

CATEGORY 3 VOLUNTARY BUY-OUT POLICY SUPPORTING GUIDE

SEPTEMBER 2023

This supporting guide has been developed to help explain the Category 3 Voluntary Buy-out Policy (the policy) and address some of the likely questions people may have. It does not override the policy document and further, in the unlikely instance of a perceived conflict between the policy and this guide, the policy will guide the implementation of the Category 3 Voluntary Buy-out Programme.

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MESSAGE FROM THE MAYOR



Finalising the Category 3 Voluntary Buy-Out Policy is a critical step towards providing our most impacted residential property owners with options and a pathway forward – so that they can move forward with their lives, with some certainty.

The policy framework recognises the substantial impact that the Cyclone had on people's lives, the risk associated with people continuing to live in these Category 3 areas and therefore the need to support people in relocating out of these areas to somewhere safer.

I want to thank you for your patience and resilience in these extraordinarily challenging circumstances – I am acutely aware of the hardships you are facing and hope the implementation of this policy will assist you to make plans for your future. Our voluntary buy-out team and Council connectors will help you through this process, every step of the way.

This guide, as well as the policy itself, contains a lot of information for you to digest – so do take your time to consider it and take advice before deciding on the best course of action for you and your family/ whānau. We recommend you also discuss this with your trusted advisors to determine which option suits you best.

Don't ever hesitate to reach out for support – there is a list of avenues for support and assistance towards the end of this document.

