

Briefing

To the Associate Minister of Finance – Hon David Seymour

Natural Hazards Commission Toka Tū Ake: further recommendations on the Crown's On-sold programme

Date	11 September 2024	
Reference Number	NHC 24-25 007	
NHC Priority	High	
Confidentiality Classification	UNCLASSIFIED	
Ministerial Action Sought	<p>Associate Minister of Finance (Hon David Seymour)</p> <p>Action sought:</p> <p>Note this briefing supplements Treasury Report 2024/2358</p> <p>Agree to changes to the Crown's On-sold programme sought by Natural Hazards Commission Toka Tū Ake</p> <p>Deadline: 23 September 2024 (alongside T2024/2358)</p>	
Natural Hazards Commission Contact	<p>Tina Mitchell Chief Executive Officer s9(2)(a)</p>	<p>Michala Beacham Chief Strategy Officer s9(2)(a) Primary contact: ✓</p>
Enclosures	Nil	

Briefing

Introduction

1. In July 2024, the Treasury recommended that you commission advice from the Natural Hazards Commission (NHC) on changes that could be made to the Crown On-sold programme ('the programme') either operationally or requiring direction from the Crown, to manage the costs and duration of the programme (T2024/1497).
2. The NHC Board discussed the programme in August 2024 and agreed a package of operational solutions. The Board also agreed recommended amendments to the programme's Services Agreement to manage costs and duration. These are summarised in Appendix One.
3. The Treasury considered the Board's decisions as part of developing the advice provided to you on 6 September 2024 (T2024/2358). Treasury also identified issues that were more operational and therefore appropriate for NHC to advise you on directly:
 - introducing additional pre-settlement time limits for applicants to provide the information NHC considers necessary to reach a settlement
 - limiting pre-construction project management costs that are met by the programme to a reasonable level.
4. This briefing provides that supplementary advice, prepared by NHC in consultation with Treasury officials. Treasury supports NHC's recommendations and has provided a comment at paragraph 35.

NHC's focus is to either settle or exit 320 applications yet to progress to settlement and construction

5. Of approximately 1500 eligible applicants participating in the programme, 829 applicants (over half of eligible applicants) have completed the programme and are now back in their home with reinstatement complete.
6. A further 300 applicants have signed a settlement agreement and are actively in design, consent or construction phases. While these applicants are still to complete construction, NHC's experience is this cohort generally make timely progress as they have obligations to builders and other third parties.

7. This leaves approximately 320 applications that have not reached a settlement¹. There are several key challenges we are facing to progress and settle these applications, which are discussed below.
8. Ministers have sought advice from NHC on where the Crown can assist to support the delivery of the programme. NHC believes the most impactful changes Ministers can make are to support NHC to resolve (i.e. settle, or exit) this cohort of 320 applications still to settle.
9. We do not discuss applicants who are seeking repair costs beyond 1.5 times capital value, as this cohort is fully covered by Treasury's advice.

Disputes over scope of repair or repair strategy

10. To limit legal risk, and because applicants are required to undertake the repairs, the programme was designed on the basis that the applicant would drive the process to reach a settlement and repair their property. This includes engaging their own experts to assess damage from the Canterbury Earthquake Sequence, identify the repairs required and propose costings.
11. NHC, on behalf of the Crown, verifies the information provided by applicants and their experts to ensure it is robust, consistent with the programme, and that costings are reasonable. Our checks are completed by engineering and quantity surveying professionals with long standing experience in Canterbury earthquake claims. This forms the basis of the Crown ex-gratia payment offered in a draft deed of settlement.
12. Challenges arise when NHC queries whether all the damage listed in a scope of works was caused by the Canterbury Earthquake Sequence or considers a different, more cost-effective repair strategy could be used.

