TOKA TŪ AKE EQC CLAIMS MANUAL – RESIDENTIAL BUILDINGS

Version as at 13/09/22

Important note:
EQCover is changing due to amendments to the Earthquake Commission Regulations 1993.
These changes take place on and from 1 Oct 2022 to and including 30 Sep 2023.
Text in yellow in this Manual reflects cap, premium and excess provisions.
See the *Building Cap and EQCover Premium Change – 2022 Phase-in Guide* for details.

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1. Introduction

a. Terminology

Throughout this document, when we refer to 'we/our/us' we mean Toka Tū Ake EQC. When we refer to 'you/your', we mean any of the people described in the 'Application of Manual' section below unless we have specified otherwise.

b. Purpose of Manual

This Manual sets out policies on how we apply the *Earthquake Commission Act 1993 (EQC Act)* when dealing with residential building claims.

c. Application of Manual

This Manual is for Toka Tū Ake EQC and everyone authorised to deal with a residential building claim on our behalf:

- our staff and contractors;
- private insurers (acting as our agent under the *Natural Disaster Response Agreement (NDRA)*, dated 29 October 2020) and their staff and contractors; or
- third-party providers (authorised to act on our behalf, either appointed by us or an insurer as permitted under the *NDRA*) and their staff and contractors.

When dealing with EQCover claims, you must act in accordance with the *EQC Act*, all other applicable laws, our delegations, this Manual, and our instructions in relation to the application of the *EQC Act*.

Where damage is not covered by the *EQC Act*, you should consider whether it is covered by a private insurance policy. Where damage is covered by both the *EQC Act* and a private insurance policy, we typically cover the first loss, therefore you should consider the coverage under the *EQC Act* first. In some cases, damage may not be covered by either the EQC Act or a private insurance policy.

In all cases, you will need to comply with your organisation's own internal processes and delegations, including the *Fair Insurance Code*, and treat customers fairly, honestly and professionally, and in an empathetic and respectful manner.

We may amend this Manual (or part of it) from time to time. Amendments will be in writing.

This Manual sets out our interpretation of the *EQC Act* as at 1 December 2020, and therefore applies to claims made in relation to natural disasters occurring on or after 1 December 2020.

An amended part of this Manual may set out our interpretation of the *EQC Act* as at a later date, whether because of legal developments or otherwise. That date will be recorded against the amended part of the Manual. The amendment will be effective from the date recorded against the amendment, or otherwise from the date we notify to the required party.

d. Status of Manual

We must comply with the *EQC Act* and all applicable laws.

This Manual sets out our interpretation of the *EQC Act* (as informed by relevant case law) as agreed by private insurers under the *NDRA* in accordance with the *Toka Tū Ake EQC Insurers Manual* development process under that agreement, and provides guidance as to, and examples of, how we apply the *EQC Act* to assessing claims for EQCover in practice. However, this Manual does not act as a substitute for the *EQC Act* because:

- claims will arise in a diverse range of fact situations; and
- the interpretation of the *EQC Act* may be contested.

Personal property is no longer covered under the *EQC Act* as of 1 July 2020.

Where this Manual (or the *Toka Tū Ake EQC Assessment Manual*) does not clearly provide for the fact situation or circumstance at hand, or is capable of, or has been applied using more than one interpretation, you should escalate the matter to the appropriate Toka Tū Ake EQC representative.

e. Relationship with 'Toka Tū Ake EQC Claims Manual – Residential Land'

This Manual sets out how we apply the *EQC Act* when dealing with residential building claims in practice.

A separate manual called the *Toka Tū Ake EQC Claims Manual – Residential Land* sets out how we apply the *EQC Act* when dealing with residential land claims in practice.

2. Overview

a. Outline

The flow diagram below illustrates the steps in the journey of assessing and settling an EQCover residential building claim.

At each step a series of questions arises.

Each of these questions is dealt with in this Manual.

Next to each question below, there is a reference to the main Sections of this Manual which set out the relevant Toka Tū Ake EQC policies.

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3. Are the basic requirements for an EQCover claim met?

a. Overview

The basic requirements for an EQCover claim are:

- an insured person with an insurable interest in the property concerned must give notice of the natural disaster damage; (Section 3.b)
- the notice must state that natural disaster damage has occurred to insured property; (Section 3.c)
- the notice must be given to Toka Tū Ake EQC or another person authorised by us to receive such notices; (Section 3.d)
- the notice may be oral or in writing; (Section 3.e)
- the notice must be given within the time limit; (Section 3.f)
- there must be a contract of fire insurance or direct EQCover over the property concerned in force at the relevant time; (Section 3.g)
- the EQCover must not have been cancelled; (Section 3.h)
- there must be no reason why the claim (or part of it) will be declined or otherwise not paid; (Section 3.i) and
- if the above requirements are met, it does not generally matter whether the EQCover premium has been paid to us. (Section 3.j)

Details of these matters are set out in the Sections that follow.

b. Who can notify damage?

The person giving notice of the natural disaster damage must:

- be an insured person; and
- have an insurable interest in the property concerned.

Section 29(1)(a), EQC Act
Clause 7(1), Schedule 3, EQC Act

The person giving notice of the natural disaster damage must meet these conditions at the time that the damage occurred. Notice can be given on the insured person's behalf – see Section 3.b.iii.

i. Who is an 'insured person'?

The *EQC Act* defines an 'insured person' as follows:

> **insured person**, in relation to any property insured under this Act, means the person for the time being entitled to the benefit of the contract of fire insurance in force in respect of that property …
>
> *Section 2(1), EQC Act – Definition of 'insured person'*

In general, the 'insured person' will be the person or people named in the contract of fire insurance as the insured. They will be the person(s) entitled to the benefit of the contract of fire insurance.

The contract of fire insurance might also cover other people, depending on its terms. For example, a contract of fire insurance for a residential building may cover other family members at the same address.

If direct EQCover is in force, the 'insured person' will be the person or people named in the contract to insure the building and/or land under the *EQC Act* against natural disaster damage.

Section 22, EQC Act – Voluntary insurance against natural disaster

Who is the 'insured person' where the insurance is taken out on behalf of another person?
Sometimes a contract of fire insurance or direct EQCover is taken out on behalf of the owner of the insured property.

For example, a daughter living in a residential building owned by her mother may take out a contract of insurance on the mother's behalf to cover the residential building. In this situation, the owner (the mother) will be the 'insured person' as long as the private insurer treats the insurance as being in place for the mother's benefit. The owner (the mother) can be an 'insured person' even though she is not named on the contract of fire insurance.

Who is the 'insured person' where a residential building is subject to a sale and purchase agreement?

In general, during the period between entering into the sale and purchase agreement and (the later of) possession date or settlement date, the purchaser may also be an 'insured person' for our purposes.

The purchaser will not be named as the insured person on the vendor's contract of fire insurance or direct EQCover. But section 13 of the *Insurance Law Reform Act 1985* has the effect of making the purchaser an insured person in this situation.

During the period between entering into the sale and purchase agreement and (the later of) possession date or settlement date, any insurance maintained by the vendor is for the benefit of the purchaser as well as the vendor. This statutory rule is subject to anything to the contrary set out in the sale and purchase agreement for the residential building.

Section 13(1A), Insurance Law Reform Act 1985

ii. What is an 'insurable interest'?

In general terms, a person will have an 'insurable interest' in property where:

- the person would suffer economic loss if the property were destroyed or damaged; and
- there is a legal relationship between that person and the insured property.

People generally recognised as having an insurable interest in the property include the following:

- the registered proprietor of the property (who is the legal owner);
- anyone having an equitable interest in the property;
- where the property is leased, both the lessor and the lessee of the property;
- where the property is mortgaged, both the mortgagee and the mortgagor of the property;
- anyone holding a life estate in the property; and
- if the property is subject to an unconditional sale and purchase agreement, the purchaser of the property (as well as the vendor).

iii. Can someone give notice on the insured person's behalf?

The insured person can either:

- give the notice of the natural disaster damage personally; or
- have someone else give the notice on their behalf.

A person giving notice on behalf of the insured person must be authorised by the insured person to do so. The authority can be express or implied. Whether there is authority will be a question of fact in each case.

Clause 7(1), Schedule 3, EQC Act

iv. Can an insured person give notice of damage to another person's property?

An insured person's notice of natural disaster damage to their own property is not usually sufficient to give notice of damage to another person's property.

An example is the situation of a unit title development where the residential building is managed by a body corporate. The unit owner within the building has insured their personal property under a separate contract of fire insurance. Notice by a body corporate of damage to the residential building is generally not sufficient to serve as notice by a unit owner of damage to the unit owner's personal property.

By way of further example, notice by a landlord of damage to the landlord's residential building is generally not sufficient to serve as notice by the tenant of damage to the tenant's personal property in or on that building.

There may be exceptions. For example, in some cases the insured person may have been authorised by the other person to give notice of natural disaster damage to the other person's property (see Section 3.b.iii).

v. What about notifying damage on a neighbouring cross-lease property?

A cross-lease property is typically where:

- two people (Owner A and Owner B) own an undivided share in a piece of land; and
- Owner A and Owner B jointly lease:
    - to Owner A the part of the piece of land where Owner A's residential building is situated (i.e. Owner A's property); and
    - to Owner B the part of the piece of land where Owner B's residential building is situated (i.e. Owner B's property).

Clearly Owner A can give notice of damage to Owner A's property.

But sometimes for example, Owner A may give notice of natural disaster damage to

Owner B's property. That notice will not be valid unless Owner B has authorised Owner A to give that notice.

c. What must be notified?

i. Notice of natural disaster damage

There only needs to be notice that natural disaster damage has occurred to insured property. This notice must be given within the time limit. (See Section 3.f)

There is no particular form for this notice. There is no need for the notice to include any particular details of the damage.

There does not need to be a separate notice for each of the types of insured property (residential land and residential building) within the time limit. For example, if the insured person gives notice that the insured person's residential building has been damaged, that notice is sufficient for any damage that is later found to the residential land associated with that building.

Clause 7(1)(a), Schedule 3, EQC Act

ii. A claim in writing under clause 7(1)(b), Schedule 3, EQC Act

Clause 7(1)(b), Schedule 3, EQC Act provides that the insured person shall as soon as practicable (at their own expense) deliver a claim in writing for the natural disaster damage. That claim shall include, in particular:

- an account (as is reasonably practicable) of all property lost or damaged; and
- the respective amounts claimed for each item, having regard to their value at the time of the natural disaster.

The insured person may deliver any further material under clause 7(1)(b), Schedule 3 outside the time limit if it is not reasonably practicable to do so sooner.

We will not always insist that the customer provides the clause 7(1)(b), Schedule 3 claim material.

For each natural disaster event, we will make plain its requirements for customers to provide material under clause 7(1)(b), Schedule 3.

Clause 7(1)(b)(i), Schedule 3, EQC Act

The insured person shall also as soon as reasonably practicable (at their own expense) deliver particulars in writing of all insurances covering the property concerned.

Clause 7(1)(b)(ii), Schedule 3, EQC Act

d. Who must be notified?

i. Notice may be given to Toka Tū Ake EQC personally or to an authorised agent

The notice of natural disaster damage must be given either:

- to Toka Tū Ake EQC; or
- to a person authorised by us to receive such notices.

ii. Toka Tū Ake EQC agents authorised to receive notices of natural disaster damage

We have from time to time authorised people to receive notices of natural disaster damage on our behalf.

Sometimes a person (other than Toka Tū Ake EQC) may say they have authority to receive notices of natural disaster damage. In this situation, the matter must be escalated to the appropriate Toka Tū Ake EQC representative, so they can check whether that person has authority to receive such notices at the relevant time.

Clause 7(5), Schedule 3, EQC Act

Situation where notice of natural disaster damage is given to a broker

Whether a broker has been authorised by us to receive notices of natural disaster damage will be a question of fact in each case.

We would only rarely authorise a broker to receive notices of natural disaster damage on our behalf. An agent of Toka Tū Ake EQC cannot authorise the broker to receive these notices.

If a broker says they have authority to receive notices of natural disaster damage, the matter must be escalated to the appropriate Toka Tū Ake EQC representative. The Toka Tū Ake EQC representative will then check whether that broker has authority to receive such notices at the relevant time.

Clause 7(5), Schedule 3, EQC Act

iii. Notice of natural disaster damage to one type of insured property only

The insured person does not need to give a separate notice for each of the types of insured property (residential land and residential building) within the time limit (See Section 3.f). Notice of natural disaster damage to one type of insured property is sufficient.[1]

It follows that notice to Toka Tū Ake EQC that the insured person's residential land has been damaged is sufficient for any damage that is later found to the residential building.

In that case, the insured person does not need to separately notify the building damage.

The converse applies. Notice that the insured person's residential building has been damaged is sufficient for any damage that is later found to the relevant residential land. In that case, the insured person does not need to separately notify the land damage.

We do not provide cover for contents. Therefore:

- any notice of natural disaster damage to contents will not be treated as notice of natural disaster damage to their residential land or residential building; and

- natural disaster damage to that person's insured residential land or residential building will need to be specifically notified.

e. How can the notice be given?

The notice of natural disaster damage can be oral or in writing.

Notice can be given verbally (e.g. by telephone or face to face) or in writing (e.g. by email, text message, social media, letter or fax).

[1] An EQCover claim can include damage to a residential building and/or residential land. Each of these components is sometimes referred to by Toka Tū Ake EQC as an 'exposure'. A single claim can contain both exposures (for example, where the roof has collapsed and the land has cracked).

f. Has the damage been notified in time?

i. Notice of natural disaster damage must be given within a two-year period

Notice of the natural disaster damage must be given within two years of the natural disaster damage occurring

There is no discretion to extend this time limit.

Clause 7(1)(a), Schedule 3, EQC Act

In determining the end of the two-year period:

- the date that the natural disaster damage occurred is excluded from the calculation;
- if the date two years out is not on a 'working day', the period is extended to the next working day; and

  Section 35(6), Interpretation Act 1999

- the two-year period expires at midnight on the last day, not at close of business on that day.

ii. Situation where lapse of time before notice is given materially prejudices ability to assess the damage

There is a specific discretion to decline claims if notice of the natural disaster damage is given more than three months after the damage occurs (but still within the two-year time limit). In this case, we may decline the claim if the lapse of time before the notice was given materially prejudices our ability to assess the claim.

See Section 7.j.

Clause 7(2B), Schedule 3, EQC Act

iii. A claim in writing under clause 7(1)(b), Schedule 3, EQC Act must be given as soon as practicable

The insured person may deliver further material about the claim (under clause 7(1)(b), Schedule 3) outside the two year (notice) period, if it is not reasonably practicable to do so sooner. See Section 3.c.ii.

Clause 7(1)(b), Schedule 3, EQC Act

iv. Situation where there is more than one natural disaster in a 48-hour period

Sometimes natural disaster damage occurs as a result of more than one natural disaster within the period of 48 consecutive hours (starting from the time that the damage first started occurring to the property). In this case, the notice of natural disaster damage must be given no later than two years after the date on which that damage first started occurring.

As a shorthand, we refer to all the natural disaster damage occurring to the insured property during this 48-hour period as one 'event'.

The *EQC Act* does not use the term 'event', but this description is a useful way to describe individual natural disasters insured under the *EQC Act*. All damage occurring within a consecutive 48-hour period which is a direct result of any natural disasters is treated as an 'event'. Conversely, if the time between natural disasters is longer than 48 consecutive hours, the *EQC Act* requires us to treat the events separately.

The 'event' may have different types of natural disasters during the 48-hour period (e.g. earthquake and natural landslip).

The definitions of 'natural disaster' and 'natural disaster damage' in the *EQC Act* are set out and discussed at Sections 5.b and 5.c of this Manual.

Clause 1, Schedule 3, EQC Act

What if notice is given during the 48 hour event period?
It is not necessary for the insured person to wait for the end of the 48 hour 'event' before giving notice under clause 7(1)(a), Schedule 3 of natural disaster damage. Notice can be given at any time during the 48-hour event notifying any natural disaster damage occurring to the insured property.

Notice given during the 48-hour period will capture all the natural disaster damage that occurs to the insured property during that 48-hour period. This will include:

- natural disaster damage that occurs during the 48-hour period but after the notice is given; and
- natural disaster damage occurring as a direct result of all the different natural disasters during that 48-hour period (e.g. earthquake and natural landslip).

What if there is a natural disaster fire?
We cover all natural disaster damage that occurs as a result of natural disaster fire within 7 consecutive days. This period starts when damage to the insured property first occurs as the result of natural disaster fire.

Clause 1(b), Schedule 3, EQC Act

g. Was there a 'contract of fire insurance' or direct EQCover over the property concerned in force at the relevant time?

i. What is a 'contract of fire insurance'?

The *EQC Act* defines a 'contract of fire insurance' as follows:

> **contract of fire insurance** means a contract whereby any property is insured against physical loss or damage by fire (other than natural disaster fire), whether the contract includes other risks or not; but does not include any contract of marine insurance or any contract of reinsurance
>
> *Section 2(1), EQC Act – Definition of 'contract of fire insurance'*

In general, the contract of fire insurance will be between the insurance company and the insured person.

A contract of fire insurance must (at least) insure the residential building against physical loss or damage by fire (other than natural disaster fire).

The contract may also provide insurance against other risks (whether they be other risks to the residential building or insurance in relation to other things entirely). However, the contract cannot be a contract of marine insurance or reinsurance.

The contract of fire insurance will most often be a standard home policy that insures against physical loss or damage by fire (other than natural disaster fire).

ii. For residential building EQCover, the contract of fire insurance must insure the 'residential building'

Unless the customer has direct EQCover, the contract of fire insurance must be checked carefully to ensure that it covers the residential building that has suffered the natural disaster damage.

For example, many contract works policies insure against fire – but they may insure only the works themselves. For properties under alteration at the time of the natural disaster, EQCover may depend on whether the residential building is covered by a separate contract of fire insurance (i.e. as well as the contracts works policy).

For the definition of the term 'residential building', see Section 4.b.

iii. Contract of fire insurance or direct EQCover needs to be 'in force' at date of the damage-causing natural disaster

EQCover in relation to a contract of fire insurance continues only while the contract of fire insurance is in force. If the private insurer cancels or suspends the contract of fire insurance or if the contract expires or otherwise ceases, there will be no EQCover for the residential building unless direct EQCover is in force.

What if there is no longer a 'residential building' at the date of the natural disaster damage?
EQCover continues as long as the underlying contract of fire insurance or direct EQCover continues.

So, if a building no longer meets the definition of 'residential building' in the *EQC Act*, EQCover nevertheless continues for that building until:

- the contract of fire insurance for that building ceases to be in force (e.g. expires or is cancelled or suspended by the private insurer); or
- we cancel the EQCover for that building (see Section 3.h).

An example of where a building no longer meets the definition of 'residential building' is where the building changes from residential to commercial use. This change of use may occur part way through the period of the cover under the contract of fire insurance.

If the building no longer meets the definition of 'residential building' when the new contract of fire insurance or direct EQCover for that property is entered into (or when the existing contract is renewed), there will be no EQCover for that property.

Section 18, EQC Act Section 20, EQC Act Section 2(2), EQC Act

iv. What is direct EQCover?

If a person has not insured their residential building against fire with a private insurer, they may have obtained EQCover directly from us for natural disaster damage. *Section 22 of the EQC Act* provides that, on application made by any person having an insurable interest in any residential building and residential land, we may enter into a contract to insure that building and land under this Act against natural disaster damage (not exceeding the maximum EQCover cap) and subject to the approval conditions.

Section 22, EQC Act – Voluntary insurance against natural disaster damage

Direct EQCover claims are lodged with us and proceed in the same manner as outlined in this Manual.

h. Has the EQCover been cancelled or limited in any way?

i. Cancellation of EQCover

The Record of Title[2] for the property must be checked to ensure that the EQCover has not been cancelled.

Toka Tū Ake EQC may cancel EQCover for the property. We can do this where:

- we have cash settled a claim to the full extent of cover available under the *EQC Act*; and
- we are not satisfied with the replacement or reinstatement of the property.

[2] Since the Land Transfer Act 2017 came into force, what used to be known as the Certificate of Title is now called the Record of Title.

If EQCover for property has been cancelled, then, until we reinstate the EQCover, a claim cannot be made for EQCover for any damage to that property.

In the case of a residential building, we cancel the EQCover by sending the owner a written notice of the cancellation and arranging for a notice to be placed on the Record of Title. The entry on the Record of Title indicating a cancellation would typically read as follows:

> Certificate under Section 28(1) Earthquake Commission Act 1993

In rare cases, the notice of cancellation may have been entered on the Record of Title under *regulation 16 of the Earthquake and War Damage (Land Cover) Regulations 1984*. In such cases, the entry on the Record of Title indicating a cancellation would typically read as follows:

> Statutory Land Charge under the Earthquake and War Damage (Land Cover) Regulations 1984

The notice remains on the Record of Title notwithstanding:

- the renewal of the contract of fire insurance;
- the issue of a new contract of fire insurance; or
- change of ownership of the property.

We can at our discretion reinstate the EQCover, in which case the notice on the Record of Title will be removed.

For residential building claims, the Record of Title to the property should be checked before any settlement to ensure that the EQCover was not cancelled at the time of the damage-causing natural disaster. For the purposes of this check, the copy of the Record of Title sourced from Land Information New Zealand (LINZ) must be no older than three months from the date that LINZ sent it out.

Section 28, EQC Act

Clause 4, Schedule 3, EQC Act

ii. Limitation on EQCover

The Record of Title for the property must be checked to ensure that the EQCover has not been limited.

Toka Tū Ake EQC may limit EQCover for the property.

We may do this where we consider that any property is in imminent danger of suffering natural disaster damage. In this scenario, we limit our cover by sending the owner a written notice stating that we limit liability to the amount for which the property is insured at that time.

We can also limit EQCover where:

- natural disaster damage has occurred to any residential land or residential building as the direct result of a natural landslip; or to any residential land as the direct result of storm or flood; and
- we consider that the property will suffer the same loss or damage again, and the likelihood of that future loss or damage could reasonably be, or have been, avoided.

In this second scenario, we limit the EQCover by sending the owner a written notice stating that Toka Tū Ake EQC may decline any further claim for loss or damage.

In either scenario, we will arrange for a notice to be placed on the Record of Title. The entry on

the Record of Title indicating a limitation would typically read as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

The notice remains on the Record of Title notwithstanding:

- the renewal of the contract of fire insurance;
- the issue of a new contract of fire insurance; or
- change of ownership of the property.

We can at our discretion remove the limitation to the EQCover, in which case the notice on the Record of Title will be removed.

Where there is a notice of limitation on the Record of Title under *section 28* and *clause 5, Schedule 3, EQC Act*, then:

- the person dealing with the claim may continue to do so only if they have specific authority to deal with claims where the EQCover has been limited; and
- in all other cases, the claim must be escalated to the appropriate Toka Tū Ake EQC representative.

Section 28, EQC Act
Clause 5, Schedule 3, EQC Act

i. What other matters must be considered early on in processing a claim?

i. Circumstances where Toka Tū Ake EQC may decline cover

Even if the requirements in Sections 3.b to 3.h are met, there may be grounds to decline (or only meet part of) a claim in the circumstances set out in *Schedule 3 of the EQC Act*.

Details of the grounds for declining claims are set out at Section 7.

Early in the claims management process, any potential grounds to decline should be considered. To the extent it is plain from information available that any of these grounds to decline may apply, this may make other aspects of the process (e.g. full assessment of the damage) unnecessary, although the process for declining claims set out in Section 7 must still be followed.

Clause 3, Schedule 3, EQC Act
Clause 5(3), Schedule 3, EQC Act Clause 7(2B), Schedule 3, EQC Act Clause 8(4), Schedule 3, EQC Act

ii. 'Ground up' cover

A private insurer's cover under the contract of fire insurance can be either 'ground up' cover or 'top up' cover.

With 'ground up' cover, the private insurer pays for all natural disaster damage within the terms of the contract of fire insurance and we cover the balance, if any (within the scope of the EQCover up to the limits specified in the *EQC Act*).

With 'top up' cover, we pay for all natural disaster damage covered by the *EQC Act* up to the limits specified in the *EQC Act*, and then the private insurer pays for the balance (if any).

Most private insurer contracts of fire insurance provide for 'top up' cover. However, if the private insurer's contract of fire insurance is 'ground up' cover, then (subject to the terms of that contract) we will only have liability if the private insurer's cover is exhausted.

Accordingly, our liability may be limited or even 'nil'.

Section 30, EQC Act

j. What if the premium is unpaid or underpaid?

i. Failure of private insurer or customer to pay premium does not affect EQCover claim

The customer's EQCover claim can proceed if:

- the private insurer has not paid an EQCover premium[3] due to Toka Tū Ake EQC; and/or
- the customer has not paid the premium due to the private insurer.

This is provided that the contract of fire insurance has not been suspended or cancelled as a result of the non-payment by the customer.

[3] The premium payable by a private insurer under the *EQC Act* is sometimes colloquially called a 'levy'. But because the *EQC Act* uses the term 'premium', that term is also used in this Manual.

Check unpaid or underpaid premiums at an early stage as these may:

- affect the amount of EQCover (See Sections 8.e and 8.f);
- indicate that the correct number of dwellings in the residential building has not been disclosed to the private insurer at the time that the contract of fire insurance was entered into or renewed.

You must notify the appropriate Toka Tū Ake EQC representative immediately of any unpaid EQCover premium. We will expect recovery of any premium due to us through separate processes.

Section 18(1)(c), EQC Act

4. Is there an insured 'residential building'?

a. Overview

The definition of 'residential building' draws a line between those buildings, parts of buildings, structures, appurtenant structures and certain services that are insured under the *EQC Act* and those that are not.

In general terms, to find what is an insured 'residential building', it is necessary to identify:

- a 'dwelling'; (Section 4.c)
- the building (or part) that is a 'residential building'. This building (or part):
    - may **be** the dwelling itself, or more than one dwelling; or
    - may **include** the dwelling or more than one dwelling;

  (Section 4.d)
- the buildings and structures that are appurtenant to the dwelling; (Section 4.e)
- the services (e.g. water supply, drainage and sewerage) that serve the dwelling or surrounding land and the structures appurtenant to those services. (Section 4.f)

Details on each of these matters are set out in Sections 4.c to 4.f.

Particular provisions apply to EQCover for buildings, appurtenant structures and services that relate to long-term accommodation for the elderly. This aspect is addressed separately in Section 4.g.

Schedule 2 of the *EQC Act* lists items we do not cover. This Schedule has the effect of carving out some items that may otherwise be insured as components of the 'residential building'. (Section 4.h)

b. What is a 'residential building'?

i. Four components of 'residential building' definition

The 'residential building' definition in the *EQC Act* can be broken down into four key components:

- the building (or part), or structure, that is or includes one or more dwellings; (see Section 4.d)
- buildings and structures appurtenant to the dwelling; (see Section 4.e)
- services (e.g. water supply, drainage and sewerage) that serve the dwelling or surrounding land and the structures appurtenant to the services; (see Section 4.f)
- long-term accommodation for the elderly (including a building (or part of a building), appurtenant structures, and services). (see Section 4.g)

Section 2(1), EQC Act – Definition of 'residential building'

ii. Various components together can make up a 'residential building'

One or more of these components together can comprise a 'residential building'. As such, they are insured by Toka Tū Ake EQC, provided there is a contract of fire insurance or direct EQCover in force at the relevant time.

So, for example, in broad terms a 'residential building' could be:

- a stand-alone dwelling PLUS appurtenant structures PLUS certain services (and any structures appurtenant to those services) that serve the dwelling or surrounding land;
- a multi-unit building (such as a unit title development) that mainly comprises dwellings PLUS the appurtenant structures PLUS certain services (and any structures appurtenant to those services) that serve the dwellings or surrounding land; or
- a building providing long-term accommodation for the elderly PLUS the appurtenant structures PLUS certain services (and any structures appurtenant to those services) that serve that building or surrounding land.

iii. Timing of determination of whether or not there is a 'residential building'

The question whether a building, part of a building, appurtenant structure and/or services meet the requirements of the 'residential building' definition is usually determined when:

- the new contract of fire insurance or direct EQCover for the property is entered into; or
- if the contract of fire insurance or direct EQCover is being renewed, when the renewal takes place.

If, part way through the period of the cover under the contract of fire insurance or direct EQCover, the building no longer meets the definition of 'residential building' in the *EQC Act*, EQCover will nevertheless continue. The cover will continue for that building until:

- the contract of fire insurance for that building ceases to be in force (e.g. expires or is cancelled or suspended by the private insurer); or
- the direct EQCover for that building ceases to be in force (e.g. expires or is cancelled by Toka Tū Ake EQC); or
- when the contract of fire insurance or direct EQCover comes to an end (whether for renewal or otherwise) the building no longer meets the definition of 'residential building'; or
- we cancel the EQCover for that building. (See Section 3.g)

For more details, see Section 3.g.iii.

Section 18, EQC Act

c. What is a 'dwelling'?

i. Identifying a 'dwelling' is critical to determining whether there is a 'residential building'

Identifying whether or not there is a 'dwelling' is a critical first step in applying the 'residential building' definition.

The term 'dwelling' is central to the definition of 'residential building'. For example, under the 'residential building' definition:

- the building or part or structure must be or include one or more *dwellings*;

  Section 2(1), EQC Act – Paragraph (a) of the definition of 'residential building'

- the building or structure is appurtenant to a *dwelling*;

  Section 2(1), EQC Act – Paragraph (c) of the definition of 'residential building'

- the services (and structures appurtenant to them) serve a *dwelling*.

  Section 2(1), EQC Act – Paragraph (d) of the definition of 'residential building'

ii. What is the definition of 'dwelling'?