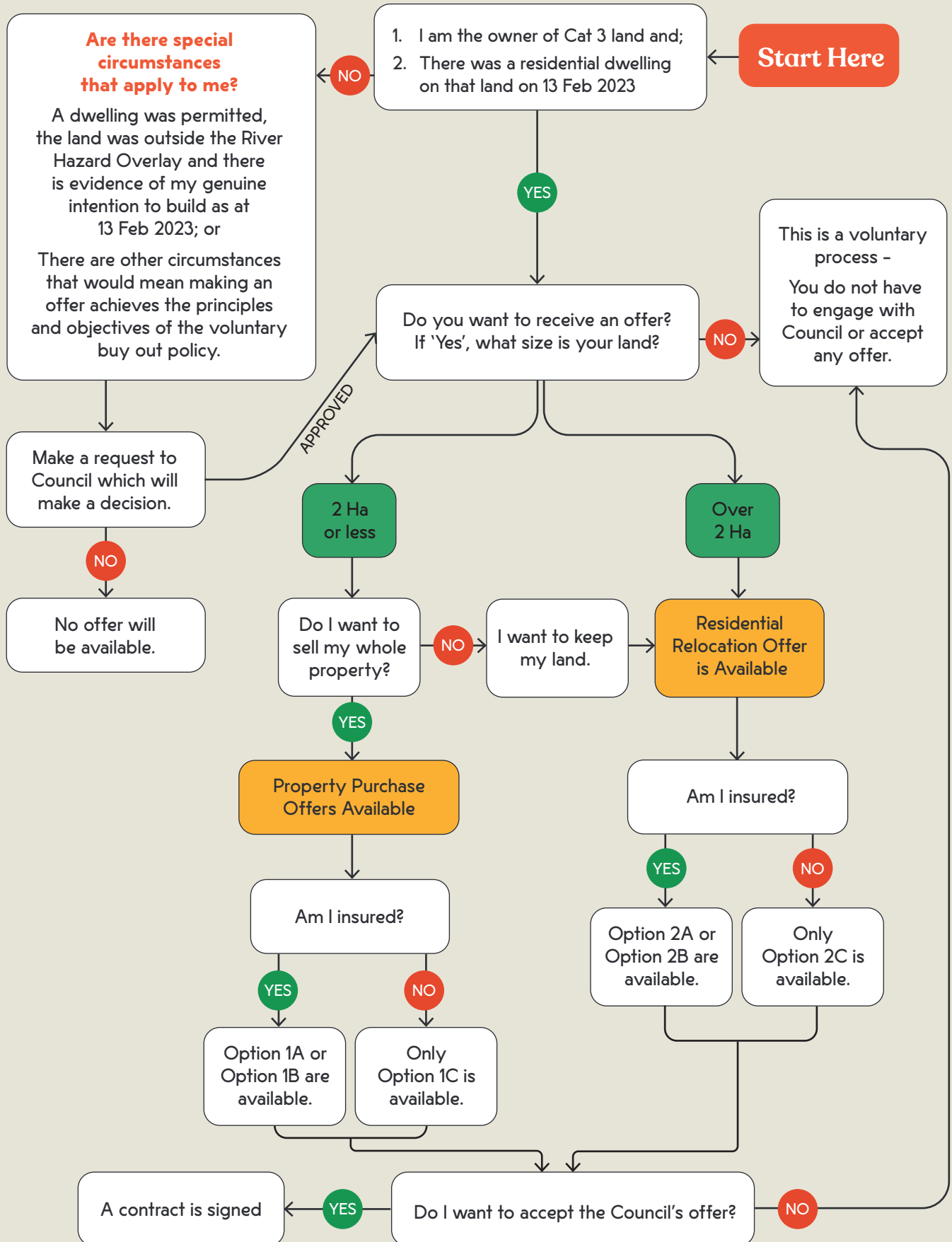
Kia Kaha

Sandra Hazlehurst

Mayor of Hastings

THE OPTIONS

Am I eligible for an offer?



Option 1 – Property Purchase Offer

Available to: Owners of properties 2 hectares or less in size with a residential dwelling (“Residential Properties”)

	OPTION 1A (INSURED)	OPTION 1B (INSURED)	OPTION 1C (UNINSURED)
What is the Council offer for?	Your whole property – i.e. your land, your house and residential improvements		
What will the Council pay for my property?	Market value for your land, your house and residential improvements as at 13 February 2023, less any insurance payments paid directly to you for your land, house and residential improvements that you have not spent on repairing your land, house and residential improvements. If you have made repairs or reinstated your dwelling, you will need to provide evidence of the amounts paid.	Market value for your land as at 13 February 2023, less any payment by EQC for damage to the land that has not been spent, in good faith, on repairs to the land. Under this option, you keep any insurance payments for your house and residential improvements.	Market value for your land, your house and related improvements as at 13 February 2023, less a deduction for damage to the land. This is assessed based on what would have been covered by EQC had the property been insured.
What is the difference between the options?	Under this option, you receive all insurance payments owing, plus Council will ‘top up’ that amount so you receive what your property was worth immediately before Cyclone Gabrielle.	Under this option, you keep all payments for your house and Council will ‘top up’ any amount received from EQC for damage to the land so you receive market value for the land.	You will receive what your property was worth immediately before Cyclone Gabrielle, with a deduction for damage to land (what would usually be covered by EQC for insured properties).
Which is the best option for me?	Option 1A is best suited to owners who are insured but are not eligible for full replacement value for the house (either because the house was not sufficiently damaged or you were underinsured).	If you have full replacement insurance Option 1B will likely be the best option for you financially.	If your property was not insured, this is the only option available.

Option 2 – Residential Relocation Offer

Available to: Owners of properties (2ha and under) who wish to retain ownership of the land
 Owners of properties over 2 hectares with a dwelling ("Mixed Use Properties")

