



# TOKA TŪ AKE EQC CLAIMS MANUAL

## – RESIDENTIAL LAND

Version as at 13/09/22

UNCLASSIFIED

**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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**TOKA TŪ AKE EQC CLAIMS MANUAL – RESIDENTIAL LAND**

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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 land claims.

## c. Application of Manual

This Manual is for Toka Tū Ake EQC and everyone authorised to deal with a residential land 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 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 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.

Where this Manual (or the *Toka Tū Ake EQC Assessment Manual*) does not clearly provide for the fact situation or circumstances 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 Buildings’**

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

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

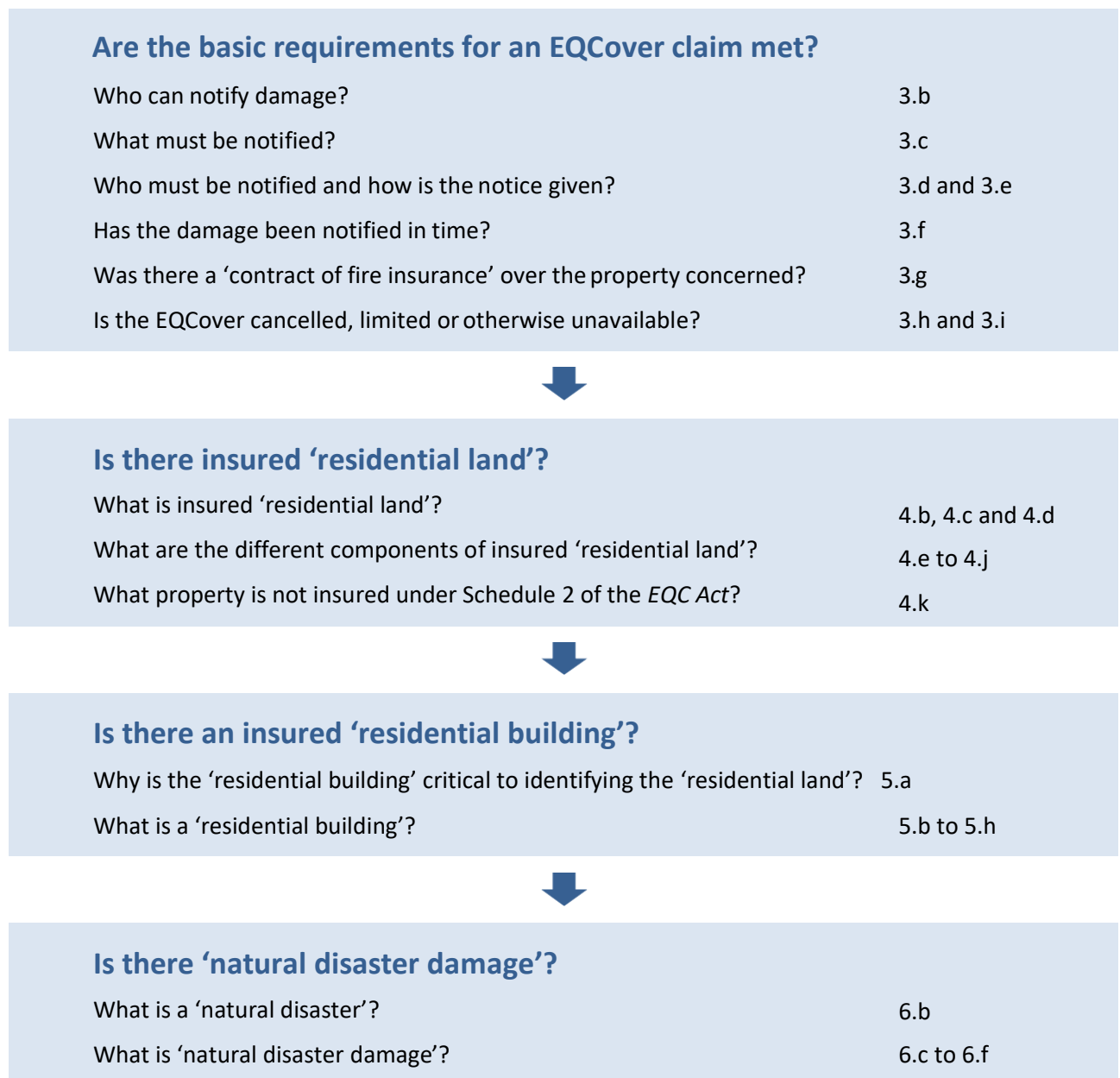
## 2. Overview

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



TOKA TŪ AKE EQC CLAIMS MANUAL – RESIDENTIAL LAND



### How is the natural disaster damage assessed?

|  |                             |
|--|-----------------------------|
| What are the steps in the assessment?                              | 7.A.c to 7.A.f and<br>7.A.j |
| What are the standards in carrying out assessments?                | 7.A.g                       |
| What are the requirements for visiting the property?               | 7.A.h and 7.A.i             |
| What is the process for, and output of, the assessment?            | 7.B                         |
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### What are the grounds for declining an EQCover claim?

|   |                    |
|---|--------------------|
| What are the grounds for declining a claim?                       | 8.d and 8.h to 8.k |
| Who may make a decision to decline a claim?                       | 8.e                |
| What is the process for deciding whether to decline a claim?      | 8.f and 8.g        |
| What is the Toka Tū Ake customer's obligation to mitigate damage? | 8.l                |



### How is the EQCover claim settled?

|   |     |
|---|-----|
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| How is the settlement amount calculated?                          | 9.d |
| What is the maximum amount (or cap) for a residential land claim? | 9.e |
| What excess applies for a residential land claim?                 | 9.f |
| What is the time limit for settlement?                            | 9.g |
| How is the settlement communicated?                               | 9.h |



### With whom is the EQCover claim settled?

|  |              |
|--|--------------|
| Who has an 'insurable interest' and why is that important?                     | 10.b         |
| What if issues arise in identifying the person with whom the claim is settled? | 10.c to 10.m |



### How is the EQCover claim closed?

|  |      |
|--|------|
| How is a residential land claim closed?  | 11.A |
| How is the overall EQCover claim closed? | 11.B |

### 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 for the associated residential building insurance 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’?***

In the case of insured residential land, 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 ... the residential building situated on that land ...

*Section 2(1), EQC Act – Definition of ‘Insured person’*

In general, the ‘insured person’ will be the person or people named as the insured in the contract of fire insurance for the residential building (which is on the residential land). 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 EQCover 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 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 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.

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.

If Owner A gives notice of natural disaster damage to land that is common or shared between Owner A and Owner B, that will be sufficient notice of damage to:

- Owner A’s property; and
- any such shared or common land.

In some cross-lease situations there may be a number of people who own the undivided share in a piece of land. But the same principles apply regarding notifying damage.

## **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 (for example, for the damaged residential land and the damaged residential building) within the time limit. 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 two-year (notice) period 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*. These requirements may differ, depending, for example, on whether the natural disaster damage is to a residential building or to residential land.

*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 (for example, for both residential land damage and residential building damage) within the time limit (see Section 3.f). Notice of natural disaster damage to one type of insured property is sufficient.<sup>1</sup>

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

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

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

---

<sup>1</sup> An EQCover claim can include damage to residential land and a residential building. Each one 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 land has cracked and the roof has collapsed).

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).

### **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 8.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 6.b and 6.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 land 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 relevant residential building. The relevant residential building will be the one on the residential land that has suffered the natural disaster damage.

If the contract of fire insurance covers the residential building, the residential building is covered under the *EQC Act*. In turn, once the residential building is covered under the *EQC Act*, the associated residential land is also covered under the *EQC Act* (see Section 4.b).



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 for the residential building (and the residential land) may depend on whether the residential building is covered by a separate contract of fire insurance (i.e. as well as the contract works policy). See Section 4.f.v.

For the definition of the term ‘residential building’, see Section 5.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 for the residential land continues only while the EQCover for the associated residential building is in force. In turn, the EQCover for the residential building continues only while the contract of fire insurance for that building is in force, unless direct EQCover is in force.

If the private insurer cancels or suspends the contract of fire insurance for the residential building or if the contract expires or otherwise ceases, unless direct EQCover is in force, there will be no EQCover for:

- the residential building; or
- the associated residential land.

**What if there is no longer a ‘residential building’ at the date of the natural disaster damage?**

EQCover for the residential land continues as long as the EQCover for the residential building continues.

So, if a building no longer meets the definition of ‘residential building’ in the *EQC Act*, EQCover nevertheless continues for that building and the associated residential land 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 and/or that land (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 either the residential building or the residential land.

*Section 18, EQC Act Section 19, 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 the manual.

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

#### ***i. Cancellation of EQCover***

The Record of Title<sup>2</sup> 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.

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 residential land, 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 land 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.

If we have cancelled the EQCover for a residential building, that cancellation also has the effect of cancelling the EQCover for the associated residential land.

*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.

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<sup>2</sup> 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.

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 8.

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 8 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*

**Is the ‘ground up’ cover or ‘top up’ cover distinction relevant to EQCover for residential land?**

Yes. This is because some contracts of fire insurance may cover some residential land.

Most private insurers do not generally cover land in a contract of fire insurance. But a private insurer’s contract of fire insurance for a residential building may sometimes cover bridges, culverts and retaining walls. Some bridges, culverts and retaining walls are insured as ‘residential land’ under the *EQC Act*. See Sections 4.b, 4.h, 4.i and 4.j.

## j. What if the premium is unpaid or underpaid?

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

#### No premium for residential land cover

No premium is payable in respect of the insurance of any residential land under the *EQC Act*.

However, there is no residential land cover without there being a contract of fire insurance in force for the residential building. And there is a premium for the residential building cover under the *EQC Act*.

#### What if the premium is not paid for the residential building cover?

The customer's EQCover claim can proceed if:

- the private insurer has not paid an EQCover premium<sup>3</sup> due to Toka Tū Ake EQC for the residential building cover; 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.

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

- affect the amount of EQCover (See Sections 9.e and 9.f);
- indicate that the 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*

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<sup>3</sup> 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.

## 4. Is there insured ‘residential land’?

### a. Overview

The definition of ‘residential land’ draws a line between land that is insured under the *EQC Act* and land that is not.

In general terms, to find what is the insured ‘residential land’, it is necessary to identify:

- the relevant ‘residential building’. That is because identifying the residential building (which may, for these purposes, include appurtenant buildings and structures but will not include services) is critical to identifying the insured residential land; (Section 4.c)
- the land holding on which the residential building is lawfully situated; (Section 4.d)
- the land on which the residential buildings (excluding services) are situated; (Section 4.e)
- the land within 8 metres, in a horizontal line, of the residential building (excluding services); (Section 4.f)
- the main access way to the residential building (excluding services) and land supporting the main access way; (Section 4.g)
- the bridges within the insured area of land; (Section 4.h)
- the culverts within the insured area of land; (Section 4.i)
- the relevant retaining walls and their support systems. (Section 4.j)

Details of these matters are set out in Sections 4.c to 4.j. For a description of ‘residential building’, see Section 5.

Schedule 2 of the *EQC Act* lists items that are not covered by EQCover. This Schedule has the effect of carving out some items that may otherwise be insured as components of the ‘residential land’. (Section 4.k)

The following diagram provides a high-level illustration of what is and what is not covered as residential land



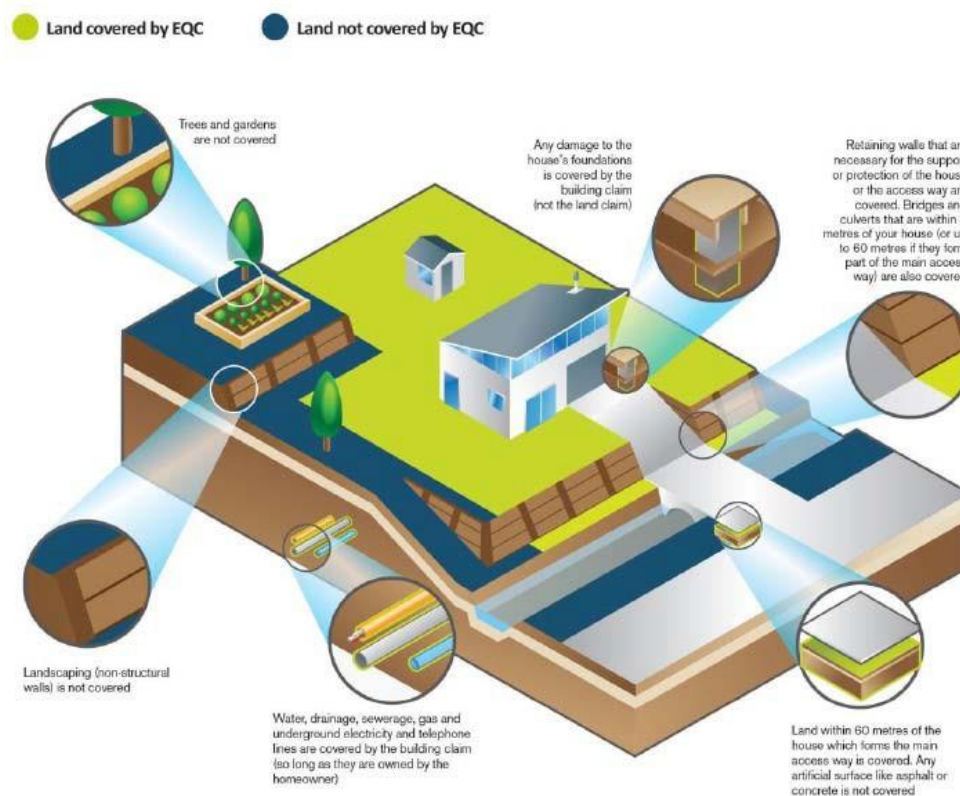


Figure 1: Residential land we cover

## b. What is ‘residential land’?

### i. ‘Residential land’ is in relation to a ‘residential building’

Identifying the relevant ‘residential building’ is critical to identifying the ‘residential land’ insured under the *EQC Act*.

The area of land that is insured under the *EQC Act* is generally identified by reference to certain components of the ‘residential building’ situated on that land.

These components of the residential building may include appurtenant buildings and structures, but will not include any water supply, drainage, sewerage, gas, electrical, or telephone services.

## **ii. ‘Residential land’ must be situated within a land holding**

The land insured under the *EQC Act* as ‘residential land’ must be within the land holding.

Furthermore, for the land to be insured, the associated residential building must be lawfully situated on this land holding.

In this context, the ‘land holding’ generally refers to the land within the boundaries shown on the Record of Title for the property. However, the land holding can sometimes include areas of land outside those boundaries. See Sections 4.d.i and 4.d.ii.

*Section 2(1), EQC Act – Definition of ‘residential land’*

## **iii. Five components of ‘residential land’**

The ‘residential land’ definition in the *EQC Act* can be broken down into five key components:

- the land under the residential building (excluding services); (Section 4.e)
- the land within 8 metres, in a horizontal line, of the residential building (excluding services); (Section 4.f)
- the main access way to the residential building (excluding services) and land supporting the main access way; (Section 4.g)
- the bridges (Section 4.h) and culverts (Section 4.i) within the insured area of land;
- certain retaining walls and their support systems. These must be necessary for the support or protection of the residential building (excluding services) or the insured area of land. (Section 4.j)

For each of these components, the ‘residential building’ is critical (see Section 4.c and Section 5). Importantly, the residential building typically includes not only the dwelling, but also buildings and structures appurtenant to the dwelling (or long-term accommodation for the elderly).

*Section 2(1), EQC Act – Definition of ‘residential land’ and definition of ‘residential building’*

#### ***iv. Various components together can make up ‘residential land’***

One or more of these components together can comprise the insured ‘residential land’.

So, for example, in broad terms ‘residential land’ could be:

- the land under the dwelling (or long-term accommodation for the elderly) and the garage PLUS the land within 8 metres of the dwelling PLUS the land within 8 metres of the garage PLUS the main access ways to each of the dwelling and the garage;
- the land under the dwelling (or long-term accommodation for the elderly) PLUS the land within 8 metres of the dwelling PLUS a retaining wall (and its support systems) necessary for the support or protection of the insured area of land; or
- the land under the dwelling (or long-term accommodation for the elderly) PLUS the land within 8 metres of the dwelling PLUS part of the main access way to the dwelling PLUS a bridge within the insured area of land PLUS a retaining wall (and its support systems) necessary for the support or protection of the insured area of land.

#### ***v. Timing of determination of whether or not there is ‘residential land’***

The question whether any area of land, bridge, culvert and/or retaining wall meets the requirements of the ‘residential land’ definition is usually determined when:

- the new contract of fire insurance or direct EQCover for the associated residential building is entered into; or
- if that 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 associated residential building no longer meets the definition of ‘residential building’ in the *EQC Act*, EQCover for that building and its associated residential land will nevertheless continue. The cover will continue for the residential land until:

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

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

Sometimes a residential building will be undergoing alterations at the time of the natural disaster. These alterations may extend or reduce the building footprint. For determining the extent of the ‘residential land’ in this situation, see Section 4.f.v.

### **c. Identifying a ‘residential building’ is critical to determining whether there is ‘residential land’**

#### ***i. What is a ‘residential building’?***

Identifying the ‘residential building’ on the land holding is a critical first step in applying the ‘residential land’ definition.

For this reason, the description of a ‘residential building’ is set out at Section 5.

‘Residential land’ is defined under the *EQC Act* to mean certain property within the land holding *in relation to the residential building*.