Behaviours of advocates engaging on applicants' behalf

13. Some applicants engage advocates or project managers to help them navigate the programme. Advocates often have extensive experience working with insurance issues following the Canterbury earthquakes and can seek to challenge steps in the settlement process in a way they perceive as maximising benefits for their clients. We

¹ There were 320 pre-settlement applications at 30 August 2024. This has decreased from the 369 pre-settlement applications cited in the Treasury Report T2024/2358, which refers to the 30 June programme valuation.

have also observed this approach across our remaining Canterbury claims and to some extent, in response to severe weather events of 2022 and 2023².

14. There are two main areas of challenge – disputing NHC’s assessment of reasonable costs and/or disputing NHC’s ability to set timeframes for process steps where those timeframes are not specified in the Services Agreement. For example, NHC may apply a timeframe for an applicant to provide missing information to help us verify asserted earthquake damage, to facilitate a review by Engineering New Zealand (when conflicting expert reports are an issue), or to sign a settlement agreement.
15. Of the 320 applications still to reach a settlement, we estimate approximately 100 have stalled due to disputes involving an advocate and relating to NHC’s assessment of reasonable costs or ability to enforce timeframes.
16. s9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Proposal – NHC recommends additional timeframes in the Services Agreement

17. To assist with these challenges, Treasury recommended two new timeframes are added to the Services Agreement in its advice to you on 6 September 2024 (T2024/2358):
 - 30 working days for applicants to sign a settlement agreement, from the date of NHC issuing an offer.
 - 6 months from the date of settlement for applicants to commence construction.
18. NHC supports the Treasury’s recommendation and recommends adding two further operational timeframes to the Services Agreement to expedite the pre-settlement phase of the programme.

² In 2020 the *Public Inquiry into the Earthquake Commission* recommended the government considers regulation of insurance advocates to provide assurance and clarity for claimants and to avoid predatory behaviour (recommendation 8.1.3). The Ministry of Business, Innovation and Employment considered this recommendation and concluded regulation was not justified (the issue falls within the Commerce and Consumer Affairs portfolio, which includes regulation of insurance and financial advice).

19. By way of background, in 2020 NHC requested a timeframe of five months be added to the Services Agreement to expedite applications through to the settlement stage. However, that timeframe was not practicable during the years of Covid disruption when construction boomed in Canterbury and applicants could not access experts to provide reports or builders to start construction. It also became apparent that some applicants lacked experience in this type of repairs process and needed additional support. s9(2)(j)

20. In late 2023, NHC communicated to 191 applicants that they must provide the necessary information or exit the programme. As a result of this communication:

- 33 applicants provided all information
- 150 applicants provided some information
- 8 applicants did not provide any information and have been exited from the programme.

21. NHC continues to engage regularly with each applicant in this cohort and to set timeframes for information or activity. This engagement has delivered mixed results, for example some applicants are insisting the information they have already provided is sufficient for NHC to rely on in making a settlement offer.

NHC seeks additional support for managing the 150 applications where more information is needed to progress to a settlement

22. Of the 320 applications still to settle, around 150 require more information from the applicant for NHC to prepare a settlement offer. NHC is seeking additional pre-settlement timeframes in the Services Agreement to manage these applications (**option A**). The proposed timeframes are:

- 4 weeks (20 working days) to provide any remaining evidence of EQ damage and the extent of that damage
- 8 weeks (40 working days) to provide any remaining information on repair strategy and costings.

23. The proposed timeframes are based on NHC's experience of a reasonable period for the applicant to engage a suitable expert (such as engineer or builder) to prepare the information required. They take into account the context that these applicants have already been actively engaging experts and NHC has already been communicating the

information still outstanding. NHC would strictly apply these timeframes and indicate to applicants that no extensions will be provided.