	OPTION 2A (INSURED)	OPTION 2B (INSURED)	OPTION 2C (UNINSURED)
What is the Council offer for?	Your house and residential improvements. You retain ownership of your land, however Council will pay you a relocation grant in recognition that your land can no longer be used for residential activities.		
What will the Council pay for my property?	Market value of your house and residential improvements as at 13 February 2023, less any insurance payments paid directly to you for your house and residential improvements that you have not spent on repairs. If you have made repairs or reinstated your dwelling, you will need to provide evidence of the amounts paid. AND A relocation grant, which is an amount equivalent to the difference in market value of your land with and without the right to use it for residential activity.	A relocation grant, which is an amount equivalent to the difference in market value of your land with and without the right to use it for residential activity. Under this option, you keep any insurance payments for your house and residential improvements.	Market value of your house and residential improvements as at 13 February 2023. AND A relocation grant, which is an amount equivalent to the difference in market value of your land with and without the right to use it for residential activity.
What is the difference between the options?	Under this option, you receive all insurance payments owing, plus Council will 'top up' that amount so you receive what your house and residential improvements were worth immediately before Cyclone Gabrielle. You also receive the relocation grant.	Under this option, you keep all insurance payments for your house and residential improvements. Council will only pay the relocation grant.	This is the only option available where a property was uninsured. You will receive what your house and residential improvements were worth immediately before Cyclone Gabrielle, plus the relocation grant.
Which is the best option for me?	Option 2A is best suited to owners who are insured but are not eligible for full replacement value for the house (either because the house was not sufficiently damaged or you were underinsured).	If you have full replacement insurance Option 2B will likely be the best option for you financially.	If your property was not insured, this is the only option available.

Option decision-making

When do I need to decide which option I would like to take?

You can make this decision at any time up to the final offer being presented.

What is a relocation grant?

A relocation grant is a payment which, in combination with the amount received from Council and/or your insurer for your house, is intended to enable you to move to a safer area to live. As part of accepting the offer, a covenant will be registered on the title to your land which prevents it being used for residential activity in the future. The amount of the grant will be calculated by a registered valuer as being how much your land was worth prior to Cyclone Gabrielle (i.e. with your right to live on it) minus how much it is worth with the covenant on it (i.e. without the right to live on it). The difference in value is the amount of the grant.

If I take the Residential Relocation Offer (Option 2A, 2B or 2C) and retain my land, what can I do with it?

If you accept Council's offer, any dwelling and residential improvements will be removed from the land, and a covenant or legal instrument will be registered on the title to the land which prevents it from being used for residential activity. It also prevents you from opposing any future plan change which seeks to restrict or remove the ability under the District Plan to undertake residential activity.

While you will not be able to use the property for residential activity, you will still be able to use it for any other purpose you were able to use it for prior to Cyclone Gabrielle. Typically this will include land based primary production activities, but you may also be able to undertake commercial or industrial activities (in accordance with the District Plan or a resource consent).

Will Council apply any covenants to my land?

If you accept a Residential Relocation Offer (Option 2A, 2B or 2C), you continue to own the land. To ensure that the land is not used for residential activities (either by the current or any future owner) a term of the offer will be that a covenant in gross or similar legal instrument is registered on the title of the property. This covenant reflects the fact that Council is paying you the value of being able to use your land for residential purposes. It gives notice to all owners that the land cannot be used for those purposes and means that you cannot later argue that you should be allowed to do so.

The Council encourages you to seek your own legal advice to understand how a covenant works and what it means for your property.

Who does not receive a Council offer?

The Council's Voluntary Buy-Out policy only applies to properties which have been confirmed by Hawke's Bay Regional Council as being in Category 3 at 3 October 2023, and which had a residential dwelling on them at the time of Cyclone Gabrielle.

There may be special circumstances where the Council is prepared to make an offer where Category 3 land did not have a dwelling; but only where specific criteria are met (see "What if my land does not have a house on it?" below). Council also has a general ability to make an offer in special circumstances (see "What if I don't quite fit any of the options?" below).

Council's offer is not available to:

- properties used for commercial or industrial activities
- bare land with no clear evidence of advanced plans to build a residential dwelling.

What if my land doesn't have a house on it?

The purpose of the Council's Category 3 Voluntary Buy-Out Policy is to remove risk-to-life to people living in Category 3 areas. Where your property is in Category 3, but you did not have a house on it immediately before Cyclone Gabrielle, there is no automatic right to an offer. However, you may apply for an offer under the Policy if you meet certain criteria. These are:

