

CYCLONE GABRIELLE: CATEGORY 3 VOLUNTARY BUY-OUT POLICY

SUMMARY EVALUATION REPORT

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1 Introduction

1.1 Purpose of this Report

This report sets out the matters considered in formulating the Category 3 Voluntary Buy-Out Policy (**Policy**) which is intended to be adopted by Hastings District Council (**HDC**) and Napier City Council (**NCC**) (together, the **Councils**) in response to Cyclone Gabrielle. Our recommended version of the Policy is attached at **Appendix A**.

As part of the Crown agreement for funding, the Councils were required to determine a Category 3 purchase methodology and to then notify the Crown of this methodology.

Although the Crown indicated the Councils would implement a process for purchasing residential property and residential property rights, there is no statutory obligation or duty on councils to undertake such purchases: they are voluntary in nature and limited in precedent. Therefore, how any purchases will be undertaken is for the Councils to determine. The process for making the decision as to how they intend to carry out purchases is set out in this document.

It records how the requirements of the Local Government Act 2002 (**LGA**) in relation to decision making have been satisfied, particularly s 77 which requires:

- (1) *A local authority must, in the course of the decision-making process, —*
 - (a) *seek to identify all reasonably practicable options for the achievement of the objective of a decision; and*
 - (b) *assess the options in terms of their advantages and disadvantages; and*
 - (c) *if any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water, sites, waahi tapu, valued flora and fauna, and other taonga.*

1.2 Background to and Context of the Policy

Cyclone Gabrielle struck Hawke’s Bay on 14 February 2023 and resulted in widespread flooding, property damage and, most tragically, loss of life. In order to quantify future risk to property owners the Government announced that affected areas would be classified according to an assessed level of risk, as follows:¹

Category 1 - Low Risk – Repair to previous state is all that is required to manage future severe weather event risk. This means that once any flood protection near the property is repaired, the home can be rebuilt at the same site.

Category 2 - Managed Risk – Community or property-level interventions will manage future severe weather event risk. This could include the raising of nearby stop banks, improving drainage or raising the property.

Category 3 - High Risk – Areas in the high-risk category are not safe to live in because of the unacceptable risk of future flooding and loss of life. Homes in these areas should not be rebuilt on their current sites.

¹ <https://www.beehive.govt.nz/release/update-assessment-affected-properties-post-cyclone-and-flooding>, 1 May 2023

The categorisation of land was undertaken by Hawke’s Bay Regional Council (**HBRC**) according to a Land Categorisation Methodology. This identified Category 3 on the basis of whether properties faced an intolerable risk to life from flooding and where there was no ability to mitigate future flood risk from design events. At the time of drafting, HBRC had not completed the categorisation process, however provisional categories were expected to be confirmed before the end of September 2023. The Councils are reliant on HBRC’s determinations as to the properties that have been classified as Category 3.

Given the inability to mitigate against future flooding events in Category 3 areas, the Government announced that a voluntary property purchase would be offered by the Councils to affected residential property owners. This would be part of an overall ‘locally led – Crown supported’ process.

Subsequent to this announcement, negotiations to determine the level of Crown support were undertaken. This resulted in a Council-Crown agreed funding package that included funding for the voluntary purchase of residential property, or the payment of relocation grants for mixed use properties, in Category 3 areas. Part of the terms of agreement is that the Councils are required to prepare a purchase methodology which is to be attached to the final agreement. Purchases of, and relocation grants in respect of, Category 3 land must be carried out in accordance with that methodology.

The voluntary purchase of residential property and provision of relocation grants is outside the scope of usual Council business. Accordingly, the Councils prepared amendments to their Long-Term Plans to provide for a relevant new activity and notified the amendments for submissions. In parallel with that process, the Councils engaged us, Jim Palmer and Asher Davidson, to assist with the preparation of the Policy to guide the implementation of this new activity.

1.3 What the Policy does and does not set out to do

As discussed in detail below, the Policy’s overarching objective is removal of risk-to-life associated with people living on Category 3 land. The intent of the Policy is to provide pathways for people living on Category 3 land, enabling them to move to areas that have lower risk of flooding associated with them. Property owners that have a dwelling on their land will be eligible for an offer to purchase either their entire property if it is 2 ha or less, or where the property is greater than 2ha, they are entitled to a Residential Relocation Offer whereby the Council offers to purchase the dwelling and makes a relocation grant equating to the value of the right to use the property for residential purposes. In special circumstances, at the Council’s absolute discretion it may also make an offer for residential bare land where there is a demonstrable intention of building a dwelling.

We acknowledge that the scope of the Policy will not address all of the profound effects that Cyclone Gabrielle has had on people and land throughout Hawke’s Bay. However, this policy does not seek to, and cannot, address all of the damage caused. The mandate the Councils have as part of the Crown agreement and the new activity in their Long-Term Plans (**LTPs**) is to address risk-to-life within areas the HBRC has identified as Category 3.

Therefore, for instance, the Policy does not extend to non-residential and commercial activities, nor does it seek to address any commercial or other financial losses suffered as a result of the floods.

In this regard it is important to note that the Policy does not remove or restrict the existing use rights associated with the land. The fact that areas have been identified as at-risk of significant flooding in the future will be relevant to future proposals to build within Category 3. However, that is a result of the flooding and further information now available, rather than of the Categorisation. At this stage, the Councils have not proposed any changes to the planning rules around land-use within Category 3 areas, although the natural hazard risk information now known by the Councils means this will need to be considered in due course. The purpose of this Policy is to provide a voluntary scheme for people who have a dwelling within Category 3 area who wish to relocate out of that area.

The Policy also does not seek to address existing issues which are acknowledged to exist in the Hawke's Bay region, and the country, including a housing shortage, a cost-of-living crisis and general social inequity. Again, while these are matters that remain of concern to the Councils, the Policy does not seek to address them. We have been made aware, as part of this process, that a number of people have been living within Category 3 areas in vehicles or buildings that have not been approved for residential habitation. The Policy applies to lawfully established dwellings and does not extend to other buildings which have been used as housing.

The Council nevertheless acknowledges that there will be circumstances that are not specifically covered by the Policy but may be consistent with objectives the Councils have identified as wanting to be achieved through the Policy. A 'special circumstances' clause enables the Councils to consider those circumstances in terms of the objectives of the Policy when exercising their discretion. It is not intended that this be used to significantly depart from the Policy, but to enable appropriate solutions within the general scope of what is intended.

The Policy does not apply to Whenua Māori, which is being addressed by the Crown through a Kaupapa Māori pathway, the overriding purpose of which is, we understand, to enable people residing on Māori land in Māori communities severely affected by North Island Weather Events to move out of harm's way by relocating their residential and related uses to safer places. There are 33 titles within Category 3 areas that are held as Whenua Māori in two main locations (Tangoio and Esk Valley). These titles will be dealt with through the Kaupapa Māori pathway. General land owned by Māori will be covered by this Policy, although there remains a possibility these will also be dealt with in a holistic manner as part of the Crown's negotiations.

Finally, the Policy does not address the important question of the future of Category 3 land. In response to the LTP and Category 3 Policy consultation launched in August 2023 by the Councils, a number of submissions raised the issue of the future of Category 3 land, including a submission by Maungaharuru-Tangitū Trust seeking a first right of refusal over certain land. What will happen with Category 3 land going forward will require careful consideration, in consultation with the community, and is outside the scope of what the Policy can address.