#### ***ii. What does residential land ‘in relation to a residential building’ mean?***

The ‘residential land’ definition in the *EQC Act* begins in this way:

**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:

*Section 2(1), EQC Act – Definition of ‘residential land’*

To determine what property comes within the ‘residential land’ definition, it is necessary to identify that property by reference to each residential building lawfully situated on the land holding (excluding services).

#### **Residential land in relation to different types of residential buildings**

This Manual sets out how to determine the ‘residential land’ in the following situations:

- where there is a single residential building with a single dwelling; (Section 4.c.iv)
- where there is a residential building with multiple dwellings; (Section 4.c.v)
- where there is more than one residential building on the land holding; and (Section 4.c.vi)
- where there is a cross-lease property. (Section 4.c.vii)

### ***iii. The residential building must be lawfully situated on the land holding***

For there to be ‘residential land’ cover in relation to a particular residential building, the residential building must be ‘lawfully’ situated on the land holding.

*Section 2(1), EQC Act – Definition of ‘residential land’*

For example, to be ‘lawfully’ situated on the land holding, the residential building must not have been built without the permission of the owner of the land holding on which the building was built. The owner’s permission may be in any form – written or verbal, permanent or temporary.

#### **What if the residential building was once (but is no longer) lawfully situated?**

The residential building will be treated as not lawfully situated on the land holding if it is no longer lawfully there.

For example, the residential building will not be lawfully situated on the land holding if:

- the residential building was lawfully built on the land holding (because the owner of the land gave permission for the building to be built and kept there for a certain period); but
- the building is no longer lawfully situated on the land holding (because the owner has lawfully revoked that permission)

Where it appears that a building is not lawfully situated on the land holding, all relevant information about that building should be collected, and escalated to the appropriate Toka Tū Ake EQC representative.

#### **iv. Situation where there is a residential building with a single dwelling**

It is straightforward to identify the extent of the insured residential land where a land holding contains a single residential building comprising a single dwelling and there are one or more appurtenant structures (e.g. a garage or shed). In this situation, the insured residential land comprises:

- the land on which the dwelling and the appurtenant structures are situated;

*Section 2(1), EQC Act – Paragraph (a) of the definition of ‘residential land’*

- all land within 8 metres, in a horizontal line, of the dwelling and of each appurtenant structure;

*Section 2(1), EQC Act – Paragraph (b) of the definition of ‘residential land’*

- that part of the land holding that:
  - is within 60 metres, in a horizontal line, of the dwelling (and of each appurtenant structure); and
  - constitutes the main access way or part of the main access way to the dwelling (and to each appurtenant structure) from the boundary of the land holding;

*Section 2(1), EQC Act – Paragraph (c) of the definition of ‘residential land’*

- all bridges and culverts situated within any of the above areas of land;

*Section 2(1), EQC Act – Paragraph (d) of the definition of ‘residential land’*

- all retaining walls and their support systems within 60 metres, in a horizontal line, of the dwelling (and of each appurtenant structure) necessary for the support or protection of the dwelling (and the appurtenant structure) or any of the above areas of land.

*Section 2(1), EQC Act – Paragraph (e) of the definition of ‘residential land’*

#### **v. Situation where there is a residential building with multiple dwellings**

It is also straightforward to identify the extent of the insured residential land where a land holding contains a single residential building:

- that includes two or more dwellings; and
- the area containing the dwellings makes up 50% or more of the total area of the building.

In this situation, the entire building is insured as a ‘residential building’, and the insured residential land for that entire building (and its appurtenant structures) is identified as set out in Section 4.c.iv.

***vi. Situation where there is more than one residential building on the land holding***

If there is more than one residential building lawfully situated on the land holding, the insured residential land is determined by reference to each residential building.

For example, if there are two residential buildings on the same land holding, each comprising a separate dwelling, the insured ‘residential land’ must be determined by reference to each of those buildings (and their respective appurtenant structures).

***vii. Situation where there is a cross-lease property***

Where there is a cross-lease situation, the extent of the insured residential land must be identified depending on how many separately insured residential buildings there are.

**A single building with multiple dwellings insured as a single building**

Sometimes in a cross-lease property, the dwellings are located in one building that is insured as a single residential building under the *EQC Act*.

In that case, the extent of the insured residential land is identified by reference to that single residential building. (Section 4.c.iv and Section 4.c.v)

**A cross-lease building where each dwelling is separately insured**

More typically in a cross-lease property, there is a single building comprising multiple dwellings, but each dwelling is separately insured as a residential building in its own right.

In that case, the area of the insured residential land must be identified separately in respect of each residential building.

There will be areas of overlap between the insured areas of residential land for the different residential buildings. This overlap must be taken into account when settling the residential land claims.

**Land structures on a cross-lease property**

Land structures (bridges, culverts and retaining walls) within the insured area of residential land for each residential building will be covered as part of the ‘residential land’ for that building.

A single land structure may come within the insured area of residential land for more than one residential building. This scenario must be taken into account when settling the residential land exposure. (See Section 9.e.viii)



### ***viii. What if there is another type of residential building on the property?***

Where there is some other type of residential building (i.e. other than in Sections 4.c.iv to 4.c.vii), the person dealing with the claim should collect relevant information about the residential building(s) on the property and escalate the matter to the appropriate Toka Tū Ake EQC representative.

The information should be collected using a land sketch or other means and should include the following for each building on the property:

- whether the building (or part of it) is or may be a ‘residential building’;
- whether the building contains any dwellings and, if so, how many and where they are situated;
- what the area of the dwelling or dwellings is, when compared to the total area of the building;
- whether the building (or any part of it) provides long-term accommodation for the elderly;
- which buildings and structures are or may be appurtenant to that building (or part of the building);
- the total premium that the private insurer paid to us for the residential building or buildings.

Collecting this information about the residential buildings (if any) on the property will be critical to enabling the appropriate Toka Tū Ake EQC representative to consider the extent of the insured residential land (if any) on the property.

## **d. What is a ‘land holding’?**

For the land to be insured, the associated residential building must be lawfully situated on the land holding.

### ***i. Is the land holding always the same as the area of land shown on the Record of Title?***

In general, the ‘land holding’ consists of all the land within the boundaries shown on the Record of Title for that property.

However, land outside those boundaries may also form part of the land holding in two situations as follows:

- where there is an easement providing access over neighbouring land;
- where it is appropriate to treat two or more Records of Title as one.

### Easements over the neighbouring land

Driveways and other neighbouring land outside the boundaries may also form part of the land holding, where the owner of the property has an easement over that neighbouring land. An easement confers a legal or equitable right to cross or otherwise use someone else's land for a specified purpose.

The most usual example of this situation is where the owners of the property have an easement over the neighbouring land allowing them to use it as a driveway. In this situation the driveway can form part of the land holding.

### Two or more Records of Title treated as one

It may be appropriate to treat land comprised in two or more Records of Title as though the land formed a single land holding.

For example, this treatment may be appropriate if:

- the same person or people own all the land in question; and
- the land in question is being used and is intended to be used as a single residential property.

Typically in this situation, two Records of Title would be adjacent and would have at least one common boundary. If they do not share a common boundary, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

### One Record of Title treated as two

By contrast, there may be rare situations where the land comprised within a single Record of Title should in fact be treated as two (or more) separate land holdings under the *EQC Act*.

That situation may arise where the land in question is being used and is intended to be used as two (or more) separate residential land holdings.

## ***ii. When can bridges, culverts and retaining walls on neighbouring land be treated as within the land holding?***

In some situations, bridges, culverts and retaining walls on land outside the boundaries of the residential property can be treated as coming within the land holding.

We do not provide cover for a bridge, culvert or retaining wall on neighbouring land, unless the owner of the residential property in question has an easement (or equivalent) over the neighbouring land in relation to the bridge, culvert or retaining wall.

If the customer does not have an easement over the neighbouring land for this purpose, the bridge, culvert or retaining wall outside the boundaries is not within the customer's land holding.

### **iii. What if the customer has an encroachment licence or licence to occupy the neighbouring land?**

For the purpose of determining the extent of the land holding, an encroachment licence or occupation licence is not equivalent to an easement.

For example, if the customer has an encroachment licence or licence to occupy neighbouring land on which a garage is situated, that garage will not be treated as within the land holding.

For EQCover for appurtenant structures on neighbouring land, see *Section 4eii of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

## **e. What is ‘land on which the building is situated’?**

Under the ‘residential land’ definition, EQCover includes, in relation to a residential building:

the land on which the building is situated

*Section 2(1), EQC Act – Paragraph (a) of the definition of ‘residential land’*

The land that comes within paragraph (a) of the ‘residential land’ definition is the land directly underneath the building.

### **i. What is the ‘building’ for this purpose?**

For this purpose, the building may comprise:

- the building that is or includes one or more dwellings (or long-term accommodation); (see Section 5.d) and
- buildings and structures appurtenant to the dwelling (or long-term accommodation). These are called ‘appurtenant structures’. (see Section 5.e)

#### **What about the land underneath the drains, pipes, sewer and wiring serving the dwelling?**

The services serving the dwelling (or long-term accommodation) are not treated as a ‘building’ for the purposes of the ‘residential land’ definition. Therefore the land underneath the services is not treated as an additional component of ‘residential land’.

For these purposes, the ‘services’ are certain water supply, drainage, sewerage, gas, electrical, and telephone services. See a description of ‘services’ at Section 5.f below. These services will be covered by the residential building claim, provided certain conditions are met (see *Section 4 of the Toka Tū Ake EQC Claims Manual – Residential Buildings*).

### What about long-term accommodation for the elderly?

Where the residential building is long-term accommodation for the elderly, the ‘building’ may comprise:

- the building for the provision of that accommodation; and
- the appurtenant structures to that building. (See Section 5.g).

Again, the services are not treated as a ‘building’ for these purposes. Therefore the land underneath the services is not treated as an additional component of ‘residential land’.

## **f. What is ‘land within 8 metres in a horizontal line of the building’?**

Under the ‘residential land’ definition, EQCover includes, in relation to a residential building:

all land within 8 metres in a horizontal line of the building

*Section 2(1), EQC Act – Paragraph (b) of the definition of ‘residential land’*

The land that comes within paragraph (b) of the ‘residential land’ definition is all the land surrounding the building, for a distance of 8 metres, in a horizontal line, of the building.

### ***i. What is the ‘building’ for this purpose?***

The building may comprise:

- the building that is or includes one or more dwellings (or long-term accommodation); (see Section 5.d) and
- any buildings and structures appurtenant to the dwelling (or long-term accommodation). These are called ‘appurtenant structures’. (see Section 5.e)

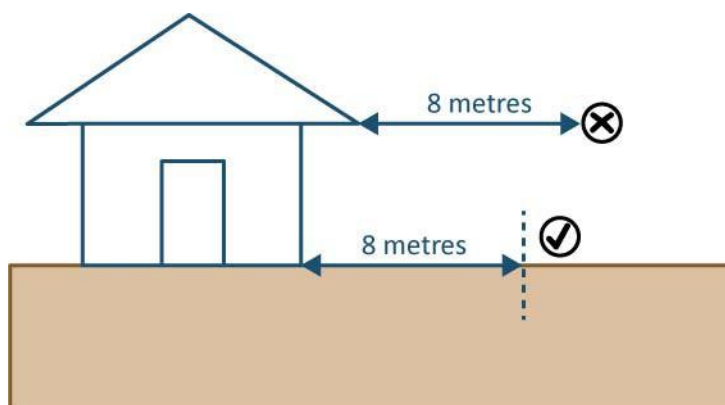
The 8 metres in a horizontal line is measured around each such building and structure.

For example, if there is a house and garage on the land holding, the 8 metres in a horizontal line is measured around each of them.

The ‘building’ is described in more detail in Section 4.e.i (including in relation to a residential building that comprises long-term accommodation for the elderly).

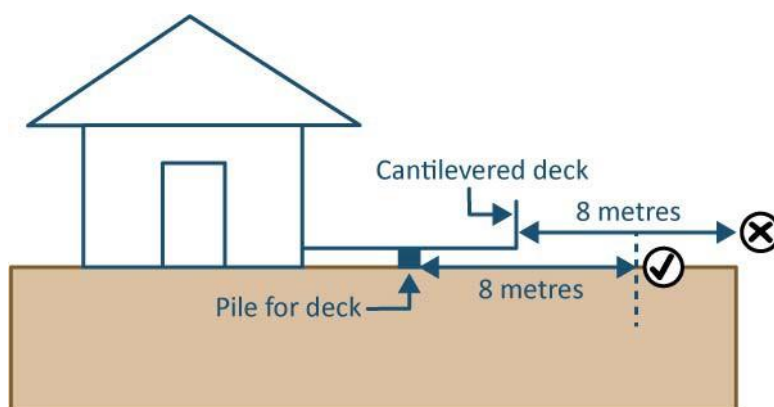
**ii. Where is the start point for the measurement of the 8 metres?**

The start point for measuring the 8 metres is the outermost point, at ground level, of the building.



**Figure 2: Residential land cover – start point of measurement of the 8 metres**

The outermost point is a point that provides a permanent firm base of the building on the ground. It is not a point on a part of the building that protrudes from the wall. For example in the diagram below, the outermost point is where the pile for the deck meets the ground, not the far end of the cantilevered deck suspended above the ground.



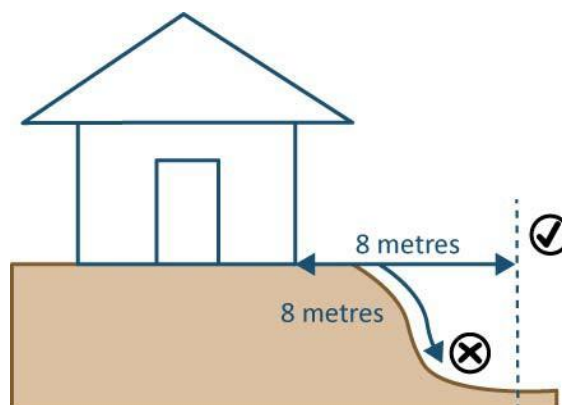
**Figure 3: Residential land cover – start point of measurement of the 8 metres. Cantilevered deck example.**

It may be necessary to obtain advice from an appropriately qualified professional (such as a licensed building practitioner, a geotechnical engineer or (in some cases) a structural engineer) to determine the outermost point of the building or structure. In cases of doubt about where the outermost point of the building or structure is, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

**iii. How is 8 metres ‘in a horizontal line’ measured on a sloping site?**

The 8 metres must be measured ‘in a horizontal line’. If the 8 metres is being measured across a sloping site, the 8 metres is measured in a horizontal line straight across from the building. The 8 metre distance is not measured following the contours of the land.

The correct approach to measuring the 8 metres is set out in the diagram below.



**Figure 4: Residential land cover – measurement of the 8 metres. Sloping site example.**

**iv. What is the end point for the measurement of the 8 metres?**

The end point for the measurement is:

- the point that is 8 metres, in a horizontal line, from the start point; or
- the boundary of the land holding, if the boundary is less than 8 metres in a horizontal line from the start point.

#### **v. How is the 8 metres measured when the building is in the course of alterations?**

Sometimes a residential building will be undergoing alterations at the time of the natural disaster. These alterations may extend or reduce the building footprint.

In these cases, the person dealing with the claim should collect the following information:

- the original footprint of the building;
- the condition and use of the building at the time when the contract of fire insurance or direct EQCover was entered into or last renewed (whichever occurred more recently before the damage-causing natural disaster);
- the footprint of the building at the time of the damage-causing natural disaster;
- the progress of the alterations at the time of the damage-causing natural disaster;
- full details of the contract of fire insurance or direct EQCover for the building;
- full details of the contract works insurance (if any) for the alterations.

This information must then be escalated to the appropriate Toka Tū Ake EQC representative.

#### **g. What access way (or part of an access way) is ‘residential land’?**

##### **i. What is an ‘access way’?**

An ‘access way’ is a route that is taken to reach a building from the boundary of the land holding.

An access way usually follows a driveway or pathway from the boundary to a building. It may be a walkway – it does not need to allow access for a vehicle.

The access way will often have some form of artificial surface. However, it is *the land* that forms the access way (or part of the access way) that is insured, not any artificial surface on top of the access way.

Under the ‘residential land’ definition, EQCover includes, in relation to a residential building:

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

*Section 2(1), EQC Act – Paragraph (c) of the definition of ‘residential land’*

This means that to come within paragraph (c) of the ‘residential land’ definition, the land must:

- be within 60 metres, in a horizontal line, of the building; and
- be the main access way (or part of the main access way) to that building from the boundary of the land holding.

Paragraph (c) of the ‘residential land’ definition also covers any land supporting the insured parts of the access way. The supporting land is covered if it is within 60 metres, in a horizontal line, of the building. See Section 4.g.viii.

### ***ii. What is the ‘building’ for this purpose?***

The building may comprise:

- the building that is or includes one or more dwellings (or long-term accommodation); (see Section 5.d) and
- any buildings and structures appurtenant to the dwelling (or long-term accommodation). These are called ‘appurtenant structures’. (see Section 5.e)

An access way may serve each such building and structure. For example, if there is a house and garage, there may be an access way to one of those buildings, or access ways to both of them. These scenarios are discussed at Section 4.g.iii.

The ‘building’ is described in more detail in Section 4.e.i (including in relation to a residential building that comprises long-term accommodation for the elderly).

### ***iii. What is the ‘main access way’ to the building from the boundary of the land holding?***

In most cases, there is one ‘main’ access way to a building.

#### What if there is more than one access way to the same building?

If there are two or more access ways leading to the same building, we cover only the main access way.

#### What if there are several access ways serving several buildings?

There may be several ‘main access ways’ on a single land holding serving several buildings.