1. Either:
 - (a) your land must be located outside the River Hazard Overlay (relevant to properties that fall under the Hastings District Plan) or the River Hazard Area (relevant to properties that fall under the Napier District Plan) and residential activity must have been a Permitted Activity under the relevant District Plan; or
 - (b) you had been granted a resource consent to build a dwelling on the land and the consent was still valid on 13 February 2023; AND
2. You are able to provide the Council with evidence that you had a genuine intention to construct a dwelling for use of owner and/ or their family on the land, such as:
 - (a) you obtained plans for a new dwelling
 - (b) you had applied for a building consent or a certificate to confirm the dwelling was permitted under the District Plan
 - (c) you had obtained finance for the build
 - (d) you had taken any other steps which indicate it was more likely than not that a dwelling would be built on the Category 3 land
3. If your land has more than one Category (e.g. part is Category 1 or 2 and part is Category 3), you would also need to show that it is not practical to build the new dwelling on the Category 1 or 2 part of the land.

If Council decides there are special circumstances, and agrees to make you an offer, the terms of the offer will depend on the specific circumstances of your case. If you think you might want to apply for an offer under this category contact council.

What if I don't fit any of the options?

Council recognises that there may be special circumstances which mean the situations anticipated by the Policy don't apply in all cases. The Policy allows for the Council to make an offer in such circumstances where it considers doing so will meet the objectives of the Policy – particularly that it will achieve the objective of removing risk-to-life associated with residential activity within Category 3 areas.

THE OFFER

How will offers be made?

Council is engaging a dedicated team who will be Council's representatives for the offer process.

If you are eligible for a Residential Property Offer (Option 1) or a Residential Relocation Offer (Option 2), one of these representatives will contact you to arrange an initial meeting. The purpose of the initial meeting is to discuss the process and the options available to you. This will also be an opportunity for you to provide any information you consider relevant to the valuation process and to indicate which option you would like to take.

At the meeting, you will be asked to sign an agreement that records the process around the making of an offer. You can sign the agreement giving permission at the meeting, or afterwards if you prefer (you are welcome to seek any advice prior to signing the agreement). All insurance claims will need to be settled with your insurer before Council can make an offer so you will need to provide a copy of any insurance information which might be relevant to calculating your offer. Sometimes Council may need additional information from your insurer and the representative will ask for your permission to access that.

After the initial meeting, and once the necessary agreements are signed, Council will obtain a valuation from a registered valuer, and there will also be an opportunity for you to obtain your own valuation. There will be a separate 'Valuation Process' document which will be provided to you and your valuer.

The Council's representative will then present you with an offer for you to consider. The offer will remain open for three months but may be extended if there is good progress being made towards an agreement being reached.

Who will be at the initial meeting?

Council's representative will attend the initial meeting to explain the process and the available options, and to hear from you about what is important to you in terms of any offer Council might make. The representative may be accompanied by a valuer engaged by Council, and sometimes there may be other people there to assist.

You are welcome and encouraged to bring along a support person and/or a professional advisor, such as your lawyer.

How will the Council know how much my property is worth?

Council will commission a valuation from an independent registered valuer who will take into account any relevant information you shared at the initial meeting. You will also have the option to obtain your own valuation from a registered valuer which Council will also take into account as part of preparing its offer.

The property will be valued as at 13 February 2023 – the day before the impacts of Cyclone Gabrielle were felt by the community. This means the valuation will not take into account any damage caused by the Cyclone.

Will Council decide what the valuation of my property will be?

No, the valuations are not decided by Council. A registered valuer engaged by Council will independently assess the market value of the property as at 13 February 2023. You will also have the opportunity to engage your own registered valuer to assess the market value of your property. All valuations will be completed in line with the Property Institute of New Zealand Professional Practice Standards as adopted at the date of valuation, and the International Valuation Standards (IVS) 2022.

If I consent to having a valuation done does that mean I commit to accepting the offer?

No, it does not. You can choose to opt-out at any time during the process until you sign a Sale and Purchase Agreement.

When will I receive my offer from Council?

There are a few things that need to happen before you can receive an offer:

- if you are insured, your insurance claim has been settled with your insurer
- a preliminary meeting has been held between you and Council's representative
- you have signed the preliminary agreement and provided Council with all insurance information
- the valuation process has been completed.

Will Council cover my independent valuation and legal costs?