The *EQC Act* defines a 'dwelling' as follows:

> **dwelling** means, subject to any regulations made under this Act, any self-contained premises which are the home or holiday home, or are capable of being and are intended by the owner of the premises to be the home or holiday home, of 1 or more persons
>
> *Section 2(1), EQC Act – Definition of 'dwelling'*

To be a 'dwelling', the premises must be self-contained and **either**:

- be the home or holiday home of at least one person; **or**
- be:
    - capable of being the home or holiday home of at least one person; and
    - intended by the owner of the premises to be the home or holiday home of at least one person.

Currently there are no regulations made under the *EQC Act* that qualify the definition of 'dwelling'.

Sections 4.c.iii to 4.c.vii discuss the various elements of the 'dwelling' definition.

iii. What does 'self-contained' mean?

To be a 'dwelling' the premises must be self-contained.

To be self-contained, premises must contain the facilities necessary for day-to-day living on an indefinite basis. There must be somewhere to cook, sleep, live, wash, and use the toilet.

The facilities needed to do these things do not have to be in one building, but must be for the exclusive use of the dwelling. For example, a property may have an outside toilet in its grounds. In this example there are facilities for the premises to be self-contained, but the facilities are in two buildings (the house and the outside toilet). Provided the facilities are not shared with other homes, the premises will be self-contained for EQCover purposes.

iv. What is a 'home'?

Where a person chooses to live (whether alone or with others) in premises on a more than temporary or transient basis, and the primary purpose of the premises is to serve as somebody's home, then the premises will be a 'home' for EQCover purposes.

Examples of a 'home' may include:

- homes where the owner lives there (whether or not with others);
- a home leased to a single tenant;
- a home leased, where one occupant rents the entire home and then lets others live there as well;
- a building where occupants rent individual rooms as their home (on a more than transient or temporary basis) from a landlord (whether or not operating on a 'commercial' basis). The occupants share common facilities, such as kitchens and bathrooms, in that self-contained building.

Examples of premises that are not a 'home' are:

- premises which have as their primary purpose the provision of temporary or transient accommodation (such as that provided by hotels and motels). This is accommodation that is ordinarily provided for periods of less than 28 days at a time;
- premises where the occupants living there are not occupying them of their own free will. These premises include for example, a Corrections prison, police jail, police barracks, police cells and lock-ups, and barracks conducted by the Armed Forces for the accommodation of people subject to the *Armed Forces Discipline Act 1971*;
- premises which do not have as their primary purpose the provision of somewhere to live on an indefinite basis (such as hospitals and night shelters);
- a show home, which is purely used to showcase a product or design. These types of buildings are generally not a home to anyone and there is generally no intention they will be lived in as a home during the period of the insurance.

  However, say, at the time the contract of fire insurance was made or renewed, the show home is on the market to be sold. In these circumstances, the show home can be a 'home' if it is:

  - capable of being a home; and
  - intended by the owner to be a home for someone.

In each case, whether particular premises are a 'home' will depend on the particular facts.

v. What is a 'holiday home'?

A holiday home is a secondary residence for somebody whose home is elsewhere. It may be used on a transient basis by that person, usually for holidays.

Generally, a building is unlikely to be a holiday home if:

- it is set up purely as a commercial enterprise and the owner does not use it, or intend to use it, for their own purposes as a holiday home (and no-one else uses it as a holiday home);
- an organisation owns the building, and it is used purely for the benefit of its members, who pay to stay there;
- it is on the same property as the owner's residence. Even though others, like family and friends, may use the building for holidays or visits, it is unlikely to be the holiday destination for the owner or the holiday home of any other person. In those circumstances the building may be an appurtenant structure if it meets the criteria for an appurtenant structure (see Section 4.e).

Serviced apartments and timeshares

Serviced apartments and timeshares are not usually covered by EQCover.

However:

- if there is self-contained premises for the manager of the apartment block, that may be covered (subject to meeting the other requirements of a dwelling);
- if the building has both serviced and owner-occupied apartments, EQCover may apply to the owner-occupied apartments and may also extend to the serviced apartments in certain circumstances – see Section 4.d.i.

vi. What does 'capable of being the home or holiday home' mean?

Premises may contain all the components needed to be a self-contained 'home' (see Section 4.c.iv) or 'holiday home' (see Section 4.c.v), but may not be occupied as a home or holiday home. In these circumstances, the premises can still be covered by us if they:

- are capable of being a home or holiday home; and
- are intended by the owner to be a home or holiday home.

For example, a tenanted building may have a period where it is untenanted. That period may include the renewal date of the insurance policy. At that point the building is not being used as someone's home. However, in this example, if the landlord is intending to lease the building during the renewed insurance period, then the building will be considered to be capable of being a person's home.

vii. What does 'intended by the owner to be a home or a holiday home' mean?

The owner's intention for the premises to be a home may be inferred from, for example:

- the owner's description of their intention regarding the property;
- the lease/tenancy type and duration that the owner intends to enter into for the premises;
- the type of insurance policy covering the premises; and
- the steps the owner is taking to let the property as a home or holiday home,

  e.g. advertisements.

For holiday homes, the owner's intention for the premises to be a holiday home may be inferred from the owner's description of their intention to return again and again to the premises – no matter how minimal the use. At a minimum it is acceptable if:

- the owner can occupy the premises whenever they wish; and
- the owner stores their possessions there.

The owner's intention can be that the holiday home is used:

- solely by the owner;
- by friends and family as well as the owner; and/or
- by tenants on a periodic basis, but by the owner too, whenever the owner wishes to use it.

d. What is meant by a building (or part of a building) or other structure that is or includes one or more dwellings?

The *EQC Act* defines a 'residential building' to include:

> (a) any building, or part of a building, or other structure (whether or not fixed to land or to another building, part, or structure) in New Zealand which comprises or includes 1 or more dwellings, if the area of the dwelling or dwellings constitutes 50% or more of the total area of the building, part, or structure

Section 2(1), EQC Act – Paragraph (a) of the definition of 'residential building'

To come within paragraph (a) of the definition of 'residential building', the building (or part of it) or the other structure must contain one or more dwellings. The definition of a 'dwelling' is set out and discussed at Section 4.c.

Sections 4.d.i to 4.d.iii discuss the various other elements of paragraph (a) of the definition of 'residential building'.

i. Dwelling or dwellings must make up 50% or more of the total area of the building (or part of it)

To come within paragraph (a) of the definition of 'residential building', the area containing the dwelling or dwellings (*the dwellings area*) must make up 50% or more of the total area of the building (or part of it) or of the other structure.

It should be straightforward to apply this requirement to the whole building – the question is simply whether the dwellings area is 50% or more of the area of the entire building. If it is, the whole building is covered by paragraph (a) of the definition of 'residential building'.

If the dwellings area is not 50% or more of the area of the entire building, it may nevertheless be 50% or more of a *part of the building*.

What is a 'part of the building'?

By way of example, an apartment and shop comprise the entire ground floor of a multi- storey building. The ground floor is one separate unit under the Unit Titles Act 2010. The rest of the building is used for commercial purposes. The ground floor would satisfy the test for a 'residential building' where the apartment makes up 50% or more of the total area of *a part of the building* (the ground floor unit).

But in this example, even if the apartment did not comprise more than 50% of the ground floor unit, the apartment itself would still satisfy the test for a 'residential building' because it is a dwelling. This is because it makes up 50% or more of the total area of *a part of the building* (the area of that dwelling).

The building or part of the building containing the dwelling(s):

- can be above and separate from the ground floor;
- can be joined to, or be separate from, other buildings (or parts of buildings).

Section 2(1), EQC Act – Paragraph (a) of the definition of 'residential building'

All questions of what is a part of a building (including what shared infrastructure relates to the part) must be escalated to the appropriate Toka Tū Ake EQC representative for a determination.

What is the 'dwellings area'?
For these purposes, the 'dwellings area' is a term used to describe the area containing the dwelling or dwellings.

The dwellings area is the area behind the front door of each dwelling or dwellings.

The dwellings area does not include 'common' or shared areas such as lobbies, corridors or stairwells that might be used to access a dwelling or dwellings. Nor does it include carparks or appurtenant structures, such as garages. However, it would include any outbuildings that are essential to the definition of a dwelling, such as an outside toilet.

ii. Why is it important to distinguish between whether the residential building is the building or part of the building?

If 50% or more of the building comprises dwellings, then the building is a residential building. This means that the entire building can have EQCover (assuming all other requirements under the *EQC Act* are met). This is notwithstanding that some of the building may be for commercial use.

But it may be that the 'residential building' test can only be met because 50% or more of **part of the building** comprises a dwelling or dwellings. In that case, that part of the building is a residential building. This means that only that part of the building can have EQCover (assuming all other requirements under the *EQC Act* are met). This is notwithstanding that some of that part of the building may be for commercial use.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'residential building'

Section 18(1), EQC Act

iii. What items make up a 'building … that is or includes one or more dwellings'?

There is an issue as to what items make up a building for the purposes of paragraph (a) of the 'residential building' definition. For example, are the fixtures and fittings, the front doorsteps and the swimming pool included?

In determining whether an item is a component of the building for these purposes, it is necessary to establish:

- if the item is physically and permanently joined to the building (e.g. chemset or bolted – as opposed to resting only under its own weight);
- if the item was intended to benefit or improve the building;
- if there would be damage to the building if the item is removed.

Each case will turn on its facts. But if the above three considerations are met, that is a good indicator that the items are a component of the building.

<u>Fixtures and Fittings</u>
Fixtures and fittings are considered a component of the residential building. These are items that are affixed to the building and are, generally, items left as part of the building when somebody stops living there. Fixtures and fittings are considered a part of the residential building (and not contents). Examples are toilets, sinks and basins, kitchen cabinetry and wood burners.

Sometimes it is difficult to draw the line between fixtures and fittings and contents. For example, we have developed separate guidance to deal with the specific issues arising with respect to dishwashers, ovens, carpets and drapes (see below).

Dishwashers and ovens

If a dishwasher or oven is fixed into the residential building, then it is considered to be part of the residential building. In this case 'fixed' means that:

- the dishwasher or oven is bolted, secured or permanently hard-wired into the wall or floor; and/or
- the removal of the dishwasher or oven would cause material damage.

If the dishwasher or oven is able to be unplugged and moved (without material damage), then it is considered to be personal property.

In cases of doubt as to whether or not the dishwasher or oven is fixed into the residential building, the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

Carpets

The same analysis above applies to carpets. In this case, 'fixed' normally means that the carpet is glued or nailed to the flooring or otherwise permanently fixed (and not adhered through loose tacks, carpet grippers or other easily removable form of adherence).

Sometimes carpets at a property are covered under the contract(s) of fire insurance as both part of the 'residential building' and part of the 'contents'. In these cases, the issue whether we should treat the carpet as part of the residential building exposure must be escalated to the appropriate Toka Tū Ake EQC representative.

Curtains and drapes

Generally, curtains and drapes will not be covered as part of the residential building. However, they may be covered if, e.g., they are fixed to a structure (such as a pelmet) from which they cannot be removed and which is in turn affixed to the building.

Where the curtains or drapes are covered by the contract(s) of fire insurance as part of both the residential building and the contents, the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

Items that comprise the access to the building

If the item is integral to and comprises the access to the building (that contains the dwelling), it may be appropriate to treat it as a component of the building. See also Section 4.h.

For example, there may be steps leading from the outside of the building to an external door of the dwelling. Without these steps, it would be difficult to access the property through the external door. These steps would generally be considered to be a component of the building if they are an access platform or other form of access that is an integral part of the building.

Swimming pools

The effect of *Schedule 2 of the Act* is to exclude swimming pools from EQCover other than a swimming pool 'that constitutes an integral part of, and that is within, a residential building'. For example, a swimming pool will be covered by us where it is an indoor pool permanently built into the dwelling. See also Section 4.h.

Each case will turn on its own facts.

e. What is an 'appurtenant structure'?

The *EQC Act* defines a 'residential building' to include:

> (c) every building or structure appurtenant to a dwelling … , and that is used for the purposes of the household of the occupier of the dwelling …
>
> *Section 2(1), EQC Act – Paragraph (c) of the definition of 'residential building'*

To come within paragraph (c) of the definition of 'residential building' (as quoted above):

- there must be a building or structure;
- it must be appurtenant to the dwelling; and
- it must be used for household purposes by the people who occupy the dwelling.

Sections 4.e.i to 4.e.v discuss the various elements of paragraph (c) of the definition of 'residential building'.

We use the shorthand term 'appurtenant structures' to refer to appurtenant buildings or structures that meet these requirements under this part of the 'residential building' definition. The shorthand term 'appurtenant structures' is used in this Manual.

i. What is a 'building' or 'structure' for these purposes?

The word 'building' captures items such as garages, sleep-outs and other buildings of this nature.

The *EQC Act* does not define what qualifies as a 'structure'. Our approach to the word 'structure' in this context is that it is generally:

- something of substantial size and similar in scale to a building; and/or
- of a sufficiently complex construction, in the sense that it is constructed of several parts.

The less similar an item is to a building, the less likely it is that it will qualify as a structure.

ii. What does 'appurtenant' mean?

There is no definition of 'appurtenant' in the *EQC Act*.

It is a question of fact and degree whether an item is appurtenant to a dwelling.

A building or structure is likely to be considered appurtenant to a dwelling if it is located in close proximity to the dwelling and is clearly related to that dwelling.

In general, to be appurtenant to the dwelling, the building or structure will also be permanent or at least have a degree of permanence. Generally an appurtenant structure will be fixed to the ground. If the item is moveable and is regularly moved then it is unlikely to be a 'building or structure' that is appurtenant to the dwelling.

When assessing whether an item is permanent or has a sufficient degree of permanence, it is useful to consider whether, if the dwelling was sold, the item would pass with the dwelling on the sale and purchase.

By way of example, a makeshift bike shed or woodshed consisting of only two pallets and a corrugated iron sheet roof and that is not fixed to the land is unlikely to be sufficiently permanent to be appurtenant to the main dwelling. It would not therefore be an appurtenant structure.

Buildings or structures related to the dwelling that are outside the land holding will be appurtenant structures if they:

- are in close proximity to the land holding;
- are clearly related to the dwelling; and
- will pass with the dwelling when the dwelling is sold.

A garage for a dwelling on neighbouring road reserve is an example of a building that is outside the land holding but is an appurtenant structure (assuming all of the criteria are met).

Where the building or structure is some distance away from the land holding and/or does not clearly relate to the dwelling, the question whether the building or structure is an appurtenant structure should be escalated to the appropriate Toka Tū Ake EQC representative.

iii. When is a building or structure 'used for the purposes of the household of the occupier of the dwelling'?

To come within this part of the definition, the appurtenant structure must be used for the purposes of the household of the occupier of the dwelling.

In considering whether this part of the definition is satisfied, it is useful to consider whether the item provides some service to the occupants of the household. If the item is used for the direct benefit of the household then that will satisfy the test.

One instance where an item is unlikely to be covered is where its sole purpose is in connection with another item that is excluded from EQCover. For example, take the case of a pump shed that is near the dwelling. The test of 'used for household purposes':

- would not be satisfied where the pump shed only houses a pool pump for a swimming pool and the pool does not have EQCover;
- would be satisfied if the pump shed also had another substantial function (such as, for example, to house the garden tools). In this instance, the pump shed would be covered because it is being used for the purposes of the household of the occupier of the dwelling.

Section 2(1), EQC Act – Paragraph (c) of the definition of 'residential building'

iv. Is it a 'dwelling' or an 'appurtenant structure'?

Some items on their face may appear to be a 'dwelling' in their own right, but in fact they are only structures appurtenant to a dwelling.

An example is a sleep-out. Separate EQCover for a sleep-out will apply only if the sleep-out meets the definition of 'dwelling' in the Act. For details on what is a 'dwelling', see Section 4.c.

However, a sleep-out that contains no facilities to cook or wash will not be a 'dwelling' because it is not self-contained. It will, however, usually be covered as an appurtenant structure to the dwelling. This is provided that the sleep-out meets all the criteria for an appurtenant structure set out in this Section 4.e (including that the sleep-out is used for household purposes by the people who occupy the dwelling). If the sleep-out is an appurtenant structure, the EQCover provided for the sleep-out is within the insurance for the dwelling and subject to the same cap.

Why is it important to determine whether the building is a separate dwelling or an appurtenant structure?
Whether there are two dwellings or one in these cases is important for the purposes of applying the *EQC Act*. For example:

- the number of dwellings will be important for calculating the cap amount of EQCover available and the appropriate excesses that apply (see Sections 8.e and 8.f); and
- in particular, if the number of dwellings is disclosed to the private insurer at the time that the contract of fire insurance or direct EQCover is entered into or renewed, the cap will increase. Such disclosure is critical to the cap calculation (see Section 8.e).

Appurtenant structures do not by themselves attract a separate amount of EQCover from the amount available for the dwelling. In other words, when an item is included as an appurtenant structure, it does not increase the overall amount of EQCover for the 'residential building'. It may however affect the amount of cover that will be available for 'residential land'. The correct identification of appurtenant structures is critical, including for that purpose.

v. Is it a component of a building or an 'appurtenant structure'?

Some items – such as carports attached to the dwelling – may not be 'appurtenant structures'. But they may be covered under paragraph (a) of the 'residential building' definition on the basis that they are a component of a building.

If an item does not qualify as an appurtenant structure, then it nevertheless pays to check whether the item is covered by paragraph (a) of the 'residential building' definition. See Section 4.d.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'residential building'

vi. Is it 'residential land' or an 'appurtenant structure'?

We cover some items – such as certain retaining walls, bridges and culverts – as 'residential land' rather than an appurtenant structure.

'Residential land' is defined in the *EQC Act* as follows:

> **residential land** means, in relation to any residential building, the following property situated within the land holding on which the residential building is lawfully situated:
>
> (a) the land on which the building is situated; and
>
> (b) all land within 8 metres in a horizontal line of the building; and
>
> (c) that part of the land holding which—
>
> (i) is within 60 metres, in a horizontal line, of the building; and
>
> (ii) constitutes the main access way or part of the main access way to the building from the boundary of the land holding or is land supporting such access way or part; and
>
> (d) all bridges and culverts situated within any area specified in paragraphs (a) to (c); and
>
> (e) all retaining walls and their support systems within 60 metres, in a horizontal line, of the building which are necessary for the support or protection of the building or of any property referred to in any of paragraphs (a) to (c).

Section 2(1), EQC Act – Definition of 'residential land'

The bridges and culverts covered in paragraph (d) of this definition and the retaining walls covered in paragraph (e) of this definition are covered by Toka Tū Ake EQC residential land insurance.

f. What are the 'services' (and structures appurtenant to them) that serve the dwelling?

The *EQC Act* defines a 'residential building' to include:

> (d) all water supply, drainage, sewerage, gas, electrical, and telephone services, and structures appurtenant thereto—
>
> (i) serving a dwelling … , or surrounding land; and
>
> (ii) situated within 60 metres, in a horizontal line, of the dwelling … ; and
>
> (iii) owned by the owner of the dwelling … , or by the owner of the land on which the dwelling … is situated

Section 2(1), EQC Act – Paragraph (d) of the definition of 'residential building'

Paragraph (d) of the 'residential building' definition covers water supply, drainage, sewerage, gas, electrical, and telephone services, and structures appurtenant to them.

To come within this part of the definition, these services (and structures appurtenant to them) must:

- serve a dwelling (see Section 4.c) or the surrounding land; and
- be situated within 60 metres, in a horizontal line, of the dwelling; and
- be owned by either:
  - the owner of the dwelling; or
  - the owner of the land on which the dwelling is situated.

Sections 4fi and 4fii discuss some elements of paragraph (d) of the definition of 'residential building'.

i. What are the water supply, drainage, sewerage, gas, electrical, and telephone services that are covered?

These items cover the services infrastructure that forms part of the residential property.

The phrase 'water supply … services', and the other services mentioned (drainage, sewerage, gas, electrical, telephone), cover the means of conveyance, rather than the thing conveyed.

It follows that, for example, water supply services would include the water pipes, but not the supply of potable water.

By way of further example, say a natural disaster directly causes the loss of a stream that had flowed through the residential property and had been used as a source of water. The loss of the potable water supply would not be covered by EQCover.

ii. What are the structures appurtenant to the services?

Our approach to the word 'structure' in this context is that it generally means:

- something of substantial size; and
- of a sufficiently complex construction, in the sense that it is constructed of several parts.

An example of such a 'structure', in relation to water supply services, would be a pump shed for servicing that water supply.

The structure must also be appurtenant to the service. In this context, the reference to 'appurtenant' simply requires that the structure relate to the service. For example, subject to all other requirements being met, a pump shed appurtenant to the water pipes from the dwelling to the street would be appurtenant to the water supply service. This is because the pump shed relates to that service.

Water bores

Only the bore itself is a structure appurtenant to the water supply services. EQCover does not include an obligation to ensure that potable water is supplied from the bore. EQCover does not cover any additional equipment required to ensure the supply of potable water (e.g. more extensive equipment required because the depth, location or quantity of the underground water has changed).

Once installed, the additional equipment can be part of the water supply services. This is provided that the equipment otherwise meets the requirements for cover under the *EQC Act*.

g. How does Toka Tū Ake EQC cover 'long-term accommodation for the elderly'?

The 'residential building' definition in the *EQC Act* includes three components that are relevant to EQCover for long-term accommodation for the elderly. They are:

- the building (or part) with 50% or more of its area comprising long-term accommodation for the elderly; (Section 4.g.ii)

  Section 2(1), EQC Act – Paragraph (b) of the definition of 'residential building'

- buildings and structures appurtenant to that building or part; (Section 4.g.iii)

  Section 2(1), EQC Act – Paragraph (c) of the definition of 'residential building'

- services (e.g. water supply, drainage and sewerage) that serve that building or part or surrounding land and the structures appurtenant to the services. (Section 4.g.iv)

  Section 2(1), EQC Act – Paragraph (d) of the definition of 'residential building'

Details on each of these matters are set out in Sections 4.g.ii to 4.g.iv.

To come within these provisions of the definition of 'residential building', the building (or part of it) must provide long-term accommodation for the elderly.

i. What is 'long-term accommodation for the elderly'?

This type of accommodation is dormitory-style accommodation for elderly people that is found in many rest homes. It includes accompanying facilities.

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex), which is covered under paragraph (a) of the 'residential building' definition – see Sections 4.c and 4.d.

In assessing a rest home complex for EQCover purposes, it is necessary to differentiate between these different types of accommodation. This is because identifying the different types correctly is critical to the application of the *EQC Act* (e.g. in the calculation of the cap amount of the EQCover and the excesses that apply).

Before finalising settlements, the identification of the different types of accommodation in a rest home complex must be escalated to an appropriate Toka Tū Ake EQC representative.

ii. Building or part of a building with 50% or more of the area comprising long- term accommodation for the elderly

The *EQC Act* defines a 'residential building' to include:

> (b) any building or part of a building (whether or not fixed to land, or to another building, part, or structure) in New Zealand which provides long-term accommodation for the elderly, if the area of the building which provides long-term accommodation for the elderly constitutes 50% or more of the total area of the building, part, or structure

Section 2(1), EQC Act – Paragraph (b) of the definition of 'residential building'

To come within paragraph (b) of the definition of 'residential building' (quoted above), the building (or part of it) must contain an area which provides long-term accommodation for the elderly.

The phrase 'long-term accommodation for the elderly' is discussed at Section 4.g.i.

In determining whether this part of the definition is met, corresponding principles apply as for paragraph (a) of the definition of 'residential building' (see Section 4.d). In brief:

- the area which provides the long-term accommodation for the elderly (the accommodation area) must make up 50% or more of the total area of the building (or part of it);
- if the accommodation area is not 50% or more of the area of the entire building, it may nevertheless satisfy the test because it is 50% or more of a part of the building;
- the question of what is a 'part of a building' is whether the area could sensibly be treated as an area that is separate from other parts of the building;
- the building or part of the building which provides the accommodation can be above the ground floor and can be joined to or separate from other buildings or parts of buildings.

Section 2(1), EQC Act – Paragraph (b) of the definition of 'residential building'

<u>Why is it important to distinguish between whether the residential building is the whole of the building or part of the building?</u>
If 50% or more of the whole building comprises the accommodation area, then the whole building is a residential building. This means the entire building can have EQCover (assuming all other requirements under the *EQC Act* are met). This is notwithstanding that some of the building may not be for the long-term accommodation for the elderly.

But it may be that the 'residential building' test can only be met because 50% or more of *part of the building* comprises the accommodation area. In that case that part of the building is a residential building. This means that only that part of the building can have EQCover (assuming all other requirements under the *EQC Act* are met). This is even though some of that part of the building may not be for long-term accommodation for the elderly.

Section 18(1), EQC Act

iii. Building or structure appurtenant to the building (or part) that provides long- term accommodation for the elderly

The definition of 'residential building' also includes a building or structure that is appurtenant to the building or part of a building that provides long-term accommodation for the elderly.

To come within this part of the definition, the appurtenant building or structure must be used for the purposes of the residents of the building (or part) that provides the long-term accommodation for the elderly.

For discussion on the meaning of the words 'appurtenant' and 'structure' in a related context, see Sections 4.e.i and 4.e.ii.

Section 2(1), EQC Act – Paragraph (c) of the definition of 'residential building'

iv. Certain water supply, drainage and other services (and structures appurtenant to them) that serve the building (or part) that provides long-term accommodation for the elderly

This part of the 'residential building' definition covers water supply, drainage, sewerage, gas, electrical, and telephone services, and structures appurtenant to them.

To come within this part of the 'residential building' definition, these services (and structures appurtenant to them) must:

- serve:
    - a building or part of a building for the provision of long-term accommodation for the elderly; or
    - the surrounding land; and
- be situated within 60 metres (in a horizontal line) of that building or part of that building; and
- be owned by either:
    - the owner of that building or part of that building; or
    - the owner of the land on which that building or part of that building is situated.

For discussion on the meaning of the words 'appurtenant' and 'structures' in a related context, see Sections 4.e.i and 4.e.ii.

Section 2(1), EQC Act – Paragraph (d) of the definition of 'residential building'

h. What property is not insured by virtue of Schedule 2 of the EQC Act?

i. Schedule 2 lists property of the kind that is not insured by the EQC Act

Some items that might otherwise be or form part of a 'residential building' are not insured under the *EQC Act*.

Items that are excluded from insurance under the *EQC Act* include:

- any motor vehicle (being a vehicle drawn or propelled by mechanical power);
- any vessel (being anything made to float, whether it is fixed or free, and whether or not it has any means of propulsion);
- any aircraft;
- any drain, channel, tunnel, or cutting, unless used to connect parts of one or more residential buildings;
- any dam, breakwater, mole, groyne, fence, pole, or wall that does not constitute an integral part of a residential building. For these purposes, a mole is typically masonry, large stones or earth that is laid in the sea as a pier or breakwater. A groyne is typically a wall or sturdy barrier built out into the sea or a river;
- any tennis court, whether inside or outside and whether or not lawn;
- any jetty, wharf, or landing;
- any paving or other artificial surface.

Schedule 2, EQC Act Section 21(1)(a), EQC Act

<u>Trailers, caravans, tiny houses</u>
Except as set out immediately below, trailers are not insured as 'residential buildings' under the *EQC Act*. For this purpose, a trailer is a vehicle without motive power that is capable of being drawn or propelled by a motor vehicle.

However, a trailer can have residential building insurance under the *EQC Act* if the trailer meets the definition of – and is being used as – a 'dwelling'. For the definition of a 'dwelling', see Section 4.c. If it is a dwelling, the trailer would generally have a degree of permanency.

An example of a trailer that is a 'dwelling' is a caravan that is:

- self-contained;
- connected to local services and/or has the ability to be self-sufficient; and
- has its wheels removed.

The caravan in this example would have Toka Tū Ake EQC residential building cover.

On the other hand, a caravan that is able to be towed to a camp site and is towed away after the holiday is not a residential building. It would not have 'residential building' insurance under the *EQC Act*.

A further example of a trailer that is a 'dwelling' is a tiny house that is:

- self-contained;
- connected to local services and/or has the ability to be self-sufficient; and
- immobilised by reason of it being positioned on a platform, surrounded by decks and other structures that prevent it from readily being moved.

The tiny house in this example would have Toka Tū Ake EQC residential building cover.

Item 3, Schedule 2, EQC Act Section 21(1)(a), EQC Act

Roads, streets, drives etc

Except as set out immediately below, roads, streets, drives, paths, bridges or culverts are not insured as 'residential buildings' under the *EQC Act*.

However, residential building insurance under the *EQC Act* includes gangways, ladders, access platforms, or other forms of access, if they are constructed in a residential building or are an integral part of a residential building.

Item 10, Schedule 2, EQC Act
Section 21(1)(a), EQC Act

Swimming pools, tanks, water towers etc

Except as set out immediately below, reservoirs, swimming pools, baths, spa pools, tanks, or water towers are not insured as 'residential buildings' under the *EQC Act*.

However, residential building insurance under the *EQC Act* includes:

- a reservoir, swimming pool, bath, spa pool, tank, or water tower that constitutes an integral part of, and that is within, a residential building;
- a reservoir or tank used in a residential building as a storage vessel for any liquid product;
- a water tank forming part of the water supply to a residential building; or
- a septic tank.

Item 13, Schedule 2, EQC Act
Section 21(1)(a), EQC Act

5. Is there 'natural disaster damage'?

a. Overview

In general terms, for 'natural disaster damage' (as defined in the *EQC Act*), there must be:

- 'physical loss or damage' to the property … ; (Section 5.d)
- … occurring as 'the direct result' of … ; (Section 5.e)
- … the 'natural disaster'. (Section 5.b)

Each of these components is discussed at Sections 5.d, 5.e, and 5.b.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'natural disaster damage'

The definition of 'natural disaster damage' also covers a specific type of physical loss or damage that is a direct result of measures taken to mitigate the consequences of natural disaster. This type of natural disaster damage is discussed separately at Section 5.f.