2 Evaluation Process

Section 77 of the LGA requires that a Council identify all reasonably practicable options for the achievement of the objective of a decision and assess those options in terms of their advantages and disadvantages.

Section 78 of the LGA requires that the Council, in the course of its decision-making, give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter.

Section 79 of the LGA provides that it is the responsibility of the Council to make, in its discretion, judgment about how to achieve compliance with sections 77 and 78 that is largely in proportion to the significance of the decision. Those judgments must be made having regard to the significance of all relevant matters and in addition to the principles relating to local authorities in s 14 of the LGA, the extent of the Council's resources, and the extent to which the nature of the decision allows scope to consider a range of options and views of other persons.

The purchase of residential property and residential property rights is a new activity for the Councils and has been the subject of consultation through the introduction of that activity into the LTPs. While that consultation was focussed largely on the question of whether the purchases should be carried out, this Policy relates to how the purchases will be completed.

This report seeks to effectively 'tell the story' of what is proposed in terms of carrying out the activity of purchasing residential property and property rights on Category 3 land, and the reasoning behind it. The evaluation aims to communicate the thinking behind the proposal to the community and to decision-makers. The evaluation also provides a record for future reference as to the matters that were taken into account and the reasons for the various components of the Policy.

Policy formulation drew on input from numerous agencies, past events, and specialists. Initial cross council meetings defined the impact on communities across the region and allowed for regional input towards initial policy options. Further discussions included Government Agencies to allow Crown input into policy objectives and options, while also providing information on historical learnings. A parallel process of defining categorisation zones and affected properties assisted in defining the costs and magnitude of work necessitated by any policy.

Comparative events (such as Christchurch, Matata, Twin Stream, Queensland) were studied and assessed. This provided valuable data on previous policy decisions and their ramifications on affected parties. This included the methods of valuation; land compensation offers; and the effect of policy on communities. It also allowed the study of legal precedents that needed deliberate consideration in policy decisions.

Much of the input to the policy required specialist knowledge of subject matter not retained by Council in its usual business. Advice was sought from individuals and agencies that had experience in previous similar events, as well as specialist knowledge in valuation assessments and legal advice.

As the policy was refined and compared to the identified objectives, it was tested with Council officers, elected officials, and the community. Council officers provided feedback regarding risk assessments; democracy and governance implications; community interactions; and financial implications. Workshops and meetings allowed elected officials to challenge policy settings and provide alternative recommendations. Community engagement took place on a continual basis as part of the Cyclone recovery programme, and specific input to policy was also sought to compare policy settings to the aspirations of affected property owners.

3 Engagement

In preparing the Policy, we were particularly aware of the direct impact it would have on the lives of those with land classified by HBRC as Category 3. Under s 78 Local Government Act 2002, *"a local authority must, in the course of its decision-making process in relation to a matter, give*

consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter”.

In parallel with the special consultative procedure carried out in relation to the LTP amendments, the Councils also sought the views of significantly affected people through writing to affected property owners zoned in Categories 3, 2A and 2P (on the basis 2A and 2P land may be reclassified as Category 3) to seek their views on the draft principles of the Policy, which were:

- There is a significant risk to life for people living in dwellings on Category 3 land and, as no effective flood protection systems or mitigation can feasibly be developed, it is deemed unsafe to live there.
- [The Councils] will make an offer to all property owners that have a residential dwelling on their Category 3 land, whether they are insured or not.
- The offer will be based on a pre-cyclone market valuation and will be either an offer for the entire property, or in the case of larger properties the residential component thereof. The objective of doing so is to remove any residential uses from Category 3 areas.
- The agreement with the Crown does not provide for purchase of non-residential uses. At this stage, it is not intended that any offer will be made in respect of bare land not containing a dwelling.

The letters made clear that these did not yet constitute the Councils’ policy, and feedback was sought as follows:

- Do you have any comments on the guiding principles?
- Should all property owners that have a dwelling on their Category 3 land receive an offer from the Council?
- What matters do you consider are important to support the offer process?
- Do you have any other views and/or suggestions?

In response to the 403 letters sent, 106 submissions were received providing feedback on these questions. A summary of the feedback is set out in **Appendix B**. The feedback from submissions was considered in terms of each aspect of the Policy and is discussed in the relevant sections below.

4 Objectives, Principles and Values

4.1 Option Identification and Assessment Process

An important starting place for preparation of the Policy was ascertaining what it is the Councils seek to achieve for their communities. A process was undertaken to identify possible objectives and then to assess these against whether they achieved the purpose of local government, and what was considered of greatest importance, as ascertained by the Councillors.

A clear statement of objectives is intended to assist the assessment of alternatives for the provisions of this Policy, and will also assist users of the Policy when any issue of interpretation arises or where an exercise of discretion is required. Identification of the objectives of a decision is an important aspect of the assessment required under s 77 LGA.

In general, the process adopted in identifying the objectives for the Policy included:

- A review by the drafters of related material and outcomes sought to be achieved by similar policies. Helpfully among these, although issued only part way through the process of developing the Policy, was the Report of the Expert Working Group on Managed Retreat, which identified a series of outcomes and principles relevant to a programme of managed

retreat (see extract at **Appendix C**). While some of these were not relevant for this Policy (for instance, the Policy does not cover the categorisation process and nor can it address provision for any new areas of housing to which people may relocate), many were relevant;

- In Councillor workshops with HDC and NCC elected members on 22 August 2023, and 23 August 2023 respectively. Elected members were asked to identify objectives, values and principles they wished to see reflected in the Policy and its implementation. These are set out at **Appendix D**.
- Based on the above, including consideration of how the proposed objectives were consistent with the principles and values identified through the Council workshops, the drafters prepared recommended objectives for consideration by elected members. These were considered and endorsed through subsequent workshops with the elected members (HDC, on 29 August 2023 and 5 September 2023 / NCC on 30 August 2023 and 5 September 2023).

These agreed objectives are outlined below.

4.2 Overarching Objective

The overarching objective of the Policy is:

Overarching Objective
The removal of the risk to life associated with people living on Category 3 land.

This objective is inherent in:

- The Categorisation of Category 3 land as being land where future severe weather event risk cannot be sufficiently mitigated. In some cases current land uses may remain acceptable, while for others there is an intolerable risk of injury or death.
- The terms of the agreement between the Crown and the Hawke’s Bay local authorities which defines Category 3 properties as a residential property, or the residential portion of a mixed-use property, that has been impacted by the North Island Weather events where there is an intolerable risk to life and it is not feasible to mitigate that risk.
- The amendment made to the Councils’ Long-Term Plans to provide a new activity titled “Cyclone Gabrielle – Voluntary Residential Property and Property Rights Purchase”.

As such the removal of risk to life associated with people living on Category 3 land was considered to be the core reason for why the Councils have agreed to embark on a buy-out process. This has been identified as the overarching objective for the Policy as a whole.

4.3 Other Objectives

From the range of outcomes considered, the following were identified as the key objectives the Councils intend to guide the Policy.

Further Objective
Residents have clear pathways and certainty about the offer
Long term positive outcomes for the whole community and the environment
Affordability for ratepayers.

4.4 Principles

Supporting the objectives are a list of principles which relate to how the objectives are intended to be achieved. These were derived using the same process outlined above, with the agreed principles being:

Principles
Acting in good faith
Treating people with respect
Working to achieve timely outcomes
Communicating clearly

Together with the objectives, these principles have been applied in considering options for different aspects of the Policy, as discussed in further detail below, and are intended to provide guidance to persons charged with delivering the Policy to Category 3 landowners.

