



EQC CLAIMS MANUAL FOR INSURERS

Version as at 28/9/17

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1. Introduction

a. Purpose of Manual

This Manual sets out policies on how EQC applies the Earthquake Commission Act 1993 (*EQC Act*).

EQC has appointed participating insurers (*Insurers*) as EQC's agents for carrying out some of its functions for certain claims related to specified natural disaster events. The terms of each Insurer appointment are set out in a Memorandum of Understanding (*MOU*).

The Insurers are entitled to rely on the policies in this Manual (as amended from time to time) for the purpose of acting in accordance with the EQC Act.

The phrase "in accordance with the EQC Act" means in accordance with the EQC Act as interpreted by EQC and notified to the relevant Insurer. EQC will notify the Insurers of its interpretation by sending them a copy of this Manual (and amendments from time to time).

b. Insurer's agency role

i. Claims covered by agency role

The Insurer's agency role only extends to certain claims as set out in the MOU.

Residential land claims are not part of the agency role (and therefore are also outside the scope of this Manual).

ii. Standards of performance in agency role

In its agency role, each Insurer must at all times act with the degree of skill, care and diligence reasonably expected of a professional insurance claims manager providing insurance claims management services similar to those provided under the MOU.

Each Insurer will at all times act in accordance with the EQC Act, all other applicable laws, and EQC's instructions in relation to the application of the EQC Act.

c. Status of Manual

EQC must comply with the EQC Act. This Manual does not act as a substitute for the EQC Act.

The Manual sets out EQC's interpretation of the EQC Act. EQC has agreed that the Insurer is entitled to rely on this interpretation for the purposes of their agency role.

The claims which come within the scope of the Insurer's agency role will give rise to diverse fact situations. This Manual does not provide legal interpretations that will apply to every fact situation. If an Insurer considers that a legal interpretation is or may be required on a matter which is not covered by (or which cannot reasonably be inferred from) this Manual, the Insurer should escalate the matter to EQC.

Further, there may be instances where an Insurer in its agency role considers or is aware that the EQC Act is capable of, or has been applied using, more than one interpretation. In those instances the Insurer should also escalate the matter to EQC.

d. Amendments to Manual

EQC may amend this Manual from time to time. Amendments will be in writing. EQC will send a copy of each amendment to the Insurer in accordance with the notice provisions of the MOU.

The first version of this Manual states the law as at 1 April 2017.

An amended part of this Manual may state the law as at a later date. That date will be recorded against the amended part of the Manual.

2. Overview

[diagram to come]

3. Is there a valid claim?

a. Overview

For an EQC claim to be valid:

- an insured person with an insurable interest in the property concerned must give notice of the natural disaster damage; (Section 3b)
- the notice must say that natural disaster damage has occurred to insured property; (Section 3c)
- the notice must be given to EQC, the Insurer or another person authorised by EQC to receive such notices; (Section 3d)
- the notice may be oral or in writing; (Section 3e)
- the notice must be given within the three month time limit; (Section 3f)
- there must be a contract of fire insurance over the property concerned in force at the relevant time; (Section 3g)
- the EQC cover must not have been cancelled; (Section 3h)
- there must be no other reason why the claim (or part of it) will not be accepted; (Section 3i) and
- it does not generally matter whether the EQC premium has been paid to EQC. (Section 3j)

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

b. Who can notify damage?

For an EQC claim to be valid, 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 3biii.

i. Who is an “insured person”?

The EQC Act defines an “insured person” as follows:

Insured person, in relation to any property insured under this Act, means the person for the time being entitled to the benefit of the contract of fire insurance in force in respect of that property ...

Section 2(1), EQC Act – Definition of “Insured person”

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

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

Who is the “insured person” where the insurance is taken out on behalf of another person?
Sometimes a contract of fire insurance 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 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 EQC purposes.

The purchaser will not be named as the insured person on the vendor's contract of fire insurance. 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.

Persons 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;
- anyone holding a life estate in the property; and
- if the property is subject to an unconditional sale and purchase agreement, the purchaser of the property (as well as the vendor).

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

The insured person can either:

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

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

Clause 7(1), Schedule 3, EQC Act

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

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

An example is the situation of a unit title development where the residential building is managed by a body corporate. The unit owner within the building has insured their personal property under a separate contract of fire insurance. Notice by a body corporate of damage

to the residential building is generally not sufficient to serve as notice by a unit owner of damage to the unit owner's personal property.

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

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

c. What must be notified?

i. Notice of natural disaster damage

For a claim to be valid, there only needs to be notice that natural disaster damage has occurred to insured property. This notice must be given within the three month time limit (see Section 3f).

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 three types of insured property (residential land, residential building and personal property) within the three month time limit. For example, if the insured person gives notice that the insured person's residential building has been damaged, that notice is sufficient for any damage that is later found to:

- the residential land associated with that building; and
- the insured person's personal property in or on that building (or usually located there, but temporarily removed).

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 (at their own expense) as soon as practicable shall 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 three month (notice) period if it is not reasonably practicable to do so sooner.

EQC will not always insist that the Insurer requires the customer to provide the clause 7(1)(b), Schedule 3 claim material. The Insurer will itself gather and assess information (which may include some information provided by the customer under clause 7(1)(b), Schedule 3) to ascertain the loss or damage and the amount of the damage or loss for the purpose of settling the claim.

For each natural disaster event, EQC will inform Insurers of 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 loss and damage is to a residential building or to personal property.

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. The Insurer will of course already be aware of any contract of insurance the insured person has with the Insurer.

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

d. Who must be notified?

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

For a claim to be valid, the notice of natural disaster damage must be given either:

- to EQC; or
- to a person authorised by EQC to receive such notices.

ii. EQC's agents authorised to receive notices of natural disaster damage

EQC has authorised the Insurer as its agent to receive notices of natural disaster damage.

EQC has from time to time also authorised persons other than the Insurer to receive notices of natural disaster damage.

The Insurer must let EQC know where someone purports to have authority to receive notices of natural disaster damage. EQC will then inform the Insurer whether that person had 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 EQC to receive notices of natural disaster damage will be a question of fact in each case.

The Insurer must let EQC know where a broker purports to have authority to receive notices of natural disaster damage. EQC will then inform the Insurer whether that broker had authority to receive such notices at the relevant time.

Clause 7(5), Schedule 3, EQC Act

iii. Notice to EQC or Insurer 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 three types of insured property (residential land, residential building and personal property) within the three month time limit. Notice of natural disaster damage to one type of property is sufficient.

It follows that notice to EQC that the insured person's residential land has been damaged is sufficient for any damage that is later found to:

- the residential building; and
- the insured person's personal property in or on that building (or usually located there, but temporarily removed).

In that case, the Insurer does not need to be separately notified by the insured person of the building and personal property damage.

The converse applies. Notice to the Insurer that the insured person's residential building has been damaged is sufficient for any damage that is later found to the relevant residential land and personal property. In that case, EQC does not need to be separately notified by the insured person of the land damage. Nor does the Insurer need to be separately notified of the personal property damage.

e. How can the notice be given?

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

A written notice can be given on-line or by post, facsimile or hand delivery.

f. Has the damage been notified in time?

i. Notice of natural disaster damage must be given within three month period

For a claim to be valid, notice of the natural disaster damage must be given within three months of the natural disaster damage occurring. There is no discretion to extend the three month period.

Clause 7(1)(a), Schedule 3, EQC Act
Regulation 6, Earthquake Commission Regulations 1993

In determining the end of the three month period:

- the date that the natural disaster damage occurred is excluded from the calculation;
- if the date three months out is not on a “working day”, the period is extended to the next working day; and

Section 35(6), Interpretation Act 1999

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

ii. A claim in writing under clause 7(1)(b), Schedule 3, EQC Act may be notified after the three month period

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

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

iii. 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 three months after the date on which that damage first started occurring.

As a shorthand, EQC refers 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 EQC to treat the events separately.

The “event” may have different types of natural disasters during the 48 hour period (e.g. earthquake and storm).

The definitions of “natural disaster” and “natural disaster damage” in the EQC Act are set out and discussed at Sections 6b and 6c 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 storm).

However, for these purposes, natural disaster fire is treated differently.

See clause 1(b), Schedule 3, EQC Act

g. Was there a contract of fire insurance 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 and/or personal property 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 and/or personal property 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 and/or contents policy that insures against physical loss or damage by fire (other than natural disaster fire). But it may, for example, be a travel policy that insures personal property against those risks.

ii. For residential building EQC cover, the contract of fire insurance must insure the “residential building”

The contract of fire insurance must be checked carefully to ensure that it covers the residential building that has suffered the natural disaster damage.

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

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

iii. For personal property EQC cover, the contract of fire insurance must insure the “personal property”

The contract of fire insurance must be checked carefully to ensure that it covers the particular personal property that has suffered the natural disaster damage.

If the contract of fire insurance excludes particular items of property, those items will not be covered by EQC insurance.

For the definition of the term “personal property”, see Section 5b.

iv. Contract of fire insurance needs to be “in force” at date of the damage-causing natural disaster

EQC insurance continues only while the contract of fire insurance is in force. If the Insurer cancels or suspends the contract of fire insurance or if the contract expires or otherwise ceases, there will be no EQC insurance for the residential building or the personal property.

What if there is no longer a “residential building” at the date of the natural disaster damage?
EQC insurance continues as long as the underlying contract of fire insurance continues.

So, if a building no longer meets the definition of “residential building” in the EQC Act, EQC insurance nevertheless continues for that building until:

- the contract of fire insurance for that building ceases to be in force (e.g. expires or is cancelled or suspended by the Insurer); or
- EQC cancels the EQC insurance for that building (see Section 3h).

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 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 for that property is entered into (or when the existing contract is renewed), there will be no EQC insurance for that property.

Section 18, EQC Act

Section 20, EQC Act

Section 2(2), EQC Act

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

i. Cancellation of EQC insurance

The Certificate of Title for the property must be checked to ensure that the EQC insurance has not been cancelled.

EQC may cancel EQC insurance for the property. EQC can do this where:

- it has cash settled a claim to the full extent of cover available under the EQC Act; and
- EQC is not satisfied with the replacement or reinstatement of the property.

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

Certificate under Section 28(1) Earthquake Commission Act 1993

The notice remains on the Certificate 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.

EQC can at its discretion reinstate the EQC insurance, in which case the notice on the Certificate of Title will be removed.

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

Section 28, EQC Act

Clause 4, Schedule 3, EQC Act

ii. Limitation on EQC insurance

The Certificate of Title for the property must be checked to ensure that the EQC insurance has not been limited.

EQC may limit EQC insurance for the property.

EQC may do this where it considers that any property is in imminent danger of suffering natural disaster damage. In this scenario, EQC limits its cover by sending the owner a written notice stating that it limits liability to the amount for which the property is insured at that time.

EQC can also limit EQC insurance where:

- natural disaster damage has occurred to any residential land, residential building or personal property as the direct result of a natural landslide; or to any residential land as a direct result of storm or flood; and
- EQC considers 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, EQC limits the EQC insurance by sending the owner a written notice stating that it may decline any further claim for loss or damage.

In either scenario, EQC will arrange for a notice to be placed on the Certificate of Title.

The notice remains on the Certificate 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.

EQC can at its discretion remove the limitation to the EQC insurance, in which case the notice on the Certificate of Title will be removed.

Where there is a notice of limitation on the Certificate of Title under section 28 and clause 5, Schedule 3, EQC Act, the Insurer must escalate the claim to EQC.

Section 28, EQC Act

Clause 5, Schedule 3, EQC Act

i. Is there any other reason why the claim (or part of it) might not be accepted?

i. Circumstances where EQC may decline cover

Various pre-conditions must be met before a valid claim is established.

In addition to those requirements, there may be grounds to decline (or only meet part of) a claim in the circumstances set out in Schedule 3 to the EQC Act.

Details of the grounds for declining claims are set out at Section 8.

Optimally early in the claims management process, the Insurer should consider these grounds to decline. 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 claim) redundant.

Clause 3, Schedule 3, EQC Act

Clause 5(3), Schedule 3, EQC Act

Clause 8(4), Schedule 3, EQC Act

ii. “Ground up” cover

An Insurer’s cover under the contract of fire insurance can be either “ground up” cover or “top up” cover.

With “ground up” cover, the Insurer pays for all natural disaster damage within the terms of the contract of fire insurance and EQC covers the balance, if any (within the scope of the EQC insurance up to the limits specified in the EQC Act).

With “top up” cover, EQC pays for all natural disaster damage covered by the EQC Act up to the limits specified in the EQC Act, and then the Insurer pays for the balance (if any).

Most Insurer contracts of fire insurance provide for “top up” cover.

However, if the Insurer's contract of fire insurance is "ground up" cover, then (subject to the terms of that contract) EQC will only have liability if the Insurer's cover is exhausted. Accordingly, EQC's liability may be limited or even 'nil'.

Section 30, EQC Act

j. What if the premium is not paid up?

i. Failure of Insurer or customer to pay premium does not affect EQC claim

If:

- the Insurer has not paid an EQC premium due to EQC; and/or
- the customer has not paid the premium due to the Insurer;

that will not affect the customer's EQC claim. 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.

EQC will pursue recovery of any premium due to it through separate processes.

Non-payment of premium in respect of multi-unit property

However, for multi-unit properties, the Insurer should check for non-payment of the premium at an early stage. Non-payment may indicate that the number of dwellings in the residential building has not been disclosed to the Insurer at the time that contract of fire insurance was entered into or renewed. This in turn may affect the amount of the EQC cover. See Section 9Ae and 9Af.

Section 18(1)(c), EQC Act

4. Is there an insured “residential building”?

a. Overview

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

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

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

More details on each of these items are set out in Sections 4c to 4f below.

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

Schedule 2 of the EQC Act lists items that are not covered by EQC insurance. This Schedule has the effect of carving out some items that may otherwise be insured as components of the “residential building”. (Section 4h)

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 4d)
- buildings and structures appurtenant to the dwelling; (see Section 4e)

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

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 EQC, provided there is a contract of fire insurance 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 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 that serve the dwellings or surrounding land; or
- a building providing long-term accommodation for the elderly PLUS the appurtenant structures PLUS certain 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 determined when:

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

If, part way through the period of the cover under the contract of fire insurance, the building no longer meets the definition of “residential building” in the EQC Act, EQC insurance 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 Insurer); or
- EQC cancels the EQC insurance for that building. (See Section 3g)

For more details, see Section 3giv.

Section 18, EQC Act

c. What is a “dwelling”?

i. *Identifying a “dwelling” is critical to determining whether there is a “residential building”*

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

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

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (a)

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (c)

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (d)

ii. *What is the definition of “dwelling”?*

The EQC Act defines a “dwelling” as follows:

dwelling means, subject to any regulations made under this Act, any self-contained premises which are the home or holiday home, or are capable of being and are intended by the owner of the premises to be the home or holiday home, of 1 or more persons

Section 2(1), EQC Act – Definition of “dwelling”

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

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

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

Sections 4ciii to 4cvii discuss the various elements of the “dwelling” definition.

iii. What does “self-contained” mean?

To be a “dwelling” the premises must be self-contained.

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

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

iv. What is a “home”?

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

Examples of a “home” may include:

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

Examples of premises that are not a “home” are:

- premises which have as their primary purpose the provision of temporary or transient accommodation (such as that provided by hotels and motels). This is accommodation that is ordinarily provided for periods of less than 28 days at a time;
- premises where the occupants living there are not occupying them of their own free will. These premises include for example, a Corrections prison, police jail, police barracks, police cells and lock-ups, and barracks conducted by the Armed Forces for the accommodation of persons subject to the Armed Forces Discipline Act 1971;
- premises which do not have as their primary purpose the provision of somewhere to live on an indefinite basis (such as hospitals and night shelters);

- a show home, which is purely used to showcase a product or design. These types of buildings are generally not a home to anyone and there is generally no intention they will be lived in as a home during the period of the insurance.

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

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

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

v. What is a “holiday home”?

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

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

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

Serviced apartments and timeshares

Serviced apartments and timeshares are not usually covered by EQC insurance.

However:

- if there is self-contained premises for the manager of the apartment block, that may be covered (subject to meeting the other requirements of a dwelling);
- if the building has both serviced and owner-occupied apartments, EQC insurance may apply to the owner-occupied apartments but not to the serviced apartments.

