

Reference: 20260011



30 April 2026

Sam Brown
fyi-request-33449-78abaac4@requests.fyi.org.nz

Dear Sam

Thank you for your Official Information Act request, received on 6 January 2026. You requested the following:

Under the Official Information Act 1982, I request:

1. Any analysis, policy advice, or precedent studies regarding Crown loan guarantee or credit enhancement programmes for infrastructure providers, including:

- Circumstances where government underwrites commercial loans rather than providing direct capital*
- Cost-benefit analysis of loan guarantees versus direct infrastructure spending*
- Risk assessment frameworks for determining when Crown guarantees are appropriate*
- International examples where governments use loan guarantees to address infrastructure financing gaps*

2. Any advice to Ministers regarding whether loan guarantee mechanisms could address capital access barriers in rural telecommunications or other infrastructure sectors, including:

- Whether such programmes would represent better value for money than direct subsidies or service payments*
- Fiscal risk assessment of guarantee programmes versus other intervention types*
- Whether enabling local infrastructure providers to access commercial capital serves government objectives more efficiently than alternative approaches*

3. Any analysis of Crown loan guarantee programmes currently operating in New Zealand (such as housing, business lending, agriculture, or other sectors) including:

- Programme design, eligibility criteria, and risk management approaches*
- Fiscal costs and default rates*
- Economic outcomes and whether programmes achieved policy objectives*
- Whether similar models could apply to rural infrastructure financing*

4. Any assessment of whether Crown loan guarantees for rural telecommunications infrastructure providers would:

- Address identified market failures at lower fiscal cost than alternatives*
- Enable competition and consumer choice without ongoing subsidy requirements*
- Support regional economic development through local business growth*

1 The Terrace
PO Box 3724
Wellington 6140
New Zealand
tel. +64-4-472-2733

<https://treasury.govt.nz>

- Provide better long-term value than funding foreign-operated alternatives

5. Any advice on appropriate risk assessment, pricing, or eligibility frameworks for infrastructure loan guarantee programmes, including how to ensure Crown exposure is appropriately managed while achieving policy objectives.

Context: Commercial lenders appear to decline rural telecommunications infrastructure financing due to asset illiquidity concerns rather than business viability, creating systematic capital access barriers. I am seeking to understand whether Crown loan guarantee mechanisms could address this market failure efficiently, and what precedents or frameworks exist for such programmes.

On 30 January 2026 the request was clarified to be:

Please provide the following information regarding the Business Finance Guarantee Scheme, North Island Weather Events Loan Guarantee Scheme, and Community Housing Provider Loan Guarantee Scheme:

1. Programme Design and Frameworks:

- Eligibility criteria and assessment frameworks used to determine which borrowers/sectors qualified*
- Risk assessment methodologies for determining guarantee coverage percentages*
- Pricing structures (guarantee fees charged to borrowers or lenders)*
- How Crown fiscal exposure was calculated and managed*
- Criteria used to determine when loan guarantees are appropriate government intervention versus direct grants or other mechanisms*

2. 1. Actual fiscal cost to Crown (the substantive cost):

- Total value of guarantee payments actually made by Crown when borrowers defaulted*
- This expressed as percentage of total loans guaranteed*
- For example: if \$100M was guaranteed and Crown paid out \$3M in defaults = 3% fiscal cost*

2.2 Programme administration costs:

- Operational and administrative costs of running each scheme*
- This helps assess total Crown cost of the intervention*

3. Policy Development:

Any ministerial briefings, cabinet papers, or policy advice regarding:

- Rationale for selecting loan guarantees versus alternative interventions (direct grants, subsidies, etc.)*
- Assessment of market failures these schemes were designed to address*
- Why guarantees were considered appropriate for these sectors/circumstances*
- Whether similar mechanisms were considered or proposed for other sectors experiencing capital access barriers*

4. Cross-Sector Applicability:

- Any analysis of whether loan guarantee models developed for these schemes could be applied to other sectors facing systematic capital access barriers*

- Any advice regarding what types of market failures or capital access problems are suitable for loan guarantee intervention
- Framework or criteria for assessing when new loan guarantee schemes would be appropriate policy response to market failures

5. International Comparisons:

- Any analysis of international loan guarantee programmes that informed New Zealand scheme design
- Particularly any analysis of loan guarantees used for infrastructure financing in comparable jurisdictions

On 2 March 2026 the Treasury partially responded to your request by responding to part of Part One, part of Part Two, part of Part Three and Part Five. The Treasury also extended the request for 40 working days.

Response

Part One: Programme Design and Frameworks.

With regards to the North Island Weather Events Loan Guarantee Scheme, please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	9 May 2023	Treasury Report T2023/848: North Island Weather Events Business Loan Guarantee Scheme: Take-outs from Bank Engagement and Initial Design Considerations	Release in part
2.	18 May 2023	Treasury Report T2023/901: North Island Weather Events Business Loan Guarantee Scheme: Design Recommendations and Approach with Lenders	Release in part
3.	8 June 2023	Treasury Report T2023/1009: NIWE Loan Guarantee Scheme Design	Release in part
4.	16 June 2023	Treasury Report T2023/1114: Cabinet Paper: Establishing a NIWE Loan Guarantee Scheme to Support Recovery for Highly Impacted Firms	Release in part
5.	21 July 2023	Treasury Report T2023/1203: Final Terms of the NIWE Loan Guarantee Scheme and Delegations for Implementation	Release in part
6.	21 June 2023	EWR-23-MIN-0048: Establishing a North Island Weather Events (NIWE) Loan Guarantee Scheme to Support Recovery for Highly Impacted Firms	Release in full
7.	21 June 2023	EWR-23-SUB-0048: Establishing a NIWE Loan Guarantee Scheme for Highly Impacted Firms	Release in part
8.	June 2023	Crown Deed of Indemnity in relation to the North Island Weather Event Loan Guarantee Scheme - Bank Version	Release in full
9.	June 2023	Crown Deed of Indemnity in relation to the North Island Weather Event Loan Guarantee Scheme - NDTL Version	Release in full

I have decided to release the relevant parts of the documents listed above, subject to information being withheld under the following sections of the Official Information Act, as applicable:

- section 9(2)(b)(ii) – to protect the commercial position of the person who supplied the information, or who is the subject of the information,
- section 9(2)(ba)(i) – to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public interest that such information should continue to be supplied,
- section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions,
- section 9(2)(h) – to maintain legal professional privilege,
- section 9(2)(i) – to enable the Crown to carry out commercial activities without disadvantage or prejudice, and
- section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage. This reduces the possibility of staff being exposed to phishing, social engineering and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury’s website.

With regards to the Community Housing Provider Loan Guarantee Scheme the following information will soon be publicly available on the Treasury website:

Item	Date	Document Description	Website Address
10.	20 February 2025	Treasury Report T2025/259: Reducing Debt Financing Barriers for CHPs	https://www.treasury.govt.nz/publications/other-official-information/information-releases
11.	6 March 2025	Treasury Report T2025/514: Detail on Debt Financing Support for CHPs with Draft Cabinet Paper	
12.	11 March 2025	Treasury Report T2025/632: Debt Financing Support for CHPs Cabinet Paper	
13.	24 March 2025	Cabinet Minute: CAB-25-MIN-0072: Reducing Debt Financing Barriers for Community Housing Providers	
14.	24 March 2025	Cabinet Paper: CAB-25-SUB-0072: Reducing Debt Financing Barriers for Community Housing Providers	
15.	3 April 2025	Treasury Report T2025/730: Crown Lending to the CHFA	
16.	29 May 2025	Treasury Report T2025/1022: CHP Loan Guarantee Scheme for Banks – endorsement of design changes	
17.	18 June 2025	Treasury Report T2025/1409: Progressing Crown Lending to the	

		CHFA	
18.	25 July 2025	Treasury Report T2025/1684: CHP Loan Guarantee Scheme: Final Design Decisions	
19.	28 August 2025	Treasury Report T2025/1988: CHP Loan Guarantee Scheme: Draft Cabinet Paper and Delegations	
20.	17 September 2025	Cabinet Paper: ECO-25-SUB- 0142: Community Housing Provider loan guarantee Scheme	
21.	17 September 2025	Cabinet Minute: ECO-25-MIN- 0142 Revised: Community Housing Provider Loan Guarantee Scheme	
22.	October 2025	Scheme Deed relating to the Community Housing Provider Loan Guarantee Scheme for Lenders	

Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the Official Information Act as the information requested is or will soon be publicly available. When these documents are released, some information may have been removed from the documents and should continue to be withheld on the grounds described in the documents.

Part Two point two: Programme administration costs

The operational and administrative costs of running each scheme cannot be provided on an individual basis (i.e., Business Finance Guarantee Scheme (BFGS), North Island Weather Events (NIWE) Loan Guarantee Scheme (LGS), and Community Housing Provider (CHP) LGS).

The operational and administrative costs included in the table below are for all three LGSs combined, covering the financial year beginning 1 July 2019 through to the most recent costs incurred for this current financial year, up to and including 28 February 2026. The only operational expense that we can allocate to each LGS is related to audit fees.

Loan Guarantee Schemes	Total
Operational and Administration Expenses	\$3.6 m
Business Finance Guarantee Scheme Audit Fees	\$0.7 m
North Island Weather Events Loan Guarantee Scheme Audit Fees	\$0.2 m
	\$4.5 m

Part Three

Material for part three is captured as part of the material provided for part one.

Part Four: Cross-Sector Applicability

I have decided to withhold in full, the material relating to part four of your request under section 9(2)(f)(iv) of the Official Information Act, – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely



Peter Rowe
Head of Delegated Schemes

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Treasury Report: North Island Weather Events Business Loan Guarantee Scheme: Take-outs from Bank Engagement and Initial Design Considerations

Date:	9 May 2023	Report No:	T2023/848
		File Number:	PD-6-2-1-3

Action sought

	Action sought	Deadline
Minister of Finance and Minister for Cyclone Recovery (Hon Grant Robertson)	Discuss this advice with officials at the next Finance Priorities Meeting	10 May 2023

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Tim Baxter	Senior Analyst, Regions, Enterprise and Economic Development	s9(2)(k)	
Peter Rowe	Head of Export Credit, Financing, Infrastructure and Urban Development		✓
Chris White	Director, Projects, Financial and Commercial Group		

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

COMMERCIAL-SENSITIVE**Treasury Report: North Island Weather Events Business Loan
Guarantee Scheme: Take-outs from bank
engagement and initial design considerations**

Executive Summary

Following bilateral engagement on 4 and 5 May conducted by the Cyclone Recovery Taskforce and the Treasury, this report summarises the feedback we had from the five major lenders to cyclone affected businesses and presents initial analysis of a business loan guarantee style intervention – drawing on lessons from the recent COVID-19 Business Finance Guarantee Scheme (BFGS).

The key message from the engagement was the relatively limited number of highly and severely affected customers, meaning the scope of any intervention would be relatively limited. With one exception, the banks were not actively seeking a guarantee scheme. Discussions indicated that a guarantee could reduce the cost of borrowing for affected customers, assist banks to look through longer cashflow gaps than they otherwise would and support lending with longer terms. However, we understand that it would be unlikely to materially change the customers they lend to or how much they would be able to lend.

Clarity of objectives and good design choices will be key to developing a scheme that delivers benefits to customers and it is critical to include a consultation phase with lenders to test design choices and the impacts they will and will not achieve before finalising a scheme.

Recommended Action

We recommend that you **discuss** the issues covered in this report with officials at your Finance Priorities Meeting on 10 May.

Agree/disagree

Chris White
Director, Projects, Financial and Commercial Group

Hon Grant Robertson
Minister of Finance

_____/_____/_____

COMMERCIAL-SENSITIVE**Treasury Report: North Island Weather Events Business Loan
Guarantee Scheme: Take-outs from bank
engagement and initial design considerations**

Purpose of report

1. On 5 May you commissioned a concrete proposal for a North Island Weather Events Business Loan Guarantee Scheme (Scheme) and asked that this proceed with urgency. You also indicated this work should take account of lessons learned from the COVID-19 Business Finance Guarantee Scheme (BFGS).
2. This report briefs you on take-outs from bilateral meetings with five banks on 4 and 5 May and sets out some initial design considerations for such a scheme. We would like to discuss the issues raised in this report before progressing further with design of the Scheme.

Context

3. Officials are developing an overall funding framework to inform decisions on further Government interventions to address North Island Weather Events (NIWE) which we expect will be provided to you this week. Treasury has been involved in the work which is aligned with previous Treasury advice setting out a preference for a market-led response.
4. If an intervention in financial markets along the lines outlined below was implemented in the next month, this would likely be in advance of overall cross-Government agreement on the broader approach.
5. Introducing a guarantee could reinforce the Government's preference for a market-led approach and have a catalysing effect on decisions by market actors – providing a helpful inflection point for your overall communications strategy and confidence to the sector that the Government is looking to help them get through the ongoing uncertainty.
6. Alternatively, delaying a decision may allow us to provide a more comprehensive rationale for a relatively limited guarantee scheme or consider it alongside a wider range of options flowing from work underpinning the framework. Additional time might also allow further clarity on other support/next steps of importance to businesses – particularly certainty regarding the Future of Severely Affected Locations (though we note that the focus of this work is on residential land use at this stage), infrastructure and land use changes.

Headline messages from banks

7. On 4 and 5 May, the Cyclone Recovery Taskforce (Sir Brian Roche, Craig Rennie and Amber Bill) and Treasury officials met bilaterally with each of the five banks that have exposure to business customers in areas affected by NIWEs. The conversations were wide ranging: the bullets below summarise the common themes relevant to the overall context and any decisions for the Crown to support the banks to support customers. Summarised comments from individual banks relating to financing approaches and challenges for customers are included at Annex 1.

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- The most important thing bank customers are looking for from the Government is certainty around i) land use change and ii) reinvestment in roading infrastructure and flood protection. Uncertainty is the biggest driver of the timing of decision-making for individual customers and these decisions are critical to individuals' rebuild decisions and to drawing in investment capital.
 - The number of bank customers who are severely affected is small, but the impact on these customers is very significant. These customers are almost exclusively primary sector businesses, with horticulture and sheep and beef the main sectors.
 - Banks cannot and will not lend to customers who cannot sustain additional levels of borrowing.
 - Some customers simply do not have the appetite to rebuild regardless of whether financing is available or not.
 - Banks are not capital constrained and are able to respond. They are at varying stages of planning and executing responses to NIWE.
 - A guarantee product could lower the cost of borrowing for affected customers, and could make other differences to lending decisions for a small number of customers. With one exception, banks are not actively seeking this support.¹
8. One bank made a very strong call for direct Government support for land clean up and restocking, based on precedents from Cyclone Bola, other floods and the Christchurch earthquake.
9. We also heard some concerns that there may be businesses with no existing debt that are in trouble but are not visible to the banks – for example orchards that are leased to corporates, hill country farms which traditionally don't borrow or Māori business on collectively owned land that have historically faced barriers to securitisation of debt.

Lessons from the Business Finance Guarantee Scheme

10. An interim post implementation review of the BFGS was carried out by BERL and concluded that "the general consensus from lenders was that the BFGS achieved the objective of facilitating the provision of credit to cushion the impact of COVID-19 on otherwise viable SMEs facing temporary financial distress". There are however relevant lessons to be drawn from the scheme.

A guarantee scheme is likely to only marginally increase the lending available to affected businesses

11. During COVID-19, lenders' main concern was debt serviceability rather than debt security and even with a relatively generous 80% guarantee the BFGS did not materially increase lending volumes. It did however instil confidence at an economy-wide level and enable banks to lower the cost of lending to existing and new customers.

¹s9(2)(b)(ii)

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12. The BFGS was initially established at a time of great uncertainty due to COVID-19, with the initial intent of ensuring that in the event of a tightening credit environment, as occurred during the Global Financial Crisis, banks could keep lending to support their customers.
13. In the current context, banks have indicated their ability to continue lending to business is not restricted by their credit risk appetite or capital constraints. Rather, for a small number of customers, the main issues are borrowers' inability to demonstrate debt serviceability and uncertainty around business viability due to wider factors. The current economic outlook and high interest rates are exacerbating factors.

Close consultation with lenders is important

14. s9(2)(g)(i)

15. To a significant extent, design risks should be able to be mitigated through clear policy objectives and a Scheme tightly designed to deliver these, and a robust consultation process with lenders that is not too rushed to ensure any intervention is consistent with the needs of lenders and will enable them to support their customers.

Scheme design and communications should be simple and clear

16. Legalistic phrasing and documentation for the BFGS made it complex and difficult for many lenders and businesses to understand the parameters and rules.
17. With the BFGS being a delegated high trust model, lenders felt that the Crown rights of investigation and audit were overly burdensome, which made lenders cautious to ensure they strictly implemented the BFGS to ensure that they did not lose the benefit of the guarantee.
18. Clear, consistent, and well-timed public messaging about the scope, eligibility criteria and implications of a Scheme is important to enable lenders to set up the systems and educate their frontline staff to manage customer enquiries, in order for there to be a successful rollout of any future scheme.

Customer groups most at risk

19. Most banks seem to have triaged their customers on the basis of the impact of NIWEs. While the number of customers who have been mildly impacted is large, we do not think these customers require any additional assistance, as lenders are able to support them through a range of products and services in the ordinary course of business and an intervention should ideally not expose the Crown to 'business as usual' risk.
20. At least two banks have grouped the worst affected customers into highly impacted and severely impacted groups. While their definitions may not be identical, this is a useful way of focusing on those who need the most help and the nature of that help.

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21. **High impact** – these customers have a pathway to restored cashflow within a reasonable timeframe (defined as two years by ^{s9(2)(ba)(i)} but could be a little more or less). To rebuild, they will require, or benefit from, some combination of:

- Interest write-offs
- Principal holidays/interest capitalisation
- Higher levels of debt
- Longer repayment terms
- Lower interest rates (closer to or at the cost of marginal funding)

Some banks have provided some of these benefits – particularly interest write-offs and principal holidays/interest capitalisation – as a short-term emergency response and, looking ahead, will provide others through new funding pools focused on rebuilding, with various concessional terms. When we spoke with banks, they saw lending to this group as core business.

22. **Severe impact** – these customers have no pathway to restored cashflow within a reasonable timeframe. Debt alone will not enable them to rebuild because security is too severely compromised and/or they can't service the necessary level of debt. In addition to debt, they will require:

- Equity, or
- A subsidy/compensation for damage, and
- (In either case) the appetite to take on the rebuild – this may well be absent for some customers, particularly older customers.

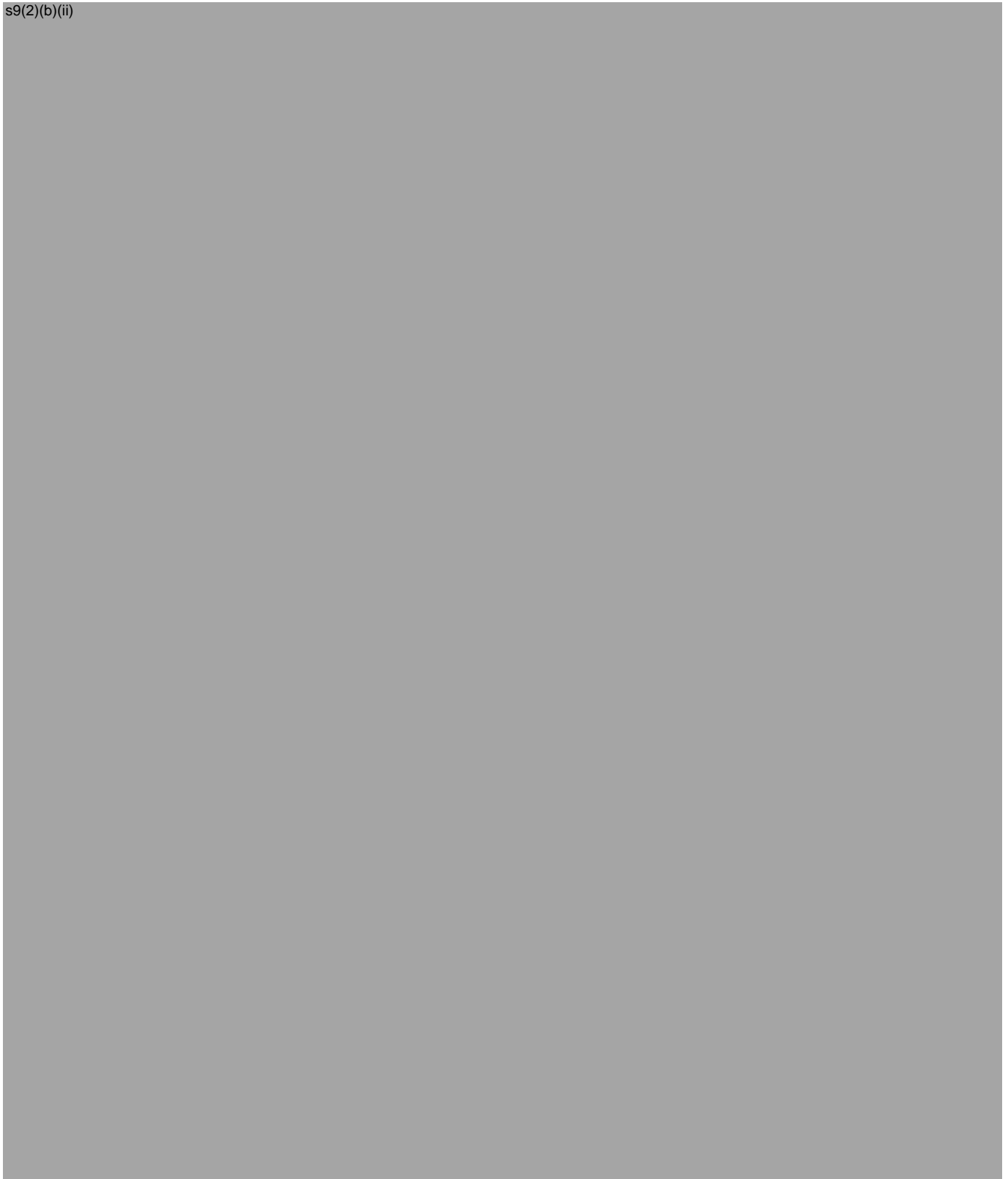
If these conditions are not met, the likely outcome is liquidation of assets. Severely impacted customers include both sheep and beef, and horticulture businesses, though timeframes for recovery are different with sheep and beef nearer two years and horticulture three to seven years.

Indicative quantification of customer needs

23. Banks have supplied various numbers and commentary relating to customers to the Taskforce and to Treasury both orally in meetings and in writing. In order to try to quantify the need for, and impact of, a Scheme, we are including a summary of this data at Table 1. The data also includes a summary of bank actions to date and planned.
24. You should note that the data is incomplete as well as inconsistent as to definitions for different groups. It should therefore be treated with significant caution and as indicative only.
25. It is also presented without identifying individual institutions as it is commercially sensitive and was provided in confidence.

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s9(2)(b)(ii)



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COMMERCIAL-SENSITIVE**Objectives for a Scheme**

26. To analyse the potential benefit of a Scheme and to make decisions about design we need to be clear what the Government intends to achieve. Drawing on what we know about the needs of impacted customers, we can see three potential objectives:
- Increase the number of customers receiving financing to rebuild/recover
 - Enable customers to borrow more to rebuild/recover
 - Improve the loan terms for customers – tenor or cost.

The following section assesses a business loan guarantee against these objectives.

27. Other important factors to consider are the scale of the impact, cost, and whether support will distort decision making in a way that promotes poor investment choices.

How a business loan guarantee benefits customers

28. A Crown guarantee has two benefits for lenders.
29. Firstly, a guarantee enables lenders to transfer risk from the borrower to the Crown. In practice this means that lenders can assign the Crown's risk rating to the borrower, which improves their risk weighting and in turn reduces the amount of capital the lender needs to put aside in relation to that loan.
30. As the lender is using less capital for the loan, they are able to reduce the interest rate that they charge to the borrower. This will reduce the burden on customers to service debt and could in turn support some customers to service a higher level of debt.
31. Secondly, a guarantee provides a level of additional certainty to lenders that could encourage banks to lend to customers in a wider set of circumstances, although actual lending volumes are expected to be modest.
32. This is because the guarantee provides lenders with an additional form of security, which enhances the borrower's creditworthiness. This enhanced creditworthiness can enable lenders to i) see through a longer period of uncertainty in relation to cashflows, and ii) provide loans with a tenor greater than they would without a guarantee (beyond the normal 3-5 years). Additionally, a Crown guarantee can be used in lieu of security with a diminished value due to damage during one of the NIWE. This may be particularly applicable to Māori business where securitisation of collectively owned assets is a longstanding barrier.
33. Experience from the BFGS is that banks did marginally increase lending to businesses as a result of the guarantee but not at significant levels. Additionally, increasing the tenor of the BFGS loans from three to five years was one of the changes that led to a significant uptake in the BFGS.
34. As with the BFGS it is anticipated that the initial signalling of the Scheme would also provide a level of confidence that the Crown is looking to support affected businesses.

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35. To summarise against the objectives set out above:
- **Increase the number of customers receiving financing to rebuild/recover.** To increase the number of customers receiving financing, the guarantee would need to be the swing factor for customers in the severely impacted group. While a lower cost of borrowing could improve debt serviceability for this group, we expect that their appetite for a potentially challenging process of rebuilding damaged businesses, and access to additional equity are more important factors.
 - **Enable customers to borrow more to rebuild/recover.** We think any increase in borrowing capacity is likely to be small as this is mainly a function of debt serviceability.
 - **Improve the loan terms for customers – tenor or cost.** The proposed Scheme would somewhat improve the interest rate that lenders charge as the level of capital they are required to put aside is reduced. We think this is likely to be the largest benefit of a Scheme. By offering a guarantee with a term of five years or more the Scheme could also increase the tenor of loans beyond what would normally be available. This could be important in the horticulture sector where orchards will need to regrow.

Key design decisions

36. Design decisions will be required across a range of eligibility criteria and guarantee terms. A draft summary of criteria and terms that will need to be considered is included at Annex 2 and Annex 3 respectively.
37. We highlight seven criteria or terms here for initial discussion. A number of these relate to the question of targeting the Scheme to those in need and controlling its scope and size for the Crown.
38. **Threshold of impact for eligibility.** Do we want to set a threshold of impact against which eligibility for the Scheme will be determined? This was the approach taken for the wage subsidy scheme, whereby businesses had to have suffered a minimum level of revenue loss before being eligible for the Scheme. With the NIWE it may be appropriate to link eligibility to a level of disruption to cashflow and/or a level of material damage.
39. This would help target the Scheme, reducing the risk of subsidising lending that would occur without intervention and/or of taking on large scale Crown balance sheet risk. However, it could make it more challenging to administer the Scheme and open the Crown up to criticism by businesses who do not meet the eligibility criteria.
40. **Regional and sectoral limitations.** We expect the Scheme would be limited to the same eight² regions as MBIE's previous business support. You could also consider limiting by sector, with the primary sector as the obvious choice: however, as we think the majority of demand will come from the primary sector this limitation is not likely to make a material difference to scope and risks excluding a small number of businesses that would otherwise benefit.

² Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, Wairarapa

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41. **Level of guarantee.** One of the important design features is the level of guarantee to be offered to lenders. Based on the positive feedback from lenders in the BFGS post implementation review, we consider that the 80% guarantee level would be appropriate.
42. **New debt only, or also existing debt.** There is a question around whether the guarantee should be applied to only new lending or also to existing lending.
43. Lenders have made a conscious decision to advance all existing debt to businesses; as such there is a question of whether the lenders should be able to transfer this risk to the Crown. Under the BFGS banks were able to transfer up to 20% of existing lending to the BFGS.
44. However, banks have indicated that they are unlikely to advance significant new loans to severely affected businesses due to pressures on debt serviceability and levels of leverage. Additionally, borrowers have reservations around incurring a significant level of debt whilst there remains significant uncertainty around land use and infrastructure. Therefore, to ensure that the Scheme makes a meaningful contribution to businesses it would be worth considering allowing lenders to include existing debt in the Scheme, to help reduce businesses' current interest costs.
45. If existing lending were included, it could be at a lower level of guarantee, say 50% versus 80% for new lending. Requiring lenders to retain a higher level of the risk would ensure that they remain more accountable for loans they originated prior to the NIWE.
46. **Existing customers only.** There was feedback from the BFGS ^{s9(2)(g)(i)} [REDACTED] refinance provisions to compete for business and attract new customers. To mitigate this risk and preserve the purpose of the Scheme, it is proposed that the Scheme only be available to lenders' existing customers. Customers could be able to transfer their Scheme guarantee to another lender at a later date, should they choose to change lender.
47. **Other limits.** Limits on the size of loans that can be guaranteed and on total Crown exposure and exposure to individual institutions are additional ways of targeting the Scheme and limiting its size.
48. ^{s9(2)(g)(i)} [REDACTED]

Public interest test under the Public Finance Act 1989

49. The establishment of the Scheme would be subject to your consideration (in your role as Minister of Finance) of whether it appears to you to be necessary or expedient in the public interest as required by section 65ZD of the Public Finance Act 1989. Officials will provide further advice on the public interest test if you wish to pursue a Scheme. You should also inform Cabinet in advance of your intention to establish the Scheme.

COMMERCIAL-SENSITIVEAlternative approaches suggested by the banks


50. In our discussions with banks there was some interest in a FLP scheme to help reduce the cost of funds to affected businesses. While the COVID-19 Term Lending Facility (TLF) linked to the BFGS and the Funding for Lending Program (FLP) allowed banks to access lower cost funding, they were developed independently by the Reserve Bank, largely for monetary policy reasons. They are therefore not appropriate in these circumstances.

Next steps

51. We would like to discuss the issues raised in this report with you. If you wish us to proceed, the next step will be to work up a detailed design for the Scheme together with its fiscal implications and financial recommendations. This could be agreed with you and then either consulted with the banks or held in reserve in case it is needed.
52. If you determine it is appropriate to stand up a Scheme, the Treasury has existing documentation and processes that will enable this to be developed at pace. We anticipate that this could be achieved as follows:
- Week 1: Preparation of detailed draft terms sheet for your agreement
- Week 2: Consultation with lenders – Taskforce led but with Treasury participation
- Week 3: Finalisation of terms sheet, preparation of Cabinet Paper, and preparation of guarantee documentation (the latter to run in parallel with Cabinet)
- Weeks 4 & 5: Cabinet process
53. This timeline is dependent on Taskforce and lender availability.

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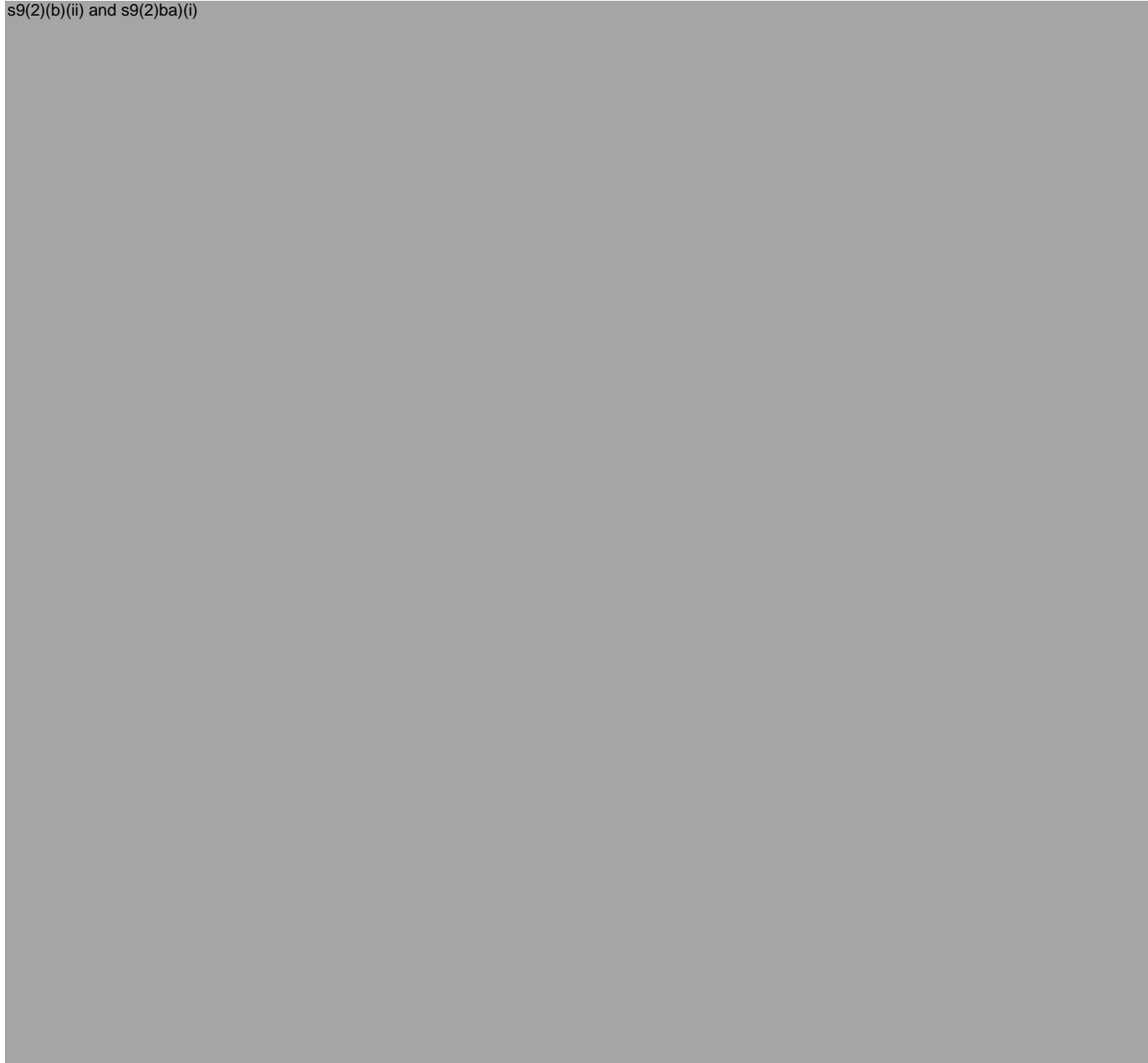
s9(2)(b)(ii) and s9(2)(ba)(i)



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s9(2)(b)(ii) and s9(2)ba(i)



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COMMERCIAL-SENSITIVE**Annex 2: Draft Scheme Eligibility Criteria**

These eligibility criteria are draft and require further consideration before making firm recommendations.

Eligibility criteria	
Key Terms	Rationale
NZ registered business	This is to ensure that the benefit of establishing the Scheme is only made available to businesses who are required to pay tax in New Zealand.
No turnover restrictions	It is not proposed that there be any turnover restrictions as both big and small businesses have been affected. Larger businesses are likely to have greater ability to rebuild, however, could benefit from support in the near term to get this rebuild started.
Businesses must have been viable pre-NIWE	As was the case with the BFGS, the Scheme should be designed to support viable businesses who have affected by the NIWE. As such businesses who were already on a Lenders watchlist at the time the relevant NIWE occurred could/should be excluded.
Business directly impacted by NIWE	Threshold of impact for eligibility to obtain a Supported Loan is to be determined. Do we want to set a threshold of impact against which eligibility for the Scheme will be determined? This was the approach taken for the wage subsidy scheme, whereby businesses had to have suffered a minimum level of revenue loss before being eligible for the Scheme. With the NIWE it may be appropriate to link eligibility to a level of disruption to cashflow and/or a level of material damage.
Geographical/ [sectoral] impact	We expect the Scheme would be limited to the same eight regions as MBIE's previous business support. You could also consider further narrowing the scheme by limiting by sector, with the primary sector as the obvious choice.

COMMERCIAL-SENSITIVE**Annex 3: Draft Scheme High Level Terms**

These terms are draft and require further consideration before making firm recommendations.

Key funding terms	
Key Terms	Rationale
Crown guarantee of [80%]	Crown guarantee of 80% of Supported Loans, feedback from the Business Finance Guarantee Scheme (BFGS) was that the 80% guarantee was useful to lenders.
The Scheme can support working capital and capex	Borrowers will be able to use the Scheme to support either their short-term working capital needs or to support their longer term rebuild needs.
Maximum Crown guarantee per loan of [\$5m - \$10m]	It is expected that the Scheme will be used by a mixture of small and large businesses. Larger businesses using the Scheme to support their rebuild will have a need for high levels of additional debt, particularly in the horticulture sector. Consideration should be given to whether only new debt ([80%]) is supported or new ([80%]) and existing debt ([50%]) is supported.
Maximum tenor of [5-10] years	The BFGS closed with a maximum tenor of five years, which lenders found useful. We are hearing that for the horticulture sector there may be a period of 3-5 years before orchards regrow, hence it may be necessary to offer a longer guarantee to lenders. We will test this aspect with lenders.
The Scheme will be available to banks and non-banks	We received very strong feedback from non-banks that they were disadvantaged by not being able to participate in the BFGS at its inception. As such we propose to allow both banks and non-banks to participate in the Scheme, however, we will be offering maximum guarantees (i.e a cap on the dollar amount we will guarantee for each lender) to banks and non-banks who support a much smaller portion of the economy.
Availability through to [30 June 2024]	The Scheme will be available to Borrowers through to [30 June 2024], to enable businesses that are rebuilding time to develop and implement plans.
Lender risk margin to reflect Crown credit rating	s9(2)(g)(i)
Existing customers only	s9(2)(g)(i)

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Threshold of impact for eligibility	<p>Lenders will be asked to only make Supported Loans available to those businesses who have directly suffered a material impact from a NIWE.</p> <p>With the NIWE it may be appropriate to link eligibility to a level of disruption to cashflow and/or a level of material damage.</p>
Crown Maximum Liability [\$1bn]	<p>Based on discussions with a number of banks and the fact that we are dealing with quite a targeted group of businesses, it is felt that the Crown's guarantee of up to [\$1bn] would be more than sufficient to meet possible demand. The BFGS had a Crown maximum liability of \$5bn to support businesses nationally affected by Covid-19.</p>
Lender limits	<p>Limits will be assigned to Lenders based on exposure, market share and lender type.</p>

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Treasury Report: North Island Weather Events Business Loan Guarantee Scheme: Design Recommendations and Approach with Lenders

Date:	18/05/2023	Report No:	T2023/901
		File Number:	PD-6-2-1-3

Action sought

	Action sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Indicate if you wish to try to secure benefits from lenders for customers that go beyond a straight pass through of the effects of a guarantee</p> <p>Indicate if you wish to lead out the conversation with banks</p> <p>Provide any views on the core design choices and parameters set out in this report, which are the proposed basis for a terms sheet and engagement with banks</p>	22 May 2023

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Tim Baxter	Senior Analyst, Regions, Enterprise and Economic Development	s9(2)(k)	
Peter Rowe	Head of Export Credit, Financing, Infrastructure and Urban Development		✓
Chris White	Director, Projects, Financial and Commercial Group		

Minister's Office actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

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Treasury Report: North Island Weather Events Business Loan Guarantee Scheme: Design Recommendations and Approach with Lenders

Executive Summary

This report sets out further thinking on a NIWE business loan guarantee scheme and associated plan for engagement with lenders and other key actors – including on the concessions we should be seeking from lenders.