For example, as well as the dwelling on the land holding, there may be a separate appurtenant structure such as a garage on the land holding. Each ‘building’ could in principle have a separate main access way leading to that building from the boundary of the land holding. In such a case, both the main access way to the dwelling and the main access way to the garage can be covered under paragraph (c) of the ‘residential land’ definition.



#### Access way must lead from the boundary to the building

An access way will be covered only if it leads from the boundary of the land holding to the residential building in question.

Any paths or tracks that lead only from one residential building to another are not covered under paragraph (c) of the ‘residential land’ definition. That is because these paths or tracks do not go from the boundary of the land holding to the building.

However, paths or tracks are covered where:

- they form part of the main access way itself; or
- are a continuation of the main access way.

An example is where a driveway leads to a parking area and the continuation of the access way is the pathway from the parking area to the dwelling. In this situation, the parking area is covered only to the extent it is part of the access way itself.

#### Access way must be on same land holding where residential building is lawfully situated

An access way is covered only if it is within the same land holding on which the residential building is lawfully situated.

However, the main access way to a building will be within the same ‘land holding’, if:

- the access way is part of neighbouring land; and
- the owners of the building have a right of way, in the form of an easement, over that neighbouring land. This will be the case no matter who owns the neighbouring land. For example, it doesn’t matter if it is owned by neighbouring residential owners, a commercial operation or someone else.

For the situation where land comprised in two or more Records of Title may be treated as part of the same land holding, see Section 4.d.i.

#### What if the access way is ‘seasonal’?

Sometimes the main access way changes with the seasons. In these cases, the person dealing with the claim should collect the following information:

- how the customer uses the different access ways over the course of a year;
- which access way was being used at the time of the damage-causing natural disaster.

This information should be escalated to the appropriate Toka Tū Ake EQC representative.

#### ***iv. Where is the start point for measuring the 60 metres?***

The main access way must be within 60 metres, in a horizontal line, of the building.

The 60 metres is measured from the building to the boundary, not from the boundary to the building.

The start point for measuring the 60 metres is the outermost point, at ground level, of the building.

The outermost point is a point that provides a permanent firm base of the building on the ground. It is not a point on a part of the building that protrudes from the wall. For illustrations of the start point, see Figure 2, Figure 3 and Figure 4 above.

It may be necessary to obtain advice from an appropriately qualified professional (such as a licensed building practitioner, a geotechnical engineer or (in some cases) a structural engineer) to determine the outermost point of the building. In cases of doubt about where the outermost point of the building is, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

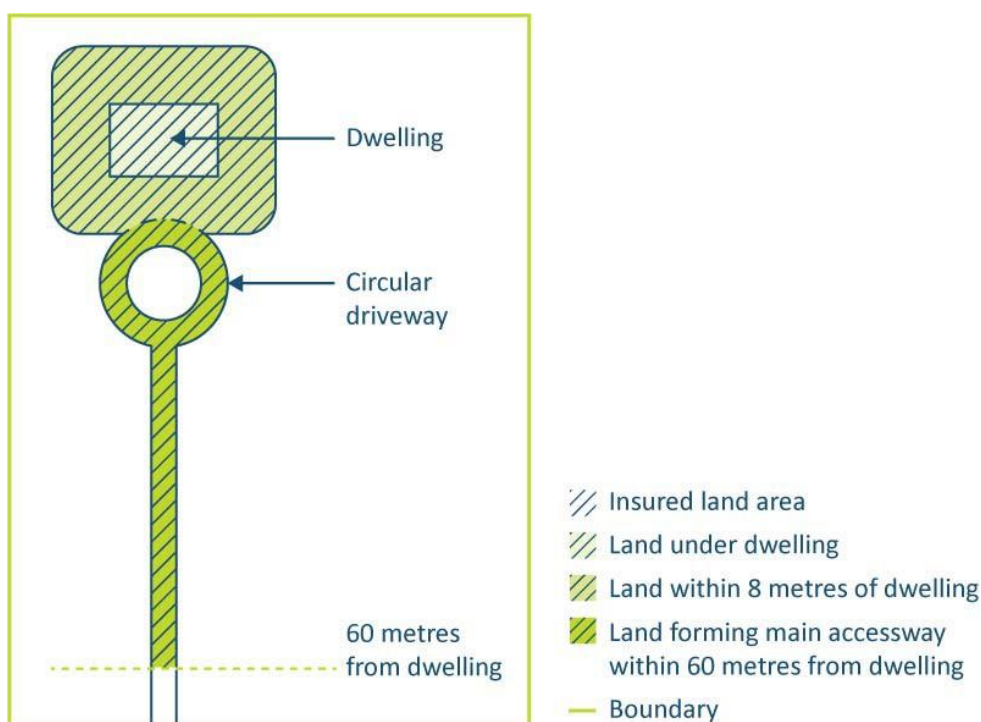
**v. How is the 60 metres ‘in a horizontal line’ measured?**

The 60 metres must be measured ‘in a horizontal line’. If the 60 metres is being measured across a sloping site, the 60 metres is measured in a horizontal line straight across from the building. The 60 metre distance is not measured following the contours of the land.

The main access way itself may not follow in a straight line. In that case, the 60 metres is measured not by following the main access way, but by measuring out 60 metres from the residential building in a straight line.

The correct approach to measuring the 60 metres is set out in the diagram examples below. These examples are illustrative only. More complex situations need to be assessed on a case by case basis.

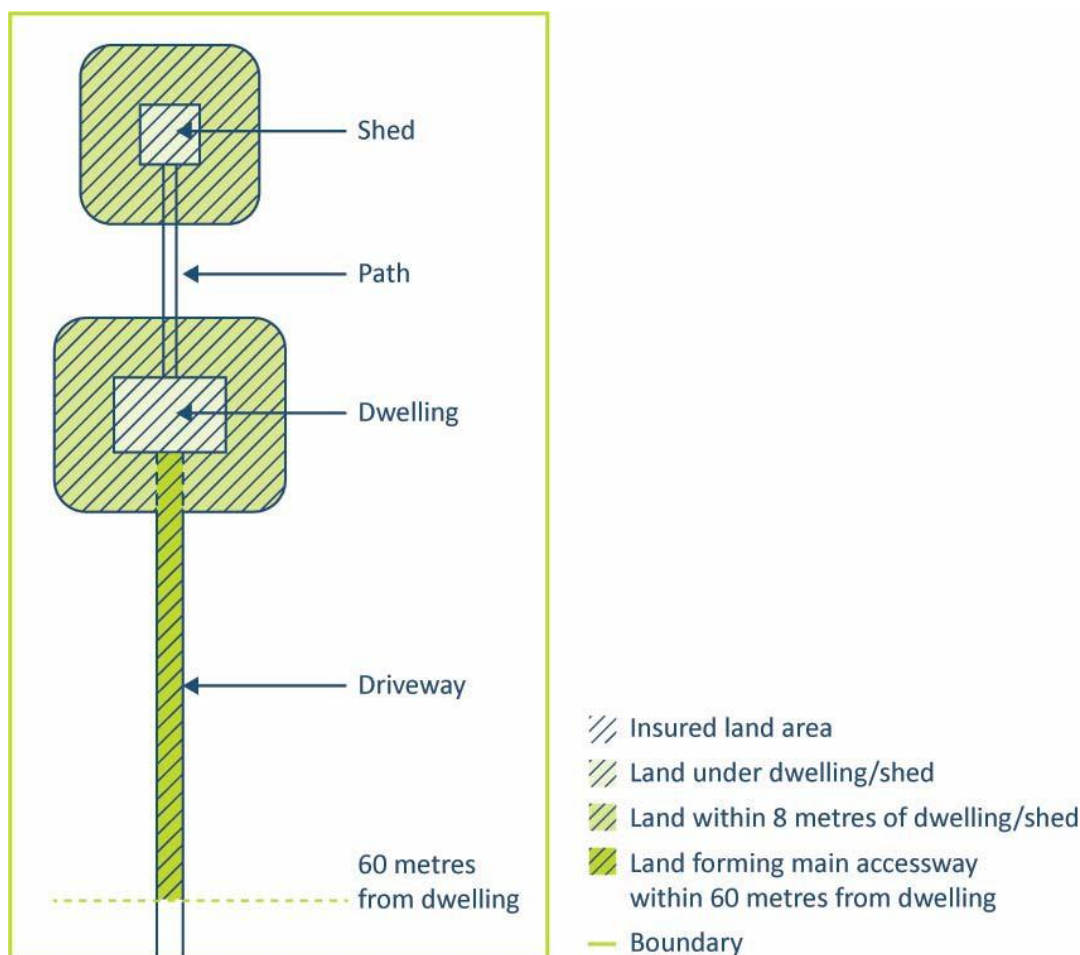
**Example 1: Circular main access way to the dwelling**



**Figure 5: Residential land cover – circular driveway**

In Example 1, the shaded area of land is insured as ‘residential land’. Both sides of the circular main access way are covered because both are part of the main access way to a residential building (in this case, the dwelling) from the boundary of the land holding. The shaded parts of the access way are covered because they are within 60 metres, in a horizontal line, of the dwelling. The rest of the main access way is not covered.

**Example 2: Main access way to the dwelling and a path from the dwelling to a shed**



**Figure 6: Residential land cover – Main access way to dwelling; path from dwelling to shed**

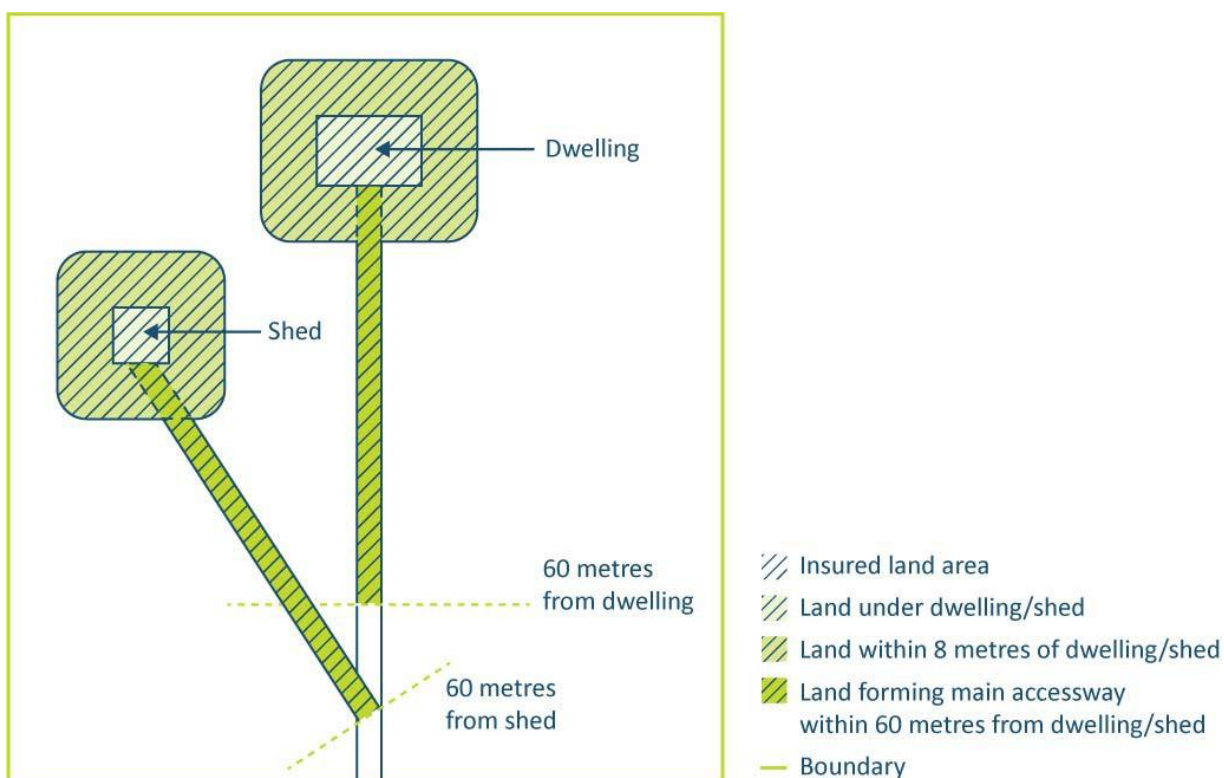
In Example 2, the shaded area of land is insured as ‘residential land’. For the most part, the main access way to the shed is not covered. That is because the main access way to the shed goes from the dwelling - not from the boundary of the land holding. However, the parts of the main access way that are within 8 metres, in a horizontal line, of a building (either the dwelling or the shed) are covered (under paragraph (b) of the ‘residential land’ definition).

The shaded area of the main access way to the dwelling from the boundary is covered. That is because:

- it is within 60 metres, in a horizontal line, of the dwelling, and
- it goes to the dwelling from the boundary of the land holding.

The part of the main access way that is more than 60 metres, in a horizontal line, from the dwelling is not covered.

Example 3: Main access ways to the dwelling and a shed



**Figure 7: Residential land cover – Main access ways to the dwelling and a shed**

In Example 3, the shaded area of land is insured as ‘residential land’. The main access way from the boundary forks to go to both the dwelling and the shed (which is an appurtenant structure). The shaded part of the main access way to the shed from the boundary is covered because:

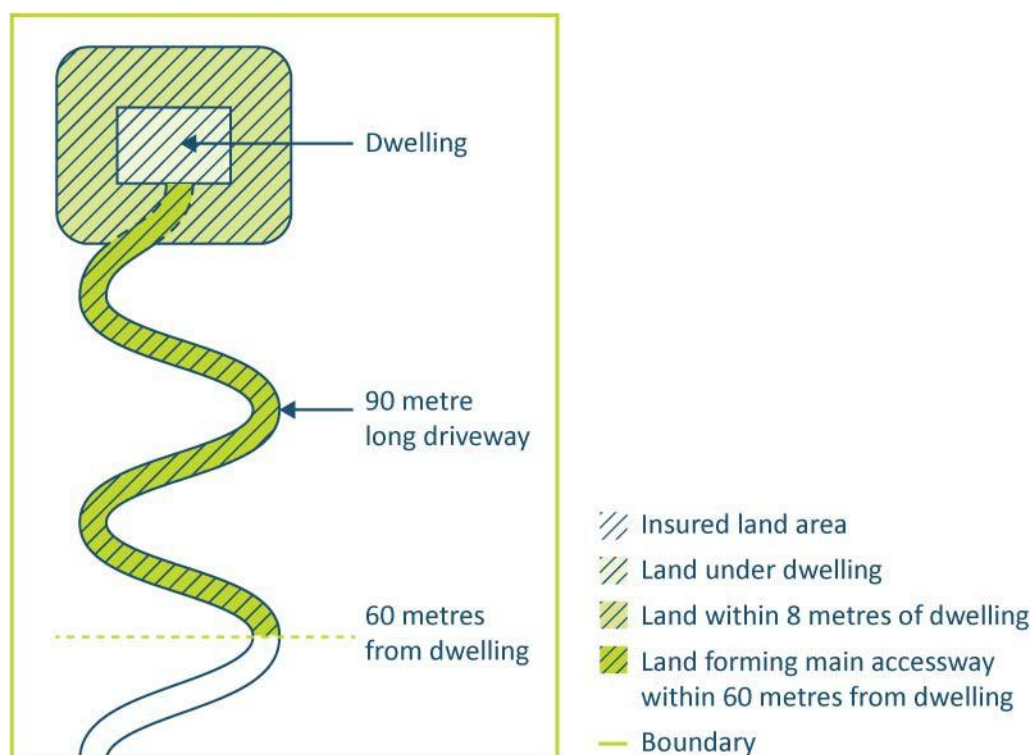
- it is within 60 metres, in a horizontal line, of the shed; and
- it goes to the shed from the boundary of the land holding.

Similarly, the shaded part of the main access way to the dwelling from the boundary is covered because:

- it is within 60 metres, in a horizontal line, of the dwelling; and
- it goes to the dwelling from the boundary of the land holding.

The parts of the main access way that are more than 60 metres, in a horizontal line, from the particular building that those parts serve are not covered.

Example 4: A winding main access way



**Figure 8: Residential land cover – Winding main access way**

In Example 4, the shaded area of land is insured as ‘residential land’. The main access way from the boundary goes to the dwelling by a winding and indirect route. The first 60 metres of the main access way, in a horizontal line from the dwelling, is covered, even though the actual length of the main access way in this area is 90 metres.

The part of the main access way that is more than 60 metres, in a horizontal line, from the dwelling is not covered.

**vi. What is the end point for the measurement of the 60 metres?**

The end point for the measurement is:

- the point that is 60 metres, in a horizontal line, from the start point; or
- the boundary of the land holding, if the boundary is less than 60 metres, in a horizontal line, from the start point. The land holding may include neighbouring land if the owners of the building have a right of way, in the form of an easement, over that neighbouring land. (See Section 4.g.iii)

**vii. How wide can the access way be?**

The access way must be for the purposes of access. Land that is not reasonably necessary for that purpose will not form part of the access way.

**viii. What is 'land supporting such access way'?**

Paragraph (c) of the 'residential land' definition also covers land supporting the main access way (or part of it) insured under the *EQC Act*.

For example, the main access way may be elevated and supported by land on either side of the access way. In this case, the land supporting the access way is also covered under paragraph (c).

To be covered under paragraph (c), this supporting land must also be within 60 metres, in a horizontal line, of the building.

In cases of doubt, what constitutes land supporting the main access way should be determined by an appropriately qualified professional (such as a geotechnical engineer).

**ix. What if there is a shared access way?**

Sometimes two or more properties share some or all of a main access way.