Section 2(1), EQC Act – Paragraph (b) of the definition of 'natural disaster damage'

b. What is a 'natural disaster'?

For there to be 'natural disaster damage', there must be a natural disaster.

i. What is the EQC Act definition of 'natural disaster'?

The *EQC Act* defines 'natural disaster' as follows:

> **natural disaster** means—
>
> (a) an earthquake, natural landslip, volcanic eruption, hydrothermal activity, or tsunami; or
>
> (b) natural disaster fire; or
>
> (c) in the case only of residential land, a storm or flood
>
> *Section 2(1), EQC Act – Definition of 'natural disaster'*

Residential buildings and residential land have EQCover for earthquakes, natural landslips, volcanic eruptions, hydrothermal activity, tsunamis and natural disaster fire. This is provided there is a relevant contract of fire insurance or direct EQCover in force at the relevant time.

But only residential land has EQCover for storms and floods. This is provided there is a contract of fire insurance or direct EQCover for the residential building on that land, which is in force at the relevant time.

ii. Who determines whether there has been a natural disaster under the EQC Act?

Toka Tū Ake EQC (or a person authorised by us) determines whether there is a 'natural disaster' under the *EQC Act*.

iii. What is a 'natural disaster fire'?

The *EQC Act* defines 'natural disaster fire' as follows:

> **natural disaster fire** means fire occasioned by or through or in consequence of an earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami, or (in the case only of residential land) a storm or flood
>
> *Section 2(1), EQC Act – Definition of 'natural disaster fire'*

In other words, a natural disaster fire is a fire that is occasioned by or through or as a consequence of:

- (in the case of EQCover for residential buildings and residential land), an earthquake, natural landslip, volcanic eruption, hydrothermal activity, tsunami; and
- (in the case of EQCover for residential land), storm or flood.

iv. What is a 'natural landslip'?

The *EQC Act* defines 'natural landslip' as follows:

> **natural landslip** means the movement (whether by way of falling, sliding, or flowing, or by a combination thereof) of ground-forming materials composed of natural rock, soil, artificial fill, or a combination of such materials, which, before movement, formed an integral part of the ground; but does not include the movement of ground due to below-ground subsidence, soil expansion, soil shrinkage, soil compaction, or erosion.
>
> *Section 2(1), EQC Act – Definition of 'natural landslip'*

The central features of a 'natural landslip' are:

- there must be movement (whether falling, sliding, flowing or a combination); and
- the material that has moved must be ground forming. It must:
    - be composed of natural rock, soil, artificial fill or a combination of those materials; and
    - have formed an integral part of the ground before the movement.

A natural landslip does not include the movement of ground due to:

- below-ground subsidence;
- soil expansion, soil shrinkage, or soil compaction; or
- erosion, – which is defined under the *EQC Act* as follows:

> **erosion** means erosion by the normal action of the wind or sea or of a lake, river, or other body of water.
>
> *Section 2(1), EQC Act – Definition of 'erosion'*

A natural landslip may occur where human action is the trigger. The most common example of this is the failure of an excavated slope left unsupported. If the customer is responsible for this event, their claim may be declined or limited under *Schedule 3 of the EQC Act* due to for example, negligence; failure to meet construction standards; or failure to comply with any law or bylaw. For more details, see Section 7.

Clauses 3 and 5, Schedule 3, EQC Act

c. What is 'natural disaster damage'?

i. What is the EQC Act definition of 'natural disaster damage'?

The *EQC Act* defines 'natural disaster damage' as follows:

> **natural disaster damage** means, in relation to property,—
>
> (a) any physical loss or damage to the property occurring as the direct result of a natural disaster; or
>
> (b) any physical loss or damage to the property occurring (whether accidentally or not) as a direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate the consequences of, any natural disaster, but does not include any physical loss or damage to the property for which compensation is payable under any other enactment
>
> *Section 2(1), EQC Act – Definition of 'natural disaster damage'*

ii. Components of paragraph (a) of the definition of 'natural disaster damage'

Paragraph (a) of this definition can be broken down into the following components. There must be:

- 'physical loss or damage' to the property … ; (Section 5.d)
- … occurring as 'the direct result' of … ; (Section 5.e)
- … the 'natural disaster'. (Section 5.b)

Each of these components is discussed at Sections 5.d, 5.e, and 5.b.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'natural disaster damage'

iii. Physical loss or damage that is a direct result of measures taken to mitigate the consequences of natural disaster

Paragraph (b) of the definition of 'natural disaster damage' covers a specific type of physical loss or damage that is a direct result of measures taken to mitigate the consequences of natural disaster. An example is damage caused by Urban Search and Rescue (USAR) teams entering residential buildings by force after an earthquake in order to check on the safety of any person inside the building. The type of loss or damage covered by paragraph (b) is discussed separately - see Section 5.f.

Section 2(1), EQC Act – Paragraph (b) of the definition of 'natural disaster damage'

d. Is there 'physical loss or damage'?

We cover 'physical loss or damage' occurring as the direct result of a natural disaster.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'natural disaster damage'

i. What is the EQC Act definition of 'physical loss or damage'?

The *EQC Act* defines 'physical loss or damage' as follows:

> **physical loss or damage**, in relation to property, includes any physical loss or damage to the property that (in the opinion of the Commission) is imminent as the direct result of a natural disaster which has occurred
>
> *Section 2(1), EQC Act – Definition of 'physical loss or damage'*

This definition means that we cover both:

- physical loss or damage that has actually occurred; and
- in some circumstances, physical loss or damage that we (or an authorised person acting on our behalf) consider will happen in the future. The scope of this future physical loss or damage is confined by the wording of the definition, in particularthe word 'imminent'. The authorised person acting on our behalf can be any of the people set out in Section 1.c.

ii. Loss or damage must be physical

Physical loss – not economic loss
Loss or damage in the context of the *EQC Act* means loss or damage to the physical materials or structure of the insured property.

For example, depriving a person the use of their home because of the threat of rockfall is not 'physical loss ... to the property' under the *EQC Act*. That is an economic loss – not a physical loss.

Material physical change that affects the utility or amenity value of the insured property
The physical loss or damage must be a material physical change that adversely affects the utility or amenity value of the insured property (from a structural, functional or aesthetic perspective). Material physical change includes change that is 'more-than-negligible', i.e. something beyond the minor, inconsequential or immaterial.

There may be physical changes to insured property caused by a natural disaster that are not material or do not adversely affect the utility or amenity value of the property. In that case, the change is not natural disaster damage. For example, cracking to the foundation (which is covered by carpet) of a residential building caused by an earthquake will not be natural disaster damage if it does not affect the structural integrity of the foundations as a whole or the floor's aesthetic value (and therefore does not impair the utility or amenity of the residential building). It will be a question of fact in each case whether:

- there is a material physical change to the insured property; and
- the material physical change adversely affects the utility or amenity value of the insured property.

iii. Physical loss or damage may be imminent physical loss or damage

The definition of 'physical loss or damage' includes any physical loss or damage that, in our opinion, is imminent as the direct result of a natural disaster which has occurred.

The *Act* does not define 'imminent'. However, for practical purposes, we will consider whether further damage is expected to result from that event during the 12 months after it. Loss may be treated as 'imminent' where it is expected to occur within the next 12 months. Engineers or other assessors must provide their best estimate of the further natural disaster damage expected to occur to the insured property as the direct result of the original natural disaster, during the 12-month period following that natural disaster.

This 12-month rule is not hard and fast, but it will apply in most cases.

Physical loss or damage caused by an aftershock following an earthquake is not imminent physical loss or damage under the claim for the original earthquake. We cover aftershocks (more than 48 hours apart) as separate earthquake events, where the relevant requirements of the *EQC Act* are met.

When assessing whether there is imminent physical loss or damage to a residential building, it is important to consider the interrelationship with the residential land cover. A solution to prevent the imminent physical loss or damage to the residential building from occurring may have the effect of removing the imminent physical loss or damage to the residential land, or vice versa. See Section 8.d.ii.

If different people are dealing with different exposures, those people should:

- liaise with each other on whether and how the decision to settle imminent physical loss or damage for one exposure will affect settlement of the other exposure; and
- escalate the matter to the appropriate Toka Tū Ake EQC representative.

e. Is the physical loss or damage as 'the direct result' of the natural disaster?

We cover insured property against 'natural disaster damage', being any physical loss or damage occurring as 'the direct result' of a natural disaster.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'natural disaster damage'

i. Physical loss or damage must be 'the direct result' of the natural disaster

Whether physical loss or damage is 'the direct result' of a natural disaster will be a question of fact to be resolved in the circumstances of the particular case. As a general rule, physical loss or damage to property will be 'the direct result' of a natural disaster where the natural disaster is the direct or proximate cause of the physical loss or damage. This would include where the physical loss or damage does not occur promptly after the natural disaster because it was mitigated but would have been considered 'imminent' if it had not been mitigated.

For details on the meaning of 'imminent' physical loss or damage, see Section 5.d.iii. The authorised person acting on our behalf can be any of the people set out in Section 1.c.

Determining causation is a common-sense exercise rather than one involving any formal or strict legal tests. When considering whether the natural disaster was the direct or proximate cause of the physical loss or damage to the property, you should consider whether, in light of all the evidence viewed as a whole, the natural disaster was more likely than not the cause of the damage. In general, the natural disaster will 'cause' the physical loss or damage to property where the natural disaster:

- leads, in the natural and ordinary course of events, to that kind of loss or damage; and
- without any break in the physical chain of causation.

The following examples illustrate where a natural disaster has 'caused' the damage.

Example 1: Damage to water pumps, taps and hot water cylinder in a residential building after bore damaged by earthquake

The earthquake has caused fine silt to be drawn into the water bore. Water from the bore is then pumped through the water supply system for the residential building. The silt in the water damages the cylinder, water pump and taps. This damage is:

- the consequence of the earthquake, and it would occur in the natural and ordinary course of events; and
- there is no intervening cause that breaks the physical chain of causation.

The damage is therefore the direct result of the earthquake.

Example 2: Residential building with cracks in roof letting water in; section 124 notice means owners cannot access the residential building

The earthquake has caused cracks in the roof of the residential building. The cracks have let water in when it rained. The owners have been unable to access the residential building because a notice under *section 124 of the Building Act 2004* has been issued in respect of the property.

In this case, the water damage from the rain is:

- the consequence of the earthquake. It would occur in the natural and ordinary course of events; and
- there is no intervening cause breaking the physical chain of causation.

The water damage is therefore the direct result of the earthquake.

ii. What if the natural disaster damage has also been caused or exacerbated by somebody's action or inaction?

In some cases, a claim for natural disaster damage can be declined (or only met in part). One such case is where the physical loss or damage – although the direct result of the natural disaster – has also been caused or exacerbated by somebody's action or inaction. These grounds to decline claims are set out in *Schedule 3 of the EQC Act*. For further details of these grounds for declining a claim, see Section 7.

Schedule 3, EQC Act

The question whether any physical loss or damage is 'the direct result' of a natural disaster must be considered before – and separately from – the question whether there are any grounds to decline the claim. If the physical loss or damage is not 'the direct result' of the natural disaster, then there is no natural disaster damage. There is no need then to go on to consider the grounds to decline the claim under Schedule 3.

Set out below are examples of relevant grounds where a claim can be declined because the natural disaster damage has been caused or exacerbated by somebody's action or inaction:

- We made payment for earlier natural disaster damage and that payment was not used to repair the property. The earlier natural disaster damage has caused or exacerbated the current natural disaster damage;

  Clause 3(a), Schedule 3, EQC Act

- the insured person failed to comply with any law or bylaw, and that failure caused or exacerbated the natural disaster damage;

  Clause 3(b), Schedule 3, EQC Act

- an appurtenant structure (see Section 4.e) or services that serve a dwelling or surrounding land (see Section 4.f) were not constructed in accordance with standards considered appropriate for them at the time of construction. Furthermore, the failure to meet those standards caused or exacerbated the natural disaster damage;

  Clause 3(c), Schedule 3, EQC Act

- the insured person's wilful act or negligence caused or contributed to the natural disaster damage; or

  Clause 3(g), Schedule 3, EQC Act

- a previous owner's or previous occupier's wilful act or negligence caused or contributed to the natural disaster damage. The insured person was aware of that other person's wilful act or negligence when the insured person acquired the property.

  Clause 3(g), Schedule 3, EQC Act

For a fuller discussion of these grounds for declining a claim, see Section 7.

iii. What if the physical loss or damage to a residential building is the direct result of a storm or flood after an earthquake or other natural disaster?

EQCover under the *EQC Act* for storms and floods is limited to physical loss or damage to residential land.

Sometimes there are two potential causes of the physical loss or damage to a residential building:

- a storm or flood; and
- another 'natural disaster' under the definition of that term in the *EQC Act* (say, an earthquake or a natural landslip).

In this case it would be necessary to determine whether any physical loss or damage to the residential building was the direct result of the storm or flood OR of the earthquake (or natural landslip). If the physical loss or damage was:

- the direct result of the storm or flood, there will be no EQCover for the physical loss or damage to the residential building;
- the direct result of the earthquake or natural landslip, there will be EQCover available for the physical loss or damage to the residential building as provided by the *EQC Act*.

Sometimes multiple but separately insured natural disaster events cause damage to the building. See Section 6.C.

iv. Consequential loss is excluded from EQCover

We do not cover any consequential loss.

Clause 2, Schedule 3, EQC Act

The *EQC Act* states that 'consequential loss' includes loss by theft, vandalism, loss of profits, or business interruption. This list is not exhaustive.

Sometimes the natural disaster may merely 'set the scene'. The physical loss or damage may in fact be as the direct result of human intervention (for example, a vandal or a thief). Such physical loss or damage is not covered by us.

We do not cover loss of profits and business interruption. An example of this is when a landlord's residential rental property suffers natural disaster damage, resulting in the tenants having to move out for repairs to the dwelling. We do not cover this loss of rent as this is a consequential loss. In this case, the homeowner should be referred to their private insurer to discuss their private insurance policy response.

We acknowledge that the application of consequential loss considerations may be different for various private insurers and the policies they hold. In difficult cases, you should escalate to the appropriate Toka Tū Ake EQC representative.

f. What is physical loss or damage as a direct result of measures taken under proper authority to mitigate the consequences of any natural disaster?

Paragraph (b) of the definition of 'natural disaster damage' in the *EQC Act* is as follows:

> (b) any physical loss or damage to the property occurring (whether accidentally or not) as a direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate the consequences of, any natural disaster, but does not include any physical loss or damage to the property for which compensation is payable under any other enactment
>
> *Section 2(1), EQC Act – Paragraph (b) of the definition of 'natural disaster damage'*

i. Four components of paragraph (b) of 'natural disaster damage' definition

Paragraph (b) of the 'natural disaster damage' definition in the *EQC Act* can be broken down into four key components. For there to be 'natural disaster damage' under paragraph (b) of the definition:

1. there must be physical loss or damage to the property;

2. the physical loss or damage must occur (whether accidentally or not) as a direct result of measures taken under proper authority;

3. those measures must be to avoid the spreading of, or otherwise to mitigate the consequences of, any natural disaster;

4. there must not be compensation payable under any other enactment for the physical loss or damage.

For paragraph (b) of the definition to apply, all components must be met. Each component is discussed below.

1. <u>There must be physical loss or damage to the property</u>

The definition of 'physical loss or damage' is set out and discussed at Section 5.d.

2. The physical loss or damage must occur (whether accidentally or not) as a direct result of measures taken under proper authority

The physical loss or damage to the property will be 'a direct result' of a measure taken under proper authority where:

- the measure has caused the physical loss or damage; and
- the physical loss or damage has occurred or is 'imminent'. For details on the meaning of 'imminent' physical loss or damage, see Section 5.d.iii.

In this context 'proper authority' could be authority derived from any enactment. An enactment is an Act or regulations.

An example is Urban Search and Rescue (USAR) teams (which come under the umbrella of Fire and Emergency New Zealand). They cause physical loss or damage by the measures they take to break down doors and enter residential buildings to check for the safety of the occupants of those buildings after an earthquake. They derive their authority from legislation governing Fire and Emergency New Zealand.

3. Those measures must be to avoid the spreading of, or otherwise to mitigate the consequences of, any natural disaster

The words 'to avoid the spreading of' contemplate measures for avoiding the spread of the natural disaster.

However, the words 'or otherwise to mitigate the consequences of any natural disaster' are wider. They include, for example, measures taken to preserve life or otherwise assist people possibly hurt as a result of the natural disaster.

4. There must be no compensation payable under any other enactment for the physical loss or damage

For example, take the USAR team scenario. If the Civil Defence Emergency Management legislation provides for compensation for the physical loss or damage caused by the USAR team, then there would be no EQCover for that loss or damage.

In each case it will be a matter of:

- identifying the particular physical loss or damage caused as a direct result of the measure; and
- ascertaining whether there is any alternative compensation available under any enactment for that loss or damage.

ii. Who determines whether paragraph (b) of the definition of 'natural disaster damage' applies?

We will determine whether paragraph (b) of the definition of 'natural disaster damage' applies.

Sometimes the authority (for measures for mitigating the consequences of natural disaster) will be granted by emergency legislation. We will determine whether paragraph (b) applies, taking into account, in each case, the specific facts and legal position at the relevant time.

6. How is the natural disaster damage assessed?

This Section 6 is divided into four parts:

- Section 6.A, which addresses the assessment of natural disaster damage to residential buildings;
- Section 6.B, which deals with the process and output for the assessment; and
- Section 6.C, which sets out principles for assessment of natural disaster damage where there are multiple events.

A. Residential buildings

a. Overview

The main purpose of the assessment of the customer's claim for damage to the residential building is to find:

- whether the residential building has suffered natural disaster damage as claimed by the customer; and
- the extent of that damage (if any).

The amount of insurance cover available to the customer is then assessed by determining the extent of the natural disaster damage and the cost of the repair and/or replacement. (Section 6.A.b)

The 'residential building' being assessed includes appurtenant structures and certain services. (See Sections 4 and 6.A.g.i)

The amount of the insurance cover available for the natural disaster damage is measured on the basis of 'replacement value'. (Section 6.A.c)

The damage includes any damage that is imminent as the direct result of the natural disaster that has occurred. In this Section 6 of the Manual, a reference to 'damage' includes any such imminent damage.

The assessment will typically involve:

- engaging sufficiently qualified people; (Section 6.A.d)
- visiting the residential building; (Sections 6.A.e and 6.A.f)
- assessing any natural disaster damage to the residential building; (Section 6.A.g) and
- costing of the repair and/or replacement on the basis of the 'replacement value' standard in the *EQC Act*. (Section 6.A.g)

The assessment process will involve taking into account relevant considerations, disregarding irrelevant considerations and weighing the available evidence. (Section 6.B.a)

The output of the assessment is full documentation recording the reasoning underpinning, and the results of, the assessment. (Section 6.B.b)

Where there are multiple events, the principles for assessment of claims for natural disaster damage under Section 6.C will also apply.

Details of these matters are set out below in this Section 6.

This Section does not address the specific circumstances where a repair has already been carried out in relation to the current claim and the residential building needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in such assessments.

b. What is the purpose of the claims assessment process?

The main purpose of the residential building assessment is to find:

- whether the residential building has suffered natural disaster damage as claimed by the customer; and
- if so, the extent of the natural disaster damage and the customer's insurance entitlements.

i. Has the residential building incurred natural disaster damage?

The residential building will have incurred natural disaster damage where there is:

- 'physical loss or damage' to the residential building … ; (Section 5.d)
- … occurring as 'the direct result' of … ; (Section 5.e)
- … a 'natural disaster'. (Section 5.b)

Details on these components are set out at Sections 5.d, 5.e, and 5.b.

Section 2(1), EQC Act – Paragraph (a) of the definition of 'natural disaster damage'

ii. What is the amount of the natural disaster damage covered?

The cover available in respect of the natural disaster damage suffered is measured on the basis of 'replacement value'. Details are set out at Section 6.A.c.

c. What is 'replacement value'?

i. What is the definition of 'replacement value'?

We insure a residential building against natural disaster damage for its 'replacement value'.

The amount of the EQCover for a residential building is also subject to a maximum amount of insurance (sometimes referred to as the 'cap') (see Section 8.e). But before it can be determined whether or not the cap is reached, it is necessary to assess the amount of the natural disaster damage on the basis of the 'replacement value'.

Section 18, EQC Act

'Replacement value', in relation to a residential building, is defined in the *EQC Act* as follows:

replacement value in relation to a residential building means, 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; and
>
> (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; and
>
> (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

The 'replacement value' definition can be broken down into four components. 'Replacement value' means costs that are reasonably incurred in doing all of the following:

- demolishing and removing debris. But this is only to the extent that the demolition and removal is essential to enable the residential building to be replaced or reinstated;
- replacing or reinstating the residential building to substantially the same as (but not better or more extensive than) its condition 'when new'. The 'when new' condition is modified as necessary to comply with any applicable laws;
- complying with any applicable laws relating to replacing and reinstating the residential building; and
- paying other fees or costs in the course of replacing or reinstating the residential building.

Also relevant is clause 9 of Schedule 3 to the *EQC Act*:

> **9 Replacement of property**
>
> (1) The Commission may at its option replace or reinstate any property that suffers natural disaster damage, or any part thereof, instead of paying the amount of the damage, but—
>
> (a) the Commission shall not be bound to replace or reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner…

What does 'when new' mean?

Our obligation is to replace or reinstate a residential building to a condition 'substantially the same as but not better or more extensive than its condition when new'. Where we opt to do so by carrying out the relevant replacement or reinstatement work, rather than cash settling, our obligation is to meet the 'when new' repair standard 'only as circumstances permit and in a reasonably sufficient manner'.

We are required to replace or reinstate a customer's house to a condition as similar as possible to when it was new. If a component only has a functional purpose, our obligation is met by restoring that functional purpose to its 'when new' condition. Where a component also has an aesthetic purpose, the remediation strategy must also (as far as possible) restore the original aesthetic quality of the component. The restoration is not required to be to the same level as modern standards but rather to the same level as the original standard.

Common issues that might arise relating to the 'when new' repair standard include where a residential building was built with materials that are no longer available, the damaged parts of the building are to be repaired with comparable new materials so that those parts are returned to a condition that is substantially the same as, but not better or more extensive than, when the building was built.

Another issue is how the 'when new' standard applies where there have been changes to the building laws since the residential building was built. In this case the EQCover will meet the costs of complying with any laws applicable to the repair or replacement of the earthquake damaged parts of the building.

If a chimney of an older type residential building were damaged by an earthquake, and the *Building Code* required that the replacement chimney have a different specification than the one used when the building was built, the EQCover would meet the cost of the improvement.

ii. Situation where reinstatement or replacement requires doing work on undamaged property elements

Because the 'replacement value' includes the costs 'reasonably incurred' in replacing or reinstating the building, it is sometimes necessary to do work on an undamaged part of the residential building to meet the 'replacement value' standard. An example of this is the removal of undamaged floorboards in order to repair foundations. This also applies when there is a pre-existing condition.

In these situations, EQCover includes the cost of:

- the work on the undamaged part of the residential building that is necessary to carry out the repair;
- reinstating the undamaged part if it was damaged in the course of the work being done on it; and
- modifying the undamaged part, if any laws or legal requirements, e.g. the performance standards in the Building Code, require the undamaged part to be modified as a result of the work being done on it.

Whether work on an undamaged part of the residential building is necessary in order to replace or reinstate the damage will depend on the particular circumstances of each damaged residential building.

Example

The following is an example of how the 'replacement value' standard may apply in practice.

Following an earthquake, a brick chimney falls through the corrugated iron roof of a 1900s- era villa.

The falling chimney smashes through the ceiling, shattering a ceramic light fitting, whose wiring was not compliant but was functional before the earthquake.

For a repair of the roof, the corrugated iron in the area where the chimney fell would be replaced with new corrugated iron. If corrugated iron of the same type as the damaged iron is not available because it is no longer manufactured, the new corrugated iron would be a modern compatible product, which matches as closely as possible the profile of the damaged corrugated iron.

It will also be necessary to repair or replace non-damaged parts of the roof that need to be removed in order to repair the earthquake damage, such as the iron ridging on the roof apex.

The repair work to the roof would be carried out to ensure that the work meets applicable laws such as the performance standards in the *Building Code*.

The light fitting would be replaced. If the existing wiring could not be safely reconnected to the light fitting, then an Electrical Safety Inspection would be required. The wiring would need replacing to a point where the electrician determines it can safely be reconnected, and to meet any legal requirements for that work.

Residential buildings with structural/design issues

Before finalising the assessment of a residential building which has structural/design issues (for example, weathertightness issues arising from the specific design or construction of the building), the assessment should be escalated to the appropriate Toka Tū Ake EQC representative.

iii. How does 'replacement value' apply with respect to floor levels?

If the natural disaster damage includes floor dislevelment, whether relevelling is required is determined under the *EQC Act*. Any relevelling will be on the basis of the 'replacement value' standard. See Section 6.A.c.i.

The 'replacement value' standard does not mean that we must necessarily replace or reinstate a residential building exactly the same as it was when it was new. This is a particular issue where a residential building has floors that were not level before an earthquake and the residential building has previously been altered to accommodate the floors not being level.

If the floors were to be completely re-levelled it could damage the other parts of the residential building that had previously been altered. In those circumstances a repair of the foundation system that does not result in the floors being completely level may be sufficient to meet the requirements of the *EQC Act*. What is required will depend on the circumstances of each residential building. Any repair strategy must also comply with all applicable laws, such as the Building Act 2004.

Effect of MBIE Guidance document

Under the *Building Act 2004*, the Ministry of Business Innovation & Employment (MBIE) issued a Guidance document entitled *Repairing and rebuilding houses affected by the Canterbury earthquakes (Guidance document)*. The Guidance document contains suggested indicator criteria for the levelness of floors.

The Guidance document relates to the Canterbury earthquake sequence only. The Guidance document does not apply to subsequent natural disasters.

Table 2.2 of Part A of the Guidance document includes the following floor level criteria:

> Vertical differential settlement <50 mm and floor slope less than one in 200 between any two points >2m apart.

The Guidance document states that these criteria may be used to indicate that no relevelling of the floor or foundation is considered necessary.

If a residential building has suffered earthquake damage that includes the floor being out of level:

- the fact that the floor level is within the MBIE Guidance criteria is not a sufficient reason for us **not** to cover the relevelling of the floor; and
- if we cover the relevelling of the floor, the relevelling required is determined by the *EQC Act* (on the basis of the 'replacement value' standard), not by the MBIE Guidance criteria. Details of the 'replacement value' standard are set out in this Section 6.A.c.

iv. How does the 'replacement value' standard apply where there is a cash settlement?

If the claim is cash settled, the payment must be the 'replacement value' of the property as defined in section 2(1) of the *EQC Act* (and otherwise in accordance with the provisions of the *EQC Act*, including the cap on the amount of the insurance). This 'replacement value' standard of repair is the same whether the EQCover claim is cash settled or if the residential building is repaired.

d. What are the standards required in carrying out assessments?

All people engaged in claims assessments must:

- be sufficiently experienced, qualified and skilled for the purpose, in each case meeting the expectations in the *Toka Tū Ake EQC Insurers Manual*;
- meet any applicable legal obligations (such as complying with health and safety obligations);
- conduct themselves in a professional manner at all times; and
- be appropriately trained.

e. When must the assessor visit a residential building for an assessment?

The assessment will involve a visit to the residential building where the person dealing with the claim considers that a visit is necessary to assess the natural disaster damage to the property.

Whether a visit is necessary is a matter of judgement. In most instances a visit will be necessary.

However, there may be some instances where a visit is not necessary. For example, it may not be necessary to visit where other information (obtained without visiting the site) clearly indicates that there is no damage to the residential building.

i. What about where the property is situated in an area in New Zealand where damage to property from the natural disaster would not be expected?

In some cases the property that is the subject of the EQCover claim is in an area in New Zealand where damage to property from the natural disaster would not be expected.

In these cases, the person dealing with the claim may come to the view that property at that location is highly unlikely to be damaged as the direct result of the natural disaster and that therefore a visit to the property is not warranted.

Where the residential building is not visited for the above reason, the person dealing with the claim must request that the customer provide supporting information that shows the extent of the damage claimed. For more details, see Section 3.c.ii.

This supporting information:

- should include a detailed written description with clear photos of the damaged property; and
- may include other information, such as engineering or other specialist reports.

The person dealing with the claim must have regard to any such supporting information provided by the customer in assessing the residential building claim.

To assist with considering these issues, we may, for a particular natural disaster, commission technical information and advice from specialist advisers (e.g. engineers). This information and advice will help establish the regions across New Zealand where damage to property as the direct result of that natural disaster would not be expected.

ii. What about taking a 'digital' or 'desktop' approach to the assessment of residential buildings?

Any proposal to take a general approach to the assessment of any EQCover residential building claims (that does not involve site visits) must first be escalated to the appropriate Toka Tū Ake EQC representative. Prior Toka Tū Ake EQC approval to any such approach would be required.

f. What are the requirements for visiting a residential building for an assessment?

i. Arranging access to residential building

Before the visit, we must obtain the customer's consent to access the property to carry out the assessment. The customer should be given at least 24 hours' notice of the visit (unless some other arrangement is agreed).

The visit should be arranged so that the customer (or their representative) is at the residential building at the time of the visit.

If, after reasonable steps have been taken to obtain the customer's consent, the customer will still not allow access to the residential building for the assessment, then the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

ii. Health and safety

All health and safety requirements must be met in connection with the visit to the residential building for the purposes of the assessment.

For more details see Section 11.a.

iii. Dangerous and insanitary buildings

If at any time in connection with the assessment, it is found that the property is dangerous, insanitary and/or contaminated, the policies set out in Section 11.b must be followed.

iv. Proper identification

People engaged in the assessment who visit the residential building must carry proper identification. The identification must enable the Toka Tū Ake EQC customer and/or occupants of the property to clearly identify the person attending, their role and the organisation they are working for.

g. Other requirements for an assessment of the natural disaster damage to the residential building

i. What must be assessed?