It incorporates your previous feedback and sets out key design and tactical choices which we want to test your views on, s9(2)(g)(i). We will incorporate these views into a draft terms sheet which we would use as a basis for engagement with lenders and will coordinate our work with the joint workstream on other options to support the horticultural sector.

The scheme would primarily reduce the cost and increase the length and flexibility of loan terms, rather than materially changing the number of firms in scope for lending (though we would expect some movement on the margins). The concessions we would seek from lenders may go further, though it will still be primarily a market-led mechanism retaining a strong element of commercial discipline to drive lenders' decisions. Any further options to support affected businesses should be designed to be complementary to this approach – applying to only those severely affected business that banks will not lend to – to avoid undermining the effectiveness of a guarantee scheme.

Recommended Action

We recommend that you:

- a **indicate** if you wish to try to secure benefits from lenders for customers that go beyond a straight pass through of the effects of a guarantee

yes/no

- b **indicate** if you wish to lead out the conversation with banks

yes/no

- c **provide** any views on the core design choices and parameters set out in this report, which are the proposed basis for a terms sheet and engagement with banks:

- i That we should frame this as a **collaborative process** with banks to maximise support available to viable customers, rather than a negotiation with a defined set of asks

- ii That we should position assurances on **full pass through of financial benefits** of a guarantee to customers as the baseline requirement, s9(2)(g)(i)

- iii That you play a **direct role in engagement** with banks at senior levels s9(2)(g)(i)

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- iv In addition to new lending, that the guarantee could be applied to existing lending, which would require **existing lending to be re-financed**, rather than applied retrospectively to existing debt
 - v That we use an **80% guarantee for new lending** and a **60-80% range for existing lending** as the starting point for engagement/negotiation, but **rule out a 100% guarantee** in any instance
 - vi That the scheme should be restricted to businesses operating in **Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, Wairarapa** (in line with other NIWE business support to date)
 - vii That the scheme includes **eligibility criteria related to loss of income/assets** designed to target only highly and severely affected business
 - viii Whether you are **supportive of a higher level of support being provided to affected entities identified as Māori business** if that would assist them
 - ix That businesses **must be viable with a demonstrated path to serviceability over the mid-long term** to be eligible, and **must not have already been on a lender's watchlist prior to the first NIWE**. This relies on lenders' responsible lending assessment
 - x That the guarantee has a **maximum tenor of 5-10 years, aligned to the needs of affected businesses** in particular the estimated time required to re-establish cashflows and return to serviceability
- d **note** we will prepare a fully worked up draft terms sheet to support engagement with banks for Monday 22 May to align with initial advice on broader assistance to the horticulture sector.


Chris White
Director, Projects, Financial and Commercial Group

Hon Grant Robertson
Minister of Finance


_____/_____/_____

COMMERCIAL-SENSITIVE**Treasury Report: North Island Weather Events Business Loan
Guarantee Scheme: Design Recommendations and
Approach with Lenders**

Purpose of Report

1. We discussed initial considerations for a North Island Weather Events (NIWE) business loan guarantee scheme (Scheme) at your Finance Priorities Meeting on the 10 May (T2023/848 refers). You asked us to continue working up a detailed proposal and we have been considering whether a Crown intervention could be leveraged to secure more comprehensive positive outcomes from the banks.
2. s9(2)(g)(i)

3. You have also asked us to work in coordination with the Cyclone Recovery Unit (CRU) and Ministry for Primary Industries (MPI) on a wider suite of possible Crown support for severely affected businesses in the horticulture sector. We have continued to develop this advice on a guarantee at pace to test your appetite for the proposed approach, but final decisions including the timing of engagement with banks will need to be considered alongside other potential policy interventions.

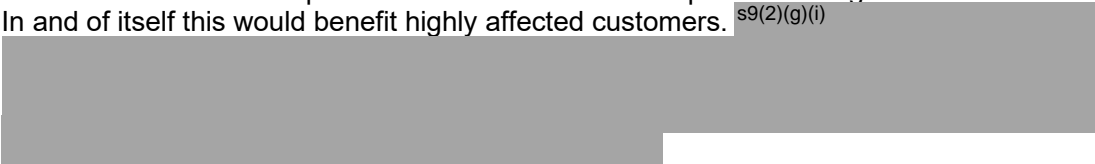


Rationale for intervention

4. s9(2)(b)(ii) and s9(2)(ba)(i)

5. As discussed at our meeting last week, we do not think the large group of moderately affected customers require any support beyond that already being provided by the banks, but we do think a guarantee scheme can provide additional relief to a group of businesses that have been highly affected by the cyclone and are able to borrow the amounts necessary to recover. At the margins it may expand this group of borrowers.
6. Providing Crown support through the existing lending sector has a number of broader benefits compared to other interventions. It retains a strong role for commercial decision making which is likely to limit market distortions and it mitigates precedent risk in respect of direct Crown support. It may also help support confidence in the recovery process and catalyse recovery decisions by business owners, lenders and local leaders more broadly.
7. A guarantee can provide relief to customers in the following ways (a fuller analysis of the risks and opportunities is set out in T2023/848):
 - **Support lenders to charge lower interest rates.** Lower interest rates reduce the free cashflow that businesses need to generate to service their debt and also reduce the cost of the debt over its lifetime. This lowering of cost should modestly increase the amounts some customers can borrow and at the margins may increase the number of customers who are able to borrow.

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- **Support lenders to bridge longer cashflow gaps and offer longer loan terms.** This should enable banks to offer more favourable terms to customers, and again at the margins may increase the number of customers who are able to borrow.
8. This intervention will not support severely affected businesses that do not have a pathway out of debt, or who do not have the appetite to take on a rebuild, and we should be realistic about its ability to expand the number of firms that banks consider lendable.
 9. Additional support for severely affected horticulture firms (which should consider the unique characteristics of Māori firms) is being developed in joint work with CRU and MPI, and a guarantee will work in tandem to support any further interventions. Likewise, issues created by non-bank lending (e.g. within corporate groups, intra-lwi, downstream supply chain issues outside NIWE affected regions) may need to be incorporated into that broader work where there is evidence intervention is required.

Leveraging the opportunity with banks

10. Any given Crown guarantee will provide a certain level of value to the banks and at a minimum the Crown's expectation should be that this is passed through to customers. In and of itself this would benefit highly affected customers. ^{s9(2)(g)(i)}

11. The Crown cannot require banks to take up the guarantee so this would be a delicate negotiation. Key leverage points for the Crown could be ^{s9(2)(g)(i)}
 the Crown's ability to position the guarantee with customers as a partnership with the banks where each party is going above and beyond normal approaches. ^{s9(2)(g)(i)}

12. We would like to understand your appetite for this approach – particularly because if you agree we think it is most likely to succeed with your direct involvement.

Design choices and parameters that can be varied

13. This section of the report sets out the key design choices that will target support to those who need it and support the banks to pass through lower interest rates and improved loan terms around cashflow gaps and tenor. It explores the limits of what the Crown can put on the table to achieve these outcomes, and as such is a first draft of the Crown's potential "best offer" to the banks.
14. This scheme is intended to support impacted businesses, not to support financial institutions who have not sought Crown support. Our objective is to ensure that credit is extended to firms that need it and that can demonstrate a satisfactory path to serviceability over the mid-long term, with the Crown guarantee assisting lenders to see through the current period of instability.

COMMERCIAL-SENSITIVE*Targeting*

15. The scheme should be restricted to businesses operating in **Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, Wairarapa** - together the "Affected Regions" (in line with other NIWE business support to date). There may be a small number of affected firms with downstream/supply chain impacts outside of these regions which need to be considered as part of the broader workstream, however we think this is necessary to minimise Crown exposure to low-risk lending that banks would undertake anyway.
16. It is not intended to provide support to those businesses who were already in distress prior to the NIWE occurring – we recommend **businesses who were already on a lender's watchlist prior to the NIWE will not be eligible for supported lending**.
17. The Scheme should be designed to target highly affected but viable businesses. We do not recommend the scheme supports mildly impacted business. To prevent this we will need to set entry thresholds. We are consulting with MPI / MBIE (we expect most, potentially all, of the firms in scope will be primary sector) to understand how these thresholds might be specified, but at a high level, borrowers will need to demonstrate that they have **suffered direct impact of a NIWE to a set threshold which may include a proportionate loss of cashflow, revenue or asset base**. We are unlikely to be able to finalise these thresholds without input from the banks so this will be a key area for discussion.

New and refinanced Lending

18. The level of relief to customers will be significantly greater if the guarantee covers existing as well as new lending. However, there are a number of challenges relating to existing lending, particularly the risk that the Crown will guarantee existing bad debt which will simply deliver a subsidy to the bank when a business fails and they call on the guarantee.
19. **We therefore recommend that the scheme covers new lending and refinancing of existing lending (by the same bank)**. By requiring a refinancing decision, lenders will have to **follow their internal responsible lending criteria to assess refinanced existing lending** to ensure that the business proposition remains viable (as they remain responsible for 20% of the risk), taking into account the benefit of the Crown guarantee. This is an area we will particularly want to test with banks to avoid unintended consequences. This refinancing provision would likely need to apply to all existing lending rather than just a subset to ensure consistency.

Existing customers only

20. Based on strong feedback from the banks about the BFGS, we think it preferable that the Scheme **only allows lenders to support existing customers** (i.e. those with an existing banking relationship though not restricted to those with current borrowing). We understand that this may reduce the ability for customers to seek a better deal elsewhere, but the number of affected customers will be small. We could also consider allowing banks to approach the Crown for consent to offer a Scheme loan to a non-customer should there be compelling circumstances. And we propose that businesses with a loan supported by the guarantee will be able to transfer this to another lender should they choose.

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21. s9(2)(g)(i)

Proportion of risk guaranteed

22. We think it is critical that banks retain some risk and therefore the Crown should not guarantee 100% of lending. **An 80% guarantee was well received in the BFGS and is broadly in line with other Covid-19 guarantee schemes around the world and is our recommended starting point for engagement.**
23. An option to consider is offering a lower level of guarantee on refinanced existing lending. This would further strengthen protections against subsidising the banks for the costs of existing bad debt. We recommend that you **consider a range of 60-80% for refinanced lending** and that this might be a parameter that can flex in negotiations with the banks.

Tenor

24. We suggest the guarantee has a **maximum tenor aligned to the needs of affected businesses**. Most commercial bank lending is for periods of 3-5 years, but we know that some horticulture businesses are facing rebuilds that will take longer than this. Subject to further work and engagement with lenders a maximum in the range of 5-10 years would allow time to re-establish cashflows and make progress paying down debt – for example 10 years is the standard maximum loan term under the Regional Strategic Partnership Fund, extending to 15 years for whenua Māori land and horticultural projects.

Other terms

25. Availability Period: We suggest **the Scheme is available to 30 June 2024**. This gives businesses and banks a year to make reinvestment plans. Should this prove to be too short, the scheme availability period could be extended if needed – though we expect at that point the future of these business will be clear one way or the other and lending decisions will have been made.
26. Drawdown Period: while Scheme lending must be agreed to within the Availability Period, it is possible for **actual drawdown of the supported loan to be advanced after the end of the Availability Period** (for example where land needs extensive remediation before assets are replanted).
27. Ability to refinance: a supported loan may be entered into after the Availability Period if the borrower is looking to refinance their existing supported lending. This **allows for businesses to move to a new lender if desired**, after the end of the Scheme Availability Period.
28. Caps to mitigate the fiscal risk: There are a number of potential avenues to limit the Crown's fiscal risk: maximum supported loan size, a cap on guarantee per firm, per lender and an overall guarantee cap. We will **use the engagement process to design a set of caps (which can change over time if necessary) that mitigate fiscal risk** while still supporting targeted business.

COMMERCIAL-SENSITIVE**Possible Approaches to Negotiation**

29. To enter a negotiation with the banks we would need to be clear what benefits we are seeking for customers in return. As we are operating on limited information, at this stage it is easiest to describe these in general terms as follows:
- Longer interest free periods
 - Longer suspension of principal repayments
 - Lower interest rates, for longer
 - Longer loan terms.
30. At a minimum we would be looking to ensure a commitment from banks to fully pass on the savings created by the guarantee – though we would attempt to secure additional concessions/mitigations beyond that and lock these in.
31. s9(2)(g)(i) [REDACTED] Banks have demonstrated a willingness to support affected customers through lending, including on concessional terms, s9(2)(g)(i) [REDACTED] and lenders comments that they are not currently capital constrained. Depending on how far you are willing to go this could include public communications on your part designed to appeal directly to customers.
32. Given the information asymmetry we think a further round of engagement with banks would help us to explore the specifics of what banks might offer in return for a guarantee, including various design choices that will make it more or less attractive to banks. This could be described as a co-design approach. An alternative would be to put a set of ambitious asks on the table at the start of the process to create a strong sense of expectation. s9(2)(g)(i) [REDACTED]
33. Either way, we think your direct involvement would be beneficial in a kick off meeting at the most senior level feasible that sets top-down expectations for the process and may also be required later in the process if there are difficult sticking points to resolve.
34. Beyond that we envisage the conversation to be managed by a combination of the Cyclone Recovery Taskforce (Taskforce) and Treasury, in coordination with wider work on the horticulture sector. We have noted your preference on a number of occasions that the Taskforce remains in the lead in conversations with the banks, however with the work moving to a detailed policy and design phase and potential for intensive discussions with multiple parties it will be necessary for Treasury to take a greater role to ensure we keep moving at pace.
35. We have shared the high-level idea contained in this report with Sir Brian Roche – namely that we should try to use a Crown guarantee to secure further concessions from the banks – who is broadly in agreement with the approach. Once we have a sense of direction from you, we will liaise with the Taskforce on the engagement process. There will be a number of tactical process choices to make including the split between bilateral and multilateral conversations with the banks, which can have quite different dynamics.

COMMERCIAL-SENSITIVE**Consultation**

36. This report was consulted with the Taskforce, MPI and MBIE and the drafting team included a principal advisor from MPI.

Next steps

37. If you agree to this approach the proposed next steps are:
- Finalise a terms sheet to establish Crown bottom lines
 - Plan engagement strategy with the banks
 - Ensure this work is factored into the broader NIWE response, both in terms of timing and policy implications, in particular ensuring any further interventions to support the horticulture sector and the guarantee scheme are complementary (for example any quasi-commercial lending should be carefully designed so as not to 'crowd out' bank lending)
 - Determine and report on fiscal implications including overall cost estimates, noting our initial expectation is that it would (like the BFGS) be delivered through a combination of Vote Finance and the existing PLA for guarantees and indemnities
 - At an appropriate point, engage with the Reserve Bank of New Zealand to agree joint messaging and draw on their expertise
 - Once details of the Scheme are crystalised, ensure officials at MFAT are engaged and consulted to ensure obligations under relevant Free Trade Agreements are met. This engagement is already underway and once Scheme details are finalised, MFAT will engage their Trade Policy legal team.
38. As previously advised, the establishment of the Scheme would be subject to your consideration of the public interest test as required by section 65ZD of the Public Finance Act 1989. You should also inform Cabinet in advance of your intention to establish the Scheme. Our working assumption is that you will require a Cabinet paper.
39. To progress an updated terms sheet and engagement plan, your steer on the design choices set out in the recommendations would be welcome.

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Treasury Report: NIWE Loan Guarantee Scheme Design

Date:	8 June 2023	Report No:	T2023/1009
		File Number:	IM-2-1-15-8-2

Action sought

	Action sought	Deadline
Minister of Finance Minister for Cyclone Recovery (Hon Grant Robertson)	<p>Agree to establish a NIWE Loan Guarantee Scheme</p> <p>Agree to inform your Cabinet colleague of your intention and that you will make decisions on any further policy matters that arise during implementation</p> <p>Agree to the overall terms of the Scheme as set out in the terms sheet in Annex Two</p>	Monday 12 June 2023

Contact for telephone discussion (if required)

Name	Position	Telephone	1 st Contact
Max Christie	Analyst, Export Credit Office	s9(2)(k)	✓
Renee Polaczuk	Portfolio Analyst, Export Credit Office		
Chris White	Director, Projects, Financial and Commercial Group		

Minister's Office actions (if required)

Return the signed report to Treasury.
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Note any feedback on the quality of the report

Enclosure: No

COMMERCIAL-SENSITIVE**Treasury Report: NIWE Loan Guarantee Scheme Design**

Executive Summary

Engagement with lenders has confirmed that a guarantee of lending to NIWE-affected firms could provide modest but meaningful cost reductions aiding business recovery. Estimates suggest that savings for a firm with \$3 million in debt (the average reported by lenders) could range from \$45,000 to \$225,000 over five years. Over the operational life of the scheme this sums to upper limits of \$22.5 million to \$112.5 million total savings, depending on the interest rate reductions. Exact savings depend on debt levels, terms, and benefits passed on by lenders. A NIWE loan guarantee scheme (the Scheme) could support confidence in the recovery and catalyse firms to make necessary decisions on their future.

Should you go ahead, we recommend that the Scheme that is available to all businesses in NIWE-affected regions that have suffered a material financial impact such as decreases to cashflow, revenue, or asset value as a result of NIWE, but have a pathway to restored cashflow within a reasonable time frame. Lending would be supported 80% by the Crown for a period of up to five years, with loans available for one year from establishment.

An overall Scheme size of \$2 billion is recommended. This is sufficient to cover lending needs indicated by consulted lenders and provides a buffer for additional lenders to enter the Scheme. Overall and lender limits serve to manage overall Crown risk exposures. No limits on refinancing within or across lenders are proposed, to maximise benefits to affected firms

s9(2)(g)(i)

Businesses' cost reductions would be achieved through additional risk borne by the Crown balance sheet rather than direct, upfront fiscal cost. A provision reflecting the expected credit loss under the Scheme would need to be recognised as and when loans are guaranteed, with a corresponding impact on the operating balance (but not net debt). We conservatively estimate the expected credit loss to be \$91 million. Lending decisions would remain lenders', with a 20% risk share ensuring lenders' commercial incentives remain: this supports a market led recovery and protects the Crown balance sheet from unnecessary risk.

Consideration of the Scheme should be made alongside other potential support to firms severely affected by NIWE – advice on options is being provided to you alongside this advice. On balance we recommend you agree to progress the Scheme and instruct us to prepare a paper to be considered by Cabinet alongside other response measures. Preparatory work to establish the Scheme, including further engagement with lenders, needs to occur in parallel to meet establishment timing objectives.

Recommended Action

We recommend that you:

- a **note** that the North Island Weather Events Loan Guarantee Scheme (the Scheme) could support affected businesses by reducing borrowing costs and improving lending related cashflow terms
- b s9(2)(b)(ii) and s9(2)(ba)(i)
- c **note** that the Scheme is not likely to materially affect the availability of credit to affected businesses, and therefore should be considered to provide relief rather than an economic intervention to change the shape of the recovery

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d **note** that your decision on the Scheme should be taken alongside options to support firms severely affected by NIWE being prepared in parallel to this advice

e **agree** to the following core design choices and parameters for a NIWE Loan Guarantee Scheme:

- a. Eligible firms – located in NIWE-affected regions¹, that have suffered a material financial impact as a result of NIWE as determined by the lender
- b. Lending subject to lenders' standard credit assessment and approval criteria
- c. Overall Scheme lending cap of \$2 billion
- d. 80% Crown guarantee proportion
- e. Guarantee period of up to five years
- f. Availability period of one year from Scheme establishment
- g. No restrictions on refinancing within or across lenders

Agree/disagree.

f **agree** to the overall terms of the Scheme as set out in the terms sheet in Annex Two

Agree/disagree.

g **note** that the NIWE Loan Guarantee Scheme will involve granting indemnities to lenders, and that under section 65ZD of the Public Finance Act 1989, the Minister of Finance may, on behalf of the Crown, give indemnities if it appears to the Minister to be necessary or expedient in the public interest to do so

h **note** that in the circumstances officials consider giving indemnities to lenders on the terms set out in Annex Two to be expedient in the public interest

i **agree** to inform Cabinet of your intention to establish the Scheme as set out in this paper and that you will make decisions on any further policy matters that arise during implementation

Agree/disagree.

j **agree** that officials continue to engage with lenders to establish the Scheme to ensure readiness to coincide with potential announcement timing in late June or early July

Agree/disagree.

k **agree, subject to (and with effect from) Cabinet consideration**, that it appears to you to be necessary or expedient in the public interest to provide indemnities to lenders under the NIWE Loan Guarantee Scheme on the terms set out in Annex Two

Agree/disagree.

l **agree, subject to (and with effect from) Cabinet consideration**, to provide indemnities to lenders under the NIWE Loan Guarantee Scheme under section 65ZD of the Public Finance Act 1989

Agree/disagree

¹ The Affected regions refers to Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, and Wairarapa.

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- m **note** that as the contingent liability of the indemnities is over \$10.0 million, section 65ZD(3) of the Public Finance Act 1989 requires you to present as soon as practicable a statement to the House of Representatives that the indemnities have been granted
- n **agree, subject to (and with effect from) Cabinet consideration**, to present a statement to the House of Representatives that these indemnities have been given, as soon as practicable after giving the indemnities.

Agree/disagree

- o **note** that Treasury will liaise with your office at the relevant time to provide a Statement of Indemnity to be signed and presented to the House of Representatives.

Chris White
Director, Projects, Financial and Commercial Group

Hon Grant Robertson
Minister of Finance and Minister for Cyclone Recovery

____/____/____

COMMERCIAL-SENSITIVE**Treasury Report: NIWE Loan Guarantee Scheme Design**

Purpose of Report

1. On 22 May you requested work continue on the design of a North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme). You indicated this work should take account of lessons learned from the COVID-19 Business Finance Guarantee Scheme (BFGS) and from further bilateral discussions to be held with lenders in conjunction with the Cyclone Recovery Taskforce. Officials met with lenders on 26 May and have engaged with the horticultural sector as part of the joint Treasury and Ministry of Primary Industries (MPI) process to consider options for severely affected firms.
2. This report:
 - briefs you on the outcome of further engagement with six lenders (five banks and one non-deposit taking lender) and provides an overview of the data received from these lenders (refer Annex One)
 - makes an assessment of the overall potential benefits, costs, and risks of the Scheme, to support your decision to provide indemnities on behalf of the Crown under section 65ZD of the Public Finance Act 1989
 - discusses key design choices and sets out a recommended Scheme design, to be agreed if the Scheme is to be progressed.

Context

3. We previously advised you (T2023/901) that a guarantee can:
 - **Support lenders to charge lower interest rates.** Lower interest rates reduce the free cashflow that businesses need to generate to service their debt and also reduce the cost of the debt over its lifetime. This lower cost should modestly increase the amounts some customers can borrow and, at the margin, may increase the number of customers who are able to borrow.
 - **Support lenders to bridge longer cashflow gaps and offer longer loan terms.** This should enable lenders to offer more favourable terms to customers, and at the margin, may increase the number of customers who are able to borrow.
4. We previously advised on preliminary design considerations for a Scheme following initial bank engagement (T2023/848 and T2023/901 refer). You indicated that design of the Scheme should continue alongside development of advice on other policy initiatives to support businesses severely affected by NIWE (T2023/1062 refers). This paper focuses on the merits of the loan guarantee scheme in and of itself, but we recommend you consider both pieces of advice at the same time including how the options target different groups, how they fit together, and what impact they have separately and together.

COMMERCIAL-SENSITIVE**Engagement – Feedback from Lenders**

5. The Taskforce and Treasury officials met with lenders² on 26 May to discuss the potential for a Scheme to be established. The purpose of the engagement was to seek feedback on lenders' support for a scheme, discuss the design choices set out in our previous advice to you, confirm potential benefits for eligible customers and to collect additional information required to finalise a Scheme. Face to face engagement was augmented by a request for targeted written feedback on key design choices, and a data request on the lending needs of affected customers.
6. s9(2)(b)(ii) and s9(2)(ba)(i)
7. Lender data indicates up to * with approximately \$1.5 billion of debt (both existing and anticipated) are highly affected, and could be eligible for the Scheme (depending on final design). The vast majority (around 90%) of firms have total borrowing requirements under \$10 million. This more detailed data is generally consistent with feedback obtained through the Taskforce's initial engagement and our previous advice. A summary is provided in Annex One. *s9(2)(b)(ii) and s9(2)(ba)(i)
8. There was general support for the high-level design of the Scheme previously advised to you. This is perhaps unsurprising given general consistency with the BFGS which lenders are familiar with. In some areas, however, feedback has shifted officials' views. Key feedback included:
- Defining a materially affected firm – lenders highlighted that even within an individual institution a degree of judgment was used to assess impacts and there was not necessarily a single (set of) metric(s) that could be used to define eligibility. This challenge is larger when considered across institutions.
 - Tenor – a ten-year guarantee was considered too long as it is not aligned to loan terms offered by lenders which are rarely expected to exceed five years regardless of a guarantee.
 - Refinancing across lenders – general concerns were raised about the potential for an uneven playing field, especially if constraints were placed on lenders refinancing their own customers' debt into the Scheme (either due to a constraint on the proportion of existing debt that is eligible, or due to being on a 'watchlist' prior to NIWE – both features of the BFGS).
 - Guarantee proportion – lenders favoured higher proportions on the basis it would support the pass through of maximum benefits to customers, and that it would – at the margin – support a greater amount of lending.
9. Feedback confirmed that Treasury's assessment of the types of benefits the Scheme might provide was broadly accurate, with lenders confirming the potential for cost reductions alongside cashflow relief and/or tenor extension. Lenders also indicated the Scheme is not likely to lead to material changes to the availability of credit for eligible firms.
10. Based upon the proposed design, lenders indicated customer cost savings could range from 0.3% up to 1.5% per annum, although most estimates were towards the lower end of that range. Feedback was less specific in respect of cashflow relief or term extension, with benefits depending on the specific circumstances of each borrower.

² s9(2)(b)(ii)

COMMERCIAL-SENSITIVE**Scheme Design**

11. A more detailed discussion of Scheme design, and key remaining choices, follows later in the paper (and a full terms sheet is included at Annex Two). At a high level, based on our understanding of your objectives, feedback from lenders and our experience with the BFGS, we consider the best scheme that could be progressed at this point to support NIWE affected businesses involves:
- an 80% Crown guarantee
 - a five-year guarantee period
 - making new and refinanced lending eligible
 - including refinancing across lenders, and
 - targeting the Scheme to eligible businesses that are located in the impacted NIWE regions, have been classified by their lender as having been materially financially impacted, and meet their lender's credit assessment criteria.
12. This intervention will not support severely affected businesses that do not have a pathway out of debt, or who do not have the appetite to take on a rebuild, and we should be realistic about its ability to expand the number of firms that lenders consider lendable.
13. In this regard, the Scheme will effectively act as a relief mechanism for businesses highly impacted by the NIWE, rather than an economic intervention that will change the nature, speed or shape of the recovery.
14. You previously advised that you did not think that a differentiated scheme should be established to support businesses who face existing constraints on access to capital, such as Māori business. A guarantee should not materially influence lenders' behaviour in supporting new lending, therefore issues faced by Māori businesses in accessing capital are unlikely to be addressed under this Scheme. Broader work is underway on addressing this and you may want to consider businesses impacted by the NIWE as part of this work.

Analysis under section 65ZD of the Public Finance Act 1989

15. The NIWE Loan Guarantee Scheme would involve granting indemnities to lenders. Section 65ZD of the Public Finance Act 1989 (the Act) empowers you, as the Minister responsible for the administration of the Act, to give an indemnity to a person, organisation or government if it appears to you to be 'necessary or expedient in the public interest' to do so, and to give such an indemnity on any terms and conditions that you think fit.
16. It is a matter for you to decide whether you are satisfied that it is necessary or expedient in the public interest to give indemnities to lenders under the Scheme in the terms set out in Annex Two.
17. The following paragraphs set out factors that officials consider are relevant to that assessment. ^{s9(2)(h)}

 You should make an independent decision and are not bound to accept the assessment below.

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Public interest

18. s9(2)(h)

19. Structured as set out in this report, the Scheme would maximise potential interest cost savings of affected firms. Based upon the feedback and data provided to us by lenders, we estimate that an eligible business with an average amount of debt (\$3 million) could save between \$9,000 and \$45,000 in interest costs per annum due to the benefit of the guarantee, most likely towards the lower end of that range.³ Over a five-year period, savings would total \$45,000 to \$225,000 for a firm with an average amount of debt. Ranges for annual savings at other amounts of debt are set out in Table One.

Table One: Indicative interest cost savings per annum			
	Interest rate reduction		
Supported borrowing	0.3%	0.9%	1.5%
\$1,000,000	\$3,000	\$9,000	\$15,000
\$3,000,000	\$9,000	\$27,000	\$45,000
\$10,000,000	\$30,000	\$90,000	\$150,000

20. Lenders have informed us that \$1.5 billion of lending would fall under the Scheme, though the final amount is likely to diverge from this estimate. In particular, around s9(2)(b)(ii) and s9(2)(ba)(i) and breaches the proposed \$10 million loan limit. Under the proposed Scheme, inclusion of this lending would be considered by the Crown on a case-by-case basis with the discretion to exclude it, for example if it creates too much concentration risk. In addition, we have further questions about how one bank⁴ has forecast eligible lending which could result in up to \$94 million in additional lending. Finally, if you agree to provide equity-like support to severely affected firms, this will enable additional lending to this group by banks – the data we received from banks indicates a \$175 million capital requirement for 29 firms, but this data could be incomplete, and some of that capital would not be bank debt.

21. Assuming \$1.5 billion of lending is guaranteed under the Scheme, aggregate per annum savings for businesses could range from \$4.5 million (with a 0.3% rate reduction) to \$22 million (with a 1.5% rate reduction) and over the operational life of the scheme this sums to upper limits of \$22.5 million to \$112.5 million total savings.

22. The Scheme is also expected to allow lenders to provide additional cashflow and tenor benefits to borrowers; these benefits are harder to estimate and quantify but should be helpful at the margin. Provision of the Scheme should support sector confidence in the response, alongside other interventions you may progress at the same time.


³ All ranges in this section reflect the difference between the lowest (30 basis points) and highest (1.5%) potential interest rate reductions indicated by lenders.

⁴ Lender 4

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23. In addition to the core benefits, support through the existing lending sector has a number of broader benefits. These include:
- retaining a strong role for commercial decision making which is likely to limit market distortions and ensure commercial relationships remain intact
 - mitigating precedent risk and fiscal impact in respect of direct Crown support
 - helping support confidence in the recovery process by signalling to markets that the Crown is prepared to offer support for affected businesses, but will apply elements of commercial discipline, and
 - catalysing recovery decisions by business owners, lenders and local leaders more broadly – either as part of a package or a standalone intervention – by ‘drawing a line’ under NIWE business support.
24. The use of a guarantee allows benefits to be provided through taking risk on the Crown’s balance sheet, rather than direct, upfront fiscal cost. A provision reflecting the expected credit loss under the scheme would need to be recognised as and when loans are guaranteed, with a corresponding impact on the operating balance (but not net debt). Retaining lenders’ commercial incentives through the risk share protects the Crown from taking on undue risk.
25. To maximise the benefits, strong corresponding communications emphasising that further large-scale intervention is unlikely to be forthcoming will assist business owners to make decisions based on their current options.
26. This would help start the necessary adjustment process, including prompting firms to exit the market where they have no viable path back to profitability. This could be achieved either via the Scheme alone or as part of a package along with some form of equity-like support for severely affected firms.

Necessary or expedient

27. s9(2)(h) 
28. As outlined in paragraphs 18 to 23 above, Treasury considers the Scheme to be an expedient means of supporting businesses highly impacted by the NIWE through retaining a strong role for commercial decision making and through taking risk on the Crown’s balance sheet, rather than direct, upfront fiscal cost.

Costs

29. The actual costs to the Crown of the Scheme will only be known once the Scheme closes and payments have been made for all defaults. However, the Scheme would require upfront recognition of the expected credit loss of providing the guarantee. This would be captured as a provision as and when loans are guaranteed.
30. It is difficult to estimate the total of this provision now given the limited data available but Treasury estimates it at 6.05%. Assuming guaranteed lending of \$1.5 billion, the provision would total \$91 million. If the Scheme were to utilise the full recommended Scheme limit of \$2 billion the total would rise to \$121 million.
31. We would expect our ability to provision accurately will improve over time as we receive underlying loan data.
32. By way of comparison, initial provisioning for the BFGS sat at 8.4% but has now fallen to 2.5% and actual claims are tracking well below this level. We consider that the NIWE Loan Guarantee Scheme is riskier than the BFGS as by definition eligible firms have already experienced a material financial impact.

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33. In addition, we expect establishment and ongoing operational costs of the Scheme to be just over \$2 million over the forecast period. This includes operational personnel, legal and audit costs.
34. Further detail on the fiscal implications is provided later in the paper.

Risks

35. Default risk: The potential benefit is achieved through increased credit risk borne through the Crown balance sheet, which could crystallise into costs if supported loans default. By design the Scheme is targeted towards business facing material financial impact due to NIWE, and with heightened default risk. The key protection against taking undue risk is reliance on lenders' underwriting standards, and their incentive to ensure lending for their 20% risk share is profitable. This has proven to be an effective risk mitigant as exhibited by the BFGS, where claims to date have totalled \$1.45 million, from supported loans totalling \$2.86 billion.
36. 'Uptake' risk could influence public response to the Scheme and could result if lenders' underwriting standards mean firms cannot access the Scheme or because affected businesses do not have appetite to borrow to support their own recovery.
37. Uptake risk was prevalent under the BFGS, as firms' demand for credit was constrained, and lenders' risk appetites decreased, due to the uncertainty created by COVID-19. We consider this risk is low for NIWE as the forward outlook is more certain and both businesses and lenders are focused on recovery. Allowing full refinancing of debt into the Scheme further mitigates this risk, as lenders are already 'on risk' to affected firms and should have positive incentives to both mitigate their exposures and support their customers.
38. Effectiveness risk: Although likely to be meaningful in dollar terms, indicated interest rate reductions are more modest than officials had expected. This could give rise to concerns from businesses that the Scheme is an insufficient level of support in and of itself. Depending on actual outcomes generated by the Scheme and borrowers' responses, you can manage this risk by highlighting in public communications that lending decisions are made by lenders and that it is your strong expectation they pass the full benefit of the guarantee on to customers.⁵ Announcing the Scheme as a component of a broader package can also mitigate this risk.

We recommend progressing the Scheme

39. In light of the above, officials consider that there is a public interest in giving indemnities to lenders under the Scheme on the terms outlined in Annex Two, and that the benefits of the proposed indemnity appear to outweigh those costs and risks. Accordingly, officials are of the view that the indemnities are expedient in the public interest.
40. Overall, we recommend progressing the Scheme, noting that the recommendation is relatively finely balanced. Overall benefits are likely to be meaningful although relatively modest, both to affected firms, and at an aggregate level. Though the expected credit losses of the guarantee are estimated to approach the upper limit aggregate cost savings to firms, there are additional non-quantifiable benefits as outlined above, including the signalling benefits and the avoidance of a direct fiscal cost. As such, a guarantee may be a cost-effective mechanism relative to alternative interventions to deliver support to firms, although risk to the balance sheet could result in future costs. You may be best placed to consider the signalling benefits and non-financial risks associated with the Scheme.

⁵ If progressed, the guarantee deed will include an obligation to pass on the benefits of the guarantee to customers, although the exact benefit will be difficult to quantify and therefore enforce.

COMMERCIAL-SENSITIVE**Key Remaining Design Choices**

41. Engagement with lenders has broadly confirmed that a scheme consistent with our previous advice is appropriate. However, three issues have been identified which warrant your further consideration:
- Firm level eligibility criteria
 - Sector targeting, and
 - Pre-NIWE status (i.e., watchlist criteria).

Firm-level eligibility criteria

42. The Scheme should be targeted to ensure support is directed to businesses who are the most impacted. This limits moral hazard, fiscal and precedent risk. Targeting also reduces the risk that lenders transfer risk to the Crown (i.e., impaired or less credit-worthy lending) without providing benefit to support the recovery. On the other hand, 'over-targeting' may restrict access to the Scheme for some businesses who need support.
43. Initially we intended to determine specific quantitative criteria to define eligibility, including, for example, minimum revenue, cashflow or asset impacts for businesses seeking support. Feedback has indicated that lenders have taken differing approaches to assessing impact. As each lender has individually assessed the impact to their own portfolio, often using differing methods and relying on bankers' individual assessment of their clients, a quantitative rules-based approach is unlikely to be effective.
44. Without available well-defined common metrics, we consider a principle-based eligibility test is likely to be more effective. This will provide lenders, who have a strong and ongoing relationships with their impacted customers, with the ability to assess and make individual judgements on who would be eligible to receive support under the proposed Scheme.
45. We recommend that firm eligibility be described as: "the Scheme will be available to firms that incurred a material financial impact such as decreases to cashflow, revenue, or asset value as a result of the North Island Weather Events, but have a pathway to restored cashflow".
46. s9(2)(g)(i) and lenders' requirement to follow their own internal credit policies and processes before making new or refinanced loans. These, along with lenders commercial incentives, should ensure support is passed through to those highly impacted businesses who would most benefit from the Scheme.