Because of the way that EQCover is defined for access ways, the damaged part of the access way may come within the insured 'residential land' for some of these properties but not others.

In these cases, the person dealing with the claim should collect the following information:

- which properties share the damaged access way;
- the legal basis on which they share the access way and the supporting documentary evidence (such as the Record of Title and easement document);
- whether each property that shares the access way has EQCover;
- maps or drawings (to scale) showing the location of:
  - the properties affected;
  - the residential buildings on those properties, including appurtenant structures served by the access way;
  - the shared access way;
  - the precise location of the damage on the access way;
- whether any particular property owner seems better placed than the others to carry out the repair.

This information should then be escalated to the appropriate Toka Tū Ake EQC representative.

#### **x. Cases of doubt**

If there is remaining doubt about whether an access way is the ‘main’ access way or whether any particular land forms part of (or supports) the main access way, the person dealing with the matter should:

- collect all relevant information; and
- escalate the matter to the appropriate Toka Tū Ake EQC representative.

### **h. What bridges are ‘residential land’?**

Under the ‘residential land’ definition, we cover, in relation to a residential building:

all bridges ... situated within any area specified in paragraphs (a) to (c)

*Section 2(1), EQC Act – Paragraph (d) of the definition of ‘residential land’*

This means that bridges are covered where they are within the insured land area. The insured land area comprises the areas described in Sections 4.e, 4.f and 4.g above.



***i. What is a ‘bridge’?***

A bridge is a structure for the purpose of carrying a road or path across a river, road or similar. The bridge includes all components necessary for this purpose.

***ii. Bridge must be situated within insured land area***

To be covered as ‘residential land’, the bridge must be situated within the insured area of residential land.

In other words, the whole bridge must be within the land holding and:

- within the land area on which one or more of the buildings is also situated (see Section 4e). Note however that there is an exception where the bridge is part of the building (see Section 4.h.iv below);
- within 8 metres, in a horizontal line, of one or more of the buildings or appurtenant structures; (see Section 4.f) and/or
- along the insured main access way to one or more of the buildings. (see Section 4g)

***iii. What if one end of the bridge is outside the insured land area?***

If part of the bridge is inside the insured area of residential land and the rest of the bridge is outside the insured area of residential land, none of the bridge is covered under the *EQC Act*. That is because the whole bridge must be ‘within’ the insured area of residential land to be covered.

The bridge must be fully within the land holding. The bridge will be covered if the bridge is partly within the boundaries shown on the Record of Title and the rest of the bridge is on land fully covered by an easement that the customer has over neighbouring property. That is because the easement is part of the customer’s land holding. See Section 4.d.ii.

***iv. When is a bridge insured by EQCover as part of the residential building (and not as part of the residential land)?***

If a bridge is constructed in a residential building or is an integral part of a residential building, the bridge will be insured by EQCover as part of the residential building. In this case, the bridge is not insured as part of the residential land.



## **i. What culverts are ‘residential land’?**

Under the ‘residential land’ definition, we cover, in relation to a residential building:

all ... culverts situated within any area specified in paragraphs (a) to (c)

*Section 2(1), EQC Act – Paragraph (d) of the definition of ‘residential land’*

This means that culverts are covered where they are within the insured land area. The insured land area comprises the areas described in Sections 4.e, 4.f and 4.g above.

### ***i. What is a ‘culvert’?***

A culvert is a tunnel for the purpose of carrying a stream or open drain under a road or access way. The culvert includes all components necessary for this purpose.

### ***ii. Culvert must be situated within insured land area***

To be covered, the culvert must be situated within the insured area of residential land.

In other words, the whole culvert must be within the land holding and:

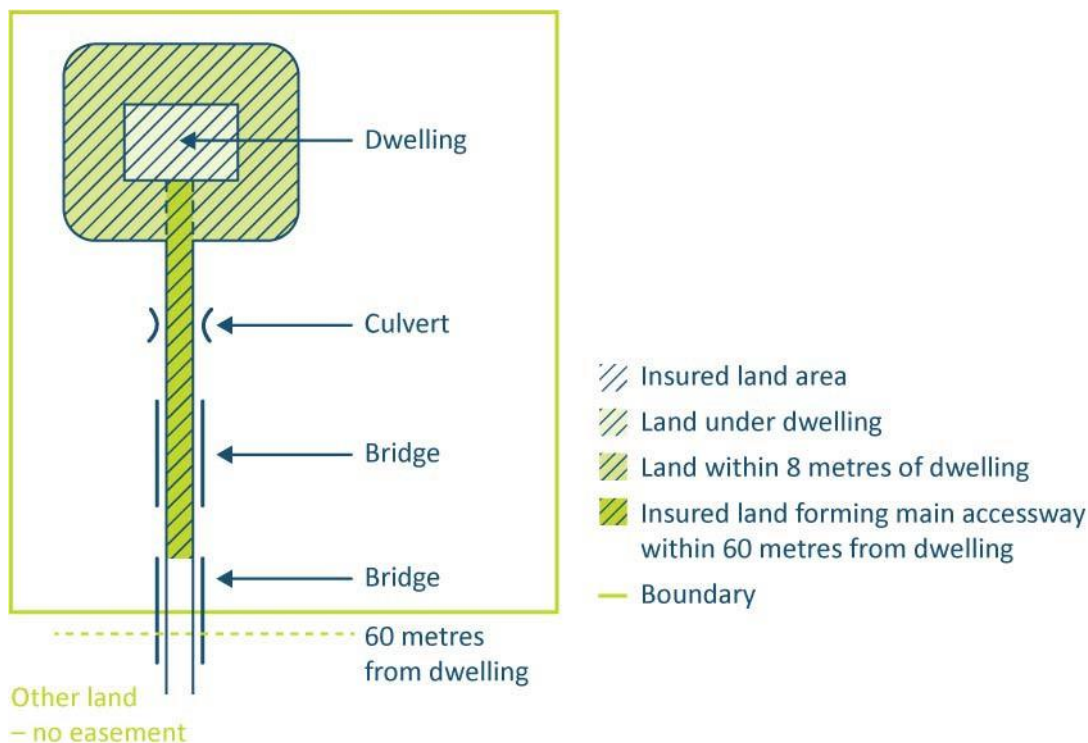
- within the land area on which one or more of the buildings is also situated (see Section 4.e). Note, however, that there is an exception where the culvert is part of the building (see Section 4.i.iv below);
- within 8 metres, in a horizontal line, of one or more of the buildings or appurtenant structures; (see Section 4.f) and/or
- along the insured main access way to one or more of the buildings. (see Section 4.g)

### ***iii. What if one end of the culvert is outside the insured land area?***

If part of the culvert is inside the insured area of residential land and the rest of the culvert is outside the insured area of residential land, none of the culvert is covered under the EQC Act. That is because the whole culvert must be ‘within’ the insured area of residential land to be covered.

The culvert must be fully within the land holding. The culvert will be covered if it is partly within the boundaries shown on the Record of Title and the rest of the culvert is on land that is fully covered by an easement that the customer has over neighbouring property. That is because the easement is part of the customer’s land holding. See Section 4.d.ii.

Example: A culvert and bridge on the main access way



**Figure 9: Residential land cover – Main access way with bridge and culvert**

In the example in Figure 9:

- the main access way within the boundaries of the land holding is less than 60 metres, in a horizontal line, from the dwelling. All the *land* forming the main access way is therefore covered;
- the culvert is also covered because it is entirely within the insured area of residential land and entirely within the land holding;
- the bridge nearer to the culvert is also covered, because it is also entirely within the insured area of residential land and entirely within the land holding;
- the bridge straddling the boundary is not covered, because it is not entirely within the land holding. None of the land under this bridge is covered, because that land is not part of the access way. The access way is the bridge over the land – but, as explained, the bridge is not covered.

#### ***iv. When is a culvert insured by EQCover as part of the residential building (and not as part of the residential land)?***

Although rare, if a culvert is constructed in a residential building or is an integral part of a residential building, the culvert will be insured by EQCover as part of the residential building. In this case, the culvert is not insured as part of the residential land.

#### **j. What retaining walls are ‘residential land’?**

Under the ‘residential land’ definition, we cover, in relation to a residential building:

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 – Paragraph (e) of the definition of ‘residential land’*

This means that retaining walls and their support systems are covered where:

- they are within 60 metres (in a horizontal line) of the building or appurtenant structure; and
- they are necessary to support or protect the building or appurtenant structure or the insured land area. The insured land area comprises the areas described in Sections 4.e, 4.f and 4.g above.

#### ***i. What are ‘retaining walls’?***

The *EQC Act* does not define the term ‘retaining wall’.

In general, a retaining wall is a wall built to support earth at a higher level on one side of the wall than on the other side of the wall.

A retaining wall may:

- be self-standing;
- be anchored into the land it retains;
- be below ground; or
- get structural support from the land it retains.

Retaining walls take many forms. Examples include (but are not limited to) timber pole, steel pole, concrete block, mass block, dry stack, gabion basket, shotcrete (with anchors), sheet piling, crib, geogrid reinforced fill, or keystone (gravity) retaining walls.

In cases of doubt about whether something is a ‘retaining wall’, the person dealing with the claim should obtain advice from an appropriately qualified professional (such as an engineer). If that professional is unable to confirm the position, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

**ii. What are the retaining walls’ ‘support systems’ and when are the support systems covered?**

What are the support systems of a retaining wall?

The support systems of a retaining wall may include (but are not limited to) anchors, cabling, footings, piles, capping beams, and drainage systems behind the retaining wall.

In cases of doubt about whether something is a support system of a retaining wall, the person dealing with the claim should obtain advice from an appropriately qualified professional (such as an engineer). If that professional is unable to confirm the position, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

When are the support systems covered?

Where a retaining wall is covered, the support systems of the retaining wall are also covered. But to be covered, both the retaining wall and their support systems must be:

- within 60 metres, in a horizontal line, of the building; and
- necessary to support or protect the building or the insured land area.

**iii. What is the ‘building’ for this purpose?**

The building may comprise:

- the building that is or includes one or more dwellings (or long-term accommodation); (see Section 5.d)
- any buildings and structures appurtenant to the dwelling (or long-term accommodation). These are called ‘appurtenant structures’. (Section 5.e)

The retaining wall and its support systems must be within 60 metres (in a horizontal line) of the building. They must be necessary to support or protect *that building* or the insured land area.

The ‘building’ is described in more detail in Section 4.e.i (including in relation to a residential building that comprises long-term accommodation for the elderly).

**iv. Where is the start point for measuring the 60 metres?**

To be insured residential land, the retaining wall and its support systems must (among other things) be within 60 metres, in a horizontal line, of the building.

The start point for measuring the 60 metres is the outermost point, at ground level, of the building.

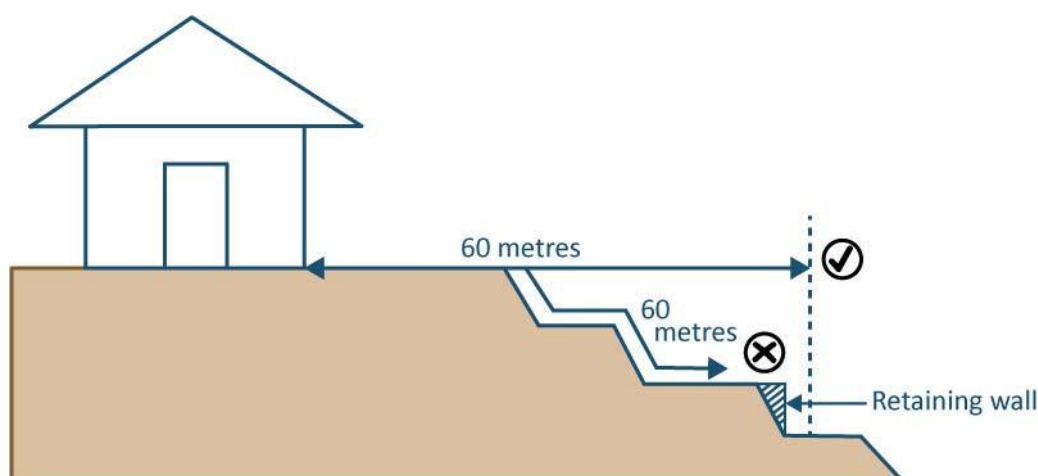
The outermost point is a point that provides a permanent firm base of the building on the ground. It is not a point on a part of the building that protrudes from the wall. For illustrations of the start point, see Figure 2, Figure 3 and Figure 4 above.

It may be necessary to obtain advice from an appropriately qualified professional (such as a licensed building practitioner, a geotechnical engineer or (in some cases) a structural engineer) to determine the outermost point of the building. In cases of doubt about where the outermost point of the building is, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

**v. How is the 60 metres ‘in a horizontal line’ measured?**

The 60 metres must be measured ‘in a horizontal line’. If the 60 metres is being measured across a sloping site, the 60 metres is measured in a horizontal line straight across from the building. The 60 metre distance is not measured following the contours of the land.

The correct approach to measuring the 60 metres is set out in the diagram below. In this example, the retaining wall is within 60 metres (in a horizontal line) of the building.



**Figure 10: Residential land cover – Measurement of the 60 metres – retaining wall cover**

**vi. What if one end of the retaining wall and its support systems are beyond the 60 metres?**

A retaining wall and its support systems are covered only if (among other things) they are within 60 metres, in a horizontal line, of a residential building (excluding services).

Any section of a retaining wall that is more than 60 metres away, in a horizontal line, from a residential building is not covered.

If the section of the retaining wall that is within the 60 metres can be considered a retaining wall in its own right, that section will be covered – if it meets the requirements for cover in paragraph (e) of the ‘residential land’ definition. This section of the retaining wall will be covered, even if it is attached to another section of the wall that is outside the 60 metres and also a retaining wall in its own right. It may be necessary to obtain advice from an appropriately qualified professional (such as a geotechnical engineer) on these matters.

***vii. What if the retaining wall is situated on the boundary of the land holding?***

To be covered, the retaining wall must be within the land holding. In this context, the land holding includes any neighbouring land over which the customer has an easement (or equivalent right).

If a retaining wall is located wholly or partly outside the boundary of the customer’s property, the retaining wall will still be within the land holding if the customer has an easement (or equivalent right) over the whole (or part) of the retaining wall outside the boundary.

If a section of the retaining wall that is within the land holding can be considered a retaining wall in its own right, that section will be covered – if it meets the requirements for cover in paragraph (e) of the ‘residential land’ definition. This section of the retaining wall will be covered, even if it is attached to another section of the wall that is outside the land holding and also a retaining wall in its own right. It may be necessary to obtain advice from an appropriately qualified professional (such as a geotechnical engineer) on these matters.

**What should be done if it is not clear, or if there is a disagreement, where the boundary lies in relation to the retaining wall?**

If it is not clear, or if there is a disagreement, where the boundary lies in relation to the retaining wall:

- a survey should be arranged from a professional surveyor; and
- as part of that survey, a plan should be produced showing the retaining wall and boundary locations.

**When is a survey of the location of the retaining wall required?**

For the purposes of determining if a survey to identify the location of the retaining wall (and any relevant easements) is required, the person dealing with the claim should obtain and consider (at a minimum):

- copies of the relevant Records of Title (particularly showing the location of the boundary); and
- any relevant information from the council file for the properties in question.

If the location of the wall cannot be determined from this information with reasonable confidence, then a survey to confirm the location should be obtained.

If the person dealing with the claim is unsure about how to proceed with this process, they should escalate the matter to the appropriate Toka Tū Ake EQC representative.

***viii. What retaining walls are ‘necessary for the support or protection’ of the building or the insured land?***

The retaining walls are covered only if (among other things) they are necessary for the support or protection of the building or the insured land.

A retaining wall is necessary for the support or protection of a building (or land) if the building (or land):

- would collapse (that is, evacuate) or be undermined without the presence of the retaining wall; or
- would be impacted or inundated – if the retaining wall was removed – by the earth behind the retaining wall.

Walls that serve a landscaping function only, rather than supporting or protecting the building or the insured land, are not covered by us.

It is often appropriate and reasonable to obtain engineering advice to determine whether a retaining wall is necessary for the support or protection of a residential building or the insured land.

Where a retaining wall is necessary for the support or protection of a particular building, then in order to be covered, the retaining wall (and its support systems) must be within 60 metres, in a horizontal line, of *that building*.

***ix. When is a retaining wall and its support systems insured by EQCover as part of the residential building (and not as part of the residential land)?***

If a retaining wall is constructed in a residential building or is an integral part of a residential building, the retaining wall will be insured by EQCover as part of the residential building. An example is where a garage is built into a bank and the back wall of the garage also serves to retain the earth behind it.

In this case, the retaining wall is not insured as part of the residential land. It may be insured as part of the residential building, provided certain conditions are met (see *Section 4 of the Toka Tū Ake EQC Claims Manual – Residential Buildings*).

## k. 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 part of the ‘residential land’ are not insured under the EQC Act.

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

- any bush, forest, tree, plant, or lawn;
- any growing crops (including fruit trees and vines) or cut crops in the open fields;
- any tennis court, whether inside or outside and whether lawn or not; and
- any paving or other artificial surface.

*Schedule 2, EQC Act*

*Section 21(1)(a), EQC Act*

#### Fences and retaining walls

Some retaining walls have fences along the top of them to act as barriers. Fences are excluded property under *Schedule 2 of the EQC Act*. If a fence is a separate item from the wall, it will be excluded.

However, if the fence is so integral to the retaining wall that it can properly be considered part of the wall, it will be covered as part of the retaining wall. It will be a question of fact and degree in each case as to whether the fence is covered in these circumstances.