24. The table below shows the impact of proposed timeframes on remaining applicants.

Category of applicants	Intended impact of proposal
Applicants who have provided some, but not all the necessary information to NHC	Receive 4 additional weeks (from date Services Agreement amended) to provide any remaining evidence of EQ damage Receive 8 additional weeks to provide remaining information on repair strategy and costings
Applicants who have not yet settled for another reason, such as seeking settlement above 1.5 times Capital Value	Applicant would receive the proposed time if NHC needed to request further information
Applicants who have provided necessary information and action is now with NHC	Applicant would receive the proposed time if NHC needed to request further information
Applicants who NHC exited from programme for not complying with 5-month deadline for providing information	No impact – applicants who did not engage with the initial timeframe should not be granted more time
Applicants who have been issued a settlement offer but not yet signed	No impact – settlement offer was prepared based on sufficient information received by NHC
Applicants who have already signed a settlement agreement	No impact – settlement already reached and agreed based on information provided

25. Alternatively, you may decide that NHC should manage these applicants operationally by issuing offers based on information provided to date and if this is not possible, exiting applicants for non-compliance with the Services Agreement (**option B**). This option is the status quo.

26. Under option B, NHC would request outstanding information from each applicant, due within a number of weeks. s9(2)(j)

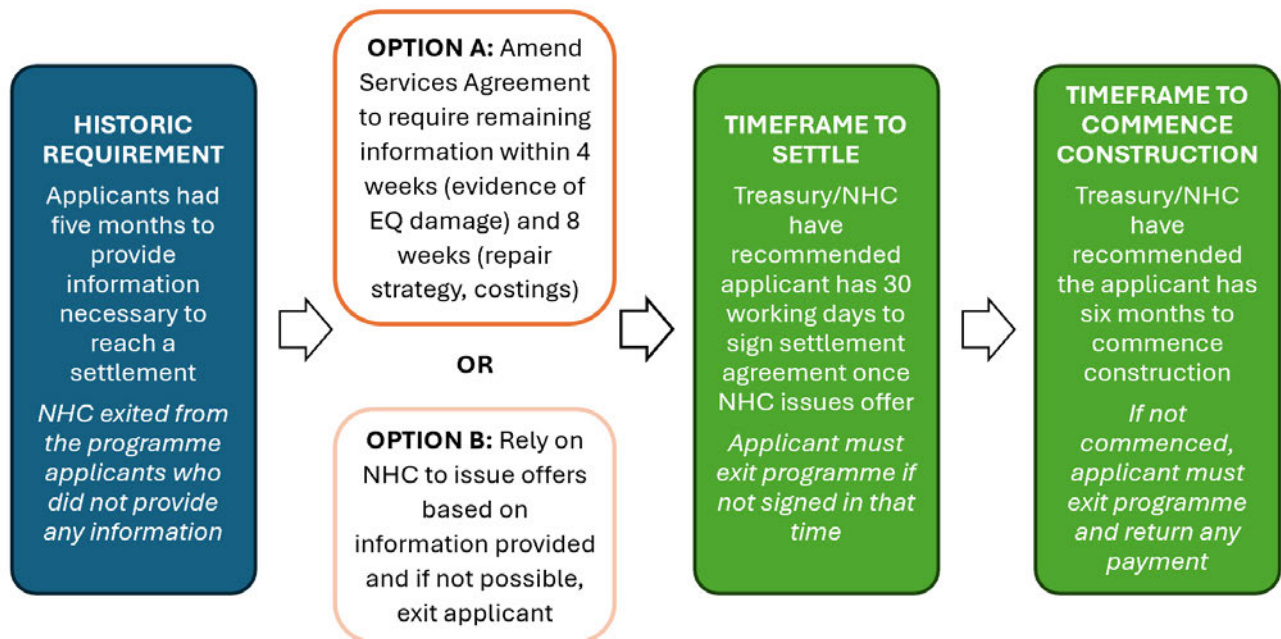
[REDACTED]

27. The table below compares the high-level impacts of both options. The key benefit of Option A is certainty for applicants and NHC, which we expect will support a more streamlined process and certainty of costs.