5 Eligibility

5.1 Option Identification and Evaluation Process

This part of the Report considers who should be eligible for an offer under the Policy. It does not address the content of the offer, which is considered subsequently.

The following options were considered:

- All properties (or just residential properties) affected by Cyclone Gabrielle
- All properties classified by HBRC as Category 3
- All residential properties classified by HBRC as Category 3
- Principal residences only (i.e. excluding holiday homes, visitor accommodation)
- Properties where a residence could be built but was not prior to the Cyclone
- Insured residential properties only (i.e. exclude uninsured properties).

The first of these options was immediately eliminated because it is not within the scope of the Crown-Council Agreement, or the Activity authorised by the Councils' Long Term Plan Amendments. The Agreement and the new Activity are clearly focused on addressing land within Category 3 as assessed by the HBRC. This has both a backwards and forwards looking aspect, in that land must have been affected by Cyclone Gabrielle and identified as subject to unacceptable risk from future severe weather events. Offers to purchase properties affected by Cyclone Gabrielle without the requisite level of forward-looking risk denoted by a Category 3 classification is outside the scope of this Policy and were not considered further.

The remaining options were assessed against the identified Objectives and Principles set out above.

5.2 Evaluation of Eligibility

5.2.1 Residential versus other uses within Category 3

Land has been identified as being within Category 3 on an area basis, meaning a range of different property uses are captured, including residential, commercial, and productive activities.

As discussed above, the overarching objective for the Policy has been primarily derived from the Government's definition of Category 3 land ("Future severe weather event risk cannot be sufficiently mitigated. In some cases some current land uses may remain acceptable, while for others there is an intolerable risk of injury or death"), the question being what type of activity within the Category 3 areas may be able to continue and which gave rise to an intolerable risk of injury or death.

The position reached is that the risk of injury or death is intolerable for residential activity. Residential uses can be differentiated from other uses by reference to the ability to safely leave the area at very short notice in the event of a severe weather event. The difficulties associated with alerting people, people taking action to protect themselves and their families, and carrying out evacuation, are exacerbated with the risk of an event occurring during night-time hours when people are sleeping. This is particularly the case in terms of the very young, elderly and those who have impaired mobility.

The same concerns do not arise with more commercial or productive uses primarily carried out during the day. This is not to say that there is no natural-hazard risk associated with other activities, however there is a greater ability to self-manage and evacuate at short notice should the need arise.

Residential uses have therefore been identified as the sole land-use category for acquisition. This is reflected in the objective and in the nature of the Activity included in the LTPs which forms the basis of this Policy.

There was feedback received as part of the engagement that sought to apply the offer to all land within Category 3, rather than restricting it to residential uses. While noted, those requests were not taken forward as a recommendation for the Policy.

5.2.2 Types of Residential Uses

Consideration was given to whether there should be differentiation between types of residential uses that may or may not be eligible for an offer.

The Report of the Expert Working Group on Managed Retreat, which was released part way through the Policy development process, proposes to differentiate between:²

- Principal places of residence;
- Tenanted properties that provide principal places of residence for their tenants (tenanted residential properties)
- Second homes that serve as holiday homes (eg, baches), which may be rented occasionally or for short periods (eg, in the holidays) but are not principal places of residence for their owners or those who rent them (second homes)

² [Report of the Expert Working Group on Managed Retreat](#), from p 205

- Commercial buildings
- Buildings owned by non-governmental organisations and used for their ‘not-for-profit’ activities;
- Buildings owned by iwi, hapū and Māori .

For second homes / holiday homes, the Working Group proposes that these would not be eligible for an offer but could receive assistance for removal, demolition and clean-up costs. Tenanted properties would be eligible for an offer but on conditions essentially requiring another rental property be established with the funds received.

We have not proposed that the Policy delve into this level of detail. We acknowledge that such an approach may well be appropriate for a nation-wide policy, however the relatively small amount of land classified by HBRC as Category 3 and the outcomes sought by the current policy, as set out above, are not considered to require the breakdown and control suggested by the Working Group. It is likely this would include additional complexity and administration time and cost which would counteract key objectives of enabling removal of risk to life, and doing so in an affordable and timely manner.

There was no real suggestion in the public engagement or from the Council workshops that suggested, for instance, that holiday homes should not be the subject of an offer, or that rental properties should only be subject to an offer if the Owner agreed to reestablish the rental elsewhere in the locality. For completeness, we have considered the option of excluding holiday homes, by focusing on making an offer only for a principal residence,

Differentiation on these grounds was considered as summarised below. Note that commercial buildings have been excluded for the reasons set out above, and there is no proposal to treat NGO or Māori-owned buildings (where covered by this Policy) as distinct categories.

A further matter under this heading is whether buildings used as dwellings should be covered by the offer, even where they are not lawfully established as such. For instance, submissions from the public indicated that there were instances of people living in sheds or other buildings where these were not the subject of a building consent.

The proposed definition of a ‘dwelling’ is:

... a building, or part of a building (including decks, patios and pergolas) that was, as at 13 February 2023, lawfully established, and 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.

This is largely based on the definition in the Natural Hazards Insurance Act 2023, but with the additional requirement that the building (or part of a building) be lawfully established as at 13 February 2023. As such it is not intended to capture situations where people have been living in buildings not lawfully approved for residential activity. To seek to capture unlawful living situations would create a high level of complexity and uncertainty. For instance, the Council would have no records of such occupations and the persons living in the buildings are less likely to be the owner of the land, meaning any benefit in purchasing the property would not accrue to the people whose home has been lost.

We consider it necessary to apply an offer only where there is a lawful dwelling on land. However, below we discuss the appropriateness of a special circumstances discretion which could plausibly be used to address situations where a building has genuinely been used as a

dwelling and an offer is considered appropriate, when assessed against the objectives and principles identified.

5.2.3 Insurance Status

A key matter raised through public engagement and queried by elected members was the issue of whether an offer should be extended to owners of uninsured properties. If uninsured properties will be covered, whether they will be entitled to a reduced offer is a related question, is considered under section 6 of this report, entitled 'content of the offer'.

The question of whether it is appropriate to differentiate based on insurance status was considered in detail in the *Quake Outcasts* litigation, summarised below. Consideration of past treatment of differentiation based on insurance status is considered important to ensuring the Policy meets the objective of being legally robust.

Following the Christchurch earthquakes in 2011, a Cabinet decision was made to offer to purchase insured properties in the red zone at 100% of the most recent rating valuation, while owners of uninsured improved residential properties and uninsurable bare residential land were offered 50% of unimproved land value (with nothing for improvements). The lawfulness of the 50% offers was challenged on judicial review as being inconsistent with the Canterbury Earthquake Recovery Act 2011 and as being oppressive, disproportionate and breaching the appellants' human rights.