Sector targeting

47. In addition to the risk mitigations set out in the previous paragraph, you could consider further narrowing the Scheme by targeting it to a specific sector or industry group for example the primary sector.
48. Restricting access by sector is likely to result in boundary issues that could result in fairness issues or administrative complexity. For example, a sectoral definition might exclude businesses in the region related to the primary sector or in the supply chain, such as independent cool stores and packhouses. In addition, other sectors such as retail, hospitality or transport would be excluded, even if they were similarly affected by NIWE, or suffered flow on consequences due to direct impacts on other firms. In addition, a sectoral constraint may exclude a number of smaller entities highly impacted by the NIWE.

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49. We recommend that you do not set a sector-based eligibility criteria.

Pre-NIWE status

50. The Scheme should aim to maximise support to firms affected by NIWE that are viable and for whom debt will support their recovery. You have further indicated a desire to retain competition across lenders by not restricting the ability for lenders to take on new customers under the Scheme.
51. Consideration is therefore warranted as to whether it is necessary to restrict access to the Scheme for businesses who were facing difficulties prior to the NIWE occurring. This constraint is a feature of the BFGS (via a 'watchlist' criteria⁶) to prevent lenders from lending to distressed firms, or refinancing existing distressed debt, with the benefit of the guarantee, and to ensure support was provided to those businesses impacted by the effects of COVID-19.
52. Lenders have advised that a similar watchlist criteria will result in a number of businesses being excluded from the Scheme that are "viable" and who would benefit from the guarantee, including businesses affected by prior weather events in the forestry sector.
53. Implementing a watchlist criteria also restricts the ability for lenders to compete on a level playing field. Watchlists are unique to each lender: as such, a watchlist criteria would restrict firm eligibility at incumbent lenders, but not with competitors.
54. We recommend that given the different context and targeted nature of the proposed Scheme, a watchlist criteria is not included. Rather than a watchlist criteria, the loss sharing ratio and requirement to lend to firms that meet lender underwriting standards should provide sufficient protection against adverse lending under the Scheme.

Further Design Features – Calibration

55. This section confirms recommended settings for terms on which we have previously advised. A complete Terms Sheet covering the whole Scheme is attached in Annex Two.

Scheme Limit

56. We recommend that you advise Cabinet of the intended overall Scheme limit based on the data provided by lenders, with an allowance to serve as a buffer should lenders beyond those consulted directly sign up to the guarantee and to accommodate unanticipated lending, competition across lenders and additional lending enabled if you progress equity-like support for severely affected firms. To provide this headroom, an overall Scheme size of \$2 billion is proposed.

Lender Limits

57. The overall Scheme limit will govern the total size of supported lending and the maximum amount of support available and overall risk to the Crown. Approved lenders will be allocated a portion of the overall Scheme limit (the "Maximum Lender Limit") which will restrict the total value of loans each lender is able to underwrite.

⁶ The BFGS watchlist criteria states the firms that were 60 days or more in arrears, and/or graded below a Lender's specific risk grading according to the Lender's internal risk framework at a specified date prior to the onset of COVID-19 are not eligible for the guarantee.

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58. We recommend you advise Cabinet that you intend to agree individual Maximum Lender Limits once the Scheme is closer to being established. These limits will be recommended by officials using lender reported estimated borrowing needs (including refinancing and new lending needs). Based on current data, we anticipate individual Maximum Lender Limits in the range \$60 million - \$350 million per lender (the upper bound could be approximately \$450 million if lending to severely affected firms is enabled by equity-like support).
59. The Crown will reserve the right to amend or update the Maximum Lender Limits as it sees fit, providing you flexibility throughout the Scheme availability period to manage future demand.

Borrower loan limit

60. We recommend that the borrower loan limit is set at \$10 million to ensure that eligible firms can receive sufficient relief from the Scheme while minimising the potential for over-subsidising firms. This cap would apply per borrowing entity/group, with conditions included in Scheme documentation to allow for increased limits to be assessed on an individual case by case basis, at the discretion of the Crown. s9(2)(b)(ii) and s9(2)(ba)(i)

We will need to give careful consideration to the case for supporting this lending based on a range of factors including need, concentration risk and fiscal risk.

Tenor

61. We recommend that the maximum tenor or supported loans be set at five years, to align with the limit of tenors that lenders have indicated they would offer. Lenders would determine the tenor of loan they are prepared to offer to their customers.

Loss sharing arrangement

62. We recommend an 80/20 loss sharing arrangement to provide the maximum benefit to businesses while ensuring appropriate commercial incentives remain with lenders.

Refinancing

63. We recommend that refinancing of a lender's existing debt, and across lenders, is not restricted. This approach maximises potential benefits to firms, ensures that all eligible businesses can access the Scheme regardless of their current lender s9(2)(g)(i)

Interest rate and benefit pass through

64. We do not think it is feasible or desirable to seek to require lenders to contractually pass on a certain level of benefit as a condition of the guarantee. Doing so would likely result in unintended consequences including affecting take-up of the Scheme itself, undermining its effectiveness.
65. Instead, and consistent with the BFGS, we recommend the Scheme includes a general obligation to pass on lower interest rates to impacted businesses reflective of the benefit provided by the Crown guarantee.
66. Any benefit beyond that achieved through these approaches, either to cost or more broadly (e.g., further cashflow relief), will be at the discretion of participating lenders.

Audit and Rights of Investigation

67. Feedback received through the BFGS included that the audit and investigation provisions were onerous and posed a barrier to some lenders in fully utilising that Scheme.

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68. Lenders who are likely to participate in the proposed NIWE loan guarantee Scheme have now had experience and exposure in the practical application of the BFGS, mitigating the risk that similar provisions affect uptake. We have not received specific feedback that similar NIWE provisions would be unnecessarily onerous.
69. We recommend that audit and investigation terms remain consistent with those in the BFGS. As a high-trust, delegated model, it is important to strike an appropriate balance between retaining sufficient provisions to protect the Crown's balance sheet, and reducing the operational burden, perceived or otherwise, for participating lenders.

Financial Implications

70. The establishment of the guarantee scheme will require a contingent liability of \$1.6 billion (80% of \$2 billion) to be recognised in the Economic and Fiscal Updates. This liability assumes full utilisation of the Scheme limit and that all loans default.
71. Accounting standards will require a provision to be recorded in the financial statements of government equal to the expected credit loss from the guarantee. The Treasury estimates that the provision will be between \$91 and \$121 million based on guaranteed lending in the range \$1.5 billion to the Scheme limit of \$2 billion. The intention is for the provision to be recorded a quarterly basis over the 2023/24 year (that the scheme is open for new loans) as lenders report the actual value of guaranteed loans. The provision will cause a corresponding decrease to the operating balance, but no immediate impact on net debt as there are no direct cashflow implications until claims are made.
72. We recommend that the provision is pre-committed to the Budget 2024 allowance because it is too large to charge to the Between-Budget Contingency (BBC) – it would effectively halve the BBC.
73. Claims under the Scheme will be recognised as they arise and/or become sufficiently certain to meet financial reporting requirements. The impact on net debt will be recognised when this occurs.
74. In addition ongoing operational costs to administer the Scheme will be just over \$2 million over the forecast period. Administration costs will continue until the scheme is disestablished in 2029, at \$0.460 million per annum. We recommend that this cost is charged to the Between-Budget Contingency.
75. The operating costs of the Business Finance Guarantee Scheme, have been funded out of the Public Finance Act 1989 (PFA) s 65ZG PLA departmental appropriation. BFGS losses are funded by the Payments and Expenses in Respect of Guarantees and Indemnities non-departmental PLA. Treasury is currently considering the same approach for the NIWE Loan Guarantee Scheme and will finalise its recommendation in time for the Cabinet paper.
76. If funded from the PLA, costs of the Scheme will be reflected in reforecasts of the PLA.

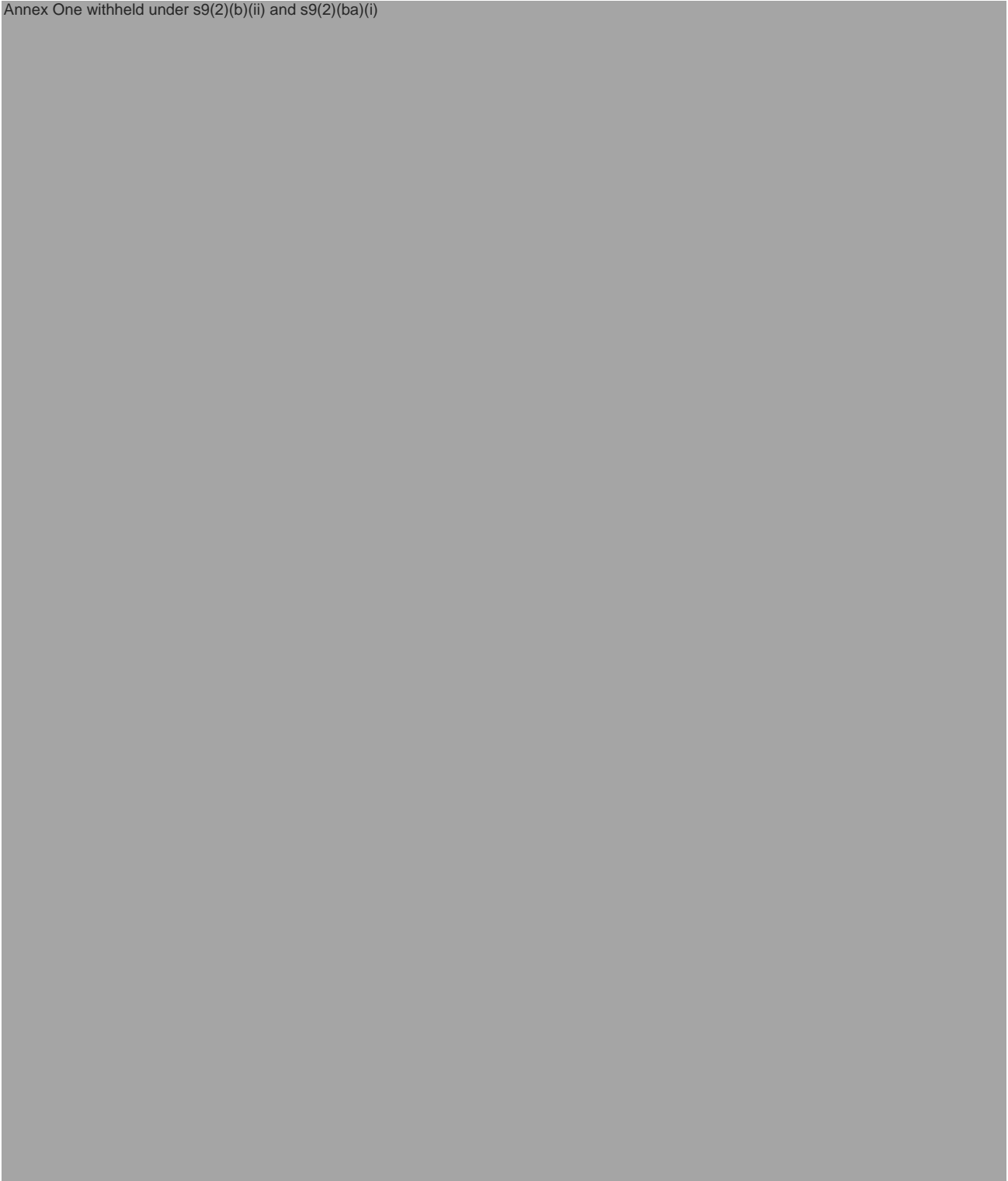
COMMERCIAL-SENSITIVE**Next Steps**

77. Assuming that you agree with our recommendations for the Scheme, and you agree that it is necessary or expedient in the public interest to give the indemnities, then we recommend that you first advise Cabinet of your intended decision, in light of the Cabinet Manual principle of informing Cabinet of the exercise of individual statutory powers relating to important financial commitments (clause 5.35).
78. It makes sense that Cabinet consideration of the Scheme occurs at the same time as its consideration of other NIWE response measures for severely affected businesses. We understand that these are to be considered by EWR on 21 June and Cabinet the week after. We have commenced preparation of a draft Cabinet paper on this basis, for your review and Ministerial consultation next week. Given timeframes, a curtailed consultation process will be required and we will work with the Cyclone Recovery Unit and your office to manage this.
79. If the proposed Scheme is agreed, we recommend you inform Cabinet that you, as Minister of Finance, will use your power to make decisions on any further policy matters that arise as part of the implementation of the proposed Scheme recommended above. This is likely to include decisions on operational and administrative terms of the Scheme, provided the overall Scheme is consistent with the design detailed above.
80. Subsequent consideration could be made to further delegation from you to the Secretary to the Treasury to agree the final operational terms and conditions of the guarantee, arrange execution of all and any necessary documentation to give effect to the guarantee and for the general administration of the guarantee.
81. In parallel to Cabinet consideration we recommend that you instruct officials to continue necessary steps to finalise a Scheme. This would involve re-engaging with consulted lenders, and engaging the broader lending sector via the New Zealand Bankers Association, to progress work required to establish the Scheme including drafting of relevant documentation and operational readiness.
82. Parallel engagement is necessary to ensure Scheme preparations are sufficiently advanced to align with our understanding of announcement timing preferences in early July. Any risk of commencing engagement with lenders ahead of Cabinet consideration can be managed through careful messaging by officials.
83. We note that section 65ZD(3) of the PFA provides:
- If the contingent liability of the Crown under a guarantee or an indemnity given by the Minister under subsection (1) exceeds \$10 million, the Minister must, as soon as practicable after giving the guarantee or indemnity, present a statement to the House of Representatives that the guarantee or indemnity has been given.*
84. If you decide to grant the indemnities, we recommend that Treasury liaise with your office at the relevant time to provide a Statement of Indemnity to be signed. Your office can liaise with the Office of the Clerk of the House about the necessary arrangements for presenting the statement to the House.

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Annex One – Highly and severely impacted borrower numbers and debt levels

Annex One withheld under s9(2)(b)(ii) and s9(2)(ba)(i)



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Annex Two – Terms Sheet

TERMS SHEET NORTH ISLAND WEATHER EVENTS BUSINESS LOAN GUARANTEE SCHEME [] June 2023 – DRAFT	
General description of Crown Support Package	<ol style="list-style-type: none"> 1. The Crown wants to work with banks and non-banks (the Lenders) to support New Zealand businesses (Borrowers) recover from the impact of the North Island Weather Events (NIWE). 2. NIWE include the effects of the Auckland Anniversary weekend floods in early 2023, and Cyclone Gabrielle. 3. Crown support will be targeted at new loans (including increases to existing limits) and refinancing of existing debt, to be made by participating Lenders to a portfolio of Borrowers as a response to difficulties caused by the NIWE (each a Supported Loan). The Supported Loans will be provided to businesses that are considered by the relevant Lender to be viable under the relevant Lender's Supported Loan Policies, Practices and Processes to help those Lenders meet Borrowers' needs to fund working capital requirements, and the rebuild of assets and infrastructure damaged by the NIWE by: <ol style="list-style-type: none"> a) supporting Lenders to pass lower interest rates to impacted businesses, reducing the cashflow required for Borrowers to service their Supported Loan, and to reduce the cost of the debt over its lifetime, including for new and refinanced lending; b) supporting lenders to bridge longer cashflow gaps for impacted Borrowers; c) supporting lenders to offer more favourable principal repayment terms for impacted Borrowers. 4. The Maximum Scheme Limit (i.e., the maximum aggregate value of all Supported Loans under the Scheme) is \$2 billion. 5. The Maximum Lender Limit (i.e., the maximum aggregate cap of all Supported Loans per lender) will be allocated on a per lender basis in line with forecasts received from Lenders with Maximum Lender Limits defined in each Lender's Deed of Indemnity. <i>[Drafting note: Maximum Lender Limit to be confirmed in consultation with Lenders. The relevant Deed of Indemnity will also include a mechanism by which the Crown can agree to change the relevant Lender's Maximum Lender Limit without committing to an equivalent change for any other Lender.]</i> 6. The Maximum Borrower Limit (i.e., the maximum value of Supported Loans per borrower group) is \$10,000,000 (but the Crown may permit a higher limit in its absolute discretion following request by a Lender). 7. The Supported Loans may be established in the period from the date the guarantee scheme takes effect and

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	<p>ending 30 June 2024 (or such later date as notified by the Crown to the Lenders) (the Availability Period). (A roll over or renewal or an extension (by whatever name called) of a Supported Loan after the expiry of the Availability Period will be a “Supported Loan” for the purposes of the Crown Support Scheme.)</p> <p>8. Each Supported Loan may be a fixed term or revolving loan and have a term of not more than five years.</p> <p>9. Supported Loan repayment in full or Supported Loan commitment reductions during the Availability Period, will be available for other Supported Loans by the relevant Lender.</p>
Lenders and Approved Lenders	<p>1. All Lenders will have the option to apply to participate in the Crown support package. The Crown will approve applicants at its discretion, based on due diligence deemed necessary by the Crown (each an Approved Lender).</p> <p>2. As part of the application process, each applicant Lender must provide the Crown with:</p> <p>(a) information to allow the Crown to understand the Lender’s risk assessment, performance monitoring, workout, and provisioning methodologies, as reasonably requested by the Crown; and</p> <p>(b) a summary of its Supported Loan Policies, Practices and Processes.</p> <p>3. Each Approved Lender must enter into a Deed of Indemnity with the Crown, which will reflect the terms set out in this Terms Sheet.</p> <p>4. Each Approved Lender will be allocated a portion of the Maximum Scheme Limit, based on the information supplied to the Crown.</p>
Loss Sharing Arrangement	The Crown will pay to an Approved Lender the amount equal to 80 per cent of any Shortfall which arises on a Supported Loan.
Supported Loan Policies, Practices and Processes	Approved Lenders will apply their existing credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices, and processes applicable to Supported Loans. These will generally reflect modifications to the relevant Approved Lender’s standard policies, practices, and processes, to enable the Approved Lender to give effect to the objectives of the Scheme.
Shortfall	<p>Shortfall means, in respect of a defaulted Supported Loan, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the defaulted Supported Loan after the Approved Lender:</p> <p>(a) has:</p> <p>(i) completed its arrears management and enforcement processes; and</p> <p>(ii) determined that it does not reasonably expect to make any further recoveries; and</p> <p>(b) has applied all recoveries available to be retained by it in accordance with the following order of application:</p> <p>(i) first, to pay reasonable costs and expenses incurred by the Lender in applying its arrears</p>

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	<p>management and enforcement policies and processes;</p> <p>(ii) secondly, to reduce all indebtedness of the Borrower (as principal or surety) to the Approved Lender which is not owed under the defaulted Supported Loan and which is, at the time any such recoveries are applied, due and payable by the Borrower; and</p> <p>(iii) thirdly, to reduce all indebtedness under the defaulted Supported Loan owed by the Borrower to the Approved Lender,</p> <p>(the Shortfall Waterfall).</p>
Borrower Eligibility Criteria	<p>A Borrower must:</p> <p>(a) have incurred a material financial impact such as decreases to cashflow, revenue, or asset value as a result of NIWE;</p> <p>(b) be a New Zealand based business;</p> <p>(c) not be engaged as a material part of its business in an “Excluded Activity”;</p> <p>(d) be considered by the relevant Approved Lender to be viable under the relevant Approved Lender’s Supported Loan Policies, Practices and Processes at the time either a New Supported Loan is written or Refinanced Existing Lending becomes a Supported Loan;</p> <p>(e) have a business or parts of the business that are located in any of Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke’s Bay, Tararua, or Wairarapa (together the Affected Regions).</p> <p>or be any other borrower that an Approved Lender and the Crown agree will be a “Borrower” for the purposes of the Loss Sharing Arrangement.</p> <p>The Crown may amend the Borrower Eligibility Criteria, by written notice to all Approved Lenders, with effect from the date of that written notice or any subsequent date specified in the written notice.</p>
Excluded Activities	<p>Means:</p> <p>(a) being a local authority, a council-controlled organisation or a council organisation for the purposes of the Local Government Act 2002;</p> <p>(b) the manufacture of cluster munitions;</p> <p>(c) the manufacture or testing of nuclear explosive devices;</p> <p>(d) the manufacture of anti-personnel mines;</p> <p>(e) the manufacture of tobacco;</p> <p>(f) the processing of whale meat;</p> <p>(g) recreational cannabis;</p> <p>(h) the manufacture of civilian automatic and semi-automatic firearms, magazines or parts; and</p> <p>(i) any other activity notified by the Crown in writing to the Approved Lenders, with the effect from the date of that notification (or such later date as set out in the notification).</p>

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Supported Loan	A loan established during the Availability Period which meets the Supported Loan Criteria.
Supported Loan Criteria	
Purpose	Each Supported Loan must meet the Borrower Eligibility Criteria. A Supported Loan will not be available to fund: <ul style="list-style-type: none"> (a) dividends to be distributed outside the Borrower's guaranteeing group; (b) on-lending outside the Borrower's guaranteeing group; or (c) Excluded Activities, unless expressly agreed by the Crown.
Supported Loan Limit	<p>The Maximum Borrower Supported Loan Limit (i.e., the maximum value of Supported Loans to one Borrower or Borrower Group) is \$10,000,000, (but the Crown may permit a higher limit in its absolute discretion following request by a Lender).</p> <p>The Maximum Lender Limit (i.e., the maximum aggregate cap of all Supported Loans per lender) is \$[].</p> <p><i>[Drafting note: Maximum Lender Limit to be allocated on a per lender basis in line with forecasts received from Lenders and confirmed in consultation with Lenders. The relevant Deed of Indemnity will also include a mechanism by which the Crown can agree to change the relevant Lender's Maximum Lender Limit without committing to an equivalent change for any other Lender.]</i></p> <p>The Maximum Scheme Limit (i.e., the maximum aggregate value of all Supported Loans from all Lenders under the Scheme) is \$2 billion.</p>
Borrower Refinancing	A Supported Loan will be available to fund the refinancing of a Borrower's existing lending, as well as lending a Borrower may hold with another Lender.
Term	The term for an individual Supported Loan will be as determined by the relevant Approved Lender, but limited to a maximum of five years.
Interest rate	In recognition of the Crown providing Lenders with a 80 per cent. guarantee, Lenders agree to pass lower interest rates to impacted businesses, reflective of the Crown guarantee.
Documentation	Documentation in relation to a Supported Loan: <ol style="list-style-type: none"> 1. In the case of the Supported Loan, will be documented in accordance with the Approved Lender's Supported Loan Policies, Practices and Processes; and 2. Include any security or guarantee documentation held or required to be taken by the Approved Lender for the Supported Loan.
Security	The Approved Lender will comply with its normal procedures and practices in relation to the security they will take in relation to the Supported Loan.
Loan Approval Process	The Approved Lender will make Supported Loans in accordance with the Approved Lender's Supported Loan Policies, Practices and Processes, which are likely to reflect

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	modifications to enable the Approved Lender to give effect to the Scheme.
Application of repayments	<p>While the Supported Loan remains outstanding and prior to any acceleration or enforcement by the Approved Lender:</p> <p>(a) scheduled repayments by a Borrower will be applied to the facility to which they relate (including the Supported Loan);</p> <p>(b) total prepayment of all facilities by a Borrower (including the Supported Loan) will be applied in accordance with the Shortfall Waterfall; and</p> <p>(c) any other prepayments by a Borrower will be applied to the Supported Loan to the extent permitted by the terms of any other facility documents between the Approved Lender and the Borrower.</p>
Re-advances	Supported Loan repayment in full or Supported Loan commitment reductions during the Availability Period, will be available for other Supported Loans by the relevant Lender.
Administration	Each Approved Lender will administer its Supported Loans in accordance with its Supported Loan Policies, Practices and Processes, which are likely to reflect modifications to enable the Approved Lender to give effect to the Scheme.
General Reporting	General reporting arrangements to be agreed as part of the guarantee scheme documentation.
Provision of Supported Loan Policies, Practices and Processes	Each Approved Lender must provide the Crown with an updated summary of its Supported Loan Policies, Practices and Processes at the end of each calendar month in which it makes material changes to those Supported Loan Policies, Practices and Processes.
Information to be provided on request	<ol style="list-style-type: none"> On request, the Approved Lender must promptly provide the Crown with any other relevant information that is available to, or that can reasonably be obtained by, the Approved Lender in relation to a Supported Loan or the Borrower of a Supported Loan. The Crown will use such information solely for the purposes of management and administration of the Loss Sharing Arrangement and will agree to appropriate confidentiality arrangements in relation to such information and other information provided by Approved Lenders.
Official Information Act requests	<p>The Crown acknowledges that each Approved Lender will provide information that is commercially sensitive under this arrangement and will inform and consider the views of each Approved Lender before responding to a request under the <i>Official Information Act 1982</i> that relates to information provided by that Approved Lender under this arrangement.</p> <p>Approved Lenders acknowledge that the Crown is subject to the <i>Official Information Act 1982</i> and that the Crown's decision in responding to any request under the <i>Official Information Act 1982</i> is final.</p>
Default and workout	If an Approved Lender becomes aware that a Borrower has defaulted under the relevant Supported Loan Agreement, the Approved Lender must take commercially reasonable action (including enforcement of any security and any guarantees) to recover the Supported Loan and any other indebtedness in

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	accordance with its Supported Loan Policies, Practices and Processes (which may include reaching a compromise with the Borrower instead of putting the Borrower into liquidation).
Application of proceeds of enforcement	Any proceeds received by the Approved Lender from the exercise of any rights under any facility, security or guarantee document which relates to, secures or supports the Supported Loan, must be applied in accordance with the Shortfall Waterfall.
Rights of review and audit	<ol style="list-style-type: none"> 1. At the request of the Crown, the Approved Lender must allow the Crown or its agent to inspect the books, records and accounts of the Approved Lender that relate to a Supported Loan, including a Supported Loan where a claim is being considered, or has been paid by, the Crown. 2. The Crown may audit the Approved Lender's compliance with the requirements of the Loss Sharing Arrangement in relation to any Supported Loan, including the Approved Lender's application of its Supported Loan Policies, Practices and Processes 3. Provisions regarding notice, frequency, consequences and cost of such audits will be shared 50:50.
Notification of claims	<p>No more than 20 working days after the end of each calendar month, the Approved Lender will provide the Crown with a notice (a Notification) in respect of any Supported Loan which is in default and has become subject to the Approved Lender's management and enforcement policies and procedures during the relevant calendar month which:</p> <ol style="list-style-type: none"> (a) certifies that the Borrower has defaulted under the Supported Loan; and (b) confirms that the Approved Lender is following its management and enforcement processes in accordance with its Supported Loan Policies, Practices and Processes in respect of the Supported Loan.
Claims process	<ol style="list-style-type: none"> 1. The Approved Lender may serve a notice of claim in the agreed form (a Notice of Claim) for payment under the Loss Sharing Arrangement on the Crown if: <ol style="list-style-type: none"> (a) the Approved Lender is not repaid all or part of the Supported Loan in accordance with the relevant Supported Loan Agreement; and (b) the Approved Lender has completed its arrears management and enforcement processes in accordance with its Supported Loan Policies, Practices and Processes. 2. The Approved Lender's Notice of Claim must: <ol style="list-style-type: none"> (a) specify the circumstances which have caused demand to be made under the Loss Sharing Arrangement; (b) specify the amount payable by the Crown; (c) be received no later than three months after the Approved Lender has completed its arrears management and enforcement processes in accordance with its Supported Loan Policies, Practices and Processes;

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	<ul style="list-style-type: none"> (d) be accompanied by a copy of any provisioning paper or loan loss review paper where prepared by the Approved Lender in relation to the Supported Loan; and (e) be accompanied by a statement from the Approved Lender certifying that all Supported Loans the subject of the Notice of Claim have been managed in accordance with the Approved Lender’s Supported Loan Policies, Practices and Processes. <p>3. The Crown will pay the Approved Lender any amount payable by it under the Loss Sharing Arrangement within 20 business days of confirming receipt of a complete and valid Notice of Claim.</p>
<p>Exclusions</p>	<p>The Crown has no obligation to pay a claim made by an Approved Lender under the Loss Sharing Arrangement in respect of a Supported Loan:</p> <ul style="list-style-type: none"> (a) to the extent that in respect of a Supported Loan under any relevant law: <ul style="list-style-type: none"> (i) a Supported Loan Agreement is (wholly or partly) unenforceable, invalid or not binding on the Borrower; or (ii) the Borrower’s obligation to pay money owing under the Supported Loan is (wholly or partly) unenforceable against the Borrower; or (iii) the Borrower is entitled to a reduction in respect of its payment obligations to the Approved Lender, including where the Borrower’s payment obligations are held to be a penalty, and any such circumstance affects the amount potentially payable by the Crown under the Loss Sharing Arrangement by reducing the amount that would, but for such circumstance, have been available to reduce the money owing by the Borrower under the Supported Loan, provided that this will not apply where such circumstance is caused solely as a result of: <ul style="list-style-type: none"> (iv) the winding up of the Borrower or if it subsequently transpires that the Borrower was not solvent at the time the relevant Supported Loan was made to it; or (v) despite the Approved Lender having made due enquiry, the fraud of the Borrower; (b) to the extent that non-payment by the Borrower under the Supported Loan Agreement is due to any breach of contract, negligence in relation to the Approved Lender’s application of its Supported Loan Practices, Policies and Processes or fraud by the Approved Lender; (c) to the extent that the Approved Lender is in breach of any of its obligations under the Loss Sharing Arrangement and such breach has caused non-payment by the Borrower under the Supported Loan Agreement;

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	<p>(d) where an Approved Lender has not notified the Crown in accordance with the relevant documentation that a claim has been lodged; and</p> <p>(e) where the loan is not a Supported Loan.</p>
Refund by Lender	<p>If the Crown has paid a claim under the Loss Sharing Arrangement and it is subsequently established that the payment or a part of the payment of that claim was greater than the amount required to be paid by the Crown (such surplus amount being the Surplus Amount) under the terms of the Loss Sharing Arrangement (including as a result of the exclusions set out in above), the Approved Lender must repay the Amount together with interest on the Surplus Amount at the "Bank Bill Rate" from the date the Crown made the payment until the Approved Lender repays the Surplus Amount to the Crown in full. Repayments will be made on a quarterly basis on the same cycle as Approved Lenders' report to the Crown as described above.</p>
Termination	<ol style="list-style-type: none"> 1. Each party has the right to withdraw from the Loss Sharing Arrangements at any time during the Crown Support Period by an agreed period of prior notice. 2. Termination of the Loss Sharing Arrangements will not affect the parties' obligations in relation to those Supported Loans already entered into.
Confidentiality	<p>Standard confidentiality provisions to apply subject to the usual <i>Official Information Act 1982</i> acknowledgements.</p>
Transfer	<p>An Approved Lender may not transfer a Supported Loan, [except to another Approved Lender] or with the Crown's written consent.</p>

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TE TAI ŌHANGA
THE TREASURY
Treasury Report: Cabinet Paper: Establishing a NIWE Loan Guarantee Scheme to Support Recovery for Highly Impacted Firms

Date:	16 June 2023	Report No:	T2023/1114
		File Number:	IM-2-1-15-8-2

Action Sought

	Action Sought	Deadline
Minister of Finance Minister for Cyclone Recovery (Hon Grant Robertson)	Agree to approve the attached Cabinet paper	Monday 19 June 2023

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Max Christie	Analyst, New Zealand Export Credit	s9(2)(k)	✓
Renee Polaczuk	Senior Business Originator, New Zealand Export Credit		
Peter Rowe	Head of Export Credit		

Minister of Finance's Office Actions (if required)

Return the signed report to Treasury.

Note any feedback on the quality of the report

Enclosure: No

COMMERCIAL-SENSITIVE**Treasury Report: Cabinet Paper: Establishing a NIWE Loan Guarantee Scheme to Support Recovery for Highly Impacted Firms**

Executive Summary

A guarantee of lending to firms highly affected by the North Island Weather Events (NIWE) could provide modest but meaningful cost reductions aiding business recovery. Last week, you agreed to the design of a NIWE loan guarantee scheme (the Scheme), agreed to establish the Scheme, and agreed to inform your Cabinet colleagues of your intention to do so (T2023/1009 refers).

This report provides you with the Cabinet paper *Establishing a NIWE Loan Guarantee Scheme to Support Recovery for Highly Impacted Firms* for your approval. If you agree, we will lodge it with the Cabinet Office on Monday 19 June for consideration at the Cabinet Extreme Weather Response Committee on 21 June 2023. Last week, you received a draft Cabinet paper on capital- and cashflow-related support for severely impacted firms. You will receive a final draft of that paper alongside this paper for your approval and then for lodgement on Monday 19 June to the same Committee. We recommend you consider these proposals together.

Following Cabinet's consideration, we will progress with implementation of the Scheme.

Recommended Action

We recommend that you **agree** to approve the attached Cabinet paper.

Agree/disagree.

Peter Rowe
Head of Export Credit

Hon Grant Robertson
Minister of Finance and Minister for Cyclone Recovery

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Office of the Minister of Finance

Chair, Cabinet Extreme Weather Recovery Committee

Establishing a NIWE Loan Guarantee Scheme for Highly Impacted Firms**Proposal**

1. This paper seeks agreement to the key design elements of the North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) to provide relief to firms that have been highly impacted by NIWE but are still considered viable by banks, and informs Cabinet of my intention use my power under the Public Finance Act to establish the Scheme.
2. The Scheme should be considered alongside other potential support to firms highly and severely affected by NIWE – specifically the parallel proposal for capital- and cashflow-related support for at-risk firms.

Relation to government priorities

3. The proposal in this paper reflects the Government's priorities of supporting market-led resilience and economic recovery in the regions, and specifically in response to the severe weather events of early 2023.

Executive Summary

4. The NIWE were significant natural disasters, and the impacts continue to be felt by New Zealand communities. There are a relatively small but meaningful number of firms that have been highly impacted by NIWE. These firms continue to be affected by material impacts to cashflow, revenue, and assets, but do have the ability to source and service debt.
5. I intend to use my power under the Public Finance Act 1989 to establish the Scheme to provide meaningful relief to these firms. The Scheme would enable lenders to lower interest rates and offer more flexible loan terms on loans issued to affected firms over the next year. This relief would apply to these loans for a maximum of five years to support firms to recover, rebuild, and get back on their feet. I am seeking agreement to the key design elements of the Scheme to ensure it will facilitate a strong market-led recovery.
6. The Scheme would be part of a package that also includes proposals to provide concessionary loans and equity finance to severely impacted firms.
7. Over the next weeks, I will finalise the details of the Scheme and instruct the Treasury to work with lenders to implement it. I expect that the Scheme would be up and running, and available for firms to seek support from it, in July 2023.

COMMERCIAL-SENSITIVE**Background**

8. The NIWE were significant natural disasters, with estimated damage ranging from \$9 billion to \$14.5 billion, let alone the unquantified impacts on households, businesses, and communities. The primary industries bore the brunt of the losses, with damage to crops, livestock, and on-farm infrastructure. Much of the damage was to uninsurable assets. The Government has provided significant assistance to firms and households so far (see **Appendix One**), but there remain a small number of impacted firms, particularly in the primary sector, that continue to be affected by material impacts to cashflow, revenue, and assets.
9. Officials have identified four broad categories of impacted firms in the NIWE regions of Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, and Wairarapa:
 - 9.1 Partially impacted firms, which may be severely impacted in parts, but who are sufficiently diversified and/or large enough to manage 'on their own'.
 - 9.2 Highly impacted firms that have a pathway to restored cashflow within a reasonable timeframe, and an ability to take on meaningful levels of increased debt to fund rebuild and recovery.
 - 9.3 Severely impacted firms that may otherwise be commercially viable in the future with reasonable support – these firms have no current pathway to restored cashflow to support taking on additional debt, but with a reasonable level of support, they could return to viability within a reasonable timeframe.
 - 9.4 Severely impacted firms that are (or are near) a complete loss – these firms have no current pathway to restored cashflow within a reasonable timeframe or at a reasonable level and are fundamentally unviable.
10. The proposal in this paper centres on the cohort of highly impacted firms. While these firms do have an ability to take on meaningful levels of debt to fund rebuild and recovery, the impacts on their cashflow, revenue, and assets are material.
11. s9(2)(b)(ii) and s9(2)(ba)(i) Just
under 90% of the firms are small, currently holding debt of less than \$10 million. In total, about \$1.5 billion of debt is anticipated to be supported by the Scheme.

COMMERCIAL-SENSITIVE**The Scheme would fit in a package to support impacted firms**

12. Our preference as Government is for a market-led approach to business assistance, sending a credible and clear signal to the market – ahead of future events – that the Government will not act as insurer of last resort and facilitating a pathway for embedding better risk management into land use decisions.
13. However, a market-led solution may not adequately address wider risks, such as the compounded effects of multiple simultaneous business failures in concentrated regions. The Government could mitigate these risks and reduce potentially significant local disruption in the near term by tempering the market-led response.
14. I consider that a mix of quasi-commercial mechanisms spanning the Scheme, concessional loans, and equity infusions best balance meeting the needs of businesses I wish to target while supporting the market-led recovery, having acceptable levels of risk for the Crown, being feasible, and being consistent with the Crown's Tiriti of Waitangi obligations.
15. The parallel proposal for capital- and cashflow-related support for at-risk firms discusses the concessional loans and equity infusions, which would be narrowly targeted at severely impacted firms that have a reasonable likelihood of returning to viability with further support, but not a clear enough way forward to access commercial finance. If Cabinet agrees to these measures severely impacted firms may also benefit from the Scheme.
16. Paired with the Scheme, this suite of mechanisms would address issues for the two highest priority categories (highly and severely impacted firms), while allowing the partially impacted firms to recover without unnecessary intervention and avoiding the distortion of supporting severely impacted firms that are fundamentally not viable. The following flowchart provides an overview of how the mechanisms would work together.