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

Premises may contain all the components needed to be a self-contained “home” (see Section 4civ) or “holiday home” (see Section 4cv), but may not be occupied as a home or holiday home. In these circumstances, the premises can still be covered by EQC if they:

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

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

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

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

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

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

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

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

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

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

The EQC Act defines a “residential building” to include:

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 – Definition of “residential building” – paragraph (a)

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

Sections 4di to 4diii discuss the various other elements of paragraph (a) of the definition of “residential building”.

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

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

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

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

What is a “part of the building”?

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

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

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

- can be above and separate from the ground floor;

- can be joined to, or be separate from, other buildings (or parts of buildings).

Section 2(1), EQC Act – Definition of “residential building” – paragraph (a)

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

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

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

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

Section 18(1), EQC Act

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

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

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

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

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

Fixtures and Fittings

Fixtures and fittings are considered a component of the residential building. These are items that are affixed to the building and are, generally, items left as part of the building when somebody stops living there. Examples are toilets, sinks and basins, kitchen cabinetry and wood burners. Carpets and drapes are dealt with under a specific EQC policy – see Section 5e.

Items that comprise the access to the building

Further, if the item is integral to and comprises the access to the building (that contains the dwelling), it may be appropriate to treat it as a component of the building. For example,

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

Swimming pools

The effect of Schedule 2 of the Act is to exclude swimming pools from EQC insurance other than a swimming pool “that constitutes an integral part of, and that is within, a residential building”. For example, a swimming pool will be covered by EQC where it is an indoor pool permanently built into the dwelling.

Each case will turn on its own facts.

e. What is an “appurtenant structure”?

The EQC Act defines a “residential building” to include:

- (c) every building or structure appurtenant to a dwelling ... , and that is used for the purposes of the household of the occupier of the dwelling ...

Section 2(1), EQC Act – Definition of “residential building” – paragraph (c)

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

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

Sections 4ei to 4ev discuss the various elements of paragraph (c) of the definition of “residential building”.

EQC uses the shorthand term “appurtenant structures” to refer to appurtenant buildings or structures that meet these requirements under this part of the “residential building” definition. The shorthand term “appurtenant structures” is used in this Manual.

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

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

The EQC Act does not define what qualifies as a “structure”. EQC’s approach to the word “structure” in this context is that it is generally:

- something of substantial size and similar in scale to a building; and

- of a sufficiently complex construction, in the sense that it is constructed of several parts.

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

ii. What does “appurtenant” mean?

There is no definition of “appurtenant” in the EQC Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (c)

iv. Is it a “dwelling” or an “appurtenant structure”?

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

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

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

Why is it important to determine whether the building is a separate dwelling or an appurtenant structure?

Whether there are two dwellings or one in these cases is important for the purposes of applying the EQC Act. For example:

- the number of dwellings will be important for calculating the cap amount of EQC insurance available and the appropriate excesses that apply (see Section 9Ae and 9Af); and

- in particular, if the number of dwellings is disclosed to the Insurer at the time that the contract of fire insurance is entered into or renewed, the cap will increase. Such disclosure is critical to the cap calculation (see Section 9Ae).

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

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

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

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (a)

vi. Is it “residential land” or an “appurtenant structure”?

Some items – such as certain retaining walls, bridges and culverts – are covered by EQC as “residential land” rather than an appurtenant structure.

“Residential land” is defined in the EQC Act as follows:

residential land means, in relation to any residential building, the following property situated within the land holding on which the residential building is lawfully situated:

- (a) the land on which the building is situated; and
- (b) all land within 8 metres in a horizontal line of the building; and
- (c) that part of the land holding which—
 - (i) is within 60 metres, in a horizontal line, of the building; and
 - (ii) constitutes the main access way or part of the main access way to the building from the boundary of the land holding or is land supporting such access way or part; and
- (d) all bridges and culverts situated within any area specified in paragraphs (a) to (c); and

(e) all retaining walls and their support systems within 60 metres, in a horizontal line, of the building which are necessary for the support or protection of the building or of any property referred to in any of paragraphs (a) to (c).

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

The bridges and culverts covered in paragraph (d) of this definition and the retaining walls covered in paragraph (e) of this definition are covered by EQC residential land insurance. This cover is outside the scope of the Insurer’s agency role under the MOU.

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

The EQC Act defines a “residential building” to include:

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (d)

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

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

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

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

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

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

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

ii. What are the structures appurtenant to the services?

EQC’s approach to the word “structure” in this context is that it generally means:

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

An example of such a “structure”, in relation to water supply services, would be a water bore or well.

Water Bores

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

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

g. How does EQC insurance cover “long-term accommodation for the elderly”?

The “residential building” definition in the EQC Act includes three components that are relevant to EQC insurance cover 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 4gii)

Section 2(1), EQC Act – Definition of “residential building” – paragraph (b)

- buildings and structures appurtenant to that building or part; (Section 4giii)

Section 2(1), EQC Act – Definition of “residential building” – paragraph (c)

- 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 4giv)

Section 2(1), EQC Act – Definition of “residential building” – paragraph (d)

More details on each of these items are set out in Sections 4gii to 4giv.

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

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

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

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

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

Before finalising settlements, Insurers must escalate to EQC the identification of the different types of accommodation in a rest home complex.

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

The EQC Act defines a “residential building” to include:

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (b)

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

The phrase “long-term accommodation for the elderly” is discussed at Section 4gi.

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

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

Section 2(1), EQC Act – Definition of “residential building” – paragraph (b)

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

If 50% or more of the whole building comprises the accommodation area, then the whole building is a residential building. This means the entire building can have EQC insurance (assuming all other requirements under the EQC Act are met). This is notwithstanding that some of the building may not be for the long-term accommodation for the elderly.

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

Section 18(1), EQC Act

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

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

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

For discussion on the meaning of the words “appurtenant” and “structure” in a related context, see Sections 4ei and 4eii.

Section 2(1), EQC Act – Definition of “residential building” – paragraph (c)

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

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

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

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

- the owner of the land on which that building or part of that building is situated.

For discussion on the meaning of the words “appurtenant” and “structures” in a related context, see Sections 4ei and 4eii.

Section 2(1), EQC Act – Definition of “residential building” – paragraph (d)

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

By way of example, drives and paths are excluded from EQC cover – but not access platforms and other forms of access constructed in, or being an integral part of, a residential building.

Clause 10, Schedule 2, EQC Act

Section 21(1)(a), EQC Act

EQC will issue guidance from time to time on whether specific items are excluded from EQC insurance under Schedule 2.

5. Is there insured “personal property?”

a. Overview

In general terms, to find what is insured “personal property”, it is necessary to identify property that is:

- in or on a residential building; (Section 5bii) or
- usually located in or on a residential building, but which is temporarily removed. (Section 5biii)

Property will not be personal property where it is:

- used solely or principally for commercial purposes; (Section 5biv)
- not insured by EQC because the contract of fire insurance does not cover the item of property; (Section 5c) or
- listed in Schedule 2 of the EQC Act as an item that is not covered by EQC insurance. (Section 5d)

Sometimes EQC refers to “personal property” as “contents”.

b. What is the definition of “personal property”?

The EQC Act defines “personal property” as follows:

personal property means property that is located in or on a residential building; and includes property that is usually so located but is temporarily removed from the building for any reason; but does not include any property used solely or principally for commercial purposes

Section 2(1), EQC Act – Definition of “personal property”

“Personal property”:

- can be of any type as long as it meets the conditions of the definition;
- can be owned by the owner-occupier of the house, a tenant or a landlord. In each case, they should be the insured person under the relevant contract of fire insurance.

i. Components of “personal property” definition

The “personal property” definition in the EQC Act can be broken down into three key components. The definition:

- covers property located in or on a residential building; (see Section 5bii)
- includes property that is usually located in or on a residential building but for any reason is temporarily removed from the building; (see Section 5biii)
- excludes any property used solely or principally for commercial purposes. (see Section 5biv)

More details on each of these items are set out in Sections 5bii to 5biv.

ii. Property “in or on a residential building”

The “personal property” definition covers property that is located in or on a residential building. The definition of “residential building” is set out and discussed in Section 4.

Property located in or on the residential building may, for example, include property in or on:

- the dwelling (see Section 4c); or
- the garage, shed or other “appurtenant structure” (see Section 4e).

However, property permanently located outside, such as outdoor chairs permanently located on the back lawn away from the residential building, would not be “personal property”.

Personal property in or on a residential building vs fixtures and fittings

Personal property in or on a residential building is moveable (e.g. refrigerators, rugs, sofas).

By contrast, fixtures and fittings are items that are affixed to the building and are, generally, items left as part of the building when somebody stops living there. Fixtures and fittings are considered a part of the residential building (and not personal property). Examples are toilets, sinks and basins, kitchen cabinetry, and wood burners.

Sometimes it is difficult to draw the line between personal property and fixtures and fittings. For example, EQC has developed a separate policy to deal with the specific issues arising with respect to carpets and drapes (see Section 5e).

iii. Definition also includes property that is “usually located in or on a residential building but is temporarily removed”

The “personal property” definition covers property that is usually located in or on a residential building but is temporarily removed.

Property comes within the “personal property” definition where it is temporarily being removed from the residential building or being returned to the residential building. This is as long as the property is usually located in or on the residential building.

Property that is being moved between residential buildings

Personal property is also covered where the owner is moving house and the property is being moved from one residential building to another residential building.

It does not matter in this situation that the Insurer’s contract of fire insurance excludes cover for personal property while it is being moved. There is still EQC insurance while the personal property is being moved. This is so long as the Insurer’s contract of fire insurance remains in force and all the other requirements under the EQC Act are met.

Property in storage

“Personal property” also extends to personal property temporarily in storage. For example, the property may be being temporarily stored at a storage facility by an owner who is moving house. The personal property would be at the storage facility until it is sent on to a new residential building. For it to be “personal property”, the owner must intend the property to be returned to a residential building. Again, for EQC insurance cover, the Insurer’s contract of fire insurance must remain in force and all the other requirements under the EQC Act must be met.

As a rule of thumb, temporary storage at a storage facility for up to 12 months is generally accepted for these purposes. Storage for longer periods is considered on a case by case basis, having regard to the individual circumstances of the claim. This is provided always that there is evidence of a definite intention by the owner of the property to return it to a residential building.

iv. Definition excludes property “used solely or principally for commercial purposes”

The “personal property” definition excludes property that is used solely or principally for commercial purposes.

The key is how the property is used and by whom. If used domestically by a person, it is most likely to be covered. If used commercially by a person in business, it will most likely be excluded.

Property like computers and filing cabinets in a home office will be excluded if they are used by a person primarily to work from home. By contrast, home computers for personal (as opposed to commercial) use are covered.

Property provided as part of a commercial operation will be covered if used primarily for residential purposes. For example, furniture provided for rest home residents’ use, like beds, cabinets and chairs, will be covered even if they are owned by a commercial rest home operator. Although provided as part of the rest home operator’s business, these items are for the benefit and use of the residents.

v. *Timing of determination of whether or not there is “personal property”*

The question whether there is “personal property” is determined when:

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

If, part way through the period of the cover under the contract of fire insurance, the property no longer meets the definition of “personal property” in the EQC Act, EQC insurance will nevertheless continue. The cover will continue for the personal property until:

- the contract of fire insurance for the personal property ceases to be in force (e.g. expires or is cancelled or suspended by the Insurer); or
- EQC cancels the EQC insurance for the personal property. (See Section 3hi)

Section 20, EQC Act

vi. *Examples of personal property*

Provided it meets the conditions of the definition (see Section 5bi to iv), personal property can be any type of property. For example, it could be:

- a liquid, such as the wine in the dwelling’s wine cellar; or
- the landlord’s chattels (e.g. washing machine, refrigerator, heaters that have been left in the residential building for the tenant) covered under a Landlord’s Contents Policy with the Insurer.

c. *What personal property is not insured by EQC by virtue of the contract of fire insurance not insuring the property?*

If the contract of fire insurance specifically excludes a particular item or items of personal property, that item or those items will not be covered by EQC insurance.

d. *What personal 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*

Schedule 2 lists property (including personal property) of the kind that is not insured by the EQC Act. Applying Schedule 2 of the EQC Act, property that is not insured under the EQC Act includes the following:

- any property that is not tangible property. For example, information stored on a computer;
- any motor vehicle (being a vehicle drawn or propelled by mechanical power);
- any parts of, or accessories to, a motor vehicle;
- any trailer (being a vehicle without motive power that is capable of being drawn or propelled by a motor vehicle and that is not being used as a dwelling);
- any parts of, or accessories to, a trailer;
- any vessel (being anything made to float, whether it is fixed or free, and whether or not it has any means of propulsion);
- any parts of, or accessories to, a vessel;
- any aircraft, or anything in or on an aircraft;
- any bush, forest, tree, plant, or lawn;
- any growing crops (including fruit trees and vines) or cut crops in the open fields;
- any explosives;
- any animals, including livestock and pets;
- any portable swimming pool, bath or spa pool;
- any jewellery, precious stones, money, works of art, securities, documents, or stamps.

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

ii. What are “works of art”?

Works of art are excluded from EQC insurance.

To determine whether there is a work of art, the following questions must be considered:

- Has the object any use other than decoration?
- If the object has a use, which is the primary function - the use or the decoration?
- If the object has no practical application, is it the artist’s original?

An item is considered to be a work of art if its primary function and use is decoration and it is an artist original.

Examples of works of art are original paintings, hand-made ceramics, and one-off sculptures. These items are not insured “personal property”.

Examples of items that are not works of art are manufactured ceramic sculptures, limited edition collectables, and prints of paintings signed by the artist. These items are “personal property” (assuming other conditions in the definition of that term are met).

Clause 17, Schedule 2, EQC Act

Section 21(1)(a), EQC Act

e. How does EQC insurance cover carpets and drapes?

EQC has adopted a policy of using the treatment applied by the Insurer as a guide to whether some items are considered a fixture and fitting (and therefore dealt with as part of the “residential building”), or personal property.

Carpets

In the case of carpets, where the customer’s contract of fire insurance covers the carpet under the contents cover, EQC will treat the carpet as personal property. In this case, any EQC settlement for the damaged carpet will be made under the EQC personal property exposure.

Conversely, where the contract of fire insurance covers the carpet under the building cover, EQC will treat the carpet as part of the “residential building”. In this case, any EQC settlement for damaged carpet will be made under the EQC residential building exposure.

Drapes

The same policy applies to drapes. The treatment applied by the Insurer is used as a guide as to whether drapes are considered a fixture and fitting (and therefore dealt with as part of the EQC residential building exposure), or personal property.

f. How does EQC insurance apply in relation to Landlord’s contents insurance policies?

Insurers often offer a landlord’s extension or inclusion on a home or building contract of fire insurance to cover any contents the landlord may own that are located in their rental building, e.g. refrigerator, dishwasher, etc.

If a landlord’s home or building contract of fire insurance insures contents, those items will be treated as covered under an EQC personal property exposure. This is notwithstanding that the contract of fire insurance covering that personal property primarily relates to the residential building.

In this situation any EQC settlement for the landlord's damaged personal property in or on the rental property will be dealt with under the EQC personal property exposure. So, for example, the caps and excesses relating to personal property will apply to the settlement of the damaged personal property. (See generally Section 9Be and 9Bf)

g. How does EQC insurance apply to international students' personal property?

There are various contracts of fire insurance available for covering the contents of international students when they are studying in New Zealand.

As long as the criteria relating to "personal property" are satisfied, EQC insurance applies to the student's property that is in New Zealand. If the property is not located (or usually located) in or on a residential building, it will not meet the definition of "personal property" and EQC insurance will not apply.

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 6d)
- ... occurring as the direct result of ... ; (Section 6e)
- ... the “natural disaster”. (Section 6b)

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

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 6f.

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, residential land and personal property have EQC insurance for earthquakes, natural landslips, volcanic eruptions, hydrothermal activity, tsunamis and natural disaster fire. This is provided there is a relevant contract of fire insurance in force at the relevant time.

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

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

By way of example, a fire following an earthquake will usually come within the definition of “natural disaster fire” if the earlier earthquake can be shown to have been a substantial and operative cause of the fire. The earthquake does not need to be the only cause of the fire. Nor does the fire need to be a direct result of the earthquake.

iii. 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.

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

iv. What is a tsunami?

A tsunami is a sea wave caused by earthquake, volcanic eruption, landslip and/or ocean floor movement.

A sea wave caused by a sudden drop in air pressure is not a tsunami.