The assessment is an appraisal of the natural disaster damage to the residential building claimed by the customer. It is recognised however that the assessment of natural disaster damage will involve assessing parts of the residential building that may or may not have natural disaster damage.

The assessment will involve a visit to the residential building, where a visit is necessary to assess the natural disaster damage to the residential building.

The 'residential building' comprises:

- the 'dwelling'; (Section 4.c)
- the building (or part) that is a 'residential building'. This building (or part):
    - may *be* the dwelling itself, or more than one dwelling; or
    - may *include* the dwelling or more than one dwelling; (Section 4.d)
- the buildings and structures that are appurtenant to the dwelling; (Section 4.e)
- the services (e.g. water supply, drainage and sewerage) that serve the dwelling or surrounding land and the structures appurtenant to those services. (Section 4.f)

For details on what is meant by the term 'residential building', see Sections 4.b to 4.h.

ii. What appraisals are required?

The appraisals must be sufficient to ascertain:

- whether the residential building has suffered natural disaster damage; and
- if so, the extent of that natural disaster damage.

The cover available to the customer will depend on the extent of the natural disaster damage and the costing of the repair and/or replacement on the basis of 'replacement value'. (See Section 6.A.c)

iii. What about material supplied by Toka Tū Ake EQC customers?

In carrying out the assessment, the person dealing with the claim must have regard to any material that is provided by the Toka Tū Ake EQC customer:

- under *clause 7(1)(b), Schedule 3, EQC Act*; (see Section 3.c.ii) and
- otherwise in relation to the claim.

iv. Engaging engineers and other professionals

Sometimes the person dealing with the claim will need to engage an engineer and other professionals (e.g. surveyors) to complete the assessment. This engagement must in all cases be made on our behalf.

These engineers and other professionals must:

- be engaged on arm's-length commercial terms;
- be appropriately qualified and experienced;
- be independent of the Toka Tū Ake EQC customer; and
- not be subject to any conflict of interest that would, in the circumstances, reasonably be considered to prevent the engineer (or other professional) from providing services to us in relation to the Toka Tū Ake EQC customer's claim or claims generally.

Reports from engineers and other professionals must be addressed to, and for the use of, Toka Tū Ake EQC. They must be able to be relied on by us. The reports will be available to customers. In some cases, they will also be for the use of the private insurer.

v. Other matters

We may from time to time issue specific guidance on matters related to assessments.

B. Assessment process and output

a. What is the process for the assessment?

i. Carrying out the assessment

The assessment should weigh the available evidence in reaching a conclusion on the balance of probabilities. The assessment must be undertaken:

- in good faith;
- not mechanically (that is, not in a simply process-driven way); and
- in a manner that does not exclude consideration of factors that are relevant to any particular case.

ii. Information to be taken into account

Assessors should ensure that they collect sufficient information in their assessment of the property, including (where relevant) information from the Toka Tū Ake EQC customer, to enable them to determine the damage caused by each event to the property.

The same set of information for every claim or occurrence of natural disaster damage may not be available. Therefore, the assessment process requires identification of the most reliable information available for the relevant property.

Assessments should be made having regard to the best available information.

Where previous claims have been made to us for the same property, assessors must review the material on those claims files when assessing the current claim. For example, review of the previous claims material may disclose that we previously paid to repair natural disaster damage and our payment has not been used to repair that damage. In this situation, there may be grounds to decline the claim if the earlier natural disaster damage caused or exacerbated the current natural disaster damage. See Section 7.h.i.

iii. Irrelevant considerations

When assessing the amount of damage caused by an event to the property, the following matters should not be taken into account:

- anticipated settlement outcomes (excess and cap implications);
- when applying the principles under Section 6.C, whether the insured person is covered by private insurance and any conditions or excesses imposed by that insurance. For example, the insured's private insurance may be conditional on there being an EQCover pay-out for each event; or
- any other irrelevant factors. For example, in managing the claim, the assessor may have empathy for personal or family factors that the customer identifies. But those factors should not be taken into account in assessing the amount of the damage.

iv. Process

All information required to complete the assessment must be collected and made available to us upon request.

All decisions are subject to audit processes.

b. What is the output of the assessment?

For each assessment, the person dealing with the claim must complete and have available full documentation and evidence recording the reasoning underpinning, and the results of, the assessment.

Where we issue a template form to be used for the recording of this material, that template must be used. However, whether or not a template form is issued, the records must be:

- comprehensive;
- robust; and
- suitable for use, should any settlement decision (that is based on the assessment) later be challenged.

C. Principles for assessment where there are multiple events

The guidance below sets out the legal principles that apply to the settlement of residential building damage claims under the *EQC Act* where multiple but separately insured natural disaster events have caused damage to the building.

a. How should the amount of the natural disaster damage be assessed where there are multiple events?

An assessment must be made of the extent of natural disaster damage that is the direct result of each event there is a claim for. The guidance below sets out:

- the principles used to assess the extent of damage for each event; and
- the information that should be taken into account in making that assessment.

For the definition of the term 'natural disaster damage', see Section 5.c.

i. What is an 'event'?

The *EQC Act* does not use the term 'event', but this description is a useful way to describe individual natural disasters insured under the *EQC Act*.

All damage occurring within a consecutive 48-hour period which is a direct result of natural disaster is to be treated as an 'event'. A single cap and excess is applied to each event.

This is the case even if different types of disaster (e.g. earthquake and natural landslip) cause damage in the 48-hour period. However, where the 'event' has different types of natural disasters during the 48-hour period, the claim and the settlement of it must be escalated to the appropriate Toka Tū Ake EQC representative.

If the time between natural disasters is longer than 48 consecutive hours, the *EQC Act* requires us to treat the events separately.

A different period (7 days) will apply for natural disaster fire. (See Section 3.f.iv)

Assessing damage within an event

Within an event, we can assess different types of damage, including types of damage caused by different natural disasters separately. However, for settlement purposes, we must ensure that the Toka Tū Ake EQC customer has not been over-indemnified by assessing different types of damage separately (e.g., because the repair of one type of damage will also repair another type of damage).

Event can only be settled where the basic requirements for the claim have been met

An event can only be settled where the basic requirements for the claim have been met. For details on these basic requirements, see Section 3.

If there has been damage caused by an event for which no claim has been made (an unclaimed event), the unclaimed event damage will be deducted and the amount of damage attributable to subsequent events will need to be assessed taking this into account.

For each event for which there is a claim, it is necessary to consider:

- what physical loss or damage was the direct result of that event; and
- what physical loss or damage is imminent as the direct result of the event. (See Section 5.e)

ii. What are the principles that should be applied in the assessment?

To assess the extent of the damage caused by an event to a residential building in a context where the building has been damaged by multiple events without intervening repairs, the following principles should be applied (using here the example of earthquakes, and assuming the other requirements of the *EQC Act* have been met for each event):

- the task is to assess, in respect of the first earthquake event (EQ1), the damage that occurred as a direct result of EQ1 and the cost of repairing that damage to the required standard under the *EQC Act*. For a discussion of the required standards, see Section 6.A.c;
- in respect of the next earthquake event (EQ2), the task is to assess what additional damage (if any) occurred as a direct result of EQ2 – beyond the damage that had already occurred – and the additional marginal cost (if any) of reinstating the damage that occurred as a direct result of EQ2;
- however, if a component of the building needs to be replaced after an earthquake, it cannot in any meaningful sense be further damaged or have further cost incurred – it already needs replacement. No further amount is payable under the *EQC Act* in respect of that component;
- by extension, if the building as a whole needs to be replaced after an earthquake, it cannot be further damaged or have further repair cost incurred;
- the allocation of damage should not be directly translated to a share of the total cost of repairing the combined damage caused by all of the earthquakes. This is because costs do not necessarily increase in relation to extent of damage in a linear or uniform fashion. Rather, reference should be had to the circumstances of each damaged component or property;
- the total cost of all of the insured damage cannot exceed the cost of replacement of the building.

Example of application of principles

The following example shows how the principles apply:

- a building is damaged in two earthquakes – EQ1 and EQ2;
- EQ1 and EQ2 have occurred more than 48 hours apart;
- the cost to repair the damage that is the direct result of EQ1 to the standard required under the *EQC Act* is $20,000;
- the cost to repair the damage that is the direct result of EQ1 and EQ2 is $80,000;
- the amount of damage (subject to the applicable cap, the excess and any grounds to decline the claim) for:
    - EQ1 is $20,000;
    - EQ2 is $60,000 (i.e. $80,000 less $20,000).

7. What are the grounds for declining an EQCover claim under Schedule 3, EQC Act?

a. Overview

This section discusses the decision to decline an EQCover claim on one or more of the grounds under *Schedule 3 of the EQC Act*.

There are other reasons why a claim may not proceed to settlement. Specifically:

- a claim may not meet the prerequisites for settlement; (see Section 7.b) or
- the EQCover may have been cancelled. (see Section 7.c)

Even if all the prerequisites for settlement are met and the EQCover has not been cancelled, the claim may still be declined if one of the grounds to decline a claim under *Schedule 3 of the EQC Act* is met.

This section outlines:

- who may make a decision to decline an EQCover claim under Schedule 3 of the *EQC Act*; (see Section 7.e)
- the nature of such a decision to decline; (see Section 7.f)
- the process for such a decision to decline; (see Section 7.g)
- the grounds to decline an EQCover claim (in whole or part) under Schedule 3. (see Sections 7.h, 7.i, 7.j and 7.k)

b. Prerequisites before making settlement decision

An EQCover claim should only be considered for settlement (i.e. a payment or reinstatement, replacement or relocation of property) after the prerequisites are met.

Specifically, the prerequisites are:

- there must be an EQCover claim that meets the basic requirements; (see Section 3)
- for an insured residential building (see Section 4)
- that has suffered natural disaster damage (see Section 5).

Furthermore, there must be an assessment (see Section 6) to help determine the extent of the natural disaster damage and the amount of the settlement.

Details on each of these aspects are set out in Sections 3 to 6.

The claim would normally proceed to the next step (see Section 7.d) after these requirements are met. However, early in the claims management process, the person dealing with the claim should consider the grounds to decline under Schedule 3. To the extent it is plain from information available that any of these grounds to decline may apply, this may make other aspects of the claims management process unnecessary (e.g. full assessment of the damage under Section 6). (See also Section 3.i of the Manual)

c. Has the EQCover been cancelled?

We may cancel EQCover for property (residential building and/or residential land). (See Section 3.h.i)

There will be no settlement of an EQCover claim if the EQCover for the property was cancelled at the time of the damage-causing natural disaster.

For residential building claims, the Record of Title to the property should be checked before any settlement to ensure that the EQCover was not cancelled at the time of the damage-causing natural disaster. For the purposes of this check, the copy of the Record of Title sourced from Land Information New Zealand (LINZ) must be no older than three months from the date that LINZ sent it out.

The entry on the Record of Title indicating a cancellation would typically read as follows:

> Certificate under Section 28(1) Earthquake Commission Act 1993
> *Clause 4, Schedule 3, EQC Act*
> *Section 28, EQC Act*

d. Is there any reason for the claim (or any part of it) to be declined?

If:

- the prerequisites for settlement are met; and
- the EQCover was not cancelled at the time of the damage-causing natural disaster;

the next question is whether there are any grounds to decline the claim.

i. Grounds to decline a claim under Schedule 3, EQC Act

An EQCover claim may be declined (or only met in part) on grounds set out in Schedule 3 of the *EQC Act*. Specifically:

- a claim may be declined (or met only in part) in the circumstances set out in *clause 3, Schedule 3 of the EQC Act*; (Section 7.h)
- a claim may be declined after a notice is given by us under *clause 5(2), Schedule 3 of the EQC Act* (which sets out grounds to limit EQCover). The notice will state that any claim for loss or damage after the date of the notice may be declined; (Section 7.i)
- a claim may be declined under *clause 7(2B), Schedule 3, of the EQC Act* where notice of the claim was given more than three months after the damage occurred and the lapse of time before the notice was given materially prejudices our ability to assess the claim; (Section 7.j)
- a claim may be declined where the insured person does not comply with our requirements, or hinders or obstructs us exercising our powers under, *clause 8, Schedule 3* (which sets out our rights to salvage). (Section 7.k).

These grounds to decline a claim under Schedule 3 are discussed in more detail in Sections 7.h to 7.k below.

Further:

- Section 7.e sets out who may decline claims;
- Sections 7.f and 7.g outline the decision-making process; and
- Section 7.l discusses the obligation on an insured person to mitigate natural disaster damage. This section addresses the issue whether a failure to comply with that obligation to mitigate is a ground to decline an EQCover claim.

ii. Schedule 3, EQC Act grounds to decline are the only grounds relevant when determining whether to decline part or all of the EQCover claim

The grounds to decline an EQCover claim are those set out in *Schedule 3, EQC Act*.

Any separate grounds to decline a claim (i.e. other than those in *Schedule 3*) that may be set out in the contract of fire insurance do not apply to the EQCover claim.

e. Who may make a decision to decline an EQCover claim under Schedule 3, EQC Act?

i. Appropriate delegated authority before declining a claim

A decision to decline an EQCover claim on the grounds set out in Schedule 3 of the *EQC Act* will be unlawful unless that decision is made by:

- Toka Tū Ake EQC; or
- another person to whom that decision-making power has been properly delegated by us. For example, the person could be a private insurer or a third-party provider authorised to deal with a residential building claim on our behalf.

Where a claim is being dealt with by someone other than Toka Tū Ake EQC staff or contractors, we will let that person know specifically:

- whether or not they have been delegated powers to decline claims under Schedule 3;
- which powers to decline under *Schedule 3* have been delegated; and
- any prerequisites to the exercise of these delegated powers.

Where the person dealing with an exposure does not have the specific delegated authority to decline an EQCover claim under *Schedule 3*, then they must:

- gather all relevant information in accordance with Section 7 of this Manual in relation to the exposure; and
- escalate the matter of whether to decline the claim (in whole or in part) to the appropriate Toka Tū Ake EQC representative.

ii. Decision-makers dealing with different exposures may need to liaise

Even if someone other than Toka Tū Ake EQC staff or contractors does have the power to decline an EQCover claim, they may need to liaise with us regarding the decision to decline the claim.

For example, grounds to decline EQCover claims can apply across all property (residential land and residential buildings). These cases are discussed at Section 7.f.i. If different people are dealing with different exposures, those people must:

- liaise with each other on whether and how the decision will apply in respect of all exposures; and
- escalate the matter to the appropriate Toka Tū Ake EQC representative.

If the person dealing with the claim does not have the specific delegated authority to make a decision to decline the EQCover claim under *Schedule 3*, then:

- they should nevertheless consider whether the grounds under *Schedule 3* may apply; and
- if they consider that one or more of the grounds may apply, they must escalate the matter to the appropriate Toka Tū Ake EQC representative.

f. What is the nature of a decision under Schedule 3, EQC Act whether or not to decline a claim?

i. Power to decline an EQCover claim is discretionary

The power under Schedule 3 to decline or meet part only of an EQCover claim is a discretionary power. However, it is still subject to legal challenge, including by way of judicial review.

Where there are grounds to decline the EQCover claim, this does not necessarily mean the claim should automatically be declined (in full or in part). There are additional relevant considerations, set out below, to consider when deciding whether or not to accept the claim in full or in part.

The decision-maker must:

- consider the issues with an open mind;
- consider all viewpoints and relevant evidence; and
- approach each decision on a case-by-case basis and on its own facts.

Clause 3 of Schedule 3 gives the power to decline the claim entirely and in part. In each case, it is necessary to consider:

- whether or not the claim should be declined entirely; and
- whether or not only part of the claim should be declined.

As grounds to decline EQCover claims can apply across all property (residential land and residential building exposures), it will be necessary in these cases to consider whether and how the overall decision will apply in respect of each of those exposures.

ii. Relevant considerations

In making the decision on whether to decline a claim in whole or in part, all relevant considerations must be taken into account and irrelevant considerations disregarded.

Any decision on whether to decline an EQCover claim must be based on material that:

- is relevant to the decision at hand;
- is cogent;
- is credible; and
- logically proves the facts relied on.

Advice from an appropriately qualified professional (e.g. an engineer) will typically be necessary where, for example, there may have been failures to comply with building laws or appropriate standards.

g. What is the process for a decision under Schedule 3, EQC Act whether or not to decline a claim?

Before making any decision to decline an EQCover claim it is necessary to conduct a fair process.

i. Fair hearing

The customer must be given a fair hearing. Specifically, the customer must be notified:

- that consideration is being given to declining the claim;
- of the reasons why consideration is being given to decline the claim; and
- of the factual material underpinning that consideration.

Furthermore:

- the customer must be given a reasonable time (10 working days minimum) to respond to the notice and comment on the proposed reasons and material for declining the claim. What is a reasonable time will depend on factors such as the complexity of the material; and
- genuine and fair consideration must be given to the customer's comments.

The decision-maker must be:

- free of bias; and
- have no conflict of interest, including with respect to the customer.

ii. Information for the purpose of making a decision whether or not to decline under Schedule 3

For some of the grounds under *Schedule 3* for declining claims, information about previous EQCover claims at the property may be used to help make a decision whether or not to decline the current EQCover claim.

An example is *clause 3(a) of Schedule 3*, which contemplates referring to information from a previous EQCover claim in order to decide whether to decline the subsequent claim. (See Section 7.h.i)

For more details on obligations regarding shared information, see Section 11.f.

iii. Reasonableness

All steps in the decision-making process (and the ultimate decision on whether to decline the claim) must be reasonable.

The decision must be justifiable. The customer must be informed of the reasons for any decision to decline the claim.

iv. Notification of any decision to decline under Schedule 3

We must notify the customer in writing of the decision to decline a claim under *Schedule 3* (with reasons). Such notice must include a description of the customer's right to refer the decision to decline to the Ombudsman.

An example is set out below of the form of words that can be used to describe the customer's right to refer the decision to decline to the Ombudsman:

> If you are not satisfied with the outcome of [the settlement of your EQCover claim for your property] you have the right to ask the Ombudsman to investigate and review the settlement decision. The Ombudsman can be contacted at PO Box 10152, Wellington 6143, or on Freephone 0800 802 602, or at www.ombudsman.parliament.nz.

After the customer has been notified, the person dealing with the claim must compile and have available for Toka Tū Ake EQC full records of:

- the investigation;
- the decision to decline (with reasons); and
- all communications with the customer.

The records must be:

- comprehensive and robust for audit and reporting purposes;
- suitable for use, should the decision to decline under Schedule 3 later be challenged; and
- in the case of a decision to decline because the claim is in any respect fraudulent, suitable for use to support any prosecution undertaken by Toka Tū Ake EQC or the Police.

h. What are the grounds to decline claims (in whole or part) under clause 3 of Schedule 3?

Clause 3 of Schedule 3 sets out circumstances where we may decline (or meet part only of) a claim made under any insurance of any property under the *EQC Act*.

Because *clause 3 of Schedule 3* contemplates the claim being declined in whole or in part where one of the grounds applies, in each case, you must consider both:

- whether the claim should be declined entirely; and
- whether the claim should be declined only in part.

For example, it may be appropriate, having considered all the circumstances of the claim, to decline all (or part of) one of the exposures only. This could mean for example, that all (or part of) the residential land exposure is declined, but the residential building exposure is not declined.

In cases where the claim has a residential land exposure, the person dealing with the residential building exposure must:

- liaise with the person dealing with the residential land exposure as to whether and how the decision will apply in respect of the residential land and/or residential building; and
- escalate the matter to the appropriate Toka Tū Ake EQC representative.

The seven grounds of declining claims under *clause 3* are discussed in more detail below.

i. Paragraph (a) of clause 3, Schedule 3

Paragraph (a) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) the natural disaster damage to which the claim relates was caused or exacerbated by earlier natural disaster damage for which the Commission made payment and that payment was not used to repair the property;
>
> *Clause 3(a), Schedule 3, EQC Act*

This ground to decline applies where natural disaster damage that is the subject of the current claim is caused or made worse by previous natural disaster damage:

- which we paid for under an earlier claim; and
- where the money paid by Toka Tū Ake EQC has not been used to repair the property.

It will be necessary to identify the extra natural disaster damage that has been caused by the failure to use the money to do the repair. To make this calculation, where possible, it is useful to consider how much natural disaster damage occurred with how much damage would have occurred if the money paid by Toka Tū Ake EQC had been used to repair the earlier natural disaster damage to the property.

ii. Paragraph (b) of clause 3, Schedule 3

Paragraph (b) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) the insured person has failed to comply with any law or bylaw, or any requirement pursuant to any law or bylaw, and that failure has caused or exacerbated the natural disaster damage;
>
> *Clause 3(b), Schedule 3, EQC Act*

This ground to decline applies where:

- the insured person has failed to comply with any law or bylaw; and
- that failure has caused the natural disaster damage or made it worse.

<u>Insured person must have failed to comply</u>
In general, the 'insured person' will be the person or people named in the contract of fire insurance or direct EQCover as the insured. They will be the person(s) entitled to the benefit of the contract of fire insurance. For more details on who is the 'insured person', see Section 3bi of this Manual.

Where the insured person owned the insured residential building at the time that it was built (or, if relevant, at the time that it was altered), the insured person will have had obligations under the building and resource management legislation. Accordingly, clause 3(b) may potentially be a ground to decline in this situation if the insured failed to comply with their legal obligations.

But where somebody else owned the insured building when it was being built (or altered) and the insured person bought it afterwards (and has not since carried out an alteration to it), clause 3(b) of Schedule 3 will generally not apply in dealing with cases of e.g. deficient design, construction and siting of the building.

Failure to comply with laws or bylaws

If the insured person owned the insured residential building at the time that it was built (or altered), then in considering whether to decline a claim under clause 3(b) it will often be necessary to identify whether, and if so how, the insured person failed to comply with the Building Act 2004, Resource Management Act 1991 or predecessor legislation.

This exercise will involve for example, examining any requirements laid down in consents issued under this legislation that were binding on the insured person, or in any relevant bylaws. Expert advice will be required from an appropriately qualified professional (e.g. an engineer) identifying the extent to which the building work carried out deviated from the building code or building consent or otherwise failed to comply with legal requirements.

Failure to comply must have caused or exacerbated the natural disaster damage

For the ground to decline to apply, the natural disaster damage must be caused or made worse by the failure to comply with the laws or bylaws.

Again, advice from an appropriately qualified professional (e.g. an engineer) will be needed to identify whether (and the extent to which) the failure to comply with the laws or bylaws caused or worsened the natural disaster damage.

iii. Paragraph (c) of clause 3, Schedule 3

Paragraph (c) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) in the case of any property of a kind referred to in—
>
> (i) paragraph (c) or paragraph (d) of the definition of the term residential building in section 2(1); or
>
> (ii) paragraph (d) or paragraph (e) of the definition of the term residential land in section 2(1)—
>
> the property was not constructed in accordance with standards considered appropriate for that property at the time of construction, and the failure to meet those standards has caused or exacerbated the natural disaster damage;
>
> *Clause 3(c), Schedule 3, EQC Act*

Ground to decline claim may be used in respect of insured appurtenant buildings and structures and insured services to the dwelling

Insofar as it relates to residential buildings, this power to decline a claim may be used only in respect of insured appurtenant buildings and structures and insured services.

Insured appurtenant buildings and structures are described at Section 4.e.

Insured services are described at Section 4.f.

This ground also includes a power to decline a claim where certain residential land structures (retaining walls; bridges; culverts) fail to meet appropriate standards. If different people are dealing with the residential building and residential land exposures, they should liaise with each other as to whether and how any decision to decline will apply in respect of the different exposures.

If the failure of the retaining walls, bridges and/or culverts to meet appropriate standards may have potential consequences for the residential building exposure, the person dealing with the residential land exposure should pass that information on to the person dealing with the residential building exposure. That person must also escalate the matter to the appropriate Toka Tū Ake EQC representative.

Equally, if the failure of the insured appurtenant buildings or the insured services to meet construction standards may have potential consequences for the residential land exposure, the person dealing with the residential building exposure should pass that information on to the person dealing with the residential land exposure. That person must also escalate the matter to the appropriate Toka Tū Ake EQC representative.

Failure to meet appropriate standards at the time of construction
This ground to decline the claim will apply if appurtenant buildings and structures or insured services were 'not constructed in accordance with standards considered appropriate for that property at the time of construction'.

For this purpose, it will be necessary to identify:

- when appurtenant buildings and structures or insured services were built; and
- what the appropriate standards were at that time.

Advice from an appropriately qualified professional (e.g. an engineer) will be required.

Failure to comply must have caused or exacerbated the natural disaster damage
For the ground to decline to apply, the natural disaster damage must be caused or made

worse by the failure to meet the appropriate construction standards at the time of construction.

Advice from an appropriately qualified professional (e.g. an engineer) will be needed to identify whether (and the extent to which) the failure to meet those standards caused or worsened the natural disaster damage.

iv. Paragraph (d) of clause 3, Schedule 3

Paragraph (d) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) the record of title for the land comprising the property, or on which the property is situated, contains an entry under section 36(2) of the Building Act 1991 or an entry under section 74 of the Building Act 2004;

Clause 3(d), Schedule 3, EQC Act

Notification under section 74, Building Act 2004

This ground applies where the property has a section 74, Building Act 2004 notification on its Record of Title. If an EQCover claim is for damage that is caused by the type of natural hazard(s) that caused the notification to be made, that claim may be declined. These types of natural hazard(s) include erosion, falling debris, subsidence, inundation and slippage.

Section 71, Building Act 2004

Section 74 notifications are placed on a Record of Title where:

- the local authority grants a conditional building consent; and
- the land (on which the building work is carried out) is, or will likely be, subject to one or more natural hazards.

In making the decision whether to decline an EQCover claim on this ground, the decision-maker must take into account the particular circumstances of the property, and the details of the section 74 notification and the claim. As a general rule, this will mean considering whether the insured person has assumed the risk for the type of damage referred to in the notice, when either:

- purchasing the property, or
- progressing with alterations conditional to section 74.

In practice, the Record of Title will show a section 74 notification as being under *section 72 of the Building Act*.

Notifications under section 36(2) of the Building Act 1991 or section 641A of the Local Government Act 1974

Similar notifications on Records of Title were made under *section 36(2) of the Building Act 1991* and *section 641A of the Local Government Act 1974*. These notifications still appear on some titles, although both these sections are now superseded. These notifications have the same effect as a section 74 notification. However the notifications under these superseded provisions will not always identify the natural hazard(s) concerned. Where the natural hazard is not identified in the notice, the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

For ground to decline to apply, damage-causing natural disaster must be of the same type as hazard in notice

If the EQCover claim relates to damage from a natural disaster of a different type to the hazard(s) which caused the notification to be made, normal processes apply and the claim may be met in full.

Section 74, Building Act 2004
Section 36(2), Building Act 1991
Section 641A, Local Government Act 1974

v. Paragraph (e) of clause 3, Schedule 3

Paragraph (e) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) there is or has been on the part of the insured person (whether to the Commission or its agents or to the insurance company concerned)—
>
> (i) any wilful and material misdescription of any of the property, or of any building or land in or on which the property is situated; or
>
> (ii) any misrepresentation as to any matter material for the purpose of estimating the value of the property
>
> *Clause 3(e), Schedule 3, EQC Act*

This ground to decline applies where the insured person makes or has made (to us, the private insurer, or any Toka Tū Ake EQC agent) either:

1. a wilful and material misdescription about any property or any building or land in or on which the property is situated; or
2. a misrepresentation about any material matter for the purpose of estimating the value of the property.

‘Wilful and material misdescription’
For 1. to apply, there must be a ‘wilful and material misdescription’.

To be ‘wilful’, the misdescription must be deliberate. The insured person must have known what they were doing in giving the misdescription and intended to give it.

To be ‘material’, the misdescription must make a difference to the claim, or affect our liability to settle the claim. This includes affecting the settlement amount or any other aspect of the decision-making in relation to the claim.

vi. Paragraph (f) of clause 3, Schedule 3

Paragraph (f) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) the claim is in any respect fraudulent;
>
> *Clause 3(f), Schedule 3, EQC Act*

Care must be taken in the investigation of suspected fraudulent behaviour so as to avoid mistaken accusations or potentially defamatory statements. Fraudulent behaviour under (f) does not have to be by the insured but can be by anyone.

For details of our policy on investigating suspected fraudulent claims, see Section 11.l.

vii. Paragraph (g) of clause 3, Schedule 3

Paragraph (g) of clause 3 sets out the following circumstance where we may decline (or meet part only of) an EQCover claim:

> (a) the natural disaster damage is caused or contributed to by the wilful act or negligence of the insured person, or of any previous owner or occupier of the property where the insured person was aware of that wilful act or negligence at the time the insured person acquired the property.
>
> *Clause 3(g), Schedule 3, EQC Act*

For this ground to apply there must be either:

1. acts or omissions of the insured person which were wilful or negligent; or

2. acts or omissions of the previous owner or occupier which were wilful or negligent. In this case, the insured person must have known of those wilful acts or negligence when the insured person bought the property.

In either case the wilful act or negligence (under either 1. or 2. above) must cause or contribute to the natural disaster damage.

These two parts of this ground to decline a claim (1. or 2.) are discussed below.

<u>1. Wilful act or negligence of insured person</u>
The insured person will have committed a 'wilful act' where the insured person intentionally did it, knowing it would cause or contribute to the damage that occurred.

As to the 'negligence' of an insured person, that may have occurred when they themselves carried out work on the property. Negligence is, inevitably, a fact-specific assessment but, in general, the insured person may have been negligent if they failed to apply the degree of skill and care to be expected of a reasonably competent tradesperson carrying out that work at the time the work was done.