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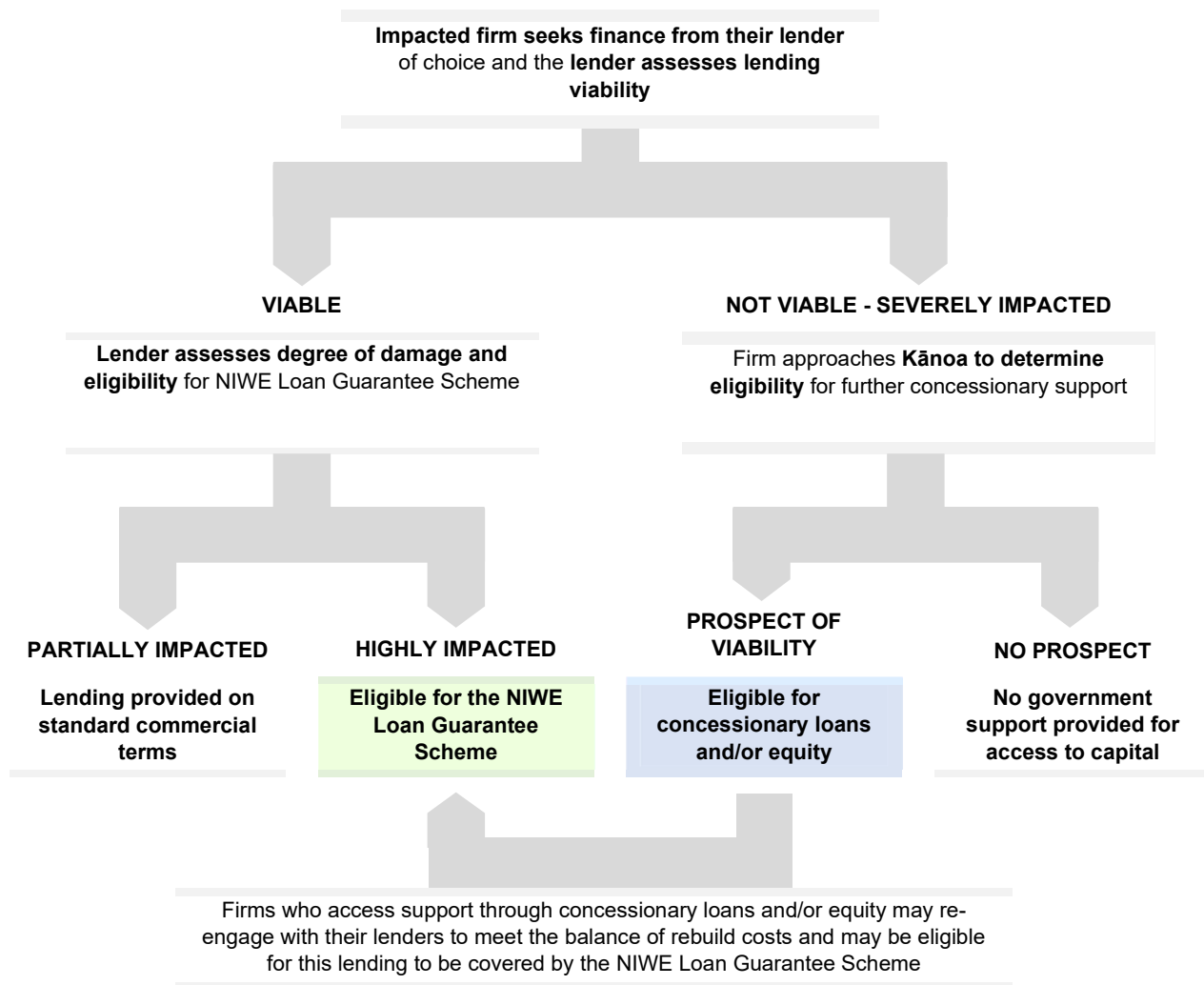


Figure One: Overview of support mechanisms and how they work together

The Scheme would provide cost and flexibility relief to catalyse the recovery

- The Scheme would enable lenders to transfer 80% of risk from the borrower to the Crown for loans issued in the 2023/24 financial year. This means that lenders can assign the Crown’s risk rating to the borrower, improving their risk weighting and so reducing the amount of capital the lender needs to set aside in relation to that loan. This benefit is passed on to the borrower through a reduction in the interest rate that is charged to the borrower, and a higher guarantee supports greater benefits.

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18. Estimates indicate that the reduction in interest rates would range from 30 to 150 basis points (0.3% to 1.5%), depending on the individual loan and borrower risk. This is the equivalent of \$9,000 to \$45,000 in interest cost savings per annum for the average supported firm, based on borrowings of \$3 million. Over the five years the Scheme is in place, these savings could accumulate to between \$45,000 and \$225,000 for a firm with an average amount of debt. Cost savings of this magnitude would provide meaningful relief to firms.
19. Extended across all anticipated debt, aggregate savings for the sector could range from \$4.5 million to \$22.5 million per annum, which sums to upper limits of \$22.5 million to \$112.5 million over the life of the Scheme.
20. In addition to the cost saving benefits, lenders are expected to offer more favourable loan terms to customers. This could include bridging longer cashflow gaps and offering longer loans to borrowers, which would provide them with more flexibility to recover.
21. Coupled with sending a signal that boosts sector confidence in the response, cost savings and additional flexibility would catalyse recovery decisions by business owners, lenders and local leaders and could help 'draw a line' under NIWE business support.

The Scheme has been designed in consultation with lenders to maximise benefits to borrowers

22. Lenders have indicated that * [REDACTED] of their customers are highly impacted and provided further information to support officials to design the Scheme. At a high level, I consider the best Scheme to progress involves: *s9(2)(b)(ii) and s9(2)(ba)(i) [REDACTED]
 - 22.1 an 80% Crown guarantee
 - 22.2 a five-year guarantee period, meaning loans issued between 1 July 2023 and 30 June 2024 would be covered by the guarantee for five years from the date of issue
 - 22.3 new and refinanced lending, meaning lenders could refinance existing lending under the guarantee in addition to issuing new loans under the guarantee
 - 22.4 new customers, meaning lenders could offer loans to new customers and refinance lending that borrowers have with other lenders
 - 22.5 limits to the amount of lending to each borrower (of \$10 million, with exceptions on a case-by-case basis), from each lender (indicatively between \$60 million and \$450 million, unique to lender), and across the entire Scheme (a maximum of \$2 billion), and

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- 22.6 principled targeting requirements, including that eligible firms must be located in impacted NIWE regions, be classified as having been materially financially impacted, and meet their lender's credit assessment criteria (i.e., that they are lendable)
- 22.7 a general requirement for lenders to pass on lower interest rates reflective of the benefit provided by the guarantee.
23. It is most practical for the eligibility criteria to be based on a principle rather than set impact thresholds. Each lender uses different methods and relies on individualised assessments of their clients, and it is not clear that a consistent threshold could be set without risk of ruling out firms I consider should be eligible. Mitigations, like carefully setting the lender limits and retaining rights of investigation and audit, will ensure that lenders apply the principle meaningfully.
24. This Scheme would not support severely affected firms (which are targeted by the concessionary loans and equity infusion proposals) and is unlikely to expand the number of firms that lenders consider lendable. Because it would not materially influence lenders' behaviour in supporting new lending, it is unlikely to address access-to-capital issues faced by Māori firms.
25. This means that, as described above, the Scheme would effectively act as a relief mechanism for firms highly impacted by the NIWE, rather than as an economic intervention that would change the nature, speed or shape of the recovery.
26. The key parameters are proposed to be:

Parameter	Description of NIWE Guarantee terms	For Comparison: Concessional Loans and/or Equity
Loss sharing arrangement	The Crown would underwrite 80% of each supported loan to provide maximum benefit to firms while ensuring appropriate commercial incentives remain with lenders.	The Crown takes 100% of the default risk.
Scheme Limit	The overall Scheme size would not exceed \$2 billion. This is based on the data provided by lenders on anticipated eligible lending with an allowance for unanticipated lending.	There would be no set limit, but expectation is these mechanisms would support up to \$255 million.
Lender Limits	Approved lenders would be allocated a portion of the overall Scheme limit which will restrict the total value of loans each lender is able to underwrite. Individual limits will be developed closer to Scheme establishment but are anticipated to range from \$60 million to \$450 million per lender.	Lending would be done by Kānoa, with the lender limit up to the scheme limit by definition.

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Parameter	Description of NIWE Guarantee terms	For Comparison: Concessional Loans and/or Equity
Borrower Limit	Each borrower could only cover \$10 million of debt in the Scheme to ensure that eligible firms can receive sufficient relief while minimising the potential for over subsidising firms. The Crown will reserve the right to extend the limit on a case-by-case basis.	Each borrower could only be lent (or provided equity) up to \$4 million. There would be an exceptions process for the Crown to consider varying terms where there is a compelling reason.
Tenor	Loans would be supported by the guarantee for no more than five years to align with maximum anticipated loan lengths advised by banks.	Loans with interest deferral would be supported for up to 10 years, and other loans for up to 15 years to meet the unique needs of the horticulture sector.
Refinancing	Lenders could refinance existing debt (including across lenders) to maximise potential benefits to firms and ensure all eligible firms can access the Scheme regardless of their current lender.	These mechanisms would not support refinancing.
Benefit pass through	Lenders would have a general requirement to pass on lower interest rates reflective of the benefit provided by the guarantee. It is not feasible or desirable to require lenders to contractually pass on a specific level of benefit because each loan requires individual consideration, and it could cause negative impacts on the uptake of the Scheme. It is expected that there would be reductions of 30 to 150 basis points on interest rates, and extended terms and bridged cashflow gaps.	Firms would be able to access lending and/or equity from Kānoa where they couldn't access commercial lending. Kānoa would offer a reduction of up to * [REDACTED] arms-length interest rates, and up to 10 years deferral of interest payments. *s9(2)(b)(ii) and s9(2)(ba)(i)
Firm-level eligibility criteria	The Scheme would be available to firms that incurred a material financial impact such as decreases to cashflow, revenue, or asset value as a result of the NIWE but have a pathway to restored cashflow. These firms would also have to be New Zealand based, operate in one of the NIWE regions, and not be an excluded activity such as the manufacture of tobacco. This principle-based eligibility criteria would enable lenders to make individual assessments on borrowers' unique circumstances. Lenders' requirements to follow credit policies and processes, lender limits, and 80/20 risk sharing ensure lenders will target the Scheme appropriately.	These mechanisms would be eligible to firms that demonstrate: they have incurred losses of 30% or more of their productive capacity because of the NIWE; its loss of viability was due to the NIWE; it has a reasonable prospect of returning to viability over a reasonable period; it has sought and failed to receive commercial lending; it took reasonable steps to mitigate losses; it is committed to improve resilience; and be located in the NIWE regions.

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Parameter	Description of NIWE Guarantee terms	For Comparison: Concessional Loans and/or Equity
Audit and rights of investigation	Audit and rights of investigation terms would be consistent with those in the Business Finance Guarantee Scheme, retaining sufficient provisions to protect the Crown's balance sheet.	N/A
Delivery	Loans would be delivered by a firm's lender of choice.	These mechanisms would be delivered by Kānoa.

The Scheme provides relief without significant direct, upfront fiscal cost, but comes with risks

27. The use of a guarantee allows benefits to be passed to highly impacted firms by taking risk on the Crown's balance sheet without any direct, upfront fiscal cost. The actual costs to the Crown would only materialise if supported loans default – the Crown would be liable for 80% of any defaulted loan. The likely full cost would only be known once the Scheme closes.
28. The indicative estimated credit loss of the expected guaranteed lending (\$1.5 billion) is \$91 million. There would need to be an upfront recognition of this in the form of a provision as and when the loans are guaranteed. The indicative 6.05% provision is based on the limited data that is currently available, and the accuracy of the estimate will improve over time as the Treasury receives underlying loan data. The actual provision will be dependent on utilisation of the Scheme and the quality of loans guaranteed by the Scheme.
29. The provision estimate is conservative. For comparison, initial provisioning for the Business Finance Guarantee Scheme (BFGS) was 8.4% but has now fallen to 2.5% and so far, actual claims are well below this level at only 0.05%. However, the Scheme comes with more risk than the BFGS – it targets firms that have already experienced a material financial impact, while the BFGS had much broader eligibility.
30. The risk that loans will default, and the Crown will be obliged to make payments, is mitigated by the Scheme design. Lenders hold 20% of the risk, retaining their incentive to remain profitable and appropriately manage the credit risk through strong underwriting standards. Together, these have proved to be an effective risk mitigant for the BFGS, where claims to date have totalled \$1.45 million from supported loans totally \$2.86 billion.
31. There is also the risk that the Scheme is not as effective as anticipated – either because of low uptake or if benefits to borrowers are more modest than anticipated.
32. I consider that uptake risk for the Scheme is low because the forward outlook is relatively certain and both firms and lenders are focused on the recovery –

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lenders have already identified the group of firms that could be eligible. Allowing full refinancing of debt into the Scheme (up to the \$10 million cap) further mitigates this risk.

33. There will remain a risk that lenders' interpretation of the general requirement means benefits (such as interest rate reductions) are more modest than anticipated. Should this occur, firms may express concerns that the Scheme provides insufficient relief, and the cost effectiveness of the Scheme may decrease. Though it is not feasible or desirable to require lenders to contractually pass on a specific level of benefit, I will manage this risk by highlighting in public communications that lending decisions are made by lenders and that it is my and the Government's strong expectation they pass the full benefit on to customers.

The benefits of the Scheme are modest but meaningful

34. We should recognise the limits of this proposal: while it will provide meaningful although relatively modest relief to a small number of firms, there are many other factors in the recovery, such as our essential infrastructure, that need to be addressed with other interventions.
35. The quantification of benefits is challenging. The direct interest cost savings for firms are expected to be in the range of \$22.5 million to \$112.5 million, most likely somewhere in the middle of the range. Benefits to firms from more flexible loan terms and non-monetary benefits to the market from clear signalling cannot be measured but are meaningful.
36. The initial expected credit loss of \$91 million will be refined once actual underlying loan data becomes available. Our experience to date with the Business Finance Guarantee Scheme is that claims volumes have been significantly lower than the inherently conservative accounting provision recorded in relation to these loans. Additionally, through working through financial institutions we can reduce precedent risk, reinforce private sector disciplines and avoid funding the cost of this initiative upfront. As such, I consider the Scheme to be a cost effective mechanism relative to alternative interventions.

COMMERCIAL-SENSITIVE**Next Steps**

37. Following your consideration, I will instruct the Treasury to finalise the operational details in line with the key parameters agreed today. The Treasury will engage with lenders to prepare the necessary legal and operational documentation. At this stage, I estimate that the Scheme will be made available for applications via lenders from the week of 17 July 2023, pending operational and implementation matters. The New Zealand Export Credit team will monitor and report on the progress of the Scheme on behalf of the Treasury.
38. Officials will develop a joint communications package promoting the Scheme alongside the concessionary loans and equity scheme as a coherent business support package.

Financial Implications

39. The establishment of the guarantee scheme will require a contingent liability of \$1.6 billion (80% of \$2 billion) to be disclosed in the Economic and Fiscal Updates. This liability assumes full utilisation of the Scheme limit and that all loans default, representing the unanticipated worst-case scenario.
40. Accounting standards will require a provision to be recorded in the financial statements of government equal to the expected credit loss from the guarantee. The Treasury estimates that the provision will be between \$91 and \$121 million based on guaranteed lending in the range of \$1.5 billion to the Scheme limit of \$2 billion. The provision increases will cause a corresponding decrease to the operating balance, but no immediate impact on net debt as there are no direct cashflow implications until claims are made.
41. Claims under the Scheme will be recognised as they arise and/or become sufficiently certain to meet financial reporting requirements. The impact on net debt will be recognised when this occurs.
42. In addition, ongoing operational costs to administer the Scheme will be \$1.760 million over the forecast period. Administration costs will continue until the scheme is disestablished in 2029, at \$0.460 million per annum. To minimise these costs, the Treasury will utilise existing personnel for administration of the Scheme. However, there are unavoidable additional costs for services such as audit and legal that cannot be met within baselines.
43. This provision will be pre-committed to the Budget 2024 allowance and the operational costs to the Between-Budget Contingency, demonstrating consistency with my public announcements that the NIWE response would be managed within allowances.
44. Expenses for the administration of the Scheme, the provision for the expected credit loss, and any payments made to fulfil the Crown's obligations on defaulted loans are funded by the permanent legislative authority departmental and non-departmental appropriations in Vote Finance under section 65ZG of the Public Finance Act 1989 (PFA).

COMMERCIAL-SENSITIVE**Legislative Implications**

45. As the Minister of Finance, I will be responsible for determining whether I consider the granting of indemnities and/or guarantees to lenders to be expedient or necessary in the public interest under section 65ZD of the PFA. No indemnities can be granted until I have made this determination.
46. It appears to me to be expedient in the public interest to grant indemnities under the Scheme. Should you agree to the key design elements of the Scheme, I intend to exercise my power to implement the Scheme by granting indemnities.
47. s9(2)(h)

Impact Analysis**Regulatory Impact Statement**

48. There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply.

Climate Implications of Policy Assessment

49. This paper does not meet the threshold for a Climate Implications of Policy Assessment.

Population Implications

50. The Scheme is not intended to materially influence lenders' behaviour in supporting new lending, so historic barriers faced by Māori businesses in accessing capital are unlikely to be addressed under this proposal. A key consideration of the complementary capital- and cashflow-related proposals is to ensure mechanisms are designed in a manner that do not disadvantage Māori and are consistent with the Crown's Te Tiriti o Waitangi obligations and, in particular, whenua Māori.
51. The Scheme would be targeted towards firms in the NIWE regions, including Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, and Wairarapa.

Human Rights

52. s9(2)(h)

COMMERCIAL-SENSITIVE**Consultation**

53. This paper has been prepared by the Treasury in consultation with the Cyclone Recovery Task Force, the Department of the Prime Minister and Cabinet, the Ministry for Primary Industries and the Ministry of Foreign Affairs and Trade.
54. To support development of the Scheme, targeted in-confidence engagement has occurred with six lenders.

Communications

55. I intend to announce this proposal in conjunction with the capital- and cashflow-related proposals as a joint communications package that will be developed. The Scheme, concessionary loans, and equity support would be promoted as a coherent business support package. Announcements will come as soon as possible following further engagement with lenders on the Scheme.
56. Targeted engagement with lenders will facilitate the establishment of the Scheme.

Proactive Release

57. This paper will be proactively released within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister of Finance recommends that the Committee:

1. **note** the authority to give a guarantee and/or indemnity under section 65ZD of the Public Finance Act 1989 rests with the Minister of Finance if it appears to the Minister of Finance to be necessary or expedient in the public interest
2. **note** the Minister of Finance intends to use his power under the Public Finance Act 1989 to establish a North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) to support the provision of financing to New Zealand firms highly impacted by NIWE by an 80% underwrite of the resulting credit risk
3. **note** that proposals to provide concessionary loans and equity finance on less than commercial terms to severely impacted firms combine with the Scheme to form a package of business support and that those proposals will be considered alongside the Scheme.
4. **agree** that the primary objective of the Scheme is to provide relief to New Zealand firms that incurred a material financial impact such as decreases to cashflow, revenue, or asset value as a result of the NIWE but have a pathway to restored cashflow.

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5. **agree** the main design elements of the Scheme include:
 - 5.1 an 80% Crown guarantee
 - 5.2 a five-year guarantee period, meaning loans issued between 1 July 2023 and 30 June 2024 would be covered by the guarantee for five years from the date of issue
 - 5.3 new and refinanced lending, meaning lenders could refinance existing lending under the guarantee in addition to issuing new loans under the guarantee
 - 5.4 new customers, meaning lenders could offer loans to new customers and refinance lending that borrowers have with other lenders
 - 5.5 limits to the amount of lending to each borrower (of \$10 million, with exceptions on a case-by-case basis), from each lender (indicatively between \$60 million and \$450 million, unique to lender), and across the entire Scheme (a maximum of \$2 billion)
 - 5.6 principled targeting requirements, including that eligible firms must be located in impacted NIWE regions, be classified as having been materially financially impacted, and meet their lender's credit assessment criteria (i.e., that they are lendable), and
 - 5.7 a general requirement for lenders to pass on lower interest rates reflective of the benefit provided by the guarantee.
6. **note** the Minister of Finance intends to use his power under the Public Finance Act to make final policy decisions on the scheme design.
7. **note** there will be no fee charged to the banks for the Scheme
8. **note** there will be administration costs to implement the Scheme, estimated at \$2.660 million in total across the life of the Scheme
9. **note** the following changes to appropriations in accordance with section 65ZG of the Public Finance Act 1989, reflecting the changed expenses relating to administration costs in implementing the Scheme described in recommendation 2 above with a corresponding impact on the operating balance and net debt:

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Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27
Departmental Output Expense	-	0.660	0.310	0.310	0.460
Administration of Guarantees and Indemnities Given by the Crown PLA					
	2027/28	2028/29	2029/30	2030/31 & Outyears	
	0.460	0.460	-	-	

10. **agree** that the expenses incurred under recommendation 8 above be charged against the between-Budget contingency established as part of Budget 2023
11. **note** that the establishment of the guarantee scheme will produce a contingent liability to the Crown of \$1.6 billion
12. **note** that the Payments and Expenses in Respect of Guarantees and Indemnities PLA will increase for a provision equal to the expected loss of the guarantee, which is currently estimated at \$121 million based on the maximum uptake of the scheme
13. **note** that the indicative profile for the changes to the appropriation described in recommendation 12 above is as follows:

Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Non-Departmental Output Expense					
Payments and Expenses in Respect of Guarantees and Indemnities PLA	-	121.000	-	-	-
Total Operating	-	121.000	-	-	-

14. **note** that the anticipated changes to appropriations reflecting the changed expenses relating to a provision equal to the expected loss of the guarantee will have a corresponding impact on the operating balance
15. **note** that any expenses recognised and incurred from the crystallisation of any claims under the guarantees will need to be funded, with a corresponding impact on net debt
16. **note** that forecasting changes to the provision will be made at each Economic and Fiscal Update

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17. **agree** that the anticipated expenses incurred for the provision of the Scheme will be charged as a pre-commitment against the Budget 2024 operating allowance
18. **note** the above changes and anticipated changes to appropriations for 2023/24 will be reported and disclosed in the 2023/24 Supplementary Estimates

Authorised for lodgement
Hon Grant Robertson

Minister of Finance

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Appendix 1: Overview of previous support

Intervention	Level of support \$m	Sector Targeting	Partially Impacted	Highly Impacted	Severely Impacted with prospect of viability	Severely Impacted without prospect of viability
Proposed further support						
<i>NIWE Loan Guarantee Scheme</i>	~2,000	All		✓		
<i>Concessionary loans and/or equity</i>	~225	Land-based primary industries			✓	
Examples of previous support						
<i>MBIE Business Support Fund</i>	75	Non-primary industries	✓	✓	✓	✓
<i>MPI Primary Sector Response Fund</i>	74	Primary industries	✓	✓	✓	✓
<i>Sediment and debris removal</i>	100	All	✓	✓	✓	✓
<i>Rural Community Support Fund</i>	4	Impacted rural communities	N/A – applied to communities			
<i>Primary Industries North Island Weather Event Recovery Fund</i>	30	Primary industries	✓	✓	✓	✓
<i>Isolated Rural Communities Recovery Fund</i>	5	Impacted rural communities	N/A – applied to communities			
<i>Woody debris (incl. slash) removal</i>	10	Impacted locations	N/A – applied at affected locations			

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Treasury Report: Final Terms of the NIWE Loan Guarantee Scheme and Delegations for Implementation

Date:	21 July 2023	Report No:	T2023/1203
		File Number:	IM-2-1-15-8-2

Action sought

	Action sought	Deadline
Hon Grant Robertson Minister of Finance	Agree to the final terms of the Scheme. Delegate authority to the Secretary to the Treasury to implement the Scheme.	24 July 2023

Contact for telephone discussion (if required)

Name	Position	Telephone	1st Contact
Max Christie	Analyst, New Zealand Export Credit	s9(2)(k)	✓
Peter Rowe	Head of Export Credit, New Zealand Export Credit		

Minister's Office actions (if required)

Return the signed report and delegation instrument to Treasury.
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Note any feedback on the quality of the report

Enclosure: Yes (attached)

COMMERCIAL-SENSITIVE**Treasury Report: Final Terms of the NIWE Loan Guarantee Scheme and Delegations for Implementation**

Executive Summary

You announced that the North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) and the NIWE Primary Producers Finance Scheme would become available to support highly and severely impacted businesses at the end of July.

The NIWE Loan Guarantee Scheme is now nearly ready to go live: the Deeds of Indemnity (Deeds) are drafted according to the proposed terms in this report and we are completing due diligence of interested lenders to approve them to join the Scheme. Once the individual Deeds are executed (subject to each lender agreeing), lenders will establish the Scheme. We are working with lenders, Kānoa, and the Ministry for Primary Industries to establish these schemes.

The final proposed terms of the Scheme are aligned with those previously agreed by you and Cabinet. In finalising the Deeds with lenders, the main issue that has arisen is the definition of 'highly impacted' business. A principle based definition leaves some room for interpretation by lenders, which could give rise to unintended consequences.

s9(2)(g)(i)

potentially impacting the ability of highly impacted firms to access support through the Scheme and/or generating pressure to raise the Scheme's \$2 billion limit, with associated impacts on the operating balance. Other features of the Scheme design and intended communications should mitigate this risk, which we consider to be low. As such, we consider that the key elements of the Scheme as previously agreed by you and Cabinet remain the best options for establishing the Scheme and providing relief to highly impacted New Zealand firms in the affected regions.

We recommend that you agree to the final terms of the Scheme, consistent with Cabinet's decisions in June. We also recommend that you delegate authority to the Secretary to the Treasury to finalise the details of the Scheme in accordance with these terms and to enter into the Deeds on behalf of the Crown.

Recommended Action

We recommend that you:

- a **note** that Cabinet agreed the primary objective of the North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) is to provide relief to New Zealand firms that incurred a material financial impact, such as decreases to cashflow, revenue, or asset value, as a result of the NIWE but have a pathway to restored cashflow [EWR-23-MIN-0048 refers].

Noted.

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- b **note** that you have determined that the Scheme is necessary or expedient in the public interest as required under section 65ZD of the Public Finance Act 1989 (T2023/1009 refers).

Noted.

- c **note** that you and Minister McAnulty announced that the Scheme, alongside the NIWE Primary Producers Finance Scheme, would go live at the end of July, and the Crown will need to enter Deeds of Indemnity (Deeds) with participating lenders over the next week to meet this deadline.

Noted.

- d **agree** to establish the Scheme with the following Key Elements:

- a. The maximum Scheme limit is \$2 billion.
- b. Each lender will have a limit on the supported loans provided to be determined by the Secretary to the Treasury (or an approved sub-delegate) under delegated authority.
- c. The intention is that in most cases for borrowers there will be an upper limit of \$10 million across Supported Loans, with exceptions considered on a case-by-case basis at the discretion of the Secretary to the Treasury (or an approved sub-delegate) under delegated authority, after having considered regional significance, financial impact the business has experienced, impact on regional employment related to the business, and/or any other criteria that the Secretary to the Treasury (or an approved sub-delegate) deems relevant.
- d. The Crown will underwrite 80% of each supported loan.
- e. The Scheme will include banks, non-bank deposit takers, and non-deposit taking lenders.
- f. The definition of eligibility is that the lender has determined that the borrower has experienced (or is expected to experience) a significant negative impact on the business and financial condition of its business as a result of the NIWE, that the borrower is a New Zealand-based business and located at least in part in the NIWE regions, is not engaged in an excluded activity, and is considered viable by the lender.
- g. Supported loans will be available from establishment date until 30 June 2024.
- h. Supported loans can have a maximum term of five years.
- i. Supported loans will not be able to fund excluded activities.
- j. Supported loans will be available to fund the refinancing of a borrower's lending and to fund new customers.
- k. Lenders are required to pass on lower interest rates reflective of the benefit provided by the Crown guarantee.

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- l. That for the purpose of the Scheme, the NIWE covers the Auckland anniversary weekend floods and Cyclone Gabrielle.

Agreed/not agreed.

e

s9(2)(i)

Yes/no.

- f **agree** to the Delegation as presented in Annex One, which, among other things, authorises the Secretary to the Treasury to enter Deeds (consistent with the Key Elements agreed by you above) on behalf of the Crown.

Agree/disagree.

- g **authorise** the Secretary to the Treasury to sub-delegate any or all of the powers delegated to her to Treasury staff with the appropriate expertise.

Authorised/not authorised.

- h **note** that your approval will still be required for any changes to certain key elements of the Scheme listed in the Delegation (Key Elements).

Noted.

- i **confirm** that those Key Elements were the basis of your judgement that the Scheme is necessary or expedient in the public interest as required under section 65ZD of the Public Finance Act 1989 (T2023/1009 refers).

Confirmed/not confirmed.

- j **indicate** whether the Treasury should prepare a press release for you.

Yes/no.

- k **note** that the Treasury will report back to you with a list of the lenders with which the Crown has entered into Deeds.

Noted.

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Peter Rowe
Head of Export Credit

Hon Grant Robertson
Minister of Finance

_____/_____/_____

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COMMERCIAL-SENSITIVE**Treasury Report: Final Terms of the NIWE Loan Guarantee Scheme and Delegations for Implementation**

Purpose of Report

1. This report seeks your agreement to the final terms of the North Island Weather Events (the NIWE) Loan Guarantee Scheme (the Scheme), to establish the Scheme, and your agreement to delegate authority to the Secretary to the Treasury to enter deeds of indemnities with lenders as part of Scheme implementation.

Context

2. On 11 June 2023, you agreed, subject to (and with effect from) Cabinet consideration, that it appears to you to be necessary or expedient in the public interest to provide indemnities to lenders under the Scheme on the terms provided in that advice (T2023/1009 refers). This is the test required for you to exercise your powers under section 65ZD of the Public Finance Act 1989 to give indemnities or guarantees.
3. On 21 June 2023, the Cabinet Extreme Weather Response Committee (EWR) agreed to the key design elements of the Scheme and noted your intention to exercise your powers under the Public Finance Act 1989 to establish the Scheme. EWR also agreed that the primary objective of the Scheme is to provide relief to New Zealand firms that incurred a material financial impact, such as decreases to cashflow, revenue, or asset value, as a result of the NIWE but have a pathway to restored cashflow [EWR-23-MIN-0048 refers].
4. Relief will come in the form of cheaper debt and more flexible loan terms, most of which will relate to the refinancing of existing debt.
5. We developed draft Deeds of Indemnity (Deeds): one for banks and non-bank deposit takers (NBDTs), and one for non-deposit taking lenders (NDTLs), as a basis to commence negotiations with lenders. The Deeds are consistent with the terms for which your agreement is sought in this advice.

Updates following engagement with lenders and businesses

Engagement with lenders

6. Based on the EWR approval of the Scheme and following your public announcement of the Scheme, the Treasury has engaged with lenders to negotiate the final terms of the Deeds. Discussions focused on the trade-off between flexibility and prescription on the following key issues:
 - a Eligibility: there are several practical challenges that come with a prescriptive approach, and the risk of unintended consequences that come with a flexible approach. The final terms of the Deeds reflect a flexible

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approach that is supplemented by a set of guidelines designed to mitigate the risks of unintended consequences.

- b Benefit pass-through: the final terms of the Deeds reflect that there will be a number of benefits to lenders which all need to be passed on but does not prescribe the benefit to be passed on – we consider that each lender is best placed to determine benefits based on the unique circumstances of each borrower, and we will rely on the general requirement and reporting and rights of investigation mechanisms to hold lenders accountable.
 - c Monitoring, reporting, and rights of investigation: the requirements are similar to the COVID-19 Business Finance Guarantee Scheme (BFGS) but adjusted to cater to the specific needs of the Scheme. They include reporting around interest rates savings.
7. Lenders also provided useful feedback on other operational elements that we consider will make the Deeds clearer and more effective in achieving the intended outcomes.
 8. We are awaiting responses from banks in relation to the last version of the Deed for banks and NBDTs that was circulated. Based on engagement to date, we consider that no substantive changes (such as to key terms) will be required to finalise Deeds. However, there remains a risk that lenders raise further issues or delay signing.

Eligibility

9. Initially, the Treasury intended for the eligibility criteria to be tied to a quantitative impact threshold. We sought feedback and advice from six lenders to help develop a definition for impact. However, they highlighted that even within an individual institution, a degree of judgement was used to assess impacts and that there was not necessarily a single (set of) metric(s) that could be used to define eligibility. In essence, they advised that a prescriptive approach is impractical, especially in the contractual context.
10. We have considered whether the Crown's interests would be better served by having a prescriptive approach, however, we consider a prescriptive approach may:
 - a be inconsistent with Cabinet's decision that there be "principled targeting requirements"
 - b shift the onus of decision-making onto the Crown from lenders, which is inconsistent with the market-led response and generates political risk
 - c discourage lender participation (given implementation challenges), and
 - d risk excluding businesses from the Scheme where they do not specifically meet the materiality criteria but could still be considered significantly impacted, compared to a more flexible approach where lenders are currently permitted discretion with the proposed Deeds.
11. If you do wish to progress with a prescriptive approach, we could redraft the Deeds to articulate the impact thresholds in terms of the metrics described in

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paragraph 17c below. This may result in minor delays from the need to seek lender agreement.

12. The alternative, which Cabinet agreed to, is a principle based approach to targeting the significantly impacted but still viable firms. We have worked with lenders to develop a definition that targets this group, based on the lender's determination:

“Borrower means a person whose business and financial condition (or the business and financial condition of its Guaranteeing Group) has experienced, or is expected to experience, a significant negative impact as a result of the North Island Weather Events (for example, material decreases in cashflow (current or forecast) or asset value).”

13. Banks had reservations around the use of the language, “materially financially impacted”, so an alternative has been adopted. ^{s9(2)(h)}

Other changes in language are intended to reflect that the impact evaluated is on the business and not on the person. From here on, we will refer to “highly” or “materially” impacted firms as “significantly” impacted.

14. A principled approach to defining eligibility allows banks to use discretion and will be hard to enforce. This creates a low level of risk given the delegated and overall high trust nature of the model being adopted.
15. The risk associated with a principle based approach is driven by lenders' commercial incentives to seek maximum benefits from the Scheme. They are incentivised to support as many customers that apply as possible (to maintain a positive relationship with customers) and to use the Scheme to compete for other banks' customers.
16. Lenders may be willing to provide supported loans to partially impacted businesses or to focus on competing for other lenders' customers. If this uses up their limit, highly impacted businesses could have more difficulty accessing the Scheme. This could hinder recoveries in the regions and presents a political risk that might generate pressure to increase the limits with a corresponding fiscal impact.
17. There are several mechanisms we have developed to mitigate this risk:

- a ^{s9(2)(g)(i)}

If lenders seek an increase to their limit, the Treasury will seek assurances that the initial lender limit had been used to support the intended businesses.

- b Lenders are required to judge whether a borrower is eligible. The alternative, proposed by banks, was for lenders to rely on a confirmation

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from the borrower which would have allowed the business to self-assess impact. This would have increased risks of abuse or reduced ability to effectively target the Scheme.

- c We are working with lenders to develop public communications and a set of guidelines that aim to build a shared understanding of the threshold of impact for eligibility. These will provide flexibility while establishing clear expectations for both lenders and businesses. These guidelines include examples of metrics (e.g., cashflow, asset value, and operating costs), indicative thresholds of 20% changes in those metrics¹, and a clear delineation between significantly impacted businesses and partially impacted businesses. Some banks have already provided assurance that these guidelines will capture substantially the same list of affected customers that was previously reported (T2023/1009 refers).
 - d The Treasury has worked with lenders to build a shared understanding of the intent of the Scheme. This is articulated in the non-binding background to the Deeds.
 - e The monitoring processes and rights of review and audit will maintain accountability. Note that this may be challenging to enforce because evaluations of eligibility are partly based on subjective judgements of impact.
18. We consider that while there is a risk associated with the principled approach remains, it is low. The principle based approach (supplemented by the mitigations above) is the best option to get the support to the targeted highly impacted businesses.

Ensuring and monitoring benefit pass-through

- 19. The Scheme provides relief to significantly impacted firms by lowering the cost of debt through interest rate discounts, alongside other possible benefits such as providing flexibility on loan terms. Most of the discounts will be provided on refinanced debt, which is a key feature of the Scheme.
- 20. The flexibility benefits, and the broader sectoral benefits such as sending a clear market signal, are challenging to quantify and monitor but should be helpful at the margin (T2023/1009 refers).
- 21. Since the announcement of the Scheme, you have received several Parliamentary questions and public enquiries about how you will ensure that the benefit is passed through.
- 22. The Scheme includes several legal and non-legal mechanisms to ensure that lenders pass through the benefit of the guarantee, including:
 - a The proposed Deeds specifically require that the interest rate for each supported loan must reflect the effect of the Crown guarantee. This

¹ The 20% threshold is a rough estimation based on banks' evaluation of their existing customers. It aligns with the threshold for the NIWE Primary Producers Finance Scheme, for which the impact threshold is a reduction of 30% of uninsurable productive capacity. In other words, a business may be treated as significantly impacted if they have a 20% impact and be treated as severely impacted if they have a 30% impact and cannot access commercial lending.

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imposes on lenders a legal obligation to pass through all the benefits of the guarantee.

- b The Scheme allowing refinancing across lenders, meaning competitive pressures act as an incentive to pass through benefits.
 - c The regular reporting for the Scheme monitoring several items, including uptake, risk profile of loans, and information around the interest rate discount provided.
 - d The Crown retaining the right to investigate a lender's compliance with the Scheme, and specifically calling out the right to investigate whether the interest rate benefits are being passed on to the borrowers.
23. Subject to these features, lenders will be responsible for determining the benefit of the guarantee. In an investigation, it may be difficult for the Crown to establish that a lender had not passed through the full benefits of the Scheme, except in egregious cases.