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

EQC determines whether there is a damage-causing “natural disaster”.

In some cases, the relevant “natural disasters” which are within the scope of the Insurer’s agency role will be specifically identified in the MOU. To the extent that they are generally described in the MOU (e.g. by date range), EQC will notify the Insurer of the relevant damage-causing “natural disasters” for the purposes of the 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 6d)
- ... occurring as the direct result of ... ; (Section 6e)
- ... the “natural disaster”. (Section 6b)

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

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 6f.

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

d. Is there “physical loss or damage”?

EQC covers “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 EQC covers both:

- physical loss or damage that has actually occurred; and
- in some circumstances, physical loss or damage that EQC (or the Insurer, as its agent) considers 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”.

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 of the insured property

The physical loss or damage is a material physical change that adversely affects the utility or amenity of the insured property (from a structural, functional or aesthetic perspective).

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 of the property. In that case, the change is not natural disaster damage. For example, cracking to the foundation of a residential building caused by an earthquake will not be natural disaster damage if it does not affect the utility or amenity of the foundation (or part of it).

Whether:

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

will be a question of fact in each case.

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 EQC’s opinion, is imminent as the direct result of a natural disaster which has occurred.

Loss may be treated as “imminent” where it is almost certain to occur within the next 12 months. Engineers or other assessors must provide their best estimate of the further natural disaster damage expected to occur to the insured property as the direct result of the original natural disaster, during the 12-month period following that natural disaster.

This 12-month rule is not hard and fast, but is a policy that EQC has adopted. It will apply other than in exceptional cases.

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

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

EQC covers 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

As a general rule, physical loss or damage to property will be “the direct result” of a natural disaster where:

- the natural disaster has caused the physical loss or damage; and
- the physical loss or damage has occurred within 48 hours of the natural disaster (or, in the case of natural disaster fire, 7 days).

Physical loss or damage to property will also be “the direct result” of a natural disaster where:

- the physical loss or damage caused by the natural disaster does not occur within 48 hours (or 7 days, for natural fire); but
- if the issue had been addressed at the end of that 48 hour (or 7 day) period, EQC (or the Insurer, as its agent) would have considered at that time that the physical loss or damage caused by the natural disaster was “imminent”. For details on the meaning of “imminent” physical loss or damage, see Section 6diii.

ii. What is meant by – “the natural disaster has caused the physical loss or damage”?

The natural disaster will “cause” the physical loss or damage to property where the natural disaster:

- leads inevitably, 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.

This test is sometimes referred to as “proximate cause”.

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

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

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

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

The damage is therefore the direct result of the earthquake.

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

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

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

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

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

iii. 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:

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

Clause 3(a) Schedule 3, EQC Act

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

Clause 3(b) Schedule 3, EQC Act

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

Clause 3(c) Schedule 3, EQC Act

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

Clause 3(g) Schedule 3, EQC Act

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

Clause 3(g) Schedule 3, EQC Act

For a fuller discussion of these grounds for declining a claim, see Section 8.

iv. What if the physical loss or damage to a residential building or personal property is the direct result of a storm or flood after an earthquake?

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

Sometimes there are two potential causes of the physical loss or damage:

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

In these cases it is necessary to determine whether any physical loss or damage to the residential building and/or personal property was the direct result of the storm or flood OR of the earthquake. If the physical loss or damage was:

- the direct result of the storm or flood, there will be no EQC insurance for the physical loss or damage to the residential building and/or personal property;
- the direct result of the earthquake, there will be EQC insurance available for the physical loss or damage to the residential building and/or personal property as provided by the EQC Act.

v. Consequential loss is excluded from EQC insurance

EQC insurance does not cover 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.

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 EQC insurance.

Loss of profits and business interruption are not covered by EQC insurance.

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 paid 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 6d.

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 6diii.

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 the Fire Service). 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 the Fire Service.

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 damage to property.

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 persons possibly hurt as a result of the natural disaster.

4. There must be no compensation paid 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 EQC insurance 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?

EQC 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. EQC 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 four parts:

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

A. Residential buildings

a. Overview

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

- whether the residential building has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage. The amount is assessed by determining the extent of the natural disaster damage and the cost of the repair and/or replacement. (Section 7Ab)

The “residential building” being assessed includes appurtenant structures and certain services. (see Sections 4 and 7Ahi)

The amount of the natural disaster damage is measured on the basis of “replacement value”. (Section 7Ac)

The assessment will involve:

- the engagement of sufficiently qualified Insurer personnel; (Section 7Ae)
- a visit to the residential building, where necessary to assess the natural disaster damage to the residential building; (Sections 7Af and 7Ag)
- an appraisal of any natural disaster damage to the residential building; (Section 7Ah) and
- a costing of the repair and/or replacement on the basis of “replacement value”. (Section 7Ah)

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

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

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

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 building needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in such assessments.

b. What is the purpose of the assessment?

The purpose of the assessment is to find:

- whether the residential building has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage. The amount is assessed by determining the extent of the natural disaster damage and the cost of the repair and/or replacement.

i. Has the residential building incurred natural disaster damage?

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

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

Details on these components are set out at Sections 6d, 6e, and 6b.

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

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

The amount of the natural disaster damage is measured on the basis of “replacement value”. Details are set out at Section 7Ac.

c. What is “replacement value”?

i. What is the definition of “replacement value”?

EQC insures a residential building against natural disaster damage for its “replacement value”.

The amount of the EQC insurance for a residential building is also subject to a maximum amount of insurance (sometimes referred to as the “cap”) (see Section 9Ae). But before it can be determined whether or not the cap is reached, it is necessary to assess the amount of the natural disaster damage on the basis of the “replacement value”.

Section 18, EQC Act

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

replacement value means—

(a) in relation to a residential building, any costs which would be reasonably incurred in respect of—

(i) demolition and removal of debris, to the extent that is essential to enable the building to be replaced or reinstated; and

(ii) replacing or reinstating the building to a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws; and

(iii) complying with any applicable laws in relation to the replacement or reinstatement of the building; and

(iv) other fees or costs payable in the course of replacing or reinstating the building, including architects’ fees, surveyors’ fees, and fees payable to local authorities;

Section 2(1), EQC Act – Paragraph (a) of the definition of “replacement value”

The “replacement value” definition can be broken down into four components.

“Replacement value” means costs that are reasonably incurred in doing all of the following:

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

- complying with any applicable laws relating to replacing and reinstating the residential building; and
- paying other fees or costs in the course of replacing or reinstating the residential building.

What does “when new” mean?

Where a residential building was built with materials that are no longer available, the damaged parts of the building are repaired with comparable new materials so that those parts are returned to a condition that is substantially the same as, but not better or more extensive than, when the building was built.

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

For example, if the windows of an older type residential building were damaged by an earthquake, and the Building Code requires that replacement windows must have a higher specification than used when the building was built, then the EQC insurance would meet the cost of the improvement.

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

Sometimes in order to replace or reinstate a damaged residential building or a damaged part of the residential building, it is necessary to do work on an undamaged part of the residential building. Examples of this include the removal of undamaged wiring in order to repair wall linings, or the removal of undamaged floorboards in order to repair foundations.

In these situations, EQC insurance includes:

- the cost of the work on the undamaged part of the residential building which is necessary to carry out the repair;
- the cost of reinstating the undamaged part if it was damaged in the course of the work being done on it; and
- the cost of modifying the undamaged part, if any laws require the undamaged part to be modified as a result of the work being done on it.

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

Example

The following is an example of how “replacement value” standard may apply in practice.

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

The falling chimney smashes through the ceiling, shattering a ceramic light fitting, whose wiring was badly deteriorated prior to the earthquake.

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

In some situations the new corrugated iron may need to be repainted to match the colour of the existing roof.

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

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

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

Residential buildings with weathertightness issues

Before finalising the assessment of a residential building which has weathertightness issues (arising from the specific design or construction of the building), the Insurer should escalate the assessment to EQC.

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

If the EQC insurance covers the releveling of the floor, the required releveling is determined under the EQC Act. The releveling is on the basis of the “replacement value” standard. See Section 7Aci.

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

If the floors were to be completely re-levelled it could damage the other parts of the residential building that had previously been altered. In those circumstances a repair of the foundation system that does not result in the floors being completely level may be sufficient

to meet the requirements of the EQC Act. What is required will depend on the circumstances of each residential building. Any repair strategy must also comply with all applicable laws, such as the Building Act 2004.

Effect of MBIE Guidance document

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

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

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

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

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

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

- the fact that the floor level is within the MBIE Guidance criteria is not a sufficient reason for the EQC insurance *not* to cover the releveling of the floor; and
- if the EQC insurance covers the releveling of the floor, the releveling required is determined by the EQC Act (on the basis of the “replacement value” standard), not by the MBIE Guidance criteria. Details of the “replacement value” standard are set out in this Section 7Ac.

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

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

d. What does an assessment involve?

The assessment will involve:

- the engagement of sufficiently qualified Insurer personnel; (Section 7Ae)
- a visit to the residential building, where necessary to assess the natural disaster damage to the residential building; (Sections 7Af and 7Ag)
- an appraisal of any natural disaster damage to the residential building; (Section 7Ah) and
- a costing of the repair and/or replacement on the basis of “replacement value”. (Sections 7Ac and 7Ah)

Sections 7Ac, 7Ae, 7Af, 7Ag and 7Ah set out details on these aspects of the assessment.

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

e. What are the standards required of Insurer personnel carrying out assessments?

The Insurer must ensure that all personnel engaged in assessments:

- are sufficiently experienced, qualified and skilled for the purpose; and
- conduct themselves in a professional manner at all times.

f. When must the Insurer visit a residential building for an assessment?

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

Whether a visit is necessary is a matter of judgment for the Insurer. In most instances a visit will be necessary. But there may be some instances where it is not.

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 the subject of the EQC claim is in an area in New Zealand where damage to property from the natural disaster would not be expected.

In these cases, the Insurer may come to the view that property at that location is extremely 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 Insurer does not visit the residential building for the above reason, the Insurer must request that the customer provide supporting information that shows the extent of the damage claimed. This should include a detailed written description with clear photos of the damaged property. The Insurer must have regard to any such information provided by the customer in assessing the residential building claim.

To assist Insurers with these issues, EQC 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 where the Insurer wishes to take a “digital” or “desktop” approach to the assessment of residential buildings?

If the Insurer wishes to take a general approach to the assessment of its EQC residential building claims (or any portion of them) that does not involve site visits by the Insurer’s personnel, the Insurer must first obtain EQC approval to that approach.

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

i. Arranging access to residential building

Before the visit, the Insurer must obtain the EQC customer’s consent to access the property to carry out the assessment. The EQC customer should be given at least 24 hours’ notice of the visit (unless some other arrangement is agreed). Where possible, the visit should be arranged so that the EQC customer is at the residential building at the time of the visit.

If, after the Insurer has taken reasonable steps to obtain the EQC customer’s consent, the customer will still not allow access to the residential building for the assessment, then the matter should be escalated to EQC.

ii. Health and Safety

The Insurer must ensure that all health and safety requirements are met in connection with the visit to the residential building for the purposes of the assessment.

For more details see Section 12.

iii. Dangerous and insanitary buildings

If at any time in connection with the assessment, it is found that the residential building is dangerous or insanitary, the Insurer must ensure that the policies set out in Section 12 are followed.

iv. Proper identification

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

h. What are the requirements for an assessment of the natural disaster damage to the residential building?

i. What must be assessed?

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

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

The “residential building” comprises:

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

(Section 4d)

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

For details on what is meant by the term “residential building”, see Sections 4b to 4f.

Should the Insurer identify or suspect that there is natural disaster damage to the residential land on the property, the Insurer must inform the EQC customer that they should contact EQC direct regarding that land damage (or suspected land damage).

ii. What appraisals are required?

The appraisals must be sufficient to ascertain:

1. whether the residential building has incurred natural disaster damage; and
2. if so, the amount of that natural disaster damage.

This second limb will involve a costing of the repair and/or replacement on the basis of “replacement value”. (see Section 7Ac)

iii. What about material supplied by EQC customers?

In carrying out the assessment, the Insurer must have regard to any material that is provided by the EQC customer:

- under Clause 7(1)(b), Schedule 3, EQC Act; (see Section 3cii) and
- otherwise in relation to the claim.

iv. Engaging engineers and other professionals

Sometimes the Insurer will need to engage an engineer and other professionals (e.g. surveyors) to complete the assessment.

These engineers and other professionals must:

- be engaged by the Insurer on arm’s-length commercial terms;
- be appropriately qualified and experienced;
- be independent of the EQC customer;
- not be subject to any conflict of interest that would, in the circumstances, reasonably be considered to prevent the engineer (or other professional) providing services to EQC in relation to the EQC customer’s claim or claims generally; and
- otherwise meet the requirements of the relevant MOU.

Reports from engineers and other professionals must be addressed to, and be for the benefit of, EQC. They must be enforceable by EQC. The reports will be available to customers.

v. Other matters

EQC will from time to time issue specific guidance on matters related to Insurer assessments.

B. Personal property

a. Overview

The purpose of the assessment of the personal property is to find:

- whether the personal property has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage. (Section 7Bb)

The amount of the natural disaster damage is measured on:

- the basis of “replacement value”; (Section 7Bc) or
- if the personal property is insured against fire on any less favourable basis, that less favourable basis. (Section 7Bd)

The assessment will involve:

- the engagement of sufficiently qualified Insurer personnel; (Section 7Bf)
- an appraisal of any natural disaster damage to the personal property; (Section 7Bg) and
- a costing of the repair and/or replacement on the basis of “replacement value” or an appraisal on any less favourable basis. (Section 7Bg)

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

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

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

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

For the details on what is meant by “personal property”, see Section 5.

b. What is the purpose of the assessment?

The purpose of the assessment is to find:

- whether the personal property has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage.

i. Has the personal property incurred natural disaster damage?

The personal property will have incurred natural disaster damage where there is:

- “physical loss or damage” to the personal property ... ; (Section 6d)
- ... occurring as the direct result of ... ; (Section 6e)
- ... a “natural disaster”. (Section 6b)

Details on these components are set out at Sections 6d, 6e, and 6b.

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

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

The amount of the natural disaster damage is measured on the basis of:

- “replacement value”; (Section 7Bc) or
- if the personal property is insured against fire on any less favourable basis, that less favourable basis. (Section 7Bd)

Section 20, EQC Act

c. What is “replacement value”?

EQC insures personal property against natural disaster damage for its “replacement value”. This is unless the personal property is insured against fire under the contract of fire insurance on any less favourable basis. (see Section 7Bd)

The amount of the EQC insurance for personal property is also subject to a maximum amount of insurance (sometimes referred to as the “cap”) (see Section 9Be). But before it can be determined whether or not the cap is reached, it is necessary to assess the amount of the natural disaster damage on the basis of the “replacement value” (or the less favourable basis, if that is applicable).

Section 20, EQC Act

i. What is the definition of “replacement value”?

“Replacement value”, in relation to personal property, is defined in the EQC Act as follows:

replacement value means—

...

(b) in relation to any personal property, the lesser of—

(i) the cost of replacing the property with similar property, in a condition equal to but not better or more extensive than its condition when new:

(ii) the cost of reinstating the property to a condition substantially the same as but not better or more extensive than its condition when new

Section 2(1), EQC Act – Paragraph (b) of the definition of “replacement value”

This paragraph (b) of the “replacement value” definition can be broken down as follows. “Replacement value” means the **lesser of** 1. and 2. below:

1. the cost of replacing the personal property with similar personal property. For this purpose the similar personal property must be in a condition equal to but not better or more extensive than the condition of the personal property when new; and
2. the cost of reinstating the personal property to a condition substantially the same as but not better or more extensive than its condition when new.

ii. How does the “replacement value” standard apply where there is a cash settlement?

If the claim is cash settled, the payment must be the “replacement value” of the personal property as defined in section 2(1) of the EQC Act (and otherwise in accordance with the provisions of the EQC Act, including on a less favourable basis if applicable). Any payment will be subject to the cap on the amount of the insurance (see Section 9Be).

This “replacement value” standard of repair is the same whether the EQC claim is cash settled or if the personal property is repaired.

d. When is personal property “insured against fire on any less favourable basis”?

This could include where the personal property is insured under the contract of fire insurance on an indemnity basis. That basis would be less favourable than a “replacement value” basis.

In that case the amount of the natural disaster damage must be assessed on an indemnity basis (as per the contract of fire insurance). The assessment will not be on the basis of “replacement value”.

e. What does an assessment involve?