As a general rule, if the insured person calls in a reputable expert or specialist to carry out the work on the property, the insured person will have taken reasonable care and will not be responsible for any shortcomings on the part of the expert. By contrast, there may be negligence where the insured person:

- calls in people whom the insured person knew were not qualified to carry out the work; or

- instructs the tradesperson not to complete the work to the required standard.

2. Wilful act or negligence of previous owner or occupier
Similar considerations as set out above apply in identifying whether there has been a wilful act or negligence on the part of the previous owner or occupier.

For this part of the ground to decline to apply, the insured person must have actually known of the wilful act or negligence of the previous owner or occupier when the insured person bought the property. It is not sufficient if the insured person found out about the relevant facts after the insured person bought the property.

However, if the insured person became aware of the relevant facts and does not take reasonable precautions for the safety of the property, then there could be a wilful act or negligence of the type referred to in 1. above.

Wilful act or negligence must cause or contribute to natural disaster damage
The wilful act or negligence (under either 1. or 2. above) must cause or contribute to the natural disaster damage.

Advice from an appropriately qualified professional (e.g. an engineer) will be needed to identify whether (and the extent to which) the wilful act or negligence caused or contributed to the natural disaster damage.

i. What are the grounds to decline claims (in whole or part) under clause 5 of Schedule 3?

We may limit EQCover for the property under *clause 5 of Schedule 3*. In some cases where we limit cover, we may decline cover for further claims for certain loss or damage.

i. When can Toka Tū Ake EQC limit cover?

First scenario
We may limit cover where we consider that any property is in imminent danger of suffering natural disaster damage. In this scenario, we limit our cover by sending the owner a written notice stating that we limit liability to the amount the property is insured for under the *Act* at that time.

This first scenario does not give rise to grounds to decline a claim. The person dealing with the claim must escalate the matter to the appropriate Toka Tū Ake EQC representative where they find that a notice has been placed on the Record of Title under *clause 5(1), Schedule 3, EQC Act*.

Clause 5(1), Schedule 3, EQC Act

Second scenario

We can also limit EQCover where:

- natural disaster damage has occurred to any residential building or residential land as the direct result of a natural landslip, or to any residential land as the direct result of a storm or flood; and
- we consider that the property will suffer the same loss or damage again, and the likelihood of that future loss or damage could reasonably be, or have been, avoided.

Clause 5(2), Schedule 3, EQC Act

ii. When can Toka Tū Ake EQC decline a claim?

A claim can be declined in the second scenario. In this second scenario:

- we limit the EQCover by sending the owner a written notice stating that we may decline any further claim for the same type of loss or damage;
- after we give the notice, any claim may be declined in respect of any such loss or damage occurring after the date on which the notice is received by the insured person.

Clause 5(2) and (3), Schedule 3, EQC Act

iii. Notice of limit of cover placed on Record of Title

In either scenario, we will arrange for a notice to be placed on the Record of Title. The entry on the Record of Title indicating a limitation would typically read as follows:

> Certificate under Section 28(1) Earthquake Commission Act 1993
>
> *Clause 5, Schedule 3, EQC Act Section 28, EQC Act*

The notice remains on the Record of Title notwithstanding:

- the renewal of the contract of fire insurance;
- the issue of a new contract of fire insurance; or
- change of ownership of the property.

We can at our discretion remove the limitation to the EQCover, in which case the notice on the Record of Title will be removed.

Where there is a notice of limitation on the Record of Title under *Section 28* and *Clause 5, Schedule 3, EQC Act*, the person dealing with the claim must escalate it to the appropriate Toka Tū Ake EQC representative.

Clause 5, Schedule 3, EQC Act Section 28, EQC Act

j. What are the grounds to decline claims under clause 7 of Schedule 3?

While the insured person has two years in which to give notice of the natural disaster damage, there is discretion to decline the claim if the notice of the natural disaster damage is given more than three months after the damage occurs. The claim may be declined if the lapse of time before the notice was given materially prejudices our ability to assess the claim.

Clause 7(2B), Schedule 3, EQC Act

i. What does 'materially prejudice' mean?

For us to decline the claim on this ground, we would need to be able to demonstrate, on balance, that we have been materially disadvantaged in assessing the claim. The disadvantage must have been caused by notice of the damage being given more than three months after the damage occurred.

Delay in itself is not enough to establish prejudice. The delay must cause other consequences, which materially prejudice the ability to assess the claim.

In some instances technical or engineering input will be needed to determine whether the ability to assess the claim has been materially prejudiced due to the passage of time.

If the person dealing with the EQCover claim considers that their ability to assess the claim has been materially prejudiced, they must escalate the matter immediately to the appropriate Toka Tū Ake EQC representative.

ii. Situations where 'material prejudice' will apply

By way of example, our ability to assess the claim may have been materially prejudiced by the insured person's delay in giving notice in the following situations:

- if time-sensitive evidence of the insured event is made inaccessible by the delay. For example, the passing of time may make it impossible to distinguish between insured damage and damage caused by exposure to the weather;
- if we have been denied any actual opportunity to compare the assessment of damage from different events.

Each claim should be considered on a case by case basis.

k. What are the grounds to decline claims under clause 8 of Schedule 3?

Clause 8 of Schedule 3 sets out the rights of Toka Tū Ake EQC and our agents as to salvage. For details of our policy on salvage, see Section 11.m.

Clause 8(4) provides:

> (4) If the insured person or any person on his or her behalf does not comply with the requirements of the Commission, or hinders or obstructs the Commission in the exercise of its powers, under this clause, the Commission may decline any claim made under the insurance under this Act.
>
> *Clause 8(4), Schedule 3, EQC Act*

This provision gives us the power to decline any claim if the insured person (or any person acting on the insured person's behalf):

- does not comply with our requirements as to salvage; or
- hinders or obstructs us in the exercise of our powers related to salvage.

If the person dealing with the claim considers that the insured person (or any person acting on the insured person's behalf) has not complied with any salvage requirements of Toka Tū Ake EQC or has hindered or obstructed us in any exercise of our salvage powers, they must escalate the matter to the appropriate Toka Tū Ake EQC representative.

l. What is the obligation of a Toka Tū Ake EQC customer to mitigate damage, and does a failure to comply with that obligation comprise a ground to decline an EQCover claim?

Clause 12 of Schedule 3 places an obligation on an insured person to mitigate natural disaster damage. *Clause 12* provides:

> The insured person shall at all times take reasonable precautions for the safety of the insured property, having regard to its nature; and, in particular, if at any time any part of the insured property or any premises in which any part of the insured property is situated suffer natural disaster damage, the insured person shall take all reasonable steps to preserve the insured property from further natural disaster damage or from natural disaster damage, as the case may be.
>
> *Clause 12, Schedule 3, EQC Act*

In summary, the obligation to mitigate under clause 12 is as follows:

- at all times the insured person shall take reasonable precautions for the safety of the insured property; and
- if at any time the insured property (or any premises where that property is situated) suffers natural disaster damage, the insured person shall take all reasonable steps to preserve the insured property from natural disaster damage or further such damage.

This obligation to mitigate arises as soon as the relevant contract of fire insurance or direct EQCover is entered into, and continues for so long as the contract of fire insurance or direct EQCover remains in force.

i. Does a failure to comply with clause 12 comprise a separate ground to decline?

Clause 12 does not expressly provide that a failure to mitigate allows Toka Tū Ake EQC to decline an EQCover claim.

That said, in circumstances where there is a failure to comply with *clause 12*, those same circumstances may mean that one or more of the following grounds to decline an EQCover claim under *Schedule 3* apply:

- the insured person has failed to comply with any law or bylaw and that failure has caused the natural disaster damage or made it worse (see *clause 3(b) of Schedule 3*); (Section 7.h.ii)
- appurtenant buildings and structures and insured services were not constructed in accordance with standards considered appropriate for the property at the time of construction. That in turn caused the natural disaster damage or made it worse (see *clause 3(c) of Schedule 3*); (Section 7.h.iii) or
- the natural disaster damage is caused or contributed to by the wilful act or negligence of the insured person (*clause 3(g) of Schedule 3*). (Section 7.h.vii)

ii. What should happen when a customer has failed to comply with clause 12?

Sometimes a person dealing with the claim may consider that:

- the obligation under clause 12 has not been met; but
- none of the grounds to decline under *clauses 3(b), 3(c) and 3(g) of Schedule 3* appears to be available to decline the claim.

In such a case:

- if they are authorised to deal with the claim in these circumstances, that person should continue to assess the claim. They should escalate any matter related to the claim to the appropriate Toka Tū Ake EQC representative if they require more guidance; and
- if they are not authorised to assess the claim in these circumstances, that person must escalate the matter to the appropriate Toka Tū Ake EQC representative.

Clause 12, Schedule 3, EQC Act
Clauses 3(b), 3(c) and 3(g), Schedule 3, EQC Act

8. How is the EQCover claim settled?

This Section 8 addresses the settlement of EQCover claims for natural disaster damage to residential buildings. It covers settlement by payment, reinstatement, replacement and relocation.

a. Overview of settling claims for natural disaster damage to residential buildings

This part deals with settlement of EQCover claims for natural disaster damage to residential buildings.

Specifically this part sets out:

- the prerequisites to making a settlement decision; (Section 8.b)
- the methods that can be used to settle a residential building claim (cash payment; reinstatement; replacement; relocation); (Section 8.c)
- how the settlement amount is calculated; (Section 8.d)
- the maximum amount (or cap) that can be paid; (Section 8.e)
- the excess that applies; (Section 8.f)
- the time limit for settlement; (Section 8.g)
- how the settlement is communicated. (Section 8.h)

This part does not address every aspect of a residential building settlement where:

- a repair to the residential building has already been carried out in relation to the current claim; and
- the residential building needs to be reassessed because that repair strategy has failed or otherwise.

Additional matters (not dealt with in this part) must be addressed in such settlements. These settlements must be escalated to the appropriate Toka Tū Ake EQC representative.

For details of what is meant by the term ‘residential building’, see Section 4.

b. Prerequisites to making a settlement decision for an EQCover residential building claim

An EQCover claim for a residential building may only be considered for settlement (i.e. a cash payment, or the reinstatement, replacement or relocation of the building) after the prerequisites are met.

i. What are the prerequisites?

Specifically, the prerequisites are:

- there must be an EQCover claim that meets the basic requirements; (see Section 3)
- for an insured residential building; (see Section 4)
- that has suffered natural disaster damage. (see Section 5).

There must have been an assessment (see Section 6.A, 6.B and 6.C) to help determine the extent, and amount (if any), of any natural disaster damage.

The settlement decision may only be made after all the prerequisites to settlement are met.

ii. Specific matters to check before settlement

Check that the EQCover was not cancelled

The Record of Title to the property must be checked before any settlement to ensure that the EQCover was not cancelled at the time of the damage-causing natural disaster. The entry on the Record of Title indicating a cancellation would typically read as follows:

> Certificate under Section 28(1) Earthquake Commission Act 1993

In rare cases, the notice of cancellation may have been entered on the Record of Title under regulation 16 of the Earthquake and War Damage (Land Cover) Regulations 1984. In such cases, the entry on the Record of Title indicating a cancellation would typically read as follows:

> Statutory Land Charge under the Earthquake and War Damage (Land Cover) Regulations 1984

For the purposes of this check, the copy of the Record of Title sourced from Land Information New Zealand (LINZ) must be no older than three months from the date that LINZ sent it out. (See Section 3.h.i)

Check whether the grounds to decline a claim under Schedule 3 of the EQC Act apply
If there are grounds to decline the claim under *Schedule 3 of the EQC Act*, the claim must not be settled until a decision is made whether or not to decline all or part of the claim.

A description of the grounds to decline and the process for deciding whether to decline a claim is set out at Section 7.

The claim (across all of its exposures – residential land and residential building) will need to be checked against each ground to decline a claim. The grounds are set out at Sections 7.h to 7.k of this Manual.

Check that there are no other reasons why the claim might not be accepted
If the private insurer's contract of fire insurance is 'ground up' cover, then (subject to the terms of that contract) we will only have liability if the private insurer's cover is exhausted. Accordingly, our liability may be limited or even 'nil'. (See Section 3.i.ii)

c. What methods can be used to settle an EQCover residential building claim?

i. Payment, reinstatement, replacement

The *EQC Act* includes an option to settle a claim for natural disaster damage for a residential building by payment, replacement or reinstatement. Specifically, *section 29(2) of the EQC Act* provides:

> (2) Subject to any regulations made under this Act and, where a contract has been entered into under section 22, to the provisions of that contract, if, during the period for which any property is insured under this Act, the property suffers natural disaster damage, the Commission shall settle any claim (by payment, replacement, or reinstatement, at the option of the Commission) to the extent to which it is liable under this Act.
>
> *Section 29(2), EQC Act*

Method of settling (payment, replacement or reinstatement) is at the option of Toka Tū Ake EQC

The method of settling (payment, replacement or reinstatement) is at our option. In some cases, there may be a combination of these settlement methods.

The settlement method is not our customer's choice. We will make the choice of the settlement method.

Settlement will be by payment, unless Toka Tū Ake EQC otherwise instructs

Unless we expressly instruct otherwise, the settlement method for all claims will be by payment. Any claim that we have indicated should be settled other than by payment must be escalated to the appropriate Toka Tū Ake EQC representative for approval.

A settlement amount is typically for the cost of repairing the residential building to the 'replacement value' standard (see Section 8.d.i). However, the settlement amount is always subject to the cap (see Section 8.e). Any settlement will only be to the extent that we are liable under the *EQC Act*.

ii. Relocation

The *EQC Act* also includes an option to settle a claim for natural disaster damage for a residential building by way of relocation of the residential building. Specifically clause 10(1) of Schedule 3 of the *EQC Act* provides:

> **10 Relocation of building**
>
> (1) Instead of paying the amount of any natural disaster damage to, or reinstating, a residential building or residential land, the Commission may, at its option, relocate the building concerned on the same site or, where that site is unsuitable because of damage which it has suffered or is likely to suffer, to a different site determined by the Commission, being a site that is reasonably equivalent in all material respects to the existing site immediately before the damage occurred.
>
> *Clause 10(1), Schedule 3, EQC Act*

Under this option, the relocation of the residential building may be:

- on the same site; or
- if that site is unsuitable because of the damage which the site has suffered or is likely to suffer, on a different (but reasonably equivalent) site.

This method of settling by relocation is again at the option of Toka Tū Ake EQC. It is not our customer's choice.

Unless we expressly instruct otherwise, the settlement method for all claims will be by payment. Any suggestion or proposal to settle a claim by relocation must be escalated to the appropriate Toka Tū Ake EQC representative for approval.

Any settlement will only be to the extent that we are liable under the *EQC Act*.

d. How is the settlement amount calculated for an EQCover residential building claim?

Section 8.d.i below discusses the basis of cover ('replacement value') for the settlement of an EQCover claim for natural disaster damage to a residential building.

Other matters relevant to the calculation of the settlement amount are discussed at Sections 8.d.ii to 8.d.xi.

i. Basis of cover

We insure a residential building against natural disaster damage for its 'replacement value'.

The amount of the EQCover for a residential building is also subject to a maximum amount of insurance (sometimes referred to as the 'cap') (see Section 8.e).

But before it can be determined whether or not the cap is reached, it is necessary to assess the amount of the natural disaster damage on the basis of the 'replacement value'.

For the definition of 'replacement value' and details on how that definition is applied, see Section 6.A.c.

ii. Imminent loss or damage

The amount of imminent loss or damage will take into account:

- the cost to prevent the imminent natural disaster damage from occurring (where this is possible);
- the cost to reinstate the imminent natural disaster damage once it has occurred.

Payments for imminent loss or damage form part of the settlement amount for the overall residential building claim. That settlement amount is subject always to the maximum amount of EQCover (or cap) available per event for the residential building.

Should the person dealing with the claim identify or suspect that there is natural disaster damage to the residential land on the property, then:

- if they are authorised to settle the residential land exposure, that person should also settle the residential land exposure; and
- if they are not authorised to settle the residential land exposure, that person should escalate the matter to the appropriate Toka Tū Ake EQC representative.

For a description of 'imminent' loss or damage, see Section 5.d.iii.

iii. GST

The GST exclusive amount of the settlement payment for the residential building is increased by the amount of GST that has been paid or will be payable by the insured in carrying out the replacement or reinstatement of the residential building.

In other words, the GST component that has been paid or will be payable by the insured is included for the purposes of calculating the settlement amount. This GST component must be set out in the Scope of Works prepared for the assessment of the residential building.

Section 29(3), EQC Act

The settlement amount (inclusive of GST) is of course subject to the cap (which itself will include a GST component) – see Section 8.e.

Section 18(1), EQC Act

iv. Fees incurred in the course of replacing or reinstating the residential building

Fees incurred in replacing or reinstating the natural disaster damage to the residential building (part of the settlement amount)
'Replacement value' includes the cost reasonably incurred in respect of fees payable in the course of replacing or reinstating the residential building. These fees include architects' fees, surveyors' fees, and fees payable to local authorities.

The cost of these fees is included in calculating the settlement amount (subject always to the EQCover cap).

Section 2(1), EQC Act – Paragraph (d) of the definition of 'replacement value'

These fees must be distinguished from fees that are incurred in actually establishing the amount of the natural disaster damage. The latter type of fees (sometimes referred to as Claims Handling Expenses (CHE)) is discussed next.

Fees that are incurred in establishing the amount of the natural disaster damage to the residential building (not part of the settlement amount)

The following fees are not included in the settlement amount:

- other professional fees incurred in helping us to determine the actual EQCover settlement amount (i.e. ascertaining the cause and extent of the natural disaster damage, identifying repair strategies, and costing and quantifying the amount of the damage). Accordingly, the fees of consultants (e.g. assessors, estimators, surveyors, valuers, engineers) that are incurred in helping to determine the EQCover settlement amount are not added in calculating that settlement amount; or

- legal fees (including the customer's and our legal fees) in establishing the amount of the natural disaster damage.

Section 11.o of the Manual addresses separately the treatment of fees where there is a reassessment of the settlement amount (e.g. professional fees incurred by a customer following a request by the customer for a review).

v. Urgent works to the residential building

What are urgent works?

Urgent (or emergency) works are repairs that are needed to make the residential building safe, sanitary, secure and weathertight.

There is no reference to 'urgent works' in the *EQC Act*. But in practice urgent repairs are completed urgently because final repairs cannot be carried out immediately.

EQCover requires Toka Tū Ake EQC customers to take reasonable steps after a natural disaster to preserve their insured property from further natural disaster damage. For details, see Section 7.l.

This means that after the natural disaster event, if the Toka Tū Ake EQC customer is safely able to, they should do things like:

- board up broken windows;

- put tarpaulins over holes in the roof or walls;

- get essential services like toilets repaired immediately.

Sometimes the Toka Tū Ake EQC customer will need to get urgent help from a tradesperson to carry out some urgent repairs of the natural disaster damage. For example, the Toka Tū Ake EQC customer may need to get essential services like toilets up and running (if possible) or otherwise get work done to make the residential building safe, sanitary, secure and weathertight.

Paying or reimbursing the customer for the tradesperson's services for the urgent works
The customer may have sent invoices (or receipts) for urgent works from these tradespeople to the person dealing with the claim. That person may then either:

- pay the customer, so that the customer can in turn pay the tradesperson for the urgent works; or
- reimburse the customer, where the customer has already paid the tradesperson for the urgent works.

This early payment or reimbursement should only occur where there are actually urgent works. The works must be needed urgently to make the residential building safe, sanitary, secure or weathertight.

Our strong preference is to pay or reimburse the customer for the tradesperson's services for the urgent works. It is not anticipated that the tradesperson would be paid direct, except in exceptional circumstances.

Prerequisites for payment or reimbursement for the cost of urgent works
Any payment or reimbursement for the cost of urgent works will depend on there first being an EQCover claim that meets the basic requirements. See Section 3 of the Manual.

Where urgent works cover multiple events, the person dealing with the claim will need to identify which urgent works pertain to which event, usually by asking the customer.

Payment or reimbursement for the cost of urgent works forms part of the overall settlement amount
Any payment or reimbursement for the cost of urgent works forms part of the overall settlement amount (which amount is subject to the EQCover cap for a residential building claim – see Section 8.e).

Item A.7 of Appendix 1 of the Manual sets out a step by step guide to calculating the settlement payment if there have been urgent works that have already been paid for or reimbursed.

vi. Damaged heat sources that are an integral part of the residential building

If a heat source was damaged as the direct result of a natural disaster, we may pay the amount of that damage in advance of the final settlement. Any such advance payment will form part of the overall settlement amount (which amount is subject to the EQCover cap for a residential building claim – see Section 8.e).

We may make the advance payment where it is reasonably satisfied that this payment forms part of the overall settlement. This is a payment for the repair/replacement of the heat source that has been damaged as the direct result of the natural disaster. It is our expectation that the customer would use the advance payment to repair or replace the heat source that has been damaged.

However, sometimes the customer may not apply the advance payment to the repair/replacement of the damaged heat source. By way of example:

- the heat source is a log fire and there is earthquake damage to the chimney; and
- an advance payment is made that is sufficient to cover the repair of the chimney;
- instead of repairing/replacing the chimney, the customer uses the advance payment to buy and install a heatpump.

In that example, we cannot pay again on final settlement for the repair/replacement of the chimney.

vii. Temporary accommodation

EQCover does not cover the cost of temporary accommodation for our customers (or pet accommodation costs) as part of cash settlements for the cost of the repair/replacement of the residential building.

viii. Removal and storage of personal property where residential building is to be repaired/rebuilt

We may issue guidance from time to time on whether (and the extent to which) we cover the removal and storage of personal property where the residential building is to be:

- demolished before a rebuild; or
- repaired.

To the extent that we cover them, the removal and storage costs (plus GST) may be included in the overall settlement amount for the residential building exposure (which amount is subject to the EQCover cap for a residential building claim – see Section 8.e).

ix. Travel costs

The settlement amount must take into consideration the cost of transporting materials to the property and costs for contractors in travelling to and from the property.

x. Costings

We may issue guidance from time to time regarding costings on the rates to apply, Preliminary & General (P&G) and margin.

xi. Ex gratia payments

The *EQC Act* allows for making ex gratia payments in limited circumstances. *Section 29(5)* provides:

> (5) The Commission may make ex gratia payments in respect of natural disaster damage to property that is not insured under this Act where a premium has been paid under this Act in respect of that property in the belief that the property was insured under this Act.
>
> *Section 29(5), EQC Act*

Under this provision we may only make ex gratia payments in the unusual situation where a premium has been paid for property mistakenly thought to be insured under the *EQC Act*.

No ex gratia payment may be made on our behalf without the prior written approval of the appropriate Toka Tū Ake EQC representative on each occasion.

e. What is the maximum amount (or cap) that can be paid for a residential building exposure?

i. How is the cap calculated?

The maximum amount of EQCover (or cap) available per event for a residential building is the least of the following (all of which are GST exclusive):

1. any replacement sum insured (for which the residential building is insured against fire) set out in the contract of fire insurance;

2. if there is no such replacement sum insured (as described in Item 1.), the amount to which the residential building is to be insured under the *EQC Act* (as set out in the contract of fire insurance or direct EQCover). However this amount cannot be less than a minimum amount prescribed by the *EQC Act*. For details, see under the heading 'Minimum amount under Item 2.' below;

3. $150,000 multiplied by the number of dwellings in the residential building. For details, see under the heading 'Number of dwellings in the residential building under Item 3.' below.

GST is then added to determine the maximum amount of the EQCover. In other words, to determine the maximum amount of the EQCover:

- find the least of the (GST exclusive) amounts in Items 1. and 3.; but
- if there is no Item 1., find the least of the (GST exclusive) amounts in Items 2. and 3; but
- if there is no Item 1. and no Item 2., find the (GST exclusive) amount in Item 3.

GST is then added to determine the maximum amount of the EQCover.

Section 18(1), EQC Act

Items 1., 2. and 3. are examined in more detail below.

Replacement sum insured under Item 1.

The replacement sum insured under Item 1. above is an actual dollar figure set out in the contract of fire insurance. This replacement sum insured is a sum which applies if the residential building is damaged by fire. Some contracts of fire insurance will include such a replacement sum insured – and some will not.

A 'replacement sum insured' is a different thing from an 'indemnity sum insured'.

Open-ended 'replacement policies' which do not include a specific replacement sum insured for fire will not fall within Item 1. above.

It is our expectation that where a contract of fire insurance sets out a replacement sum insured, the contract will clearly state to which residential building the replacement sum insured relates. However, sometimes a policy covers multiple residential buildings with a single replacement sum insured. In other words, the replacement sum insured 'floats' over all the buildings and does not identify a replacement sum insured for each building. In these cases, the treatment of the 'floating' replacement sum must be escalated to an appropriate Toka Tū Ake EQC representative.

Section 18(1)(a), EQC Act

Minimum amount under Item 2.

If there is no replacement sum insured (as described in Item 1.), then (subject to the minimum discussed below), Item 2 is the amount to which the residential building is to be insured under the *EQC Act* (as set out in the contract of fire insurance or direct EQCover).

The amount under Item 2. cannot be less than:

$2,500 multiplied by the number of square metres of the area of the residential building.

If the amount to which the residential building is to be insured under the *EQC Act* (as set out in the contract of fire insurance or direct EQCover) is less than the amount calculated by the formula quoted immediately above, then the amount calculated by the formula is deemed to be the amount for the purposes of Item 2.

The '$2,500' in the quoted formula is GST exclusive.

Section 18(1)(b), EQC Act

Number of dwellings in the residential building under Item 3.

For the purposes of Item 3., the *EQC Act* deems that the number of dwellings in the residential building is one dwelling - unless a higher number is disclosed to the private insurer.

The relevant time for the disclosure to the private insurer of the higher number of dwellings is:

- the date of entering into the contract of fire insurance; or
- the date of renewal of the contract of fire insurance.

Section 18(1)(c) and 18(3), EQC Act
Section 2(2), EQC Act

The disclosure of the higher number of dwellings to the private insurer can be oral or in writing.

In most cases, disclosing 'more than one dwelling' will require an actual number to be provided. If the number is not disclosed, the number of dwellings is deemed to be 'one'.

It is our expectation that:

- each private insurer will keep robust records of the actual number of dwellings in a residential building that have been disclosed to the private insurer (and the timing of the disclosures); and
- pay the correct premiums to us accordingly.

However, where:

- it has been disclosed that there is 'more than one dwelling', but the actual number of dwellings has not been disclosed;
- there is a dispute with the insured person as to whether the necessary disclosure was made to the private insurer;
- the actual number of dwellings and the disclosed number of dwellings differ; or
- the purported disclosure is to a broker;

the matter must be escalated to the appropriate Toka Tū Ake EQC representative. Before doing so, the person dealing with the claim should gather evidence from the insured person, the broker and/or the private insurer about:

- what information regarding the number of dwellings was disclosed; and
- when that information was disclosed.

ii. What does the cap apply to?

The cap is per residential building per event. (See Section 8.e.iv below)

For a description of the 'residential building', see Section 4.

As set out in Section 4, identifying the building(s) and/or the part of a building that comprise the insured residential building is critical to the correct calculation of the cap.

By way of example:

- One residential building or two on the same property - Whether there are one or two residential buildings on the property is important for the purposes of calculating the cap amount of EQCover available. If there are two residential buildings on the property, there will be two caps (one for each building) as opposed to one cap, provided all the requirements of the *EQC Act* are met;

- Appurtenant structure or separate residential building - Whether or not the building is an appurtenant structure is important for the purposes of calculating the cap amount of EQCover available. Appurtenant structures do not by themselves attract a separate amount of EQCover from the amount available for the residential building. In other words, when an item is identified as an appurtenant structure, it does not increase the overall amount of EQCover for the 'residential building'. There is no separate capped amount of insurance for the appurtenant structure. (See Section 4.e)

  To illustrate, if a sleep-out is self-contained, it may be a separate residential building (as opposed to an appurtenant structure). If it is a separate residential building, this would mean that the sleep-out has its own separate cap amount of insurance, provided the other requirements of the *EQC Act* are met. For example, the sleep-out would need to be covered under a contract of fire insurance or direct EQCover; (See Section 4.e.iv)

- Mixed use buildings - If 50% or more of the building comprises dwellings, then the building is a residential building. This means that the entire building can have EQCover (assuming all other requirements under the *EQC Act* are met). This is notwithstanding that some of the building may be for commercial use. We refer to these types of residential buildings as 'mixed use' buildings. (For more details, see Section 4.d)

  In the case of a mixed-use residential building (e.g. where 50% or more of the building comprises dwellings, but there is some commercial use), the EQCover applies to the whole residential building (notwithstanding some of that building has commercial use). Furthermore, the cap applies to the whole residential building.

  The cap is calculated in accordance with the calculation set out in Section 8.e.i. If there are multiple dwellings in the residential building, then they will be taken into account in that calculation.

iii. What is the cap for rest home complexes?

We cover certain buildings for long-term accommodation for the elderly. See generally Section 4.g.

This type of accommodation is dormitory-style accommodation for elderly people that is found in many rest homes. It includes accompanying facilities.

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex) – see Sections 4.c and 4.d.

In assessing a rest home complex for EQCover purposes, it is necessary to differentiate between these different types of accommodation for the purposes of identifying each 'residential building'. This is because identifying the 'residential buildings' correctly is critical to the application of the *EQC Act* (e.g. in the calculation of the cap amount of the EQCover that will apply to each residential building in the complex).

Before finalising a settlement, the identification of the 'residential building(s)' in a rest home complex and the appropriate cap amount(s) must be escalated to the appropriate Toka Tū Ake EQC representative.

iv. Does a new cap apply for each event?

Yes. EQCover reinstates with a new cap after the residential building suffers natural disaster damage as the direct result of an event.