Unique elements for non-deposit taking lenders

24. As with the BFGS, you agreed that the Scheme will include non-deposit taking lenders (NDTLs). These lenders are not regulated by the Reserve Bank of New Zealand. The Deed for NDTLs is therefore slightly different to the template Deed for banks and non-bank deposit takers. This Deed will be finalised after the bank and non-bank deposit takers Deed has been finalised. Most of these differences are minor or operational. There is one key difference to note.
25. In general, NDTLs charge higher interest rates than banks because they have higher funding costs than banks and service a segment of the market that has a higher credit risk profile. Unsecured lending is higher risk and so incurs higher interest rates than secured lending. This creates the risk that supported loans, even with a discount reflective of the guarantee benefits, will appear to be unreasonably high. In other words, it may appear to the public that the Scheme is providing insufficient benefit through the NDTLs.
26. This risk was present in the BFGS and was managed by setting interest rate caps. The Scheme can also manage this risk with interest rate caps. We propose that caps will be 500 basis points higher than those set in the BFGS, partially accounting for the 525 basis point increase in the Official Cash Rate between 2020 and July 2023 (from 0.25% to 5.5%) – meaning, in real terms, they are effectively equivalent. The caps would then be 15% for secured lending and 20% for unsecured lending.

The Scheme should remain limited to just the NIWE

27. We note that weather events after the Auckland anniversary weekend floods and Cyclone Gabrielle (the North Island Weather Events, or NIWE) have also caused significant damage to businesses in the North Island. Various stakeholders have questioned whether the Scheme would cover these subsequent events. Though clearly impactful, these subsequent events have not been of the same scale as the devastation caused by the NIWE.
28. Cabinet agreed that the primary objective of the Scheme is to provide relief to New Zealand firms impacted by the NIWE. The support is intended to be

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proportionate to the scale of the event – the Crown should not act as insurer of last resort for every event. Expanding the Scheme to cover subsequent weather events would call into question the regional boundaries, would generate significant precedent risk for future support, and may generate more uptake than intended. We consider that Cabinet’s decision to limit the relief to impacts from the NIWE remains appropriate.

29. Additionally, broadening of the definition of NIWE would put pressure on the adequacy of the \$2 billion Scheme limit.

Participating lenders

30. We have worked with several banks, non-bank deposit takers, and NDTLs to develop the Deeds. There is a risk that lenders may not participate in the Scheme. While there are indications that several of these entities intend to participate in the Scheme, we have not had any formal notification or commitment to this.

31. This is understandable, as final terms of the Deed are still being finalised.

s9(2)(b)(ii) and s9(2)(ba)(i)

We have also had reasonable engagement with the banks around negotiation of details of the Scheme, and several lenders have indicated an interest in participating in a communications working group with relevant agencies. We have heard that s9(2)(b)(ii) and s9(2)(ba)(i) is not interested in joining the Scheme (noting they were not part of the pool of lenders expected to participate in the Scheme).

32. We expect at least the following lenders to participate:

s9(2)(b)(ii) and s9(2)(ba)(i)

*These figures were reported in June – lenders have not yet provided updates.

33. Approving and entering Deeds with these lenders will be the priority in the coming week, subject to your agreement to the Key Elements. Given the compressed timeframes and need to conduct suitable due diligence, some other lenders (such as other NDTLs) may not be approved until August. We consider that the impact of this would be small because the majority of expected uptake is captured by the above lenders.
34. The estimates for expected uptake above are indicative only and have been provided by lenders. Some banks have confirmed that the indicative figures above are representative of the expected amount of supported debt provided to

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their customers that fit within the eligibility definition and guidelines described above. These figures will form the basis of the lender limits. The Scheme remains targeted at the relatively small group of firms that were highly but not partially or severely impacted by the NIWE.

35. Though we consider that the \$2 billion Scheme limit remains appropriate, there remains the possibility of greater uptake than expected. If it becomes clear that the cap may be reached following any expansions of individual lender limits, we will provide you with advice on whether to consider raising the Scheme limit, along with any fiscal impact on the operating balance of doing so. For now, it is important to note that capping the Scheme (and enforcing lender limits) incentivises lenders to prioritise the most impacted customers. ^{s9(2)(i)}
36. To support any further engagements with lenders and to help Treasury determine the level of buffer within the \$2 billion cap to retain, we recommend you indicate your appetite for raising the Scheme limit (noting there are likely to be impacts on the operating balance) should demand require.

Confirming the Key Elements of the Scheme

37. Notwithstanding the above updates, we consider that the main design elements of the Scheme should remain consistent with those agreed by Cabinet and you [EWR-23-MIN-0048 and T2023/1009 refer]. We recommend you agree that the final Key Elements of the Scheme are:
- a The maximum Scheme limit is \$2 billion.
 - b Each lender will have a limit on the supported loans provided to be determined by the Secretary to the Treasury (or an approved sub-delegate) under delegated authority.
 - c The intention is that in most cases for borrowers there will be an upper limit of \$10 million across Supported Loans, with exceptions considered on a case-by-case basis at the discretion of the Secretary to the Treasury (or an approved sub-delegate) under delegated authority, after having considered regional significance, financial impact the business has experienced, impact on regional employment related to the business, and/or any other criteria that the Secretary to the Treasury (or an approved sub-delegate) deems relevant.
 - d The Crown will underwrite 80% of each supported loan.
 - e The Scheme will include banks, non-bank deposit takers, and non-deposit taking lenders.
 - f The definition of eligibility is that the lender has determined that the borrower has experienced (or is expected to experience) a significant negative impact on the business and financial condition of its business as a result of the NIWE, be a New Zealand-based business and be located at least in part in the NIWE regions, not be engaged in an excluded activity, and be considered viable by the lender.

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- g Supported loans will be available from establishment until 30 June 2024.
- h Supported loans can have a maximum term of five years.
- i Supported loans will not be able to fund excluded activities.
- j Supported loans will be available to fund the refinancing of a borrower's lending and to fund new customers.
- k Lenders are required to pass on lower interest rates reflective of the benefit provided by the Crown guarantee.
- l That for the purpose of the Scheme, the NIWE covers the Auckland anniversary weekend floods and Cyclone Gabrielle.

Delegations

- 38. To ensure operational efficiency, we propose that you grant delegated authority to the Secretary to the Treasury to:
 - a determine the final templates for the Deeds consistent with your agreed terms
 - b execute the Deeds between the Crown and each lender approved by the Treasury to implement the Scheme
 - c take any action required to give effect to each Deed
 - d make any amendments to a Deed, and
 - e sub-delegate the above powers, as necessary, to Treasury staff with relevant expertise.
- 39. A delegation from you to the Secretary to the Treasury is attached as Annex One.
- 40. The intention is for the Secretary to the Treasury to agree and execute the Deeds, and for her to sub-delegate further administration of the Scheme (including but not limited to making payments of claims) to the relevant Treasury staff.
- 41. Your approval would be required for any change to a Key Element of the Scheme (provided in the Delegation at Annex One). Regarding borrower limits - the intention is that in most cases for borrowers there will be an upper limit of \$10 million across Supported Loans, with exceptions considered on a case-by-case basis at the discretion of the Secretary to the Treasury (or an approved sub-delegate) under delegated authority, after having considered regional significance, financial impact the business has experienced, impact on regional employment related to the business, and/or any other criteria that she deems relevant. The Delegation would also permit the Secretary to the Treasury to set the lender limits.
- 42. We recommend you confirm that the Key Elements are the basis of your judgement that the Scheme is necessary or expedient in the public interest as required under the Public Finance Act 1989 (T2023/1009 refers).^{s9(2)(h)}

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s9(2)(h)

Communications

43. Following your announcement of the Scheme and the NIWE Primary Producers Finance Scheme on 29 June 2023, the Treasury, Kānoa - Regional Economic Development & Investment Unit, and the Ministry for Primary Industries published information about the Scheme online and engaged with businesses to generate awareness.
44. In addition, the Treasury is forming a communications working group with lenders to support consistency across their commercial communications and help get their frontline staff the information and tools they need to support their customers in the Scheme. This includes supporting lenders to develop a set of external and internal guidelines to support assessments of eligibility.
45. You may wish to make another announcement to mark the opening of the two schemes and reiterate the key messages and information for the targeting businesses. s9(2)(g)(i)

Consultation

46. The Treasury's external legal advisors, MinterEllisonRuddWatts have been involved in drafting the Deeds and liaising with lenders. Treasury legal has advised on and reviewed this report and the delegation instrument.

Next Steps

47. If you agree to the Delegation, we will finalise the Deeds. Following a due diligence process to approve lenders and receipt of our external legal advisors' sign-off that the Deeds are in order for execution, the Secretary to the Treasury will execute the Deeds with approved lenders. She will also forward to the Office of the Clerk of the House of Representatives a statement of details of each Deed for presentation to the House on your behalf.
48. We will prioritise onboarding banks and non-bank deposit takers, as they represent the largest portion of expected lending. Our efforts have been focussed on agreeing terms with them. We will shortly after that be in a position to onboard non-deposit taking lenders also.
49. Simultaneously, we will support lenders to establish their internal processes for managing and communicating the Scheme to their customers.

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50. If you decide to make a Ministerial announcement, we can work with your office to support that announcement.
51. We will update the Treasury website at the end of July to indicate that the Scheme is open.
52. We will provide you with an update following the launch of the Scheme as to which lenders participate.

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Annex One – Delegation Letter

Attached.

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EWR-23-MIN-0048



Cabinet Extreme Weather Recovery Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Establishing a North Island Weather Events (NIWE) Loan Guarantee Scheme to Support Recovery for Highly Impacted Firms

Portfolio Finance

On 21 June 2023, the Cabinet Extreme Weather Recovery Committee, exercising its Power to Act in accordance with its terms of reference:

- 1 **noted** that the authority to give a guarantee and/or indemnity under section 65ZD of the Public Finance Act 1989 rests with the Minister of Finance if it appears to the Minister of Finance to be necessary or expedient in the public interest;
- 2 **noted** that the Minister of Finance intends to use his power under the Public Finance Act to establish a North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) to support the provision of financing to New Zealand firms highly impacted by NIWE by an 80 percent underwrite of the resulting credit risk;
- 3 **noted** that proposals to provide concessionary loans and equity finance on less than commercial terms to severely impacted firms will combine with the Scheme to form a package of business support, and that those proposals will be considered alongside the Scheme;
- 4 **agreed** that the primary objective of the Scheme is to provide relief to New Zealand firms that incurred a material financial impact, such as decreases to cashflow, revenue, or asset value, as a result of the NIWE but have a pathway to restored cashflow;

Scheme design

- 5 **agreed** that the main design elements of the Scheme include:
 - 5.1 an 80 percent Crown guarantee;
 - 5.2 a five-year guarantee period, meaning loans issued between 1 July 2023 and 30 June 2024 would be covered by the guarantee for five years from the date of issue;
 - 5.3 new and refinanced lending, meaning lenders could refinance existing lending under the guarantee in addition to issuing new loans under the guarantee;
 - 5.4 new customers, meaning lenders could offer loans to new customers and refinance lending that borrowers have with other lenders;

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- 5.5 limits to the amount of lending to each borrower (of \$10 million, with exceptions on a case-by-case basis), from each lender (indicatively between \$60 million and \$450 million, unique to lender), and across the entire Scheme (a maximum of \$2 billion);
 - 5.6 principled targeting requirements, including that eligible firms must be located in impacted NIWE regions, be classified as having been materially financially impacted, and meet their lender’s credit assessment criteria (i.e., that they are lendable);
 - 5.7 a general requirement for lenders to pass on lower interest rates reflective of the benefit provided by the guarantee;
- 6 **noted** that the Minister of Finance intends to use his powers under the Public Finance Act to make final policy decisions on the Scheme design;
- 7 **noted** that there will be no fee charged to the banks for the Scheme;

Financial implications

- 8 **noted** that there will be administration costs to implement the Scheme, estimated at \$2.660 million in total across the life of the Scheme;
- 9 **noted** the following changes to appropriations in accordance with section 65ZG of the Public Finance Act, reflecting the changed expenses relating to administration costs in implementing the Scheme described in paragraph 2 above, with a corresponding impact on the operating balance and net debt:

Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27
Departmental Output Expense	-	0.660	0.310	0.310	0.460
Administration of Guarantees and Indemnities Given by the Crown PLA	2027/28	2028/29	2029/30	2030/31 & Outyears	
	0.460	0.460	-	-	-

- 10 **agreed** that the expenses incurred under paragraph 8 above be charged against the between-Budget contingency established as part of Budget 2023;
- 11 **noted** that the establishment of the Scheme will produce a contingent liability to the Crown of \$1.6 billion;
- 12 **noted** that the *Payments and Expenses in Respect of Guarantees and Indemnities PLA* will increase for a provision equal to the expected loss of the guarantee, which is currently estimated at \$121 million based on the maximum uptake of the Scheme;

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- 13 **noted** that the indicative profile for the changes to the appropriation described in paragraph 12 above is as follows:

Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Non-Departmental Output Expense Payments and Expenses in Respect of Guarantees and Indemnities PLA	-	121.000	-	-	-
Total Operating	-	121.000	-	-	-

- 14 **noted** that the anticipated changes to appropriations reflecting the changed expenses relating to a provision equal to the expected loss of the guarantee will have a corresponding impact on the operating balance;
- 15 **noted** that any expenses recognised and incurred from the crystallisation of any claims under the guarantees will need to be funded, with a corresponding impact on net debt;
- 16 **noted** that forecasting changes to the provision will be made at each Economic and Fiscal Update;
- 17 **agreed** that the anticipated expenses incurred for the provision of the Scheme be charged as a pre-commitment against the Budget 2024 operating allowance;
- 18 **noted** that the above changes and anticipated changes to appropriations for 2023/24 will be reported and disclosed in the 2023/24 Supplementary Estimates.

Janine Harvey
Committee Secretary

Present:

Hon Carmel Sepuloni
Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Willie Jackson
Hon Damien O'Connor
Hon Kieran McAnulty
Hon Barbara Edmonds

Officials present from:

Office of the Prime Minister
Officials Committee for EWR
Cyclone Recovery Unit, DPMC

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Office of the Minister of Finance

Chair, Cabinet Extreme Weather Recovery Committee

Establishing a NIWE Loan Guarantee Scheme for Highly Impacted Firms**Proposal**

1. This paper seeks agreement to the key design elements of the North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) to provide relief to firms that have been highly impacted by NIWE but are still considered viable by banks, and informs Cabinet of my intention use my power under the Public Finance Act to establish the Scheme.
2. The Scheme should be considered alongside other potential support to firms highly and severely affected by NIWE – specifically the parallel proposal for capital- and cashflow-related support for at-risk firms.

Relation to government priorities

3. The proposal in this paper reflects the Government's priorities of supporting market-led resilience and economic recovery in the regions, and specifically in response to the severe weather events of early 2023.

Executive Summary

4. The NIWE were significant natural disasters, and the impacts continue to be felt by New Zealand communities. There are a relatively small but meaningful number of firms that have been highly impacted by NIWE. These firms continue to be affected by material impacts to cashflow, revenue, and assets, but do have the ability to source and service debt.
5. I intend to use my power under the Public Finance Act 1989 to establish the Scheme to provide meaningful relief to these firms. The Scheme would enable lenders to lower interest rates and offer more flexible loan terms on loans issued to affected firms over the next year. This relief would apply to these loans for a maximum of five years to support firms to recover, rebuild, and get back on their feet. I am seeking agreement to the key design elements of the Scheme to ensure it will facilitate a strong market-led recovery.
6. The Scheme would be part of a package that also includes proposals to provide concessionary loans and equity finance to severely impacted firms.
7. Over the next weeks, I will finalise the details of the Scheme and instruct the Treasury to work with lenders to implement it. I expect that the Scheme would be up and running, and available for firms to seek support from it, in July 2023.

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COMMERCIAL-SENSITIVE**Background**

8. The NIWE were significant natural disasters, with estimated damage ranging from \$9 billion to \$14.5 billion, let alone the unquantified impacts on households, businesses, and communities. The primary industries bore the brunt of the losses, with damage to crops, livestock, and on-farm infrastructure. Much of the damage was to uninsurable assets. The Government has provided significant assistance to firms and households so far (see **Appendix One**), but there remain a small number of impacted firms, particularly in the primary sector, that continue to be affected by material impacts to cashflow, revenue, and assets.
9. Officials have identified four broad categories of impacted firms in the NIWE regions of Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, and Wairarapa:
 - 9.1 Partially impacted firms, which may be severely impacted in parts, but who are sufficiently diversified and/or large enough to manage 'on their own'.
 - 9.2 Highly impacted firms that have a pathway to restored cashflow within a reasonable timeframe, and an ability to take on meaningful levels of increased debt to fund rebuild and recovery.
 - 9.3 Severely impacted firms that may otherwise be commercially viable in the future with reasonable support – these firms have no current pathway to restored cashflow to support taking on additional debt, but with a reasonable level of support, they could return to viability within a reasonable timeframe.
 - 9.4 Severely impacted firms that are (or are near) a complete loss – these firms have no current pathway to restored cashflow within a reasonable timeframe or at a reasonable level and are fundamentally unviable.
10. The proposal in this paper centres on the cohort of highly impacted firms. While these firms do have an ability to take on meaningful levels of debt to fund rebuild and recovery, the impacts on their cashflow, revenue, and assets are material.
11. s9(2)(b)(ii) and s9(2)(ba)(i) Just
under 90% of the firms are small, currently holding debt of less than \$10 million. In total, about \$1.5 billion of debt is anticipated to be supported by the Scheme.

COMMERCIAL-SENSITIVE**The Scheme would fit in a package to support impacted firms**

12. Our preference as Government is for a market-led approach to business assistance, sending a credible and clear signal to the market – ahead of future events – that the Government will not act as insurer of last resort and facilitating a pathway for embedding better risk management into land use decisions.
13. However, a market-led solution may not adequately address wider risks, such as the compounded effects of multiple simultaneous business failures in concentrated regions. The Government could mitigate these risks and reduce potentially significant local disruption in the near term by tempering the market-led response.
14. I consider that a mix of quasi-commercial mechanisms spanning the Scheme, concessional loans, and equity infusions best balance meeting the needs of businesses I wish to target while supporting the market-led recovery, having acceptable levels of risk for the Crown, being feasible, and being consistent with the Crown's Tiriti of Waitangi obligations.
15. The parallel proposal for capital- and cashflow-related support for at-risk firms discusses the concessional loans and equity infusions, which would be narrowly targeted at severely impacted firms that have a reasonable likelihood of returning to viability with further support, but not a clear enough way forward to access commercial finance. If Cabinet agrees to these measures severely impacted firms may also benefit from the Scheme.
16. Paired with the Scheme, this suite of mechanisms would address issues for the two highest priority categories (highly and severely impacted firms), while allowing the partially impacted firms to recover without unnecessary intervention and avoiding the distortion of supporting severely impacted firms that are fundamentally not viable. The following flowchart provides an overview of how the mechanisms would work together.

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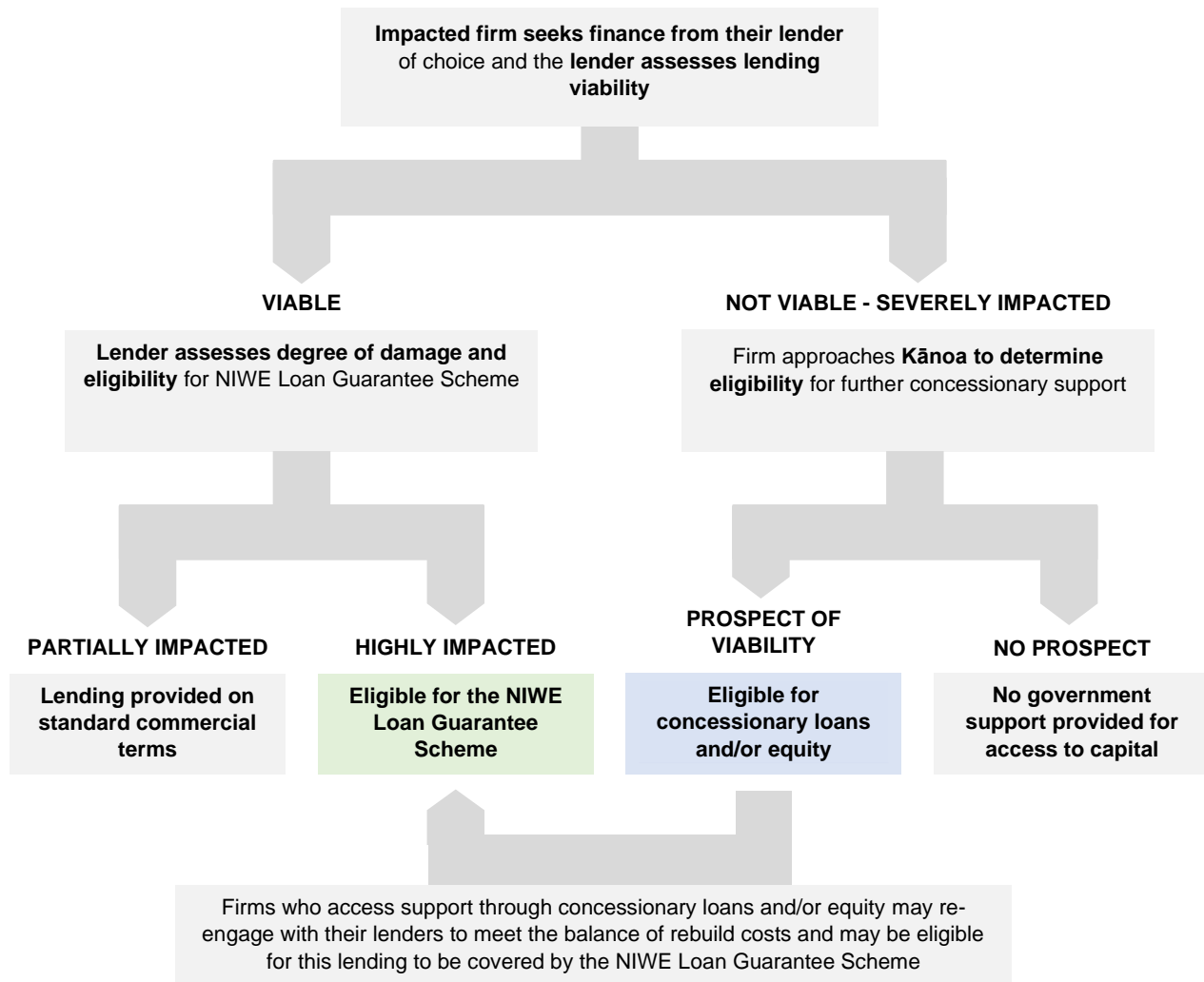


Figure One: Overview of support mechanisms and how they work together

The Scheme would provide cost and flexibility relief to catalyse the recovery

- 17. The Scheme would enable lenders to transfer 80% of risk from the borrower to the Crown for loans issued in the 2023/24 financial year. This means that lenders can assign the Crown’s risk rating to the borrower, improving their risk weighting and so reducing the amount of capital the lender needs to set aside in relation to that loan. This benefit is passed on to the borrower through a reduction in the interest rate that is charged to the borrower, and a higher guarantee supports greater benefits.

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18. Estimates indicate that the reduction in interest rates would range from 30 to 150 basis points (0.3% to 1.5%), depending on the individual loan and borrower risk. This is the equivalent of \$9,000 to \$45,000 in interest cost savings per annum for the average supported firm, based on borrowings of \$3 million. Over the five years the Scheme is in place, these savings could accumulate to between \$45,000 and \$225,000 for a firm with an average amount of debt. Cost savings of this magnitude would provide meaningful relief to firms.
19. Extended across all anticipated debt, aggregate savings for the sector could range from \$4.5 million to \$22.5 million per annum, which sums to upper limits of \$22.5 million to \$112.5 million over the life of the Scheme.
20. In addition to the cost saving benefits, lenders are expected to offer more favourable loan terms to customers. This could include bridging longer cashflow gaps and offering longer loans to borrowers, which would provide them with more flexibility to recover.
21. Coupled with sending a signal that boosts sector confidence in the response, cost savings and additional flexibility would catalyse recovery decisions by business owners, lenders and local leaders and could help 'draw a line' under NIWE business support.

The Scheme has been designed in consultation with lenders to maximise benefits to borrowers

22. Lenders have indicated that * [REDACTED] of their customers are highly impacted and provided further information to support officials to design the Scheme. At a high level, I consider the best Scheme to progress involves:

*s9(2)(b)(ii) and s9(2)(ba)(i)

22.1 an 80% Crown guarantee

22.2 a five-year guarantee period, meaning loans issued between 1 July 2023 and 30 June 2024 would be covered by the guarantee for five years from the date of issue

22.3 new and refinanced lending, meaning lenders could refinance existing lending under the guarantee in addition to issuing new loans under the guarantee

22.4 new customers, meaning lenders could offer loans to new customers and refinance lending that borrowers have with other lenders

22.5 limits to the amount of lending to each borrower (of \$10 million, with exceptions on a case-by-case basis), from each lender (indicatively between \$60 million and \$450 million, unique to lender), and across the entire Scheme (a maximum of \$2 billion), and

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- 22.6 principled targeting requirements, including that eligible firms must be located in impacted NIWE regions, be classified as having been materially financially impacted, and meet their lender’s credit assessment criteria (i.e., that they are lendable)
- 22.7 a general requirement for lenders to pass on lower interest rates reflective of the benefit provided by the guarantee.
- 23. It is most practical for the eligibility criteria to be based on a principle rather than set impact thresholds. Each lender uses different methods and relies on individualised assessments of their clients, and it is not clear that a consistent threshold could be set without risk of ruling out firms I consider should be eligible. Mitigations, like carefully setting the lender limits and retaining rights of investigation and audit, will ensure that lenders apply the principle meaningfully.
- 24. This Scheme would not support severely affected firms (which are targeted by the concessionary loans and equity infusion proposals) and is unlikely to expand the number of firms that lenders consider lendable. Because it would not materially influence lenders’ behaviour in supporting new lending, it is unlikely to address access-to-capital issues faced by Māori firms.
- 25. This means that, as described above, the Scheme would effectively act as a relief mechanism for firms highly impacted by the NIWE, rather than as an economic intervention that would change the nature, speed or shape of the recovery.
- 26. The key parameters are proposed to be:

Parameter	Description of NIWE Guarantee terms	For Comparison: Concessional Loans and/or Equity
Loss sharing arrangement	The Crown would underwrite 80% of each supported loan to provide maximum benefit to firms while ensuring appropriate commercial incentives remain with lenders.	The Crown takes 100% of the default risk.
Scheme Limit	The overall Scheme size would not exceed \$2 billion. This is based on the data provided by lenders on anticipated eligible lending with an allowance for unanticipated lending.	There would be no set limit, but expectation is these mechanisms would support up to \$255 million.
Lender Limits	Approved lenders would be allocated a portion of the overall Scheme limit which will restrict the total value of loans each lender is able to underwrite. Individual limits will be developed closer to Scheme establishment but are anticipated to range from \$60 million to \$450 million per lender.	Lending would be done by Kānoa, with the lender limit up to the scheme limit by definition.

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Parameter	Description of NIWE Guarantee terms	For Comparison: Concessional Loans and/or Equity
Borrower Limit	Each borrower could only cover \$10 million of debt in the Scheme to ensure that eligible firms can receive sufficient relief while minimising the potential for over subsidising firms. The Crown will reserve the right to extend the limit on a case-by-case basis.	Each borrower could only be lent (or provided equity) up to \$4 million. There would be an exceptions process for the Crown to consider varying terms where there is a compelling reason.
Tenor	Loans would be supported by the guarantee for no more than five years to align with maximum anticipated loan lengths advised by banks.	Loans with interest deferral would be supported for up to 10 years, and other loans for up to 15 years to meet the unique needs of the horticulture sector.
Refinancing	Lenders could refinance existing debt (including across lenders) to maximise potential benefits to firms and ensure all eligible firms can access the Scheme regardless of their current lender.	These mechanisms would not support refinancing.
Benefit pass through	Lenders would have a general requirement to pass on lower interest rates reflective of the benefit provided by the guarantee. It is not feasible or desirable to require lenders to contractually pass on a specific level of benefit because each loan requires individual consideration, and it could cause negative impacts on the uptake of the Scheme. It is expected that there would be reductions of 30 to 150 basis points on interest rates, and extended terms and bridged cashflow gaps.	Firms would be able to access lending and/or equity from Kānoa where they couldn't access commercial lending. Kānoa would offer a reduction of up to * [redacted] on arms-length interest rates, and up to 10 years deferral of interest payments.
Firm-level eligibility criteria	The Scheme would be available to firms that incurred a material financial impact such as decreases to cashflow, revenue, or asset value as a result of the NIWE but have a pathway to restored cashflow. These firms would also have to be New Zealand based, operate in one of the NIWE regions, and not be an excluded activity such as the manufacture of tobacco. This principle-based eligibility criteria would enable lenders to make individual assessments on borrowers' unique circumstances. Lenders' requirements to follow credit policies and processes, lender limits, and 80/20 risk sharing ensure lenders will target the Scheme appropriately.	These mechanisms would be eligible to firms that demonstrate: they have incurred losses of 30% or more of their productive capacity because of the NIWE; its loss of viability was due to the NIWE; it has a reasonable prospect of returning to viability over a reasonable period; it has sought and failed to receive commercial lending; it took reasonable steps to mitigate losses; it is committed to improve resilience; and be located in the NIWE regions.

*s9(2)(b)(ii) and s9(2)(ba)(i)

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Parameter	Description of NIWE Guarantee terms	For Comparison: Concessional Loans and/or Equity
Audit and rights of investigation	Audit and rights of investigation terms would be consistent with those in the Business Finance Guarantee Scheme, retaining sufficient provisions to protect the Crown's balance sheet.	N/A
Delivery	Loans would be delivered by a firm's lender of choice.	These mechanisms would be delivered by Kānoa.

The Scheme provides relief without significant direct, upfront fiscal cost, but comes with risks

27. The use of a guarantee allows benefits to be passed to highly impacted firms by taking risk on the Crown's balance sheet without any direct, upfront fiscal cost. The actual costs to the Crown would only materialise if supported loans default – the Crown would be liable for 80% of any defaulted loan. The likely full cost would only be known once the Scheme closes.
28. The indicative estimated credit loss of the expected guaranteed lending (\$1.5 billion) is \$91 million. There would need to be an upfront recognition of this in the form of a provision as and when the loans are guaranteed. The indicative 6.05% provision is based on the limited data that is currently available, and the accuracy of the estimate will improve over time as the Treasury receives underlying loan data. The actual provision will be dependent on utilisation of the Scheme and the quality of loans guaranteed by the Scheme.
29. The provision estimate is conservative. For comparison, initial provisioning for the Business Finance Guarantee Scheme (BFGS) was 8.4% but has now fallen to 2.5% and so far, actual claims are well below this level at only 0.05%. However, the Scheme comes with more risk than the BFGS – it targets firms that have already experienced a material financial impact, while the BFGS had much broader eligibility.
30. The risk that loans will default, and the Crown will be obliged to make payments, is mitigated by the Scheme design. Lenders hold 20% of the risk, retaining their incentive to remain profitable and appropriately manage the credit risk through strong underwriting standards. Together, these have proved to be an effective risk mitigant for the BFGS, where claims to date have totalled \$1.45 million from supported loans totally \$2.86 billion.
31. There is also the risk that the Scheme is not as effective as anticipated – either because of low uptake or if benefits to borrowers are more modest than anticipated.
32. I consider that uptake risk for the Scheme is low because the forward outlook is relatively certain and both firms and lenders are focused on the recovery –

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lenders have already identified the group of firms that could be eligible. Allowing full refinancing of debt into the Scheme (up to the \$10 million cap) further mitigates this risk.

33. There will remain a risk that lenders' interpretation of the general requirement means benefits (such as interest rate reductions) are more modest than anticipated. Should this occur, firms may express concerns that the Scheme provides insufficient relief, and the cost effectiveness of the Scheme may decrease. Though it is not feasible or desirable to require lenders to contractually pass on a specific level of benefit, I will manage this risk by highlighting in public communications that lending decisions are made by lenders and that it is my and the Government's strong expectation they pass the full benefit on to customers.

The benefits of the Scheme are modest but meaningful

34. We should recognise the limits of this proposal: while it will provide meaningful although relatively modest relief to a small number of firms, there are many other factors in the recovery, such as our essential infrastructure, that need to be addressed with other interventions.
35. The quantification of benefits is challenging. The direct interest cost savings for firms are expected to be in the range of \$22.5 million to \$112.5 million, most likely somewhere in the middle of the range. Benefits to firms from more flexible loan terms and non-monetary benefits to the market from clear signalling cannot be measured but are meaningful.
36. The initial expected credit loss of \$91 million will be refined once actual underlying loan data becomes available. Our experience to date with the Business Finance Guarantee Scheme is that claims volumes have been significantly lower than the inherently conservative accounting provision recorded in relation to these loans. Additionally, through working through financial institutions we can reduce precedent risk, reinforce private sector disciplines and avoid funding the cost of this initiative upfront. As such, I consider the Scheme to be a cost effective mechanism relative to alternative interventions.

COMMERCIAL-SENSITIVE**Next Steps**

37. Following your consideration, I will instruct the Treasury to finalise the operational details in line with the key parameters agreed today. The Treasury will engage with lenders to prepare the necessary legal and operational documentation. At this stage, I estimate that the Scheme will be made available for applications via lenders from the week of 17 July 2023, pending operational and implementation matters. The New Zealand Export Credit team will monitor and report on the progress of the Scheme on behalf of the Treasury.
38. Officials will develop a joint communications package promoting the Scheme alongside the concessionary loans and equity scheme as a coherent business support package.

Financial Implications

39. The establishment of the guarantee scheme will require a contingent liability of \$1.6 billion (80% of \$2 billion) to be disclosed in the Economic and Fiscal Updates. This liability assumes full utilisation of the Scheme limit and that all loans default, representing the unanticipated worst-case scenario.
40. Accounting standards will require a provision to be recorded in the financial statements of government equal to the expected credit loss from the guarantee. The Treasury estimates that the provision will be between \$91 and \$121 million based on guaranteed lending in the range of \$1.5 billion to the Scheme limit of \$2 billion. The provision increases will cause a corresponding decrease to the operating balance, but no immediate impact on net debt as there are no direct cashflow implications until claims are made.
41. Claims under the Scheme will be recognised as they arise and/or become sufficiently certain to meet financial reporting requirements. The impact on net debt will be recognised when this occurs.
42. In addition, ongoing operational costs to administer the Scheme will be \$1.760 million over the forecast period. Administration costs will continue until the scheme is disestablished in 2029, at \$0.460 million per annum. To minimise these costs, the Treasury will utilise existing personnel for administration of the Scheme. However, there are unavoidable additional costs for services such as audit and legal that cannot be met within baselines.
43. This provision will be pre-committed to the Budget 2024 allowance and the operational costs to the Between-Budget Contingency, demonstrating consistency with my public announcements that the NIWE response would be managed within allowances.
44. Expenses for the administration of the Scheme, the provision for the expected credit loss, and any payments made to fulfil the Crown's obligations on defaulted loans are funded by the permanent legislative authority departmental and non-departmental appropriations in Vote Finance under section 65ZG of the Public Finance Act 1989 (PFA).

COMMERCIAL-SENSITIVE**Legislative Implications**

45. As the Minister of Finance, I will be responsible for determining whether I consider the granting of indemnities and/or guarantees to lenders to be expedient or necessary in the public interest under section 65ZD of the PFA. No indemnities can be granted until I have made this determination.
46. It appears to me to be expedient in the public interest to grant indemnities under the Scheme. Should you agree to the key design elements of the Scheme, I intend to exercise my power to implement the Scheme by granting indemnities.
47. s9(2)(h)

Impact Analysis**Regulatory Impact Statement**

48. There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply.

Climate Implications of Policy Assessment

49. This paper does not meet the threshold for a Climate Implications of Policy Assessment.

Population Implications

50. The Scheme is not intended to materially influence lenders' behaviour in supporting new lending, so historic barriers faced by Māori businesses in accessing capital are unlikely to be addressed under this proposal. A key consideration of the complementary capital- and cashflow-related proposals is to ensure mechanisms are designed in a manner that do not disadvantage Māori and are consistent with the Crown's Te Tiriti o Waitangi obligations and, in particular, whenua Māori.
51. The Scheme would be targeted towards firms in the NIWE regions, including Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, and Wairarapa.

Human Rights

52. s9(2)(h)

COMMERCIAL-SENSITIVE**Consultation**

53. This paper has been prepared by the Treasury in consultation with the Cyclone Recovery Task Force, the Department of the Prime Minister and Cabinet, the Ministry for Primary Industries and the Ministry of Foreign Affairs and Trade.
54. To support development of the Scheme, targeted in-confidence engagement has occurred with six lenders.

Communications

55. I intend to announce this proposal in conjunction with the capital- and cashflow-related proposals as a joint communications package that will be developed. The Scheme, concessionary loans, and equity support would be promoted as a coherent business support package. Announcements will come as soon as possible following further engagement with lenders on the Scheme.
56. Targeted engagement with lenders will facilitate the establishment of the Scheme.

Proactive Release

57. This paper will be proactively released within 30 business days of decisions being confirmed by Cabinet.

Recommendations

The Minister of Finance recommends that the Committee:

1. **note** the authority to give a guarantee and/or indemnity under section 65ZD of the Public Finance Act 1989 rests with the Minister of Finance if it appears to the Minister of Finance to be necessary or expedient in the public interest
2. **note** the Minister of Finance intends to use his power under the Public Finance Act 1989 to establish a North Island Weather Events (NIWE) Loan Guarantee Scheme (the Scheme) to support the provision of financing to New Zealand firms highly impacted by NIWE by an 80% underwrite of the resulting credit risk
3. **note** that proposals to provide concessionary loans and equity finance on less than commercial terms to severely impacted firms combine with the Scheme to form a package of business support and that those proposals will be considered alongside the Scheme.
4. **agree** that the primary objective of the Scheme is to provide relief to New Zealand firms that incurred a material financial impact such as decreases to cashflow, revenue, or asset value as a result of the NIWE but have a pathway to restored cashflow.

