and preferable to progress with the Memorandum of Understanding (MOU) with Waimakariri District Council only. As such, the Concept Design Report will only cover land remediation in the Waimakariri district and will be prepared by 31 March 2011. I agree with this recommended approach as it will allow work to be progressed where it can be and allow time for the necessary wider consideration of Christchurch city.

I understand that the draft MOU has been agreed in principle by Waimakariri District Council and the EQC Board. To enable the EQC to sign these, I will need to issue a direction under section 112 of the Crown Entities Act 2004 (CE Act) 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 CE Act, I am required to consult with the EQC before giving the direction, if practicable.

I understand 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, in relation to WDC only, to give effect to Cabinet's decisions of 11 October 2010 (CAB Min (10)36/11), 1 November 2010 (CAB Min (10) 39/9) and 16 November (ACE Min (10)6/1).

Please provide me with any comments on the draft direction. This would allow for me to finalise the direction to the EQC.

The direction comes into effect on signing, and could be amended, revoked or replaced in the same way that it is given.

Yours sincerely

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

Encl

Draft 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 enter into the Memorandum of Understanding between the Commission and Waimakariri District Council in the form sent to me on 22 March 2011 (the *MOU*);
 - b to carry out the Commission's roles and responsibilities set out in the *MOU* (as amended from time to time); and
 - c without limiting anything in paragraph 2b., to carry out works before the approval of the Concept Design Report referred to in the *MOU* where those works:
 - i are designed to mitigate future earthquake damage to damaged land located in the vicinity of Charles Street and eastward towards Hall Street, North Kaiapoi, Waimakariri; and
 - ii are ready to be carried out before the approval of the Concept Design Report.

Hon Gerard Anthony Brownlee
Minister for Canterbury Earthquake Recovery

March 2011

Mr Michael Wintringham
Chair
Earthquake Commission
PO Box 790
WELLINGTON 6140

Dear Mr Wintringham

Pursuant to section 12 of the Earthquake Commission Act 1993 as Responsible Minister for the Earthquake Commission (with the authority of the Prime Minister), I now issue a Ministerial direction to the Earthquake Commission to enter into and carry out roles and responsibilities set out in the Memorandum of Understanding (MOU) with the Waimakariri District Council. The direction also allows the Commission to carry out certain land remediation works in North Kaiapoi where they are ready to be carried out before the approval of the Concept Design Report.

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.

The MOU anticipates that a Project Control Group (PCG) will be established to ensure that the project objectives are achieved. As this is a key means for managing the Crown's investment and highlighting potential project risks, I expect that you will update me regularly on the PCG's work and report on developments with this project including progress on cost, completion, and risks.

The MOU includes provision for the Commission to indemnify the Waimakariri District Council against unforeseen claims that might be made against the Council by any third party, subject to the Council assuming the first \$1,000,000 (plus GST) of such a liability. I am satisfied that this risk will be appropriately managed, and I accept the Commission's decision to offer the indemnity.

Now that remediation work in Christchurch city has been deferred, pending further investigation, the \$140 million (plus GST) land remediation budget is likely to be more than is required to undertake the planned works in Waimakariri District. In light of this, I expect that the recommended approach detailed in the Concept Design Report will continue to be financially prudent and will only utilise the minimum amount of funding required to deliver objectives.

The direction directs the Commission to carry out certain land remediation work in the vicinity of Charles Street, North Kaiapoi in advance of the approval of the Concept Design Report in circumstances where that work is ready to be carried out before that approval is given. I note EQC's advice that these accelerated works are consistent with a sensible programme of works and have been prioritised after having careful regard to the Tonkin & Taylor Limited's Stage 2 Report and subsequent advice. I also note that the accelerated works will not unduly constrain Ministers' ability to make adjustments to the approved programme of works, if necessary.

The MOU states that the EQC will obtain Crown approval of the Concept Design Report before progressing. This will be a shared decision between the Minister of Finance and me, as the Minister for Canterbury Earthquake Recovery. Such an approval should be sought before any commitments are made to carrying out any of the works, except where previously or separately authorised.

The Crown will in turn fund EQC to meet the payment provisions under the MOU and this direction for the cost of the works. This excludes, subject to further Crown decisions on the matter, any costs relating to the indemnity contained in the MOU.

Yours sincerely

Hon Gerry Brownlee
Minister for Canterbury Earthquake Recovery

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 enter into the Memorandum of Understanding between the Commission and Waimakariri District Council in the form sent to me on 23 March 2011 (the *MOU*);
 - b to carry out the Commission's roles and responsibilities set out in the *MOU* (as amended from time to time); and
 - c without limiting anything in paragraph 2b., to carry out works before the approval of the Concept Design Report referred to in the *MOU* where those works:
 - i are designed to mitigate future earthquake damage to damaged land located in the vicinity of Charles Street and eastward towards Hall Street, North Kaiapoi, Waimakariri; and
 - ii are ready to be carried out before the approval of the Concept Design Report.

Hon Gerard Anthony Brownlee
Minister for Canterbury Earthquake Recovery

March 2011