However, EQCover is subject always to the requirements of the *EQC Act*. For example, for there to be cover:

- there must be a contract of fire insurance or direct EQCover over the residential building concerned in force at the relevant time; (Section 3.g)
- the EQCover must not have been cancelled at the time of the damage-causing event; (Section 3.h) and
- there must be no other reason why the claim (or part of it) will not be accepted (Section 3.i).

What is an event?
All damage occurring within a consecutive 48-hour period which is a direct result of any natural disasters is treated as an 'event'. A different period (7 days) applies for natural disaster fires. The term 'event' is discussed in more detail at Section 3.f.iv.

Where the 'event' has different types of natural disasters during the 48-hour period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to an appropriate Toka Tū Ake EQC representative; or
- otherwise dealt with in accordance with any operational processes which we have notified.

One reason for these approaches is to ensure that the cap is correctly applied for the claim. This will be particularly important where, as in the example above, different people are dealing with the different natural disasters (e.g. one person is dealing with the earthquake and the other is dealing with the tsunami).

f. What excess applies for a residential building claim?

i. What is the excess for an EQCover claim?

Clause 1 of Schedule 3 of the *EQC Act* provides:

> In respect of any natural disaster damage to any one property occurring during any period of—
>
> (a) 48 consecutive hours as the direct result of a natural disaster other than natural disaster fire; or
>
> (b) 7 consecutive days as the result of natural disaster fire—
>
> the Commission shall not be liable to pay or contribute more than the amount by which the amount payable under section 29 in respect of the natural disaster damage exceeds the excess specified in regulations made under this Act.
>
> *Clause 1, Schedule 3, EQC Act*

In other words, the settlement amount is the amount over and above the excess.

For a cash settlement, the customer does not 'pay' the excess. There is nothing for them to pay. The excess is deducted before the cash settlement amount is paid out.

Where settlement is by way of repair, replacement or relocation of the residential building, issues regarding the recovery of the excess from the Toka Tū Ake EQC customer must be escalated to the appropriate Toka Tū Ake EQC representative.

<u>One excess per event</u>
One excess applies per 'event'.

As set out above in the discussion on the cap that applies, all damage occurring within a consecutive 48-hour period which is a direct result of any natural disasters is treated as an 'event'. A different period (7 days) applies for natural disaster fires. The term 'event' is discussed in more detail at Section 3.f.iv.

Where the 'event' has different types of natural disasters during the 48-hour period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to an appropriate Toka Tū Ake EQC representative; or
- otherwise dealt with in accordance with any operational processes which we have notified.

One reason for these approaches is to ensure that the excess is calculated correctly for the claim. This will be particularly important where, as in the example above, different people are dealing with different natural disasters (e.g. one person is dealing with the earthquake and the other is dealing with the tsunami).

ii. What is the amount of the excess for residential building claims?

The excess deducted per EQCover claim for a residential building is:

i. $200 multiplied by the number of dwellings in the residential building; or

ii. 1% of the amount payable (inclusive of GST); whichever is greater.

Regulation 4(1)(a), Earthquake Commission Regulations 1993

iii. What is 'the number of dwellings in the residential building'?

We consider that the number of dwellings in the residential building is one dwelling unless a higher number is disclosed. Who the customer needs to make the disclosure to, and the relevant time for making the disclosure, depend on whether the customer has a contract of fire insurance or direct EQCover. Details are set out below.

Contract of fire insurance

For excess purposes, the *EQC Act* deems that the number of dwellings in the residential building is one dwelling - unless a higher number is disclosed to the private insurer. The relevant provision (section 18(3) of the *EQC Act*) is the same as for identifying the number of dwellings for cap purposes – see Section 8.e.i.

Details are set out below on how to identify whether a higher number of dwellings has been disclosed to the private insurer.

The relevant time for the disclosure to the private insurer of the higher number of dwellings is:

- the date of entering into the contract of fire insurance; or
- the date of renewal of the contract of fire insurance.

Regulation 4(3), Earthquake Commission Regulations 1993 Section 18(3), EQC Act

Section 2(2), EQC Act

The disclosure to the private insurer can be oral or in writing.

In most cases, disclosing 'more than one dwelling' will require an actual number to be provided. If the number is not disclosed, the number of dwellings is deemed to be 'one'.

It is our expectation that each private insurer will:

- keep robust records of the actual number of dwellings in a residential building that have been disclosed to the private insurer (and the timing of the disclosures); and
- pay the correct premiums to us accordingly.

However, you must escalate the matter to the appropriate Toka Tū Ake EQC representative where:

- it has been disclosed that there is 'more than one dwelling', but the actual number of dwellings has not been disclosed;
- there is a dispute with the insured person as to whether the necessary disclosure was made to the private insurer;
- the actual number of dwellings and the disclosed number of dwellings differ; or
- the purported disclosure is to a broker;

Direct EQCover

In relation to EQCover, the same principles apply as above, however we will carry out the role of the private insurer.

iv. What is the excess for rest home complexes?

We cover certain buildings for long-term accommodation for the elderly. See generally Section 4.g.

This type of accommodation is dormitory-style accommodation for elderly people that is found in many rest homes. It includes accompanying facilities.

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex) – see Sections 4.c and 4.d.

In assessing a rest home complex for EQCover purposes, it is necessary to differentiate between these different types of accommodation for the purposes of identifying each 'residential building'. This is because identifying the 'residential buildings' correctly is critical to the application of the *EQC Act* (e.g. in the calculation of the excess(es) for the EQCover that will apply to the residential building(s) in the complex).

Before finalising a settlement, the identification of the 'residential building(s)' in a rest home complex and the appropriate excess(es) must be escalated to the appropriate Toka Tū Ake EQC representative.

g. What is the time limit for settlement?

Section 29 (4) provides:

> Subject to any regulations made under this Act and without limiting the liability of the Commission under this Act, any payments or expenditure for which the Commission may be liable under this section shall be made as soon as reasonably practicable, and in any event not later than 1 year after the amount of the damage has been duly determined (which determination shall be made as soon as reasonably practicable).
>
> *Section 29(4), EQC Act*

Breaking down the components of this section:

- the determination of the amount of the damage must be made as soon as reasonably practicable;
- the settlement payment (or the expenditure) must be made as soon as reasonably practicable; and
- the settlement payment (or the expenditure) must be made no later than one year after the date when the amount of the damage is determined.

The damage will not have been 'determined' until the residential building has been assessed and the amount it would cost to repair or replace the residential building has been determined.

The 'expenditure' refers to expenditure in settling the claim other than by way of cash settlement (e.g. expenditure in carrying out a repair of the damage).

There are no current regulations affecting the time frames under *section 29(4), EQC Act*.

h. How is the settlement communicated?

Section A of Appendix 1 of the Manual sets out the requirements that must be addressed in a communication for the cash settlement of an EQCover residential building exposure.

Section B of Appendix 1 sets out some suggested items for the cash settlement communication.

Communications of other settlement outcomes for a residential building exposure are addressed in Section 10.A.c.

Notification to the appropriate Toka Tū Ake EQC representative of certain cap payments
Where the residential building exposure is settled on the basis of cap, the person dealing with the exposure must notify the appropriate Toka Tū Ake EQC representative of that settlement.

This notice will make us aware of that settlement, in case there are any other circumstances that might give rise to grounds to cancel future EQCover under *clause 4, Schedule 3 of the EQC Act*.

9. With whom is the EQCover claim settled?

a. Overview

Where:

- the insured person is the owner of the insured property;
- nobody else has any insurable interest in the insured property; and
- there has been no assignment of the EQCover claim;

the EQCover claim would normally be settled with the insured person. But the situation is not always that straightforward.

This Section addresses numerous situations where particular issues arise in:

- identifying the person or people with whom the EQCover claim may be settled; and
- deciding with whom the EQCover claim will be settled.

Specifically, this Section deals with situations where:

- there are multiple people with insurable interests in the insured property; (Section 9.b)
- there is an assignment of the EQCover claim; (Section 9.c)
- there is a mortgage over the insured property; (Section 9.d)
- the insured property is owned by a company (or by a company that is in receivership, voluntary administration or liquidation); or was owned by a company that has since been removed from the Companies Register; (Section 9.e)
- the owner of the property died after the EQCover claim was made, or died before the natural disaster and the claim was made by the executors of the deceased's estate; (Section 9.f)
- the insured property is owned by a trust; (Section 9.g)
- the insured property is a unit title development; (Section 9.h)
- the insured property is a leasehold property; (Section 9.i)
- the insured property is Māori freehold land with multiple owners; (Section 9.j)

- two people have together owned the insured property (which is the subject of an EQCover claim) and the relationship between them ends; (Section 9.k)

- other registered interests are shown on the Certificate of Title to the property. (Section 9.l)

Section 9.m addresses the position should there be a dispute over who is to receive an EQCover claim settlement.

Decision-makers dealing with different exposures must liaise

In cases where different people are dealing with different exposures, they must liaise with each other as to:

- identifying the person or people with whom the EQCover claim may be settled; and

- where there is more than one such person, deciding with whom the various EQCover claim exposures will be settled.

In cases of doubt, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

b. Insurable interests

It is important to determine who has an 'insurable interest' in the insured property for two reasons.

One reason is that we must have due regard to all the 'insurable interests' in the insured property when settling the claim.

The other reason is that, as discussed in Section 3.b, for an EQCover claim to meet the basic requirements, the person giving notice of the natural disaster damage must:

- be the 'insured person' under the contract of fire insurance or direct EQCover for the property concerned; (see Section 3.b.i) and

- also have an 'insurable interest' in that property.

Section 29(1), EQC Act
Clause 7(1), Schedule 3, EQC Act

i. Settlement of an EQCover claim is with person(s) who have an 'insurable interest'

Section 29(1) of the *EQC Act* provides:

> (i) Subject to any regulations made under this Act—
>
> (a) a claim may be made in respect of any insurance under this Act only by a person who has an insurable interest in the property concerned; and
>
> (b) without limiting section 31, where more than 1 person has such an insurable interest, the Commission shall in settling any claim have due regard to the respective insurable interests.
>
> *Section 29(1), EQC Act*

The EQCover claim should normally be settled with the insured person where:

- the insured person is the owner of the insured property;
- nobody else has any insurable interest in the insured property; and
- there has been no assignment of the EQCover claim.

But if there is more than one person with the insurable interest, then we must have due regard to the 'respective insurable interests' of those people.

For this purpose, the relevant insurable interests are those that existed at the time the natural disaster damage occurred.

ii. What is an 'insurable interest'?

In general terms, a person will have an 'insurable interest' in the insured property where:

- the person would suffer economic loss if the property was destroyed or damaged; and
- there is a legal relationship between that person and the insured property.

People generally recognised as having an insurable interest in the property include, for example, the following:

- the registered proprietor of the property (who is the legal owner);
- anyone having an equitable interest in the property;
- where the property is leased, both the lessor and the lessee of the property;
- where the property is mortgaged, both the mortgagee and the mortgagor of the property;
- anyone holding a life estate in the property; and
- if the property is subject to an unconditional sale and purchase agreement, the purchaser of the property (as well as the vendor).

c. EQCover claims where there has been an assignment

There are a number of situations where an EQCover claim is assigned to a new person. This may be for example, as a result of a sale of insured property or a relationship break up.

In these cases, the new person (sometimes referred to as the 'assignee') will have rights in respect of the EQCover claim. If we receive clear written evidence of the assignment, the EQCover claim must be settled with the assignee (and not the assignor), subject always to:

- any specific terms and conditions of the assignment document; and
- the requirement that we must have due regard to all the 'insurable interests' in the insured property when settling the claim.

i. What evidence of an assignment is required?

It is critical that there is clear written evidence that the original claimant ('assignor') wishes us to deal with and to settle the EQCover claim with the new person ('assignee'). Each situation needs to be considered on an individual basis.

Ideally, the parties involved will complete a formal Deed of Assignment (DOA) – see Section 9.c.ii below. But sometimes a customer will attempt to assign their EQCover claim without a DOA. For example, there might be a provision assigning the claim in an agreement for sale and purchase or in a relationship property agreement – see Section 9.c.iii below.

Transfer of ownership of insured property does not of itself also assign an EQCover claim relating to that property.

What are the risks of settling with a purported assignee where there is insufficient evidence of the assignment?

If there is not sufficient evidence of an assignment, there is a risk of having to pay the claim again to the original claimant.

ii. What are the requirements for a Deed of Assignment (DOA)?

If the DOA is properly signed and witnessed and sets out all necessary information, then it will provide good evidence of the assignment.

What information must be included in the DOA?
The DOA will need to set out:

- the full names of the original claimant ('assignor') and the person taking over the claim ('assignee');
- the address of the damaged insured property;
- the date on which the assignment is to take effect;
- a clear description of the claims being assigned. This may include the EQCover claim number(s) of the claim(s) being assigned or a more general (but clear) description of the claim(s) being assigned. In either case, it is important that it is clear which exposures are being assigned (for example, the residential building and/or residential land exposure(s)). Some claimants will only assign aspects of their claim(s) - for example, their residential building exposure(s) but not their residential land exposure(s);
- a clear statement of intention that the claim(s) be assigned.

What if there is doubt about which EQCover claim(s) are assigned under the DOA?
If no claim numbers are specified in the DOA and there is no other clear description of what is to be assigned, then before settlement can be made to the assignee:

- the DOA will need to be amended; or
- other evidence provided (see Section 9.c.iii);

as evidence of the parties' intentions regarding the assignment.

If only some claim numbers are referred to in the DOA, then (assuming all other requirements are met) settlement can only be made with the assignee in respect of those claims. If the intention is to assign the other claims as well, then before settlement can be made to the assignee with respect to the other claims:

- the DOA will need to be amended; or
- other evidence provided (see Section 9.c.iii);

as evidence of the parties' intentions regarding the assignment of those other claims.

Where there is a typographical error in the claim number(s) noted in a DOA but it is possible to figure out the intended claim number(s) from the balance of the DOA (for example, from the physical address of the insured property), the parties to the DOA must be contacted to confirm the correct claim number(s).

What are the technical requirements for a DOA to be effective?

DOAs must be written, signed and (in most cases) witnessed – see below. The DOA will be binding on the parties once:

- the person to be bound by it (or someone on their behalf) delivers the DOA; and
- it is apparent from the circumstances that they intended to be bound by the DOA. The DOA may contain conditions that must be fulfilled before the DOA will be binding.

Section 9, Property Law Act 2007

We must act in accordance with the assignment only after it receives clear written evidence of the assignment. If such evidence is not received, then the person dealing with the claim must write to the relevant parties requesting such evidence, and follow up on the request if no response is received within a reasonable timeframe.

How must the DOA be signed and witnessed?

An individual must sign the DOA before a witness.

A company which is registered in New Zealand can sign a DOA in accordance with the procedure set down in any relevant statute that governs how companies can execute deeds, or as follows:

- if there is only one director, that director must sign the DOA before a witness;
- if there are two or more directors of the company, not fewer than two directors must sign the DOA;
- if the company's constitution authorises it, one director or another person may sign the deed before a witness.

Appropriate searches must be made of the Companies Register to check that the requirements for the signing of the DOA by the company as described above are met.

A witness must not be a party to the DOA. The witness must sign the DOA and then write the name of the town or city that they ordinarily live in, as well as their occupation.

Section 9, Property Law Act 2007

If there are multiple owners who are assigning their EQCover claim under a DOA, normally all the owners must sign the DOA.

What if the DOA is not signed by all the parties to it?
Ordinarily a DOA must be signed by all parties.

Where the assignee receives the benefits under the DOA and has no obligations to the assignor, it may be possible to safely treat the DOA as effective to assign the EQCover claim even where the assignee has not signed the DOA.

But the assignor will always need to sign the DOA.

What if the counterpart DOAs are not the same?
It is acceptable to sign a DOA in counterpart (that is, one party to sign one copy and the other party to sign another copy) if the DOA provides for this.

But if the two counterparts do not use the same wording, there will be no agreement between the parties and therefore no valid assignment. In these cases, the parties must be advised that the DOA is ineffective and be invited to execute a (new) valid DOA.

What are the technical requirements for an amendment to a DOA?
An amendment to a DOA must take the form of a Deed.

The requirements that apply to a DOA (i.e. signing, witnessing, delivery, use of counterparts) also apply to an amendment to a DOA.

What if there is a conflict between the DOA and the Notice of Assignment?
If there is a conflict between the terms of the DOA and the terms of the notice of assignment given under section 50 of the Property Law Act 2007, the terms of the DOA will usually be determinative.

In these cases it will be necessary to write to the parties involved, noting the intention to settle the claim in accordance with the DOA, unless the parties provide a written amendment to the DOA or provide other evidence to prove the parties' intentions regarding the assignment.

iii. If there is no formal DOA, what evidence of assignment is required?

If there is no formal DOA, we will need clear written instructions from the original claimant directing us to settle the claim with the new person, and/or to deal with the new person in the lead up to settlement.

The written instructions must set out:

- the full names of the original claimant ('assignor') and the person taking over the claim ('assignee');
- the address of the damaged insured property;
- the date on which the assignment is to take effect;
- a clear description of the claims being assigned. This may include the EQCover claim number(s) of the claim(s) being assigned or a more general (but clear) description of the claim(s) being assigned. In either case, it is important that it is clear which exposures are being assigned (for example, the residential building and/or residential land exposure(s)). Some claimants will only assign aspects of their claim(s) - for example, their residential building exposure(s) but not their residential land exposure(s);
- a clear statement of intention that the claim(s) be assigned;
- if the name of the original claimant and the name on the contract of fire insurance or direct EQCover are different, an explanation for this discrepancy. (See Section 3.b of the Manual.)

The instructions must be correctly signed by the assignor and assignee.

Can an assignment be set out in an agreement instead of a DOA?
Yes.

For example:

- a sale and purchase agreement of insured property may include an assignment of an EQCover claim;
- a relationship property agreement may include an assignment of an EQCover claim.

However, for an agreement such as a sale and purchase agreement or a relationship property agreement to provide sufficient evidence of the assignment of the EQCover claim, the agreement will have to:

- be correctly signed and otherwise valid in all respects; and
- include all the information required for written instructions as listed above. In particular, the agreement must actually assign the EQCover claim(s). It is not enough for the agreement simply to contemplate a further step which will assign the claim(s) (e.g. the future signing of a DOA).

If a claimant maintains that there was an oral agreement to assign a claim (but there is nothing in writing), then the matter (including all available information about the oral agreement) should be escalated to the appropriate Toka Tū Ake EQC representative.

iv. What if there is no formal DOA or other evidence of an assignment?

Sometimes a property is sold and the purchaser comes looking for settlement of the EQCover claim over the property, but there is no DOA or other evidence that the vendor intended to assign the claim to the purchaser.

Other than in exceptional cases, it will be appropriate in these circumstances to settle the claim with the vendor. In exceptional circumstances, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

v. Can an assignment improve a claim?

No.

Assigning a claim does not fix any existing problems with an EQCover claim. So for example, if notice of the EQCover claim was made out of time, the assignment of the claim to another party will not make the claim meet that basic notice requirement. An assignee in effect stands in the shoes of the original claimant.

vi. What if there is more than one assignment?

Sometimes a property may have been sold more than once, after the earthquake damage occurred and before the EQCover claim is settled.

An assignee can only receive what the assignor owns. It will be necessary to review the chain of assignments to check what exactly has been validly assigned and to whom. If the situation is unclear, the person dealing with the claim must (as a first step) ask the relevant parties to identify as between themselves who is entitled to the settlement.

vii. What if there is an existing mortgage over the property where there is an assignment of the EQCover claim?

Subject to any mortgagee waiver (see Section 9.d), a mortgagee will usually have a prior claim over money to be paid in settlement of an EQCover claim.

However, where for example, a property has been sold, it is usual for the prior mortgage to be discharged before or when the EQCover claim is assigned to the purchaser. An historical search of the Record of Title will confirm whether this has occurred.

If the mortgage prior to the assignment of the EQCover claim remains on the Record of Title, then the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

viii. Claim information may be disclosed to assignees

Where it is necessary to use information that we collected relating to a claim (including personal information of the assignor or property-related information), that information can be shared with the assignee in order to:

- resolve the EQCover claim;
- resolve a subsequent EQCover claim by the assignee (or any subsequent owner); and
- resolve a claim related to the same property with the private insurer.

Personal information of the assignor can only be shared with the assignee if the assignor has consented to this.

Information privacy principle 11, Section 22, Privacy Act

Such consent is usually provided for in the deed of assignment or the sale and purchase agreement. This should be reviewed and confirmed before personal information of the assignor is disclosed in accordance with this section. Any sensitive cases should be escalated to the appropriate Toka Tū Ake EQC representative.

d. Mortgages

Where there is a mortgage over the insured property, the mortgagee will have an insurable interest in the property. Accordingly, we must have due regard to that insurable interest in the insured property when settling the EQCover claim.

i. When is the mortgagee entitled to the EQCover residential building claim payment?

For the purpose of settling claims, we assume that any mortgage on the title includes a condition that has the effect of assigning the EQCover claim proceeds for the residential building and residential land claims to the mortgagee. However, mortgagees can waive their entitlement to receive the EQCover proceeds and agree that the EQCover proceeds may instead be paid to the owner.

In practice, most major lenders have supplied us with a waiver, referred to as the 'mortgagee cap'. The mortgagee cap lets us pay claims up to a certain amount directly to the owner and not to the mortgagee.

If the amount of the EQCover claim proceeds to be paid is greater than the mortgagee cap, the payment must go to the mortgagee.

The mortgagee cap for each major lender varies depending on what that lender has told us.

We will let people dealing with an EQCover claim know details of:

- the mortgagee cap applicable at the time of the relevant natural disaster event;
- in the case of a sequence of multiple natural disaster events, the mortgagee cap(s) applicable across the sequence.

ii. What if payment(s) have already been made to the Toka Tū Ake EQC customer in respect of the same EQCover claim?

Sometimes we will have already made payments to the customer in respect of the same claim (e.g. for urgent works under the residential building exposure or for the residential land exposure). If the current payment will push the total amount that has been paid out on the claim over the mortgagee cap, then the current payment must be paid to the mortgagee.

In cases where the claim has a residential building exposure and a residential land exposure, and there is an issue whether the mortgagee cap applies, then:

- if they are authorised to assess residential land damage, the person dealing with the residential building exposure should also deal with the residential land exposure and address the mortgagee cap issue;
- if the person dealing with the residential building exposure is not authorised to deal with residential land exposure, that person should escalate the mortgagee cap issue to the appropriate Toka Tū Ake EQC representative.

Example
A Toka Tū Ake EQC customer has made a claim for damage as the direct result of an earthquake. There is a mortgage on the Record of Title to the property. The mortgagee has a mortgagee cap of $25,000.

We have previously made a payment of $10,000 for the residential land exposure for the same earthquake. This payment was made to the Toka Tū Ake EQC customer because it was under the mortgagee cap.

However, we now need to make a payment of $20,000 for the EQCover residential building exposure for that earthquake.

The current payment (the $20,000) when added to the previous payment ($10,000) will push the claim over the mortgagee cap of $25,000. We must therefore pay the current payment (of $20,000) to the mortgagee.

iii. What if there is no existing mortgagee cap for the mortgagee?

Where a mortgagee is previously unknown to us, the mortgagee will not have provided us with any waiver. In this case there is no waiver and so the mortgagee will generally be entitled to get the EQCover proceeds, unless the mortgagee agrees otherwise.

In this situation, the person dealing with the claim will need to contact the mortgagee to ask for:

- details about how the EQCover claim proceeds should be paid to the mortgagee; or
- a waiver so that the payment can be sent to the Toka Tū Ake EQC customer.

The person dealing with the claim must establish contact directly with the mortgagee and not through the Toka Tū Ake EQC customer, unless it proves impossible to make contact with the mortgagee.

If the mortgagee is willing to provide a waiver, then the person dealing with the claim should obtain a written letter of authority (sometimes called an 'LOA') from the mortgagee and add the letter to the claim file. If any specific difficulties arise related to the waiver, then the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

e. Companies

A company is recognised in law as an independent legal entity (a body corporate). This means it is treated as being a separate legal 'person' from its directors and shareholders.

A company can have an insurable interest in an insured property (for example, as the owner of that property) and an EQCover claim can be settled with the company.

i. What happens where a company with an EQCover claim is in receivership, voluntary administration or liquidation?

As long as the company in any of these circumstances is still registered on the *Companies Register*, we may settle a company's EQCover claim with the company. However, if the settlement is by payment, there may be constraints on what happens to the payment.

The receiver, administrator or liquidator will have authority to direct where the settlement payment should be made. Where a direction is made to an account which does not belong to the company, it is necessary to obtain documentation that:

- demonstrates that the person directing the payment has been appointed as the receiver/administrator/liquidator and is acting within their authority; and
- provides a written, signed and witnessed statement authorising payment of the EQCover claim proceeds to the particular account.

It is also necessary to look at the Companies Office website (*www.companiesoffice.govt.nz/companies*) in relation to the relevant company name to check:

- whether the company has been put into voluntary receivership/administration/liquidation;
- that the notice of appointment of receiver/administrator/liquidator is there;
- that the name on the notice matches the name of the person holding themselves out to be the receiver/administrator/liquidator; and
- the date on which the appointment was made.

ii. What happens where a company has been removed from the Companies Register?

A company can be removed from the *Companies Register* for many reasons, including not paying the required fees to the Companies Office or having ceased carrying on business.

Part 17, Companies Act 1993

Where:

- a company owned the insured property at the date that that property suffered natural disaster damage; and
- the company has since been removed from the *Companies Register*;

the right to any proceeds from outstanding EQCover claims may ultimately vest with the Crown.

Section 324, Companies Act 1993

However, before paying any proceeds to the Crown, we must consider three questions:

- Did the company assign the EQCover claim before it was removed from the *Companies Register*?
- Can the company be restored to the *Companies Register*?
- Does anyone else have an insurable interest in the damaged property?

Did the company assign the claim before it was removed from the Companies Register?
We must confirm with the former directors that the company did not make any arrangements before being struck off to assign the benefit of the EQCover claims (either by way of deed of assignment or through other documentation). If the company did make such arrangements, then after receiving supporting documents, we will be able to progress the claim with the assignee.

Those arrangements must have been made before the company was struck off. The former directors of the company have no power to assign claims on behalf of the company after the company has been struck off.

Similar enquiries regarding the assignment of the EQCover claim can be made with any receiver, administrator, or liquidator who was appointed before the company was struck off.

Can the company be restored to the Companies Register?
Various parties can apply to the Companies Registrar for the company to be restored to the Companies Register. This approach may be appropriate where, for example, the company has been struck off because an annual return has not been filed.

If any party proceeds with this option, it will be necessary to wait to see if the Companies Office restores the company to the *Register* before settling the EQCover claim with the company.

Does anyone else have an insurable interest in the damaged property?
The removed company may not have been the only party with an insurable interest in the damaged property. In that case, a party with a strong insurable interest at the date of loss could properly be paid the benefit of the claim.

Before settlement is completed with any party other than the company (if restored to the register) or valid assignee, the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

Paying the money to The Treasury (if required)
Where the above options have been considered but none can proceed, the EQCover claim payment due to the company that has been removed may instead be paid to The Treasury, which receives the EQCover claim proceeds on behalf of the Crown.

Any proposed payment of EQCover claim proceeds to The Treasury should be escalated to the appropriate Toka Tū Ake EQC representative, as only the Toka Tū Ake EQC representative should liaise with The Treasury. In all cases, the Toka Tū Ake EQC representative should liaise with The Treasury about any possible payment to The Treasury.

f. Deceased estates

Where a person with an insurable interest in an EQCover claim dies, the claim will usually be transferred in accordance with the laws of succession. These laws are discussed below.

Communications with family members and other beneficiaries in relation to a claim involving a deceased person should be handled especially sensitively, given the circumstances.

i. If the EQCover claim was made before the deceased died, who inherits the EQCover claim?

If the deceased had a valid will, the EQCover claim will be transferred in accordance with the terms of the will.

If the deceased died without a valid will, they are said to have died 'intestate'. In this case, the rules of intestacy in *Part 3 of the Administration Act 1969* set out who gets the deceased's assets (which will include the EQCover claim). These rules set out a certain order of priority for who will receive the deceased's assets - for example, spouse or partner, children, parents, siblings etc, and in what proportions.

Part 3, Administration Act 1969

What happens to the deceased's assets if there is a will?
Once the executor has obtained probate, the executor must collect in the assets that were owned by the deceased. In most cases, an EQCover claim is unlikely to be mentioned specifically in a will – but, unless there is information to the contrary, the assets of the estate will generally include the EQCover claim.

Once the executor has collected in the assets of the deceased's estate, the executor can distribute the assets in the estate (including the EQCover claim) to a beneficiary or beneficiaries as set out in the deceased's will.

What happens to the deceased's assets if there is no will?
If there is no will, or if the people named as executors under the will are unwilling to act, an administrator is appointed under the *Administration Act*. The administrator fulfils a similar role to an executor.

For convenience in this Manual, we refer to 'executor', but 'administrator' can be substituted as needed.

Who gets the EQCover claim?
Unless there is information to the contrary, an EQCover claim in relation to a residential building and/or residential land will be treated as being transferred to the person entitled to ownership of the residential building and/or residential land. That person may be the executor. After the assets of the estate are distributed, it will be the person(s) entitled to the property under the will or the rules of intestacy.

Should Toka Tū Ake EQC deal with the executor or with the beneficiaries who get the property under the will or the rules of intestacy?
Whether we should deal only with the executor, or whether we should deal directly with the intended recipient of the benefit of the EQCover claim, will depend on where the administration of the estate is up to. Generally we should deal with the executor, unless the executor notifies in writing that the distribution of the assets of the estate is complete.

This is of course subject to the requirement that we must have due regard to all other 'insurable interests' in the insured property (e.g. mortgagees) when settling the claim.