COMMERCIAL-SENSITIVE

5. **agree** the main design elements of the Scheme include:
 - 5.1 an 80% Crown guarantee
 - 5.2 a five-year guarantee period, meaning loans issued between 1 July 2023 and 30 June 2024 would be covered by the guarantee for five years from the date of issue
 - 5.3 new and refinanced lending, meaning lenders could refinance existing lending under the guarantee in addition to issuing new loans under the guarantee
 - 5.4 new customers, meaning lenders could offer loans to new customers and refinance lending that borrowers have with other lenders
 - 5.5 limits to the amount of lending to each borrower (of \$10 million, with exceptions on a case-by-case basis), from each lender (indicatively between \$60 million and \$450 million, unique to lender), and across the entire Scheme (a maximum of \$2 billion)
 - 5.6 principled targeting requirements, including that eligible firms must be located in impacted NIWE regions, be classified as having been materially financially impacted, and meet their lender's credit assessment criteria (i.e., that they are lendable), and
 - 5.7 a general requirement for lenders to pass on lower interest rates reflective of the benefit provided by the guarantee.
6. **note** the Minister of Finance intends to use his power under the Public Finance Act to make final policy decisions on the scheme design.
7. **note** there will be no fee charged to the banks for the Scheme
8. **note** there will be administration costs to implement the Scheme, estimated at \$2.660 million in total across the life of the Scheme
9. **note** the following changes to appropriations in accordance with section 65ZG of the Public Finance Act 1989, reflecting the changed expenses relating to administration costs in implementing the Scheme described in recommendation 2 above with a corresponding impact on the operating balance and net debt:

COMMERCIAL-SENSITIVE

Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27
Departmental Output Expense	-	0.660	0.310	0.310	0.460
Administration of Guarantees and Indemnities Given by the Crown PLA					
	2027/28	2028/29	2029/30	2030/31 & Outyears	
	0.460	0.460	-	-	

10. **agree** that the expenses incurred under recommendation 8 above be charged against the between-Budget contingency established as part of Budget 2023
11. **note** that the establishment of the guarantee scheme will produce a contingent liability to the Crown of \$1.6 billion
12. **note** that the Payments and Expenses in Respect of Guarantees and Indemnities PLA will increase for a provision equal to the expected loss of the guarantee, which is currently estimated at \$121 million based on the maximum uptake of the scheme
13. **note** that the indicative profile for the changes to the appropriation described in recommendation 12 above is as follows:

Vote Finance Minister of Finance	\$m – increase/(decrease)				
	2022/23	2023/24	2024/25	2025/26	2026/27 & Outyears
Non-Departmental Output Expense					
Payments and Expenses in Respect of Guarantees and Indemnities PLA	-	121.000	-	-	-
Total Operating	-	121.000	-	-	-

14. **note** that the anticipated changes to appropriations reflecting the changed expenses relating to a provision equal to the expected loss of the guarantee will have a corresponding impact on the operating balance
15. **note** that any expenses recognised and incurred from the crystallisation of any claims under the guarantees will need to be funded, with a corresponding impact on net debt
16. **note** that forecasting changes to the provision will be made at each Economic and Fiscal Update

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17. **agree** that the anticipated expenses incurred for the provision of the Scheme will be charged as a pre-commitment against the Budget 2024 operating allowance
18. **note** the above changes and anticipated changes to appropriations for 2023/24 will be reported and disclosed in the 2023/24 Supplementary Estimates

Authorised for lodgement
Hon Grant Robertson

Minister of Finance

COMMERCIAL-SENSITIVE

Appendix 1: Overview of previous support

Intervention	Level of support \$m	Sector Targeting	Partially Impacted	Highly Impacted	Severely Impacted with prospect of viability	Severely Impacted without prospect of viability
Proposed further support						
<i>NIWE Loan Guarantee Scheme</i>	~2,000	All		✓		
<i>Concessionary loans and/or equity</i>	~225	Land-based primary industries			✓	
Examples of previous support						
<i>MBIE Business Support Fund</i>	75	Non-primary industries	✓	✓	✓	✓
<i>MPI Primary Sector Response Fund</i>	74	Primary industries	✓	✓	✓	✓
<i>Sediment and debris removal</i>	100	All	✓	✓	✓	✓
<i>Rural Community Support Fund</i>	4	Impacted rural communities	N/A – applied to communities			
<i>Primary Industries North Island Weather Event Recovery Fund</i>	30	Primary industries	✓	✓	✓	✓
<i>Isolated Rural Communities Recovery Fund</i>	5	Impacted rural communities	N/A – applied to communities			
<i>Woody debris (incl. slash) removal</i>	10	Impacted locations	N/A – applied at affected locations			

Bank version – Agreed form

draft

Crown Deed of Indemnity

in relation to the North Island Weather Event Loan
Guarantee Scheme

—

The Sovereign in right of New Zealand acting by and through the Minister of
Finance (the **Crown**)

[Lender] (the **Lender**)

—

Crown Deed of Indemnity

North Island Weather Event Loan Guarantee Scheme

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Details

Date

Parties

Name **The Sovereign in right of New Zealand acting by and through the Minister of Finance**

Short form name **the Crown**

Notice details Address: The Treasury, 1 The Terrace, Wellington
Email: legal@treasury.govt.nz
Attention: Treasury Solicitor

Name **[Lender]**

Short form name **the Lender**

Notice details Address:
Email:
Attention:

Background

- A The Minister of Finance considers it necessary or expedient in the public interest to establish the Loan Guarantee Scheme to help Approved Lenders to support New Zealand businesses facing difficulties caused by the North Island Weather Events by providing Supported Loans.
- B As a general principle, the Loan Guarantee Scheme is intended to support customers that have experienced a significant negative impact on their business and financial condition. The Loan Guarantee Scheme is not intended to support to customers that have experienced a low or moderate impact from the relevant North Island Weather Events.
- C The Supported Loans are intended to assist New Zealand businesses to manage the impacts of the North Island Weather Events, including by supporting the Lender to pass lower interest rates to Borrowers, reducing the cashflow required to service a Supported Loan, and reducing the cost of debt over its lifetime (for both new and refinanced lending).
- D This document sets out the terms on which the Minister of Finance, on behalf of the Crown, grants an indemnity pursuant to section 65ZD of the *Public Finance Act 1989* to the Lender to give effect to the Loan Guarantee Scheme.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Affected Region means any of Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, or Wairarapa.

Approved Lender means:

- (a) each registered bank which has been approved by the Crown as a participant in the Loan Guarantee Scheme;
- (b) each licensed NBDT which has been approved by the Crown as a participant in the Loan Guarantee Scheme; and
- (c) each non-deposit taking lender which has been approved by the Crown as a participant in the Loan Guarantee Scheme,

and **Approved Lenders** means all of them.

Availability Period means the period from (and including) the Commencement Date to (and including) 30 June 2024 (or such later date as notified by the Crown under a Scheme Notice).

Borrower means a person:

- (a) that, at the time the Supported Loan is entered into, carries on a business which:
 - (i) is a New Zealand Based Business;
 - (ii) is located (in whole or in part) in an Affected Region; and
 - (iii) does not involve any Excluded Activity;
- (b) whose business and financial condition (or the business and financial condition of its Guaranteeing Group) has experienced, or is expected to experience, a significant negative impact as a result of the North Island Weather Events (for example, material decreases in cashflow (current or forecast) or asset value);
- (c) unless clause 3.4(d)(ii) applies, that is not, at the time the Supported Loan is entered into, a "Borrower" under a "Supported Loan" entered into with another Approved Lender under a LGS Crown Deed of Indemnity; and
- (d) that is not a local authority, a council-controlled organisation or a council organisation for the purposes of the *Local Government Act 2002*,

unless otherwise agreed in writing by the Crown and the Lender.

Certificate has the meaning set out in clause 7.1(a)(ii).

Claim Certificate has the meaning set out in clause 9.3.

Claim Information Deficiency has the meaning set out in clause 9.5.

Claim Report has the meaning set out in clause 9.1(a).

Claim Report Data Specifications means the data specifications document relating to the Claim Report Template provided by the Crown to the Lender on or about the date of this document, as amended from time to time by the Crown pursuant to clause 9.5.

Claim Report Template means the claims template consisting of two tabs with the titles "Claim Detail" and "Claim Commentary" within an Excel workbook, as provided by the Crown to the Lender on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 9.5.

Commencement Date means the later of the date of this document or 31 July 2023.

Creditor Process means, in respect of a Supported Loan, a settlement, compromise or other arrangement under which all or any part of the amount owing by the Borrower (or any guarantor) under or in connection with the Supported Loan is written off, cancelled or not recovered.

Data Specifications means the data specifications document provided by the Crown to the Lender on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(d).

Defaulted Supported Loan means a Supported Loan in respect of which:

- (a) an event of default, termination event or similar event (however described or defined) has occurred; and
- (b) the Lender has:
 - (i) declared all outstanding amounts due and payable; or
 - (ii) taken any other action to recover amounts owing (excluding, for the purposes of the *Farm Debt Mediation Act 2019*, the act of entering into mediation but including entering into an enforceable mediation agreement or applying for an enforcement certificate, in each case, for the purpose of recovering amounts owing to the lender).

Event of Review means an event or circumstance specified in clause 8.5(b).

Excluded Activity means any of the following:

- (a) the manufacture of cluster munitions;
- (b) the manufacture or testing of nuclear explosive devices;
- (c) the manufacture of anti-personnel mines;
- (d) the manufacture of tobacco;
- (e) the processing of whale meat;
- (f) the manufacture or distribution of recreational cannabis;
- (g) the manufacture of civilian automatic and semi-automatic firearms, magazines or parts;
- (h) any activity which is illegal in New Zealand; and
- (i) any other activity designated as an "Excluded Activity" by the Crown in writing to the Approved Lenders, with such designation to take effect no earlier than 20 Working Days after the date on which the relevant Notice is delivered to the Approved Lenders (as set out in that Notice). Any designation made by the Crown under this paragraph will not apply in respect of any Supported Loan entered into prior to the date on which such designation takes effect.

Facility Limit means the maximum aggregate principal amount that may be drawn under a loan agreement in accordance with its terms (excluding, to avoid doubt, any interest that may be capitalised to form part of the loan balance).

Guaranteeing Group means the Borrower and each person (if any) which has guaranteed the Borrower's obligations to the Lender (excluding, for the avoidance of doubt, the Crown in respect of its obligations under this document).

Information Deficiency has the meaning set out in clause 7.1(d).

Insolvency Event means:

- (a) the Lender is declared or becomes bankrupt or insolvent or is otherwise unable to pay its debts when they fall due;
- (b) the Lender enters into dealings with or for the benefit of any of its creditors with a view to avoiding, or in expectation of, insolvency;
- (c) the Lender takes any corporate action or any other procedure or step is taken to make a general assignment or an arrangement, compromise or composition with or for the benefit of any of its creditors;
- (d) the Lender stops or threatens to stop payments generally;

- (e) a security interest is enforced in respect of, or a receiver is appointed to, any material part of the assets of the Lender;
- (f) an order is made, or a resolution is passed, for the appointment of a liquidator to the Lender;
- (g) a statutory manager is appointed or a step taken with a view to any such appointment in respect of the Lender under the *Banking (Prudential Supervision) Act 1989*; or
- (h) any analogous or equivalent event to any listed above (in any jurisdiction).

LGS Crown Deed of Indemnity means a Crown Deed of Indemnity in relation to the Loan Guarantee Scheme between the Crown and another Approved Lender.

Loan Guarantee Scheme means the scheme established by the Crown to help Approved Lenders to support New Zealand businesses to respond to difficulties as a consequence of the North Island Weather Events.

NBDT has the meaning given to that term in the *Non-Bank Deposit Takers Act 2013*.

New Zealand Based Business means a business in respect of which, if carried on by:

- (a) an individual or a company, the individual or the company is resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
- (b) a company or partnership (including a limited partnership) or trustees of a trust (in each case whether or not formed or incorporated in New Zealand), the relevant entity or body of persons:
 - (i) is or are resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
 - (ii) carry or carries on business in New Zealand through a fixed or permanent place of business in New Zealand and will file a New Zealand income tax return in respect of that business.

New Supported Loan has the meaning set out in clause 3.4(d).

North Island Weather Events includes:

- (a) the effects of the floods immediately before and during Auckland Anniversary Weekend 2023; and/or
- (b) the effects of Cyclone Gabrielle.

Notice has the meaning set out in clause 20.1

OIA has the meaning set out in clause 18(a).

Original Loan has the meaning set out in clause 3.4(d)(ii).

Portfolio Information has the meaning set out in clause 7.1(a)(i).

Reasonable Assurance Engagement has the meaning set out in clause 7.2(a)(i).

Reasonable Assurance Report has the meaning set out in clause 7.2(a)(ii).

Refinanced Supported Loan has the meaning set out in clause 3.4(d)(i).

Related Party means, in relation to a Borrower:

- (a) any Subsidiary of the Borrower;
- (b) any company which is related (as defined by section 2(3) of the *Companies Act 1993*) to the Borrower or any Subsidiary of the Borrower, any shareholder of the Borrower, or any director of the Borrower;
- (c) any person who legally or beneficially owns (directly or indirectly) any of the equity share capital of or equity interests in the Borrower;
- (d) any spouse, family member, or other familial relation of the Borrower, or of a director or shareholder of the Borrower, or any entity owned or controlled by such a spouse, family member, or other familial relation; and
- (e) any person referred to or listed as a related party in any of the Borrower's financial statements.

Relevant Officer means:

- (a) for the purposes of clause 7.1, a person employed by the Lender who is responsible for the Lender's participation and operation of the Loan Guarantee Scheme; and
- (b) for the purposes of clause 9.3, the Chief Financial Officer, the Chief Risk Officer or any equivalent, or any executive who reports directly to the Chief Executive Officer of the Lender.

Report has the meaning set out in clause 7.1(a)(i).

Reporting Template means the reporting template consisting of two tabs with the titles "Expected Credit Loss" and "Lending Summary" within an Excel workbook, as provided by the Crown to the Lender on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(d).

Scheme Notice has the meaning set out in clause 21.1.

Shortfall means, in respect of a Defaulted Supported Loan, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan after the Lender:

- (a) has:
 - (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and
 - (ii) determined that it does not reasonably expect to make any further recoveries; and
- (b) has applied all recoveries available to be retained by it in accordance with the following order of application:
 - (i) first, to pay reasonable costs and expenses incurred by the Lender in applying its arrears management and enforcement policies and processes;
 - (ii) secondly, to reduce all indebtedness of the Borrower (as principal or surety) to the Lender which is not owed under the Defaulted Supported Loan and which is, at the time any such recoveries are applied, due and payable by the Borrower; and
 - (iii) thirdly, to reduce all indebtedness under the Defaulted Supported Loan owed by the Borrower to the Lender,

(the **Shortfall Waterfall**).

For the purpose of this definition, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan will include, if applicable, without double counting:

- (c) any such amount that has been cancelled, written off or not recovered as a result of a Creditor Process; and/or
- (d) any such amount that either has not been recovered by the Lender as a result of the Defaulted Supported Loan being set aside (in whole or part) or which the Lender has been required to pay to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws.

Shortfall Waterfall has the meaning set out in the definition of the term Shortfall.

Subsidiary means:

- (a) a "subsidiary" as defined in section 5 of the *Companies Act 1993* (as if the term "company" in that section includes entities incorporated in a jurisdiction other than New Zealand) (but as if any reference to a body corporate includes any entity);
- (b) any other person treated as a subsidiary for the purposes of any applicable accounting standards; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person.

Supported Loan has the meaning given in clause 3.1.

Supported Loan Policies, Practices and Processes means the Lender's credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes applicable to Supported Loans from time to time, such policies, practices and processes to be:

- (a) determined commercially by the Lender; and
- (b) applied to a particular Supported Loan in such manner and to the extent as the Lender in its discretion determines.

Supported Loans Cap has the meaning set out in clause 4(a).

Working Day means a week day on which registered banks are open for general banking business in Wellington and Auckland.

1.2 Interpretation

- (a) In this document:
 - (i) headings are for reference only and do not affect interpretation;
 - (ii) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
 - (iii) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
 - (iv) examples and use of the word **including** and similar expressions do not limit what else may be included.
- (b) Unless the context requires otherwise, a reference in this document to:
 - (i) a party to any document includes that person's successors and permitted substitutes and assigns;
 - (ii) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
 - (iii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
 - (iv) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
 - (v) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
 - (vi) a person includes an individual, company, corporation, partnership (including a limited partnership), trustees of a trust, unincorporated body or other entity;
 - (vii) time is to New Zealand time unless stated otherwise;
 - (viii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
 - (ix) an accounting term is to be interpreted according to generally accepted accounting practice in New Zealand, as defined in section 8 of the *Financial Reporting Act 2013*;
 - (x) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) to pay or repay money;
 - (xi) **property** or an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset; and
 - (xii) **rights** includes authorities, consents, discretions, remedies, powers and causes of action.

2. Indemnity

2.1 Scope of indemnity

- (a) The Crown undertakes to indemnify the Lender against any Shortfall which arises in relation to a Defaulted Supported Loan.
- (b) The Crown's liability under paragraph (a) above in respect of each Defaulted Supported Loan:
 - (i) is limited to an amount equal to 80 per cent. of the Shortfall; and
 - (ii) is otherwise subject to the provisions of this document.

2.2 Payment process

The Crown's obligation to make payment under clause 2.1 above arises following the Lender providing the Crown with a Claim Report in accordance with clause 9.

2.3 Liability cap

The Crown's total liability under this document is limited to \$[TBC], or such higher amount as notified by the crown in writing to the Lender.

3. Supported Loan Criteria

3.1 Supported Loan – qualification

A loan agreement entered into by the Lender will be a **Supported Loan** for the purposes of this document if it:

- (a) is entered into by the Lender on or following the Commencement Date with a person who, at the time of entering into the Supported Loan, is a Borrower; and
- (b) satisfies the criteria set out in clauses 3.2 to 3.6.

3.2 Purpose

- (a) Prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Lender that it is requesting the Supported Loan for the purposes of managing the impact of the North Island Weather Events, including by refinancing any of the Borrower's existing indebtedness (including a Refinanced Supported Loan or an Original Loan in accordance with clause 3.4(d)) but excluding any existing indebtedness to any Related Party.
- (b) Other than as agreed in writing by the Crown, prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Lender that it will not apply the proceeds of the Supported Loan for any of the following purposes:
 - (i) to fund dividends to be distributed outside the Borrower's Guaranteeing Group; or
 - (ii) to fund on-lending outside the Borrower's Guaranteeing Group; or
 - (iii) to fund one or more Excluded Activities.

3.3 Supported Loan limit

- (a) Other than as agreed in writing by the Crown, the Facility Limit for each Supported Loan must not exceed \$10,000,000.
- (b) Other than as agreed in writing by the Crown, the aggregate of the Facility Limits of all Supported Loans between the Lender and a Guaranteeing Group at any one time must not exceed \$10,000,000.

3.4 Term

- (a) Subject to paragraph (d) below, each Supported Loan must be entered into during the Availability Period.
- (b) Each Supported Loan must require that all amounts outstanding under the Supported Loan must be repaid in full:
 - (i) where the Supported Loan was entered into during the Availability Period, either and at the Lender's election:

draft

- (A) by not later than the fifth anniversary of the date of the Supported Loan; or
- (B) where the date of the first advance was within the Availability Period, by not later than the fifth anniversary of the date on which funds under the Supported Loan were first advanced to the Borrower; or
- (C) where the date of the first advance was after the Availability Period, by not later than 30 June 2029; or
- (ii) where the Supported Loan has been entered into and advanced after the Availability Period in accordance with either paragraph (d)(i) or paragraph (d)(ii) below, by not later than the repayment date contemplated by the relevant paragraph.
- (c) Subject to paragraph (b) above, the Lender may agree to extend the term of a Supported Loan from time to time, including after the Availability Period.
- (d) Despite paragraph (a) above, a Supported Loan may be entered into and advanced at any time, including after the Availability Period (the **New Supported Loan**) if:
 - (i) amounts under the New Supported Loan are advanced to refinance in full an outstanding loan advanced by the Lender that was and continued to the relevant refinancing date to be a Supported Loan for the purposes of this document (the **Refinanced Supported Loan**), provided that:
 - (A) the New Supported Loan complies in all other respects with clauses 3.2 to 3.7 of this document; and
 - (B) where the New Supported Loan is entered into after the Availability Period, the final repayment date of all amounts outstanding under the New Supported Loan is no later than:
 - (I) where the first advance under the relevant Refinanced Supported Loan was made during the Availability Period, five years after the date of that first advance; or
 - (II) in all other cases, 30 June 2029; or
 - (ii) amounts under the New Supported Loan are advanced to refinance in full an outstanding loan advanced by another Approved Lender (the **Original Loan**), provided that:
 - (A) the Borrower confirms that the Original Loan was a "Supported Loan" entered into with another Approved Lender under a LGS Crown Deed of Indemnity; and
 - (B) the final repayment date of all amounts outstanding under the New Supported Loan is no later than the date that the Borrower confirms is the final repayment date contemplated by the Original Loan.

3.5 Interest and interest rate

- (a) The interest rate for each Supported Loan will be set by the Lender and must reflect the effect of the guarantee provided by the Crown under this document (as determined by the Lender acting reasonably and in good faith).
- (b) Interest on a Supported Loan will only be payable by a Borrower on drawn amounts.
- (c) Establishment fees, commitment fees and line fees in respect of a Supported Loan may be charged at the Lender's discretion in accordance with its Supported Loan Policies, Practices and Processes.

3.6 Documentation

- (a) Each Supported Loan must include a negative undertaking by the Borrower that the proceeds of the Supported Loan will not be used for any Excluded Activity, and a corresponding event of default for breach of that undertaking.
- (b) Each:
 - (i) Supported Loan; and

- (ii) security or guarantee (if any) required by the Lender in relation to the Supported Loan,

will otherwise be documented on terms and conditions agreed between the Lender and the Borrower in accordance with the Lender's Supported Loan Policies, Practices and Processes.

3.7 Loan approval process

The Lender's decision to enter into a Supported Loan (or designate an existing loan as a Designated Existing Loan) will be made in accordance with the Lender's Supported Loan Policies, Practices and Processes.

3.8 Personal guarantees

To avoid doubt:

- (a) the Lender is not required to take a guarantee from any person in respect of a Supported Loan; and
- (b) a loan that otherwise satisfies the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) above will be a Supported Loan even if the Lender has not taken a guarantee from any person in respect of that loan.

3.9 The Lender may rely on certification by a Borrower

For the purposes of determining whether a loan is a Supported Loan:

- (a) the Lender may rely on any certification or confirmation made by a Borrower:
 - (i) that the Borrower meets the requirements set out in paragraphs (a), (c) and (d) of the definition of Borrower; and
 - (ii) as contemplated by each of clauses 3.2(a) and (b), and 3.4(d)(ii)(A) and (B); and
- (b) the loan will not cease to be a Supported Loan merely as a result of that Borrower's certification or confirmation being untrue or incorrect,

unless, at the time of certification or confirmation, the Lender had actual knowledge to the contrary of the matters referred to in paragraph (a) above.

3.10 Lender determination

For the purposes of determining whether a loan is a Supported Loan, the Lender's determination (acting reasonably and in good faith) of whether a Borrower meets the requirement set out in paragraph (b) of the definition of Borrower, taking into account such information as the Lender considers reasonably appropriate in the circumstances at the time of its determination, will be conclusive and final for the purposes of this document.

3.11 No obligation to monitor

The Lender has no obligation to monitor or verify the manner in which a Borrower applies the proceeds of any Supported Loan and a loan will not cease to be a Supported Loan merely as a result of the Borrower applying the proceeds towards a purpose that is not permitted by this document.

3.12 Designation of an existing loan as a Supported Loan

- (a) For the purpose of this document:
 - (i) the Lender may agree with a Borrower to designate an existing loan made by the Lender to the Borrower as a Supported Loan where the purpose of that designation includes preserving for the benefit of the Borrower a more favourable interest rate under the existing loan than the interest rate that would be available to the Borrower under a newly advanced Supported Loan (**Designated Existing Loan**); and
 - (ii) a reference to a Supported Loan being "entered into" (or similar) includes reference to the designation of a Designated Existing Loan.
- (b) To avoid doubt:

- (i) a Designated Existing Loan must satisfy the criteria set out in clauses 3.1(a), 3.2 to 3.6(a), and 3.7 (or the relevant criteria that applied at the time of its designation) to qualify as a Supported Loan (including that the Designated Existing Loan must be amended to satisfy clause 3.6(a) at or before the time of its designation); and
- (ii) the interest rate for a Designated Existing Loan must satisfy the requirements of clause 3.5.
- (c) Nothing in this clause 3.12 will be construed as requiring the Lender to designate any existing loan as a Supported Loan, including if it is not feasible or operationally possible for the Lender to do so. Any decision to designate an existing loan as a Supported Loan in accordance with this clause 3.12 will be made by the Lender in its sole and unfettered discretion.

4. Limit on Supported Loans

- (a) Without in any way derogating from the limitation of liability under clause 2.3, the Lender agrees that it will not make Supported Loans or loans which it represents to customers are Supported Loans with aggregate Facility Limits at any time exceeding the liability cap amount set out in clause 2.3 multiplied by 1.25 (the **Supported Loans Cap**).
- (b) To avoid doubt, if any Supported Loan is repaid in full, or the Lender's commitment in respect of a Supported Loan is permanently reduced during the Availability Period, the amount of the repayment or reduction in commitment will not count towards the Supported Loans Cap.

5. Application of repayments and prepayments

5.1 Repayments prior to acceleration or enforcement

For so long as a Supported Loan is not a Defaulted Supported Loan, the Lender will apply scheduled payments made by the relevant Borrower to the facility to which they relate (including the relevant Supported Loan). To avoid doubt, scheduled payments may be changed for a Supported Loan during its term and may include interest-only periods.

5.2 Repayments after enforcement

If a Supported Loan becomes a Defaulted Supported Loan, the Lender will apply any proceeds that it recovers and is entitled to retain under any facility, security or guarantee which relates to the Supported Loan in accordance with the Shortfall Waterfall.

6. Supported Loans

6.1 Compliance with Supported Loan Criteria

The Lender will have systems and controls in place designed to ensure that any loan it represents is a Supported Loan meets the definition of Supported Loan, including the criteria set out in clause 3.

6.2 Administration

The Lender will administer and service each Supported Loan in all material respects in accordance with the Lender's Supported Loan Policies, Practices and Processes.

6.3 Default and workout

- (a) If a Supported Loan becomes a Defaulted Supported Loan, the Lender:
- (i) must take such action (including enforcement of any security and any guarantees) as it considers commercially reasonable to recover amounts owing under the Supported Loan in accordance with the arrears management and enforcement aspects of its Supported Loan Policies, Practices and Processes; and
- (ii) may, but is not required to, take action to recover any other indebtedness of the Borrower in accordance with its policies, practices and processes that apply to that indebtedness.
- (b) To avoid doubt, the Lender may agree to a Creditor Process with the Borrower or a guarantor in respect of a Supported Loan and/or other indebtedness, rather than:

- (i) appointing a receiver or administrator to the Borrower or a guarantor or the assets of the Borrower or a guarantor; or
- (ii) taking action under a guarantee of the Borrower's Supported Loan and/or other indebtedness; or
- (iii) taking mortgagee or similar action; or
- (iv) making an application for the liquidation or bankruptcy of the Borrower or a guarantor.
- (c) Provided that the Lender is complying with its arrears management and enforcement procedures in accordance with this clause 6.3, there will be no limit on the time in which it must complete those procedures.

7. Reporting

7.1 Periodic reporting and certification

- (a) The Lender will provide the Crown with:
- (i) a report setting out portfolio level information as required by the Reporting Template, the Data Specifications, the weighted average interest rate, and the weighted average rate discount (the **Portfolio Information**) in respect of the Lender's Supported Loans (the **Report**); and
- (ii) a certificate from the Lender signed by the Lender's Relevant Officer (the **Certificate**) confirming that, to his or her knowledge having made due enquiry, as at the date of the certificate:
- (A) the Lender has systems and controls in place designed to ensure that it meets its obligations under this document;
- (B) the underlying systems and controls that are used to produce the information in each Report are the same as the Lender uses in the ordinary course of its business, subject to any modifications which the Lender considers are required for the purposes of its involvement with the Loan Guarantee Scheme;
- (C) save as described in the Certificate, the systems and controls referred to in paragraph (A) above have worked effectively in all material respects from the date of the previous Certificate (or, in the case of the first Certificate, from the Commencement Date); and
- (D) the information set out in the Report to which the Certificate relates is complete and accurate in all material respects.
- (b) The Lender will provide the Portfolio Information, the Report, and the Certificate (in each case as described in paragraph (a) above) to the Crown:
- (i) during the Availability Period, no more than 15 Working Days after the end of each calendar month; and
- (ii) after the end of the Availability Period:
- (A) for each calendar quarter, no more than 15 Working Days after the end of the relevant calendar quarter; and
- (B) in addition, for the month of May, no more than 15 Working Days after 31 May.
- (c) If the Lender provides a Certificate which includes a description of the systems and controls referred to in paragraph (a)(ii)(A) above not working effectively in all material respects, the Lender must provide, with that Certificate, an explanation of the steps it intends to take to remedy the issues with its systems and controls and a timeframe for that remedy to be implemented.
- (d) If, at any time following the Commencement Date, the Crown (acting reasonably) determines that the Portfolio Information is insufficient to enable the Crown to adequately assess the potential exposure assumed by it under the Loan Guarantee Scheme (an

Information Deficiency), the Crown may, by written notice to the Lender (and each other Approved Lender), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the Portfolio Information to remedy the Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Lender have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Lender, amend the Portfolio Information as is reasonably necessary to remedy the Information Deficiency and is reasonably capable of being reported on by the Lender.

- (e) On request from the Crown, the Lender will:
- (i) provide to the Crown an explanation or any information the Crown considers necessary (acting reasonably); and/or
 - (ii) meet and consult in good faith with the Crown,
- on how the Lender has calculated the weighted average interest rate, and the weighted average rate discount in respect of the Portfolio Information.

7.2 Independent reasonable assurance engagement

- (a) To enable the Crown to prepare its annual financial statements in accordance with generally accepted accounting practice (including the requirement for the Crown's financial statements to be audited by an independent external auditor), the Lender agrees that it will if requested:
- (i) for every financial year except the financial year ending 30 June 2023, engage its independent external auditors to perform an independent reasonable assurance engagement in accordance with International Standard on Assurance Engagements (New Zealand) 3000 (Revised) Assurance Engagements Other than Audits or Reviews of Historical Financial Information, and Standard on Assurance Engagements SAE 3100 (Revised) Assurance Engagements on Compliance (the **Reasonable Assurance Engagement**);
 - (ii) for every financial year except the financial year ending 30 June 2023, provide the reasonable assurance report prepared following a Reasonable Assurance Engagement (the **Reasonable Assurance Report**) to the Crown and its independent external auditor no later than 25 Working Days after the end of the Crown's financial year; and
 - (iii) in relation to the financial year ending 30 June 2023, provide the Crown's independent auditors with such information relating to the Lender's participation in the Loan Guarantee Scheme as the Crown's independent auditors may request, if during the course of the audit such information is reasonably required for the Crown's independent auditors to gain adequate assurance over the Crown's annual financial statements.
- (b) The Crown and the Lender (each acting in good faith), together with their respective independent external auditors, will agree by no later than 31 March 2024:
- (i) the financial information and details subject to the reasonable assurance procedures to be undertaken by the Lender's external auditors as part of the Reasonable Assurance Engagement; and
 - (ii) the details to be covered by the Reasonable Assurance Report.
- (c) If the Crown, the Lender, and their respective auditors cannot reach agreement in accordance with paragraph (b) above by 31 March 2024, the Crown will determine the matters set out in paragraphs (b)(i) and (b)(ii) above, such determination to be that as is reasonably necessary to enable the Crown to comply with the requirements of the Office of the Auditor General.
- (d) The agreed costs of the Lender's independent external auditor in respect of each Reasonable Assurance Engagement and each Reasonable Assurance Report will be shared equally by the Lender and the Crown.

8. Investigation

8.1 Crown rights of investigation

- (a) Subject to clauses 8.2 and 8.3, the Crown is entitled to investigate:
- (i) the Lender's compliance with clause 6.3;
 - (ii) in relation to each loan that the Lender claims is a Supported Loan:
 - (A) whether the loan agreement was entered into during the Availability Period;
 - (B) whether the borrower met the criteria to be a Borrower when the loan agreement was entered into; and
 - (C) whether the loan otherwise met the criteria in clauses 3.2 to 3.6(a) when the loan agreement was entered into.
- (b) The Crown may issue a notice in writing to the Lender requiring it to produce to the Crown or its agent such copies of its books, records and accounts relevant to the Lender's Supported Loan Policies, Practices and Processes or any Supported Loan, including any Supported Loan where a claim is being considered by, or has been paid by, the Crown as are reasonably necessary to facilitate an investigation pursuant to paragraph (a) above.
- (c) The Lender must comply with a notice issued pursuant to paragraph (b) above and otherwise take all reasonable steps to facilitate the Crown (or its agent)'s investigation.
- (d) Nothing in paragraph (c) above requires the Lender to disclose to the Crown or its agent any privileged document or personal information pertaining to a Borrower or any other person where such disclosure would breach the *Privacy Act 2020*.

8.2 Procedural matters regarding investigation

- (a) A notice issued under clause 8.1(b) must allow a reasonable time for a Lender to produce copies of the relevant documents. This reasonable time must be at least 15 Working Days.
- (b) The Crown:
- (i) will appoint an agent to conduct an investigation who is, in the Crown's opinion, by reason of training or experience suitably qualified to conduct such an investigation; and
 - (ii) will not appoint any existing financial services regulator as agent.
- (c) Regardless of any other clause in this document, documents supplied pursuant to a notice issued under clause 8.1(b) may not be disclosed by the Crown or its agent to any third party including the Reserve Bank of New Zealand or Financial Markets Authority (except where required by law), and may not be used for any purpose other than as set out in this clause 8.

8.3 Frequency

- (a) The Crown will not conduct an investigation under clause 8.1 during the Availability Period.
- (b) After the Availability Period, the Crown will conduct an investigation under clause 8.1 no more than once annually.

8.4 Cost of investigation

The cost of each investigation (which must be properly documented and out-of-pocket) under clause 8.1 will be borne by the Lender unless the investigation has identified that, in the reasonable opinion of the Crown there have been no material deficiencies in the Lender's application of the Supported Loan criteria set out in in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into) which have resulted in loans being incorrectly classified as Supported Loans, in which case, the Crown will bear the cost.

8.5 Consequences

- (a) If an investigation under clause 8.1 reveals that:
- (i) a loan in respect of which the Crown has made payment to the Lender under this document does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into), the Lender must refund the Crown in accordance with clause 10; and
 - (ii) any other loan which the Lender had classified as a Supported Loan does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into), the Lender will not be entitled to any payment from the Crown in respect of that loan under this document.
- (b) It will be an **Event of Review** if an investigation under clause 8.1 reveals that:
- (i) a material number of loans which the Lender has claimed for or classified as Supported Loans do not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into); or
 - (ii) the Lender is not complying with its obligations under clause 6.3 in a way that will or is likely to materially increase the amount payable by the Crown to the Lender under this document.
- (c) If an Event of Review subsists, and the Crown requests, the Lender must promptly meet and consult in good faith with the Crown concerning the Event of Review with a view to agreeing the terms, if any, on which the Crown is willing to continue to allow the Lender to participate in the Loan Guarantee Scheme. If, after 10 Working Days from the date of that written notice, the Crown and the Lender have not agreed (and amended this document to record) such acceptable amendments or the Crown has otherwise determined that the Lender will not continue in Loan Guarantee Scheme, the Crown may, at any time, terminate this document in accordance with clause 13.2.

9. Claims process

9.1 Timing of claims

- (a) The Lender may provide the Crown with a report setting out claim information as required by the Claim Report Template and the Claim Report Data Specifications in respect of any Defaulted Supported Loans which have not previously been the subject of a claim and in respect of which the Lender has:
- (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and
 - (ii) determined that it does not reasonably expect to make any further recoveries, (each such report being a **Claim Report**).
- (b) The Lender must upload each Claim Report to the SecureFileShare system and send an email to niwelgs@treasury.govt.nz to notify the Crown that the Claim Report has been uploaded.
- (c) A claim in respect of a Defaulted Supported Loan must be received by the Crown no later than three months after the Lender has completed its arrears management and enforcement processes in respect of that Defaulted Supported Loan in accordance with clause 6.3 and has determined that it does not reasonably expect to make any further recoveries.
- (d) The Lender is not required to take any legal action against the Crown or any other person before it provides a Claim Report to the Crown.

9.2 Additional information

Each Claim Report must be accompanied by information about how the Shortfall was calculated for each Defaulted Supported Loan (which may include a provisioning paper or loan loss review paper, where prepared by the Lender).

9.3 Claim Certificate

Each Claim Report must be accompanied by a statement from the Lender (the **Claim Certificate**) signed by the Lender's Relevant Officer certifying that, to his or her knowledge having made due enquiry, as at the date of the certificate:

- (a) all Defaulted Supported Loans listed in the Claim Report:
 - (i) have not been included in a previous Claim Report;
 - (ii) qualified as Supported Loans at the time they were made; and
 - (iii) have been subject to the Lender's arrears management and enforcement processes in accordance with clause 6.3 in all material respects;
- (b) the Lender does not reasonably expect to make any further recoveries in respect of the Defaulted Supported Loans listed in the Claim Report;
- (c) the Lender's arrears management and enforcement processes in relation to the Defaulted Supported Loans listed in the Claim Report were completed no more than three months prior; and
- (d) the information in the Claim Report to which the Claim Certificate relates is complete and accurate in all material respects.

9.4 Payment

The Crown will pay the Lender any amount payable by it under this document in relation to each duly completed Claim Report received by it in a calendar month no more than 20 Working Days after the end of that calendar month.

9.5 Change to Claim Report Template

If at any time following the Commencement Date, the Crown (acting reasonably) determines that the information required by the Claim Report Template and the Claim Report Data Specifications:

- (a) is insufficient to enable the Crown to adequately assess and pay claims by the Lender under this document; and/or
- (b) is provided in a form that materially increases the time required for the Crown to adequately assess and pay claims by the Lender under this document,

(the **Claim Information Deficiency**), the Crown may, by written notice to the Lender (and each other Approved Lender), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the Claim Report Template and/or the Claim Report Data Specifications to remedy the Claim Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Lender have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Lender, amend the Claim Report Template and/or Claim Report Data Specifications as is reasonably necessary to remedy the Claim Information Deficiency and as is reasonably capable of being reported on by the Lender.