For example, the Building Code sometimes requires safety barriers to be included as part of the retaining wall. Although the safety barrier may have the appearance of a fence, it will be covered as part of the retaining wall where it is a necessary part of the wall for safety reasons.

#### Roads, streets, drives and paths

Except as set out immediately below, roads, streets, drives and paths are not insured under the EQC Act.

Land comprising access ways is included in ‘residential land’ insurance. (See Section 4.g) But the ‘residential land’ does not include paving or artificial surfaces.

Furthermore, residential building insurance under the EQC Act includes gangways, ladders, access platforms, or other form 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*



### Land in relation to trailers, caravans and tiny homes

Trailers, caravans and tiny homes are not insured as ‘residential buildings’ under the *EQC Act*, however in some instances, they may have residential building insurance if they meet the definition of, and are being used as, a dwelling. For further information, see the *Section 4hi of the Toka Tū Ake EQC Claims Manual – Residential Building*.

Where the trailer, caravan or tiny home meets the definition of a residential building, there may be associated residential land cover. In order to determine this, you must confirm that it meets the basic requirements for an EQCover claim. See Section 3.

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

## 5. Is there an insured ‘residential building’?

### a. Identifying a ‘residential building’ is critical to determining whether there is ‘residential land’

As explained in Section 4, identifying the ‘residential building’ on the land holding is a critical first step in applying the ‘residential land’ definition.

For that reason, this Section 5 sets out at a high level how to identify if there is an insured ‘residential building’. Details about cover for residential buildings are set out in *Section 4 of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

‘Residential land’ is defined under the *EQC Act* to mean certain property within the land holding *in relation to the residential building concerned*:

- the land on which the *building* is situated;  
*Section 2(1), EQC Act – Paragraph (a) of the definition of ‘residential land’*
- all land within 8 metres in a horizontal line of the *building*;  
*Section 2(1), EQC Act – Paragraph (b) of the definition of ‘residential land’*
- that part of the land holding that:
  - is within 60 metres, in a horizontal line, of the *building*; and
  - constitutes the main access way or part of the main access way to the *building* from the boundary of the land holding;  
*Section 2(1), EQC Act – Paragraph (c) of the definition of ‘residential land’*
- all bridges and culverts situated within any of the above areas of land;  
*Section 2(1), EQC Act – Paragraph (d) of the definition of ‘residential land’*
- all retaining walls and their support systems within 60 metres, in a horizontal line, of the *building* necessary for the support or protection of the *building* or any of the above areas of land.  
*Section 2(1), EQC Act – Paragraph (e) of the definition of ‘residential land’*

In general terms, to find the insured ‘residential land’, it is or may be necessary to consider:

- what is a ‘residential building’? (Section 5.b)
- what is a ‘dwelling’? (Section 5.c)
- what items make up a ‘residential building’? (Section 5.d)
- what is an ‘appurtenant structure’? (Section 5.e)

Details on each of these matters are set out in Sections 5.b to 5.f below.

Particular provisions apply to EQCover for buildings and appurtenant structures that relate to long-term accommodation for the elderly. This aspect is addressed separately in Section 5.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 5.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) that is or includes one or more dwellings; (see Section 5.d)
- buildings and structures appurtenant to the dwelling; (see Section 5.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 5.f)
- long-term accommodation for the elderly (including a building (or part of a building), appurtenant structures, and services). (see Section 5.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.

#### **iv. Services component of ‘residential building’ not relevant to defining area of ‘residential land’**

The services serving the dwelling are not treated as a ‘residential building’ for the purpose of defining the area of ‘residential land’. Therefore the land underneath them or within 8 metres of them is not treated as an additional component of ‘residential land’.

For these purposes, the ‘services’ are certain water supply, drainage, sewerage, gas, electrical, and telephone services. For a full description, see Section 5.f.

#### **c. What is a ‘dwelling’?**

Identifying whether or not there is a ‘dwelling’ is a critical first step in applying the ‘residential building’ definition. For details, see *Section 4c of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

#### **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. For details, see *Section 4d of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

#### **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.

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.

For details, see *Section 4e of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

#### 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.

Sections 4.h, 4.i and 4.j above set out the bridges, culverts and retaining walls covered by Toka Tū Ake EQC residential land insurance. These structures are not treated as ‘appurtenant structures’.

## **f. What are the ‘services’ (and structures appurtenant to them) that serve the dwelling?**

The *EQC Act* defines a ‘residential building’ to include:

- (c) 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 5.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.

The services serving the dwelling are not treated as a ‘residential building’ for the purpose of defining the area of ‘residential land’. Therefore the land underneath them or within 8 metres of them is not treated as an additional component of ‘residential land’.

For detail, see *Section 4f of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

## **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 2(1), EQC Act – Paragraph (b) of the definition of ‘residential building’*

- buildings and structures appurtenant to that building or part;

*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 2(1), EQC Act – Paragraph (d) of the definition of ‘residential building’*

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.

For detail, see *Section 4g of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

## **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*.

For details, see *Section 4h of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.



## 6. 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 6.d)
- ... occurring as ‘the direct result’ of ... ; (Section 6.e)
- ... the ‘natural disaster’. (Section 6.b)

Each of these components is discussed at Sections 6.d, 6.e, and 6.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 6.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 8.

*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 6.d)
- ... occurring as ‘the direct result’ of ... ; (Section 6.e)
- ... the ‘natural disaster’. (Section 6.b)

Each of these components is discussed at Sections 6.d, 6.e, and 6.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 6.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 particular the 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, minor rotation of a retaining wall caused by an earthquake will not be natural disaster damage if it does not affect the structural integrity of the wall as a whole or its aesthetic value (and therefore does not impair the utility or amenity of the wall). 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 to determine whether damage is imminent, 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. The 12-month rule will apply other than in exceptional 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 residential land, it is important to consider the interrelationship with the residential building cover. A solution to prevent the imminent physical loss or damage to residential land from occurring may have the effect of removing the imminent physical loss or damage to the residential building, or vice versa. See Section 9.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 6.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.

### Example

The following example illustrates where a natural disaster has ‘caused’ the damage:

- a natural landslide occurs up-stream affecting non-residential property;
- the natural landslide debris flows into a stream, forming a dam and creating a lake; and
- shortly afterwards the dam fails, causing downstream flooding which damages the residential land.

In this example, the damage to the residential land is:

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

The damage to the residential land is therefore the direct result of the natural landslide.

### ***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 8.

#### *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*

- a bridge (see Section 4.h), a culvert (see Section 4.i) or a retaining wall (see Section 4.j) was not constructed in accordance with standards considered appropriate for it 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 8.

### ***iii. Consequential loss is excluded from EQCover***

EQCover does 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 EQCover.



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. There must be physical loss or damage to the property**

The definition of 'physical loss or damage' is set out and discussed at Section 6.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 6.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.

## 7. How is the natural disaster damage assessed?

This Section 7 is divided into three parts:

- Section 7.A, which addresses the assessment of natural disaster damage to residential land;
- Section 7.B, which deals with the process and output for the assessment; and
- Section 7.C, which sets out principles for assessment of natural disaster damage where there are multiple events.

### A. Assessment of residential land damage

#### a. Overview

The main purpose of the assessment of the customer's claim for damage to residential land is to find whether the residential land has suffered natural disaster damage as claimed by the customer and the extent of that damage (if any). The assessment also involves arranging valuations for the purposes of calculating the maximum amount (or cap) that can be paid for the residential land exposure. (Section 7.A.b)

The 'residential land' being assessed includes bridges, culverts and retaining walls. These are referred to as 'land structures'. (See Sections 4.h, 4.i, and 4.j)

The damage includes any damage that is imminent as the direct result of the natural disaster that has occurred. In this Section 7 of the Manual, a reference to 'damage' includes any such imminent damage. (Section 7.A.c.ii)

The assessment will typically involve:

- engaging sufficiently qualified people; (Section 7.A.g)
- visiting the residential land; (Sections 7.A.h and 7.A.i)
- assessing any natural disaster damage to the residential land; (Sections 7.A.c.ii and 7.A.c.iv)
- formulating a conceptual remedial solution for the damaged residential land; (Section 7.A.c.v)
- costing of the repair; (Section 7.A.c.vi) and
- valuing the damaged areas of insured land and damaged insured land structures. (Section 7.A.c.vii)

The assessment process will involve taking into account relevant considerations, disregarding irrelevant considerations and weighing the available evidence. (Section 7.B.a)

The output of the assessment is full documentation recording the reasoning underpinning, and the results of, the assessment. (Section 7.B.b)

Where there are multiple events, the principles for assessment of claims for natural disaster damage under Section 7.C will also apply.

Details of these matters are set out below in this Section 7.

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 land 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 land assessment is to find:

- whether the residential land 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.

## **c. What are the steps in the assessment?**

In general terms, there are seven steps involved in assessing a residential land claim. The person dealing with the claim must assess (or arrange for the assessment of):

- the extent of the land holding; (Section 7.A.c.i)
- the type and extent of the land damage to the land holding; (Section 7.A.c.ii)
- the extent of the insured residential land; (Section 7.A.c.iii)
- the area of insured residential land that is lost or damaged; (Section 7.A.c.iv)
- the conceptual remedial solution for damage to the insured residential land; (Section 7.A.c.v)
- the cost of repair for damage to the insured residential land; (Section 7.A.c.vi) and
- the value, at the site of the damage, of the damaged areas of insured land and the indemnity value of the damaged insured land structures. (Section 7.A.c.vii)

More details on each of these seven steps are set out below.

### ***i. Assessing the extent of the land holding***

As a first step, the extent of the land holding must be identified.

Section 4.d sets out in detail how to identify the land holding of the property.

In general, the ‘land holding’ consists of all the land within the boundaries shown on the Record of Title for that property.

However, land outside those boundaries may also form part of the land holding in two situations as follows:

- where there is an easement providing access over neighbouring land;
- where it is appropriate to treat two or more Records of Title as one. (Section 4.d.i)

### ***ii. Assessing the type and extent of the natural disaster damage to the land and land structures on the land holding***

Next it is necessary to identify the type and extent of natural disaster damage to the land and land structures within the land holding.

#### What is the natural disaster damage?

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

- ‘physical loss or damage’ to the residential land ... ; (Section 6.d)
- ... occurring as ‘the direct result’ of ... ; (Section 6.e)
- ... a ‘natural disaster’. (Section 6.b)

Details on these components are set out at Sections 6.d, 6.e, and 6.b. *Section 2(1), EQC Act –*

*Paragraph (a) of the definition of ‘natural disaster damage’* In each case, there will be land damage

where:

- the residential land has been materially physically changed as a direct result of a natural disaster; and
- that change has adversely affected the utility or amenity value of the land.

Material physical change includes change that is ‘more-than-negligible’, i.e. something beyond the minor, inconsequential or immaterial.

Identifying damage to both insured and uninsured land

At this stage of the assessment, the assessor should identify and record damage to all land and land structures on the land holding. This means that the assessment will include damage to both:

- the insured area of residential land and the insured land structures; and
- any uninsured land and land structures on the land holding.

We cover only the insured area of residential land and the insured land structures. But it is useful to us also to have information about any damage to the uninsured land and land structures on the land holding. That information may (where relevant) inform the assessment of the current or a future EQCover related to the property.

Some typical types of land damage

Typical types of land damage from different natural disasters include (but are not limited to) those identified in the table below.

|                  |  |  | NATURAL DISASTER TYPE |                  |                   |                       |         |        |        |                       |
|------------------|--|--|-----------------------|------------------|-------------------|-----------------------|---------|--------|--------|-----------------------|
|                  |  |  | Earthquake            | Natural landslip | Volcanic eruption | Hydrothermal activity | Tsunami | Storm* | Flood* | Natural disaster fire |
| LAND DAMAGE TYPE | Land   | Evacuation (including scouring)                    | X                     | X                | X                 | X                     | X       | X      | X      |                       |
|                  |  | Inundation (falling, sliding, flowing or ejection) | X                     | X                | X                 | X                     | X       | X      | X      | X                     |
|                  |  | Cracking (lateral spreading)                       | X                     | X                |                   | X                     |         |        |        |                       |
|                  |  | Cracking (oscillation movement)                    | X                     |                  |                   |                       |         |        |        |                       |
|                  |  | Undulating land                                    | X                     | X                |                   |                       |         |        |        |                       |
|                  |  | Localised ponding                                  | X                     |                  |                   |                       |         |        |        |                       |
|                  |  | Localised settlement                               | X                     | X                |                   |                       |         |        |        |                       |
|                  |  | Groundwater springs                                | X                     | X                |                   |                       | X       |        |        |                       |
|                  | Contamination  | X  | X                     | X                | X                 | X                     | X       | X      |        |                       |
|                  | Land structures (bridges, culverts, retaining walls) | Impact   | X                     | X                | X                 | X                     | X       | X      | X      |                       |
|                  |  | Cracking   | X                     | X                | X                 | X                     | X       | X      | X      |                       |
|                  |  | Rotation   | X                     | X                | X                 | X                     | X       |        | X      |                       |
|                  |  | Collapse   | X                     | X                | X                 | X                     | X       |        | X      |                       |
|                  |  | Washed away  |                       |                  | X                 |                       | X       |        | X      |                       |

\* Residential land only

### Natural landslips

Not all ground movement is a ‘natural landslip’. The definition of ‘natural landslip’ excludes the movement of ground due to below-ground subsidence, soil expansion, soil shrinkage, soil compaction or erosion. See Section 6.b.

*Section 2(1), EQC Act – Definition of ‘natural landslip’*

### Imminent damage

In assessing any imminent damage, the engineer engaged (or other assessor) should provide their best estimate of the further natural disaster damage expected to occur to the residential land (if any):

- as a direct result of the original natural disaster; and
- during the 12-month period following that natural disaster. (See Section 6.d)

That assessment should be based on the following assumptions:

- normal weather patterns with no extraordinary events; and
- no remediation or mitigation of the original natural disaster damage.

### As at what date must the damage be assessed?

The damage must be assessed as at the date that the natural disaster occurred, not as at the date of the assessment. This includes assessing:

- the damage that has occurred; and
- any imminent damage

For example, the customer may have started repairs (such as debris removal) before the damage assessment. But in this case, the damage must nevertheless be assessed as at the date of natural disaster rather than at the date of the assessment.

### Situation where there is both residential land and residential building damage

Sometimes (particularly for a natural landslip), the natural disaster damage to the residential land may also affect the residential building on the land holding. For example, this may be the case where the land damage has resulted in imminent damage to the residential building.

In this situation, it will be necessary to consider whether and how the decision to settle the residential land exposure will affect settlement of the residential building exposure.

### Recording the type and extent of the natural disaster damage

The type and extent of the natural disaster damage to the land and land structures on the land holding should be recorded using a land sketch and accompanying report. More details about the land sketch are set out at Section 7.A.c.iv.



### ***iii. Assessing the extent of the insured residential land***

The extent of the insured ‘residential land’ must be identified.

We only cover natural disaster damage to insured residential land.

#### How is the insured residential land identified?

Section 4 sets out in detail how to identify the insured residential land.

In summary, the insured ‘residential land’ is defined under the *EQC Act* to mean certain property within the land holding which comprises:

- the land that comes within the ‘residential land’ insured under the *EQC Act*; and
- any bridges, culverts or retaining walls that are insured as ‘residential land’ under the *EQC Act*. These bridges, culverts or retaining walls are called ‘land structures’ in this Manual.

Section 4.c sets out details on assessing the extent of the residential land in different situations.

*Section 2(1), EQC Act – Definition of ‘residential land’*

#### What if there is doubt about whether any particular property is insured residential land?

Sometimes there may be doubt whether a particular area of land or land structure comes within the definition of the insured ‘residential land’ under the *EQC Act*.

For example there may be doubt about:

- whether a specific area of land supports the main access way of the property; (see Section 4.g) or
- whether a particular wall on the property is an insured retaining wall. (see Section 4.j)

If there is doubt about whether any particular area of land or land structure comes within the ‘residential land’ at the property, the assessor should:

- record the exact location and footprint of that particular area of land or land structure;
- obtain photographs of the damage situation; and
- note in writing why that particular area of land or land structure was or was not considered part of the ‘residential land’.

In the first instance, that information should be referred to an engineer to see if the doubt can be resolved. If, after the engineer’s advice has been obtained, there remains doubt about whether the particular area of land or land structure is insured residential land, the matter should be escalated to the appropriate Toka Tū Ake EQC representative.

### Recording the type and extent of the insured residential land

The extent of the insured residential land (including any particular areas of land or land structures that are in doubt) should be recorded using a land sketch and accompanying report. More details about the land sketch are set out at Section 7.A.c.iv.

#### ***iv. Assessing the area of land that is lost or damaged***

It is necessary to identify the area (or areas) of insured land that are actually lost or damaged.

The value of the area of insured land that is lost or damaged is a key component in calculating the maximum amount (or cap) that can be paid for the insured land component of a residential land claim.

The area of insured land that is actually lost or damaged includes any area of land for which physical loss or damage is, in our opinion, imminent as the direct result of the natural disaster. (See Section 7.A.c.ii under the heading 'Imminent damage'.)

Identifying the area of insured land that has actually been lost or damaged should be done early in the assessment process.

### Preparing a land sketch

For each residential land claim, the assessor should prepare a detailed land sketch identifying:

- the extent of the land holding;
- the type and extent of the land damage. This includes natural disaster damage to:
  - the insured land and land structures; and
  - any uninsured land and land structures within the land holding;
- the extent of the insured residential land (including insured land structures, whether damaged or not) on the land holding; and
- the area of insured land that is lost or damaged.