At the time of settlement, Council will reimburse you for professional valuation and legal advice received prior to the initial offer, up to maximum of \$5,000 (excl. GST). You will need to provide copies of invoices for them to be reimbursed.

In addition, the Council will also pay your reasonable legal costs related to finalising the Sale and Purchase Agreement and conveyancing costs up to \$5,000 (excl GST).

How long do I have to accept the Council's offer?

The offer will remain open for three months after you receive it, however this can be extended if good progress is being made towards an agreement.

Before making a decision, you may wish to discuss the offer with family and friends, your lawyer, and any lender that holds a mortgage over your property.

Do all Category 3 property owners in my area have to opt into the Buy-Out scheme for it to be implemented?

No. The process is voluntary and offers will be made on an individual basis.

How long can I stay in my home if I accept Council's offer?

Council will work with you to agree on a mutually acceptable settlement date. You must be out of your home by your agreed settlement date.

What do I do if I want to accept the offer?

If you decide to accept the offer, you should advise Council's representative of your decision and sign the Agreement that was provided with the offer. It is likely you will have engaged a lawyer by this time (and there is funding available for this) so they can assist you in ensuring you are happy with the terms of the offer and that you understand the next steps.

Council will pay a 10% deposit at the time the offer is accepted, and the rest is paid on settlement.

If I have a mortgage on my property, will Council pay me or my bank?

It is important you talk to your bank (or financial institution) to understand what is required under your mortgage agreement. As is typical for the sale of a property, Council will make its payment to your solicitor who will make any payment owing to a security holder (e.g. your bank if you have a mortgage) before paying any remaining amount to you. Note that this does not apply to payments made towards legal and/or independent valuation costs – these will be paid direct to the owner.

What do I do if I don't want to accept the offer?

This is a voluntary process, and you do not need to accept the offer or participate in the process. You are free to reject Council's offer, or exit the process, at any time up until you have accepted the offer.

If you decide to do this, then change your mind, it is up to Council whether to recommence the process.

What will happen to my property if I decide I do not want to accept Council's offer?

The offer is voluntary, however, if you decide that you do not want to accept the Crown's offer, you should be aware that:

- If a consent for a new dwelling or major residential work is applied for, Council will process the application, but is required to take into account known information about the property's exposure to natural hazard risk. This means applications for building consent and/or resource consent on Category 3 land are likely to face significant hurdles to being granted.
- The Insurance Council has indicated that insurers may cancel or refuse to renew insurance policies for properties in the Category 3 areas.

Council encourages you to take your own advice as to your future options for your property should you decide not to accept the offer. Part of Council's Policy is to reimburse eligible owners with up to \$5000 (excl. GST) for professional valuation and legal advice received prior to the initial offer.

INSURANCE / EQC

What will happen to my insurance claims?

In all cases, you will need to settle any claim with your insurer before Council can make an offer. Council will not “take over” any insurance claims.

What will happen to the insurance/EQC payments I have already received?

Under Options 1A and 2A, all insurance payments for damage to your property that have been paid directly to you by your insurer will be deducted from the purchase price. This means you receive the market value of your property as at 13 February 2023, partly from your insurer and partly from the Council.

If you have already spent insurance money on repairs to the property, that amount will not be deducted from the purchase price. You will need to provide evidence, such as receipts, for all such work undertaken. This means that you will not be penalised for having started repairs in good faith.

Under Options 1B and 2B, you keep the insurance payment for your house and residential improvements. Because the insurance payments may have included a payment by EQC for damage to land, that amount needs to be accounted for where Council is buying the land (Option 1B). If you retain the land, you also retain the EQC payment for damage to that land (Option 2B).

What if I have already spent some of my insurance claim on repairs?

If you have already undertaken repairs using proceeds from your insurance, Council will not deduct these from the purchase price. This is particularly important for Option 1A and 2A, where usually any insurance proceeds are deducted from the assessed market value. However, you will need to provide evidence of those works having been undertaken, such as receipts, for all repairs or reinstatement to your dwelling to show these were undertaken in good faith.

What happens if I have already settled all my claims for damage to my property as a total loss?