The claim was considered by the Supreme Court in *Quake Outcasts v Minister for Canterbury Earthquake Recovery* [2015] NZSC 27. For present purposes, the key question was the relevance of the insurance status of offerees. The Government had identified the following factors as relevant to its decision to provide a reduced offer to uninsured residential properties (at [150] – [151]):

- they were not covered by EQC land or improvements insurance;
- the risks of not having insurance should have been factored into the decision to invest in the property;
- the owners of residential properties should have been aware of the risks when choosing not to purchase insurance;
- a non-differentiated offer would compensate for uninsured damage;
- a non-differentiated offer would be unfair to other red zone property owners who have been paying insurance premiums; and
- a non-differentiated offer would result in moral hazard, due to a reduction in the incentives to insure in the future where insurance is available (because such an offer could create an expectation that the government would step in to bail out property owners struck by natural disasters in the future)

The Supreme Court considered each of these factors in turn and found none of them to be persuasive. It noted a distinction between bare residential land which was not able to be insured and situations where improved residential land could have been but was not insured (uninsurable vs uninsured). It noted that many of the reasons given for a reduced offer applied differently to those two categories. For instance, moral hazard or conscious choice not to insure did not apply to uninsurable properties.

Key aspects of the Court's decision included:

- While a 100% offer would compensate for uninsured damage, this also applied to many insured properties who would higher payments than what they would under their insurance policies. The court noted the offer to pay at 2007 (pre-event) values were designed to make the offer attractive to achieve the purpose of encouraging voluntary withdrawal from the red zones.
- Untested assumptions are not a proper basis for decision-making. For instance, the Court found it was *“unfair to take into account a factor (that of a conscious choice to remain uninsured) that may or may not have been applicable to each member of the uninsured group”* (at 156]). The Court also considered that the factor of unfairness to insured property owners had not been tested and was an *“unjustified assumption of public lack of generosity for those in need that [stood] in marked contrast to the public’s actual response to the earthquakes”* [at 161].
- In terms of moral hazard, the Court referred to economic evidence that insurance packages in New Zealand were sold on a bundled basis covering a range of risks (fire, burglary, theft, accidental damage and natural disaster) and *“very few policy owners would elect to forego all insurance to achieve any imagined benefit from no longer retaining the natural disaster component”* (at [162]).

The Court also noted that moral hazard applied to insured properties as well, as many were anticipated to be paid more than the value insured, which might equally act as a disincentive to insure fully. Further, the Court considered moral hazard concerns were diminished by the decisions to purchase *“in the context of a disaster of major proportions with widespread damage and significant human cost”* (at [164]).

The area-wide solution to red zoning and removing residential uses, even where individual properties may not have suffered much damage, warranted an area-wide solution (at [178]). In those cases, insurance would not have made a significant difference, and the damage was effectively caused by the zoning, rather than the earthquake.

While acknowledging the insurance status of properties was not irrelevant, the Court concluded the insurance status should not have been treated as determinative of whether a differential should be applied, and if so, the nature and extent of the differential (at [167]).

The Court further noted that the voluntary nature of the offers was not sufficient to address any unfairness to the uninsured properties, holding that *“the reality is that the red zone is no longer suitable for residential occupation”* (at [176]). The Court agreed it was a *“Hobson’s choice”* to accept a substantially reduced offer or to remain in effectively abandoned communities with degenerating services and infrastructure.

The Supreme Court made a declaration that the decisions relating to uninsured improved residential property owners and to vacant residential landowners in the red zones were not lawfully made, and directions were made that the decisions be reconsidered.

Subsequently, the Minister made revised offers of 100% of unimproved land value to owners of improved uninsured properties, but offered no payment for improvements. That decision was similarly challenged and the Court of Appeal declared the decision to offer nothing for uninsured improvements was unlawful (*Quake Outcasts v Minister of Canterbury Earthquake Recovery* [2017] NZCA 332).

This time, the reasons given for not paying for uninsured improvements were moral hazard, cost to the Crown, fairness to other owners and causation, with the Court concluding moral

hazard and fairness were the principal matters relied on. The Court accepted these were relevant considerations but went on to consider whether the offer was unreasonable.

Applying the Supreme Court decision, the Court of Appeal held “*the Minister could not rely on moral hazard to justify paying an owner nothing for uninsured improvements unless he had first considered the owner’s circumstances and satisfied himself that they should be held responsible*” (at [86]). There was no suggestion the Minister had considered individual circumstances, as an area-wide approach was taken.

In terms of fairness among owners, the Court held it was not open for the Government to assume that the uninsured owners were seeking compensation for uninsured loss. Some had suffered no or little loss from the earthquakes themselves and the loss was caused by the decision to red zone the land.

The Court further held it was unreasonable to take into account cost to the Crown without estimating the marginal cost on the correct basis.

The *Quake Outcasts* decisions were made in a different statutory context, however the principles set out in the Supreme Court and Court of Appeal decisions are considered relevant to any decision by the Councils to differentiate offers based on insurance status.

The best information available at the time of preparing the Policy is that there were approximately 31 properties in Category 3 that did not hold insurance. Many more are likely to have been underinsured.

Given the overarching objective of removing risk to life from Category 3 areas, making no offer to uninsured properties would fail to achieve the purpose of the offer. However, consideration is given below to whether insurance status might be relevant to the content of an offer.

A summary of assessment of the options on eligibility is set out in **Table 1**.

5.2.4 Eligibility where there is no current dwelling.

Given the objective to address risk to life, early thinking was that the Policy should not apply to sites where there was no dwelling. The rationale for this is that there is no present risk to life because there would be no one resident on the site. Where an existing house was damaged there would still be an ability under the Building Act 2004 to repair a building on a like-for-like basis, and the Resource Management Act 1991 provides for existing use rights.

On sites without an existing dwelling, a building consent, and in some cases a resource consent, would be required to establish a new dwelling. Those would need to be assessed in light of current knowledge of natural hazard risk associated with the site, meaning it would be difficult and probably unlikely that consent could be approved. In other words, the objective of avoiding risk to life in Category 3 areas would be achieved through existing statutory mechanisms available to the Councils.

It is noted that in the Hastings District, many properties now classified as Category 3 are within the River Hazard Overlay area in the Hastings District Plan. This makes any habitable building a Non-Complying Activity, meaning resource consent would be required and is likely to be extremely difficult to obtain. It is not considered that such sites have any ‘right’ or expectation to be able to build a dwelling and have not been factored into any assessment of whether they should be eligible for an offer.

Similarly, many of the Category 3 properties in Napier City are overlain by a River Hazard Area in which residential activity would require resource consent as a Discretionary activity (Rule 62.13(c)).

Through feedback on the proposed principles for the Policy, a strong message emerged from the owners of some sites that they considered the policy should apply where there is a 'right' to construct a new dwelling, where that right has been effectively removed through Cyclone Gabrielle. In light of this feedback, options around this matter have been closely considered, the options being:

- Offer restricted to existing dwellings (i.e. no offer where there is no dwelling);
- Offer available to properties where there is a legal 'right' to construct a dwelling;
- Offer available to properties where there is a legal 'right' to construct a dwelling and there is evidence that there was a genuine intention to exercise that right (for instance by commissioning plans, applying for building consent or starting construction);
- A 'half-way house' where an offer would be available on application and on a discretionary basis to properties where set criteria are met.

Note that this section considers eligibility for an offer, and not the content of an offer (i.e. whether the offer might be for something less than would apply to an existing dwelling) which is considered below.

In terms of possible criteria that might apply to limit eligibility for an offer under this heading, we have considered the objectives and principles which set out the scope of the Policy, and generally what the policy does and does not set out to do. For instance, as noted above, the Policy does not set out to address all financial loss associated with Cyclone Gabrielle. Consideration has also been given to feedback received through public engagement as to scenarios where landowners consider there should be an entitlement for an offer.

