

The Treasury

Treasury Advice Related to Modernising the EQC Act Information Release

December 2021

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- [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
- [27] 9(2)(ba)(ii) - 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 otherwise to damage the public interest
- [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
- [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: Providing information on EQC claims to prospective buyers

Date:	24 March 2021	Report No:	T2021/607
		File Number:	TY-2-1-11

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	None.	N/A.
Hon Dr David Clark Minister Responsible for the Earthquake Commission	Note the content of this briefing. Indicate whether you would like to meet EQC to discuss current EQC work programmes and priorities	31 March 2021

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Elizabeth Bolton	Senior Analyst, Earthquake Commission Policy Team	[39]	N/A (mob) ✓
Helen McDonald	Manager, Earthquake Commission Policy Team	[35]	

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

Treasury Report: Providing information on EQC claims to prospective buyers

Executive Summary

At your meeting with officials from the Treasury and the Earthquake Commission (EQC) on 8 March 2021 you requested further advice on the information on EQC claims currently available to prospective property buyers. You also asked for advice on whether Land Information Memoranda (LIMs) might be a means of communicating information relating to EQC claims to prospective buyers. The request for further advice followed a proposal from EQC that in future, the EQC Act enable EQC to require cash settled owners to undertake repairs on a discretionary basis (T2021/351 refers).

Nationally, prospective buyers can obtain information on EQC claims relating to a property by making an Official Information Act 1982 (OIA) request to EQC. Information on the need to investigate EQC claims when purchasing a property is provided on a website operated by the Real Estate Agents Authority and on the EQC website. Additionally, prospective buyers in Canterbury are able to find out whether EQC has accepted a claim for a property and the claim number on a publicly available website, www.canterburymaps.govt.nz.

While these are useful mechanisms to support prospective buyers undertaking due diligence, there are gaps in both awareness among buyers of the relevance of EQC claims, and ready access to claim information. This gap was identified by the Public Inquiry into EQC (the Inquiry), which recommended the development of a national register of EQC claim information for residential properties. The Inquiry further recommended that this register should be free and simple to access and include basic information about a claim and its status. EQC plans to complete work on the identification of all potential options for implementing this recommendation by June 2022. The timing reflects the significant challenges associated with consolidating EQC information, which has been collected via different systems and held in multiple databases. The implementation of this recommendation would improve the ability of prospective buyers to access information regarding EQC claims. If you would like this work to proceed on a faster timetable than that currently proposed, this should be discussed with EQC as a next step.

The current legislative framework for Land Information Memoranda (LIMs) does not provide for the inclusion of EQC claim information. While EQC is contributing to work on recording natural hazard information on LIMs, Te Tari Taiwhenua / Department of Internal Affairs (DIA) has advised that the physical state of buildings and building work is currently outside the scope of this work.

Recommended Action

We recommend that you:

- a **note** that nationally, prospective property buyers can access EQC claim information via an OIA request
- b **note** that in Canterbury, claimants can find out whether EQC has accepted a claim for a property relating to the Canterbury earthquake sequence and the claim number on a publicly available website
- c **note** that EQC claims, particularly building claims, do not appear to fit within the legislative criteria for what must be included in a LIM
- d **note** that the work currently being undertaken on LIMs is focused on natural hazard information and is not broad enough to include EQC claims information
- e **note** that the Inquiry recommended that EQC develop and roll out a nationwide online register with EQC claims information as it relates to individual properties which should be free and simple to access, and provide basic information about a claim and its status (Recommendation 6.1.3)
- f **note** EQC plans to complete work on the identification of all potential options for implementing this recommendation by June 2022
- g **note** that EQC will report on progress made with implementing Recommendation 6.1.3 of the Inquiry as part of the September 2021 update on implementing the Inquiry recommendations prepared by the Treasury
- h **note** that if you would like this work to proceed on a faster timetable than currently proposed, this should be discussed with EQC as a next step
- i **indicate** whether you would like to meet EQC to discuss current EQC work programmes and priorities

Helen McDonald
Manager, Earthquake Commission Policy Team

Hon Dr David Clark
Minister Responsible for the Earthquake Commission

Treasury Report: Providing information on EQC claims to prospective buyers

Purpose of Report

1. The purpose of this report is to provide you with further advice on the provision of information relating to EQC claims to prospective buyers. This was requested at your meeting with the Treasury on 8 March 2021. This included a request for advice on the potential to facilitate greater access to information on EQC claims for prospective buyers, such as through Land Information Memoranda (LIMs).
2. The request for further advice followed a proposal from EQC that the future EQC Act enable EQC to require cash settled owners to undertake repairs on a discretionary basis (T2021/351 refers).