Enough information should be recorded on the land sketch and accompanying report to help enable the next steps of the assessment to be progressed, namely:

- the formulation of a conceptual remedial solution; (see Section 7.A.c.v)
- the assessment of the cost of carrying out the conceptual remedial solution; (see Section 7.A.c.vi) and
- the assessment of the value of the damaged area of insured land and the indemnity value of any damaged insured land structure. (see Section 7.A.c.vii)

If an engineer has been retained, the engineer must also prepare a land sketch of their own.

What specific information regarding land damage should be recorded on the land sketch?

The land sketch should be drawn to scale and show the following items regarding land damage:

- each area of land that is actually lost or damaged;
- each area of land (if any) for which physical loss or damage is imminent as the direct result of the natural disaster;
- each bridge, culvert or retaining wall that is actually lost or damaged;
- each bridge, culvert or retaining wall for which physical loss or damage is imminent as the direct result of the natural disaster;
- each bridge, culvert or retaining wall that has not been lost or damaged; and
- where applicable, the relevant information about the building damage that has occurred as the direct result of the natural disaster damage to the residential land (including imminent damage).

The land sketch (or accompanying report) should also record:

- the area, in square metres, of each damaged area of land;
- enough detail about each damaged bridge, culvert or retaining wall (such as its dimensions and construction details) to allow a valuer to assess the indemnity value of that structure.

For example,

Figure 11 below provides an illustration of a land sketch after a natural landslide and flood occurring as part of one natural disaster event. The land sketch for a single land holding provides detailed dimensions of:

- an area of 20 m<sup>2</sup> of inundation (from the flood); (see A1 on the sketch)
- an area of 24 m<sup>2</sup> of inundation both on and in close proximity to the main access way (from the flood); (see A2 on the sketch)
- a retaining wall that has rotated forward (from the natural landslide), which is 4.2 metres high and 12 metres long; (see RTW1 on the sketch)
- an area of 4 m<sup>2</sup> of evacuated land behind the damaged retaining wall (from the natural landslide); (see B1 on the sketch)
- an area of 2.5 m<sup>2</sup> of inundation in front of the damaged retaining wall (from the natural landslide); (see A3 on the sketch) and
- an entire retaining wall that has suffered no damage. (see RTW2 on the sketch)

Notably also, the sketch:

- is drawn to scale;
- identifies the boundary of the land holding (including dimensions);
- indicates the dimensions of the house and shed;
- indicates (with the red dotted line) the insured land area within 8 metres of the house and the shed;
- identifies the main access way (including its distance from the house);
- identifies the areas of damaged land that are covered and not covered;
- includes details of the location and type of the retaining walls;
- identifies the street name; and
- shows the direction of north.

### Sketch Plan of Property

Completed By:  
Supvr ID  
LA ID

---

Date:

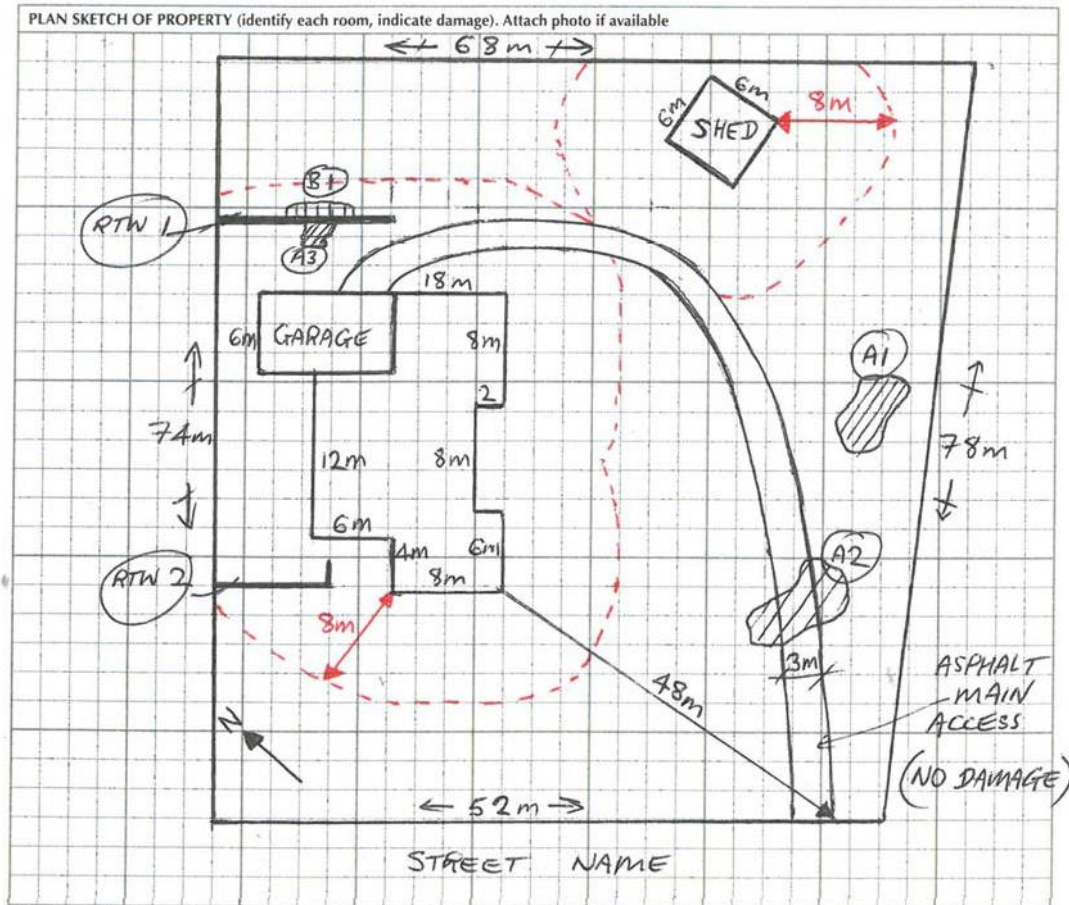
---

LA File Ref:

CLAIM NO. / /

CUSTOMER NAME :

ADDRESS :



| Additional Information                       |   |
|--|---|
| RTW 1 = TIMBER POLE WALL, 12.0m L x 4.2m H   | —— ROTATED  |
| RTW 2 = TIMBER POLE WALL, 7.5m L x 2.1m H    | —— NO DAMAGE                                      |
| = INUNDATION DEBRIS, (A1) = 20m <sup>2</sup> | —— OUT OF COVER                                   |
|  | (A2) = 24m <sup>2</sup> (9m <sup>2</sup> covered) |
| = EVACUATION, (B1) = 4.0m <sup>2</sup>       | (A3) = 2.5m <sup>2</sup> (IN FRONT OF RTW 1)      |
|  | (BEHIND RTW 1)                                    |

Figure 11: Example of land sketch

## **v. *Assessing the conceptual remedial solution***

A conceptual remedial solution for the insured land damage must be prepared.

### Purpose of the conceptual remedial solution

The remedial solution is described as ‘conceptual’ because its purpose is to identify an appropriate repair strategy for costing purposes.

The conceptual remedial solution does not comprise a detailed specification for construction purposes. Specific engineering or design documentation will be required for construction purposes in most situations.

Preparing a conceptual remedial solution does not mean that we will be:

- carrying out, or arranging to carry out, the land repair; or
- settling based on cost of repair.

It is our choice whether we settle a residential land claim by payment or reinstatement. Modes of settlement are addressed in Section 9.c.

### Conceptual remedial solution normally based on a visual site walkover

The conceptual remedial solution should normally be based on a visual site walkover. The solution must be designed to:

- repair the actual damage to the residential land by restoring its utility to immediately before the natural disaster; and
- remove any risk of imminent damage identified to the residential land (either by preventing it or by reinstating that damage once it happens).

The conceptual remedial solution does not remove any risk of future damage where that damage is not imminent.

If a more invasive investigation than a visual site walkover is required to develop a conceptual remedial solution, the person dealing with the claim should escalate the matter to the appropriate Toka Tū Ake EQC representative.

### Other key features of the conceptual remedial solution

The conceptual remedial solution should:

- be appropriate for the specific site and the nature of the damage to the areas of insured land and the insured land structures;
- be designed to identify the remedial solution required as at the date of the natural disaster (including any imminent damage from that date). This is the case even if some or all of the damage has been repaired by the time of the assessment;
- take into account information about any repair of the natural disaster damage to the residential land already carried out by the customer and whether that repair was appropriate in the circumstances;
- be lawful, including by meeting the requirements of the Building Code;
- be able to obtain (after any detailed design work is complete) a building and/or resource consent, if required; and
- be practical.

### Scope of conceptual remedial solution

The conceptual remedial solution must be limited to reinstating the natural disaster damage to the insured residential land.

If the conceptual remedial solution is not going to restore all of the insured land and land structures, it should:

- identify the areas of lost or damaged land and land structures that will not be restored; and
- quantify (in square metres) those areas of lost or damaged land and land structures.

### One repair method may repair several types of land damage

Under the conceptual remedial solution, the repair method for repairing land for one type of land damage may also repair other land damage types at the same time.

For example, the repair of undulating land may fully or partially repair local ponding.

### Enabling works

It may be necessary to include enabling works as part of the conceptual remedial solution for the land damage. For example:

- the land damage may be undulation under a driveway, but the artificial surface of the driveway is not damaged. In order to repair the damage to the underlying land, it may be necessary to lift the undamaged driveway to get access to the land. It will then be necessary to re-lay the driveway once the underlying land has been repaired. In this example, the lifting and re-laying of the driveway will be part of the repair;
- the land damage may be silt inundation under the dwelling following an earthquake. It may be that the only way that the silt can be removed is by hand and that the repair will involve lifting the otherwise undamaged floorboards. In this case, removing the silt (including lifting and replacing the floorboards) will form part of the land repair.

On the other hand:

- in the first example above, if the driveway surface had been damaged, it would already require repair or replacement. In this situation, it would typically not be appropriate to include lifting and re-laying the driveway in the conceptual remedial solution for the land damage; and
- in the second example above, if the floorboards were already damaged, they would already require repair or replacement. In this situation, it would typically not be appropriate to include lifting and re-laying the floorboards in the conceptual remedial solution for the land damage.

### Consents and other statutory approvals

It may be necessary to contact the local authority to confirm the site specific requirements of the property. The conceptual remedial solution should take into account the need for any required resource or building consents for the repairs to the insured land and land structures.

For this and other reasons, engineering or drainage advice may also be required in the preparation of the conceptual remedial solution.

### Neighbouring properties affected by the same natural disaster

Where neighbouring properties are affected by the same natural disaster, it may be appropriate to consider whether a cross-boundary remedial solution is appropriate. In this case, the person dealing with the claim should escalate the matter to the appropriate Toka Tū Ake EQC representative.

### What if the insured land damage is unrepairable?

If the insured land is unrepairable, the conceptual remedial solution should say that and set out the reasons for that conclusion.



## ***vi. Assessing the cost of repair***

It is necessary to assess the cost of the conceptual remedial solution for repairing the natural disaster damage to the insured land and insured land structures.

The land repair needs to be costed for the purposes of calculating the land settlement.

The amount of the natural disaster damage is measured (typically) on the basis of the cost of repair. This cost may include engineering and consent fees and the cost of obtaining access to the site for the purposes of carrying out the land repair.

The person assessing the residential land exposure should collect invoices for repairs already done and have regard to the costs of any such repair.

### Imminent damage

The cost of repair should include the cost of addressing any physical loss or damage to the residential land that, in our opinion, is imminent as the direct result of the natural disaster that has occurred. (See Section 6.d.iii)

Repair costings for imminent natural disaster damage to residential land will take into account either:

- the cost to prevent the imminent natural disaster damage from occurring (where this is possible); or
- the cost to reinstate the imminent natural disaster damage once it has occurred.

If some or all of the land damage has already been repaired after the natural disaster and before the assessment, the assessor should nevertheless prepare a costing as though that damage has not been repaired.

## ***vii. Assessing the relevant land values***

The assessor generally needs to obtain a valuation of:

- the value, at the site of the damage, of the area of the insured land lost or damaged; and
- the indemnity value of each insured bridge, culvert or retaining wall that has been lost or damaged.

When is a site-specific valuation required? A site-specific valuation report:

- will be required in relation to most residential land exposures; and
- must be requested if any insured bridge, culvert or retaining wall has been damaged.

A site-specific valuation may not be required where:

- there is no loss or damage;
- the cost of repairing the land damage is less than the land excess; or
- a Notional Valuation Report can be used instead (see 'Requesting a Notional Valuation Report instead of a site-specific valuation report' below).

What must the site-specific valuation assess?

The valuer preparing the site-specific valuation should be instructed to assess the values as at the date of the natural disaster. The valuer must assess, as at that date:

- the market value, at the site of the damage, of the area of insured land lost or damaged; and
- the indemnity value of each insured bridge, culvert or retaining wall that has been lost or damaged.

The valuer should also assess:

- the value of the minimum sized lot site under the District Plan for the district where the damage occurred. This requirement only applies where there is an operative District Plan in place. The 'minimum sized lot site' is the minimum area allowable under the District Plan for land used for the same purpose as the insured land at the time of the natural disaster;
- the value, at the site of the damage, of 4,000 m<sup>2</sup> of land. However, this valuation is not needed where it is clear that either:
  - the area of the insured land lost or damaged; or
  - the area of the minimum sized lot site (see above); is less than 4,000 m<sup>2</sup>.

What is the value of the area of the insured land lost or damaged?

The valuer must assess the market value of the insured land lost or damaged as at the date of the damage. This includes any area of land for which physical loss or damage is, in our opinion, imminent as the direct result of the natural disaster.

The valuer must assess the market value of the bare land (i.e. without any buildings or other improvements).

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

What is the indemnity value of the insured retaining walls, culverts, and bridges for the purposes of the cap?

The term 'indemnity value' is not defined in the *EQC Act*, but has a particular and well understood meaning in the valuation profession.

Indemnity value is typically defined as the cost necessary to replace, repair or rebuild insured property to a condition and extent substantially equal to but not better or more extensive than its condition and extent at the time that the damage occurred, taking into consideration the age, condition and remaining useful life of the insured property.

Applying this definition, when determining the indemnity value of damaged land structures, we:

- take into account the age, condition and remaining useful life of the damaged land structures; and
- do not take into account the cost of restoring the land structures to a better or more extensive condition than the property damaged, in order to meet current regulatory standards for issuing building consents.

The indemnity value of a retaining wall, culvert or bridge will likely be lower, and in many cases a lot lower, than its replacement value.

In determining the indemnity value of retaining walls, culverts and bridges, the valuer must apply recognised principles of valuation methodology.

#### What does the indemnity value apply to?

The indemnity value applies to the whole insured land structure, not just the damaged part of it.

For example, if there is an insured retaining wall 10 metres long and 4 metres high, but only 25 square metres of the retaining wall is damaged, the entire insured retaining wall (all 40 square metres of it) must be valued to find its indemnity value.

For this purpose, it is important to identify the *insured* retaining wall. For more details on what comprises an insured land structure, see Sections 4.h, 4.i and 4.j (and in particular, 4.j.vi and 4.j.vii).

#### Requesting a Notional Valuation Report instead of a site-specific valuation report

It is sometimes appropriate to use an indicative land value for claim settlement purposes rather than obtain a site-specific valuation report. In this situation, the person dealing with the claim can send a request for a Notional Valuation Report (called a Notional Valuation Request) to the valuer.

A Notional Valuation Request is typically made where there is area-wide localised natural disaster damage as the direct result of a single event (e.g. a flood where the damage is silt inundation).

Any proposed Notional Valuation Request should first be escalated to the appropriate Toka Tū Ake EQC representative.

A Notional Valuation Request may be made only where:

- there is no damage to any insured bridge, culvert or retaining wall; and
- the cost of repairing the residential land damage is less than \$20,000.

In some circumstances, the result of the Notional Valuation Report may mean that a site-specific valuation report nevertheless needs to be obtained.

#### **d. What if the residential land has, or in the short term will, self-repair?**

Where the land has, or will in the short term be, 'self-repaired', no land damage repair will be costed. Self-repair can, for example, happen where:

- light silt inundation left on the property from a flood event is washed away through normal rainfall processes; or
- inundation from a stream bank into a stream is removed by the natural flow of the stream.

Land damage will be costed where the damage involves a long-term or permanent change to the land.

#### **e. What if the residential land is potentially contaminated?**

Potentially contaminated land refers to residential land that is identified on a local or regional authority register as potentially being contaminated from previous land use. In other words, the contamination is not the result of a natural disaster.

An example is residential land on a Hazardous Activities and Industries List (HAIL) site that is listed on the Environment Canterbury (ECan) Listed Land Use Register (LLUR).

All health and safety requirements must be met in connection with any visit to potentially contaminated land. For more details, see Section 12.a.

We will fund the contamination-related costs incurred in carrying out the repair of natural disaster damage to insured residential land. Those costs may sometimes include complying with the requirements of the *Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011*. But we are not responsible for addressing the effects of the site itself (e.g. the contamination).

*Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011*

##### Temporarily contaminated land

Sometimes a natural disaster may cause residential land to become temporarily contaminated (for example, sewage seeps to the surface of the land).

However in these cases, the contamination often breaks down to safe levels over a short period (for example, because the bacteria in the sewage break down in the sunshine or normal rainfall).

In these situations, the land has, or will in the short term be, 'self-repaired'. No land damage repair will then be costed, unless there are other types of land damage to the insured land.

## **f. When should diminution of value be assessed?**

Sometimes it may be appropriate for us to settle a residential land claim (or part of that claim) on the basis of the reduction of value to the property caused by the land damage.