Bearing in mind those comments, the following criteria have been identified as relevant matters that might go to the exercise of discretion should the Councils choose to extend the offer to some bare sites:

- There should be a 'right' under the District Plan to undertake residential activity in the sense of it being a permitted (or possibly controlled) activity. As noted, many Category 3 sites are within the River Hazard Overlay and development is a Non-Complying activity. Such sites would not qualify as having the required 'right'. However, there may also be other reasons why a resource consent would be required, for instance if building coverage limits were already exceeded for the site or there was already a dwelling on it. In such cases, there should be no expectation that consent would necessarily be granted, as natural hazard factors may be considered as well as matters such as the objectives and policies of the District Plan and other planning documents such as the National Policy Statement on Highly Productive Land;
- Alternatively, if a resource consent was required but had already been granted and remained valid, this would also constitute a 'right' to develop;
- There would need to be some evidence of a firm intention to build a dwelling. This is considered necessary to address the inequity arising from restricting the policy to existing dwellings only – that is, it is not the intention of the policy to cushion people from all financial harm arising from the Cyclone but to act where there was a genuine intention to

build resulting in hardship as the result of the ability to construct a house being removed. We consider the criteria here could be based on case law around what forms part of the 'existing environment' for the purposes of the Resource Management Act 1991. In order for a development to be considered part of the 'environment; against which an application for consent must be assessed, it must be 'more likely than not' that a development would be implemented. That case law is summarised as follows.

- The Court of Appeal in *Queenstown Lakes District Council v Hawthorn Estate Ltd* held:

In our view, the word "environment" embraces the future state of the environment as it might be modified by the utilisation of rights to carry out permitted activity under a district plan. It also includes the environment as it might be modified by the implementation of resource consents which have been granted at the time a particular application is considered, where it appears likely that those resource consents will be implemented.
- The Court of Appeal in *Far North District Council v Te Runanga-a-Iwi o Ngāti Kahu* similarly held:

In our judgment the Environment Court did not err in determining that it was required to take into account the likely future state of the environment as including the unimplemented land use consent for the purposes of s 104(1)(a) if it was satisfied that Carrington was likely to give effect to that consent.
- The Environment Court decision in *Otway Oasis Society Inc v Waikato Regional Council* considered whether a house for which a certificate of compliance had been obtained (meaning it was a permitted activity) formed part of the environment for the purposes of assessing the effects of a proposed chicken farm. The Court held the construction of the house needed to be 'likely', rather than simply 'non-fanciful', holding that "the non-fanciful test clearly sets a lower bar". In considering whether a future dwelling formed part of the environment, the Court held it needed to determine "*whether or not it is likely (in the sense of being more likely than not)*" that the dwelling would be established. It held the question was "to be determined on the basis of a real world assessment but does not require certainty".
- In determining the dwelling in that case was 'likely' to be constructed, a key matter the Court took into account was direct evidence from the landowners that they had a genuine current intention to build, had discussed funding with their bank manager (based on an affidavit from the manager), and had undertaken a subdivision as a step towards financing the new build. The Court found on the evidence that the house site was "*the most viable, suitable, and logical place to build and make it the likely site of a new house*". The Court distinguished an earlier decision, *Burgess v Selwyn District Council*, where a certificate of compliance for a new dwelling was, on the evidence, not sufficiently 'likely' to be constructed, and was excluded from being considered as part of the environment for the purposes of assessing effects of an application.

Consideration was also given to whether an offer under this head should be limited to where the proposed dwelling was intended to be a primary residence. While no such differentiation has been recommended for existing dwellings, given the focus on removing risk to life, where the house does not yet exist and the focus is on addressing hardship and inequitable outcomes, there is a greater argument for limiting the offer to where it was intended to be the main home for the owner.

While we have not recommended regard be had to whether the dwelling is intended to be a 'principal residence' we have recommended it be limited to where the dwelling is intended for use by the owner or their family. Without that requirement, the offer was considered too close to protecting a business or financial investment, not materially different to any other commercial activity which was affected by Cyclone Gabrielle.

A summary of the assessment of options for eligibility of properties without a dwelling is set out in **Table 2**.

5.2.5 Eligibility where property has changed hands since 13 February 2023

We have recommended that no offer be made where the ownership of the property has changed after 13 February 2023, other than to a related party of the previous owner. We do not understand there to be many, if any, properties in this category, but it was considered important that if properties have changed hands, the special circumstances process should be used to consider whether an offer is appropriate.

Where a purchaser has bought flood damaged property, in full knowledge of the impacts of the Cyclone and likely at a depressed market value at the time of the sale. Making an offer to that purchaser at pre-Cyclone levels would not be consistent with the principle of affordability to the ratepayer, particularly where any insurance payable to the previous owner would be unable to be deducted, as would ordinarily be the case (noting that there would be no ability to require the previous owner to disclose how much insurance was received).

If there has been a purchase in good faith, for instance of a property that was not materially damaged in the Cyclone, but has been classified as Category 3 after the sale, then the special circumstances path may be able to be used to make an offer to the new owner. Each case will need to be assessed on its merits, and there may need to be adjustments, for instance to adjust the date at which valuation is assessed, or to reflect insurance payments that were received by the previous owner (and possibly reflected in a reduced subsequent purchase price).

5.3 Evaluation of Options Summaries

Table 1 – Types of Residential Use

	OPTION 1: All Category 3 Properties	OPTION 2: All Category 3 Residential Properties	OPTION 3: Principal Residences Only	OPTION 4: Insured Residential Properties Only
OVERARCHING OBJECTIVE Removal of risk to life associated with people living in Category 3 land.	Consistent but too broad: Contributes to achieving objective but goes beyond that to capture activities not associated with people living in Cat 3.	Consistent: Captures residential activities where risk to life most significant and not broader than required.	Somewhat inconsistent: Captures most residential activities where risk to life most significant but does not address risk to people living in properties not currently a 'principal' residence.	Inconsistent: Captures most residential activities but fails to address situation of people living in Cat 3 who for whatever reason did not hold house insurance.
OBJECTIVE Residents have clear pathways and certainty about the offer	Consistent: Policy could be drafted to be clear and certain.	Consistent: Policy could be drafted to be clear and certain	Somewhat inconsistent: Lack of clarity in determining what is a principal residence.	Inconsistent: Uninsured properties have no pathway to relocate from Cat 3 land.
OBJECTIVE Long term positive outcomes for the whole community and the environment	Inconsistent: Purchasing non-residential land results in Council owning land otherwise suitable for other activities.	Consistent: Effectively removes risk to life where offer accepted which is a positive outcome for community. Non-residential land retained in private ownership for other suitable purposes.	Somewhat inconsistent: Removes some but not all risk to life. Non-residential land retained in private ownership for other suitable purposes.	Somewhat inconsistent: Removes some but not all risk to life. Non-residential land retained in private ownership for other suitable purposes
OBJECTIVE Affordability for ratepayers	Inconsistent: Significant cost to ratepayers and considered unaffordable.	Mainly consistent: Programme has been assessed as affordable based on current information although needs to be monitored.	Consistent: Lower cost compared to Options 1 and 2 due to reduced number of properties eligible for offer, although exact savings unknown.	Consistent: Lower cost compared to Options 1 and 2 due to reduced number of properties eligible for offer, although exact savings unknown.