Settling all your claims for damage to your property as a total loss (e.g. beyond economic repair) does not limit what option you can choose. In many cases a total loss will see you paid for the cost of rebuilding a house. Provided you were fully insured, this amount may exceed the market value for the house, and Option 1B or 2B may result in a better financial outcome for you.

Will I be eligible for the offer if I did not have insurance on 13 February 2023?

Yes. The overarching objective of the Category 3 Voluntary Buy-Out scheme is to remove the risk-to-life associated with people living on Category 3 land. Provided you had a dwelling on your Category 3 land on 13 February 2023, you are entitled to an offer on essentially the same basis as if you were insured.

Note that where there is damage to land that would ordinarily have been covered through an insurance contract by EQC, and Council is buying the land, a deduction will be made to account for the costs to Council in repairing the land. Insured persons also need to account for the land damage component to Council, and this payment is to ensure insured and uninsured people are treated equally.

Will Council interfere with my rights to take action against my insurer if I decide that I do not want to accept the Council's offer?

You are entitled to pursue all your insurance claims and any rights that you may have under your insurance policy. All claims with your insurer must be resolved before Council is able to make an offer.

WHEN IT'S TIME TO MOVE

Can I keep my house?

If you would like to relocate your house, garage or any other buildings on your property, you should discuss this with Council's representative at the preliminary meeting. This may include relocating them to a different part of your property that is not Category 3.

Council will consider your request and advise whether the requested buildings can be removed. If they can be removed, any agreed arrangements for the removal of those buildings, including any amounts that you will need to pay to Council for the buildings that you are removing, will be recorded in the offer. These amounts will be deducted from the purchase price for your property.

When do I have to move out of my home?

You must be out of your home by the settlement date. The mutually agreed settlement date will be recorded in your Agreement for Sale and Purchase and is the date that Council will pay for and become the owner of your property. You will need to have all arrangements in place to move out of your property by the agreed settlement date including:

- having a new house or alternative accommodation to move to
- organising a moving company or assistance to remove all your belongings and chattels. You will be responsible for your own moving costs
- arranging for a final electricity reading and the disconnection of your phone and internet.

When do my tenants need to move out?

If your property is tenanted you need to arrange for your tenants to be out of your property by the settlement date. You will need to give the required notice under the Residential Tenancies Act 1986 to end the tenancy. We recommend that you discuss this with your lawyer so that the necessary arrangements can be made.

Can I rent my home from Council?

You cannot rent your home from the Council. Once the Council has become the owner of your property no one will be permitted to live there.

What can I take with me?

You can take all your personal possessions and chattels. Once the property is owned by Council you will not be able to return to remove anything else from the site.

Council's offer includes the dwelling and all residential improvements, and these may not be removed unless it is agreed as part of the agreement between you and Council. For instance, you may not remove any part of your kitchen, bathroom, or wardrobes where these are attached to the dwelling.

What are chattels?

Chattels are items that are not attached to your land or the buildings on your land and can be removed without causing damage to your property.

They include:

- blinds, curtains and drapes
- unfixed carpets and rugs
- ovens and stoves that are soft wired or plugged in to the wall
- light shades and light fittings
- household furniture
- garden plants, plant pots, raised beds, sheds and ornaments.

How long will I have to remove my possessions and chattels?

You must remove any chattels and possessions, and any other items that Council or your insurer has agreed to let you take, by the settlement date. Anything that you leave behind will become the property of Council.

How long will I have to relocate any buildings?

If Council agrees that you can relocate your dwelling or other building, the timeframe for undertaking the relocation will be recorded in the agreement. It will be important that the relocation occurs in a timely manner and there may be requirements in the agreement to ensure this happens.

WHEN IT'S TIME TO MOVE

What will happen to my property after settlement?

Where Council is buying the whole property (Options 1A, 1B or 1C), clearing of a property will begin as soon as possible after Council becomes the owner. This is important for safety and security reasons. This means the dwelling and any residential improvements will be relocated or demolished, and the site reinstated.