Expected impacts	Option A Additional timeframes in Services Agreement (NHC preferred)	Option B Rely on NHC to manage operationally (status quo)
Programme duration	<p>One off extension of time is added to the current duration</p> <p>NHC time and resources to manage applicants on a case-by-case basis is reduced, streamlining overall programme</p>	<p>Avoids explicitly providing for more time in programme</p> <p>May not assist with managing programme duration s9(2)(j)</p>
Cost/cost certainty	<p>Better quality information from those who do settle, improves certainty of costs under the programme</p>	<p>Settlement offers may be prepared based on incomplete information and/or have low likelihood of being accepted</p>
Applicant experience	<p>Transparent – reset for NHC, applicants and advocates with clear expectations from the Crown on what is required when</p> <p>s9(2)(j)</p>	<p>Risk of confusion around why and how NHC is now enforcing time limits</p> <p>Applicants who genuinely hoped to settle under the programme likely to be disappointed to lose the option</p> <p>s9(2)(g)(i)</p>
Resource required to implement	<p>Requires some Treasury and NHC resource to amend Services Agreement, but this will already be required to implement any other Ministerial amendments</p>	<p>Requires more NHC effort to follow up information from each applicant</p> <p>Likely to drive sharp increase in correspondence with Minister and NHC which will require response</p>

28. The process diagram below shows that the additional timeframes sought by NHC are intended to complement and ensure the success of the timeframes proposed by Treasury in its advice to you.

How the decision sought in this briefing fits with timeframes already recommended by Treasury



Proposal - NHC recommends limiting pre-construction project management costs met by the programme

29. Under the Services Agreement, NHC has discretion to determine when and how the programme will meet applicants' costs of participating in the programme. Given the insight that some applicants needed further support (noted above), NHC has allowed for project management costs. This has included some of the costs incurred by advocates engaging with NHC and other parties on the applicant's behalf and reviewing documents and communications, as discussed at paras 13 to 16 above.

30. s9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The Crown also already funds certain support services through the New Zealand Claims Resolution Service, which applicants can access to help them navigate the programme.

31. Imposing a reasonable limit on project management costs covered by the programme would increase assurance to Ministers that the Crown is only paying for support services that offer a reasonable benefit to applicants. It would also incentivise advocates to help the applicant reach a settlement in a timelier manner.

32. We propose that the limit is set at 4 percent of the value of the ex gratia payment, which could be communicated in dollar terms as usually falling within \$13,000 to \$30,000. s9(2)(g)(i)

The limit would not constrain who the applicant chooses to act on their behalf, but if their preferred provider charges more than the limit, the applicant will need to fund the additional cost.

33. NHC considered whether to instead propose setting a hard dollar limit (e.g. \$20,000). NHC would prefer to maintain some flexibility as different properties have different complexities, which can reasonably require more, or less, project management.

34. As an alternative, NHC could limit the costs of advocates directly and operationally.

s9(2)(g)(i)

If you agree that these costs should be limited under the programme, we recommend you agree to impose the limit through the Services Agreement. This would establish clear expectations and minimise administrative effort required by NHC on escalations and distractions.

Treasury comment

35. Treasury **supports** NHC's proposal to introduce new timeframes in the Services Agreement for applicants who have partially complied with information requests—20 working days for evidence of damage and 40 working days for repair strategy and costing (Option A). These deadlines will improve efficiency, reduce case-by-case management, and help manage programme duration by minimising delays.

36. s9(2)(g)(i)

To mitigate this, ministers should agree clear conditions for the exercise of any discretion in the Services Agreement and monitor the performance of the programme closely.

37. While the current approach (Option B) allows flexibility for managing applicants individually, it risks perpetuating inefficiencies, prolonging case management, increasing operational costs, and decreasing the predictability of programme outcomes.

38. Treasury also **supports** capping pre-construction project management costs at 4 percent of the ex-gratia payment, which will prevent excessive fees, encourage quicker settlements, and reduce unnecessary costs for the Crown.

