

# Summary of Major Points of Interest from MAS Meeting

*Rydges Hotel, November 5 2014*

*Please note this is an analytical summary of the meeting; see the attached Appendices for written material from MAS (Richard Tyler, Martin Stokes), BECA (Gerard Lieshout), Andrew Horne and Peter Whiteside QC, as well as written responses to the 50+ questions submitted in advance. InsuranceWatch thanks Lyndal Preston of MAS for very prompt supply of the MAS and BECA notes; Peter Whiteside QC likewise.*

*All material in italics (excepting this paragraph) are direct quotes taken from the identified supplied material in the Addresses, the written Q&A, or from the recording of the meeting itself; see the Appendices for further discussion and/or context.*

*Any other related material will be made available on the <http://InsuranceWatch.org.nz> website.*

***For advice on specific cases and situations, consult appropriate professional advisors.***

Approximately 180 people attended the meeting; 26 apologies were received.

## Speaking:

David Stringer, InsuranceWatch; intro and chairing

Peter Whiteside QC, Insurance Watch; address

Andrew Horne, Minter Ellison Rudd Watts (MAS advisor); address

Dr Richard Tyler, Chair, MAS Board of Directors; address and Q&A

Martin Stokes, CEO MAS; address and Q&A

Gerard Lieshout, BECA PMP, Project Director, Q&A

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27,000 members, founded in 1921; registered as a company; insurance arm (Medical Insurance Society Limited) rated A-/Stable (Standard & Poor's)

## Constitution filed at:

<http://www.business.govt.nz/companies/app/service/services/documents/81AFD39CE3D9CB4789C8568F74C2C2FA>

## Board Members

Lindsay Knowles, Auckland/Havelock North

Katie Ayers, Hamilton

Frank Frizelle, Christchurch

Harley Aish, Auckland

Helen Rodenburg, Wgtn

Craig Thompson, Wgtn

Alastair Hercus, Wgtn

Danielle Dinsdale, Waipukurau

Howard Clentworth (listed on website, as former director on company register)

John Isles, Wgtn (listed on website, as former director on company register)

As directors, their contact details can be found on the Companies' register here:

<http://www.business.govt.nz/companies/app/ui/pages/companies/27063/directors>

For further information: <http://InsuranceWatch.org.nz>

# Analysis and Commentary

*It is staggering to hear some of the issues that you have raised tonight...and we will be certainly following them up (Tyler, Q02:55:59).*

## Basic Numbers

As of the end of September 2014, MAS has had 3,072 claims relating to one or more of the earthquakes; *a lot of these were relatively small* (Stokes, Address). Figures below supplied by MAS.

### Repairs

As of the end of October 2014:

300 repair properties registered in the MAS/BECA programme, of which:  
122 have been completed and closed  
29 in cash settlement discussion

Leaving 149 still open, of which:  
57 in scoping or detailed design  
47 in procurement  
45 in construction

### Rebuilds

As of the end of October 2014:

126 rebuild properties registered in the MAS/BECA programme, of which:  
102 have been completed and closed  
24 are in cash settlement discussion

Leaving 20 still open, of which:  
10 in scoping or detailed design  
2 in procurement  
8 in construction

### Other factors

- early success due to focus on readily resolvable claims/issues (resolved smaller claims and easier issues on flat stable land; now has to deal with top-end and hills)
- MAS has a significant number of high-end, architecturally designed homes rather than group housing; an average rebuild exceeding \$1.1 million, average repair over \$600,000
- The cost of repairs and rebuilds are over twice the industry average (Stokes, Q55)
- MAS has significant exposure on TC3 land (as a percentage of business); a straw poll at the meeting indicated one-third of attendees were on TC3 land
- MAS has significant exposure on hills; a straw poll at the meeting indicated one-third of attendees were zoned on the hills
- In a typical year, MAS would replace 2-3 houses; they have had to do 50 years of work in one year (Tyler, Q2:55:05)

While a completion target of year-end 2014 was announced last year, *a more realistic timeframe would see over 95% of claims closed by the end of 2015* (Stokes, Q6); that is, 95% of the remaining 169 claims currently open.