The assessment will involve:

- the engagement of sufficiently qualified Insurer personnel; (Section 7Bf)
- an appraisal of any natural disaster damage to the personal property; (Section 7Bg) and
- a costing of the repair and/or replacement on the basis of “replacement value” or an appraisal on any less favourable basis. (Sections 7Bc, 7Bd and 7Bg)

Sections 7Bc, 7Bd, 7Bf and 7Bg set out details on these aspects of the assessment.

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

f. What are the standards required of Insurer personnel carrying out assessments?

The Insurer must ensure that all personnel engaged in assessments:

- are sufficiently experienced, qualified and skilled for the purpose; and
- conduct themselves in a professional manner at all times.

g. What are the requirements for an assessment of the natural disaster damage to the personal property?

i. What must be assessed?

The assessment is an appraisal of any natural disaster damage to the personal property.

The assessment may involve a visit to the residential building where a visit is necessary to assess the natural disaster damage to the personal property. Whether a visit is necessary is a matter of judgment for the Insurer.

The “personal property”:

- covers property located in or on a residential building; (see Section 5bii)
- includes property that is usually located in or on a residential building but for any reason is temporarily removed from the building; (see Section 5biii)
- excludes any property used solely or principally for commercial purposes; (see Section 5biv) and
- excludes property listed in Schedule 2 of the EQC Act as an item that is not covered by EQC insurance. (Section 5d)

More details on each of these items are set out in Sections 5bii to 5biv and 5d.

ii. What appraisals are required?

The appraisals must be sufficient to ascertain:

- whether the personal property has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage.

This second limb will involve:

- a costing of the repair and/or replacement on the basis of “replacement value”; (see Section 7Bc) or
- in the case where the amount of the natural disaster damage must be assessed on a less favourable basis (as per the contract of fire insurance), an assessment of the amount of the damage on that less favourable basis. For example, if the less favourable basis is indemnity, then (subject always to the precise wording of the contract of fire insurance) the assessment may be of the indemnity value of the personal property.

iii. Is proof of loss required?

Proof of loss is required for items of personal property with a replacement value of \$500 (incl GST) or over.

iv. What about material supplied by EQC customers?

In carrying out the assessment, the Insurer must have regard to any material that is provided by the EQC customer:

- under Clause 7(1)(b), Schedule 3, EQC Act; (see Section 3cii) or
- otherwise in relation to the claim.

C. Principles for assessment where there are multiple events

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

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

An assessment must be made of the amount of natural disaster damage for each event which directly results in damage to the residential building and/or personal property for which there is a valid claim. The guidance below sets out:

- the principles used to assess the amount 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 6c.

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 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 EQC.

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

A different period (7 days) will apply for natural disaster fire.

Assessing damage within an event

Within an event, EQC can assess different types of damage, including types of damage caused by different natural disasters separately. However, for settlement purposes, EQC must ensure that:

- the 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); and

- a single excess and cap for each of the building and personal property claims is applied to the totals of the amounts of building and personal property damage for the event.

Event can only be settled where there is a valid claim

An event can only be settled where there is a valid claim under the EQC Act. For details on what is a valid claim, see Section 3.

If there has been damage caused by an event for which no valid 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 (see Assessment Principles, below).

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 6e)

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

To assess the amount of damage caused by an event to a residential building or personal property in a context where the building or personal property has been damaged by multiple events without intervening repairs, the following principles should be applied (using here the example of earthquakes):

- the task is to assess, in respect of the first earthquake event (EQ1), the damage that occurred as a direct result of EQ1 and the cost of repairing that damage to the required standard under the EQC Act. For a discussion of the required standards, see Sections 7Ac and 7Bc;
- in respect of the next earthquake event (EQ2), the task is to assess what additional damage (if any) occurred as a direct result of EQ2 – beyond the damage that had already occurred – and the additional marginal cost (if any) of reinstating the damage that occurred as a direct result of EQ2;
- however, if a component of the building or personal property needs to be replaced after an earthquake, it cannot in any meaningful sense be further damaged or have further cost incurred – it already needs replacement. No further EQC insurance is payable in respect of that building or property;
- by extension, if the building or personal property as a whole needs to be replaced after an earthquake, it cannot be further damaged or have further cost incurred;
- the allocation of damage should not be directly translated to a share of the total cost of repairing the combined damage caused by all of the earthquakes. This is because costs do not necessarily increase in relation to extent of damage in a linear

or uniform fashion. Rather, reference should be had to the circumstances of each damaged item;

- the total cost of all of the insured damage cannot exceed the cost of replacement of the building or personal property.

Example of application of principles

The following example shows how the principles apply:

- a building is damaged in two earthquakes – EQ1 and EQ2;
- EQ1 and EQ2 have occurred more than 48 hours apart;
- the cost to repair the damage that is the direct result of EQ1 to the standard required under the EQC Act is \$20K;
- the cost to repair the damage that is the direct result of EQ1 and EQ2 is \$80K;
- the EQC insurance settlement for:
 - EQ1 is \$20K less excess;
 - EQ2 is \$60K less excess (i.e. \$80K less \$20K).

D. Assessment process

a. What is the process for the assessment?

i. Carrying out the assessment

The assessment should weigh the available evidence in reaching a conclusion that represents, on the balance of probabilities, the application of the above principles and standards to the particular residential building or personal property. 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 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.

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 7C, 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 is conditional on there being an EQC pay-out for each event; or
- any other irrelevant factors, such as sympathy for the insured person, or personal or family factors that the insured person identifies.

iv. Process

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

All decisions are subject to audit processes under the MOU.

b. What is the output of the assessment?

For each assessment, the Insurer must complete and have available for EQC full documentation and evidence recording the reasoning underpinning, and the results of, the assessment.

There is no particular form that EQC requires Insurers to use for the recording of this material. But the records must be:

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

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

a. Overview

This section discusses the decision to decline an EQC 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 8b) or
- the EQC insurance may have been cancelled. (see Section 8c)

Even if all the prerequisites for settlement are met and the EQC insurance 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 EQC claim under Schedule 3 of the EQC Act; (see Section 8e)
- the nature of such a decision to decline; (see Section 8f)
- the process for such a decision to decline; (see Section 8g)
- the grounds to decline an EQC claim (in whole or part) under Schedule 3. (see Sections 8h, 8i, 8j and 8k)

b. Prerequisites before making settlement decision

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

Specifically, the prerequisites are:

- there must be a valid EQC claim; (see Section 3)
- for:
 - an insured residential building; (see Section 4) and/or
 - insured personal property; (see Section 5)

- that has suffered natural disaster damage. (see Section 6)

Furthermore, there must be an assessment (see Section 7) to help determine the extent of the natural disaster damage and the amount of the settlement.

Details on each of these aspects are set out in Sections 3 to 7.

The claim would normally proceed to the next step (see Section 8d) after these requirements are met. However, optimally early in the claims management process, the Insurer 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 (e.g. full assessment of the claim) redundant. (See also Section 3i of the Manual)

c. Has the EQC insurance been cancelled?

EQC may cancel EQC insurance for property (residential building, residential land and/or personal property). (see Section 3hi)

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

For residential building and residential land claims, the Certificate of Title to the property should be checked before any settlement to ensure that the EQC insurance was not cancelled at the time of the damage-causing natural disaster. For the purposes of this check, the copy of the Certificate 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 Certificate of Title indicating a cancellation would typically read as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

Clause 4, Schedule 3, EQC Act

Section 28, EQC Act

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

If:

- the prerequisites for settlement are met; and
- the EQC insurance 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 EQC claim may be declined (or only met in part) on grounds set out in Schedule 3 of the EQC Act. Specifically:

- a claim may be declined (or met only in part) in the circumstances set out in clause 3 of Schedule 3 of the EQC Act; (Section 8h)
- a claim may be declined after a notice is given by EQC under clause 5(2), Schedule 3 of the EQC Act (which sets out grounds to limit EQC insurance). The notice will state that any claim for loss or damage after the date of the notice may be declined; (Section 8i)
- a claim may be declined where the insured person does not comply with EQC's requirements, or hinders or obstructs EQC exercising its powers under, clause 8 of Schedule 3 (which sets out EQC's rights to salvage). (Section 8j).

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

Further:

- Section 8e sets out who may decline claims;
- Sections 8f and 8g outline the decision-making process; and
- Section 8k 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 EQC claim.

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

The grounds to decline an EQC 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 EQC claim.

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

i. The Insurer (and its personnel) must have the appropriate delegated authority before declining a claim

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

- EQC; or
- another person to whom that decision-making power has been properly delegated by EQC. For example, the person could be the Insurer and/or the Insurer's personnel.

EQC will let the Insurer know specifically:

- whether or not the Insurer (and/or any of its personnel) 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 powers by the Insurer.

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

Even if the Insurer (and its personnel) do have the power to decline an EQC claim, they may need to liaise with EQC regarding the decision to decline the claim.

For example, grounds to decline EQC claims can apply across all property (residential land, residential building and personal property). If the claim has a residential land exposure, the Insurer must liaise with EQC on whether and how the decision will apply in respect of all exposures - residential land, residential building and personal property. These cases are discussed at Section 8fi.

iii. What if the Insurer and its personnel do not have the appropriate delegated authority to decline claims on the grounds set out in Schedule 3, EQC Act?

If the Insurer and its personnel do not have the specific delegated authority to make a decision to decline EQC claim under Schedule 3, then:

- the Insurer should nevertheless consider whether the grounds under Schedule 3 may apply; and
- if the Insurer considers that one or more of the grounds may apply, escalate the matter to EQC.

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 EQC claim is discretionary

The power under Schedule 3 to decline or meet part only of an EQC claim is a discretionary power.

Where there are grounds to decline the EQC claim, it is not necessary to decline the claim (entirely or partially). The claim can still be met (in whole 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 EQC claims can apply across all property (residential land, residential building and personal property 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 EQC claim must be based on cogent and credible material that logically shows the existence of the facts.

Advice from an appropriate expert will usually be necessary where, for example, there may have been failures to comply with building laws or appropriate construction 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 EQC 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 for the proposal to decline; and
- of the factual material underpinning the proposal to decline.

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 insured.

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

For some of the grounds under Schedule 3 for declining claims, personal information about the EQC customer's previous claims may be used by the Insurer to help it make a decision whether or not to decline the current EQC claim.

An example is clause 3(a) of Schedule 3, which contemplates referring to information from a previous EQC claim in order to decide whether to decline the subsequent claim. (See Section 8hi)

In these cases, the Insurer may use that personal information for the purpose of making a decision whether or not to decline the EQC claim - and not for other purposes. For example, the information cannot be used by the Insurer for deciding whether to decline the Insurer claim. We do not consider that the management of the Insurer claim is the same purpose as,

or a purpose directly related to, the purpose for which the information was collected for the previous EQC claim.

For more details on the Insurer's obligations regarding shared information, see Section 12.

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

The Insurer 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 Insurer's complaints process; and
- 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 EQC claim for your property] you have the right to ask the Ombudsman to investigate and review the settlement decision. The Ombudsman can be contacted at PO Box 10152, Wellington 6143, or on Freephone 0800 802 602, or at www.ombudsman.parliament.nz.

After the customer has been notified, the Insurer must immediately provide to EQC full records of:

- the investigation;
- the Insurer's decision (with reasons); and
- all communications between the Insurer and 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 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 EQC 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, a proportionate response should be considered.

In each case, consideration must be given to both the question:

1. whether the claim should be declined entirely; and
2. 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 or two of the exposures only. This could mean for example, that all (or part of) the residential land and residential building exposures are declined, but the personal property exposure is not declined.

In cases where the claim has a residential land exposure, the Insurer must liaise with EQC as to whether and how the decision will apply in respect of the residential land, residential building and/or personal property.

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 EQC may decline (or meet part only of) an EQC 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 the subject of the current claim is caused or made worse by previous natural disaster damage:

- for which EQC paid under an earlier claim (made by the current or a previous owner); and
- where the money paid by 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, it is useful to compare:

1. how much natural disaster damage occurred; with

2. how much damage would have occurred if the money paid by 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 EQC may decline (or meet part only of) an EQC claim:

- (b) the insured person has failed to comply with any law or bylaw, or any requirement pursuant to any law or bylaw, and that failure has caused or exacerbated the natural disaster damage;

Clause 3(b), Schedule 3, EQC Act

This ground to decline applies where:

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

Insured person must have failed to comply

In general, the “insured person” will be the person or persons named in the contract of fire insurance as the insured. They will be the person(s) entitled to the benefit of the contract of fire insurance. For more details on who is the “insured person” see Section 3bi of this Manual.

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

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

Failure to comply with laws or bylaws

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

This exercise will involve for example, examining any requirements laid down in consents issued under this legislation that were binding on the insured person, or in any relevant bylaws. Expert advice will be required from a suitably qualified expert (e.g. an engineer) identifying the extent to which the as-built building 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 a suitably qualified expert (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 EQC may decline (or meet part only of) an EQC claim:

- (c) in the case of any property of a kind referred to in—
 - (i) paragraph (c) or paragraph (d) of the definition of the term residential building in section 2(1); or
 - (ii) paragraph (d) or paragraph (e) of the definition of the term residential land in section 2(1)—

the property was not constructed in accordance with standards considered appropriate for that property at the time of construction, and the failure to meet those standards has caused or exacerbated the natural disaster damage;

Clause 3(c), Schedule 3, EQC Act

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

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

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

Insured services are described at Section 4f.

This ground also includes a power to decline a claim where certain residential land structures (retaining walls; bridges; culverts) fail to meet construction standards. As EQC is dealing with residential land exposures, this aspect of the power to decline will be considered by EQC.

EQC will let the Insurer know if the failure of the retaining walls, bridges and/or culverts to meet construction standards may have potential consequences for the residential building claim.

Failure to meet appropriate construction standards

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

For this purpose, it will be necessary to identify:

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

Advice from a suitably qualified expert (e.g. an engineer) will be required.

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

For the ground to decline to apply, the natural disaster damage must be caused or made worse by the failure to meet the appropriate construction standards at the time of construction.

Advice from a suitably qualified expert (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 EQC may decline (or meet part only of) an EQC claim:

- (d) the certificate 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 Certificate of Title. If an EQC 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 falling debris; subsidence; inundation and slippage.

Section 71, Building Act 2004

Section 74 notifications are placed on a Certificate 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 EQC 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. For example, was the insured person aware of the notice before the dwelling, or the alteration to the dwelling, on the property was built?

In practice, the Certificate 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 Certificates 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 should be escalated to EQC.

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

If the EQC 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 2014

Section 36(2) of the Building Act 1991

Section 641A of the Local Government Act 1974

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

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

- (e) 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 EQC, the Insurer, or any other 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 EQC's 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 EQC may decline (or meet part only of) an EQC claim:

- (f) 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.

For details of EQC's policy on investigating fraud, see Section 12.

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

Paragraph (g) of clause 3 sets out the following circumstance where EQC may decline (or meet part only of) an EQC 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. The insured person will have been negligent if they breached their duty 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 a suitably qualified expert (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?

EQC may limit EQC insurance for the property under clause 5 of Schedule 3. In some cases where it limits cover, EQC may decline cover for further claims for certain loss or damage.

i. When can EQC limit cover?

First scenario

EQC may limit cover where it considers that any property is in imminent danger of suffering natural disaster damage. In this scenario, EQC limits its cover by sending the owner a written notice stating that EQC limits liability to the amount for which the property is insured at that time.

This first scenario does not give rise to grounds to decline a claim. The Insurer will accordingly have no role in respect of this first scenario, other than to escalate the matter to EQC where the Insurer finds a notice to be placed on the Certificate of Title under clause 5(1), Schedule 3, EQC Act.

Clause 5(1), Schedule 3, EQC Act

Second scenario

EQC can also limit EQC insurance where:

- natural disaster damage has occurred to any residential building, residential land or personal property as the direct result of a natural landslip, or to any residential land as a direct result of a storm or flood; and
- EQC considers 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 EQC decline a claim?

A claim can be declined in the second scenario.

In this second scenario:

- EQC limits the EQC insurance by sending the owner a written notice stating that it may decline any further claim for the same type of loss or damage;
- after EQC gives 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 Certificate of Title

In either scenario, EQC will arrange for a notice to be placed on the Certificate of Title.

The notice remains on the Certificate 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.

EQC can at its discretion remove the limitation to the EQC insurance, in which case the notice on the Certificate of Title will be removed.