PRINCIPLES	Unlikely to achieve timely outcomes as many more properties captured and more complex scenarios.	Considered consistent with principles.	Not necessarily inconsistent with principles.	Unlikely to achieve good faith and respect principles unless significantly more personal information known about circumstances to warrant a differentiation based on insurance status.
OVERALL COMMENT	This option is considered too broad and therefore inconsistent with some objectives and principles.	This option is considered to meet the objectives and principles, however affordability will need to be monitored.	This option is not considered to fully achieve the overarching objectives of removal of risk to life. The reduced cost is not considered sufficient to offset that more fundamental inconsistency.	This option is not considered to fully achieve the overarching objectives of removal of risk to life. The reduced cost is not considered sufficient to offset that more fundamental inconsistency.
CONCLUSION: Option 2 is recommended – All properties on Category 3 land where there is a residential activity will be eligible for an offer.				

Table 2 – Application to Land without an existing Dwelling

	OPTION 1: No Application where no Dwelling	OPTION 2: All Bare Land with a Residential ‘Right’ eligible	OPTION 3: Bare Land with a Residential ‘Right’ plus evidence of intention to implement is eligible	OPTION 3: Application to Bare Land at Council’s discretion (where Option 3 criteria met)
OVERARCHING OBJECTIVE Removal of risk to life associated with people living in Category 3 land.	Somewhat consistent: As there are no people living on the land there is no current risk to life. Future risk to life can be addressed by other mechanisms although these are not necessarily 100% certain.	Somewhat inconsistent: As there are no people living on the land there is no current risk to life. Future risk to life can be addressed by other mechanisms although this option secures that outcome.	Somewhat inconsistent: As there are no people living on the land there is no current risk to life. Future risk to life can be addressed by other mechanisms although this option secures that outcome.	Somewhat inconsistent: As there are no people living on the land there is no current risk to life. Future risk to life can be addressed by other mechanisms although this option secures that outcome.
OBJECTIVE Residents have clear pathways and certainty about the offer	Consistent: Lack of eligibility is clear.	Somewhat consistent: Requires ascertaining whether there is a residential right.	Somewhat inconsistent: Requires ascertaining whether there is a residential right plus assessment of evidence of an intention which is subjective.	Somewhat inconsistent: Dependent on Council discretion which does not provide a guaranteed pathway, however this could be subject to guidance through criteria.
OBJECTIVE Long term positive outcomes for the whole community and the environment	Consistent: Bare land can continue to be used for present purposes, which in many cases are productive.	Somewhat consistent: securing removal of residential activity from Cat 3 areas likely to be a long term positive outcome (although this may also be achieved through other mechanisms)	Somewhat consistent: securing removal of residential activity from Cat 3 areas likely to be a long term positive outcome (although this may also be achieved through other mechanisms)	Somewhat consistent: Council will take into account consistency with this objective as part of exercise of discretion.
OBJECTIVE Affordability for ratepayers	Consistent: This options does not involve any cost to ratepayers.	Somewhat inconsistent: A requirement to make an offer would increase the cost of the scheme.	Somewhat consistent: A requirement to make an offer would increase the cost of the scheme however the number of properties eligible would be quite small.	Somewhat consistent: Few properties likely to meet criteria and Council will take into account consistency with this objective as part of exercise of discretion.
PRINCIPLES	Considered consistent with principles although there may	Not necessarily inconsistent with principles.	Considered consistent with acting in good faith where	Considered consistent with acting in good faith and treating

	be some cases where landowners feel Councils are not acting in good faith.		people have, in good faith, incurred cost and effort in development of a residential property and through no fault of their own this can no longer be achieved.	people with respect to allow their individual circumstances to be considered on a case by case basis.
OVERALL COMMENT	This option is considered largely consistent with the objectives the Councils seek to achieve, however there may be a perception by some landowners that the principles of good faith and respect are not fully addressed by this option.	This option involves cost to the ratepayer in circumstances where it is unnecessary to achieve the overarching objective of removing risk to life of people living on Cat 3 land. This would effectively be paying landowners for potential value from land which is not an outcome sought by the Policy.	This option is considered mainly inconsistent with the identified objectives, although in some cases there may be some future risk to life if existing mechanisms available to Council are not sufficient. In some cases may be consistent with principles of good faith and respect, however a blanket policy cannot properly take into account personal circumstances.	This option is considered to have the best ability to meet all objectives and give effect to the principles of treating people with respect and acting in good faith.
<p>CONCLUSION: Option 4 is recommended – Council will have a discretion to make an offer based on personal circumstances, where appropriate criteria are satisfied. Criteria are recommended to require that there be a planning right to construct a dwelling and that there be evidence of a genuine intention of building a dwelling. It is recommended that it be a requirement that the intention relate to an intention for the owner or their family to reside there. It is not intended to provide compensation for pure financial loss given the focus of the Policy on addressing loss of risk to life.</p>				

5.4 Conclusion on Eligibility

For the reasons given above, the recommendation is that an offer should be available under the Policy to the Owner of land that is within Category 3 (or includes such land, noting that some land has a split categorisation) and has a lawful residential dwelling on the Category 3 area.

Where there is no current dwelling, but there is evidence of a genuine intention to exercise a right to construct a dwelling for the owner's personal use, we recommend this be considered on a case-by-case basis. Similarly, where minor aspects of the eligibility requirements are not met, we recommend that the Councils retain a discretion to extend an offer under a discretionary 'special circumstances' category.

6 Content of Offer

6.1 Option Identification and Evaluation Process

The next step is to consider what the offer will be made for.

In contrast to other situations, such as following the Christchurch Earthquakes, the properties affected are more diverse in terms of size, characteristics and activities conducted on them. The Category 3 properties most typically have a 'rural' type zoning, which anticipates productive activities, rather than being primarily focused on residential. Given the objective of reducing risk-to-life and the focus on making an offer where there is a dwelling involved, an offer does not necessarily need to be for purchase of the full property.

Options for the content of an offer considered whether, and if so, on what basis, properties should be bought in full as opposed to just the residential component of a property.

Consideration was also given to whether the content of the offer should be differentiated on other grounds. In the previous section, when considering eligibility, a recommendation was made not to exclude properties from an offer on the basis they were not insured. In terms of the nature of the offer however, there are further options available to insured properties given the availability of insurance proceeds to cover damage or replacement value. Consideration was given as to how best reflect these in the content of the offer, as well as considering whether insurance status generally should affect the content of the offer.

In addition, while we did not recommend differentiation on the basis of the different uses of a dwelling for the purposes of making an offer (e.g. whether a holiday home should be differentiated from a primary residence) we have considered whether there should nevertheless be a different offer made. That is, we considered whether there were grounds for making a less generous offer where the property was something other than a primary residence.

Under this section, we have also considered the date on which a valuation and offer should be based, and what the standard terms of an offer should include in order to best achieve the desired outcomes and principles.

In summary, the options for consideration under the content of the offer are:

- Whether properties should be purchased outright or whether an offer should be made to remove a dwelling only, with the Owner retaining the land;
- If a combined approach is taken, what is the threshold between an outright purchase and a residential use rights purpose?
- Whether the content of the offer should vary depending on insurance status;
- Whether the content of the offer should vary based on other matters;

- What other terms should be included as part of the content of an offer?

These are considered below.

6.2 Evaluation of Content Options

6.2.1 Outright purchase or dwelling only?

In a world of unlimited funds, the simplest option would be for the Council to make an offer to buy all Category 3 land outright. However, many of the affected properties are large rural properties with viable productive uses which would be cost-prohibitive for Council to buy outright and would be inconsistent with the objective of affordability to ratepayers. This would also go significantly further than what is necessary to remove risk-to-life associated with Category 3 land and could result in the Councils between them owning large tracts of land. Land ownership, particularly at this scale, is not a core role of local government, nor is it likely to result in the best productive and commercial use of the land.