Comparison: AMI/SR has provided the most extensive data relating to repair and rebuild figures and where they were in the process, regularly publishing such material online.

## MAS Finances

*We are absolutely confident that MAS can and will pay every unresolved claim (Tyler, Address).*

Every claim has an individual provision assigned to it; a risk margin of 75% level of sufficiency had been added to the aggregate provision of all losses (a requirement of the Reserve Bank). These have been reflected in MAS accounting and, as of Sept 30, the solvency margin has been assessed at 215% of the required level (cf Tower 129%; IAG 130%, AA 141%, Vero 154%, FMG 211%; Stokes Q9).

The additional risk margin out to the end of the programme has been estimated to be \$21.5 million and has been taken through the MAS accounts (Stokes, Q28). MAS holds catastrophe cover of up to \$320 million for its estimated maximum probable loss (a significant seismic event in Wellington), which could well be the most conservative reinsurance position in the country (Stokes, Q10). MAS operating divisions are expected to be financially independent.

MAS has a panel of 23 reinsurers, the lowest rated being A- with 82% rated A+ or above. Reinsurers include large operations such as Swiss Re, Hannover Re and Gen Re. The April 1 2014 reinsurance treaty renewal was around 190% over-subscribed. Since 1 July 2011, MAS house insurance in Christchurch has grown 21% compared to a national growth rate of 13%.

## MAS Policy

*..MAS will cover the cost of rebuilding or restoring the dwelling to a condition substantially the same as the condition when new, so far as modern materials allow, and including any additional costs which may be necessary to comply with any statutory requirements or Territorial Authority by-laws. There is no maximum sum insured but the liability of MAS shall not be greater than the reasonable cost to rebuild or restore the dwelling based on a floor area no greater than that declared in the application and specified in the Schedule.*

GoldShield Policy Wording

<https://www.mas.co.nz/includes/fetch.aspx?id=2382>

The Gold Shield policy is a payment policy, where MAS covers the costs of rebuild/repair as above (provided they are reasonable and do not exceed the building area stated in the policy schedule); or a cash settlement for indemnity value if the owner elects not to rebuild/repair. The latter is not the same situation as a cash settlement at full replacement value (Horne).

*The policy does not provide for the insurer to pay a third party for the replacement or repair of the dwelling that has been destroyed or damaged. An option for reinstatement is available to an insurer only if expressly given by the contract of insurance. This insurer has no right under the Gold Shield policy to be involved in the replacement or repair of any dwelling. (Whiteside) The policy covers an obligation to pay, not an obligation to manage the actual repair or rebuild (Stokes, Q7).*

There appears to have been some misunderstanding regarding the degree of project management which MAS was taking responsibility for and the way in which this was communicated to members (Q02:20:22).

It was noted that the policy covers the costs of the rebuild/repair, not the estimated costs (Horne), which has implications for the timing and level of payment, particularly in cases where the work has not begun. That said, MAS has, in some cases, paid a lump sum based on estimated costs, but the policy does not oblige the society to do so.

*The policy wording is available to all lead consultants* (Stokes, Q42). Concerns regarding this should be directed to MAS.

Comparison: Unlike other insurers, there is a single MAS policy covering all members (cf IAG had 85 different policies in place in February 2011). MAS is one of the few insurers remaining who continue to provide full replacement domestic cover to almost all members nationwide, and are supported by their reinsurers in doing so (Stokes, Q12).

Some individual cover will be based on sum insured for *certain types of risk and risk location regardless of where they are in the country* (Stokes, Q22). This will be determined on a case by case basis (Stokes, Q01:10:27).

Eg properties of a certain age or construction, on certain slopes etc (Stokes, Q01:07:41)

In some new rebuilds MAS has asked for valuations or, more commonly, actual build costs in order to be able to estimate its risk exposure to future events (Q21). MAS would consider paying for such valuations if required, on a case by case basis (Stokes, Q01:09:03).

Unlike most insurers, MAS allows the member to identify and choose their preferred lead consultant, though this apparent protection has resulted in some problems (see Procurement section below).