Where there is a notice of limitation on the Certificate of Title under Section 28 and Clause 5, Schedule 3, EQC Act, the Insurer must escalate the claim to EQC.

Clause 5, Schedule 3, EQC Act

Section 28, EQC Act

j. What are the grounds to decline claims under clause 8 of Schedule 3?

Clause 8 of Schedule 3 sets out the rights of EQC and its agents as to salvage.

For details of EQC's policy on salvage, see Section 12.

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.

Clauses 8(4) Schedule 3, EQC Act

This provision gives EQC the power to decline any claim if the insured person (or any person acting on the insured person's behalf):

- does not comply with EQC's requirements as to salvage; or
- hinders or obstructs EQC in the exercise of its powers related to salvage.

EQC will inform the Insurer if circumstances arise where this power to decline may be invoked in relation to a claim being managed by the Insurer.

k. What is the obligation of an EQC customer to mitigate damage, and does a failure to comply with that obligation comprise a ground to decline an EQC 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 is entered into, and continues for so long as the contract of fire insurance 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 EQC to decline an EQC claim.

That said, in circumstances where there is a failure to comply with clause 12, those same circumstances will likely mean that one or more of the following grounds to decline an EQC 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 clauses 3(b) of Schedule 3); (Section 8hii)
- appurtenant buildings and structures and insured services were not constructed in accordance with standards considered appropriate for the property at the time of construction. That in turn caused the natural disaster damage or made it worse (see clause 3(c) of Schedule 3); (Section 8hiii) and
- 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 8hvii).

ii. When should an Insurer escalate an EQC customer's failure to comply with clause 12 to EQC?

The claim should be escalated to EQC, if any case should arise where the Insurer considers 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.

Clause 12, Schedule 3, EQC Act

Clauses 3(b), 3(c) and 3(g), Schedule 3, EQC Act

9. How is the EQC claim settled?

This Section 9 is divided into two parts:

- Section 9A, which addresses the settlement of EQC claims for natural disaster damage to residential buildings. This part covers settlement by payment, reinstatement, replacement and relocation;
- Section 9B, which addresses the settlement of EQC claims for natural disaster damage to personal property. This part covers settlement by payment, reinstatement and replacement.

A. Residential buildings

a. Overview

This part deals with settlement of EQC claims for natural disaster damage to residential buildings.

Specifically this part sets out:

- the prerequisites to making a settlement decision; Section 9Ab
- the methods that can be used to settle a residential building claim (cash payment; reinstatement; replacement; relocation); Section 9Ac
- how the settlement amount is calculated; Section 9Ad
- the maximum amount (or cap) that can be paid; Section 9Ae
- the excess that applies; Section 9Af
- the time limit for settlement; Section 9Ag
- how the settlement is communicated. Section 9Ah

This part does not address every aspect of a residential building settlement where:

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

Additional matters (not dealt with in this part) must be addressed in such settlements.

For details of what is meant by the term “residential building”, see Section 4.

b. Prerequisites to making a settlement decision for an EQC residential building claim

An EQC claim for a residential building may only be considered for settlement (i.e. a cash payment, or the reinstatement, replacement or relocation of the building) after the prerequisites are met.

i. What are the prerequisites?

Specifically, the prerequisites are:

- there must be a valid EQC claim; (see Section 3)
- for an insured residential building; (see Section 4)
- that has suffered natural disaster damage. (see Section 6).

There must have been an assessment (see Section 7A, 7C and 7D) to help determine the extent of any natural disaster damage and the amount (if any) of the settlement.

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 EQC insurance was not cancelled

The Certificate of Title to the property must be checked before any settlement to ensure that the EQC insurance was not cancelled at the time of the damage-causing natural disaster. The entry on the Certificate of Title indicating a cancellation would typically read as follows:

Certificate under Section 28(1) Earthquake Commission Act 1993

For the purposes of this check, the copy of the Certificate 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 3hi)

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 are set out at Section 8.

The claim (across all of its exposures – residential land, residential building and personal property) will need to be checked against each ground to decline a claim. The grounds are set out at Sections 8h to 8j of the Manual.

Check that there are no other reasons why the claim might not be accepted

If the Insurer's contract of fire insurance is "ground up" cover, then (subject to the terms of that contract) EQC will only have liability if the Insurer's cover is exhausted. Accordingly, EQC's liability may be limited or even 'nil'. (see Section 3i ii).

c. What methods can be used to settle an EQC residential building claim?

i. Payment, reinstatement, replacement

The EQC Act includes an option to settle a claim for natural disaster damage for a residential building by payment, replacement or reinstatement. Specifically, section 29(2) of the EQC Act provides:

- (2) Subject to any regulations made under this Act and, where a contract has been entered into under section 22, to the provisions of that contract, if, during the period for which any property is insured under this Act, the property suffers natural disaster damage, the Commission shall settle any claim (by payment, replacement, or reinstatement, at the option of the Commission) to the extent to which it is liable under this Act.

Section 29(2), EQC Act

The method of settling (payment, replacement or reinstatement) is at the option of EQC. In some cases, there may be a combination of these settlement methods.

The settlement method is not the EQC customer's choice. EQC will make the choice of the settlement method.

EQC will let the Insurer know (through the terms of the MOU) whether and in what circumstances settlements will be by payment, replacement and/or reinstatement for the particular natural disaster event for which the Insurer has an agency role.

Any settlement will only be to the extent that EQC is liable under the EQC Act.

ii. Relocation

The EQC Act also includes an option to settle a claim for natural disaster damage for a residential building by way of relocation of the residential building. Specifically clause 10(1) of Schedule 3 of the EQC Act provides:

10 Relocation of building

- (1) Instead of paying the amount of any natural disaster damage to, or reinstating, a residential building or residential land, the Commission may, at its option, relocate the building concerned on the same site or, where that site is unsuitable because of damage which it has suffered or is likely to suffer, to a different site determined by the Commission, being a site that is reasonably equivalent in all material respects to the existing site immediately before the damage occurred.

Clause 10(1), Schedule 3, EQC Act

Under this option, the relocation of the residential building may be:

- on the same site; or
- if that site is unsuitable because of the damage which the site has suffered or is likely to suffer, on a different (but reasonably equivalent) site.

This method of settling by relocation is again at the option of EQC. It is not the EQC customer's choice.

EQC will let the Insurer know (through the terms of the MOU) whether or not, and in what circumstances, settlements may be by relocation for the particular natural disaster event for which the Insurer has an agency role.

Any settlement will only be to the extent that EQC is liable under the EQC Act.

d. How is the settlement amount calculated for an EQC residential building claim?

Section 9Adi below discusses the basis of cover ("replacement value") for the settlement of an EQC claim for natural disaster damage to a residential building.

Other matters relevant to the calculation of the settlement amount are discussed at Sections 9Adii to 9Adxi.

i. Basis of cover

EQC insures a residential building against natural disaster damage for its "replacement value".

The amount of the EQC insurance for a residential building is also subject to a maximum amount of insurance (sometimes referred to as the "cap") (see Section 9Ae).

But before it can be determined whether or not the cap is reached, it is necessary to assess the amount of the natural disaster damage on the basis of the "replacement value".

For the definition of "replacement value" and details on how that definition is applied, see Section 7Ac.

ii. Imminent loss or damage

The amount of imminent loss or damage is based on the lower of:

- the cost to prevent the imminent loss or damage from occurring (where it is possible to prevent it);

- the cost to repair or replace the residential building once the imminent loss or damage to the building has occurred.

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

Before finalising a settlement involving imminent loss or damage to a residential building, the Insurer must escalate the proposed settlement to EQC.

For a description of “imminent” loss or damage, see Section 6diii.

iii. GST

The GST exclusive amount of the settlement payment for the residential building is increased by the amount of GST that has been paid or will be payable by the insured in carrying out the replacement or reinstatement of the residential building.

In other words, the GST component that has been paid or will be payable by the insured is included for the purposes of calculating the settlement amount. This GST component must be set out in the Scope of Works prepared for the assessment of the residential building.

Section 29(3), EQC Act

The settlement amount (inclusive of GST) is of course subject to the cap (which itself will include a GST component) – see Section 9Ae.

Section 18(1), EQC Act

iv. Fees incurred in the course of replacing or reinstating the residential building

Fees incurred in replacing or reinstating the natural disaster damage to the residential building (part of the settlement amount)

“Replacement value” includes the cost reasonably incurred in respect of fees payable in the course of replacing or reinstating the residential building. These fees include architects’ fees, surveyors’ fees, and fees payable to local authorities.

The cost of these fees is included in calculating the settlement amount (subject always to the EQC cap).

Section 2(1), EQC Act – Paragraph (a)(iv) of the definition of “replacement value”

These fees must be distinguished from fees that are incurred in actually establishing the amount of the natural disaster damage. The latter type of fees (sometimes referred to as Claims Handling Expenses (CHE)) is discussed next.

Fees that are incurred in establishing the amount of the natural disaster damage to the residential building (not part of the settlement amount)

The following fees are not included in the settlement amount:

- legal fees (including the customer's and EQC's legal fees) in establishing the amount of the natural disaster damage; or
- other professional fees incurred in helping EQC or its agents (including the Insurer) to determine the actual EQC settlement amount (i.e. ascertaining the cause and extent of the natural disaster damage, identifying repair strategies, and costing and quantifying the amount of the damage). Accordingly, the fees of consultants (e.g. assessors, estimators, surveyors, valuers, engineers) that are incurred in helping to determine the EQC settlement amount are not added in calculating that settlement amount.

Section 12 of the Manual addresses separately the treatment of fees where there is a reassessment of the settlement amount (e.g. professional fees incurred by a customer following a request by the customer for a review).

v. Urgent works to the residential building

What are urgent works?

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

There is no reference to "urgent works" in the EQC Act. But in practice urgent repairs are completed urgently because final repairs can't be carried out immediately.

EQC insurance requires EQC customers to take reasonable steps after a natural disaster to preserve their insured property from further natural disaster damage. For details see Section 8k.

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

- board up broken windows;
- put tarpaulins over holes in the roof or walls;
- get essential services like toilets repaired immediately.

Sometimes the EQC customer will need to get urgent help from a tradesperson to carry out some urgent repairs of natural disaster damage. For example, the EQC customer may need to get essential services like toilets up and running (if possible) or otherwise get work done to make the residential building safe, sanitary, secure and weathertight.

Paying or reimbursing the customer for the tradesperson's services for the urgent works

The EQC customer may have sent invoices (or receipts) for urgent works from these tradespersons to the Insurer. The Insurer 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 by the Insurer should only occur where there are actually urgent works. The works must be needed urgently to make the residential building safe, sanitary, secure and weathertight.

EQC's strong preference is that Insurers pay or reimburse the customer for the tradesperson's services for the urgent works. EQC does not anticipate that an Insurer would ever pay the tradesperson 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 a valid claim in accordance with the EQC Act. See Section 3 of the Manual.

Where urgent works cover multiple events, the Insurer 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 EQC cap for a residential building claim – see Section 9Ae).

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 by the Insurer.

vi. Damaged heat sources that are an integral part of the residential building

If a heat source was damaged as the direct result of a natural disaster, the Insurer may pay the amount of that damage in advance of the final settlement. Any such advance payment will form part of the overall settlement amount (which amount is subject to the EQC cap for a residential building claim – see Section 9Ae).

The Insurer may make the advance payment where it is reasonably satisfied that this payment forms part of the overall settlement. This is a payment for the repair/replacement of the heat source that has been damaged as the direct result of the natural disaster. It is EQC's expectation that the customer would use the advance payment to repair or replace the heat source that has been damaged.

However, sometimes the customer may not apply the advance payment to the repair/replacement of the damaged heat source. By way of example:

- the heat source is a log fire and there is earthquake damage to the chimney; and
- an advance payment is made that is sufficient to cover the repair of the chimney;
- instead of repairing/replacing the chimney, the customer uses the advance payment to buy and install a heatpump.

In that example, the Insurer (acting on EQC's behalf) cannot pay again on final settlement for the repair/replacement of the chimney.

vii. Temporary accommodation

EQC insurance does not cover the cost of temporary accommodation for EQC customers (or pet accommodation costs) as part of cash settlements for the cost of the repair/replacement of the residential building.

viii. Removal and storage of personal property where residential building is to be repaired/rebuilt

EQC may issue guidance from time to time on whether (and the extent to which) EQC insurance covers the removal and storage of personal property where the residential building is to be:

- demolished before a rebuild; or
- repaired.

To the extent that EQC covers them, the removal and storage costs (plus GST) should be included in the overall settlement amount for the residential building exposure (which amount is subject to the EQC cap for a residential building claim – see Section 9Ae).

ix. Travel costs

The settlement amount must take into consideration the cost of transporting materials to the property and costs for contractors in travelling to and from the property.

x. Costings

EQC may issue guidance from time to time regarding costings on the rates to apply, P&G and margin.

xi. Ex gratia payments

The EQC Act allows for making ex gratia payments in limited circumstances.

Section 29(5) provides:

- (5) The Commission may make ex gratia payments in respect of natural disaster damage to property that is not insured under this Act where a premium has been paid under this Act in respect of that property in the belief that the property was insured under this Act.

Section 29(5), EQC Act

Under this provision EQC 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 Insurer may make an ex gratia payment on EQC's behalf without EQC's prior written approval on each occasion.

e. What is the maximum amount (or cap) that can be paid for a residential building claim?

i. How is the cap calculated?

The maximum amount of EQC insurance (or cap) available per event for a residential building is the least of the following (all of which are GST exclusive):

1. any replacement sum insured (for which the residential building is insured against fire) set out in the contract of fire insurance;
2. if there is no such replacement sum insured (as described in Item 1.), the amount to which the residential building is to be insured under the EQC Act (as set out in the contract of fire insurance). However this amount cannot be less than a minimum amount prescribed by the EQC Act. For details, see under the heading "Minimum amount under Item 2." below;
3. \$100,000 multiplied by the number of dwellings in the residential building. For details, see under the heading "Number of dwellings in the residential building under Item 3." below.

GST is then added to determine the maximum amount of the EQC insurance.

In other words, to determine the maximum amount of the EQC insurance:

- find the least of the (GST exclusive) amounts in Items 1. and 3.; but
- if there is no Item 1., find the least of the (GST exclusive) amounts in Items 2. and 3; but
- if there is no Item 1. and no Item 2., find the (GST exclusive) amount in Item 3.

GST is then added to determine the maximum amount of the EQC insurance.

Section 18(1), EQC Act

Items 1., 2. and 3. are examined in more detail below.

Replacement sum insured under Item 1.

The replacement sum insured under Item 1. above is an actual dollar figure set out in the contract of fire insurance. This replacement sum insured is a sum which applies if the residential building is damaged by fire. Some contracts of fire insurance will include such a replacement sum insured – and some will not.

A “replacement sum insured” is a different thing from an “indemnity sum insured”.

Open-ended “replacement policies” which do not include a specific replacement sum insured for fire will not fall within Item 1. above.

It is EQC’s expectation that where a contract of fire insurance sets out a replacement sum insured, the contract will clearly state to which residential building the replacement sum insured relates. However, sometimes a policy covers multiple residential buildings with a single replacement sum insured. In other words the replacement sum insured ‘floats’ over all the buildings and does not identify a replacement sum insured for each building. In these cases the treatment of the “floating” replacement sum should be escalated to EQC.

Section 18(1)(a), EQC Act

Minimum amount under Item 2.

If there is no replacement sum insured (as described in Item 1.), then (subject to the minimum discussed below), Item 2 is the amount to which the residential building is to be insured under the EQC Act (as set out in the contract of fire insurance).

The amount under Item 2. cannot be less than:

\$1,000 multiplied by the number of square metres of the area of the residential building.

If the amount to which the residential building is to be insured under the EQC Act (as set out in the contract of fire insurance) is less than the amount calculated by the formula quoted immediately above, then the amount calculated by the formula is deemed to be the amount for the purposes of Item 2.

The “\$1,000” in the quoted formula is GST exclusive.

Section 18(1)(b), EQC Act

Number of dwellings in the residential building under Item 3.

For the purposes of Item 3., the EQC Act deems that the number of dwellings in the residential building is one dwelling - unless a higher number is disclosed to the Insurer.

The relevant time for the disclosure to the Insurer of the higher number of dwellings is:

- the date of entering into the contract of fire insurance; or
- the date of renewal of the contract of fire insurance.