This mode of settlement is an alternative to settlement on the basis of the cost of repairing that damage.

This reduction of value is called diminution of value (DOV).

### When might it be appropriate to obtain a valuation of the DOV?

In general, it may be appropriate for us to settle a residential land claim (or part of that claim) by paying DOV (rather than the cost of repair) in cases where:

- it is not feasible to carry out a repair of the damage;
- it is not possible to carry out the repair lawfully. For example, it may not be possible to get a resource consent to carry out the repair;
- we are satisfied that the customer does not intend to undertake the repair of the land within a reasonable period of time (if at all); or
- the cost of the repair work is disproportionate to the reduction of value to the property caused by the land damage. In this case, we have regard to the particular circumstances of the customer (including their stated intentions in relation to repair of the land).

In the past, we have settled on the basis of DOV in some cases where there are certain types of complex land damage. For example, we have settled on the basis of DOV for some properties with increased liquefaction vulnerability (ILV) and increased flooding vulnerability (IFV) land damage.

We may settle on the basis of DOV where land has been lost (e.g., a cliff has collapsed) and cannot be restored.

More details on settling a residential land claim (or part of that claim) by paying DOV are set out in Section 9.d.vii.

In any cases where it is identified that assessment on the basis of DOV may be appropriate, the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

## **g. 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.

## **h. When must the assessor visit the residential land for an assessment?**

The assessment will involve a visit to the residential land 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 insured land.

### ***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 land 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 land 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 land?***

Any proposal to take a general approach to the assessment of any EQCover residential land 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.

**i. What are the requirements for visiting residential land for an assessment?**

***i. Arranging access to residential land***

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 such that either:

- the customer (or their representative) is at the property at the time of the visit; or
- the customer has agreed that the assessor can come onto the property to carry out the residential land assessment without the customer (or their representative) being there.

If, after reasonable steps have been taken to obtain the customer’s consent, the customer will still not allow access to the residential land 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 land for the purposes of the assessment.

For more details, see Section 12.a.

### ***iii. Dangerous, insanitary and/or contaminated land***

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 12.b must be followed.

### ***iv. Proper identification***

People engaged in the assessment who visit the residential land 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.

## **j. Other requirements for an assessment of the natural disaster damage to the residential land**

### ***i. What if there is also damage or suspected damage to the residential building?***

If the person assessing the damage identifies or suspects that there is natural disaster damage to the residential building on the property, then:

- if they are authorised to assess residential building damage, that person should also assess the residential building damage;
- if they are not authorised to assess residential building damage, that person should escalate the matter to the appropriate Toka Tū Ake EQC representative.

### ***ii. 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.

### ***iii. Engaging engineers, valuers and other professionals***

Typically the person dealing with the claim will need to engage professionals

(e.g. geotechnical engineers and valuers) to complete the assessment. This engagement must in all cases be made on our behalf.



These 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 professional from providing services to us in relation to the Toka Tū Ake EQC customer’s claim or claims generally.

Reports from professionals must be addressed to, and be 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.

However, there may be cases where it is unnecessary to engage any professionals, for example:

- where the land damage is clearly outside the insured areas of residential land; or
- where there is only minor inundation damage and there is a small cost of removing the debris.

#### ***iv. 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 8.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 7.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 land damage claims under the *EQC Act* where multiple but separately insured natural disaster events have caused damage to the land.

### 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 6.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).

Where there is a residential building exposure as well as a residential land exposure, there is a separate excess for each exposure.

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 6.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 residential land in a context where the land has been damaged by multiple events without intervening repairs, the following principles should be applied (using here the example of natural landslips, 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 natural landslip event (LS1), the damage that occurred as a direct result of LS1 and the cost of repairing that damage;
- in respect of the next natural landslip event (LS2), the task is to assess what additional damage (if any) occurred as a direct result of LS2 – 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 LS2;
- however, in the case of land structures, if a component of the structure needs to be replaced after a natural landslip, 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 land structure as a whole needs to be replaced after a natural landslip, it cannot be further damaged or have further repair cost incurred;
- similarly, in the case of land that is lost, it cannot in any meaningful sense be further damaged or have further costs 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 natural landslips. This is because costs do not necessarily increase in relation to the extent of damage in a linear or uniform fashion. Rather, reference should be had to the circumstances of each damaged component.

### Example of application of principles

The following example shows how the principles apply:

- the same area of land is damaged in the same location in two natural landslips –LS1 and LS2;
- LS1 and LS2 have occurred more than 48 hours apart;
- the cost to repair the damage that is the direct result of LS1 is \$20,000;
- the cost to repair the damage that is the direct result of LS1 and LS2 is \$80,000;
- the amount of damage (subject to the applicable land cap, the excess, and any grounds to decline the claim) for:
  - LS1 is \$20,000;
  - LS2 is \$60,000 (i.e. \$80,000 less \$20,000).

## 8. 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 8.b) or
- the EQCover may have been cancelled. (see Section 8.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 8.e)
- the nature of such a decision to decline; (see Section 8.f)
- the process for such a decision to decline; (see Section 8.g)
- the grounds to decline an EQCover claim (in whole or part) under *Schedule 3*. (see Sections 8.h, 8.i, 8.j and 8.k)

### b. Prerequisites before making settlement decision

An EQCover claim should only be considered for settlement (i.e. a payment, reinstatement, 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 residential insured land; (see Section 4)
- that has suffered natural disaster damage. (see Section 6)

Furthermore, there must be an assessment (see Section 7) to help determine (among other things) 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 7.

The claim would normally proceed to the next step (see Section 8.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 7). (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)

If we have cancelled the EQCover for a residential building, that cancellation also has the effect of cancelling the EQCover for the associated residential land.

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 land 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*

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



## 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 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 8.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 8.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 8.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 8.k).

These grounds to decline a claim under *Schedule 3* are discussed in more detail in Sections 8.h to 8.k below.

Further:

- Section 8.e sets out who may decline claims;
- Sections 8.f and 8.g outline the decision-making process; and
- Section 8.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 land 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 8 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 8.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 8.h.i)

For more details on obligations regarding shared information, see Section 12.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](http://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 that exposure must:

- liaise with the person dealing with the residential building 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 compare 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. Typically the failure will relate to earthworks or a land structure; and
- that failure has caused the natural disaster damage or made it worse.

In the explanation below, we use the example of an insured retaining wall (which is a land structure) to illustrate how this ground to decline would apply.

**Insured person must have failed to comply**

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 3.b.i of this Manual.

Where the insured person owned for example, an insured retaining wall 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 retaining wall 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.

#### Failure to comply with laws or bylaws

If the insured person owned the insured retaining wall 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 (which may include site work) 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 bridges, culverts and retaining walls

Insofar as it relates to residential land, this power to decline a claim may be used only in respect of insured bridges, culverts and retaining walls.

Insured bridges, culverts and retaining walls are described at Sections 4.h, 4.i, and 4.j.

This ground also includes a power to decline a claim where certain residential building structures (appurtenant buildings and structures and insured services to the dwelling) 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 appurtenant structures or services to meet appropriate 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.

Equally, if the failure of the insured bridges, culverts and retaining walls 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.

### Failure to meet appropriate standards at the time of construction

This ground to decline the claim will apply if bridges, culverts or retaining walls 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 bridges, culverts or retaining walls 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 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 12.I.

### **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:

- (g) 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 natural disaster damage.

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

#### **1. Wilful act or negligence of insured person**

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 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 for which 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, it would need to be able to demonstrate, on balance, that it has 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 12.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 its 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 its salvage powers, they must escalate the matter to the appropriate Toka Tū Ake EQC representative.



## I. 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 8.h.ii)
- insured bridges, culverts and retaining walls 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 8.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 8.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*

## 9. How is the EQCover claim settled?

This Section 9 addresses the settlement of EQCover claims for natural disaster damage to residential land.

This Section covers settlement by payment, reinstatement and relocation.

### a. Overview

This Section deals with settlement of EQCover claims for natural disaster damage to residential land.

Specifically this Section sets out:

- the prerequisites to making a settlement decision; (Section 9.b)
- the methods that can be used to settle a residential land claim (cash payment; reinstatement; relocation); (Section 9.c)
- how the settlement amount is calculated; (Section 9.d)
- the maximum amount (or cap) that can be paid; (Section 9.e)
- the excess that applies; (Section 9.f)
- the time limit for settlement; (Section 9.g)
- how the settlement is communicated. (Section 9.h)

This Section does not address every aspect of a residential land settlement where:

- a repair to the residential land has already been carried out in relation to the current claim; and
- the residential land needs to be reassessed because that repair strategy has failed or otherwise.

Additional matters (not dealt with in this Section) 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 land’, see Section 4.

## **b. Prerequisites to making a settlement decision for an EQCover residential land claim**

An EQCover claim for residential land may only be considered for settlement (i.e. a cash payment, reinstatement of that land, or relocation of the building concerned on that land) 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 insured residential land; (see Section 4)
- that has suffered natural disaster damage. (see Section 6)

There must have been an assessment (see Section 7) 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 8.

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 8.h to 8.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 land claim?

### i. Payment or reinstatement

The *EQC Act* includes an option to settle a claim for natural disaster damage for residential land by payment 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*

‘Replacement’ is not an option in practice

Although section 29(2) of the *EQC Act* refers to ‘replacement’ as a settlement method, ‘residential land’ is not insured against natural disaster damage for its ‘replacement value’. Accordingly, in practice, the settlement methods available under section 29(2) for a residential land claim are payment and reinstatement only.

Method of settling (payment or reinstatement) is at the option of Toka Tū Ake EQC

The method of settling (payment 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 may be:

- (typically) for the cost of repair; (see Section 9.d.i) or
- (occasionally) for the diminution of value (called 'DOV'). (see Section 9.d.vii)

However, the settlement amount is always subject to the cap (see Section 9.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 residential land by way of relocation of the building concerned on that land. 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 building concerned 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 land claim?**

Section 9.d.i below discusses the basis of cover for the settlement of an EQCover claim for natural disaster damage to residential land.

Other matters relevant to the calculation of the settlement amount are discussed at Sections 9.d.ii to 9.d.viii.

### ***i. Basis of cover***

We insure residential land against natural disaster on an indemnity basis. Unlike residential buildings, residential land is not insured against natural disaster damage for its ‘replacement value’.

The amount of the EQCover for residential land is subject to a maximum amount of insurance (sometimes referred to as the ‘cap’). In summary, the cap is the sum of:

- the market value of the damaged or lost insured land (or other smaller specified area of land); and
- the indemnity value of the damaged insured land structures. (See Section 9.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:

- (typically) the cost of repair; (see Section 7.A.c.v) or
- (occasionally) the diminution of value or ‘DOV’. (see Section 7.A.f)

### ***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.

Imminent loss or damage can also be settled on the basis of diminution of value (DOV). (See Section 7.A.f)

Payments for imminent loss or damage form part of the settlement amount for the overall residential land claim. That settlement amount is subject always to the maximum amount of EQCover (or cap) available per event for the residential land.

Should the person dealing with the claim identify or suspect that there is natural disaster damage to the residential building on the property, then:

- if they are authorised to settle the residential building exposure, that person should also settle the residential building exposure; and
- if they are not authorised to settle the residential building 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 6.d.iii.

### **iii. GST**

When assessing the cost of repair for the residential land, it is appropriate to include a component for GST that has been paid or will be payable by the insured when carrying out the repair. This GST component must be set out in the costing prepared for the assessment of the residential land.

The settlement amount (inclusive of GST) is of course subject to the cap – see Section 9.e.

*Section 19, EQC Act*

### **iv. Fees incurred in the course of reinstating the residential land**

#### Fees incurred in reinstating the natural disaster damage to the residential land (part of the settlement amount)

The cost of repair includes the cost reasonably incurred in respect of fees payable in the course of reinstating the residential land. These fees include engineers' fees and fees payable to local authorities.

The cost of these fees is included in calculating a settlement amount based on cost of repair (subject always to the EQCover cap).

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 land (not part of the settlement amount)

The following fees are not included in the settlement amount:

- 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 conceptual repair strategies, and costing and quantifying the amount of the damage). Accordingly, the fees of consultants (e.g. assessors, estimators, 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 12.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 land**

### What are urgent works?

Urgent (or emergency) works are repairs that are needed to make the residential land safe, sanitary and secure.

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 8.I.

This means that after the natural disaster event, if the Toka Tū Ake EQC customer is safely able to, they should do things like:

- temporarily brace a retaining wall which is at risk of collapse;
- fence off unsafe areas at risk of imminent damage from a natural landslip;
- temporarily divert any overland water flow away from a natural landslip area.

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.

### 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 land safe, sanitary and secure.

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 land claim – see Section 9.e).

Item A9 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. Costings**

We may issue guidance from time to time regarding costings on the rates to apply, Preliminary & General (P&G) and margin.

**vii. Diminution of value (DOV)**

Settlements on the basis of DOV

Sometimes it may be appropriate for us to settle a land claim (or part of that claim) on a diminution of value or ‘DOV’ basis.

For more details on DOV, see Section 7.A.f.

Settlements partly on the basis of cost of repair and partly on the basis of DOV

In some cases, it may be appropriate to settle a claim partly by paying the cost of repair and partly by paying DOV. For example, a natural landslip may have:

- damaged a retaining wall (which is repairable); and
- resulted in the permanent loss of an area of land that cannot be restored (for example, where a cliff has collapsed).

In such cases, the amount of the damage to the residential land is assessed by adding:

- the cost of repair for the damage that can be repaired (in the above example, the repairable retaining wall); and
- the DOV (if any) of the property caused by the unrepairable land damage (in the above example, the lost land that cannot be restored).

The settlement amount is of course always subject to the cap – see Section 9.e.

All proposals to settle (in whole or in part) on the basis of DOV must be escalated to the appropriate Toka Tū Ake EQC representative

In any case where it is identified that settlement (in whole or in part) on the basis of DOV may be appropriate, the matter must be escalated to the appropriate Toka Tū Ake EQC representative.

### **viii. 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 land exposure?**

### **i. How is the cap calculated?**

In the case of any particular damage, the maximum amount of EQCover (or cap) available per event for a residential land exposure is the sum of:

- the value, at the site of the damage, of the smallest of the following three areas of land:
  1. if there is a district plan operative in respect of the residential land, an area of land equal to the minimum area allowable under the district plan for land used for the same purpose that the residential land was being used at the time of the damage;
  2. an area of land of 4,000 m<sup>2</sup>;
  3. the area of land that is actually lost or damaged; (see Section 7.A.c.iv) PLUS
- the indemnity value of any bridges, culverts or retaining walls that have been lost or damaged.

*Section 19, EQC Act*

In other words, to determine the maximum amount of the EQCover:

- find the smallest of the areas of land in Items 1., 2. and 3. above;
- find the value, at the site of the damage, of that smallest area of land; and
- add the indemnity value of each bridge, culvert or retaining wall (if any) that has been lost or damaged.

The land cap includes the value of the smallest of the three areas of land in Items 1., 2. and 3. It is not the least valuable of those three areas. In rare instances, the smallest of the three areas might not be the least valuable (for example, where the area of land actually lost or damaged is more valuable – although smaller than the minimum sized lot site).

#### What is the ‘minimum sized lot site’ under Item 1.?

The first of the three areas of land mentioned in section 19(a) is:

if there is a district plan operative in respect of the residential land, an area of land equal to the minimum area allowable under the district plan for land used for the same purpose that the residential land was being used at the time of the damage

*Section 19(a)(i), EQC Act*

In other words, the area of land under Item 1. is the area of land that is the minimum area allowed under the relevant District Plan for a residential section (used for the same purpose) at the time of the damage.

In this Manual, this area of land is referred to as ‘the minimum sized lot site’.

A District Plan might not have a minimum sized lot site for the particular property. In this case:

- Item 1. does not apply; and
- it is necessary to find the smaller of:
  - the area of land in Item 2.; and
  - the area of land in Item 3.

*Section 19(a), EQC Act*

## **ii. How does Toka Tū Ake EQC assess the value of the areas of land?**

The person dealing with the claim typically appoints a valuer to assess the value, at the site of damage, of each of the three areas of land in Item 1. (if applicable), Item 2. (if relevant), and Item 3.

For more details on assessing the value of the land, see Section 7.A.c.vii.

For retaining professionals on our behalf, see Section 7.A.j.iii.

## **iii. How does Toka Tū Ake EQC assess the indemnity value of land structures?**

The person dealing with the claim must appoint a valuer to assess the indemnity value of each lost or damaged bridge, culvert and retaining wall. There is no need to assess the indemnity value of any land structures that are undamaged.

For more details on assessing the indemnity value of these land structures, see Section 7.A.c.vii.

## **iv. One cap in relation to the residential land associated with each residential building**

Identifying the building(s) that comprise the insured residential building is critical to identifying:

- the residential land; and
- in turn, the correct calculation of the residential land exposure cap.

For each event, a separate cap applies in relation to the residential land associated with each residential building.

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 residential land cap amount of EQCover available. If there are two residential buildings on the property, there will be two caps (one each for the residential land associated with each residential 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. There is no separate cap amount of residential land insurance for the appurtenant structure. (see Section 5.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 residential land pertaining to the sleep-out has its own separate capped amount of insurance, provided the other requirements of the *EQC Act* are met; (see Section 5.e)

- **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 5.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 residential land cap applies to the residential land pertaining to the whole residential building.

#### Situation where areas of residential land overlap for the different residential buildings

There may be an overlap between the insured areas of residential land for the different residential buildings. This overlap must be taken into account when settling the residential land claims.