What if the executor wants to transfer the EQCover claim to the beneficiaries of the estate?
If the EQCover claim takes some time to settle, the executor might in the meantime wish to transfer or vest the claim direct to the beneficiaries of the estate. Before giving effect to such a request, we will need written notice of the request from the executor.

ii. How does the form of property ownership affect who gets the proceeds of the EQCover claim after the deceased died?

The way the insured property was owned by a person affects who owns the property (and the EQCover claim) after that person's death.

What are the different forms of property ownership?
The deceased can only pass on the interest in property that they actually owned.

- Sole ownership – When the sole owner of a property dies, ownership of the property transfers to the executor of the estate. The executor then transfers the property to the intended beneficiaries.

- Joint tenancy – When a joint owner of property dies, their interest in the property may vest with any surviving joint owner or owners. This is known as the 'principle of survivorship'. The interest of the surviving joint tenant(s) is not usually dealt with as part of the deceased person's estate.

- Tenants in common – When a person dies who was the owner of a share in a property that was held as a tenant in common, only ownership of that share is transferred to the executor for the owner's estate. Then that share of the property will be transferred to the intended beneficiaries.

Property can be owned as 'tenants in common' and 'joint tenants'. For example, a property might be divided into two shares, each held as tenants in common. But each of those shares may be jointly owned by two people as joint tenants. In that instance, the principle of survivorship applies only within the joint ownership of the deceased's share.

What if the deceased owned insured property as a sole owner?
If the deceased person was the sole owner of the insured property:

- the EQCover claim may be settled with the executor of the estate; or
- on the executor's direction, the EQCover claim may be settled directly with the person(s) who are entitled to the property under the will or the rules of intestacy. The direction must be in writing and be signed by all the appointed executors. If the direction is not signed by all the appointed executors, the facts and documents available in each instance must be assessed to determine if authority has been granted to the sole executor signing the direction.

Sometimes the executor may complete the administration of the estate and transfer or vest the assets of the estate in the beneficiaries before the EQCover claim is settled. If the executor gives notice to us that the benefit of the EQCover claim has been transferred or vested in the beneficiaries, we may then deal directly with the beneficiaries.

In any event, we must also have due regard to all other 'insurable interests' in the insured property (e.g. mortgages) when settling the claim.

What if the deceased owned the insured property as a joint tenant?
If a property or a share in a property was owned by joint tenants and one of them died before the natural disaster event, then generally the approach is to proceed as if the deceased has been removed from the Record of Title. The survivor normally becomes the individual who is likely to have had the insurable interest at the time of loss. On that basis, the EQCover claim would be settled with the survivor.

However, where the deceased held an interest in insured property as a joint tenant, and died before the settlement of the EQCover claim, it is necessary to check whether we are on notice that:

- the contract of fire insurance was taken out on a 'composite basis'. If so, the survivor and the deceased's estate might both be entitled to receive some of the EQCover claim proceeds; or
- the joint tenancy has been severed.

Either of these factors might indicate that there was an agreement between the parties as to how the EQCover claim was to be treated. In these cases, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

What if the deceased owned the insured property as a tenant in common?
If the deceased held insured property as a tenant in common, that interest in the insured property will pass to the executor and then to the beneficiary or beneficiaries, in the way already discussed above.

The proportion of the deceased's share in the insured property is a sensible guide to determining the percentage of the EQCover claim proceeds which should be paid to the deceased's estate. But this rule of thumb is always subject to:

- any specific arrangements about how the EQCover claim proceeds are to be dealt with; or
- any other relevant insurable interest that another person may have.

If either of these factors is present, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

iii. What if the property has been transferred to an executor or survivor before the natural disaster event?

In the case of the executor, legal ownership of the property will be transferred to the executor before the natural disaster event. The executor will be treated as the owner of the property at the date of the natural disaster event giving rise to the claim.

An EQCover claim can usually be made by an executor on behalf of the estate, or by a survivor. However, the executor on behalf of the estate, or the survivor, will need to show that they are the 'insured person' in relation to the property at the time of the natural disaster damage.

If an historical search copy of the Record of Title shows that a property or a share of a property was transferred before the date of the natural disaster event from the deceased:

- to individuals listed 'as executors' or 'as administrators'; or
- to individuals listed 'as survivors';

then the executor, administrator or survivor can be treated as the owner of that property or share of it. The EQCover claim made by the executor, administrator or survivor for damage as the direct result of the natural disaster can then be assessed in the usual way.

If updates to property ownership shown on the Record of Title occurred after the date of the natural disaster event, or have not occurred at all, then further documentation may be required – for example, a copy of the death certificate, probate documents or letters of administration for the deceased. Where necessary, this will confirm whether the property was transferred before the date of the natural disaster event.

iv. Is a death certificate required?

Not necessarily.

A death certificate is one way of proving death. But there are other types of documentation which can also prove death, for example:

- evidence that probate has been granted;
- evidence that letters of administration having been issued;
- a coroner's report;
- a certificate from the Public Trust or a Trustee Company.

Is it acceptable to rely on a Public Trust or Trustee Company certificate instead of probate or letters of administration?
Yes. A certificate from the Public Trust (see *section 144 of the Public Trust Act 2001*) or an authorised trustee company (under *section 42 of the Trustee Companies Act 1967*) in relation to a deceased person is sufficient evidence of the death of a person, the appointment of Public Trust/the trustee company as executor or other administrator, or Public Trust's or the trustee company's right to administer the estate.

The certificate must:

- state the name, residence, and occupation of the deceased person at the time of their death, and the date of death;
- certify that Public Trust/the trustee company has obtained a grant of probate or an order to administer, or is otherwise authorised to administer the estate; and
- state the date when the probate or order to administer was granted, or the manner in which and time at which Public Trust/the trustee company became authorised to administer it.

Section 144, Public Trust Act 2001
Section 42, Trustee Companies Act 1967

v. What if someone challenges the deceased person's estate?

There can be challenges against the estate of a deceased person. These include challenges under:

- the *Law Reform (Testamentary Promises) Act 1949*, where someone might argue that the deceased promised to leave them some money;
- the *Family Protection Act 1955*, where a family member might argue that the deceased has not provided adequately for them; or
- the *Property (Relationships) Act 1976*, by a spouse or partner of the deceased.

If there are challenges of this nature to the estate that will involve the EQCover claim, then the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

g. Trusts

i. Settlement by payment to a trust

If settlement is by way of payment, there are two ways that EQCover claim proceeds can be paid to a trust:

- to a bank account in the name of the trust; or
- to the bank account of one of the trustees on behalf of the trust. This can occur where the trust has no bank account and all the trustees request in writing that the proceeds of claim be paid in this way.

It is necessary, save in exceptional circumstances, that we only act on the instructions of all the trustees as to how payment should be made. Such instructions provide assurance that there is consensus between the trustees.

If there are difficulties in obtaining instructions from all the trustees, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

It is still of course always necessary to consider the insurable interests of others - for example, mortgagees.

ii. What if the trustees have changed?

If there have been changes to the trustees, there will be documentation that records the retirements and the new appointments. Copies of this documentation must be obtained if the trustees are no longer the same as those recorded on the Record of Title to the property.

iii. Is a copy of the Trust Deed of the Trust required?

A copy of the pages of the trust deed showing the name of the Trust, the name of the trustees and the signatures of the trustees (which should be witnessed) may be needed in order to:

- ensure that the claim has been made by the insured person with an insurable interest in the property. This is a basic requirement of the EQCover claim (see Section 3.b); and/or
- confirm that the Trust name reconciles with the name of the bank account.

But the Record of Title is enough to establish who owns the relevant property.

h. Unit title developments

i. Settlement by payment

In most cases, the unit title development under the *Unit Titles Act 2010* will be insured under a 'principal insurance policy' and the payment will be made to the body corporate.

However, complex issues can arise as to whether the EQCover claims should be settled with the body corporate, the unit owners or the mortgagees. These issues can arise for three key reasons:

- The insurance situation: Sometimes the individual unit owners hold separate contracts of fire insurance or direct EQCover (and the body corporate does not have a contract of fire insurance). Occasionally in these cases, not all unit owners are insured. On the other hand, sometimes both the body corporate and (some or all of) the individual unit owners hold contracts of fire insurance or direct EQCover; or

- The nature of the damage suffered: Damage that overlaps individual units and/or common property or other shared components of the residential building may raise difficult issues about appropriate repair strategies and correct payees; or

- There are mortgagees who have insurable interests: The *Unit Titles Act 2010* generally requires money paid under a principal insurance policy to be applied towards reinstatement of the unit title development. Where this happens, a mortgagee is not entitled to demand that any of this money is paid or applied towards repayment of the mortgage debt.

In any of these cases, the issue should be escalated to the appropriate Toka Tū Ake EQC representative.

ii. What if the Deed of Assignment (DOA) relates to a property held under the Unit Titles Act 2010?

If a unit is separately insured and a separate EQCover claim has been made by the owner, a DOA will be relevant to the EQCover claim in the usual way.

But if the body corporate holds the contract of fire insurance for the residential building and has made the claim, a DOA signed by the owner of the unit will usually be irrelevant. The EQCover claim will be settled with the body corporate and the new owner of a unit will benefit as determined by the body corporate.

iii. Further guidance

We may issue more detailed guidance from time to time on settlements of EQCover claims involving unit title developments.

i. Leasehold properties

i. Who has an insurable interest in the leasehold property?

Due regard must be had to all the 'insurable interests' in the insured property when settling the EQCover claim.

Leasehold properties in New Zealand are subject to a ground lease. This means that a lessor owns the land, and the lessee pays ground rent to the lessor. The lessee also purchases an exclusive right to possession of the land and the buildings on it for a specific period of time according to terms set out in a lease. In some cases, the lessee will own the buildings or other improvements on the land. Therefore, both the lessor and/or lessee may have an insurable interest in the parts of the property that are leased, depending on the terms of the lease.

In the case of a ground lease, both the lessor and lessee may have an insurable interest in the land. However, in some cases only the lessee will have an insurable interest in the buildings. This will depend on the terms of the lease (which should be checked) and is because the lessee effectively owns the buildings, whereas the lessor may have limited or no legal estate or interest in the buildings.

Some leases are of a very long duration, such as 999 years. In this case, the lessee – and not the lessor – may be treated as having an insurable interest in the leased property. Although this situation is in the form of a lease, in substance it is as though the lessee is the owner of the land, because the lessor cannot take possession again for nearly a thousand years. We do not treat the lessor as having an insurable interest in the leased property in this situation.

In any cases involving leasehold properties, a copy of the underlying lease agreement should be obtained and the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

Generally, residential tenancies will not involve insurable interests on the part of the lessee, but any concerns should be escalated.

ii. Can a lease operate to assign the EQCover proceeds to the lessor?

Sometimes the terms of a lease will operate to assign the EQCover proceeds to the lessor. The terms of the lease must be checked to find out whether the lease has this effect.

The effect of section 31 of the *EQC Act* is that, if any lease contains a condition relating to the contract of fire insurance on the property, that condition applies equally to the EQCover on the property. So, if there is a lease that provides for the contract of fire insurance proceeds in respect of the leased property to go to the lessor, any EQCover claim proceeds must also go to the lessor.

Section 31 EQC Act

If the EQCover proceeds have been assigned to the lessor, the EQCover proceeds should be paid to the lessor, assuming all other requirements under the *EQC Act* are met. In this case, all people having insurable interests must be advised that the proposal is to proceed in that manner (and why). Those people must be given a reasonable period in which to make any comments that they wish to make before settling the claim. Doing so is likely to reveal whether any person opposes that course and whether there is any sound basis for their opposition.

iii. What if the lease does not assign the proceeds to the lessor or any other person?

If the lease does not operate to assign the EQCover proceeds to any particular person, it will generally be appropriate to give the lessor and lessee the opportunity to agree as to who should be paid. Letters of authority must be obtained from each party recording any agreement reached. The letters of authority must be correctly signed and dated.

What if the lessor and lessee don't agree on how the EQCover proceeds should be paid out?
If the lease does not assign the EQCover proceeds to any particular person, and the lessor and lessee can't agree on who should be paid the EQCover proceeds, there are various options, including:

- where the damaged property can be repaired or rebuilt, decide to pay the proceeds to the party that is most likely to be in a position to carry out the repair work. The terms of the lease will generally make one of the parties (often the lessee) liable to keep the property in good condition and repair, and reinstate the property in the event of damage or destruction;

- determine (usually by instructing a valuer) the extent of the lessor's and the lessee's respective interests in the damaged property and apportion the EQCover proceeds accordingly.

Before adopting one of these options or another option, the proposal for settlement should be escalated to the appropriate Toka Tū Ake EQC representative.

iv. Cross-lease properties

We may issue more detailed guidance from time to time on settlements involving cross- lease properties.

j. Māori land interests

For some EQCover claims the Record of Title may show that the property is Māori freehold land.

In some instances, the property will be owned in undivided shares by a large number of people (per the Record of Title), and settling these EQCover claims can be more complex. This scenario is discussed below.

i. Due regard must be had to the insurable interests of all the owners

Where land (including Māori freehold land) is owned by multiple owners, due regard must be had to the insurable interests of all the owners.

There is a statutory presumption that multiple owners of Māori freehold land are tenants in common.

Section 345, Te Ture Whenua Māori Land Act 1993

If the owners of the Māori freehold land are relatively few in number, written agreement should be obtained from all the owners confirming to whom the EQCover settlement proceeds will be paid.

If the property is owned by more people than we can reasonably get agreement or obtain a payment authority from, another approach will need to be considered. This approach may involve deciding to pay the settlement proceeds to one (or only a few) of the owners.

In order to determine how to proceed, it will be necessary to obtain the following information:

- who were the primary residents of the residential building at the date of loss? How long have they been living there? Did they have a licence to occupy?
- are there written agreements establishing who is entitled to the benefit of the property and who is responsible for its maintenance? Who has taken out the contract of fire insurance in respect of the residential building?
- who is intending to repair the property once the settlement proceeds have been paid?
- who is claiming the right to the settlement proceeds? Are there conflicting claims?
- is ownership of the residential building any different from ownership of the underlying land? For example, is there a particular person who has built the residential building (with their own money) on Māori freehold land that is collectively owned by a wider range of people?

Once this information is obtained, the claim should be escalated to the appropriate Toka Tū Ake EQC representative.

k. Relationship property issues

Various issues may arise when a relationship ends and the parties have owned property together which is the subject of an EQCover claim. Most commonly, issues will arise over the parties' shared home.

i. What happens where only one party is the owner on the Record of Title and is noted on the insurance certificate?

If one party alone holds the Record of Title and the insurance on the property at the time of the natural disaster damage, the EQCover claim will ordinarily be settled with that party alone. However, if before the claim is settled, we become aware of potential property issues arising from a relationship break-up, both parties must be consulted. This is to ensure that there is no other matter that affects payment of the EQCover claim proceeds (for example, a relationship property order).

ii. What if both parties are owners on the Record of Title and are noted on the insurance certificate?

If, at the time of the natural disaster damage, both parties are owners on the Record of Title (whether as joint tenants or tenants in common) and have taken out insurance together, it can be assumed that both have an insurable interest in the EQCover claim.

Ideally, the individuals involved will agree to have the EQCover proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine the allocation. Letters of authority must be obtained from each party recording any such agreement to pay the EQCover proceeds into a solicitor's trust account. The letters of authority must be correctly signed and dated.

iii. Relationship property agreement will ideally deal expressly with EQCover claims

Ideally, if there is a relationship property agreement, it will record the parties' agreed intentions as to what is to happen to the EQCover claim. Usually that agreement will be able to be acted on in reliance on the recorded intentions of the parties.

The relationship property agreement will need to be properly signed by the parties and set out:

- the full names of both parties;
- the address of the damaged property;
- the date on which the agreement is to take effect;
- a clear description of the claims being addressed. This may include the EQCover claim number(s) of the claim(s) or a more general (but clear) description of the claim(s). In either case, it is important that it is clear which exposures are being assigned (for example, the residential building and/or residential land exposure(s)). Some agreements will only assign aspects of the claim(s) - for example, the residential building exposure(s) but not their residential land exposure(s);
- a clear statement as to who is to receive the benefit of the EQCover claim(s).

iv. What if the relationship property agreement is silent about the EQCover claim?

Sometimes the relationship property agreement is silent about what is to happen about an EQCover claim. If under the agreement, one party has become the sole owner of the property, it may have been intended by the parties that the EQCover claim is transferred to that person.

However, it cannot be assumed that this is the case.

The parties' express agreement is required as to how the EQCover claim is to be treated. Ideally, the individuals involved would agree to have the EQCover proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine the allocation.

Letters of authority must be obtained from each party recording any such agreement to pay the EQCover proceeds into a solicitor's trust account. The letters of authority must be correctly signed and dated.

If there is a dispute as to who is entitled to the proceeds of the EQCover claim, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

v. What if there is a new mortgagee?

If the parties have transferred the property to one party (as part of the resolution of relationship property issues), there will often be a new mortgagee recorded on the Record of Title.

The mortgagee may have made it a term of the loan that they receive any proceeds from any existing EQCover claim. It is necessary to write to the relevant parties to check if there is any such arrangement with the mortgagee.

l. Other registered interests on the Record of Title of the property

Other forms of registered interests on the Record of Title may indicate that a person has an insurable interest in the property. We must have due regard to that insurable interest in the insured property when settling the EQCover residential building claim.

We have already mentioned some registered interests above (e.g. mortgagees, leases). Some other interests are itemised below.

i. Caveats

If a caveat appears on the Record of Title, a copy of the caveat instrument must be obtained to see what interest it protects. If it protects an interest that would not affect the payment of the EQCover claim proceeds, then the caveat can be ignored.

If however the caveat protects an interest that could affect the payment of the EQCover claim proceeds, for example a mortgage that predates the natural disaster damage, then we should consult with the caveator. The caveator's contact details will be recorded in the caveat instrument.

If the owner and caveator do not agree on to whom the EQCover claim proceeds are to be paid, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

ii. Section 42(2) Property (Relationships) Act 1976 notices

A notice under *section 42(2) of the Property (Relationships) Act 1976* effectively acts as a caveat preventing dealings with the property until the relationship property claim is resolved. It does not itself create an interest in the property where an interest does not already exist. Whether the person who entered the notice against the title has an insurable interest or not in the property is not something that can be determined simply from the Record of Title.

It is necessary to check whether the individual named in the notice was an owner of the property at the date of loss. An historical search will generally be required for this purpose.

If the person named in the notice was an owner of the property (or otherwise has an insurable interest in the property) at the date of loss and has not assigned their rights to the claim, they and the other owner(s) will need to reach an agreement about who should get the EQCover claim proceeds. Letters of authority must be obtained from each party recording any agreement reached. The letters of authority must be correctly signed and dated.

Alternatively, the individuals involved can agree to have the EQCover proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine entitlement to the EQCover proceeds.

If there is a dispute about who is entitled to the proceeds of the EQCover claim, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

iii. Charging orders

A charging order simply stops the charged land from being sold or otherwise disposed of. It does not mean that the person who holds the charge has an insurable interest in the residential land and residential building. Accordingly it will usually be appropriate to disregard a charging order for the purposes of settling the EQCover claim.

iv. Family benefit charges

A family benefit charge is effectively a statutory mortgage in favour of (usually) Kāinga Ora – Homes and Communities. The charge is governed by the *Family Benefits (Home Ownership) Act 1964*, which provides that the charge is to be treated as a mortgage under the *Property Law Act 2007*. The effect of this provision will be to assign to Kāinga Ora – Homes and Communities any EQCover claim proceeds in respect of the mortgaged property.

A family benefit charge is treated as though it were a mortgage to Kāinga Ora – Homes and Communities. However, the charges are generally very old, and so are likely to have been repaid. It is therefore necessary to check with Kāinga Ora – Homes and Communities whether any amount is still secured by the charge and, if not, make the payment to the customer. It will also be necessary to check the priority of the charge with other mortgages.

v. Other interests

There will be other interests which may appear on the Record of Title that are not covered by this Manual. Where the person dealing with the EQCover claim is uncertain as to whether any particular registered interest gives rise to an insurable interest, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

m. What if there is a dispute over who is to receive the EQCover claim settlement?

If there is a dispute over who is to receive the EQCover claim settlement and the matter cannot be resolved with the claimants directly, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

10. How is the EQCover claim closed?

A claim is only closed where there is:

- an outcome for all of its applicable exposures (that is, for the residential building and/or the residential land exposure); and
- all other requirements for closure of the claim (as described below) are met.

Section 10.A sets out the requirements for closure of a residential building exposure.

Section 10.B sets out the requirements for closure of the claim.

Section 11.A of the Toka Tū Ake EQC Claims Manual – Residential Land sets out the requirements for the closure of the residential land exposure.

A. How is a residential building exposure closed?

a. Overview

Before a residential building exposure can be closed, the following requirements must be met:

- the outcome of the exposure must be identified; (Section 10.A.b)
- the customer must be advised of the outcome of the exposure; (Section 10.A.c)
- all other actions related to the closure of the exposure must be completed; (Section 10.A.d); and
- a full record of the exposure must be available for Toka Tū Ake EQC. (Section 10.A.e) Details of each of these requirements are set out below.

b. Identifying the outcome of the residential building exposure

The possible outcomes for a residential building exposure and the reasons for those possible outcomes are set out in the table below.

In identifying the outcome of an exposure, the person dealing with the claim must:

- select from the six 'Outcome' terms set out in this table (that is, 'Accepted'; 'Withdrawn'; 'Duplicate'; 'Not Accepted'; 'Declined'; and 'Invalid'); and
- specify the particular reason for the outcome (drawing from the column headed 'Reason' in the table). For example, if the outcome is 'Declined', the reason might be 'declined (in whole) on the grounds set out in *clause 3(a), Schedule 3, EQC Act'*.

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
1	Accepted	The exposure is:		
		• settled by payment of a cash amount;	Cash settled.	Section 9
		• settled by reinstatement, replacement or relocation;	Settled on the basis of reinstatement, replacement or relocation.	Section 8.c
		• below the amount of the applicable excess;	Settlement amount is below the excess amount. Therefore no amount paid.	Section 8.f
		• nil, as the contract of fire insurance provides 'ground up' cover and there is nothing else for us to pay.	The contract of fire insurance provides 'ground up' cover. The private insurer has paid for all the natural disaster damage within the terms of the contract and there is nothing else for us to pay.	Section 3.i.ii
		• 'accepted' in part.	The exposure has been accepted in part and the other part of the exposure is 'declined'.	
2	Withdrawn	The customer has withdrawn the exposure.	The customer has withdrawn (in writing or by recorded telephone communication) either the entire claim or the exposure.	n/a
3	Duplicate	The exposure is a duplicate of an existing exposure on another existing claim.	The exposure has been identified as a duplicate of an existing exposure on another existing claim.	n/a
4	Not accepted	The exposure is not accepted.	After making reasonable efforts, it has not been possible to ascertain the following:	Section 3.g

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			• the relevant insurance policy number; and • the name of the private insurer. We consider that the above two items are the minimum information required to proceed with an exposure.	
5	Declined	The exposure is declined (in whole or in part) on one or more of the grounds under *Schedule 3 of the EQC Act*.	The exposure is declined [(in whole)][(in part)] for one or more of: • the seven grounds for declining claims under clause 3, Schedule 3; • the grounds for declining claims under clause 5, Schedule 3; • the grounds for declining claims under clause 7(2B), Schedule 3; • the grounds for declining claims under clause 8, Schedule 3.	Section 7.h Section 7.i Section 7.j Section 7.k
6	Invalid	The exposure is not valid for one or more of the reasons in the next column.	The reasons are: • an insured person with an insurable interest in the property concerned did not give (or authorise the giving of) the notice of the natural disaster damage; • the notice does not say that natural disaster damage has occurred to insured property (that is, property covered by the *EQC Act*); • the notice has not been given to Toka Tū Ake EQC or another person authorised by us within the two year time limit; • there is no contract of fire insurance or direct EQCover over the property concerned in force at the relevant time; • the EQCover has been cancelled;	Section 3.b Section 3.c Section 3.d and 3.f Section 3.g Section 3.h

#	Outcome	Description of Outcome	Reason	Other relevant references in this Manual
			• there is no natural disaster damage to the residential building.	Section 4

c. Advising the customer of the outcome of the residential building exposure

Before the residential building exposure is closed, the customer must be clearly advised of the outcome of the exposure and the reason for it.

To this end, the minimum requirements set out below must be addressed when communicating the outcome of the exposure.

i. How is an 'Accepted' cash settlement outcome communicated?

Section A of Appendix 1 of the Manual sets out the requirements that must be addressed in a communication for an 'Accepted' cash settled residential building exposure.

Section B of Appendix 1 sets out some suggested items for the cash settlement communication.

ii. How are other outcomes communicated?

Where the exposure (or any part of it) is not cash settled, the communication to the customer must:

- set out the outcome of the exposure and the reason for it. The possible outcomes and reasons are set out in the table at Section 10.A.b;
- include any supporting documentation from professional advisers who have been involved in the assessment;
- where a private insurer or third-party provider is dealing with the exposure, make plain (unless we direct otherwise) that the private insurer or third-party provider is acting in an agency role in assessing the EQCover claim in accordance with the *EQC Act* (see Item A.1 of Appendix A, which applies for this purpose);
- set out the claim number allocated for the EQCover claim (in respect of the exposure) and the address of the property where the natural disaster damage allegedly occurred;
- make plain which exposures the communication relates to (for example, it may also relate to the residential land exposure);
- be consistent with other relevant provisions of this Manual with respect to specific communications. In this regard, see Sections 7.g.iv and 9.f; and
- set out how the customer can request further information.

Particular requirements regarding 'Not Accepted' outcome
Any communication informing a customer that the outcome of their claim is 'Not Accepted' must include a clear statement:

- itemising the required information that has not been received (and which has caused the claim to be 'not accepted');
- explaining that the customer may still provide the required information; and
- stating that the claim will be reopened as soon as that information is received.

Form of communication
We do not generally prescribe any particular form of the communication. However the communication must:

- be in writing;
- meet the requirements set out above in this Section 10.A.c.ii and be consistent with them throughout; and
- be in the form of a Toka Tū Ake EQC template, if we have provided a template communication for the outcome.

Communications by private insurers acting on our behalf

Where a private insurer is dealing with an exposure on our behalf, the communication may be:

- in two communications (one covering the EQCover residential building exposure and one covering the building component that is covered by the private insurer for the same property); or
- in one communication (covering both), provided the two components can clearly be understood separately.

The private insurer must set out clearly the different consequences of the respective decisions to decline where:

- they are dealing with an exposure on our behalf and the relevant EQCover claim is declined under one of the grounds set out in *Schedule 3 of the EQC Act*; and
- the private insurer also declines the claim under the contract of insurance for the same property.

d. Other requirements before closing a residential building exposure

Before an exposure can be closed, all relevant records must be checked to ensure that (in relation to that exposure) there are:

- no outstanding payments to the customer, any supplier or any other person;
- no open activities, or requests to any party, of any kind; and
- no unresolved complaints or challenges, including (but not limited to) any that:
    - have been made by the customer, lawyers, advocacy groups or other agencies, the Minister's office or MPs; or
    - are in mediation (or any other form of alternative dispute resolution), or before any decision-maker such as the Ombudsman, the Disputes Tribunal or a Court.

Additional requirement for 'Duplicate' exposures

Where the exposure is a 'Duplicate', the person dealing with the claim must transfer any new information from the duplicate exposure onto the relevant main claim.

e. Compiling a full record of the residential building exposure

i. What records need to be compiled where the residential building exposure is closed?

The person dealing with the claim must compile and have available for Toka Tū Ake EQC:

- the full file relating to the residential building exposure;
- any other information as we direct from time to time.

The file and other information must be:

- comprehensive and robust for audit and reporting purposes;
- suitable for use (including in any tribunal or Court), should the outcome later be challenged; and
- in accordance with any direction that we may give (for example, as to the form and mode of storage of the file and other information).

ii. What other records must be compiled on the closure of any residential building exposure?

Details must be compiled and be available for Toka Tū Ake EQC where any of the following have occurred:

- an inquiry relating to the exposure has been directed to the Minister;
- the exposure has attracted media attention.

f. What happens if the exposure needs to be re-opened?

Sometimes there may be circumstances where a previously closed exposure needs to be re-opened.

Where an exposure needs to be re-opened, the claim must also be re-opened.

Once resolved, the re-opened exposure and claim can be closed in accordance with the requirements for closure set out in this Section 10.

B. How is an EQCover claim closed?

a. Overview

A claim is only closed where there is:

- an outcome for all of its applicable exposures (that is, for the residential building and/or the residential land exposure); (see Section 10.A) and
- all other requirements for closure (as described below) are met.

b. What is required before an EQCover claim can be closed?

Before a claim can be closed, all relevant records must be checked to ensure that all the exposures (that is, the residential building and/or the residential land exposures) are closed.

Section 10.A sets out the requirements for closure of a residential building exposure.

Section 11.A of the Toka Tū Ake EQC Claims Manual – Residential Land sets out the requirements for closure of the residential land exposure.

c. Who should close the EQCover claim?

Sometimes all the exposures for a claim are being dealt with by one organisation (for example, all the exposures are being dealt with by Toka Tū Ake EQC; or all the exposures are being dealt with by our agent). In that case, the organisation dealing with all the exposures should close the claim.

However, different organisations may be dealing with different exposures under one claim. For example, a private insurer (as our agent) may be dealing with a residential building exposure; and another agent of ours may be dealing with the residential land exposure. In cases like this, the organisation which closes the last of the open exposures also closes the claim.