Section 18(1)(c) and 18(3), EQC Act

Section 2(2), EQC Act

The disclosure of the higher number of dwellings to the 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 EQC's expectation that:

- each Insurer will keep robust records of the actual number of dwellings in a residential building that have been disclosed to the Insurer (and the timing of the disclosures); and
- pay the correct premiums to EQC accordingly.

However, where:

- it has been disclosed that there is "more than one dwelling", but the actual number of dwellings has not been disclosed;
- there is a dispute with the insured person as to whether the necessary disclosure was made to the Insurer;
- the actual number of dwellings and the disclosed number of dwellings differ; or
- the purported disclosure is to a broker;

the matter must be escalated to EQC.

ii. What does the cap apply to?

The cap is per residential building per event. (See 9Aeiv below)

For a description of the "residential building", see Section 4.

As set out in Section 4, identifying the building(s) and/or the part of a building that comprise the insured residential building is critical to the correct calculation of the cap.

By way of example:

- One building or two on the same property? Whether there are one or two residential buildings on the property is important for the purposes of calculating the cap amount of EQC insurance available. If there are two residential buildings on the property, there will be two caps (one for each building) as opposed to one cap, provided all the requirements of the EQC Act are met;
- Appurtenant structure or separate residential building? Whether or not the building is an appurtenant structure is important for the purposes of calculating the cap amount of EQC insurance available. Appurtenant structures do not by themselves attract a separate amount of EQC insurance from the amount available for the residential building. In other words, when an item is identified as an appurtenant structure, it does not increase the overall amount of EQC insurance for the “residential building”. There is no separate capped amount of insurance for the appurtenant structure. (See Section 4e)

To illustrate, if a sleep-out is self-contained, it may be a separate residential building (as opposed to an appurtenant structure). If it is a separate residential building, this would mean that the sleep-out has its own separate capped amount of insurance, provided the other requirements of the EQC Act are met. For example, the sleep-out would need to be covered under a contract of fire insurance. (See Section 4eiv)

- 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 EQC insurance (assuming all other requirements under the EQC Act are met). This is notwithstanding that some of the building may be for commercial use. EQC refers to these types of residential buildings as “mixed use” buildings. (For more details, see Section 4d)

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 EQC insurance applies to the whole residential building (notwithstanding some of that building has commercial use). Furthermore, the cap applies to the whole residential building. The cap is calculated in accordance with the calculation set out in Section 9Aei. If there are multiple dwellings in the residential building, then they will be taken into account in that calculation.

iii. What is the cap for rest home complexes?

EQC insurance covers certain buildings for long-term accommodation for the elderly. See generally Section 4g.

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

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex) – see Sections 4c and 4d.

In assessing a rest home complex for EQC insurance purposes, it is necessary to differentiate between these different types of accommodation for the purposes of identifying each “residential building”. This is because identifying the “residential buildings” correctly is critical to the application of the EQC Act (e.g. in the calculation of the cap amount of the EQC insurance that will apply to each residential building in the complex).

Before finalising a settlement, the Insurer must escalate to EQC the identification of the “residential building(s)” in a rest home complex and the appropriate cap amount(s).

iv. Does a new cap apply for each event?

Yes. EQC insurance reinstates with a new cap after the residential building suffers natural disaster damage as the direct result of an event.

However, EQC insurance is subject always to the requirements of the EQC Act. For example, for there to be cover:

- there must be a contract of fire insurance over the residential building concerned in force at the relevant time; (Section 3g)
- the EQC cover must not have been cancelled at the time of the damage-causing event; (Section 3h) and
- there must be no other reason why the claim (or part of it) will not be accepted (Section 3i).

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 3fiii.

Where the “event” has different types of natural disasters during the 48 hour period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to EQC; or
- otherwise dealt with in accordance with operational processes which EQC notifies to the Insurer.

One reason for these approaches is to ensure that the cap is correctly applied for the claim. This will be particularly important where, as in the example above, the different disasters are managed by the Insurer (e.g. earthquake) and EQC (e.g. tsunami).

f. What excess applies for a residential building claim?

i. What is the excess for an EQC 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 doesn't "pay" the excess. There is nothing for them to pay. The excess is deducted before the cash settlement amount is paid out.

Where settlement is by way of repair, replacement or relocation of the residential building, issues regarding the recovery of the excess from the EQC customer must be escalated to EQC.

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 3fiii.

Where the "event" has different types of natural disasters during the 48 hour period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to EQC; or
- otherwise dealt with in accordance with operational processes which EQC notifies to the Insurer.

One reason for these approaches is to ensure that the excess is calculated correctly for the claim. This will be particularly important where, as in the example above, the different disasters are managed by the Insurer (e.g. earthquake) and EQC (e.g. tsunami).

ii. What is the amount of the excess for residential building claims?

The excess deducted per EQC claim for a residential building is:

- i. \$200 multiplied by the number of dwellings in the residential building; or
- ii. 1% of the amount payable (inclusive of GST);

whichever is greater.

Clause 4(1)(a), Earthquake Commission Regulations 1993

The approach is different where there is an EQC claim for both a residential building and personal property. (see Section 9Afiii below)

iii. What is the amount of the excess for a residential building and personal property claim?

For excess purposes, EQC treats residential building damage and personal property damage as part of the same EQC claim where:

- the claim is made by (or for) the same person;
- the claim is in respect of damage to the residential building and damage to personal property in or on that residential building; and
- the damage is caused by the same natural disaster.

In these cases, the excess deducted per EQC claim is:

- \$200 multiplied by the number of dwellings in the residential building; or
- 1% of the total amount (inclusive of GST) payable for the residential building damage and the personal property damage;

whichever is greater.

Clause 4(2), Earthquake Commission Regulations 1993

Where the Insurer is managing the residential building exposure and a different insurer (or EQC) covers the personal property damage (or vice versa), they will need to liaise with respect to the application of the excess.

iv. What is “the number of dwellings in the residential building”?

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 Insurer. The relevant provision (section 18(3) of the EQC Act) is the same as for identifying the number of dwellings for cap purposes – see Section 9Aei.

Details are reiterated below on how to identify whether a higher number of dwellings has been disclosed to the Insurer.

The relevant time for the disclosure to the 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.

Clause 4(3), Earthquake Commission Regulations 1993

Section 18(3), EQC Act

Section 2(2), EQC Act

The disclosure to the 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 EQC's expectation that:

- each Insurer will keep robust records of the actual number of dwellings in a residential building that have been disclosed to the Insurer (and the timing of the disclosures); and
- pay the correct premiums to EQC accordingly.

However, where:

- it has been disclosed that there is "more than one dwelling", but the actual number of dwellings has not been disclosed;
- there is a dispute with the insured person as to whether the necessary disclosure was made to the Insurer;
- the actual number of dwellings and the disclosed number of dwellings differ; or
- the purported disclosure is to a broker;

the matter must be escalated to EQC.

v. What is the excess for rest home complexes?

EQC insurance covers certain buildings for long-term accommodation for the elderly. See generally Section 4g.

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

This type of accommodation is distinct from self-contained accommodation (for example, self-contained villas and apartments in a rest home complex) – see Sections 4c and 4d.

In assessing a rest home complex for EQC insurance purposes, it is necessary to differentiate between these different types of accommodation for the purposes of identifying each “residential building”. This is because identifying the “residential buildings” correctly is critical to the application of the EQC Act (e.g. in the calculation of the excess(es) for the EQC insurance that will apply to the residential building(s) in the complex).

Before finalising a settlement, the Insurer must escalate to EQC the identification of the “residential building(s)” in a rest home complex and the appropriate excess(es).

g. What is the time limit for settlement?

Section 29 (4) provides:

Subject to any regulations made under this Act and without limiting the liability of the Commission under this Act, any payments or expenditure for which the Commission may be liable under this section shall be made as soon as reasonably practicable, and in any event not later than 1 year after the amount of the damage has been duly determined (which determination shall be made as soon as reasonably practicable).

Section 29(4), EQC Act

Breaking down the components of this section:

- the determination of the amount of the damage must be made as soon as reasonably practicable;
- the settlement payment (or the expenditure) must be made as soon as reasonably practicable; and
- the settlement payment (or the expenditure) must be made no later than one year after the date when the amount of the damage is determined.

The damage will not have been “determined” until the residential building has been assessed and the amount it would cost to repair or replace the residential building has been determined.

The “expenditure” refers to expenditure in settling the claim other than by way of cash settlement (e.g. expenditure in carrying out a repair of the damage).

There are no current regulations affecting the time frames under section 29(4), EQC Act.

h. How is the settlement communicated?

Section A of Appendix 1 of the Manual sets out the requirements that must be addressed by an Insurer in a communication for the settlement of an EQC residential building claim.

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

B. Personal property

a. Overview

This part deals with settlement of EQC claims for natural disaster damage to personal property.

Specifically this part sets out:

- the prerequisites to making a settlement decision; Section 9Bb
- the methods that can be used to settle a personal property claim (cash payment, reinstatement or replacement); Section 9Bc
- how the settlement amount is calculated; Section 9Bd
- the maximum amount (or cap) that can be paid; Section 9Be
- the excess that applies; Section 9Bf
- the time limit for settlement; Section 9Bg
- how the settlement is communicated. Section 9Bh

For details of what is meant by “personal property”, see Section 5.

b. Prerequisites to making a settlement decision for an EQC personal property claim?

An EQC claim for personal property may only be considered for settlement (i.e. a cash payment, or reinstatement or replacement of the personal property) after the prerequisites are met.

i. What are the prerequisites?

Specifically, the prerequisites are:

- there must be a valid EQC claim; (see Section 3)
- for the insured personal property; (see Section 5)
- that has suffered natural disaster damage. (see Section 6).

There must have been an assessment (see Section 7B, 7C and 7D) to help determine the extent of any natural disaster damage and the amount (if any) of the settlement.

The settlement decision may only be made after all the prerequisites to settlement are met.

ii. Specific matters to check before settlement

Check whether the insured personal property has been correctly identified

In general terms, to find what is insured “personal property”, it is necessary to identify property that is:

- in or on a residential building; (see Section 5bii) or
- usually located in or on a residential building, but which is temporarily removed. (see Section 5biii)

Property will not be insured personal property where it is:

- used solely or principally for commercial purposes; (Section 5biv)
- not insured by EQC because the contract of fire insurance does not cover the item of property; (Section 5c) or
- listed in Schedule 2 of the EQC Act as an item that is not covered by EQC insurance. (Section 5d)

For more details on what comprises insured “personal property”, see Section 5.

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 are set out at Section 8.

The claim (across all exposures – residential land, residential building and personal property) will need to be checked against the grounds to decline a claim set out at Sections 8h to 8j of the Manual.

Check that there are no other reasons why the claim might not be accepted

If the Insurer’s contract of fire insurance is “ground up” cover, then (subject to the terms of that contract) EQC will only have liability if the Insurer’s cover is exhausted. Accordingly, EQC’s liability may be limited or even ‘nil’. (see also Section 3i ii).

c. How will the EQC personal property claim be settled?

i. Payment, reinstatement, replacement

The EQC Act includes an option to settle a claim for natural disaster damage for personal property by payment, replacement or reinstatement. Specifically, section 29(2) of the EQC Act provides:

- (2) Subject to any regulations made under this Act and, where a contract has been entered into under section 22, to the provisions of that contract, if, during the period for which any property is insured under this Act, the property suffers natural disaster damage, the Commission shall settle any claim (by payment, replacement, or reinstatement, at the option of the Commission) to the extent to which it is liable under this Act.

Section 29(2), EQC Act

The method of settling (payment, replacement or reinstatement) is at the option of EQC. The settlement method is not the EQC customer's choice. EQC will make the choice of the settlement method.

EQC will let the Insurer know (through the terms of the MOU) whether and in what circumstances settlements will be by payment, replacement and/or reinstatement for the particular natural disaster event for which the Insurer has an agency role.

Any settlement will only be to the extent that EQC is liable under the EQC Act.

d. How is the settlement amount calculated for an EQC personal property claim?

Section 9Bdi below discusses the basis of cover ("replacement value" or a less favourable basis) of an EQC claim for natural disaster damage to personal property.

Other matters relevant to the calculation of the settlement amount are discussed at Sections 9Bdii to 9Bdv.

i. Basis of cover - Replacement value or a less favourable basis

EQC insures personal property against natural disaster damage for its "replacement value". This is unless the personal property is insured against fire under the contract of fire insurance on any less favourable basis. (see Section 7Bd)

The amount of the EQC insurance for personal property is also subject to a maximum amount of insurance (sometimes referred to as the "cap") (see Section 9Be). But before it can be determined whether or not the cap is reached, it is necessary to assess the amount of the natural disaster damage on the basis of the "replacement value" (or the less favourable basis, if that is applicable).

For the definition of “replacement value” and details on how that definition is applied, see Section 7Bc. For a description of personal property insured “on any less favourable basis”, see Section 7Bd.

ii. GST

The GST exclusive amount of the settlement payment for the personal property is increased by the amount of GST that has been paid or will be payable by the insured in carrying out the replacement or reinstatement of the personal property.

This means for example, that the GST component payable by the customer in replacing the personal property is included for the purposes of calculating the settlement amount.

Section 29(3), EQC Act

The GST inclusive settlement amount is of course subject to the cap (which itself includes a GST component) – see Section 9Be.

Section 20, EQC Act

iii. Costs associated with removing personal property from buildings

EQC may issue guidance from time to time on whether (and the extent to which) EQC insurance for a personal property exposure covers removing personal property from a residential building.

This guidance may cover for example, the situations where:

- damage to the personal property is imminent as the direct result of a natural disaster that has occurred;
- the personal property is not easily accessible for removal.

iv. Urgent payment or reimbursement for damaged item(s) of personal property

Insurers should prioritise payment or reimbursement for damaged item(s) of personal property where their repair/replacement is required urgently for:

- medical reasons; or
- other reasons which affect the health and safety of the customer or a member of the customer’s household.

Any such payment or reimbursement will:

- depend on there first being a valid claim in accordance with the EQC Act; (See Section 3 of the Manual) and

- form part of the overall settlement amount (which amount is subject to the EQC cap for a personal property claim – see Section 9Be).

For guidance on how to calculate the settlement payment if urgent items have already been paid for or reimbursed by the Insurer, see Item A9 of Appendix 1 of the Manual. The relevant material in Item 9A relates to “urgent works”, but the principles also apply to urgent payment or reimbursement for damaged item(s) in the context of personal property.

v. 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 EQC 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 Insurer may make an ex gratia payment on EQC's behalf without EQC's prior written approval on each occasion.

e. What is the maximum amount (or cap) that can be paid for a personal property claim?

The maximum amount of EQC insurance available per event for personal property is the lesser of Item 1. or Item 2. below (both of which are GST exclusive):

1. if the contract of fire insurance specifies a maximum amount to which the property is insured against fire under the contract, that maximum amount;
2. \$20,000.

GST is then added to determine the maximum amount of the EQC insurance.

Section 20, EQC Act

i. What does the cap apply to?

The cap is for personal property per event. (See Section 9Bei below)

For a description of “personal property”, see Section 5.

ii. Does a new cap apply for each event?

Yes. EQC insurance reinstates with a new cap after the personal property suffers natural disaster damage as the direct result of an event.

However, EQC insurance is subject always to the requirements of the EQC Act. For example, for there to be cover:

- there must be a contract of fire insurance over the personal property concerned in force at the relevant time; (Section 3g)
- there must be no other reason why the claim (or part of it) will not be accepted.

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 3fiii.

Where the “event” has different types of natural disasters during the 48 hour period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to EQC; or
- otherwise dealt with in accordance with operational processes which EQC notifies to the Insurer.

One reason for these approaches is to ensure that the cap is correctly applied for the claim. This will be particularly important where, as in the example above, the different disasters are managed by the Insurer (e.g. earthquake) and EQC (e.g. tsunami).

iii. Personal property that is at multiple situations but is insured under one contract of fire insurance

Sometimes personal property is insured under one policy document, where:

- there is intended to be more than one insured situation; or
- the insured situations contain personal property belonging to more than one person (where it is intended that the property should be separately insured). An example is a rest home situation where the personal property belongs to different residents living in separate rooms.

The following type of endorsement might be used in the contract of fire insurance:

“For the purposes of Section 20 of the EQC Act 1993, each situation (and/or identified resident) has a separate fire insurance contract in respect of each such situation or resident.”