In all cases, regardless of insurer, it is vital that the member/client carefully read their policy and any documents provided by their insurer to gain as much understanding as possible regarding what is – and is not – covered by their policy.

### **Premium Rebates (Q20)**

When asked if it would consider rebates on premiums relating to houses waiting on repair, MAS acknowledged that *we need to look into this suggestion* (Stokes, Q20), but added that this would have to be handled on a case-by-case basis.

MAS has provided rebates in cases of total loss. Members who have not been provided a rebate under such circumstances should contact MAS.

Comparison: In 2012 AMI/SR clients could qualify for a 50% premium reduction backdated to Sept 5 2010, if the property was over cap or uninhabitable. State has been automatically providing back-dated rebates for rebuild properties once they are confirmed as a rebuild.

### **Stress Payments (Q23)**

Comparison: other insurers have paid stress payments to clients who have suffered from systemic process delays or unintended consequences; some of these have been as a result of policy (eg IAG policies had an automatic \$1,000 stress payment), others have made discretionary payments regardless of whether it was in the policy or not.

MAS has not made any such payments, but does provide three free sessions in a confidential and free support counselling programme, as part of membership benefits. (Contact no: 0800 327 669). This has been in place since after the first earthquake as an extension of a previous service. MAS has been *very surprised by the very low uptake* of the service (Stokes, Q01:11:46).

When asked specifically if MAS would consider such payments on a case-by-case basis, Martin Stokes said yes (Stokes, Q01:12:48).

## Accommodation Allowance

The policy cover for temporary accommodation for over-cap claims is limited to \$25,000 or 12 months, whichever comes first. MAS agrees that *the accommodation limits have proven to be inadequate* (Stokes, Q47); the revised policy has seen this upped to \$50,000 as of 1 April 2014 as part of extensive policy changes, but this will not be applied retroactively.

MAS has paid approximately \$45-48 million *outside reinsurance treaty arrangements, and there is not an endless supply* (Stokes, Q02:51:07).

Comparison: other insurers have assessed on a case-by-case basis on merits and applied additional payouts accordingly (eg when there have been delays in demolition or issues not under the control of the owner)

MAS has sometimes paid the accommodation allowance as a lump sum, sometimes on receipt of tenancy agreements. Members should discuss any issues with MAS.

Lead consultants are expected to advise owners when to vacate their homes. *This should be just prior to work commencing on site and when all documentation is complete* (Stokes, Q47). MAS noted that some members had chosen to leave early.

There was no allowance in the policy for under-cap claims (Stokes, Q53). *The Board decided to provide an allowance of up to \$1,000 per week for a maximum of eight weeks for members with an under cap claim* (Stokes, Q53).

Members can apply for this if they have an under-cap claim and need to vacate the house.

Further information available here:

[https://mas.co.nz/Membership+/MAS+news/Canterbury+earthquake+information/MAS\\_temporary\\_accommodation\\_assistance.htm](https://mas.co.nz/Membership+/MAS+news/Canterbury+earthquake+information/MAS_temporary_accommodation_assistance.htm)

A claims form is available on the MAS website:

<https://mas.co.nz/includes/fetch.aspx?id=2195>

A related FAQ:

<https://mas.co.nz/includes/fetch.aspx?id=2196>

Other information can be seen on the MAS website, by following the links:

Membership -> MAS News -> Canterbury Earthquake Information

## Communications

### The Board

*At each Board meeting, the Board receives comprehensive monthly reports on progress with the MAS earthquake programme. Reports include analysis of progress for both rebuilds and reinstatements through each of the key programme phases such as detailed design, procurement and consenting. (Tyler; Address)*

Comparison: Other insurers have been doing this for a number of years – Southern Response having exceptionally comprehensive figures publicly available -- and it has helped reassure clients and relieve some uncertainties. Given that the Board receives this information, it would be advisable for MAS to include such data in member newsletters or online, or to provide updates further to the ones currently available (last published August 2013).

*The Board is well aware of a number of members' dissatisfaction with the progress or the proposed resolution of their claims (Tyler, Q2).*

If the situation is as well-managed as proposed by the Board and management, the members were wondering why the statistics/presentation do not appear to reflect the level of dissatisfaction (Q02:22:23). They also expressed support for releasing figures indicating the level of litigation.