39. Treasury believes these measures (additional timeframes (Option A) and cost limits) align with the Crown's goals of streamlining the programme and ensuring transparency for all applicants.
40. To ensure effective implementation of the amended measures, Treasury proposes an enhanced monitoring approach to oversee the programme's performance. This framework will further track settlement progress, cost management, adherence to deadlines, operational efficiency, risk mitigation, and resource allocation. Regular reporting and reviews will ensure the programme aligns with the Crown's goals of timely resolution, cost control, and transparency.
41. The reporting section of the Services Agreement (Schedule 4) will require changes to reflect the new reporting obligations. The Treasury will maintain collaboration with NHC to ensure the implementation of these requirements.

Next steps

42. NHC is continuing to engage frequently with all applicants one on one. We are also preparing to implement your decisions on the programme and have established a programme board of senior leaders to coordinate decisions, resources, communications and stakeholder engagement. This will support a specific intervention to reset expectations for applicants, project managers and advocates.
43. We are also engaging with Treasury to ensure we are meeting their expectations for reporting and monitoring of the programme.

Recommended Action

The Natural Hazards Commission Toka Tū Ake recommends that you:

1. Note this briefing supplements Treasury's advice in Treasury Report 2024/2358	Noted
2. Agree that applicants who have provided some but not all information required by NHC under the Services Agreement should be provided with a further: - 20 working days to provide remaining evidence of damage from the Canterbury Earthquake Sequence and - 40 working days to provide any remaining repair strategy and costing information, s9(2)(j) (NHC recommend, Treasury support)	Agree / Disagree

<p style="text-align: center;">OR</p> <p>3. Agree that NHC should manage applicants who have provided some but not all information required under the Services Agreement operationally, s9(2)(j) [REDACTED] [REDACTED] [REDACTED] (NHC do not recommend)</p>	Agree / Disagree
<p>4. Agree to limit the amount of pre-construction project-management costs that NHC may meet under the programme to 4% of the ex gratia payment (Treasury support)</p>	Agree / Disagree
<p>5. Direct the Treasury and NHC to work together to draft amendments to the Services Agreement that implement your decisions at 2 to 4.</p>	Yes / No
<p>Indicate if you wish the Commission to elaborate on any of the above.</p>	Yes / No

s9(2)(a)

Tina Mitchell
Chief Executive Officer

Signature

Hon David Seymour
Associate Minister of Finance

Date

Appendix One: Summary of solutions identified by NHC to better manage programme cost and duration

Programme stage	NHC solution/proposed solution	Next step
Pre-settlement	Final opportunity to submit remaining information Amend the Services Agreement to provide, for applicants who have provided some but not all information required to reach a settlement: <ul style="list-style-type: none"> 20 working days for applicants to provide any remaining evidence of EQ damage and the extent of such damage 40 working days for applicants to provide any remaining information on repair strategy and costings 	Minister's decision sought in NHC briefing 24-25 007
	Reasonable limit on pre-settlement project management costs met by programme Amend the Services Agreement to limit pre-settlement project management costs covered by the programme to 4% of the settlement amount.	Minister's decision sought in NHC briefing 24-25 007
	Close non-engaged applications Consistently exit applicants who are not engaged despite regular contact from NHC	Operational, NHC implementing
	Consistent use of external technical review Refer technical disputes between NHC and applicant on extent of damage or scope of works to Engineering NZ	Operational, NHC implementing
Settlement	Limit settlements to 1.5 times Capital Value across programme	Minister's decisions sought in Treasury Report 2024-2358
	Move to full and final settlements Amend the Services Agreement to remove variations and replace with full and final settlements that include a 10% contingency.	Minister's decision sought in Treasury Report 2024-2358
	Services Agreement to require applicant to sign settlement agreement within 30 working days From date of offer, if not met NHC will exit the applicant (with discretion to extend for exceptional circumstances)	Minister's decisions sought in Treasury Report 2024-2358
Construction	Services Agreement to require applicant to commence construction within 130 working days (6 months) From date of settlement, if not met NHC will exit the applicant and require payment to be returned (with discretion to extend for exceptional circumstances)	Minister's decisions sought in Treasury Report 2024-2358
	Revise tranche payment structure To reduce the size of the first payment, which currently provides incidental financial benefits and can motivate delays	Operational, NHC implementing