An endorsement of this kind will enable each situation or resident to have personal property insured, with its own separate EQC cap (e.g. \$20,000 or any lesser sum specified for the personal property, plus GST per resident).

iv. Personal property (including landlord’s personal property) as a sum insured or as a policy extension

Sometimes personal property is listed in the schedule to the contract of fire insurance as property insured. This is sometimes the case for landlord’s personal property in a contract of fire insurance for the landlord’s tenanted property.

In these cases the EQC insurance should be included for up to \$20,000, or any lesser sum specified for the listed personal property, plus GST.

The EQC insurance applies (up to \$20,000, or any lesser sum specified for the personal property, plus GST) if:

- the cover for personal property is included as a policy extension; or
- the cover for personal property is included in the dwelling sum insured.

f. What excess applies for a personal property claim?

i. What is the excess for an EQC 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 doesn’t “pay” the excess. There is nothing for them to pay. The excess is deducted before the settlement amount is paid out.

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 3fiii.

Where the “event” has different types of natural disasters during the 48 hour period (e.g. earthquake and tsunami) the claim and the settlement must be:

- escalated to EQC; or
- otherwise dealt with in accordance with operational processes which EQC notifies to the Insurer.

One reason for these approaches is to ensure that the excess is calculated correctly for the claim. This will be particularly important where, as in the example above, the different disasters are managed by the Insurer (e.g. earthquake) and EQC (e.g. tsunami).

ii. What is the amount of the excess for personal property claims?

The excess deducted per EQC claim for personal property is \$200.

Clause 4(1)(c), Earthquake Commission Regulations 1993

The amount may be different where there is an EQC claim for both personal property and a residential building. (See Section 9Bfiii below)

iii. What is the amount of the excess for a residential building and personal property claim?

For excess purposes, EQC treats residential building damage and personal property damage as part of the same EQC claim where:

- the claim is made by (or for) the same person;
- the claim is in respect of damage to the residential building and damage to personal property in or on that residential building; and
- the damage is caused by the same natural disaster.

In these cases, the excess deducted per EQC claim is:

- \$200 multiplied by the number of dwellings in the residential building; or
- 1% of the total amount (inclusive of GST) payable for the residential building damage and the personal property damage;

whichever is greater.

Clause 4(2), Earthquake Commission Regulations 1993

For details on how to calculate the number of dwellings in the residential building, see Section 9A(iv).

Where the Insurer is managing the personal property exposure and a different insurer (or EQC) covers the residential building damage (or vice versa), they will need to liaise with respect to the application of the excess.

g. What is the time limit for settlement?

Section 29 (4) provides:

Subject to any regulations made under this Act and without limiting the liability of the Commission under this Act, any payments or expenditure for which the Commission may be liable under this section shall be made as soon as reasonably practicable, and in any event not later than 1 year after the amount of the damage has been duly determined (which determination shall be made as soon as reasonably practicable).

Section 29(4), EQC Act

Breaking down the components of this section:

- the determination of the amount of the damage must be made as soon as reasonably practicable;
- the settlement payment (or the expenditure) must be made as soon as reasonably practicable; and
- the settlement payment (or the expenditure) must be made no later than one year after the date when the amount of the damage is determined.

The damage will not have been “determined” until the personal property has been assessed and the amount it would cost to repair or replace the personal property has been determined. The one year period runs from that point.

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 to the personal property).

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 by an Insurer in a communication for the settlement of an EQC personal property claim.

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

10. With whom is the EQC 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 EQC claim;

the EQC claim would normally be settled with the insured person.

But the situation isn't always that straightforward.

This Section addresses numerous situations where particular issues arise in:

- identifying the person or persons with whom the EQC claim may be settled; and
- deciding with whom the EQC claim will be settled.

Specifically, this Section deals with situations where:

- there are multiple persons with insurable interests in the insured property; (Section 10b)
- there is an assignment of the EQC claim; (Section 10c)
- there is a mortgage over the insured property; (Section 10d)
- 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 10e)
- the owner of the property died after the EQC claim was made, or died before the natural disaster and the claim was made by the executors of the deceased's estate; (Section 10f)
- the insured property is owned by a trust; (Section 10g)
- the insured property is a unit title development; (Section 10h)
- the insured property is a leasehold property; (Section 10i)
- the insured property is Māori freehold land with multiple owners; (Section 10j)

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

Section 10m addresses the position should there be a dispute over who is to receive an EQC claim settlement.

Decision-makers dealing with different exposures must liaise

In cases where the EQC claim has a residential land exposure, the Insurer must liaise with EQC as to:

- identifying the person or persons with whom the EQC claim may be settled; and
- where there is more than one such person, deciding with whom the various EQC claim exposures will be settled.

b. Insurable interests

It is important to determine who has an “insurable interest” in the insured property for two reasons.

One reason is that EQC (or the Insurer as EQC’s agent) 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 3b, for an EQC claim to be valid, the person giving notice of the natural disaster damage must:

- be the “insured person” under the contract of fire insurance for the property concerned; (see Section 3bi) 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 EQC 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

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 EQC claim;

the EQC claim should normally be settled with the insured person.

But if there is more than one person with the insurable interest, then EQC (or the Insurer acting on EQC's behalf) must have due regard to the "respective insurable interests" of those persons.

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.

Persons 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;
- 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. EQC claims where there has been an assignment

There are a number of situations where an EQC 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 EQC claim. If EQC (or the Insurer, as EQC’s agent) receives clear written evidence of the assignment, the EQC 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 EQC (or the Insurer, as EQC’s agent) 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 EQC (or the Insurer as EQC’s agent) to deal with and to settle the EQC 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 10cii below. But sometimes a customer will attempt to assign their EQC 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 10ciii below.

Transfer of ownership of insured property does not of itself also assign an EQC 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 EQC 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 EQC 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 10ciii);

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 10ciii);

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

EQC (or the Insurer, as EQC's agent) 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 Insurer 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 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 EQC 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 EQC 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 the most influential.

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, EQC will need clear written instructions from the original claimant directing EQC (or the Insurer as EQC's agent) 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 EQC 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 are different, an explanation for this discrepancy. (See Section 3b 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 EQC claim;
- a relationship property agreement may include an assignment of an EQC 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 EQC 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 EQC 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) must be escalated to EQC.

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 EQC 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.

v. Can an assignment improve a claim?

No.

Assigning a claim does not fix any existing problems with an EQC claim. So for example, if notice of the EQC claim was made out of time, the assignment of the claim to another party will not make the claim valid. 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 EQC 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 Insurer 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 EQC claim?

Subject to any mortgagee waiver (see Section 10d), a mortgagee will usually have a prior claim over money to be paid in settlement of an EQC claim.

However, where for example, a property has been sold, it is usual for the prior mortgage to be discharged before or when the EQC claim is assigned to the purchaser. An historical search of the Certificate of Title will confirm whether this has occurred.

If the mortgage prior to the assignment of the EQC claim remains on the Certificate of Title, then the matter must be escalated to EQC.

viii. Assignments can create particular privacy concerns

Sometimes privacy concerns may arise about what EQC (or the Insurer on EQC's behalf) can tell an assignee about the original claim.

Where it is necessary to use earlier information relating to the claim in order to resolve the claim (or a subsequent claim) it is likely that that information can be shared with the assignee. However, it is necessary to proceed with caution, bearing in mind the requirements of the Privacy Act 1993.

Any sensitive cases must be escalated to EQC.

d. Mortgages

Where there is a mortgage over the insured property, the mortgagee will have an insurable interest in the property. Accordingly, EQC (or the Insurer as EQC's agent) must have due regard to that insurable interest in the insured property when settling the EQC claim.

i. When is the mortgagee entitled to the EQC claim payment?

For the purpose of settling claims, EQC assumes that any mortgage on the title includes a condition that has the effect of assigning the EQC claim proceeds for the residential building and residential land claims to the mortgagee. However, mortgagees can waive their entitlement to receive the EQC proceeds and agree that the EQC proceeds may instead be paid to the owner.

In practice, most major lenders have supplied EQC with a waiver, referred to as the "mortgagee cap". The mortgagee cap lets EQC pay claims up to a certain amount directly to the owner and not to the mortgagee.

If the amount of the EQC 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 EQC.

EQC will let each Insurer know details of:

- the mortgagee cap applicable at the time of the relevant natural disaster event under the relevant Insurer MOU;
- in the case of a sequence of multiple natural disaster events under the relevant Insurer MOU, the mortgagee cap(s) applicable across the sequence.

ii. What if payment(s) have already been made to the EQC customer in respect of the same EQC claim?

Sometimes EQC and/or the Insurer will have already made payments to the customer in respect of the same claim (e.g. by the Insurer, for urgent works under the residential building exposure, or by EQC, 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, the Insurer and EQC must liaise on whether the mortgagee cap applies.

Example

An EQC customer has made a claim for damage as the direct result of the 14 November 2016 earthquake. There is a mortgage on the Certificate of Title to the property. The mortgagee has a mortgagee cap of \$25,000.

EQC has previously made a payment of \$10,000 for the residential land exposure for the 14 November 2016 earthquake. This payment was made to the EQC customer because it was under the mortgagee cap.

However, the Insurer now needs to make a payment of \$20,000 for the EQC residential building exposure for the 14 November 2016 earthquake.

The current payment (the \$20,000) when added to the previous payment (\$10,000) will push the 14 November 2016 claim over the mortgagee cap of \$25,000. The Insurer 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 EQC, the mortgagee will not have provided EQC with any waiver. In this case there is no waiver and so the mortgagee will generally be entitled to get the EQC proceeds, unless the mortgagee agrees otherwise.

In this situation, the Insurer (on EQC's behalf) will need to contact the mortgagee to ask for:

- details about how the EQC claim proceeds should be paid to the mortgagee; or
- a waiver so that the payment can be sent to the EQC customer.

The Insurer must establish contact directly with the mortgagee and not through the EQC customer, unless it proves impossible to make contact with the mortgagee.

If the mortgagee is willing to provide a waiver, the matter must be escalated to EQC, which will deal with the necessary waiver documentation.

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 EQC claim can be settled with the company.

i. What happens where a company with an EQC 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, EQC may settle a company's EQC 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 EQC claim proceeds to the particular account.

It is also necessary to look at the Companies Office website (www.companiesoffice.govt.nz/companies) in relation to the relevant company name to check:

- whether the company has been put into voluntary receivership/administration/liquidation;
- that the notice of appointment of receiver/ administrator/liquidator is there;

- that the name on the notice matches the name of the person holding themselves out to be the receiver/ administrator/liquidator; and
- the date on which the appointment was made.

ii. What happens where a company has been removed from the Companies Register?

A company can be removed from the Companies Register for many reasons, including not paying the required fees to the Companies Office or having ceased carrying on business.

Part 17, Companies Act 1993

Where:

- a company owned the insured property at the date that that property suffered natural disaster damage; and
- the company has since been removed from the Companies Register;

the right to any proceeds from outstanding EQC claims may ultimately vest with the Crown.

Section 324, Companies Act 1993

However, before paying any proceeds to the Crown, the Insurer (on EQC's behalf) must consider three questions:

- Did the company assign the EQC claim before it was removed from the Companies Register?
- Can the company be restored in 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?

The Insurer must confirm with the former directors that the company did not make any arrangements before being struck off to assign the benefit of the EQC claims (either by way of deed of assignment or through other documentation). If the company did make such arrangements, then after receiving supporting documents, the Insurer (on EQC's behalf) 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 EQC 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?

The former directors or shareholders can be asked to consider applying 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 the former directors or shareholders proceed with this option, it will be necessary to wait to see if the Companies Office restores the company to the Register before settling the EQC claim with the company.

Does anyone else have an insurable interest in the damaged property?

The struck-off 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. One example of this might be where the shareholders are also the directors, and they were living in the company-owned property (which is subject to a claim) at the time of the natural disaster that caused the damage.

However, on the other hand, it would not usually be appropriate to settle the claim with a party that has a relatively minor insurable interest, as this would not be showing “due regard” to respective insurable interests.

Before settlement is completed with any party other than the company or valid assignee, the matter must be escalated to EQC.

The last option – paying the unclaimed money to The Treasury

Where the above options have been considered but none can proceed, the EQC claim payment due to the company that has been struck off may instead be paid to The Treasury, which receives the EQC claim proceeds on behalf of the Crown.

Any proposed payment of EQC claim proceeds to The Treasury must be escalated to EQC.

f. Deceased estates

Where a person with an insurable interest in an EQC 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 EQC claim is made before the deceased died, who inherits the EQC claim?

If the deceased had a valid will, the EQC 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 EQC 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 and hold the assets that were owned by the deceased. In most cases, an EQC 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 EQC 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 EQC 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 persons 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 EQC claim?

Unless there is information to the contrary:

- an EQC 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; and
- an EQC claim relating to personal property will be transferred to the person entitled to that personal property. Again, that person may be the executor or a beneficiary.

Should the Insurer (on EQC’s behalf) deal with the executor or with the beneficiaries who get the property under the will or the rules of intestacy?

Whether the Insurer should deal only with the executor, or whether it should deal directly with the intended recipient of the benefit of the EQC claim, will depend on where the administration of the estate is up to. Generally the Insurer 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 EQC (or the Insurer as EQC’s agent) 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 EQC claim to the beneficiaries of the estate?

If the EQC 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, the Insurer 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 EQC claim after the deceased died?

The way the insured property was owned by a person affects who owns the property (and the EQC 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 vests 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 EQC claim may be settled with the executor of the estate; or
- on the executor's direction, the EQC 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 EQC claim is settled. If the executor gives notice to EQC that the benefit of the EQC claim has been transferred or vested in the beneficiaries, EQC may then deal directly with the beneficiaries.

In any event, EQC (or the Insurer as EQC's agent) 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 Certificate of Title. The survivor becomes the individual who is likely to have had the insurable interest at the time of loss. On that basis, the EQC 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 EQC claim, it is necessary to check whether EQC (or the Insurer on EQC's behalf) is 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 EQC 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 EQC claim was to be treated. In these cases, the matter must be escalated to EQC.

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 EQC 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 EQC 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 must be escalated to EQC.

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 EQC 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 Certificate 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 EQC 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 Certificate 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.

What if there is no probate or letters of administration because of the low value of the estate?

If:

- no probate has been granted;
- no administrator has been appointed; and
- probate is not otherwise required;

it is necessary to obtain a copy of the death certificate and a letter from the lawyer acting for the person claiming an entitlement to the EQC claim. That letter addressed to EQC (or to the Insurer as EQC's agent) would need to confirm that:

- there is an entitlement to apply for probate/letters of administration; but
- no application has been made due to the low monetary value of the estate.

This situation will only arise in relation to personal property claims, as probate or letters of administration must be obtained in relation to interests in land.

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 his or her 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 EQC claim, then the matter must be escalated to EQC.

g. Trusts

i. Settlement by payment to a trust

If settlement is by way of payment, there are two ways that EQC 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 strongly preferable that the Insurer (as EQC's agent) only acts 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 must be escalated to EQC.

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 Certificate 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 critical to the validity of the EQC claim (see Section 3b of the Manual); and/or
- confirm that the Trust name reconciles with the name of the bank account.

But the Certificate 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 EQC 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 (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
- The nature of the damage suffered: Damage that overlaps individual units and/or common property or other shared components of the residential building may raise difficult issues about appropriate repair strategies and correct payees; or
- There are mortgagees who have insurable interests: The Unit Titles Act 2010 generally requires money paid under a principal insurance policy to be applied towards reinstatement of the unit title development. Where this happens, a mortgagee is not entitled to demand that any of this money is paid or applied toward repayment of the mortgage debt.

In any of these cases, the issue must be escalated to EQC.

ii. What about the situation where there are separate insured personal property?

Often the personal property will be insured by the unitholder. In this case the personal property exposure must be settled with the unitholder, assuming all other requirements under the EQC Act are met.

iii. 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 EQC claim has been made by the owner, a DOA will be relevant to the EQC 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 EQC claim will be settled with the body corporate and the new owner of a unit will benefit as determined by the body corporate.

iv. Further guidance

EQC will issue more detailed guidance from time to time on settlements of EQC claims involving unit title developments.

i. Leasehold properties

i. Who has an insurable interest in the leased property?

Due regard must be had to all the “insurable interests” in the insured property when settling the EQC claim.

Where a property is leased, mostly both the lessor and lessee will have an insurable interest in the parts of the property that are leased.