Where Council is purchasing the house and paying a relocation grant, the house will be relocated or demolished as soon as possible, and the site reinstated. "Reinstatement" does not include removing all the silt from a site, or otherwise clearing it to make it suitable for non-residential purposes. This remains the responsibility of the owner as the owner of the land.

Who will pay for the costs of clearing my property and removing any buildings?

The Council will cover the costs of removing buildings and clearing a property. The only exception is any amount paid by EQC for damage to the land, or an equivalent amount if the property is not insured, will be paid to Council where Council is buying the land. Under Option 1A, this happens as part of deducting the insurance proceeds from the purchase price, but in Option 1B and Option 1C, the damage to land amount is accounted for separately. This amount will be made clear in any valuation and any offer you receive.

SUPPORT AND ASSISTANCE

What support will Council provide to help me navigate this process?

You can be assigned a Council Community Connector by calling Council on 06 871 5000. They can work with you to identify any specific concerns you have and, if required, connect you with the appropriate practical assistance along with access to support services and further information.

This can include: information about the purchase process, health and wellbeing or counselling services. This support is available throughout all stages of the process.

Council will reimburse you for professional valuation and legal advice received prior to initial offer, up to maximum of \$5,000 (excl. GST). In addition, Council will also pay your reasonable legal costs related to finalising the sale and purchase agreement and conveyancing costs up to \$5,000 (excl. GST). We encourage you to make use of all available services to ensure you have the support you need.

Is there a dispute and appeal process available?

Yes – if you believe the policy is not applied correctly and/or in good faith you can request a review of your case by the Council’s Chief Executive or their delegate. A review will be completed within four weeks of receipt of a written complaint and the outcome will be communicated to you directly.

Important phone numbers	Hastings District Council Customer Services..... (06) 871 5000
	Cyclone Support Helpline 0800 117 672
	Need to Talk..... 1737 (text or phone)
	Temporary Accommodation Services (TAS) 0508 754 163
	NZ Claims Resolution Service 0800 777 299

GLOSSARY

Agreement for Sale and Purchase	The agreement that you and Council will sign to record the terms on which you have agreed to sell your property to Council.
Category 3 Land	Land which has been identified by and confirmed as Category 3 land by Hawke's Bay Regional Council
Council	Hastings District Council for properties located in the Hastings District, and Napier City Council for properties located in Napier City.
Council's Representative	A person to whom Council has delegated authority to undertake certain actions on the Council's behalf, which is evidenced by an authorised identification card. For the avoidance of doubt, Council's representative will only have authority to present an offer that has been subject to Council's internal approval process
Dwelling	A building, or part of a building that is self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet) and is or could be used by 1 or more persons to live in as their home.
EQC	Earthquake Commission.
Insurance Proceeds	Any payments related to the residential improvements of the property from an insurer, and includes any relevant payments made under the Earthquake Commission Act.
Mixed-Use Property	Land on which one or more dwelling was lawfully established on 13 February 2023 and which is greater than 2 ha in size, regardless of whether activities other than residential were occurring on the land at that date.
Owner	The legal owner of the residential property or mixed-use property.
Residential Improvements	Improvements ancillary to the residential use of the dwelling, used by the owners or occupiers of the dwelling for household purposes (such as for parking or storage, and residential recreation facilities) or for access to the dwelling or to house infrastructure for the dwelling (such as a shed housing a pump that supplies drinking water to the dwelling).
Residential Property	Land on which one or more dwelling was lawfully established on 13 February 2023 and which is 2 ha or less in size.
Relocation Grant	A payment to the owner in an amount that represents the difference in the market value of the land with and without the right to rebuild a dwelling on the Category 3 land.
Settlement Date	<p>The date on which:</p> <ul style="list-style-type: none"> • You or your tenants must no longer be living on the property. • Council will make the final payment to you for your property. <p>Council will become the owner of your property or dwelling (depending on the type of agreement).</p>

Contact:

Hastings District Council
Private Bag 9002 Hastings 4156
customerservice@hdc.govt.nz
(06) 871 5000
www.hdc.govt.nz/cat3buyout.govt.nz

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