*...we would have been better to provide more regular updates about the progress and potentially to provide a document that generically describes the assessment process, the repair or reinstatement process as well. (Stokes; Q00:48:11)*

Documents have been made available from time to time online; the most recent update (as of the time of the meeting) is dated August 2013 and all updates are available here:  
<https://www.mas.co.nz/Membership+/MAS+news/Canterbury+earthquake+information/>

MAS decided last year to stop providing general updates as it considered each claim had got to the point of having its own circumstances, and generalised updates were becoming too challenging. They are *very happy* to reinstate a regular general programme update (Stokes, Q50).

A straw poll of the meeting showed strong support for better, more detailed communications on the part of MAS, both Board and management.

Members wish to see the member-centred process reinstated to rebuild confidence in MAS. This was diagrammed in the MAS Earthquake Reinstatement Programme progress, Oct 2012:  
<https://mas.co.nz/includes/fetch.aspx?id=2056>

### MAS/BECA Operations

Members expressed significant concerns regarding communication difficulties with representatives from MAS and/or BECA, citing long delays and unacknowledged communications through to inappropriate or unprofessional behaviour. Earthquake issue resolution generally involves significant levels of stress and distress, which can be exacerbated by communication difficulties, under-trained or inexperienced staff, or unrealistic client expectations. All parties need to take this into account.

Concerns raised about overt hostility shown by MAS representatives, such as legal representatives, were acknowledged at the meeting (Q5); other complaints, including ones raised formally with MAS, about aggressive, threatening or intimidating behaviour raised have not had

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acknowledgement or resolution (Q02:34:15). A straw poll of the meeting indicated around half had experienced unprofessional behaviour on the part of BECA staff (Q02:35:39), and this was described as “endemic” (Q02:39:01).

In regards to the behaviour of legal representatives, MAS did not regard a firm response and setting time limits for responses as unprofessional, but did acknowledge that *some things could and perhaps should have been expressed in less assertive terms* (Stokes). MAS is modifying the tone and content of its letters (Stokes, Q02:37:20).

One member noted they had been told explicitly by MAS staff that they were the only people with problems and was startled to find so many people at the meeting (Q02:21:09).

Comparison: Other insurers have enabled their clients to change case managers, which has provided relief in cases of inter-personal conflict or problems with work loads or capabilities; it has also contributed to greater understanding by clients and a better image for the insurer involved. It is unclear whether MAS has the ability to do this, but it could well be advisable as it would also help expedite process; as a large organisation, BECA should have resources to ensure that any personnel log-jams can be dealt with.

Members would be advised to document all communications, noting time, subject, parties involved and any promised outcomes or actions. If taking a phone call, make notes and send a response email soon afterwards citing what was discussed, understandings and expectations so that there is a running record; misunderstandings can be addressed; and expectations/assumptions made clear for both parties. Include actions taken/to be taken, by when, by whom. If recording an interaction in any form, note that this is being undertaken before proceeding.

Comparison: The Board of Southern Response commissioned KPMG to provide an external audit of their PMO Arrow International covering performance and value for money; this was considered a valuable, worthwhile exercise. When asked, the MAS Chair indicated the Board would be willing to consider such a review (Tyler; Q01: 31:44).

BECA has conducted its own internal audits and reinsurance audits have been undertaken during the term of the programme (Stokes, Q37). MAS is committed to BECA and would not consider any alternative programme manager (Stokes, Q31). BECA was chosen as offering centralised reporting and data management, consistency in damage assessment and QS service that was immediately available (Stokes, Q30).

One of BECA's *key performance indicators is the timely completion of each claim* (Stokes, Q38). Release of data indicating the times taken for each claim to progress through the various stages would be helpful in demonstrating to members that these KPIs are being adequately met.

MAS regularly tracks BECA's contact frequency with members to monitor progress (Stokes Q38). A significant number of attendees voiced concerns about delays and lack of follow-up from both BECA and MAS personnel. Lead consultants were mentioned a number of times as sources for delays due to workload or limited capacity (eg Tyler Q39).