The main alternative considered was to narrow down the purchase offer to residential use only, and essentially to exclude the purchase of any land. This would involve Council buying and demolishing the dwelling, and paying the owners a contribution to allow them to relocate off Category 3 land. Given the Council would not own the land, the consideration for the relocation grant would be an agreement by the owner not to undertake any residential activity on the Category 3 land. It is proposed that this be secured by covenant or similar legal instrument on the title to the land to ensure that future owners would have specific notice of the bar on residential use.

We also suggest that the covenant in gross in favour of the Council or similar legal instrument prevent the owner from opposing any future plan change or variation to the District Plan (or equivalent legal instrument) that would restrict or prevent residential activity within Category 3 in the future. While such a change to the planning regime is not yet proposed, there is a reasonable prospect of this following in the near future. It would be contrary to the spirit of the agreement reached between the Council and a Category 3 landowner to effectively pay to extinguish their residential rights over a property for them to then seek a different outcome through a planning process. This is considered a reasonable 'quid pro quo' for the payment of a relocation grant to allow residential use to be extinguished on Category 3 land and established elsewhere at the owner's election.

The issue with the 'Relocation' option is that all land would remain privately owned but, particularly for smaller lots, there would be no realistic ongoing value in them for the owners, and it is likely they would be effectively abandoned. Management of privately owned but not maintained lots would be problematic for Council and is not considered to result in positive outcomes, either for the wider environment or the community.

In considering the disadvantages of the above options, the downside of purchasing property is related to larger scale properties with viable alternative uses, and the downside of buying the residential right only is related to smaller scale properties, without such viable alternative uses. As such, a hybrid scheme was considered which would involve buy out of properties where the deemed use is primarily residential, and a 'relocation' approach would be used for larger, mixed use properties.

This option will mean Council will own a number of smaller properties that are no longer suitable for residential uses and are unlikely to have much potential for productive uses. However, having one owner, i.e Council owning these, rather than having them retained in multiple private ownership, potentially unlocks the ability to manage collectively, amalgamate or sell to other users who can make use of the lots. This is considered to be consistent with the outcome sought of enabling positive environmental and community outcomes.

During the process of developing the policy, a question was raised as to whether, if an owner of one of these smaller properties wished to retain the land and agree to remove the residential use, they should be precluded from doing that. On reflection, the answer was no – there are feasibly some owners who may have an ongoing use for a smaller-scale property even after residential uses are removed, for instance, to graze horses or stock. In those circumstances, and provided the option to use the land for residential activity is physically and legally removed, there is no reason why Council should insist on securing the land itself, particularly where doing so would result in greater cost. We have recommended that the option of an offer for house plus relocation grant be left open for owners should they wish to retain ownership of the land. The flipside is whether it should be open for larger properties to take up a complete buy-out option, if they do not wish to retain their land.

This option would result in increased cost to Council as it would be obliged to buy more properties outright. Having the discretion as to which path to follow rest solely with the landowner would create significant financial uncertainty for the Council and ratepayers. Many of the disadvantages associated with the option of Council buying out all land would accrue under this option.

We recognise that there will be some cases where the ability to use land for non-residential purposes will have been compromised by Cyclone Gabrielle, or where its characteristics are such that it was only ever viable for residential use. We recommend that those situations be considered on a case-by-case basis under the ‘special circumstances’ discretionary clause proposed to be included in the policy, rather than as a ‘right’ vested in the owner.

Our assessment of these options is summarised in **Table 3** below.

6.2.2 Threshold between Residential Property and Mixed-Use Property

Having determined it is appropriate to take a differing approach where the predominant use is residential (“Residential Property”) and where there are other uses (“Mixed Use Property”), an important point is where to draw the line between what is considered a primarily residential property, which we recommend be eligible for a buy-out offer, and a ‘mixed use’ property where other uses are likely to be viable and a dwelling plus relocation grant approach is recommended.

We considered other measures of when a property is deemed to be residential as opposed to ‘rural’, ‘commercial’ or something other than residential. Such matters included:

- In the Hastings District Plan, a “lifestyle” site in the Rural Zone is 2.5 ha or 0.5 ha in the Plains Production Zone (the two predominant zones applying to Category 3 land);
- In the Napier District Plan, the minimum lot size within the Main Rural Zone is 4 ha;
- The Hastings District Long Term Plan sets a rating differential which deems land 1 ha or less to be ‘residential’;
- The Napier City Long Term Plan provides a rating differential which sees anything less than 5 ha as being residential.

The lack of consistency here meant we did not consider these to be helpful in identifying a clear demarcation between lots sizes considered residential and as suitable for other uses.

A further option considered was to use a quantitative assessment to determine where land was primarily residential, and where it was mixed use. This would have required a valuation exercise on each property to determine its ‘highest and best’ use, or how much of its value was tied up in residential activity. We would then have had to nominate a percentage of value over which a property would be deemed predominantly residential. Given the desired outcome of

providing residents with clear pathways and certainty about the offer, this approach was considered unnecessarily complex and uncertain. An owner would have no understanding of what pathway they could follow until a site-specific valuation had been undertaken, noting of course that the owner's valuer may then reach a different conclusion.

On a valuation basis, John Reid (Added Valuation Limited) prepared the assessment attached as **Appendix E**, which considered the point at which the residential value of a property accounted for, on average, approximately 75%, or more, of the value of a property. This was identified as being 2 ha. Mr. Reid's professional opinion was that this is an effective proxy for where the value of a property is primarily residential.

Putting in place a threshold of 2 ha for where a property is eligible for a property purchase offer or a relocation offer is considered to be a useful and clear demarcation, which is justified by the valuation advice. As with any 'threshold' applied, there is an element of arbitrariness, however we consider this is more supportable than any other option available.

Where the 2 ha threshold results in unreasonable outcomes, the special circumstances discretionary clause may be used to address those situations.

6.2.3 Relevance of insurance claim settlement status

In the previous section, reasons were given for not excluding owners from offers based on insurance status, however the question of whether there should be a different offer is separate.

Insurance remains a critical aspect of the recovery from Cyclone Gabrielle and the vast majority of properties had some form of cover. That needs to be taken into account in terms of the content of any offer. We have been conscious that, where we are proposing to provide an offer to uninsured properties, the need to account for insurance should not result in any material disadvantage to those who have fully insured.

As part of the assessment process, there has been engagement with the insurance industry which has been very useful in understanding how best to accommodate insurance payments within the overall scheme.

Insurance Companies that we engaged with outlined how case law has developed when considering whether to apply a replacement value approach or an indemnity value approach to claims settlement. Most policies are now based on replacement value with approximately 60% of insurers having a "Sum Insured" cap. Replacement value will be offered where repairs or reinstatement is going to occur on the existing site. Where a Property Owner decides not to rebuild on the current site and rebuild on a different site then only indemnity value is payable, which is significantly less than the amount payable under a replacement value policy.

Insurers have signalled that even though the Council will be making an offer to buy the property and the building will not be reinstated on that site, they are still willing to settle with the property owner based on replacement value. Should Councils seek to purchase the property and have the insurance claim assigned to them, then the Councils will only be offered indemnity value.

Accordingly, it is in the best interests of the Councils, and their ratepayers, to wait until the insurance claims have been substantially settled, using replacement value, before commencing proceedings. Councils will seek that the Property Owner substantially settle their insurance claims before a Sale and Purchase Agreement is entered into.