9.6 Exclusions

- (a) The Crown will have no obligation to pay the Lender for a claim made under this document for an amount under a Supported Loan:
 - (i) to the extent that under any relevant law:
 - (A) the Supported Loan is (wholly or partly) unenforceable, invalid, or not binding on the Borrower; or
 - (B) the Borrower's obligation to pay money owing under the Supported Loan is (wholly or partly) unenforceable against the Borrower; or
 - (C) the Borrower is entitled to a reduction in respect of its payment obligations to the Lender including where the Borrower's payment obligations are held to be a penalty,
- and as a consequence that amount is not payable by the Borrower; or

- (ii) to the extent that non-payment by the Borrower of that amount under the Supported Loan is due to any breach of contract, negligence in relation to the Lender's application of its Supported Loan Policies, Practices and Processes, or fraud by the Lender; or
- (iii) to the extent that the Lender is in breach of any of its obligations under this document and such breach has caused non-payment by the Borrower of that amount under the Supported Loan; or
- (iv) where the loan subject to the claim is not a Supported Loan.
- (b) The exclusion in paragraph (a)(i) above will not apply where the relevant circumstance is caused solely as a result of any or a combination of the following:
- (i) a Creditor Process; or
- (ii) the winding up of the Borrower; or
- (iii) the Supported Loan (or any related security) being set aside (in whole or in part) or the Lender being required to pay an amount to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws; or
- (iv) despite the Lender having made due enquiry prior to the Supported Loan being entered into, the fraud of the Borrower.

10. Refund by Lender

- (a) If the Crown has paid a claim under this document and it is subsequently established, including following any investigation, that the payment or a part of the payment of that claim was greater than the amount required to be paid by the Crown (any such surplus amount being the **Surplus Amount**) under the terms of this document (including as a result of the exclusions set out in clause 9.6 above), the Lender must repay the Surplus Amount together with interest on the Amount calculated daily at the three-month "BKBM-FRA" rate as published by The New Zealand Financial Markets Association from time to time (provided that if that rate is a negative number, then it will be deemed to be zero) from the date the Crown made the payment until the Lender repays the Surplus Amount to the Crown in full.
- (b) No more than 10 Working Days after the end of each calendar quarter, the Lender will make payment to the Crown of all Surplus Amounts (and interest) that the Lender has become aware of during the preceding calendar quarter in accordance with paragraph (a) above.

11. Transfer of Supported Loans

- (a) If the Lender transfers a loan that is a Supported Loan to any other person, that loan will cease to be a Supported Loan for the purposes of this document, unless:
- (i) the Crown has given its prior written consent to the transfer; or
- (ii) the transfer is to another Approved Lender, in which case the loan will be a Supported Loan for the purposes of that other Approved Lender's LGS Crown Deed of Indemnity provided that the other Approved Lender complies with the provisions of its LGS Crown Deed of Indemnity in relation to the loan.
- (b) If the Lender is the transferee of a loan that is a Supported Loan for the purposes of another Approved Lender's LGS Crown Deed of Indemnity, that loan will be a Supported Loan for the purposes of this document, provided that the Lender complies with clauses 3.3, 3.4, and 3.5 in relation to the loan.

12. Same terms for all Approved Lenders

- (a) The Crown has entered into, or will enter into, a LGS Crown Deed of Indemnity with each Approved Lender, on identical terms as this document except as to:
- (i) a "Qualifying Transferee" being party to this document in the case of a relevant Approved Lender that is a non-deposit taking lender;

- (ii) the definition of Commencement Date;
- (iii) paragraph (g) of the definition of "Insolvency Event";
- (iv) the inclusion of the definition "Interest Rate Cap";
- (v) the inclusion of the definition "Leasing Agreement";
- (vi) the inclusion of the definition "Qualifying Criteria";
- (vii) the inclusion of the definition "Required Credit Rating";
- (viii) the liability cap in clause 2.3;
- (ix) the interest and interest rate provisions in clause 3.5;
- (x) the limit on Supported Loans in clause 4(a); and
- (xi) the list of termination events specified in clause 13.2.
- (b) The Crown will not amend the terms of this document or any other Approved Lender's LGS Crown Deed of Indemnity in such a way as to make another Approved Lender's LGS Crown Deed of Indemnity more favourable to that Approved Lender, except:
- (i) if the Crown terminates this document in accordance with clause 13; or
- (ii) in response to an Event of Review, in accordance with clause 8.5(c).
- (c) The Crown will exercise its discretions under this document and each LGS Crown Deed of Indemnity in a reasonable and consistent manner.

13. Termination

13.1 Termination by notice

Each of the Lender and, following the Availability Period, the Crown, may, by notice in writing to the other, terminate this document. Any such notice will take effect from the date 10 Working Days after the date of the notice, or any subsequent date specified in the notice.

13.2 Termination for cause

The Crown may, by notice in writing to the Lender, terminate this document with effect from the date of the notice or any subsequent date specified in the notice if:

- (a) it is entitled to do so pursuant to clause 8.5(c) following an Event of Review; or
- (b) the Lender has not provided a Report or Certificate under clause 7 by its due date and has not remedied that failure within 30 days; or
- (c) an Insolvency Event has occurred in respect of the Lender.

13.3 Effect of termination

- (a) Subject to paragraph (b) below, termination of this document under clause 13.1 or clause 13.2 will not affect the parties' rights and obligations under this document (including clause 2.1) in relation to each Supported Loan that was entered into prior to the date on which the termination of this document takes effect, including if any amount owing under the Supported Loan is repaid (in part or full) and redrawn from time to time.
- (b) The Lender may elect, in its notice of termination provided to the Crown under clause 13.1, to cease to have the benefit of the indemnity under clause 2.1 in relation to all of its outstanding Supported Loans entered into on or before the date of the notice of termination. If the Lender so elects, then, without affecting any obligations under this document which have accrued or are due but yet to be performed, the parties' rights and obligations under this document (including under clause 2.1) will terminate.
- (c) The following provisions will survive termination:
- (i) clause 18 (Official Information Act requests); and
- (ii) clause 19 (Confidentiality).

14. No counter indemnity or rights of subrogation

- (a) Except as specifically provided in this document, the Crown acknowledges and agrees that the Lender has no liability to repay, reimburse or counter-indemnify the Crown for any payment the Crown may make under this document.
- (b) The Crown will not seek to:
 - (i) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under a Supported Loan or of any other guarantee or security taken pursuant to, or in connection with, the Supported Loan; or
 - (ii) enforce any right of counter-indemnity against a Borrower arising from any payment by the Crown under this document.
- (c) The Lender has no duty to marshal in favour of the Crown or any other person.

15. Obligations not prejudiced

Except as specifically provided in this document, the obligations of the Crown under this document will not be affected by any act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this document, including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Borrower or other person; or
- (b) any composition or arrangement with any creditor of any Borrower or other person; or
- (c) any amendment to any Supported Loan or any other document or security including any extension of or any increase in any facility amount (provided that the Supported Loan as amended would have satisfied the criteria in clause 3 where it originally entered into on such terms).

16. Assignment

The Lender may not assign, transfer or otherwise deal with its rights, interests or obligations under this document without the prior written consent of the Crown.

17. Information to be provided to the Crown

17.1 Supported Loan Policies, Practices and Processes

- (a) The Lender acknowledges that it provided a summary of its Supported Loan Policies, Practices and Processes to the Crown as a condition precedent to the Crown entering into this document.
- (b) The Lender may amend its Supported Loan Policies, Practices and Processes at any time as it considered necessary or desirable. The Lender will retain a copy of each version of its Supported Loan Policies, Practices and Processes until 31 December 2030.

17.2 Other information

- (a) The Lender will provide the Crown, no more than 15 Working Days following request by the Crown (acting reasonably), any other relevant information that is available to, or that can reasonably be obtained by, the Lender in relation to a Supported Loan or a Borrower.
- (b) The Lender will, at or prior to the time each Supported Loan is entered into, obtain the consent of the relevant Borrower and any applicable new guarantor to provide information requested by the Crown under paragraph (a) above to the Crown.
- (c) The Crown will use information provided by the Lender under paragraph (a) above solely for the purposes of the management and administration of the Loan Guarantee Scheme.
- (d) Without limiting the Lender's obligation under paragraph (b) above, nothing in paragraph (a) above requires the Lender to disclose to the Crown any privileged document or personal information pertaining to any person where such disclosure would breach the *Privacy Act 2020*.

18. Official Information Act requests

- (a) The Lender acknowledges that the Crown is subject to the *Official Information Act 1982* (the **OIA**) and that the Crown is obliged to disclose information under the OIA if so requested and if there are no grounds pursuant to the terms of the OIA to withhold that information.
- (b) The Lender acknowledges that the Crown intends to proactively release this document, subject only to any redactions necessary on the grounds set out in the OIA.
- (c) The Crown acknowledges that, in connection with this document, /the Lender will provide to the Crown information that is, if publicly released, likely unreasonably to prejudice the commercial position of the Lender.
- (d) The Crown will advise the Lender if it receives a request under the OIA that relates to information provided by the Lender in connection with this document, and will consider any views that the Lender provides to the Crown before responding to any such request under the OIA, provided that:
 - (i) nothing in this paragraph (d) will require the Crown to delay its response to any such request under the OIA; and
 - (ii) all of the Crown's decisions in relation to requests received under the OIA are final.

19. Confidentiality

19.1 Confidentiality

Subject to clause 19.2, the Lender must keep confidential:

- (a) any terms of this document which are not proactively released by the Crown as contemplated in clause 18(b); and
- (b) any information provided to the Lender under this document or as part of the Lender's participation in the Loan Guarantee Scheme.

19.2 Permitted disclosure

- (a) Nothing in clause 19.1 will limit:
 - (i) any disclosures required to be made by law or required by any stock exchange or regulatory authority; or
 - (ii) disclosures to professional advisers and affiliates or to any liquidator, statutory manager, receiver or administrator appointed to, or in respect of, the Lender or any of its assets or any of their respective advisers; or
 - (iii) disclosures to any credit rating agency that has assigned a credit rating to the Lender or any of its securities; or
 - (iv) disclosure by the Lender that it is a participant lender in the Loan Guarantee Scheme; or
 - (v) disclosures in defence of legal proceedings brought against any person; or
 - (vi) disclosures in the context of any legal proceedings in respect of this document; or
 - (vii) disclosure of information that is publicly available; or
 - (viii) disclosure of information to any permitted transferee of any Supported Loan; or
 - (ix) any disclosure agreed to in writing by the Crown.
- (b) Prior to any disclosure under any of paragraph (a)(i), (a)(v) and (a)(vi) above, to the extent permitted by law, the Lender must first notify the Crown in writing of the intended disclosure and exercise its reasonable efforts to obtain assurances, including confidentiality orders in any legal proceeding, that the terms disclosed will be treated confidentially.

20. Notices and communications

20.1 Form of Notice

Each notice, demand, consent, approval or other communication (a **Notice**) under this document:

- (a) must be in writing, in English and signed by an authorised representative of the party; and
- (b) must be hand delivered or sent by email or post to the recipient's address for notices specified in the "Details" section of this document (as varied by any Notice given by the recipient to the party).

20.2 Effective on receipt

A Notice given in accordance with this clause 20 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
- (b) if sent by post, on the fifth Working Day after the date of posting (or on the seventh Working Day after the date of posting if posted to or from a place outside New Zealand); or
- (c) if sent by email, when transmitted to the correct email address of the recipient,

but if the delivery, receipt or transmission is not on a Working Day or is after 5:00 p.m. (addressee's time) on a Working Day, the Notice is taken to be received at 9:00 a.m. (addressee's time) on the next Working Day.

21. Amendment

21.1 Crown amendments

The Crown may, by no less than 10 Working Days' written notice to all Approved Lenders (unless the amendment relates to paragraph (d) below, in which case the written notice will be to the Lender alone, or the amendment relates to paragraph (f) below, in which case the written notice will be to the relevant class of Approved Lenders only) (a **Scheme Notice**), amend:

- (a) the date on which the Availability Period ends;
- (b) the definition of Borrower;
- (c) the definition of Excluded Activity;
- (d) the liability cap amount set out in clause 2.3;
- (e) the Supported Loan criteria set out in clauses 3.2 and 3.6; and
- (f) the Supported Loan criteria set out in clauses 3.3 to 3.5.

Any amendment made by the Crown in accordance with this clause 21.1 will not apply in respect of any Supported Loan entered into prior to the date on which such amendment takes effect.

21.2 Other amendments

No amendment to this document other than an amendment pursuant to a Scheme Notice or an increase to the liability cap in accordance with clause 2.3 is effective unless it is in writing and signed by or on behalf of each party to it.

22. Representations and warranties

The Lender represents and warrants to the Crown that, to the best of its knowledge and belief having made due enquiry:

- (a) any factual written information that the Lender provided to the Crown as part of its application to participate in the Loan Guarantee Scheme was true and accurate in all material respects and not misleading in any material respect at the time at which it was provided; and
- (b) any factual written information the Lender provides to the Crown under this document is true and accurate in all material respects and not misleading in any material respect at the

time at which it is provided (excluding any information provided to the Lender by a Borrower).

23. General

23.1 Third parties

This document is not intended to create any benefit for, or give rise to an obligation enforceable at the suit of, any person (other than a liquidator, statutory manager, receiver or administrator appointed to, or in respect of any of the assets of, the Lender) who is not party to this document.

23.2 Entire agreement

This document constitutes the entire agreement between the parties in relation to its subject matter. It replaces all earlier discussions, negotiations and agreements relating to that subject matter. The Lender acknowledges that in entering into this document, the Crown relied on information the Lender provided to it as part of its application to participate in the Loan Guarantee Scheme.

23.3 Currency

Any reference in this document to an amount will, to the extent that the amount is not already denominated in New Zealand dollars, mean the amount determined by the Crown to be the New Zealand dollar equivalent of that amount as at the time relevant to its calculation or determination.

23.4 Partial invalidity

If at any time a provision of this document is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision will be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of this document in any jurisdiction.

23.5 Counterparts

- (a) This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.
- (b) A party who has executed a counterpart of this document, may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.
- (c) Where a party executes this document, by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email transmission.

23.6 Electronic signatures permitted

- (a) By signing this document, each party consents to this document (or any counterpart of it) being executed in electronic form, being electronically signed (and, where witnessing of a signature is required, such signature being electronically witnessed), and being delivered in electronic form by means of an electronic communication, all in accordance with sections 222 to 227 of the *Contract and Commercial Law Act 2017*.
- (b) The parties agree to be legally bound by this document signed in this way.

23.7 Delivery

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this document will be delivered by one party immediately on the earlier of:

- (a) physical delivery of an original of this document, executed by that party, into the custody of each other party or each other party's solicitors; or
- (b) transmission by that party or its solicitors (or any other person authorised in writing by that party) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by that party, to each other party or each other party's solicitors.

23.8 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any legal action or proceedings arising out of or in connection with this document.

Signing page

EXECUTED as a deed

Crown

SIGNED by **THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Secretary to the Treasury for and on behalf of the Minister of Finance in the presence of:

Signature of the Secretary to the Treasury

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Lender

[EXECUTION BLOCK TO BE INSERTED]

NDTL version

draft

Crown Deed of Indemnity

in relation to the North Island Weather Event Loan Guarantee Scheme

—

The Sovereign in right of New Zealand acting by and through the Minister of Finance (the **Crown**)

[**Lender**] (the **Lender**)

[INSERT FOR NDTLS] [[Qualifying Transferee] (the Qualifying Transferee)]

—

[MERW general comment: Words highlighted in green are relevant for certain NDTLs. The concept of “Qualifying Transferee” is referring to a securitisation vehicle which a NDTL Supported Loan may be transferred to. If the relevant NDTL is not funding its Supported Loans through a securitisation structure, then the references to “Qualifying Transferee” and “Qualifying Criteria” can be removed.]

Crown Deed of Indemnity

North Island Weather Event Loan Guarantee Scheme

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Details

Date

Parties

Name **The Sovereign in right of New Zealand acting by and through the Minister of Finance**

Short form name **the Crown**

Notice details Address: The Treasury, 1 The Terrace, Wellington
Email: legal@treasury.govt.nz
Attention: Treasury Solicitor

Name **[Lender]**

Short form name **the Lender**

Notice details Address:
Email:
Attention:

[INSERT FOR NDTLS] **[Qualifying Transferee]**

[Name]

[Short form name] **the Qualifying Transferee**

[Notice details] **Address:**
Email:
Attention:]

Background

- A The Minister of Finance considers it necessary or expedient in the public interest to establish the Loan Guarantee Scheme to help Approved Lenders to support New Zealand businesses facing difficulties caused by the North Island Weather Events by providing Supported Loans.
- B As a general principle, the Loan Guarantee Scheme is intended to support customers that have experienced a significant negative impact on their business and financial condition. The Loan Guarantee Scheme is not intended to support to customers that have experienced a low or moderate impact from the relevant North Island Weather Events
- C The Supported Loans are intended to assist New Zealand businesses to manage the impacts of the North Island Weather Events, including by supporting the Lender to pass lower interest rates to Borrowers, reducing the cashflow required to service a Supported Loan, and reducing the cost of debt over its lifetime (for both new and refinanced lending).
- D This document sets out the terms on which the Minister of Finance, on behalf of the Crown, grants an indemnity pursuant to section 65ZD of the *Public Finance Act 1989* to the Lender to give effect to the Loan Guarantee Scheme.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this document:

Affected Region means any of Northland, Auckland, Waikato, Bay of Plenty, Tairāwhiti, Hawke's Bay, Tararua, or Wairarapa.

Approved Lender means:

- (a) each registered bank which has been approved by the Crown as a participant in the Loan Guarantee Scheme;
- (b) each licensed NBDT which has been approved by the Crown as a participant in the Loan Guarantee Scheme; and
- (c) each non-deposit taking lender which has been approved by the Crown as a participant in the Loan Guarantee Scheme,

and **Approved Lenders** means all of them.

Availability Period means the period from (and including) the Commencement Date to (and including) 30 June 2024 (or such later date as notified by the Crown under a Scheme Notice).

Borrower means a person:

- (a) that, at the time the Supported Loan is entered into, carries on a business which:
 - (i) is a New Zealand Based Business;
 - (ii) is located (in whole or in part) in an Affected Region; and
 - (iii) does not involve any Excluded Activity;
- (b) whose business and financial condition (or the business and financial condition of its Guaranteeing Group) has experienced, or is expected to experience, a significant negative impact as a result of the North Island Weather Events (for example, material decreases in cashflow (current or forecast) or asset value);
- (c) unless clause 3.4(d)(ii) applies, that is not, at the time the Supported Loan is entered into, a "Borrower" under a "Supported Loan" entered into with another Approved Lender under a LGS Crown Deed of Indemnity; and
- (d) that is not a local authority, a council-controlled organisation or a council organisation for the purposes of the *Local Government Act 2002*,

unless otherwise agreed in writing by the Crown and the Lender.

Certificate has the meaning set out in clause 7.1(a)(ii).

Claim Certificate has the meaning set out in clause 9.3.

Claim Information Deficiency has the meaning set out in clause 9.5.

Claim Report has the meaning set out in clause 9.1(a).

Claim Report Data Specifications means the data specifications document relating to the Claim Report Template provided by the Crown to the Lender on or about the date of this document, as amended from time to time by the Crown pursuant to clause 9.5.

Claim Report Template means the claims template consisting of two tabs with the titles "Claim Detail" and "Claim Commentary" within an Excel workbook, as provided by the Crown to the Lender on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 9.5.

Commencement Date means the later of the date of this document or 31 July 2023.

Creditor Process means, in respect of a Supported Loan, a settlement, compromise or other arrangement under which all or any part of the amount owing by the Borrower (or any guarantor) under or in connection with the Supported Loan is written off, cancelled or not recovered.

Data Specifications means the data specifications document provided by the Crown to the Lender on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(d).

Defaulted Supported Loan means a Supported Loan in respect of which:

- (a) an event of default, termination event or similar event (however described or defined) has occurred; and
- (b) the Lender has:
 - (i) declared all outstanding amounts due and payable; or
 - (ii) or taken any other action to recover amounts owing (excluding, for the purposes of the *Farm Debt Mediation Act 2019*, the act of entering into mediation but including entering into an enforceable mediation agreement or applying for an enforcement certificate, in each case, for the purpose of recovering amounts owing to the Lender).

Designated Existing Loan has the meaning set out in clause 3.12(a)(i).

Event of Review means an event or circumstance specified in clause 8.5(b).

Excluded Activity means any of the following:

- (a) the manufacture of cluster munitions;
- (b) the manufacture or testing of nuclear explosive devices;
- (c) the manufacture of anti-personnel mines;
- (d) the manufacture of tobacco;
- (e) the processing of whale meat;
- (f) the manufacture or distribution of recreational cannabis;
- (g) the manufacture of civilian automatic and semi-automatic firearms, magazines or parts;
- (h) any activity which is illegal in New Zealand; and
- (i) any other activity designated as an "Excluded Activity" by the Crown in writing to the Approved Lenders, with such designation to take effect no earlier than 20 Working Days after the date on which the relevant Notice is delivered to the Approved Lenders (as set out in that Notice). Any designation made by the Crown under this paragraph will not apply in respect of any Supported Loan entered into prior to the date on which such designation takes effect.

Facility Limit means the maximum aggregate principal amount that may be drawn under a loan agreement in accordance with its terms (excluding, to avoid doubt, any interest that may be capitalised to form part of the loan balance).

Guaranteeing Group means the Borrower and each person (if any) which has guaranteed the Borrower's obligations to the Lender (excluding, for the avoidance of doubt, the Crown in respect of its obligations under this document).

Information Deficiency has the meaning set out in clause 7.1(d).

Insolvency Event means:

- (a) the Lender [or the Qualifying Transferee] is declared or becomes bankrupt or insolvent or is otherwise unable to pay its debts when they fall due;
- (b) the Lender [or the Qualifying Transferee] enters into dealings with or for the benefit of any of its creditors with a view to avoiding, or in expectation of, insolvency;
- (c) the Lender [or the Qualifying Transferee] takes any corporate action or any other procedure or step is taken to make a general assignment or an arrangement, compromise or composition with or for the benefit of any of its creditors;

- (d) the Lender [or the Qualifying Transferee] stops or threatens to stop payments generally;
- (e) a security interest is enforced in respect of, or a receiver is appointed to, any material part of the assets of the Lender [or the Qualifying Transferee];
- (f) an order is made, or a resolution is passed, for the appointment of a liquidator to the Lender [or the Qualifying Transferee];
- (g) a statutory manager is appointed or a step taken with a view to any such appointment in respect of the Lender [or the Qualifying Transferee] under the *Corporations (Investigation and Management) Act 1989*; or
- (h) any analogous or equivalent event to any listed above (in any jurisdiction).

Interest Rate Cap means the annual percentage rate which does not exceed:

- (a) in the case of secured lending, 15 per cent. per annum.; and
- (b) in the case of unsecured lending, 20 per cent. per annum.

Leasing Agreement means a finance lease or operating lease in respect of new personal property or personal property which has been used for no more than 25 per cent. of its expected useful life as at the date the relevant lease was entered into.

LGS Crown Deed of Indemnity means a Crown Deed of Indemnity in relation to the Loan Guarantee Scheme between the Crown and another Approved Lender.

Loan Guarantee Scheme means the scheme established by the Crown to help Approved Lenders to support New Zealand businesses to respond to difficulties as a consequence of the North Island Weather Events.

NBDT has the meaning given to that term in the *Non-Bank Deposit Takers Act 2013*.

[INSERT FOR RELEVANT NDTLS] [New Zealand Accounting Standards means accounting standards, principles and practices applying by law or otherwise, which are generally accepted and consistently applied in New Zealand (including "generally accepted accounting practice" as defined in section 8 of the *Financial Reporting Act 2013*).

New Zealand Based Business means a business in respect of which, if carried on by:

- (a) an individual or a company, the individual or the company is resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
- (b) a company or partnership (including a limited partnership) or trustees of a trust (in each case whether or not formed or incorporated in New Zealand), the relevant entity or body of persons:
- (i) is or are resident in New Zealand for the purposes of the *Income Tax Act 2007*; or
- (ii) carry or carries on business in New Zealand through a fixed or permanent place of business in New Zealand and will file a New Zealand income tax return in respect of that business.

New Supported Loan has the meaning set out in clause 3.4(d).

North Island Weather Events includes:

- (a) the effects of the floods immediately before and during Auckland Anniversary Weekend 2023; and/or
- (b) the effects of Cyclone Gabrielle.

Notice has the meaning set out in clause 20.1.

OIA has the meaning set out in clause 18(a).

Original Loan has the meaning set out in clause 3.4(d)(ii).

Portfolio Information has the meaning set out in clause 7.1(a)(i).

[INSERT FOR RELEVANT NDTLS] [Qualifying Criteria means:

- (a) the Qualifying Transferee is consolidated with the Lender for accounting purposes under New Zealand Accounting Standards;

(b) any Supported Loan which is transferred to the Qualifying Transferee in accordance with clause 11 will continue (at all times) to be serviced by the Lender in its capacity as servicer of the Qualifying Transferee; and

(c) either:

(i) there is contractual recourse back to the Lender as the originator of any Supported Loan that becomes a Defaulted Supported Loan; and/or

(ii) the Lender has provided funding to the Qualifying Transferee on a subordinated basis, such that the Lender effectively bears the risk for any Supported Loan that becomes a Defaulted Supported Loan.]

Reasonable Assurance Engagement has the meaning set out in clause 7.2(a)(i).

Reasonable Assurance Report has the meaning set out in clause 7.2(a)(ii).

Refinanced Supported Loan has the meaning set out in clause 3.4(d)(i).

Related Party means, in relation to a Borrower:

- (a) any Subsidiary of the Borrower;
- (b) any company which is related (as defined by section 2(3) of the *Companies Act 1993*) to the Borrower or any Subsidiary of the Borrower, any shareholder of the Borrower, or any director of the Borrower;
- (c) any person who legally or beneficially owns (directly or indirectly) any of the equity share capital of or equity interests in the Borrower;
- (d) any spouse, family member, or other familial relation of the Borrower, or of a director or shareholder of the Borrower, or any entity owned or controlled by such a spouse, family member, or other familial relation; and
- (e) any person referred to or listed as a related party in any of the Borrower's financial statements.

Relevant Officer means:

- (a) for the purposes of clause 7.1, a person employed by the Lender who is responsible for the Lender's participation and operation of the Loan Guarantee Scheme; and
- (b) for the purposes of clause 9.3, the Chief Financial Officer, the Chief Risk Officer or any equivalent, or any executive who reports directly to the Chief Executive Officer of the Lender [or the Qualifying Transferee (as applicable)].

Report has the meaning set out in clause 7.1(a)(i)

Reporting Template means reporting template consisting of two tabs with the titles "Expected Credit Loss" and "Lending Summary" within an Excel workbook, as provided by the Crown to the Lender on or about the Commencement Date, as amended from time to time by the Crown pursuant to clause 7.1(d).

Scheme Notice has the meaning set out in clause 21.1.

Shortfall means, in respect of a Defaulted Supported Loan, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan after the Lender [or the Qualifying Transferee (as applicable)]:

- (a) has:
 - (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and
 - (ii) determined that it does not reasonably expect to make any further recoveries; and
- (b) has applied all recoveries available to be retained by it in accordance with the following order of application:
 - (i) first, to pay reasonable costs and expenses incurred by the Lender in applying its arrears management and enforcement policies and processes;

- (ii) secondly, to reduce all indebtedness of the Borrower (as principal or surety) to the Lender which is not owed under the Defaulted Supported Loan and which is, at the time any such recoveries are applied, due and payable by the Borrower; and
- (iii) thirdly, to reduce all indebtedness under the Defaulted Supported Loan owed by the Borrower to the Lender,

(the **Shortfall Waterfall**).

For the purpose of this definition, the aggregate amount of any principal (including capitalised interest), interest and fees that has not been paid in full under the Defaulted Supported Loan will include, if applicable, without double counting:

- (c) any such amount that has been cancelled, written off or not recovered as a result of a Creditor Process; and/or
- (d) any such amount that either has not been recovered by the Lender as a result of the Defaulted Supported Loan being set aside (in whole or part) or which the Lender has been required to pay to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws.

Shortfall Waterfall has the meaning set out in the definition of the term Shortfall.

Subsidiary means:

- (a) a “subsidiary” as defined in section 5 of the *Companies Act 1993* (as if the term “company” in that section includes entities incorporated in a jurisdiction other than New Zealand) (but as if any reference to a body corporate includes any entity);
- (b) any other person treated as a subsidiary for the purposes of any applicable accounting standards; and
- (c) a person controlled (whether directly or indirectly and whether by ownership of share capital, possession of voting power, contract or otherwise) by that person.

Supported Loan has the meaning given in clause 3.1.

Supported Loan Policies, Practices and Processes means the Lender's [and the Qualifying Transferee's] credit assessment, lending, administration, arrears management, acceleration and enforcement policies, practices and processes applicable to Supported Loans from time to time, such policies, practices and processes to be:

- (a) determined commercially by the Lender [and the Qualifying Transferee]; and
- (b) applied to a particular Supported Loan in such manner and to the extent as the Lender [or the Qualifying Transferee (as applicable)] in its discretion determines.

Supported Loans Cap has the meaning set out in clause 4(a).

Working Day means a week day on which registered banks are open for general banking business in Wellington and Auckland.

1.2 Interpretation

- (a) In this document:
- (i) headings are for reference only and do not affect interpretation;
- (ii) the singular includes the plural and *vice versa*, a gender includes other genders and different grammatical forms of defined expressions have corresponding meanings;
- (iii) no provision or expression is to be construed against a party on the basis that the party (or its advisers) was responsible for its drafting; and
- (iv) examples and use of the word **including** and similar expressions do not limit what else may be included.
- (b) Unless the context requires otherwise, a reference in this document to:
- (i) a party to any document includes that person's successors and permitted substitutes and assigns;

- (ii) an agreement includes any legally enforceable arrangement, understanding, undertaking or representation whether or not in writing;
- (iii) a document or agreement includes that document or agreement as novated, altered, amended, supplemented or replaced from time to time;
- (iv) any thing includes any part of it and a reference to a group of things or persons includes each thing or person in that group;
- (v) clauses, schedules and annexures are to those in this document, and a reference to this document includes any schedule and annexure;
- (vi) a person includes an individual, company, corporation, partnership (including a limited partnership), trustees of a trust, unincorporated body or other entity;
- (vii) time is to New Zealand time unless stated otherwise;
- (viii) legislation or other law or a provision of them includes regulations and other instruments under them, and any consolidation, amendment, re-enactment or replacement;
- (ix) an accounting term is to be interpreted according to generally accepted accounting practice in New Zealand, as defined in section 8 of the *Financial Reporting Act 2013*;
- (x) **indebtedness** includes an obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) to pay or repay money;
- (xi) **property** or an **asset** includes any real or personal, present or future, tangible or intangible property or asset and any right, interest, revenue or benefit in, under or derived from the property or asset; and
- (xii) **rights** includes authorities, consents, discretions, remedies, powers and causes of action.

2. Indemnity

2.1 Scope of indemnity

- (a) The Crown undertakes to indemnify the Lender [or the Qualifying Transferee] against any Shortfall which arises in relation to a Defaulted Supported Loan.
- (b) The Crown's liability under paragraph (a) above in respect of each Defaulted Supported Loan:
- (i) is limited to an amount equal to 80 per cent. of the Shortfall; and
- (ii) is otherwise subject to the provisions of this document.

(c) [INSERT FOR NDTLS] [To avoid doubt, the indemnity above is given to either the Lender or the Qualifying Transferee in respect of each Defaulted Supported Loan, and both the Lender and the Qualifying Transferee may not claim in respect of the same Defaulted Supported Loan.]

2.2 Payment process

The Crown's obligation to make payment under clause 2.1 above arises following the Lender [or the Qualifying Transferee (as applicable)] providing the Crown with a Claim Report in accordance with clause 9.

2.3 Liability cap

The Crown's total liability under this document is limited to \$[TBC].

3. Supported Loan Criteria

3.1 Supported Loan – qualification

A loan agreement or a Leasing Agreement entered into by the Lender will be a **Supported Loan** for the purposes of this document if it:

- (a) is entered into by the Lender on or following the Commencement Date with a person who, at the time of entering into the Supported Loan, is a Borrower; and
- (b) satisfies the criteria set out in clauses 3.2 to 3.6.

3.2 Purpose

- (a) Prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Lender that it is requesting the Supported Loan for the purposes of managing the impact of the North Island Weather Events, including by refinancing any of the Borrower's existing indebtedness (including a Refinanced Supported Loan or an Original Loan in accordance with clause 3.4(d)) but excluding any existing indebtedness to any Related Party.
- (b) Other than as agreed in writing by the Crown, prior to or at the time of entering into a Supported Loan, the Borrower must confirm to the Lender that it will not apply the proceeds of the Supported Loan for any of the following purposes:
 - (i) to fund dividends to be distributed outside the Borrower's Guaranteeing Group; or
 - (ii) to fund on-lending outside the Borrower's Guaranteeing Group; or
 - (iii) to fund one or more Excluded Activities.

3.3 Supported Loan limit

- (a) The Facility Limit for each Supported Loan must not exceed \$10,000,000.
- (b) The aggregate of the Facility Limits of all Supported Loans between the Lender [or a Qualifying Transferee] and a Guaranteeing Group at any one time must not exceed \$10,000,000.

3.4 Term

- (a) Subject to paragraph (d) below, each Supported Loan must be entered into during the Availability Period.
- (b) Each Supported Loan must require that all amounts outstanding under the Supported Loan must be repaid in full:
 - (i) where the Supported Loan was entered into during the Availability Period, either and at the Lender's election:
 - (A) by not later than the fifth anniversary of the date of the Supported Loan; or
 - (B) where the date of the first advance was within the Availability Period, by not later than the fifth anniversary of the date on which funds under the Supported Loan were first advanced to the Borrower; or
 - (C) where the date of the first advance was after the Availability Period, by not later than 30 June 2029; or
 - (ii) where the Supported Loan has been entered into and advanced after the Availability Period in accordance with either paragraph (d)(i) or paragraph (d)(ii) below, by not later than the repayment date contemplated by the relevant paragraph.
- (c) Subject to paragraph (b) above, the Lender [or the Qualifying Transferee (as applicable)] may agree to extend the term of a Supported Loan from time to time, including after the Availability Period.
- (d) Despite paragraph (a) above, a Supported Loan may be entered into and advanced at any time, including after the Availability Period (the **New Supported Loan**) if:
 - (i) amounts under the New Supported Loan are advanced to refinance in full an outstanding loan advanced by the Lender that was and continued to the relevant refinancing date to be a Supported Loan for the purposes of this document (the **Refinanced Supported Loan**), provided that:
 - (A) the New Supported Loan complies in all other respects with clauses 3.2 to 3.7 of this document; and

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- (B) where the New Supported Loan is entered into after the Availability Period, the final repayment date of all amounts outstanding under the New Supported Loan is no later than:
 - (I) where the first advance under the relevant Refinanced Supported Loan was made during the Availability Period, five years after the date of that first advance; or
 - (II) in all other cases, 30 June 2029; or
- (ii) amounts under the New Supported Loan are advanced to refinance in full an outstanding loan advanced by another Approved Lender (the **Original Loan**), provided that:
 - (A) the Borrower confirms that the Original Loan was a “Supported Loan” entered into with another Approved Lender under a LGS Crown Deed of Indemnity; and
 - (B) the final repayment date of all amounts outstanding under the New Supported Loan is no later than the date that the Borrower confirms is the final repayment date contemplated by the Original Loan.

3.5 Interest and interest rate

- (a) Subject to paragraph (d) below, the interest rate for each Supported Loan will be set by the Lender and must reflect the effect of the guarantee provided by the Crown under this document (as determined by the Lender acting reasonably and in good faith).
- (b) Interest on a Supported Loan will only be payable by a Borrower on drawn amounts.
- (c) The rate of interest for each Supported Loan must not exceed the Interest Rate Cap.
- (d) If, in relation to any Supported Loan at any time, the Lender or the Qualifying Transferee (as applicable) charges an interest rate (including any default rate) greater than the Interest Rate Cap, the indemnity in respect of the loan that is a Supported Loan under this document will be released in full and cease to apply without further action or notice, and the relevant loan will immediately cease to be a Supported Loan.
- (e) Subject to paragraph (f) below, all fees in respect of a Supported Loan may be charged at the Lender’s or the Qualifying Transferee’s discretion (as applicable) in accordance with its relevant Supported Loan Policies, Practices and Processes, provided that all such fees are charged on a basis consistent with the equivalent fees charged on similar loans which are not Supported Loans.
- (f) No fees are permitted to be charged on undrawn facilities in respect of any Supported Loan.

3.6 Documentation

- (a) Each Supported Loan must include a negative undertaking by the Borrower that the proceeds of the Supported Loan will not be used for any Excluded Activity, and a corresponding event of default for breach of that undertaking.
- (b) Each:
 - (i) Supported Loan; and
 - (ii) security or guarantee (if any) required by the Lender in relation to the Supported Loan,

will otherwise be documented on terms and conditions agreed between the Lender and the Borrower in accordance with the Lender’s Supported Loan Policies, Practices and Processes.

3.7 Loan approval process

The Lender’s decision to enter into a Supported Loan (or designate an existing loan as a Designated Existing Loan) will be made in accordance with the Lender’s Supported Loan Policies, Practices and Processes.

3.8 Personal guarantees

To avoid doubt:

- (a) the Lender is not required to take a guarantee from any person in respect of a Supported Loan; and
- (b) a loan that otherwise satisfies the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) above will be a Supported Loan even if the Lender has not taken a guarantee from any person in respect of that loan.

3.9 The Lender may rely on certification by a Borrower

For the purposes of determining whether a loan is a Supported Loan:

- (a) the Lender may rely on any certification or confirmation made by a Borrower:
 - (i) that the Borrower meets the requirements set out in paragraphs (a), (c) and (d) of the definition of Borrower; and
 - (ii) as contemplated by each of clauses 3.2(a) and (b), and clause 3.4(d)(ii)(A); and
- (b) the loan will not cease to be a Supported Loan merely as a result of that Borrower's certification or confirmation being untrue or incorrect,

unless, at the time of certification or confirmation, the Lender had actual knowledge to the contrary of the matters referred to in paragraph (a) above.