Access to information on EQC claims

Information currently available to prospective property buyers nationally

3. Prospective buyers may be interested in information relating to EQC claims for a range of reasons. This includes establishing whether a property has unrepaired damage, and whether steps need to be taken to assign the benefits of an EQC claim from the owner to the purchaser.
4. EQC has the power under the EQC Act to share information relating to EQC claims following changes to EQC's information gathering and sharing powers in 2019. Section 31A of the EQC Act provides that property information collected by EQC is taken to have been collected for the purpose of making the information available (including to the public). In addition, section 31A provides that EQC may publish information about natural disaster damage to property covered by the EQC Act where this is in the public interest. The Inquiry noted that the section 31A amendments were a positive development for prospective buyers who would now be able to access claim information without a deed of assignment from the previous owners.
5. Prospective purchasers wishing to obtain information about EQC claims on a property may request information on a property via an Official Information Act 1982 (OIA) request. Like any other agency, EQC needs to respond to an OIA request as soon as reasonably practicable, and no later than 20 working days after the request. EQC's internal policy is to respond to OIA requests within five working days (where possible). Depending on the nature of the request, EQC will provide information to prospective property purchasers about natural disaster damage suffered by a property, including (but not limited to) the statement of claim, the statement of damage, the un-costed scope of works and/or the costed scope of works.
6. The www.settled.govt.nz website operated by the Real Estate Agents Authority provides information for buyers and sellers of properties. This includes advice to check if the property has been subject to an EQC claim. It also sets out how to request information from EQC, and the types of information people should expect to receive in relation to EQC claims. It also advises prospective buyers about the need to transfer an EQC property claim. The www.settled.govt.nz website provides a link to more detailed information for prospective buyers on the EQC website. This includes the form for making an OIA request, information on transferring an EQC claim, features to look for in a property when buying, and information specific to buying or selling a home in Canterbury.

Information currently available to prospective property buyers in Canterbury

7. In Canterbury, prospective buyers can use the Canterbury Maps (www.canterburymaps.govt.nz) website to find out whether there has been an EQC building or land claim accepted against a particular property as a result of the Canterbury earthquake sequence. The website includes every property in Canterbury. It provides prospective buyers with the claim numbers for Canterbury earthquake sequence claims accepted by EQC. This claim number can then be used to request further information from EQC under the Official Information Act (as described in paragraph five).
8. The website was the result of collaboration between EQC and Environment Canterbury (ECan), with the participation of Canterbury territorial authorities. The project was launched at the direction of Hon Dr Megan Woods, the former Minister Responsible for EQC and Greater Christchurch Regeneration, with the purpose of providing potential property purchasers a place to find information about EQC claims.
9. The EQC claims information included on the website was uploaded at the end of 2019. Since then, there has been one further release of updated data to the website. The website does not disclose any private information in relation to claimants or their claims.
10. The website also includes additional high-level information that might be of interest to prospective buyers, for example, information on rating values, zoning and local bus stops.

Gaps in access to EQC claim information

The Inquiry recommendation regarding property information and EQC's response

11. While prospective buyers can contact EQC for information regarding a property, this requires the buyer to identify this as a step in the purchase process and make an OIA request. As a result, prospective buyers, particularly outside of Canterbury, may be unaware that this is part of undertaking due diligence. In addition, the time taken to receive the information may not align with offer and acceptance timelines in a buoyant property market.
12. The Public Inquiry into EQC (the Inquiry) noted that property information is of "high interest" to potential buyers (among others). The Inquiry recommended that EQC:

*"Develop and roll out a nationwide online register that provides EQC information on claims specific to individual residential properties. This should be free and simple to access for users such as prospective home buyers and should provide basic information about a claim and its status."*¹
13. This recommendation was accepted in principle, with further consideration to be given to the mechanism. EQC advises that Phase Two of the Information and Analytics programme will consider options to enable prospective home buyers to access EQC information on claims for residential properties. The feasibility of this and identification of potential options will be completed by June 2022. We anticipate that the outcomes of this work should enhance public access to EQC claim information, including for prospective buyers.
14. While work is at an early stage, EQC envisages developing a more automated information request process for interested parties. This will build on EQC's existing OIA

¹ Recommendation 6.1.3
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processes. There are a number of issues that will need to be worked through as part of this work programme, including addressing privacy concerns around the data. There are also significant challenges associated with consolidating EQC information to enable the successful implementation of this recommendation.