Release of the general tracking data relating to progress and delays could demonstrate where such delays are occurring and identify areas that need addressing. Members may also wish to provide the Board with their own records regarding communication timelines and delay points.

In the interest of transparency, members should have full access to their files.

## EQC Issues

A straw poll of the meeting attendees showed 20 people identifying as under-cap, though surrounded by over-cap properties. In one case (Q02:39:37) a property had been assessed early on by MAS as over \$400K but it has taken over two years to be acknowledged as over-cap by EQC. MAS will undertake to review cases and advocate with EQC where members have reason to believe they are over-cap (Stokes, Q02:15.16); members should contact MAS regarding this.

MAS has received 30 new over-cap claims from EQC in the year to date, including multi-unit buildings, some reassessments and some newly costed claims by EQR that have gone over-cap. Of these, 15 claims have been assessed at \$3.1 million; the remainder are awaiting scopes by EQC. (Stokes, Q17)

Concerns were raised regarding MAS's apparent inaction in pushing for over-cap EQC claims to be recognised. MAS needs EQC to declare the claim over-cap otherwise it risks forfeiting recovery of funds from EQC. MAS has undertaken approximately 110-130 joint reviews with EQC regarding potential over-cap claims, two-thirds of these are now in the programme (Stokes, Q48; Q02:14:08). It may be helpful for MAS to more clearly communicate with members where such claims are being held by EQC and identify measures are being undertaken on their behalf.

Approximately half of the active claims will need to have a Deed of Assignment (Stokes Q51). This covers cases where MAS is paying the cost of enhanced foundations and if the external works include repairing pathways, driveways, swimming pools, tennis courts or retaining walls (Stokes Q51).

MAS will *only be looking to offset the actual incurred costs of mitigating land damage and any surplus payments from EQC land payments can be retained by the owner* (Stokes, Q51). Where the land compensation does not cover such additional costs, MAS will negotiate directly with EQC and will not seek contributions from the owner.

Comparisons: other insurers have very proactively addressed the issue of under-cap properties likely to go over cap with 6,500 shifted, undertaking their own assessments etc. Southern Response have a 95% success rate in getting reviewed claims shifted from EQC; IAG around 90%; Vero approximately 80%.

## Process

Good faith provisions cut both ways: MAS must act fairly by approving reasonable claims for rebuild/repair costs within a reasonable time; members must act reasonably and cooperatively to avoid undue delays. This implies the need for good faith responses to challenges from either party.

The process below is a generalised one, as many factors can affect the process, including whether the property is a rebuild or repair, but the same general principles should follow.

Comparison: Most insurers have provided clients with charts or diagrams listing the various phases in the process, what and who is involved, and even with rough timelines for each step.

- **Assessment**

Preliminary assessment

Rebuild or repair determination (may change on further assessment)

- **Scoping**

Completion of a scope of damage, with reviews and amendments

- **Design**

Concept design phase for rebuilds, starting with high level design, including profiles and elevations, floor areas etc.

Compared to insured property and policy cover

Detailed design, covering fittings, finishes etc.

Geotechnical assessment if necessary

Reinstatement documentation

- **Procurement**

Consenting process

Preconstruction documentation

Costings and Tendering: tender documentation sent out by lead consultants

Offer approval from MAS; lead consultant seeks approval from member

Letter of Acceptance sent to successful builder

Contract documentation compiled by lead consultant, signed by builder, member, MAS

Pre-construction payment to member

Builders are asked to submit a competitive price and these are reviewed by the lead consultant and BECA for final selection; engagement of the builder is undertaken by the member.

- **Construction**

All detailed design work is completed by this stage.

Construction payments on invoicing

## Issues Arising

### Disputed Costings

MAS expects to pay what is *fair and reasonable within the bounds of the policy* (Tyler; Address).