Where the areas of residential land overlap, the matter of calculation of the settlement amounts (and the relevant caps) should be escalated to the appropriate Toka Tū Ake EQC representative.

#### ***v. The cap is a single cap***

Although the cap has two components (one relating to the areas of damaged land and one relating to the land structures) the cap is treated as a single cap.

In other words, the cap is a single amount, being the sum of:

- the value of the smallest area of Items 1., 2. and 3.; PLUS
- the indemnity value of the land structures that are lost or damaged. (See Section 9.e.i)

The cap is the maximum amount that can be paid for all of the components (together) of the land damage for the residential land exposure.

For example, the cost of repair for the residential land exposure totals \$80,000 (including GST) comprising the following costs:

- \$10,000 (including GST) for the cost of repair of the damaged areas of land damage;
- \$30,000 (including GST) for the cost of repair of one damaged retaining wall; and
- \$40,000 (including GST) for the cost of repair of another damaged retaining wall.

The cap for the residential land exposure totals \$50,000 comprising the following:

- \$20,000 for the market value of the damaged areas of land;
- \$12,000 for the indemnity value of one retaining wall; and
- \$18,000 for the indemnity value of the other retaining wall.

The single cap of \$50,000 applies to the entire residential land exposure. The cap is the maximum amount that can be paid.

As the cap (\$50,000) is less than the total cost of repair in this example (\$80,000), the amount of the payment to settle the residential land exposure is the cap of \$50,000 (less the excess that applies).

#### ***vi. New cap applies for each event***

EQCover reinstates with a new cap after the residential land 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 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.iii.

#### ***vii. What is the cap where the residential land relates to a rest home complex?***

We cover certain buildings for long-term accommodation for the elderly. See generally *Section 4g of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

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).

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’ and its associated residential land. This is because identifying the ‘residential buildings’ correctly is critical to the application of the *EQC Act* (e.g. in the calculation of each cap of the EQCover that will apply to the residential land associated with each residential building in the complex).

Before finalising a settlement, the identification of the ‘residential building(s)’ in a rest home complex, the associated residential land and the appropriate cap amount(s) must be escalated to the appropriate Toka Tū Ake EQC representative.

### ***viii. How does Toka Tū Ake EQC deal with more complex land settlements?***

From time to time, the residential land exposure gives rise to more complex settlements. For example, these circumstances include where, in the case of a natural landslip:

- the sum of:
  - the amount of the imminent damage to the residential building under the under-cap residential building exposure; and
  - the capped land settlement amount under the residential land exposure;

is sufficient to carry out the land repair; or

- the settlement solution cannot remove the risk of re-inundation. This may occur where the property is subject to debris fall from a natural landslip. The repair strategy might be a catch fence. This solution does not eliminate the imminent damage, but ‘catches’ the re-inundation (which must later be removed).

When these types of scenarios arise in relation to a residential land exposure, the matter of calculation of the settlement amount (and the relevant cap) should be escalated to the appropriate Toka Tū Ake EQC representative.

#### Cross-lease properties

Where there is a cross-lease situation, the extent of the insured residential land must be identified depending on how many separately insured residential buildings there are. (See Section 4.c.vii)

There may be areas of overlap between the insured areas of residential land for the different residential buildings. This overlap must be taken into account when settling the residential land claims.

Where the areas of residential land overlap, the matter of calculation of the settlement amounts (and the relevant caps) should be escalated to the appropriate Toka Tū Ake EQC representative.

See also Section 12.h regarding the co-ordination of cross-lease claims.



### Situation where entire area of insured land and land structure are lost or damaged

Where:

- the entire area of insured residential land; and
- a land structure (that is, a retaining wall, bridge or culvert);

have been lost or damaged, the residential land exposure must be escalated to the appropriate Toka Tū Ake EQC representative.

## **f. What excess applies for a residential land 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 reinstatement of the residential land or relocation of the building concerned on that land, 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.

#### One excess per event

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.

## **ii. What is the amount of the excess for residential land claims?**

The excess deducted per EQCover claim for residential land is:

- i. \$500 multiplied by the number of dwellings in the residential building situated on the land; or
- ii. 10% of the amount payable (inclusive of GST); whichever is greater.

However, the maximum excess per EQCover claim for residential land is \$5,000.

*Regulation 4(1)(b), 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.

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 direct EQCover, the same principles apply as above, however we will carry out the role of the private insurer.

#### ***iv. What is the excess where the residential land relates to a rest home complex?***

We cover certain buildings for long-term accommodation for the elderly. See generally *Section 4g of the Toka Tū Ake EQC Claims Manual – Residential Buildings*.

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).

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’ and its associated residential land. 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 for the EQCover that will apply to the residential land associated with each residential building in the complex).

Before finalising a settlement, the identification of the ‘residential building(s)’ in a rest home complex, the associated residential land 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 both:

- the residential land has been assessed; and
- the amount it would cost to reinstate the residential land (and/or, if applicable, the diminution of value (or DOV)) 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 land exposure.

Section B of Appendix 1 sets out some suggested items for the cash settlement communication.

Communications of other settlement outcomes for a residential land exposure are addressed in Section 11.A.c.

### Notification to the appropriate Toka Tū Ake EQC representative of certain cap payments

Where the residential land exposure is settled on the basis of cap and the cap is either:

- the minimum sized lot site; or
- an area of land of 4,000 m<sup>2</sup>;

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*. In some cases, the cap settlement may also include the indemnity value of the insured land structures.

## 10. 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 10.b)
- there is an assignment of the EQCover claim; (Section 10.c)
- there is a mortgage over the insured property; (Section 10.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 10.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 10.f)
- the insured property is owned by a trust; (Section 10.g)
- the insured property is a unit title development; (Section 10.h)
- the insured property is a leasehold property; (Section 10.i)
- the insured property is Māori freehold land with multiple owners; (Section 10.j)

- two people have together owned the insured property (which is the subject of an EQCover claim) and the relationship between them ends; (Section 10.k)
- other registered interests are shown on the Certificate of Title to the property. (Section 10.l)

Section 10.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 EQC 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:

- (1) 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 10.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 10.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 10.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 10.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 10.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, however 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 land 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 building damage, the person dealing with the residential land exposure should also deal with the residential building exposure and address the mortgagee cap issue;
- if the person dealing with the residential land exposure is not authorised to deal with residential building 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 building 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 land 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](http://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*

The right to any proceeds from outstanding EQCover claims may ultimately vest with the Crown 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*.

*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 it 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 land associated with individual units and/or common property 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 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 or direct EQCover 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.

### **I. 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 land 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) the 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 HNZA any EQCover claim proceeds in respect of the mortgaged property.

A family benefit charge is treated as though it were a mortgage to HNZA. However, the charges are generally very old, and so are likely to have been repaid. It is therefore necessary to check with HNZA 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.



## 11. 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 11.A sets out the requirements for closure of a residential land exposure.

Section 11.B sets out the requirements for closure of the claim.

*Section 11A of the Toka Tū Ake EQC Claims Manual – Residential Buildings* sets out the requirements for the closure of the residential building exposure.

### A. How is a residential land exposure closed?

#### a. Overview

Before a residential land exposure can be closed, the following requirements must be met:

- the outcome of the exposure must be identified; (Section 11.A.b)
- the customer must be advised of the outcome of the exposure; (Section 11.A.c)
- all other actions related to the closure of the exposure must be completed; (Section 11.A.d) and
- a full record of the exposure must be available for Toka Tū Ake EQC. (Section 11.A.e)

Details of each of these requirements are set out below.

#### b. Identifying the outcome of the residential land exposure

The possible outcomes for a residential land 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     | <p>The exposure is:</p> <ul style="list-style-type: none"> <li>settled by payment of a cash amount;</li> <li>settled by reinstatement or relocation;</li> <li>below the amount of the applicable excess;</li> <li>nil, as the contract of fire insurance provides ‘ground up’ cover and there is nothing else for us to pay.</li> <li>‘accepted’ in part.</li> </ul> | <p>Cash settled.</p> <p>Settled on the basis of reinstatement or relocation.</p> <p>Settlement amount is below the excess amount. Therefore no amount paid.</p> <p>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.</p> <p>The exposure has been accepted in part and the other part of the exposure is ‘declined’.</p> | <p>Section 9</p> <p>Section 9.c</p> <p>Section 9.f</p> <p>Section 3.i.ii</p> |
| 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.  | <p>After making reasonable efforts, it has not been possible to ascertain the following:</p> <ul style="list-style-type: none"> <li>the relevant insurance policy number; and</li> <li>the name of the private insurer.</li> </ul>   | Section 3.g  |

| # | Outcome  | Description of Outcome  | Reason   | Other relevant references in this Manual   |
|---|----------|---|--|--|
|   |          |   | 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 <i>Schedule 3 of the EQC Act</i> . | <p>The exposure is declined [(in whole)][(in part)] for one or more of:</p> <ul style="list-style-type: none"> <li>the seven grounds for declining claims under <i>clause 3, Schedule 3</i>;</li> <li>the grounds for declining claims under <i>clause 5, Schedule 3</i>;</li> <li>the grounds for declining claims under <i>clause 7(2B), Schedule 3</i>;</li> <li>the grounds for declining claims under <i>clause 8, Schedule 3</i>.</li> </ul>   | <p>Section 8.h</p> <p>Section 8.i</p> <p>Section 8.j</p> <p>Section 8.k</p>  |
| 6 | Invalid  | The exposure is not valid for one or more of the reasons in the next column.  | <p>The reasons are:</p> <ul style="list-style-type: none"> <li>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;</li> <li>the notice does not say that natural disaster damage has occurred to insured property (that is, property covered by the <i>EQC Act</i>);</li> <li>the notice has not been given to Toka Tū Ake EQC or another person authorised by us within the two-year time limit;</li> <li>there is neither a contract of fire insurance nor direct EQCover over the property concerned in force at the relevant time;</li> <li>the EQCover has been cancelled;</li> <li>there is no natural disaster damage to the residential land.</li> </ul> | <p>Section 3.b</p> <p>Section 3.c</p> <p>Section 3.d and 3.f</p> <p>Section 3.g</p> <p>Section 3.h</p> <p>Sections 4 and 6</p> |

### **c. Advising the customer of the outcome of the residential land exposure**

Before the residential land 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 land 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 11.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 A1 of Appendix 1, 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 building exposure);
- be consistent with other relevant provisions of this Manual with respect to specific communications. In this regard, see Sections 8.g.iv and 10.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 11.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 land exposure and one covering any land 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 land 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 land exposure

### *i. What records need to be compiled where the residential land 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 land 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 land 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 11.

## 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 11.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 11.A sets out the requirements for closure of a residential land exposure.

*Section 11A of the Toka Tū Ake EQC Claims Manual – Residential Building* sets out the requirements for closure of the residential building 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 an agent of Toka Tū Ake EQC). 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 11.A.e.i above and *Section 11.A.e.i of the Toka Tū Ake EQC Claims Manual – Residential Buildings*); and
- all other details required in relation to those exposures (see Section 11.A.e.i above and *Section 11.A.e.ii of the Toka Tū Ake EQC Claims Manual – Residential Buildings*).

### ***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.

## 12. Other matters

This Section 12 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 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 provider (as our agents)*

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); and
- *Confined spaces: planning entry and working safely in a confined space* (WorkSafe New Zealand).

*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).

### ***i. 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*

## ***ii. 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 12.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 our guidelines for identifying and supporting a customer experiencing vulnerabilities, which includes prioritising their claim. We will issue and notify these guidelines from time to time.

## **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 12.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 11.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 either specify our requirement in an applicable contract or 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 landslide) 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 it does. 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.

Toka Tū Ake EQC or our agents may exercise these powers at any time until the insured person gives notice to us in writing that they make 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 record-keeping 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 their discretion they 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 land exposure communicated?

#### Overview

The purpose of the communication of the cash settlement of an EQCover residential land 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 EQCover residential land 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;
- 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 land 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 land exposure on our behalf (or where a third-party provider is dealing with the exposure on behalf of both Toka Tū Ake EQC and a private insurer), the communication may be:

- in two communications (one covering the EQCover residential land exposure and one covering any land component that is covered by the private insurer); or
- in one communication (covering both), provided the two components 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 it supplies a specific template for communications). However, when communicating with our customers, other requirements (including as to clarity and tone) must be met (see

Section 12.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 land exposures 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 land exposure and the residential land 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;
- communications regarding settlements based (in whole or in part) on diminution of value (DOV). We will issue and notify separate guidelines regarding communicating DOV settlements from time to time.

## A. Requirements for cash settlement communications about EQCover settlements

1. ***Where a private insurer or third-party provider is dealing with the residential land 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 land 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 provider in 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 that the settlement covers the residential land**

The communication must make plain that it covers the residential land exposure.

#### Example for letter from private insurer or third-party provider

*On behalf of Toka Tū Ake EQC, we are settling your EQCover claim for the earthquake damage to your residential land.*

### **4. Make plain if any residential building exposure is being dealt with separately**

If any residential building 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.

### **5. Confirm that the assessment of the natural disaster damage has been completed**

Before settlement, the person dealing with the residential land exposure must have completed an assessment of:

- whether the residential land 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 land.*

### **6. Itemise separately the damaged property that pertains to the EQCover residential land exposure and provide a separate costing for those items**

The communication must set out what damaged items pertain to the EQCover residential land exposure and the costings for the repair of that damage to the relevant standard under the *EQC Act*.

Where a private insurer is dealing with the residential land exposure on our behalf (or where a third-party provider is dealing with a residential land 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, paving, any over-cap cover for a retaining wall).



### Example

*Enclosed is a scope of works that relates to your EQCover residential land claim. This document shows the items of damage and the costs that we have calculated will be required to repair them.*

## **7. 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 contamination); 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](http://www.asbestosaware.co.nz)*

## **8. Include supporting documentation from professional advisers who have been involved in the assessment**

Reports that have been commissioned from engineers, valuers and other professionals in the assessment of the EQCover residential land exposure must be included in the communication.

### Example

*Enclosed with this letter are some documents to explain how we calculated your EQCover residential land claim settlement amount. These documents are: [Delete as applicable]*

- *Engineer's report*
- *Toka Tū Ake EQC scope of works*
- *Valuer's report*

**9. Itemise for each EQCover residential land exposure the total amount payable for the residential land damage (with a breakdown to explain the total amount payable)**

The communication must set out, for each EQCover residential land exposure, the total amount of the damage for that exposure.

It should also set out whether we are paying on the basis of the cost of repair or a cap payment.

The amount will not exceed the relevant cap under the EQC Act. The 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 land exposure must be itemised separately.

An example for a single EQCover residential land exposure is set out immediately below.

Example for single EQCover residential land exposure

| <i>Item</i>                            | <i>Amount</i> | <i>Excess deducted*</i> | <i>Less payments already made**</i> | <i>Balance</i> |
|--|---------------|-------------------------|-------------------------------------|----------------|
| <i>Residential land</i>                | \$            | \$                      | \$                                  | \$             |
| <i>Total payment incl GST (if any)</i> |               |                         |                                     | \$             |

\* **Residential land** - The excess deducted per EQCover claim for residential land is \$500 multiplied by the number of dwellings in the residential building situated on the land or 10% of the amount payable, whichever is greater. However, the maximum excess per EQCover claim for residential land is \$5,000.

\*\* 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 land safe, sanitary and secure.

Sometimes the customer will need to get urgent help from a tradesperson to carry out some urgent repairs of natural disaster damage.

The customer may have sent invoices (or receipts) for urgent works from these tradespeople to the person dealing with the residential land 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 us 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 land settlement is under or over EQCover cap.

For example, the person dealing with the residential land exposure pays or reimburses the customer for the cost of the urgent works. That person then later assesses (under the same residential land 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 land) 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 9e 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 land exposure. That ‘Balance’ is inserted in Column 5. See the equation below:

$$\begin{array}{r} \text{Amount in Column 2} \\ \text{minus Excess in Column 3} \\ \text{minus Amount in Column 4} \\ \hline \text{Equals Balance in Column 5} \end{array}$$

The above example assumes that there are no other payments in respect of the residential land 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 residential land exposures where multiple but separately insured natural disaster events have caused damage to the residential land. See Section 7.C.

In the case of multiple residential land exposures we suggest separate tables for each EQCover exposure.

## **10. Explain how the residential land cap was calculated (if a cap was paid)**

Where the residential land exposure is being settled on the basis of a cap payment, the communication must set out how the cap has been calculated.

### Example

#### ***How the cap has been calculated***

*Your residential land claim has reached cap. The cap for the residential land claim is calculated by adding:*

- *the value of the area of insured land actually lost or damaged; and*
- *the indemnity value of the insured retaining walls that have been damaged.*

*These values have been assessed in the valuer's report provided with this letter.*

## **11. Set out how the EQCover residential land 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 12 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]*

## **12. 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 or direct EQCover); (see Section 3.b.i) or
- the mortgagee.

### Mortgagees

Payment should be made to a mortgagee where the EQCover threshold is met. (See Section 10.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 11 above.

### Other people with insurable interests

We 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 10)

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.

### ***13. Set out the possible consequences for future EQCover of not using the settlement payment for the purpose of repair***

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.

The communication must set out the possible consequences if the payment is not used for the purpose of repair.

#### Example

*It is important that the EQCover settlement payment is used for the purpose of repairing 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 promptly to minimise the risk of inflation increasing the cost of your repair.*

*If the EQCover settlement payment does not cover the full cost of repair, you may wish to contact your private insurer to see whether there is any further cover under your private insurance policy.*

#### ***14. 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.

#### ***15. 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 land 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 land exposure***

The communication may include a record of the recipient's agreement that the information they have provided in support of the EQCover residential land 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.