15. EQC is also initiating work on a '*Risk and Resilience Portal*', that is intended to deliver better hazard risk management information. This project is in its early stages but could form part of EQC's response to implementing the Inquiry recommendation. It relates to EQC's resilience strategy which is designed to enable EQC to leverage a range of information on natural disasters.

Matters EQC needs to consider if proactively providing information to prospective buyers

16. Providing information to prospective property buyers is not without risks. There is the potential for over-reliance by prospective buyers who may be less incentivised to undertake their own due diligence. Related to this is the need to manage any potential liability for EQC in relation to the accuracy of the information. It is also possible that property owners may object to EQC claim information being published about their properties where they perceive the potential for negative impacts on property values.
17. In all cases, further work would be needed around the disclosure of details relating to confidential settlements and the period of time to which the disclosure obligations apply. EQC may also be unable to disclose information, for example, where the information relates to a confidential settlement reached during mediation, or a full and final settlement where EQC may have paid a contingency. The risks associated with not disclosing these types of information and the implications this could have for a prospective buyer would also need to be managed. Many privacy issues were addressed as part of the development of the section 31A amendments, but there may be other privacy issues to work through.

Other mechanisms for disseminating property information to prospective buyers

Gaps in the property information system

18. Problems with accessing property information are not specific to EQC claim information. There are wider systemic issues across central and local government with providing timely, accessible and consolidated property information to prospective buyers and other parties with an interest in property information (for example, insurers, banks and researchers). There is no centralised service where prospective buyers can access all information held by government in relation to a property.

Land Information Memoranda

19. The information that can be included in Land Information Memoranda (LIMs) is currently set out in section 44A of the Local Government Official Information and Meetings Act 1987. This includes information on:
 - special features or characteristics of the land;
 - stormwater and sewerage drains;
 - notifications in relation to drinking water;
 - supplies of drinking water;
 - rates owing;

- consents;
 - completion of building work;
 - building certification;
 - how the land may be used;
 - notifications to territorial authorities regarding weathertightness pursuant to the Weathertight Homes Resolution Services Act 2006;
 - notifications by network utility operators; and
 - such other information concerning the land that the territorial authority considers to be relevant.
20. EQC claims, particularly building claims, do not appear to fit within the legislative criteria.
21. We have been advised that prospective purchasers wishing to obtain a LIM must pay a fee, this varies between territorial authorities but is on average approximately \$300. This reflects the administrative costs associated with compiling the data which may be held by a range of sources. Territorial authorities have up to 10 working days to respond to a request for a LIM.
22. Te Tari Taiwhenua / Department of Internal Affairs is currently undertaking work in relation to LIMs in the context of the community resilience work programme. This work is focused on recording and disclosing natural hazard risks. EQC is contributing to this work. Te Tari Taiwhenua / Department of Internal Affairs has advised that the physical state of buildings and building work is currently outside the scope of this work.

Education and communication around EQC claims

23. There is the potential to provide further education and communication around the need for prospective buyers to look into the existence of and the details of EQC claims. This could be targeted at particular groups, for example, property lawyers and real estate agents. EQC currently provides information on its website for prospective buyers.

Next Steps

24. EQC will provide an update on progress made with responding to Inquiry Recommendation 6.1.3 as part of the September 2021 update on the implementation of the Inquiry recommendations to be prepared by the Treasury.
25. If you would like this work to proceed on a faster timetable than that currently proposed, this should be discussed with EQC as a next step.
26. EQC will continue engaging with other agencies, including Land Information New Zealand (LINZ) and Te Tari Taiwhenua / Department of Internal Affairs, on the provision of property information. EQC is also working closely with the National Institute of Water and Atmospheric Research and GNS Science on data sharing capabilities.