Significant differences of opinion have arisen over what may be regarded as fair and reasonable, and the implications for costings of rebuild/repairs, and approaches to repair or rebuild. These differences have been attributed variously to:

- Disagreements over appropriate materials/standards, particularly where sub-standard/low-cost materials is used to replace previous materials (eg replacing double-brick with timber and hardboard, reducing the price by 30%, Q02:21:38)
- Failure to match like-with-like where such matching is possible (eg replacing rimu with MDF)
- Difficulties in matching where comparable replacement is not possible (eg replacing specific heritage elements)
- Variable and/or undeclared contingency allowances
- Extensive betterment or additional work (Q28)
- Differences in opinions over levels of betterment and what counts as insured/uninsured betterment (see section below addressing this issue specifically)
- Changes to specifications and/or recommended approaches:
  - by BECA personnel apparently based on cost factors
  - by members including non-insured items
  - by lead consultants or engineers allegedly proposing solutions beyond what is covered in the policy, MBIE guidelines, the Building Act 2004, or a level of future-proofing beyond what is required not consistent with similar properties with similar damage (Stokes, Q01:21:38; Lieshout Q34, 43)
- Identification of pre-existing defects in parts of the house which are not earthquake damaged (Lieshout Q43) or repairs relating to deferred maintenance
- Land-related issues
- Selective use of MBIE guidelines to support BECA decisions (Q02:10:25); a straw poll indicated around 10 people had experienced this issue

MAS has cited the positive benefit of members having the ability to choose their preferred lead consultant (Stokes, Address) as a means of ensuring quality of work is driven by the owner, not the insurer or PMO. However, disputes over costings, standards and materials between consultants and, for the most part, BECA have largely negated this otherwise positive-sounding approach. In addition, members have expressed concern over their professional advisors having their recommendations countermanded without adequate explanation or professional justification.

BECA believes it is *broadly accurate* in its assessments and costings when these are compared to third-party estimates based on similar scopes, citing problems with third-party estimates that exceed the scope, the proposed repair methodology or the policy cover (Lieshout, Q34).

To address the issues identified above, it would help to provide detailed information for comparative purposes and, where possible, ensure that tenders use the same specifications so that materials, standards etc are clearly established and addressed and any differences can be clearly identified.

It would also help credibility to provide some case studies showing where and how such differences have arisen and where these have been resolved satisfactorily; or where BECA's challenges to recommendations by architects or engineers have been upheld. MAS has, on occasion, used alternative specialists to provide advice (Lieshout, Q02:06:20) which suggests that such challenges have been addressed and could provide case study material.

The relevant qualifications of personnel involved in such disputes should be clearly identified, as this has been cause for concern, and it would help to clarify whether professional boundaries are being over-stepped or where additional expertise has been involved, such as:

where it appears that QS personnel are making decisions on engineering matters or are questioning engineering approaches later shown to be correct (Q02:09:13);  
where BECA make decisions without reference to the lead consultant (Q2:05:37).

Reviews of disputed costings and interpretations ideally should be carried out by an independent third-party to allay concerns about contractor capture, inappropriate over-rulings by unqualified personnel and/or incorrect member assumptions. This would be a prudent step, ultimately reducing costs and delays on both sides, and ensuring that the desire to meet *fair and reasonable costs* is achieved to both parties' satisfaction.

In cases where members have sought independent reports for QS and MAS has subsequently found that report to be *of use*, MAS *will then consider the payment of it on a case-by-case basis* (Stokes, Q46). Members should refer such cases to MAS.

## **Pre-Construction Payments**

Where there is a difference between a MAS/BECA estimation and that of an independent advisor, after tendering MAS will make an up-front payment of their estimated amount to the member, prior to work commencing; this is a pre-construction payment. *This is not a full and final settlement and we are not asking members to accept it as such* (Tyler; Address).

Members were concerned that money was arriving in their bank accounts from MAS without any indication as to what it related to. Without any formal explanation available, members were under the assumption that they would have to fight for further payments; in some cases it appears these were being regarded, or possibly even declared erroneously as full and final settlements.

Such concerns may have been exacerbated by the “pre-construction payments” being referred to sometimes as “settlement payments” (Stokes, Q7), without any clarification that they were interim only. MAS acknowledges that misunderstandings have occurred and apologises for any resulting confusion (Stokes, Q7).