If there is any doubt about who should close the claim, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

d. Completing all other actions related to closing the EQCover claim

i. Records required before a claim is closed

Before the claim is closed, the person dealing with the closure of the claim must compile and have available for Toka Tū Ake EQC:

- the full files and other information relating to each exposure for the claim (see

  Section 10.A.e.i above and *Section 11.A.e.i of the Toka Tū Ake EQC Claims Manual – Residential Land*); and

- all other details required in relation to those exposures (see *Section 10.A.e.ii* above and *Section 11.A.e.ii of the Toka Tū Ake EQC Claims Manual – Residential Land*).

ii. Other actions before a claim can be closed

Before the claim is closed, the person dealing with the closure of the claim must complete all other actions as we may direct from time to time in relation to the claim, including (but not limited to) actions in connection with:

- Toka Tū Ake EQC audit requirements;
- quality assurance related to the processing of the claim; and
- any other issue identified by us that must be resolved to our satisfaction before the claim is closed.

11. Other matters

This Section 11 addresses other matters relating to the assessment and settlement of EQCover claims for natural disaster damage to residential property.

a. Health and safety

Any person dealing with an EQCover claim must comply with all statutory obligations including the *Health and Safety at Work Act 2015* and regulations under that Act in all relevant respects. Sometimes Toka Tū Ake EQC and third parties will both have health and safety responsibilities for the same person. When this occurs, we and the third party must consult.

i. Our responsibilities

We are responsible for the health and safety performance of all staff and contractors dealing with EQCover claims, whether they are the staff and contractors of:

- Toka Tū Ake EQC;
- a private insurer; or
- a third-party provider.

ii. Responsibilities of private insurers and third-party providers (as agents of Toka Tū Ake EQC)

A private insurer or third-party provider (acting as agents of Toka Tū Ake EQC) are also responsible for the health and safety performance of their staff and contractors who are dealing with an EQCover claim.

The private insurer or third-party provider must:

- comply with and ensure their staff and contractors comply with:
    - any Toka Tū Ake EQC health and safety policies, processes and procedures that have been notified to them or of which they are aware, including our health and safety prequalification process;
    - any requirements to report to Toka Tū Ake EQC regarding health and safety (including reporting of notifiable events or notifiable incidents);
    - the reasonable requirements of any health and safety plan operated by any other party in control of a property;
- have in place, implement and operate appropriate health and safety policies, processes and procedures that comply with all relevant legislation;
- ensure that:
    - any information we provide on health and safety is conveyed to their staff and contractors and is implemented; and
    - their staff and contractors complete and pass any health and safety training that we require.

iii. Site hazards

Before the person dealing with the claim visits a property, the owner or occupier of the property should be asked to provide details about any known hazards on site (for example, whether there are any dogs).

Health and Safety at Work Act 2015
Health and Safety at Work (General Risk and Workplace Management) Regulations 2016 Health and Safety in Employment Regulations 1995
Worksafe – Identifying, Assessing and Managing Work Risks [PDF, 404 KB]

iv. Asbestos

The Health and Safety at Work (Asbestos) Regulations 2016 contain detailed provisions regulating work involving asbestos. Those regulations must be complied with when assessing or repairing a residential property that contains, or might contain, asbestos.

Health and Safety at Work (Asbestos) Regulations 2016
Worksafe – Approved Code of Practice: Management and Removal of Asbestos [PDF, 3.8 MB]

v. Heights and confined spaces

Particular care must be taken, when assessing or repairing residential properties, to deal appropriately with hazards arising when working at height or in confined spaces.

Further information
WorkSafe New Zealand publishes information about working at heights or in confined spaces. For the most recent information, see:

- *Best practice guidelines for working at height in New Zealand* (Ministry of Business, Innovation and Employment, July 2019 modified); and
- *Confined spaces: planning entry and working safely in a confined space* (WorkSafe New Zealand, February 2019).

Health and Safety at Work Act 2015
Regulation 21, Health and Safety in Employment Regulations 1995

b. Dangerous and insanitary buildings

i. What are dangerous and insanitary buildings under the Building Act 2004?

Under *section 124 of the Building Act 2004*, a Council has certain powers in relation to 'dangerous' or 'insanitary' buildings.

A building is 'dangerous' for the purposes of the *Building Act 2004* if (among other things) the building is likely, in the ordinary course of events (other than during an earthquake), to cause injury or death (whether by collapse or otherwise) to any people in the building.

A building is 'insanitary' for the purposes of the *Building Act 2004* if (among other things) the building is likely to be injurious to health because of how it is situated or constructed or because it is in a state of disrepair.

Where a building is 'dangerous', it may mean that access to the residential land at the property is also unsafe (for example, because the building is at risk of collapsing onto the land).

ii. What if the dangerous or insanitary building is 'red stickered'?

Under *section 124 of the Building Act 2004*, if a Council is satisfied that a building is dangerous or insanitary, it may:

- put up a hoarding or fence to prevent people from approaching the building nearer than is safe;
- attach in a prominent place on, or adjacent to, the building a notice that warns people not to approach the building; or
- issue a notice restricting entry to the building for particular purposes or restricting entry to particular people or groups of people.

If the Council has done any of these things, no person may use or occupy the building or permit another person to use or occupy the building (except where the Council has permitted access to particular people or for particular purposes). This means that any person carrying out an assessment should not enter the building to assess it, unless the Council has expressly allowed that entry.

A notice issued under *section 124* is colloquially known as a 'red sticker'.

Sections 121, 123, 124 and 128, Building Act 2004

iii. What if an assessor thinks a property may be dangerous or insanitary but the Council has not 'red stickered' the building?

Where the Council has not 'red stickered' a residential building, a person assessing the property on our behalf may nevertheless reasonably form the view that:

- the property being assessed poses, or may pose, a threat to personal health or safety by being dangerous or insanitary; or
- an adjacent property poses, or may pose, a similar threat in relation to the property being assessed.

In these cases, the assessor should notify us, the customer and the Council in strict accordance with the processes notified by us from time to time.

For our ability to share information to prevent or lessen a serious threat to health or safety, see Section 11.f.ii.

c. Customers experiencing vulnerabilities

Any person dealing with an EQCover claim must take reasonable steps to identify whether a customer is experiencing vulnerabilities.

Any person dealing with an EQCover claim should comply with their organisation's guidelines (as agreed with Toka Tū Ake EQC) for identifying and supporting a customer experiencing vulnerabilities, which includes prioritising their claim.

d. Communicating with customers

We expect our staff and contractors, private insurers (including their staff and contractors) and third-party providers (including their staff and contractors) to communicate with Toka Tū Ake EQC customers in a fair, responsive, empathetic, straightforward and helpful manner.

All these people must at all times be honest, transparent, respectful and professional in their dealings with Toka Tū Ake EQC customers.

All these people must also be able to work in partnership with Toka Tū Ake EQC resources and other suppliers and specialists.

All communications must use a plain English style, avoiding jargon, technical terms and acronyms.

Any template communication which refers to Toka Tū Ake EQC or uses the Toka Tū Ake EQC logo must be pre-approved by us. (See Section 11.e)

i. Keeping customers informed

Customers must be regularly updated on the status of their EQCover claim, in line with any Toka Tū Ake EQC standards regarding keeping customers informed. We will issue and notify these standards from time to time.

ii. Communicating settlement outcomes

Settlement outcomes must be communicated to Toka Tū Ake EQC customers in accordance with Section 10.A.c.

e. Use of Toka Tū Ake EQC name and logo

Private insurers (including their staff and contractors) and third-party providers (including their staff and contractors) must not use the Toka Tū Ake EQC name and logo without our permission.

When used, the Toka Tū Ake EQC logo and other Toka Tū Ake EQC brand elements must be applied in accordance with the specifications of the *Toka Tū Ake Brand Guidelines*. We will issue and notify the *Toka Tū Ake Brand Guidelines* from time to time.

f. Information sharing

i. Sharing information

Private insurers (including their staff and contractors) and third-party providers (including their staff and contractors) must at all times act in accordance with our position on information sharing. We will issue and notify our position on information sharing from time to time.

ii. Sharing information to prevent or lessen a serious threat to health or safety

Generally, you should not disclose information about the property to anyone outside your organisation or Toka Tū Ake EQC. However, you may make available any information you have to relevant third parties (e.g. police, medical providers or relevant regulators) if you believe on reasonable grounds that doing so is necessary to prevent or lessen a serious threat to:

- public health or public safety; or
- the life or health of any individual.

In this context, 'serious threat' has the same meaning as in the *Privacy Act 2020*, meaning a threat reasonably believed to be serious having regard to the likelihood of the threat being realised, the severity of the consequences that would follow, and the time at which the threat might be realised.

You do not need our prior approval to make this information available in these circumstances.

Section 31A(3), EQC Act
Section 7(1), Privacy Act 2020 – Definition of 'serious threat'

g. Reporting to Toka Tū Ake EQC

Any private insurer or third-party provider dealing with claims on our behalf must provide reporting to us in relation to:

- any claims; or
- the claim management process more generally.

This reporting must be in a manner and include content as requested from time to time by us.

This reporting may include for example, reporting the number of claims opened, in progress or closed during a specified period, as well as reporting on applicable KPIs and health and safety requirements.

The reporting may be at a claim level, at a property level or at an administrative level (for example, reporting on costs incurred).

We have obligations to report, including to our board, our minister, Parliament and the public. In order for us to comply with our own reporting obligations, all private insurers and third-party providers must report to us in a timely and accurate way.

h. Co-ordination

A person dealing with an EQCover claim should ensure appropriate co-ordination with other people dealing with:

- another exposure under the same EQCover claim;
- any related EQCover claims; and
- any related private insurer claims.

For example, where a natural disaster (such as a natural landslip) affects multiple properties, it may sometimes be appropriate to co-ordinate with other insurers involved in:

- obtaining reports on the damage and its repair; or
- considering whether to settle on the basis of a global remedial solution.

i. Cross-lease claims

Where a cross-leased property contains multiple dwellings in a single building, it will often be the case that the dwellings involved are insured by different private insurers.

The appropriate remedial solution for the residential building might involve work to the building as a whole, rather than to each individual unit. Furthermore, the remedial solution for the residential land damage might be an overall solution affecting all of the residential land associated with the units.

In this type of situation, the person dealing with the EQCover claim must co-ordinate, as appropriate, with the people dealing with the other insurance claims for the building and the residential land. As a general rule, the person dealing with the dwelling that is likely to have the highest amount of damage should lead the insurance response.

In the case of doubt as to who should lead the insurance response, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

i. Disputes with customers

We distinguish between a 'challenge' and a 'complaint'.

A 'challenge' is where a customer disputes the outcome of a claim.

A 'complaint' is where a customer makes a formal expression of dissatisfaction with a decision, a process, an outcome, a level of service, or an action of a person involved in one or more of these matters.

Any communications to a customer about a challenge or a complaint must be:

- in writing; or
- (if verbal) promptly confirmed in writing.

Any person dealing with a challenge or a complaint on our behalf must comply with our requirements relating to the management of customer challenges and complaints. They should deal with the matter in a fair, robust and timely way.

To that end, any private insurer or third-party provider must have in place, and ensure that their staff and contractors comply with, a disputes management policy that:

- is fair, robust and timely; and
- provides complainants with an open, effective and easy-to-use complaints process.

Any private insurer must have regard to the *Fair Insurance Code* in dealing with a challenge or complaint on our behalf.

Where a challenge or a complaint is made, the person dealing with the claim must ensure that full and accurate written records are kept recording the challenge or complaint, how it was addressed and its outcome.

Any threats of legal action made by customers must be recorded in a register which is available for Toka Tū Ake EQC on request.

j. Official Information Act and Privacy Act requests

All requests for information made by a Toka Tū Ake EQC customer under either the:

- *Official Information Act 1982*; or
- *Privacy Act 2020*;

must be referred in the first instance to the appropriate Toka Tū Ake EQC representative.

k. Media enquiries

All media inquiries related to Toka Tū Ake EQC or any EQCover claim must be referred to the appropriate Toka Tū Ake EQC representative.

Specified Toka Tū Ake EQC staff are authorised to speak to the media on our behalf. No other person may speak to media on our behalf.

l. Suspected fraudulent claims

We are committed to preventing, detecting and responding to fraud and corruption threats that it faces in the work we do. We do not tolerate fraud and corruption in any form, and all incidents are treated consistently with our integrity standards.

We have established a *Fraud Policy* to assist in preventing, detecting and responding to fraud and corruption when it occurs, including by:

- raising workers' awareness of the responsibility to report suspected fraud and corruption;
- providing guidance on how to recognise the behaviours and circumstances associated with fraud and corruption;
- providing details of how to report suspected fraud and corruption; and
- setting out responsibilities to manage and mitigate fraud and corruption.

We will issue and notify the *Fraud Policy* from time to time.

The person dealing with an EQCover claim must comply with their responsibilities under the *Fraud Policy*, including to:

- adhere to and comply with this policy and any processes relating to the policy;
- report suspected fraud and corruption to the appropriate Toka Tū Ake EQC representative;
- ensure fraud risk controls that are agreed are embedded into processes and adhered to;
- complete fraud awareness training to assist in knowledge of potential red flags that can indicate fraudulent or corrupt activities; and
- co-operate in investigations if required to do so, including by making available necessary information.

m. Salvage

Clause 8 of Schedule 3 of the *EQC Act* sets out the rights of Toka Tū Ake EQC and our agents as to salvage. Clause 8(1) provides:

(1) On the occurrence of any natural disaster damage to any property insured under this Act, the Commission or its agent may—

(a) enter and take possession of the land or building or dwelling where the natural disaster damage occurred; or

(b) take possession of or require to be delivered to it any of the property; or

(c) keep possession of the property and examine, sort, arrange, remove, or otherwise deal with it; or

(d) where the property is a residential building, or land insured in connection with that building, move the building to another site; or

(e) sell or otherwise dispose of the property.

We or our agents may exercise these powers at any time until the insured person gives notice to us in writing that he or she makes no claim or, if any claim is made, until the claim is finally determined or withdrawn.

Clause 8, Schedule 3, EQC Act

The person dealing with an EQCover claim must escalate the matter to the appropriate Toka Tū Ake EQC representative if they:

- consider that it may be appropriate in all the circumstances for us to exercise our salvage powers; or
- become aware that any private insurer involved intends (or considers it may be appropriate) to exercise salvage powers.

n. Recordkeeping

We are subject to recordkeeping obligations under the *Public Records Act 2005*. Any person dealing with an EQCover claim must:

- keep full, complete and accurate records for that claim (and any other Toka Tū Ake EQC matters on which they are working); and
- compile and have available for Toka Tū Ake EQC the full file relating to the EQCover claim and any other information as we direct from time to time.

o. Reimbursing fees incurred by customers where a claim is reassessed

Sometimes a customer who has asked for their EQCover claim to be reassessed will provide, in support of that request, a report that the customer has commissioned and paid for (such as an engineer's report or a contractor's quotation).

At our discretion, we (or the private insurer or third-party provider as our agent) may reimburse the customer (in whole or in part) for the cost of obtaining that report or quotation. In exercising our discretion we should take into account:

- whether the report or quotation uncovers legitimate natural disaster damage that we did not identify during the assessment of the property;
- if so, whether the repair strategy and/or the further earthquake repair works recommended in the report or quotation are reasonable in all the circumstances; and
- if so, whether the costs claimed are reasonable.

Reimbursement of such costs is not guaranteed. Whether those costs should be reimbursed must be determined based on the specific facts of each claim.

p. Escalating matters to Toka Tū Ake EQC

In this Manual, words that state that a matter:

- 'must be escalated to the appropriate Toka Tū Ake EQC representative' mean that that action is required. The matter has to be raised with the appropriate Toka Tū Ake EQC representative – and there are no exceptions;
- 'should be escalated to the appropriate Toka Tū Ake EQC representative' mean that that action is not required, but is recommended. It is expected that the matter will be raised with the appropriate Toka Tū Ake EQC representative – except in the occasional instance where it is not reasonably necessary to do so.

We will provide:

- a list of appropriate Toka Tū Ake EQC representatives, including contact details; and
- the process for escalating matters under this Manual.

This list and the process will be issued and notified by us from time to time.

Any person escalating a matter to the appropriate Toka Tū Ake EQC representative must comply with the escalation process set out by us.

APPENDICES

Appendix 1. How is the cash settlement of an EQCover residential building exposure communicated?

a. Overview

The purpose of the communication of the cash settlement of an EQCover residential building exposure is to clearly inform the person who is being cash settled (*the recipient*) of the following:

- that we have completed assessing the natural disaster damage;
- how the settlement amount of the exposure has been calculated;
- how the settlement amount is being paid;
- the possible consequences for future EQCover of not using the settlement amount for the purpose of repair or replacement;
- how the recipient can obtain further information.

Section A requirements
To this end, the minimum requirements set out in Section A of this Appendix must be addressed in the settlement communication when communicating the cash settlement of an EQCover residential building exposure.

We do not generally prescribe any particular form of the communication. However, the communication must:

- meet the requirements in Section A and be consistent with them throughout; and
- be in the form of a Toka Tū Ake EQC template, if we have provided a template communication.

Where a private insurer is dealing with a residential building exposure on our behalf (or where a third-party provider is dealing with such an exposure on behalf of both Toka Tū Ake EQC and a private insurer), the communication may be:

- in two communications (one covering the EQCover building exposure and one covering any corresponding building component that is covered by the private insurer claim); or
- in one communication (covering both), provided the EQCover exposure(s) and the private insurer component(s) can clearly be understood separately.

While examples are set out below of how the requirements in Section A might be addressed in the settlement communication, we do not prescribe any particular form of words (except where we supply a specific template for communications). However, when communicating with our customers, other requirements (including as to clarity and tone) must be met (see Section 11.d).

Section B suggestions

Section B of this Appendix sets out some suggested items for the settlement communication. While we would urge people dealing with EQCover residential building exposure to consider including these items in the settlement communications, these are not required.

Communication templates prepared by private insurers and third-party providers must be approved by Toka Tū Ake EQC

All template settlement communications must be pre-approved.
We will consider requests for approval promptly and will not unreasonably withhold approval.

Scope of Appendix

This Appendix does not address the specific circumstances where a repair has already been carried out in relation to the current residential building exposure and the residential building needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in communications of settlements following such assessments.

A. Requirements for cash settlement communications about EQCover settlements

1. Where a private insurer or third-party provider is dealing with the residential building exposure, make plain that the private insurer or third-party provider is acting in an agency role in assessing and settling that exposure in accordance with the EQC Act

Unless we direct otherwise, the communication must make plain that the EQCover residential building exposure (as distinct from any private insurer claim):

- is being managed by the private insurer or third-party provider on our behalf; and
- is being assessed and settled by the private insurer or third-party providerin accordance with the *EQC Act*.

The private insurer's or third-party provider's role as our agent must be made plain whether or not the amount of the damage exceeds the EQCover cap.

2. Set out the claim number for the EQCover claim(s), the address of the property where the natural disaster damage occurred, and the relevant natural disaster event(s)

The communication must include the following three items.

i. The relevant claim number of each EQCover claim

This will be a number allocated by Toka Tū Ake EQC.

ii. The property where the natural disaster damage occurred

This will be the street address for the property.

iii. The relevant natural disaster event that is the subject of the claim payment

All damage occurring within a consecutive 48-hour period which is a direct result of any natural disasters is treated as an 'event'. A different period (7 days) applies for natural disaster fires.

Example

Dear [ ],

Your claim(s): [ ] Damage address: [ ]

Natural disaster event(s): [ ]

[Text of letter commences here …]

3. *Make plain if any residential land exposure is being dealt with separately*

If any residential land exposure for the same claim is being dealt with separately (for example, by another Toka Tū Ake EQC agent), the communication must also include a clear statement regarding that fact.

4. *Confirm that the assessment of the natural disaster damage has been completed*

Before settlement, the person dealing with the residential building exposure must have completed an assessment of:

- whether the residential building has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage.

This must be confirmed in the communication.

Example

We have now completed the assessment of the earthquake damage to your residential building.

5. *Itemise separately the damaged property that pertains to the EQCover residential building exposure and provide a separate costing for those items*

The communication must set out what damaged items pertain to the EQCover residential building exposure and the costings for the repair or replacement of that damage to the relevant standard under the *EQC Act*.

Where a private insurer is dealing with the residential building exposure on our behalf (or where a third-party provider is dealing with a residential building exposure on behalf of both Toka Tū Ake EQC and a private insurer), these items must be shown separately from any items that pertain exclusively to the private insurer claim (e.g. fences, swimming pools, paving).

Example

Enclosed is a scope of works that relates to your EQCover residential building claim. This document shows the items of damage and the costs that we have calculated will be required to repair them.

6. *Set out the situation under the EQCover settlement where damaged property potentially contains asbestos or is otherwise contaminated*

The communication must address the situation where any damaged property (under the EQCover claim) potentially contains asbestos or is otherwise contaminated.

The communication must explain:

- how the costs cover asbestos testing (or testing for any other D); and
- the position should the test be positive.

Example

Asbestos testing [delete whole section if not applicable]

A cost allowance is included in your EQCover cash settlement for sampling and testing earthquake damaged areas potentially containing asbestos. If the test returns a negative result, then there is nothing more you need to do as your cash settlement will not be affected.

If the test returns a positive asbestos result you will need to provide a copy of the asbestos test certificate to us as your cash settlement figure may need to be reviewed.

You can find information about asbestos and testing by visiting www.asbestosaware.co.nz

7. *Include supporting documentation from professional advisers who have been involved in the assessment*

Reports that have been commissioned from engineers, surveyors and other professionals in the assessment of the EQCover residential building exposure must be included in the communication.

Example

Enclosed with this letter are some documents to explain how we calculated your EQCover residential building claim settlement amount. These documents are: [Delete as applicable]

- *Engineer's report*
- *Surveyor's report*
- *Architect's report*

Itemise for each EQCover claim the total amount payable for the residential building damage (with a breakdown to explain the total amount payable)

The communication must set out for each EQCover claim the total amount of the damage for the residential building exposure.

This amount will not exceed the relevant caps under the *EQC Act*. This amount should be GST inclusive (if any).

The amount deducted for the excess calculated under the *EQC Act* must be shown separately.

Any previous payments made in respect of an EQCover residential building exposure must be itemised separately.

An example for a single EQCover claim is set out immediately below.

Example for single EQCover claim

Item	*Amount*	*Excess deducted**	*Less payments already made***	*Balance*
Residential building	*$*	*$*	*$*	*$*
			Total payment incl GST (if any)	*$*

* ***Residential building*** *- The excess deducted per EQCover claim for a residential building is $200 multiplied by the number of dwellings in the residential building or 1% of the amount payable, whichever is greater.*

** *This amount will include the cost of urgent works (if any) already paid or reimbursed by us to you. Any other prior payments (e.g. interim payments) will also be included here. Any prior payments are net of any excess deducted at the time that the prior payment was made.*

Urgent works

Urgent (or emergency) works are repairs that are needed to make the residential building safe, sanitary, secure and weathertight.

Sometimes the customer will need to get urgent help from a tradesperson to carry out some urgent repairs of natural disaster damage. For example, the customer may need to get essential services like toilets and water systems up and running (if possible) or otherwise get work done to make the residential building safe, sanitary, secure and weathertight.

The customer may have sent invoices (or receipts) for urgent works from these tradespeople to the person dealing with the residential building exposure. That person may then either:

- pay the customer, so that the customer can in turn pay the tradesperson for the urgent works; or
- reimburse the customer, where the customer has already paid the tradesperson for the urgent works.

Any such payment or reimbursement for the cost of urgent works to the customer will depend on there first being an EQCover claim that meets the basic requirements of the *EQC Act*. See Section 3.

We do not anticipate paying the tradesperson direct for urgent works, except in exceptional circumstances.

Where urgent works have already been paid for or reimbursed to the customer

Set out below is a step by step guide to calculating the settlement payment if the cost of the urgent works has already been paid for or reimbursed by Toka Tū Ake EQC to the customer:

- **Step 1:** - The full cost of the urgent works *already paid or reimbursed to the customer* should be included for the purposes of calculating whether the EQCover residential building settlement is under or over EQCover cap.

  For example, the person dealing with the residential building exposure pays or reimburses the customer for the cost of the urgent works. That person then later assesses (under the same residential building exposure) other repairs to the natural disaster damage. The full cost of the urgent works and the full cost of the other repairs (without deducting any excess at this point of the calculation) are added together to calculate whether or not the EQCover cap has been reached;

- **Step 2:** - The 'Amount' inserted in Column 2 of the table above (for residential building) is the lesser of:

  - the amount calculated under Step 1 by adding together the full cost of the urgent works and the full cost of the other repairs; or

  - the EQCover cap. See Section 8.e regarding the amount of the EQCover cap.

- **Step 3:** - The applicable 'Excess' in Column 3 should be identified. The excess is calculated on the 'Amount' inserted in Column 2. The excess is then deducted from the Amount in Column 2.

- **Step 4:** - The urgent works already paid or reimbursed is inserted in Column 4. This payment or reimbursement must also be deducted.

  If an amount of excess was deducted at the time that the urgent works were paid, then the amount inserted in Column 4 should be net of that excess that was deducted. This is to ensure that the excess is not deducted twice.

  The resulting balance – once the amount in Columns 3 and 4 are deducted – is the payment in respect of the residential building exposure. That 'Balance' is inserted in Column 5. See the equation below:

  Amount in Column 2
  minus **Excess in Column 3**
  minus **Amount in Column 4**

  Equals **Balance in Column 5**

The above example assumes that there are no other payments in respect of the residential building exposure (i.e. other than the payment or reimbursement for the urgent works) already made.

*Where urgent works have **not** already been paid for or reimbursed by Toka Tū Ake EQC*
If, at the time of settlement, the cost of the urgent works has *not* already been paid for or reimbursed:

- the cost of the urgent works should be simply included in the Amount in Column 2. The Amount in Column 2 must not exceed the cap;
- the Excess in Column 3 should be deducted;
- the cost of the urgent works is not included in Column 4. This is because the cost has not already been paid or reimbursed to the customer. The cost is therefore not deducted.

The communication must also:

- explain that the cost of the urgent works has been included in the Amount in Column 2; and
- state the cost of the urgent works.

Multiple events
The principles for assessment where there are multiple events must be applied to EQCover exposures where multiple but separately insured natural disaster events have caused damage to the residential building. See Section 6.C.

In the case of multiple residential building exposures, we suggest separate tables for these EQCover exposures.

8. Set out how the EQCover residential building exposure settlement payment will be made

The communication must set out that the EQCover settlement is a cash settlement and the mode of payment. For more detail on payments to mortgagees and people other than the customer, see Item 9 below.

Example

Payment paid to mortgagee
Your cumulative cash payments for your EQCover residential building and residential land claims have exceeded your mortgagee's threshold. Payment has been made to the mortgagee and they have received a copy of this letter.

Payment to your bank account
The payment for your EQCover settlement amount has been electronically transferred to the bank account [insert account name here].

Payment by cheque
The payment cheque for your EQCover settlement amount will be sent separately to this letter. [Delete the two options above that do not apply]

9. Identify to whom the payment will be made

In most cases the settlement amount will be paid to:

- the insured person (the person entitled to the benefit of the contract of fire insurance); (see Section 3.b.i) or
- the mortgagee.

Mortgagees
Payment should be made to a mortgagee where the EQCover threshold is met. (See Section 9.d)

The EQCover threshold applies across the total of the residential land and the residential building exposures. Accordingly where different people are dealing with the two exposures, they must liaise with each other on this aspect before making the settlement payment.

An example of a paragraph setting out payment to a mortgagee is set out under Item 8 above.

Other people with insurable interests
Toka Tū Ake EQC must have regard to people with 'insurable interests' in deciding to whom to pay the settlement amount. In general terms, a person will have an 'insurable interest' in property where:

- the person would suffer economic loss if the property was destroyed or damaged; and
- there is a legal relationship between that person and the insured property. (See Section 3.b.ii and Section 9)

The form of communication will likely need to be adapted if all or part of the settlement amount is paid to a person with an insurable interest other than the insured person or the mortgagee. The changes will need to explain the payment (or part payment) of the settlement amount to that person.

10. Set out the possible consequences for future EQCover of not using the settlement payment for the purpose of repair or replacement

We have a discretion to cancel cover and decline cover in some instances where the settlement payment is not used to carry out the repair or replacement.

The communication must set out the possible consequences if the payment is not used for the purpose of repair or replacement.

Example

It is important that the EQCover settlement payment is used for the purpose of repair or replacement of damaged property. In some circumstances, any future EQCover claims may be affected if your EQCover settlement payment is not used for this purpose.

It is strongly recommended that you proceed with your repair or replacement promptly to minimise the risk of inflation increasing the cost of your repair or replacement. If the EQCover settlement payment does not cover the full cost of repair or replacement, you may wish to contact your private insurer to see whether there is any further cover under your private insurance policy.

11. No full and final discharge required

EQCover settlements are not full and final and recipients should not be required to enter into any form of full and final discharge.

12. Set out how the recipient can request further information

The communication must set out how the recipient can request further information regarding the assessment and settlement of the EQCover residential building exposure.

Example

For further information about the assessment and settlement of your EQCover claim, you can contact us by email on [ ] or call [ ].

B. Suggestions for cash settlement communications from private insurers or third-party providers about EQCover settlements

The following items are suggested but not required.

1. Set out an acknowledgement regarding accuracy of information provided in support of the EQCover residential building exposure

The communication may include a record of the recipient's agreement that the information they have provided in support of the EQCover residential building exposure is correct.

But the acknowledgement should not go beyond this. Settlements are not full and final and recipients should not be required to enter into any form of full and final discharge.

Example

> *By accepting this payment, you are agreeing that the claim information that you submitted in support of the EQCover claim is true and accurate and that you have not withheld any material information. Please inform us if you are or become aware that the claim information you provided is no longer accurate or you have new information.*

2. Refer to guidance re repairing and rebuilding

The Ministry of Business, Innovation and Employment (MBIE) from time to time prepares guidance for homeowners repairing or rebuilding. We consider this guidance may be helpful for recipients.