In the case of a ground lease, generally both the lessor and lessee will have an insurable interest in the land. However, in most cases only the lessee will have an insurable interest in the buildings. That is because the lessee effectively owns the buildings and 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 – must 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. EQC does not treat the lessor as having an insurable interest in the leased property in this situation.

ii. Can a lease operate to assign the EQC proceeds to the lessor?

Sometimes the terms of a lease will operate to assign the EQC 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 EQC insurance 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 EQC claim proceeds must also go to the lessor.

Section 31 EQC Act

If the EQC proceeds have been assigned to the lessor, the EQC proceeds should be paid to the lessor, assuming all other requirements under the EQC Act are met. In this case, all persons having insurable interests must be advised that the proposal is to proceed in that manner (and why). Those persons 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 EQC 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 EQC proceeds should be paid out?

If the lease does not assign the EQC proceeds to any particular person, and the lessor and lessee can't agree on who should be paid the EQC proceeds, there are various options, including:

- where the damaged property can be repaired, 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 might make one of the parties (often the lessee) liable to keep the property in good condition and repair;
- 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 EQC proceeds accordingly.

Before adopting one of these options or another option, the proposal for settlement must be escalated to EQC.

iv. Cross-lease properties

EQC will issue more detailed guidance from time to time on settlements involving cross-lease properties.

j. Māori land interests

For some EQC claims the Certificate 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 Certificate of Title), and settling these EQC 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 EQC settlement proceeds will be paid.

If the property is owned by more people than the Insurer (as EQC's agent) can reasonably get agreement or obtain a payment authority from, another approach will need to be considered. This approach may involve deciding to pay the settlement proceeds to one (or only a few) of the owners.

In order to determine how to proceed, it will be necessary to obtain the following information:

- who were the primary residents of the residential building at the date of loss? How long have they been living there? Did they have a licence to occupy?
- are there written agreements establishing who is entitled to the benefit of the property and who is responsible for its maintenance? who has taken out the contract of fire insurance in respect of the residential building?
- who is intending to repair the property once the settlement proceeds have been paid?
- who is claiming the right to the settlement proceeds? Are there conflicting claims?
- is ownership of the residential building any different from ownership of the underlying land? For example, is there a particular person who has built the residential building (with their own money) on Māori freehold land that is collectively owned by a wider range of people?

Once this information is obtained, the claim must be escalated to EQC.

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 EQC claim. Most commonly, issues will arise over the parties' shared home.

i. What happens where only one party is the owner on the Certificate of Title and is noted on the insurance certificate?

If one party alone holds the Certificate of Title and the insurance on the property at the time of the natural disaster damage, the EQC claim will ordinarily be settled with that party alone. However, if before the claim is settled, EQC (or the Insurer, as agent for EQC) becomes 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 EQC claim proceeds (for example, a relationship property order).

ii. What if both parties are owners on the Certificate of Title and are noted on the insurance certificate?

If, at the time of the natural disaster damage, both parties are owners on the Certificate 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 EQC claim.

Ideally, the individuals involved will agree to have the EQC 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 EQC 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 EQC claims

Ideally, if there is a relationship property agreement, it will record the parties' agreed intentions as to what is to happen to the EQC 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 EQC 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 EQC claim(s).

iv. What if the relationship property agreement is silent about the EQC claim?

Sometimes the relationship property agreement is silent about what is to happen about an EQC 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 EQC 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 EQC claim is to be treated. Ideally, the individuals involved would agree to have the EQC 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 EQC 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 EQC claim, the matter must be escalated to EQC.

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 Certificate of Title.

The mortgagee may have made it a term of the loan that they receive any proceeds from any existing EQC 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 Certificate of Title of the property

Other forms of registered interests on the Certificate of Title may indicate that a person has an insurable interest in the property. EQC (or the Insurer as EQC's agent) must have due regard to that insurable interest in the insured property when settling the EQC residential building claim.

We have already mentioned some registered interests above (e.g. mortgagees, leases).

Some other interests are itemised below.

i. Caveats

If a caveat appears on the Certificate 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 EQC claim proceeds, then the caveat can be ignored.

If however the caveat protects an interest that could affect the payment of the EQC claim proceeds, for example a mortgage that predates the natural disaster damage, then EQC (or the Insurer, as EQC's agent) 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 EQC claim proceeds are to be paid, the matter must be escalated to EQC.

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 Certificate 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 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 EQC 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 EQC proceeds paid into a solicitor's trust account, leaving the parties and their advisers to determine entitlement to the EQC proceeds.

If there is a dispute about who is entitled to the proceeds of the EQC claim, the matter must be escalated to EQC.

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 EQC claim.

iv. Family benefit charges

A family benefit charge is effectively a statutory mortgage in favour of (usually) the Housing New Zealand Corporation (HNZC). 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 HNZC any EQC claim proceeds in respect of the mortgaged property.

A family benefit charge is treated as though it were a mortgage to HNZC. However, the charges are generally very old, and so are likely to have been repaid. It is therefore necessary to check with HNZC 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 Certificate of Title that are not covered by this Manual. Where an Insurer is in uncertain as to whether any particular registered interest gives rise to an insurable interest, the matter must be escalated to EQC.

m. What if there is a dispute over who is to receive the EQC claim settlement?

If there is a dispute over who is to receive the EQC claim settlement and the matter cannot be resolved with the claimants directly, the matter must be escalated to EQC.

11. How should the claim be closed?

12. Other matters

APPENDICES

Appendix 1

How is the cash settlement of an EQC claim communicated?

Overview

The purpose of the communication of the cash settlement of an EQC claim (managed by the Insurer on EQC's behalf) is to clearly inform the person whose claim is being cash settled (*the recipient*) of the following:

- that the Insurer on behalf of EQC has completed assessing the natural disaster damage;
- how the settlement amount of the EQC claim has been calculated;
- how the settlement amount is being paid;
- the possible consequences for future EQC insurance of not using the settlement amount for the purpose of repair or replacement;
- how the recipient can obtain further information.

Section A requirements

To this end, the minimum requirements set out in Section A of this Appendix must be addressed in the settlement communication provided by the Insurer when communicating the cash settlement of an EQC claim.

EQC does not prescribe any particular form of the communication. However the communication must meet the requirements in Section A and be consistent with them throughout.

The communication may be:

- in two communications (one covering the EQC claim and one covering the Insurer claim); 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, EQC does not prescribe any particular form of words.

Section B suggestions

Section B of this Appendix sets out some suggested items for the settlement communication. While EQC would urge Insurers to consider including these items in the settlement communications, these are not required.

Communications must be approved by EQC

All settlement communications must be pre-approved.

EQC 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 claim and the residential building needs to be reassessed because that repair strategy has failed or otherwise. Additional matters will need to be addressed in communications of settlements following such assessments.

A. Requirements for cash settlement communications from Insurers about EQC settlements

1. *Make plain that the Insurer is acting in an agency role in assessing and settling the EQC claim in accordance with the EQC Act*

The communication must make plain that the EQC claim (as distinct from the Insurer claim):

- is being managed by the Insurer on behalf of EQC; and
- is being assessed and settled by the Insurer in accordance with the EQC Act.

The Insurer's role as EQC's agent must be made plain whether or not the amount of the damage exceeds the EQC cap.

Example

[Name of Insurer] is acting on behalf of EQC to assess and settle your EQC claim for residential building and contents damage in accordance with the Earthquake Commission Act 1993.

2. *Set out the claim number for the EQC 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 EQC claim

This will be a number allocated by EQC.

ii. The property where the natural disaster damage occurred

Even where the EQC claim is for personal property only, the address will be relevant – given that the “personal property” covered is defined in section 2(1) of the EQC Act to be usually in or on a residential building.

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”. Where the “event” has different types of natural disasters during the 48 hour period (e.g. earthquake and storm) the claim and the settlement communications should be escalated to EQC.

Example

Dear [],

Your claim(s): []

Damage address: []

Natural disaster event(s): []

[Text of letter commences here ...]

3. Make plain whether the settlement covers the residential building, personal property or both

The communication must make plain whether it covers:

- the EQC residential building exposure;
- the EQC personal property exposure; or
- both the EQC residential building and EQC personal property exposures.

Example

On EQC’s behalf, we are settling your EQC claim for the earthquake damage to your [residential building] [contents] [residential building and contents]. [Delete the two options that do not apply]

4. Make plain that any residential land exposure is being dealt with by EQC

The communication must also state that any residential land exposure is being dealt with separately by EQC.

The communication must not make any comment about how any residential land exposure will be dealt with or suggest any relationship between any residential land exposure and any residential building exposure.

Example

If you have a residential land claim, EQC will be in touch with you separately (if they have not already been) regarding the assessment and settlement of your land claim.

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

Before settlement, the Insurer must have completed an assessment of:

- whether the residential building and/or personal property has incurred natural disaster damage; and
- if so, the amount of that natural disaster damage.

This must be confirmed in the communication.

Example

We have now completed the assessment of the earthquake damage to your residential building [and contents].

6. Itemise separately the damaged property that pertains to the EQC claim and provide a separate costing for those items

The communication must set out what damaged items pertain to the EQC claim and the costings for the repair or replacement of that damage to the relevant standards under the EQC Act. These items must be shown separately from items that pertain exclusively to the Insurer claim (e.g. fences, swimming pools, paving).

Example

Enclosed is a scope of works that relates to your EQC residential building 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 EQC settlement where earthquake damaged property potentially contains asbestos

The communication must address the situation where the earthquake damaged property (under the EQC claim) potentially contains asbestos. The communication must explain how the costs cover asbestos testing, and the position should the test be positive.

Example

Asbestos testing [delete whole section if not applicable]

A cost allowance is included in your EQC 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

8. Include supporting documentation from professional advisers who have been involved in the assessment

Reports that have been commissioned by Insurers from engineers, surveyors and other professionals in the assessment of the EQC claim must be included in the communication.

Example

Enclosed with this letter are some documents to explain how we calculated your EQC claim settlement amount. These documents are: [Delete as applicable]

- *Engineer's report*
- *Surveyor's report*
- *Architect's report*

9. Itemise for each EQC claim the total amount payable for the residential building damage and/or personal property damage (with a breakdown to explain the total amount payable)

The communication must set out for each valid EQC claim:

- the total amount of the damage for the residential building exposure; and
- the total amount of the damage for the personal property exposure.

These amounts will not exceed the relevant caps under the EQC Act.

These amounts should be GST inclusive (if any).

The amount deducted for the excess(es) calculated under the EQC Act must be shown separately.

Any previous payments made in respect of an EQC claim must be itemised separately.

An example for a single EQC claim is set out immediately below.

Example for single EQC claim

<i>Item</i>	<i>Amount</i>	<i>Excess deducted*</i>	<i>Less payments already made**</i>	<i>Balance</i>
<i>Residential building</i>	\$	\$	\$	\$
<i>Contents</i>	\$	\$	\$	\$
<i>Total payment incl GST (if any)</i>				\$

* **Residential building** - The excess deducted per EQC claim for a residential building is \$200 multiplied by the number of dwellings in the residential building or 1% of the amount payable, whichever is greater.

Residential building and contents - For excess purposes, EQC treats residential building damage and contents damage as part of the same EQC claim where:

- the contents are in or on the same residential building; and
- the damage is caused by the same natural disaster.

In these cases, the excess deducted per EQC claim is the greater of:

- \$200 multiplied by the number of dwellings in the residential building; or
- 1% of the total amount payable for the residential building damage and the contents damage.

Contents - For contents only EQC claims, the excess is \$200 per claim.

** This amount will include the cost of urgent works (if any) already paid or reimbursed by us to you. Any other prior payments (e.g. interim payments) will also be included here. Any prior payments are net of any excess deducted at the time that the prior payment was made.

Urgent works

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

Sometimes the EQC customer will need to get urgent help from a tradesperson to carry out some urgent repairs of natural disaster damage. For example, the EQC customer may need to get essential services like toilets and water systems up and running (if possible) or otherwise get work done to make the residential building safe, sanitary, secure and weathertight.

The EQC customer may have sent invoices (or receipts) from these tradespersons to the Insurer. The Insurer 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 by the Insurer to the customer will depend on there first being a valid claim for that damage in accordance with the EQC Act. See Section 3.

EQC does not anticipate that the Insurer would pay the tradesperson direct for urgent works, except in exceptional circumstances.

Where urgent works have already been paid for or reimbursed by the Insurer 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 the Insurer to the EQC customer:

- **Step 1:** - The full cost of the urgent works *already paid or reimbursed by the Insurer to the EQC customer* should be included for the purposes of calculating whether the EQC residential building settlement is under or over EQC cap.

For example, the Insurer pays or reimburses the customer for the cost of the urgent works. The Insurer then later assesses (under the same claim) 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 EQC cap has been reached;

- **Step 2:** - The “Amount” inserted in Column 2 of the table above (for residential building) is the lesser of:
 - the amount calculated under Step 1 by adding together the full cost of the urgent works and the full cost of the other repairs; or
 - the EQC cap. See Section 9 regarding the amount of the EQC 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 isn’t deducted twice.

The resulting balance – once the amount in Columns 3 and 4 are deducted – is the payment in respect of the residential building exposure. That “Balance” is inserted in Column 5. See the equation below:

	Amount in Column 2
minus	Excess in Column 3
minus	Amount in Column 4
Equals	Balance in Column 5

The above example assumes that there are no other payments in respect of the claim (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 the Insurer

If, at the time of settlement, the Insurer has *not* already paid for or reimbursed the cost of the urgent works:

- 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 EQC claims where multiple but separately insured natural disaster events have caused damage to the residential building and/or personal property. See Section 7C.

In the case of multiple claims we suggest separate tables for each EQC claim.

10. Set out how the EQC claim settlement payment will be made

The communication must set out that the EQC settlement is a cash settlement and the mode of payment. For more detail on payments to mortgagees and persons other than the customer, see Item 11 below.

Example

Payment paid to mortgagee

Your cumulative cash payments for your EQC 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 EQC settlement amount has been electronically transferred to the bank account [insert account name here].

Payment by cheque

The payment cheque for your EQC settlement amount will be sent separately to this letter.

[Delete the two options above that do not apply]

11. Identify to whom the payment will be made

In most cases the settlement amount will be paid to:

- the insured person (the person entitled to the benefit of the contract of fire insurance); (see Section 3bi) or
- the mortgagee.

Mortgagees

Payment should be made to a mortgagee where the EQC threshold is met.

The EQC threshold applies across the total of the residential land and the residential building exposures. Accordingly the Insurer must liaise with EQC on this aspect before making the settlement payment.

An example of a paragraph setting out payment to a mortgagee is set out under Item 10 above.

Other persons with insurable interests

The Insurer must have regard to persons 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 3bii)

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.

12. Set out the possible consequences for future EQC insurance of not using the settlement payment for the purpose of repair or replacement

EQC has a discretion to cancel cover and decline cover in some instances where the settlement payment is not used to carry out the repair or replacement.

The communication must set out the possible consequences if the payment is not used for the purpose of repair or replacement.

Example

It is important that the EQC settlement payment is used for the purpose of repair or replacement of damaged property. In some circumstances, any future EQC claims may be affected if your EQC settlement payment is not used for this purpose.

It is strongly recommended that you proceed with your repair or replacement promptly to minimise the risk of inflation increasing the cost of your repair or replacement.

13. No full and final discharge required

EQC settlements are not full and final and recipients should not be required to enter into any form of full and final discharge.

14. 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 EQC claim.

Example

For further information about the assessment and settlement of your EQC claim, you can contact us by email on [] or call [].

B. Suggestions for cash settlement communications from Insurers about EQC settlements

The following items are suggested but not required.

1. Set out an acknowledgement regarding accuracy of information provided in support of the EQC claim

The communication may include a record of the recipient's agreement that the information they have provided in support of the EQC claim 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 EQC 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) has prepared a guide for homeowners rebuilding after the Kaikoura earthquake. Insurers who have entered into MOUs that cover that earthquake may wish to refer to this guide to the settlement communication for the EQC claim. EQC considers this guide may be helpful for recipients.

Example

The Ministry of Business, Innovation and Employment (MBIE) has prepared a guide which is designed to help you plan and manage the rebuild and repair of your home. You can find the guide "Rebuild with confidence - A guide for homeowners rebuilding after the Hurunui/Kaikoura Earthquake" on the MBIE website at www.building.govt.nz/getting-started/your-rights-and-obligations/homeowner-rights-and-obligations/rebuild-with-confidence/.