MAS intended these pre-construction payments to represent an upfront lump sum based on the known costs of repair as per the tender document. *In some cases we are prepared to make this payment on an estimate* (Stokes; Address). While recognising that almost every claim is different, it would be helpful if MAS could spell out what would be the common features in such cases of payment on estimate so that members could see if this was a channel worth pursuing.

It appears that some members have received indications, verbally or in writing, that the payment to them was considered full and final while costs remained in dispute, work remained to be done, builders remained to be paid etc. This should be brought to the attention of MAS for explanation or amendment.

MAS reiterated that any payments into accounts should not be regarded as full and final settlements, unless such had been agreed upon by the member (Tyler, Stokes; Address). It will look at individual situations (Stokes, Q02:20:25).

MAS will *continue to accept responsibility for additional costs assessed as necessary and reasonable to repair the earthquake-related damage* (Stokes; Address) beyond the initial amount paid out provided they are covered under the policy, assessed and inspected.

*We will continue to cover the residual risk that costs covered by the policy are higher than expected unless the levels of betterment or design changes mean the project is no longer substantially the same.* (Tyler; Address)

Comparison: Surprise payments are not uncommon -- EQC makes unannounced payments into accounts, later following them up (in some cases weeks later) with correspondence noting that they are not to be considered full and final until any disputes are resolved and all parts of the claim/s are considered settled.

## **Builder/Supplier Issues**

MAS stated that they would expect the member *to be satisfied with the quality of work completed before payment to the builders for each phase of work* (Tyler; Address). This may provide an opportunity to provide pertinent feedback regarding concerns about quality or choice of materials, though not an ideal point at which to be able to do so (see comments in above regarding agreement on materials/standards etc).

MAS has committed to *make certain that we have building inspectors available to assess such variations and our own team will also be available to meet you and your design team on-site and answer any questions you may have* (Stokes; Address).

Members have been concerned that builders have walked off the job because of lack of or long delays in payment or in providing contracts. In response, MAS said that it prides itself on paying builders and suppliers *for works that have been approved and invoiced correctly within 1-2 days of receiving a recommendation for the release of funds by BECA* (Stokes, Q33), as required by the Construction Contracts Act. However, the process for handling this has a number of stages which are potentially vulnerable to delays, and is as follows:

- Builder submits payment claim to lead consultant for approval
- Lead consultant checks for appropriate amount reflecting work undertaken
- Lead consultant issues a draft payment certificate for review by member and BECA
- Payment certificate is finalised
- Invoice issued to MAS
- BECA recommends the release of funds
- Payment made within 1-2 days

Given the relatively small number of remaining cases to be dealt with, it should be reasonably easy to track the timelines for these various phases and make that available to clearly identify where delays are occurring. The same holds for communications between lead consultants and MAS/BECA, and members and MAS/BECA.

Members are advised to seek any legal advice on the terms of the contract early in the process, rather than just prior to signing. *From our perspective it would be preferred if this advice is sought during the tender process because the terms of the contract are part of the Tender Documentation the lead consultants send to the builders* (Lieshout, Q44).

Cash settlements during or after the tender phase has led to some concern. Some members felt pressured to take a cash settlement based on the tender price; others noted that builders were unhappy with having incurred costs to tender and then having the job go to a cash settlement, with reports that there was reluctance to deal further with BECA as a result.

MAS noted that some members have chosen to cash-settle prior to committing to the acceptance of a tender. *In this situation we would ask the member to reimburse the preferred builder for their time. If the member does not do this, then MAS will likely pay some or all of the tender costs as a measure of good faith to the builder so that they tender for other projects on our programme* (Stokes, Q41).

### **Betterment: when is an upgrade not an upgrade?**

Not strictly a process step per se, identification of the elements of betterment and how they relate to insured and non-insured items appear to be an important part of addressing design, procurement and construction issues

*The significant ongoing costs of managing and separating the costs of the changes and upgrades during design and construction led us to make an operational policy change last year regarding the extent of changes and upgrade in project that we are prepared to directly manage. In general, where the value of changes or upgrades included in your reinstatement is more than 10% of the value of work required to repair the earthquake-related damage, or the changes complicate the completion of the earthquake repairs because the design no longer meets the cover provided by the policy of 'a condition substantially the same as new', we have made a cash payment of the earthquake-related portion of the claim either by way of a full and final cash payment in agreement with you or by way of a pre-construction payment.* (Stokes; Address)

This 10% figure has been a cause for some confusion, but relates to the policy that a managed reinstatement project will not proceed *where the amount of betterment exceeds 10% of the value of the reinstatement work* (Stokes, Q26). This policy has been tightened over time which may have contributed to the impression that people dealt with early on got a better deal from MAS than those going through the process now (Q02:24:08).