3.10 Lender determination

For the purposes of determining whether a loan is a Supported Loan, the Lender's determination (acting reasonably and in good faith) of whether a Borrower meets the requirement set out in paragraph (b) of the definition of Borrower, taking into account such information as the Lender considers reasonably appropriate in the circumstances at the time of its determination, will be conclusive and final for the purposes of this document.

3.11 No obligation to monitor

The Lender [nor the Qualifying Transferee] has [no/any] obligation to monitor or verify the manner in which a Borrower applies the proceeds of any Supported Loan and a loan will not cease to be a Supported Loan merely as a result of the Borrower applying the proceeds towards a purpose that is not permitted by this document.

3.12 Designation of an existing loan as a Supported Loan

- (a) For the purpose of this document:
 - (i) the Lender may agree with a Borrower to designate an existing loan made by the Lender to the Borrower as a Supported Loan where the purpose of that designation includes preserving for the benefit of the Borrower a more favourable interest rate under the existing loan than the interest rate that would be available to the Borrower under a newly advanced Supported Loan (**Designated Existing Loan**); and
 - (ii) a reference to a Supported Loan being "entered into" (or similar) includes reference to the designation of a Designated Existing Loan.
- (b) To avoid doubt:
 - (i) a Designated Existing Loan must satisfy the criteria set out in clauses 3.1(a), 3.2 to 3.6(a), and 3.7 (or the relevant criteria that applied at the time of its designation) to qualify as a Supported Loan (including that the Designated Existing Loan must be amended to satisfy clause 3.6(a) at or before the time of its designation); and
 - (ii) the interest rate for a Designated Existing Loan must satisfy the requirements of clause 3.5.
- (c) Nothing in this clause 3.12 will be construed as requiring the Lender to designate any existing loan as a Supported Loan, including if it is not feasible or operationally possible for the Lender to do so. Any decision to designate an existing loan as a Supported Loan

in accordance with this clause 3.12 will be made by the Lender in its sole and unfettered discretion.

4. Limit on Supported Loans

- (a) Without in any way derogating from the limitation of liability under clause 2.3, the Lender agrees that it will not make Supported Loans or loans which it represents to customers are Supported Loans with aggregate Facility Limits at any time exceeding the liability cap amount set out in clause 2.3 multiplied by 1.25 (the **Supported Loans Cap**).
- (b) To avoid doubt, if any Supported Loan is repaid in full, or the Lender's commitment in respect of a Supported Loan is permanently reduced during the Availability Period, the amount of the repayment or reduction in commitment will not count towards the Supported Loans Cap.

5. Application of repayments and prepayments

5.1 Repayments prior to acceleration or enforcement

For so long as a Supported Loan is not a Defaulted Supported Loan, the Lender [or the Qualifying Transferee (as applicable)] will apply scheduled payments made by the relevant Borrower to the facility to which they relate (including the relevant Supported Loan). To avoid doubt, scheduled payments may be changed for a Supported Loan during its term and may include interest-only periods.

5.2 Repayments after enforcement

If a Supported Loan becomes a Defaulted Supported Loan, the Lender [or the Qualifying Transferee (as applicable)] will apply any proceeds that it recovers and is entitled to retain under any facility, security or guarantee which relates to the Supported Loan in accordance with the Shortfall Waterfall.

6. Supported Loans

6.1 Compliance with Supported Loan Criteria

The Lender will have systems and controls in place designed to ensure that any loan it represents is a Supported Loan meets the definition of Supported Loan, including the criteria set out in clause 3.

6.2 Administration

[INSERT FOR RELEVANT NDTLS] [The Lender will administer and service each Supported Loan in all material respects in accordance with the Lender's Supported Loan Policies, Practices and Processes.]

[INSERT FOR RELEVANT NDTLS] [The Lender, in its own right or as servicer of any Supported Loan transferred to the Qualifying Transferee in accordance with clause 12(c) below, or the Qualifying Transferee (as the case may be) will administer and service each Supported Loan in all material respects in accordance with the Lender's Supported Loan Policies, Practices and Processes or the Qualifying Transferee's Supported Loan Policies, Practices and Processes (as the case may be).]

[NOTE – DELETE OPTION WHICH DOES NOT APPLY]

6.3 Default and workout

- (a) If a Supported Loan becomes a Defaulted Supported Loan, the Lender [or the Qualifying Transferee (as applicable)]:
- (i) must take such action (including enforcement of any security and any guarantees) as it considers commercially reasonable to recover amounts owing under the Supported Loan in accordance with the arrears management and enforcement aspects of its Supported Loan Policies, Practices and Processes; and
 - (ii) may, but is not required to, take action to recover any other indebtedness of the Borrower in accordance with its policies, practices and processes that apply to that indebtedness.

- (b) To avoid doubt, the Lender [or the Qualifying Transferee (as applicable)] may agree to a Creditor Process with the Borrower or a guarantor in respect of a Supported Loan and/or other indebtedness, rather than:
- (i) appointing a receiver or administrator to the Borrower or a guarantor or the assets of the Borrower or a guarantor; or
 - (ii) taking action under a guarantee of the Borrower's Supported Loan and/or other indebtedness; or
 - (iii) taking mortgagee or similar action; or
 - (iv) making an application for the liquidation or bankruptcy of the Borrower or a guarantor.
- (c) Provided that the Lender [or the Qualifying Transferee (as applicable)] is complying with its arrears management and enforcement procedures in accordance with this clause 6.3, there will be no limit on the time in which it must complete those procedures.

7. Reporting

7.1 Periodic reporting and certification

- (a) The Lender will provide the Crown with:
- (i) a report setting out portfolio level information as required by the Reporting Template, the Data Specifications, the weighted average interest rate, and the weighted average rate discount (the **Portfolio Information**) in respect of the Lender's [and the Qualifying Transferee's] Supported Loans (the **Report**); and
 - (ii) a certificate from the Lender signed by the Lender's Relevant Officer (the **Certificate**) confirming that, to his or her knowledge having made due enquiry, as at the date of the certificate:
 - (A) the Lender has systems and controls in place designed to ensure that it [and the Qualifying Transferee] meets its obligations under this document;
 - (B) the underlying systems and controls that are used to produce the information in each Report are the same as the Lender [and the Qualifying Transferee] uses in the ordinary course of its business, subject to any modifications which the Lender [and the Qualifying Transferee] considers are required for the purposes of its involvement with the Loan Guarantee Scheme;
 - (C) save as described in the Certificate, the systems and controls referred to in paragraph (A) above have worked effectively in all material respects from the date of the previous Certificate (or, in the case of the first Certificate, from the Commencement Date); and
 - (D) the information set out in the Report to which the Certificate relates is complete and accurate in all material respects.
- (b) The Lender will provide the Portfolio Information, the Report, and the Certificate (in each case as described in paragraph (a) above) to the Crown:
- (i) during the Availability Period, no more than 15 Working Days after the end of each calendar month; and
 - (ii) after the end of the Availability Period:
 - (A) for each calendar quarter, no more than 15 Working Days after the end of the relevant calendar quarter; and
 - (B) in addition, for the month of May, no more than 15 Working Days after 31 May.
- (c) If the Lender provides a Certificate which includes a description of the systems and controls referred to in paragraph (a)(ii)(A) above not working effectively in all material respects, the Lender must provide, with that Certificate, an explanation of the steps it

intends to take to remedy the issues with its systems and controls and a timeframe for that remedy to be implemented.

- (d) If, at any time following the Commencement Date, the Crown (acting reasonably) determines that the Portfolio Information is insufficient to enable the Crown to adequately assess the potential exposure assumed by it under the Loan Guarantee Scheme (an **Information Deficiency**), the Crown may, by written notice to the Lender (and each other Approved Lender), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the Portfolio Information to remedy the Information Deficiency. If, after 20 Working Days from the date of that written notice, the Crown and the Lender have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Lender, amend the Portfolio Information as is reasonably necessary to remedy the Information Deficiency and is reasonably capable of being reported on by the Lender.
- (e) On request from the Crown, the Lender will:
- (i) provide to the Crown an explanation or any information the Crown considers necessary (acting reasonably); and/or
 - (ii) meet and consult in good faith with the Crown,
- on how the Lender has calculated the weighted average interest rate, and the weighted average rate discount in respect of the Portfolio Information.

7.2 Independent reasonable assurance engagement

- (a) To enable the Crown to prepare its annual financial statements in accordance with generally accepted accounting practice (including the requirement for the Crown's financial statements to be audited by an independent external auditor), the Lender agrees that it will if requested:
- (i) for every financial year except the financial year ending 30 June 2023, engage its independent external auditors to perform an independent reasonable assurance engagement in accordance with International Standard on Assurance Engagements (New Zealand) 3000 (Revised) Assurance Engagements Other than Audits or Reviews of Historical Financial Information, and Standard on Assurance Engagements SAE 3100 (Revised) Assurance Engagements on Compliance (the **Reasonable Assurance Engagement**);
 - (ii) for every financial year except the financial year ending 30 June 2023, provide the reasonable assurance report prepared following a Reasonable Assurance Engagement (the **Reasonable Assurance Report**) to the Crown and its independent external auditor no later than 25 Working Days after the end of the Crown's financial year; and
 - (iii) in relation to the financial year ending 30 June 2023, provide the Crown's independent auditors with such information relating to the Lender's participation in the Loan Guarantee Scheme as the Crown's independent auditors may request, if during the course of the audit such information is reasonably required for the Crown's independent auditors to gain adequate assurance over the Crown's annual financial statements.
- (b) The Crown and the Lender (each acting in good faith), together with their respective independent external auditors, will agree by no later than 31 March 2024:
- (i) the financial information and details subject to the reasonable assurance procedures to be undertaken by the Lender's external auditors as part of the Reasonable Assurance Engagement; and
 - (ii) the details to be covered by the Reasonable Assurance Report.
- (c) If the Crown, the Lender, and their respective auditors cannot reach agreement in accordance with paragraph (b) above by 31 March 2024, the Crown will determine the matters set out in paragraphs (b)(i) and (b)(ii) above, such determination to be that as is reasonably necessary to enable the Crown to comply with the requirements of the Office of the Auditor General.

- (d) The agreed costs of the Lender's independent external auditor in respect of each Reasonable Assurance Engagement and each Reasonable Assurance Report will be shared equally by the Lender and the Crown.

8. Investigation

8.1 Crown rights of investigation

- (a) Subject to clauses 8.2 and 8.3, the Crown is entitled to investigate:
- (i) the Lender's [or the Qualifying Transferee's (as applicable)] compliance with clause 6.3; and
 - (ii) in relation to each loan that the Lender [or the Qualifying Transferee (as applicable)] claims is a Supported Loan:
 - (A) whether the loan agreement was entered into during the Availability Period;
 - (B) whether the borrower met the criteria to be a Borrower when the loan agreement was entered into; and
 - (C) whether the loan otherwise met the criteria in clauses 3.2 to 3.6(a) when the loan agreement was entered into.
- (b) The Crown may issue a notice in writing to the Lender [or the Qualifying Transferee (as applicable)] requiring it to produce to the Crown or its agent such copies of its books, records and accounts relevant to the Lender's [or the Qualifying Transferee's (as applicable)] Supported Loan Policies, Practices and Processes or any Supported Loan, including any Supported Loan where a claim is being considered by, or has been paid by, the Crown as are reasonably necessary to facilitate an investigation pursuant to paragraph (a) above.
- (c) The Lender [or the Qualifying Transferee (as applicable)] must comply with a notice issued pursuant to paragraph (b) above and otherwise take all reasonable steps to facilitate the Crown (or its agent)'s investigation.
- (d) Nothing in paragraph (c) above requires the Lender [or the Qualifying Transferee (as applicable)] to disclose to the Crown or its agent any privileged document or personal information pertaining to a Borrower or any other person where such disclosure would breach the *Privacy Act 2020*.

8.2 Procedural matters regarding investigation

- (a) A notice issued under clause 8.1(b) must allow a reasonable time for a Lender [or the Qualifying Transferee (as applicable)] to produce copies of the relevant documents. This reasonable time must be at least 15 Working Days.
- (b) The Crown:
 - (i) will appoint an agent to conduct an investigation who is, in the Crown's opinion, by reason of training or experience suitably qualified to conduct such an investigation; and
 - (ii) will not appoint any existing financial services regulator as agent.
- (c) Regardless of any other clause in this document, documents supplied pursuant to a notice issued under clause 8.1(b) may not be disclosed by the Crown or its agent to any third party including the Reserve Bank of New Zealand or Financial Markets Authority (except where required by law), and may not be used for any purpose other than as set out in this clause 8.

8.3 Frequency

- (a) The Crown will not conduct an investigation under clause 8.1 during the Availability Period.
- (b) After the Availability Period, the Crown will conduct an investigation under clause 8.1 no more than once annually.

8.4 Cost of investigation

The cost of each investigation (which must be properly documented and out-of-pocket) under clause 8.1 will be borne by the Lender unless the investigation has identified that, in the reasonable opinion of the Crown there have been no material deficiencies in the Lender's application of the Supported Loan criteria set out in in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into) which have resulted in loans being incorrectly classified as Supported Loans, in which case, the Crown will bear the cost.

8.5 Consequences

- (a) If an investigation under clause 8.1 reveals that:
- (i) a loan in respect of which the Crown has made payment to the Lender [or the Qualifying Transferee (as applicable)] under this document does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into), the Lender [or the Qualifying Transferee (as applicable)] must refund the Crown in accordance with clause 10; and
 - (ii) any other loan which the Lender had classified as a Supported Loan does not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into), the Lender [or the Qualifying Transferee (as applicable)] will not be entitled to any payment from the Crown in respect of that loan under this document.
- (b) It will be an **Event of Review** if an investigation under clause 8.1 reveals that:
- (i) a material number of loans which the Lender [or the Qualifying Transferee (as applicable)] has claimed for or classified as Supported Loans do not meet the criteria set out in clauses 3.1(a) and 3.2 to 3.6(a) (or the relevant criteria that applied at the time the Supported Loan was entered into); or
 - (ii) the Lender [or the Qualifying Transferee (as applicable)] is not complying with its obligations under clause 6.3 in a way that will or is likely to materially increase the amount payable by the Crown to the Lender [or the Qualifying Transferee (as applicable)] under this document.
- (c) If an Event of Review subsists, and the Crown requests, the Lender [and/or the Qualifying Transferee (as applicable)] must promptly meet and consult in good faith with the Crown concerning the Event of Review with a view to agreeing the terms, if any, on which the Crown is willing to continue to allow the Lender [and the Qualifying Transferee (as applicable)] to participate in the Loan Guarantee Scheme. If, after 10 Working Days from the date of that written notice, the Crown [the Qualifying Transferee] and the Lender have not agreed (and amended this document to record) such acceptable amendments or the Crown has otherwise determined that the Lender [and the Qualifying Transferee (as applicable)] will not continue in Loan Guarantee Scheme, the Crown may, at any time, terminate this document in accordance with clause 13.2.

9. Claims process

9.1 Timing of claims

- (a) The Lender [or the Qualifying Transferee (as applicable)] may provide the Crown with a report setting out claim information as required by the Claim Report Template and the Claim Report Data Specifications in respect of any Defaulted Supported Loans which have not previously been the subject of a claim and in respect of which the Lender has:
- (i) completed its arrears management and enforcement processes in accordance with clause 6.3; and
 - (ii) determined that it does not reasonably expect to make any further recoveries, (each such report being a **Claim Report**).

- (b) The Lender must upload each Claim Report to the SecureFileShare system and send an email to niwelgs@treasury.govt.nz to notify the Crown that the Claim Report has been uploaded.
- (c) A claim in respect of a Defaulted Supported Loan must be received by the Crown no later than three months after the Lender [or the Qualifying Transferee (as applicable)] has completed its arrears management and enforcement processes in respect of that Defaulted Supported Loan in accordance with clause 6.3 and has determined that it does not reasonably expect to make any further recoveries.
- (d) The Lender [or the Qualifying Transferee (as applicable)] is not required to take any legal action against the Crown or any other person before it provides a Claim Report to the Crown.

9.2 Additional information

Each Claim Report must be accompanied by information about how the Shortfall was calculated for each Defaulted Supported Loan (which may include a provisioning paper or loan loss review paper, where prepared by the Lender [or the Qualifying Transferee (as applicable)]).

9.3 Claim Certificate

Each Claim Report must be accompanied by a statement from the Lender (the **Claim Certificate**) signed by the Lender's Relevant Officer [or the Qualifying Transferee's Relevant Officer (as applicable)] certifying that, to his or her knowledge having made due enquiry, as at the date of the certificate:

- (a) all Defaulted Supported Loans listed in the Claim Report:
- (i) have not been included in a previous Claim Report;
 - (ii) qualified as Supported Loans at the time they were made; and
 - (iii) have been subject to the Lender's [or the Qualifying Transferee's (as applicable)] arrears management and enforcement processes in accordance with clause 6.3 in all material respects;
- (b) the Lender [or the Qualifying Transferee (as applicable)] does not reasonably expect to make any further recoveries in respect of the Defaulted Supported Loans listed in the Claim Report;
- (c) the Lender's [or the Qualifying Transferee's (as applicable)] arrears management and enforcement processes in relation to the Defaulted Supported Loans listed in the Claim Report were completed no more than three months prior; and
- (d) the information in the Claim Report to which the Claim Certificate relates is complete and accurate in all material respects.

9.4 Payment

The Crown will pay the Lender [or the Qualifying Transferee (as applicable)] any amount payable by it under this document in relation to each duly completed Claim Report received by it in a calendar month no more than 20 Working Days after the end of that calendar month.

9.5 Change to Claim Report Template

If at any time following the Commencement Date, the Crown (acting reasonably) determines that the information required by the Claim Report Template and the Claim Report Data Specifications:

- (a) is insufficient to enable the Crown to adequately assess and pay claims by the Lender under this document; and/or
- (b) is provided in a form that materially increases the time required for the Crown to adequately assess and pay claims by the Lender [or the Qualifying Transferee (as applicable)] under this document,

(the **Claim Information Deficiency**), the Crown may, by written notice to the Lender (and each other Approved Lender), require the parties to consult in good faith with a view to agreeing satisfactory amendments to the Claim Report Template and/or the Claim Report Data Specifications to remedy the Claim Information Deficiency. If, after 20 Working Days from the

date of that written notice, the Crown and the Lender have not agreed such acceptable amendments, the Crown may, at any time, by no less than 20 Working Days' further written notice to the Lender, amend the Claim Report Template and/or Claim Report Data Specifications as is reasonably necessary to remedy the Claim Information Deficiency and as is reasonably capable of being reported on by the Lender.

9.6 Exclusions

- (a) The Crown will have no obligation to pay the Lender [or the Qualifying Transferee (as applicable)] for a claim made under this document for an amount under a Supported Loan:
- (i) to the extent that under any relevant law:
 - (A) the Supported Loan is (wholly or partly) unenforceable, invalid, or not binding on the Borrower; or
 - (B) the Borrower's obligation to pay money owing under the Supported Loan is (wholly or partly) unenforceable against the Borrower; or
 - (C) the Borrower is entitled to a reduction in respect of its payment obligations to the Lender including where the Borrower's payment obligations are held to be a penalty, and as a consequence that amount is not payable by the Borrower; or
 - (ii) to the extent that non-payment by the Borrower of that amount under the Supported Loan is due to any breach of contract, negligence in relation to the Lender's [or the Qualifying Transferee's (as applicable)] application of its Supported Loan Policies, Practices and Processes, or fraud by the Lender [or the Qualifying Transferee (as applicable)]; or
 - (iii) to the extent that the Lender [or the Qualifying Transferee (as applicable)] is in breach of any of its obligations under this document and such breach has caused non-payment by the Borrower of that amount under the Supported Loan; or
 - (iv) where the loan subject to the claim is not a Supported Loan.
- (b) The exclusion in paragraph (a)(i) above will not apply where the relevant circumstance is caused solely as a result of any or a combination of the following:
- (i) a Creditor Process; or
 - (ii) the winding up of the Borrower; or
 - (iii) the Supported Loan (or any related security) being set aside (in whole or in part) or the Lender [or the Qualifying Transferee (as applicable)] being required to pay an amount to a liquidator, assignee or other insolvency officer, in each case, under any applicable insolvency or bankruptcy laws; or
 - (iv) despite the Lender having made due enquiry prior to the Supported Loan being entered into, the fraud of the Borrower.

10. Refund by Lender [or Qualifying Transferee]

- (a) If the Crown has paid a claim under this document and it is subsequently established, including following any investigation, that the payment or a part of the payment of that claim was greater than the amount required to be paid by the Crown (any such surplus amount being the **Surplus Amount**) under the terms of this document (including as a result of the exclusions set out in clause 9.5 above), the Lender [or the Qualifying Transferee (as applicable)] must repay the Surplus Amount together with interest on the Amount calculated daily at the three-month "BKBM-FRA" rate as published by The New Zealand Financial Markets Association from time to time (provided that if that rate is a negative number, then it will be deemed to be zero) from the date the Crown made the payment until the Lender [or the Qualifying Transferee (as applicable)] repays the Surplus Amount to the Crown in full.
- (b) No more than 10 Working Days after the end of each calendar quarter, the Lender [or the Qualifying Transferee (as applicable)] will make payment to the Crown of all Surplus

Amounts (and interest) that the Lender has become aware of during the preceding calendar quarter in accordance with paragraph (a) above.

11. Transfer of Supported Loans

(a) If the Lender transfers a loan that is a Supported Loan to any other person, that loan will cease to be a Supported Loan for the purposes of this document, unless:

- (i) the Crown has given its prior written consent to the transfer; or
- (ii) the transfer is to another Approved Lender, in which case the loan will be a Supported Loan for the purposes of that other Approved Lender's LGS Crown Deed of Indemnity provided that the other Approved Lender complies with the provisions of its LGS Crown Deed of Indemnity in relation to the loan[. or

(iii) **[INSERT FOR RELEVANT NDTLS] [subject to paragraph (c) below, the transfer is to the Qualifying Transferee.]**

(b) If the Lender is the transferee of a loan that is a Supported Loan for the purposes of another Approved Lender's LGS Crown Deed of Indemnity, that loan will be a Supported Loan for the purposes of this document, provided that the Lender complies with clauses 3.3, 3.4, and 3.5 in relation to the loan.

(c) **[INSERT FOR RELEVANT NDTLS] [Any loan that is a Supported Loan and is transferred to the Qualifying Transferee in accordance with paragraph (a)(iii) above will cease to be a Supported Loan and will not have the benefit of the indemnity under this document if any of the Qualifying Criteria no longer applies to the Qualifying Transferee.]**

12. Same terms for all Approved Lenders

(a) The Crown has entered into, or will enter into, a LGS Crown Deed of Indemnity with each Approved Lender, on identical terms as this document except as to:

- (i) a "Qualifying Transferee" being party to this document in the case of a relevant Approved Lender that is a non-deposit taking lender;
- (ii) the definition of Commencement Date;
- (iii) paragraph (g) of the definition of "Insolvency Event";
- (iv) the inclusion of the definition "Interest Rate Cap";
- (v) the inclusion of the definition "Leasing Agreement";
- (vi) the inclusion of the definition "New Zealand Accounting Standards";
- (vii) the inclusion of the definition "Qualifying Criteria";
- (viii) the inclusion of the definition "Required Credit Rating";
- (ix) the inclusion of clause 2.1(c) which sets out that a relevant Approved Lender and relevant "Qualifying Transferee" cannot make a claim under the relevant LGS Crown Deed of Indemnity in respect of the same Defaulted Supported Loan;
- (x) the liability cap in clause 2.3 and the Crown's ability to increase the liability cap by written notice in accordance with clause 2.3;
- (xi) the inclusion of the Crown's ability to approve a Supported Loan or group of Supported Loans in excess of \$10,000,000 in clause 3.3;
- (xii) the interest and interest rate provisions in clause 3.5;
- (xiii) the limit on Supported Loans in clause 4(a);
- (xiv) the administration and servicing of a Supported Loan in clause 6.2;
- (xv) the inclusion of clause 11(a)(iii) which permits the transfer of a Supported Loan to a "Qualifying Transferee";
- (xvi) the inclusion of clause 11(c) which sets out that a Supported Loan transferred to a "Qualifying Transferee" will cease to be a Supported Loan and will not have the

draft

- benefit of the indemnity under the relevant LGS Crown Deed of Indemnity if any of the "Qualifying Criteria" no longer applies to the relevant "Qualifying Transferee";
- (xvii) the list of termination events specified in clause 13.2;
 - (xviii) the inclusion of the reference to a liability cap increase in accordance with clause 2.3 in clause 21.2.
- (b) The Crown will not amend the terms of this document or any other Approved Lender's LGS Crown Deed of Indemnity in such a way as to make another Approved Lender's LGS Crown Deed of Indemnity more favourable to that Approved Lender, except:
- (i) if the Crown terminates this document in accordance with clause 13; or
 - (ii) in response to an Event of Review, in accordance with clause 8.5(c).
- (c) The Crown will exercise its discretions under this document and each LGS Crown Deed of Indemnity in a reasonable and consistent manner.

13. Termination

13.1 Termination by notice

Each of the Lender [and the Qualifying Transferee] and, following the Availability Period, the Crown, may, by notice in writing to the other, terminate this document. Any such notice will take effect from the date 10 Working Days after the date of the notice, or any subsequent date specified in the notice.

13.2 Termination for cause

The Crown may, by notice in writing to the Lender [and the Qualifying Transferee], terminate this document with effect from the date of the notice or any subsequent date specified in the notice if:

- (a) it is entitled to do so pursuant to clause 8.5(c) following an Event of Review; or
- (b) the Lender has not provided a Report or Certificate under clause 7 by its due date and has not remedied that failure within 30 days; or
- (c) an Insolvency Event has occurred in respect of the Lender.

13.3 Effect of termination

- (a) Subject to paragraph (b) below, termination of this document under clause 13.1 or clause 13.2 will not affect the parties' rights and obligations under this document (including clause 2.1) in relation to each Supported Loan that was entered into prior to the date on which the termination of this document takes effect, including if any amount owing under the Supported Loan is repaid (in part or full) and redrawn from time to time.
- (b) The Lender [and the Qualifying Transferee] may elect, in its notice of termination provided to the Crown under clause 13.1, to cease to have the benefit of the indemnity under clause 2.1 in relation to all of its outstanding Supported Loans entered into on or before the date of the notice of termination. If the Lender [and the Qualifying Transferee] so elects, then, without affecting any obligations under this document which have accrued or are due but yet to be performed, the parties' rights and obligations under this document (including under clause 2.1) will terminate.
- (c) The following provisions will survive termination:
 - (i) clause 18 (Official Information Act requests); and
 - (ii) clause 19 (Confidentiality).

14. No counter indemnity or rights of subrogation

- (a) Except as specifically provided in this document, the Crown acknowledges and agrees that [neither] the Lender [nor the Qualifying Transferee] has [no/any] liability to repay, reimburse or counter-indemnify the Crown for any payment the Crown may make under this document.
- (b) The Crown will not seek to:

- (i) take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Lender under a Supported Loan or of any other guarantee or security taken pursuant to, or in connection with, the Supported Loan; or
- (ii) enforce any right of counter-indemnity against a Borrower arising from any payment by the Crown under this document.
- (c) [Neither/The] Lender [nor the Qualifying Transferee] has [no/any] duty to marshal in favour of the Crown or any other person.

15. Obligations not prejudiced

Except as specifically provided in this document, the obligations of the Crown under this document will not be affected by any act, omission, matter or thing which, but for this clause, would reduce, release or prejudice any of its obligations under this document, including:

- (a) any time, waiver or other concession or consent granted to, or composition with, any Borrower or other person; or
- (b) any composition or arrangement with any creditor of any Borrower or other person; or
- (c) any amendment to any Supported Loan or any other document or security including any extension of or any increase in any facility amount (provided that the Supported Loan as amended would have satisfied the criteria in clause 3 where it originally entered into on such terms).

16. Assignment

[Neither/The] Lender [nor the Qualifying Transferee] may [not] assign, transfer or otherwise deal with its rights, interests or obligations under this document without the prior written consent of the Crown.

17. Information to be provided to the Crown

17.1 Supported Loan Policies, Practices and Processes

- (a) [Each of the/The] Lender [and the Qualifying Transferee] acknowledges that it provided a summary of its Supported Loan Policies, Practices and Processes to the Crown as a condition precedent to the Crown entering into this document.
- (b) [Each of the/The] Lender [and the Qualifying Transferee] may amend its Supported Loan Policies, Practices and Processes at any time as it considered necessary or desirable. [Each of the/The] Lender [and the Qualifying Transferee] will retain a copy of each version of its Supported Loan Policies, Practices and Processes until 31 December 2030.

17.2 Other information

- (a) [Each of the/The] Lender [and the Qualifying Transferee (as applicable)] will provide the Crown, no more than 15 Working Days following request by the Crown (acting reasonably), any other relevant information that is available to, or that can reasonably be obtained by, the Lender [or the Qualifying Transferee (as applicable)] in relation to a Supported Loan or a Borrower.
- (b) The Lender will, at or prior to the time each Supported Loan is entered into, obtain the consent of the relevant Borrower and any applicable new guarantor to provide information requested by the Crown under paragraph (a) above to the Crown.
- (c) The Crown will use information provided by [each of the/the] Lender [and the Qualifying Transferee] under paragraph (a) above solely for the purposes of the management and administration of the Loan Guarantee Scheme.
- (d) Without limiting the Lender's obligation under paragraph (b) above, nothing in paragraph (a) above requires the Lender [or the Qualifying Transferee] to disclose to the Crown any privileged document or personal information pertaining to any person where such disclosure would breach the *Privacy Act 2020*.

18. Official Information Act requests

- (a) [Each of the/The] Lender [and the Qualifying Transferee] acknowledges that the Crown is subject to the *Official Information Act 1982* (the **OIA**) and that the Crown is obliged to disclose information under the OIA if so requested and if there are no grounds pursuant to the terms of the OIA to withhold that information.
- (b) [Each of the/The] Lender [and the Qualifying Transferee] acknowledges that the Crown intends to proactively release this document, subject only to any redactions necessary on the grounds set out in the OIA.
- (c) The Crown acknowledges that, in connection with this document, [each of the/the] Lender [and the Qualifying Transferee] will provide to the Crown information that is, if publicly released, likely unreasonably to prejudice the commercial position of the Lender [or the Qualifying Transferee (as applicable)].
- (d) The Crown will advise the Lender [or the Qualifying Transferee (as applicable)] if it receives a request under the OIA that relates to information provided by the Lender [or the Qualifying Transferee (as applicable)] in connection with this document, and will consider any views that the Lender [or the Qualifying Transferee (as applicable)] provides to the Crown before responding to any such request under the OIA, provided that:
- (i) nothing in this paragraph (d) will require the Crown to delay its response to any such request under the OIA; and
 - (ii) all of the Crown's decisions in relation to requests received under the OIA are final.

19. Confidentiality

19.1 Confidentiality

Subject to clause 19.2, [each of the/the] Lender [and the Qualifying Transferee] must keep confidential:

- (a) any terms of this document which are not proactively released by the Crown as contemplated in clause 18.2(b); and
- (b) any information provided to the Lender [or the Qualifying Transferee] under this document or as part of the Lender's [or the Qualifying Transferee's] participation in the Loan Guarantee Scheme.

19.2 Permitted disclosure

- (a) Nothing in clause 19.1 will limit:
 - (i) any disclosures required to be made by law or required by any stock exchange or regulatory authority; or
 - (ii) disclosures to professional advisers and affiliates or to any liquidator, statutory manager, receiver or administrator appointed to, or in respect of, the Lender [or the Qualifying Transferee (as applicable)] or any of its assets or any of their respective advisers; or
 - (iii) disclosures to any credit rating agency that has assigned a credit rating to the Lender [or the Qualifying Transferee] or any of its securities; or
 - (iv) disclosure by the Lender [or the Qualifying Transferee] that it is a participant lender in the Loan Guarantee Scheme; or
 - (v) disclosures in defence of legal proceedings brought against any person; or
 - (vi) disclosures in the context of any legal proceedings in respect of this document; or
 - (vii) disclosure of information that is publicly available; or
 - (viii) disclosure of information to any permitted transferee of any Supported Loan; or
 - (ix) any disclosure agreed to in writing by the Crown.

- (b) Prior to any disclosure under any of paragraph (a)(i), (a)(v) and (a)(vi) above, to the extent permitted by law, the Lender [for the Qualifying Transferee (as applicable)] must first notify the Crown in writing of the intended disclosure and exercise its reasonable efforts to obtain assurances, including confidentiality orders in any legal proceeding, that the terms disclosed will be treated confidentially.

20. Notices and communications

20.1 Form of Notice

Each notice, demand, consent, approval or other communication (a **Notice**) under this document:

- (a) must be in writing, in English and signed by an authorised representative of the party; and
- (b) must be hand delivered or sent by email or post to the recipient's address for notices specified in the "Details" section of this document (as varied by any Notice given by the recipient to the party).

20.2 Effective on receipt

A Notice given in accordance with this clause 20 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
- (b) if sent by post, on the fifth Working Day after the date of posting (or on the seventh Working Day after the date of posting if posted to or from a place outside New Zealand); or
- (c) if sent by email, when transmitted to the correct email address of the recipient,

but if the delivery, receipt or transmission is not on a Working Day or is after 5:00 p.m. (addressee's time) on a Working Day, the Notice is taken to be received at 9:00 a.m. (addressee's time) on the next Working Day.

21. Amendment

21.1 Crown amendments

The Crown may, by no less than 10 Working Days' written notice to all Approved Lenders (unless the amendment relates to paragraph (d) below, in which case the written notice will be to the Lender alone, or the amendment relates to paragraph (f) below, in which case the written notice will be to the relevant class of Approved Lenders only) (a **Scheme Notice**), amend:

- (a) the date on which the Availability Period ends;
- (b) the definition of Borrower;
- (c) the definition of Excluded Activity;
- (d) the liability cap amount set out in clause 2.3;
- (e) the Supported Loan criteria set out in clauses 3.2 and 3.6; and
- (f) the Supported Loan criteria set out in clauses 3.3 to 3.5.

Any amendment made by the Crown in accordance with this clause 21.1 will not apply in respect of any Supported Loan entered into prior to the date on which such amendment takes effect.

21.2 Other amendments

No amendment to this document other than an amendment pursuant to a Scheme Notice is effective unless it is in writing and signed by or on behalf of each party to it.

22. Representations and warranties

[Each of the/The] Lender [and the Qualifying Transferee] represents and warrants to the Crown that, to the best of its knowledge and belief having made due enquiry:

- (a) any factual written information that the Lender provided to the Crown as part of its application to participate in the Loan Guarantee Scheme was true and accurate in all

material respects and not misleading in any material respect at the time at which it was provided; and

- (b) any factual written information the Lender provides to the Crown under this document is true and accurate in all material respects and not misleading in any material respect at the time at which it is provided (excluding any information provided to the Lender by a Borrower).

23. General

23.1 Third parties

This document is not intended to create any benefit for, or give rise to an obligation enforceable at the suit of, any person (other than a liquidator, statutory manager, receiver or administrator appointed to, or in respect of any of the assets of, the Lender [or the Qualifying Transferee]) who is not party to this document.

23.2 Entire agreement

This document constitutes the entire agreement between the parties in relation to its subject matter. It replaces all earlier discussions, negotiations and agreements relating to that subject matter. [Each of the/The] Lender [and the Qualifying Transferee] acknowledges that in entering into this document, the Crown relied on information the Lender provided to it as part of its application to participate in the Loan Guarantee Scheme.

23.3 Currency

Any reference in this document to an amount will, to the extent that the amount is not already denominated in New Zealand dollars, mean the amount determined by the Crown to be the New Zealand dollar equivalent of that amount as at the time relevant to its calculation or determination.

23.4 Partial invalidity

If at any time a provision of this document is illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that provision will be ineffective in that jurisdiction to the extent of the illegality, invalidity or unenforceability. This does not affect the validity or enforceability of that provision in any other jurisdiction, nor the validity or enforceability of the remainder of this document in any jurisdiction.

23.5 Counterparts

- (a) This document may be executed in any number of counterparts. Each counterpart constitutes an original of this document, all of which together constitute one instrument.
- (b) A party who has executed a counterpart of this document, may exchange it with another party by emailing a pdf (portable document format) copy of the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity of this document.
- (c) Where a party executes this document, by having it signed by more than one person, those persons may sign the same or different signature pages, either or both of which signature pages may be delivered by email transmission.

23.6 Electronic signatures permitted

- (a) By signing this document, each party consents to this document (or any counterpart of it) being executed in electronic form, being electronically signed (and, where witnessing of a signature is required, such signature being electronically witnessed), and being delivered in electronic form by means of an electronic communication, all in accordance with sections 222 to 227 of the *Contract and Commercial Law Act 2017*.
- (b) The parties agree to be legally bound by this document signed in this way.

23.7 Delivery

For the purposes of section 9 of the *Property Law Act 2007*, and without limiting any other mode of delivery, this document will be delivered by one party immediately on the earlier of:

- (a) physical delivery of an original of this document, executed by that party, into the custody of each other party or each other party's solicitors; or

- (b) transmission by that party or its solicitors (or any other person authorised in writing by that party) of a pdf original of this document (if signed electronically) or a photocopied or scanned copy of an original of this document, executed by that party, to each other party or each other party's solicitors.

23.8 Governing law and jurisdiction

This document will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably submit to the non-exclusive jurisdiction of the New Zealand courts in respect of any legal action or proceedings arising out of or in connection with this document.

Signing page

EXECUTED as a deed

Crown

SIGNED by **THE SOVEREIGN IN RIGHT OF NEW ZEALAND** acting by and through the Secretary to the Treasury for and on behalf of the Minister of Finance in the presence of:

Signature of the Secretary to the Treasury

Signature of witness

Name of witness

Occupation of witness

City/town of residence

Lender

[EXECUTION BLOCK TO BE INSERTED]

[Qualifying Transferee]

[EXECUTION BLOCK TO BE INSERTED IF REQUIRED]