*We've tried to strike a balance I think between what's reasonable and wanting to allow flexibility to do something slightly different but not to see the project effectively blow out to something that's clearly significantly different and more complex than a simple replacement of what was there before* (Stokes, Q01:14:46).

Confusion may have arisen due to varying uses of the term betterment (Horne), exacerbated by changes in policy over time which has seen reduced flexibility in this area (Stokes, Q01:15:13).

**insured betterment:** covered under the new-for-old policy, where the policy allows for a replacement of the same size, style and standard involving improvements in terms of modern materials, responses to changes to legislation/building standards (eg double-glazing, required minimum insulation) etc

**uninsured betterment:** works not covered by the policy or undertaken as part of reinstatement; additions or improvements desired by the client (eg additions, changes to floor plans); or defects requiring repair which do not result from an earthquake, including pre-existing defects or issues arising as a result of deferred maintenance in areas of the dwelling unaffected by the earthquakes

See MAS discussion of betterment:

<https://mas.co.nz/Membership+/MAS+news/Canterbury+earthquake+information/Terminology.htm>

See July 2013 Update for discussion of betterment:

[https://mas.co.nz/Membership+/MAS+news/Canterbury+earthquake+information/Christchurch\\_earthquake\\_newsletter\\_47.htm](https://mas.co.nz/Membership+/MAS+news/Canterbury+earthquake+information/Christchurch_earthquake_newsletter_47.htm)

Variations (ie alterations to the scope of works by way of addition, substitution or omission) are covered under contingency aspects and would be covered by MAS if earthquake-related damage and covered by the policy.

Members had examples of items being classed as “betterment”, without further identification as to whether these were insured or uninsured; or where it appears that such modifications were being treated incorrectly as uninsured betterment. There appeared to be considerable delays in gaining identification of betterment issues and associated costings, leading to uncertainty and delays in proceeding, or last-minute disputes regarding the valuation of the betterment portion.

Cited examples of items being questioned as uninsured betterment:

- double-glazing replacing single glazing
- steel framing required for an approved house design
- a Type 2A foundation required based on geotech assessment on TC3 land

Comparison: *If your engineers propose an alternative foundation solution that would reinstate the dwelling to a better condition than substantially the same as new, this would be deemed betterment* (Lieshout, Q45) NB applied where the foundation *needs* to be replaced; Lieshout Q01:44:23. Southern Response treats Type 2A foundations as required, not as betterment.

Specific examples of these should be directed to Gerard Lieshout and/or Martin Stokes for clarification.

Clear identification of uninsured vs insured betterment in documentation and by MAS/BECA staff, both in general in specific cases, is desirable to provide greater understanding, avoid inappropriate assumptions/expectations, and ensure that betterment is being treated appropriately by all parties.

The housing stock amongst this group tends to be very high end. There are common concerns that equivalently high standards are not being proffered in rebuild/repair solutions (leading to the use of the term “worsement”). This needs to be addressed by ensuring such standards are clearly being met or explaining necessary variations on more than a cost basis.

MAS notes that *separating betterment costs from earthquake repair costs has been difficult and costly* and that this has contributed to increased project management costs (Stokes, Q26), as a result of:

- Managing and separating changes and upgrades during design and construction
- Delays in drawing up such changes
- Additional costs for lead consultants
- Associated disputes

Comparison: Lumley and Southern Response have also had problems with the issue of betterment, as they set out to provide up to 30% betterment which raised expectations too high; the bar has since dropped. InsuranceWatch has previously recommended that clients avoid any retrofitting as part of reinstatement but leave it for later to avoid delays and wrangling.