When determining the basis of offers made the approach adopted following the Canterbury earthquakes was identified as a good model to follow in that it gave Property Owners an option, as well as enabling them to maximise the benefit they had of being fully insured.

In Canterbury, for red zone residential property, Property Owners could elect either to accept an offer based on:

- The Capital Value of their property, less insurance recoveries received; or
- Retain the Insurance proceeds and the Crown just purchases the land at Land Value.

It was considered that when making an offer to Property Owners they would be given the choice, where the property is 2ha or less that the Councils would make an offer to:

- Purchase the property at market value, less insurance proceeds, or
- Enable the Property Owner to retain any insurance proceeds, and the Council buys the land.

This enables the Property Owner to determine which is most advantageous to them. It is expected that those who are fully insured are likely to select the second option as the full replacement cost of dwelling is likely to exceed the market value of the dwelling. Those that are uninsured, under-insured or have only limited damage to their dwelling will most likely benefit from the first option of receiving a market value offer for their property, less insurance proceeds.

An additional point in respect of properties the Council is offering to purchase outright relates to the EQC payment for damage to the land. The term 'Insurance Proceeds' is defined in the proposed Policy to include any payment from EQC. Where insured owners take the first option of receiving market value, all Insurance Proceeds are deducted from the market value of the land, including the EQC payment. If the insurance payment includes \$50,000 for land damage, Council effectively pays \$50,000 less to the owner than it otherwise would have had to.

In the situation where an owner opts to retain the insurance proceeds for the dwelling, and have Council pay for the land only, the owner may have received a payment in respect of damage to the land (for instance, for silt removal) from EQC. As the Council is acquiring the land at its market value, and taking on responsibility for its clearance, the EQC payment should effectively pass to the Council. We therefore propose that the EQC component of insurance proceeds under that option should be deducted from any payment by the Council.

However, this potentially results in a disadvantage to insured owners compared to uninsured. In both scenarios for the insured, an amount for damage to land is paid by EQC and deducted from the total amount paid by the Council to the owner. The Council effectively receives a payment to reflect damage to the land it is purchasing and which it will be responsible for fixing. Where there is no insurance recovery, there is no EQC payment that can pass to the Council. In the interests of equity between owners, we consider an assessment should be made as to the amount that would have been recoverable from EQC if the property had been insured, and that amount should be deducted from the price to be paid.

We acknowledge that this may be perceived as unfair by those who are not insured. However the alternative would be to not recover the EQC payment for damage to land from any owner. This would result in Council incurring costs for repair to land where those costs had been paid for by EQC but not passed to the body undertaking the work. That would not be consistent with the principle of affordability to ratepayers. On balance, we think this is the best outcome available. The Councils will need to take appropriate advice to support an assessment of the quantum of the EQC equivalent amount as part of their implementation of the Policy.

In respect of properties over 2ha a similar choice will be made where the Council would offer to purchase the dwelling and residential improvements at market value less insurance proceeds, or enable the Property Owner to elect to retain the insurance proceeds relating to

the dwelling and residential improvements. In both cases the Council would also make a Relocation grant.

The benefit of this approach to Councils is that where the insurance proceeds are significant and the owner elects to retain them, then the Council is only exposed to the cost of the land which results in lower cost to the Council. It also encourages people to engage and to settle with their insurers, therefore helping deliver on the overarching objective that results in people leaving Category 3 land, thereby reducing risk to life.

The option of only making offers of market value less insurance recoveries was considered and discounted, as it does not reward those who have been fully insured and provides them no benefit.

Note that because of the importance of understanding the extent and terms of an insurance payout when preparing an offer, it is proposed that the owner will need to agree to provide the Council with all relevant insurance claim settlement information, including the Scope of Works and the Insurance Settlement Sheet that their Insurer has provided. The Council may also require the owner to make enquiries of their insurer on behalf of the Council. Agreement to disclosing information provided by the insurer is proposed to be a prerequisite to receiving an offer.

6.2.4 Impact of Insurance Status on the Offers considered

Where properties are uninsured, the option to retain the replacement value of the house does not apply, so the valuation option will be the only applicable option.

Some feedback suggested uninsured properties should have their offer further reduced, for instance, deducting the average value of the excess paid by insured property owners, or the average value of the premiums.

While we have given careful consideration to whether it would be appropriate to offer a reduced amount to uninsured properties, the view reached is that would not be appropriate because:

- The overarching objective is to reduce risk to life from residential use within Category 3 areas. A reduced offer would be inconsistent with that objective and may disincentivize acceptance.
- While decisions as to land categorisation have been made following public consultation, no individual consultation has been done with Category 3 property owners as to whether or why they may be uninsured. Such investigation of personal circumstances would be required to warrant differentiation following the *Quake Outcasts* decision, but is considered to be inconsistent with the outcome sought and overly invasive of persons who have already suffered significant loss and trauma from the Cyclone;
- The marginal additional cost of acquiring properties that are uninsured has not been assessed but is not expected to be significant in the wider scheme.
- A material number of properties are underinsured. It has not been suggested that those people would have their offer reduced.
- The approach suggested of offering options to those that are insured effectively provides them with a pathway to an overall better outcome, without explicitly 'punishing' the uninsured.

The same general considerations apply as were discussed in the previous section in terms of the *Quake Outcasts* decisions. At the end of the day, we come back to the overarching objective of removing risk-to-life, and efforts to sanction people for not having chosen to take out insurance are simply not conducive to achieving this outcome. As outlined above, fully

insured owners are likely to receive a beneficial outcome compared to under or uninsured properties. We do not think any of the outcomes sought to be achieved by the policy will be materially assisted by further reducing any payment to uninsured owners.

6.2.5 Relevance of any other differentials

As noted in earlier sections, where matters were considered in terms of whether an offer should be made at all, we have also considered whether a differential offer should be made. This included consideration of whether the offer might be reduced for second homes; or possibly a base level of, say 75% of value offered, with a 'bonus' 25% paid where the dwelling was a principal residence.

Factors that may have warranted a differentiated approach included:

- A preference for generosity or reflection of greater hardship where a principal residence is involved, rather than a home where residential occupation is more 'optional';
- The possibility of achieving the objectives of the policy with lower financial outlay.

However, again, the view reached following elected member sessions, public feedback and internal discussions was that the priority is to remove residential uses from the Category 3 areas, and that any type of residential unit has the potential to be used for temporary or permanent residential occupation if not removed. Similar reasons applied for ruling out differential approaches as for insured properties in that it is not considered appropriate for the Council to inquire into and make judgements on individual circumstances in this way, and the marginal cost was not considered likely to be significant.

Consistent with the Supreme Court's comments in the *Quake Outcasts* decision, an area-wide approach has been taken to categorising land, and an area-wide solution is proposed.

6.2.6 Date of valuation

A further question was how the value of a property was to be determined in order to inform an offer. Options considered were:

- The most recent Rating Valuation;
- A market valuation, as at 13 February 2023 (the day before the effects of Cyclone Gabrielle were felt);
- A market valuation at or around the date of the offer (say, 1 October 2023), but disregarding the effects of Cyclone Gabrielle.

The option of valuing properties based on a post-Cyclone basis was not considered as, in almost all cases, this would not be at a level that would materially assist people to relocate to another property outside of Category 3. It would therefore fail to meet the overarching objective of removing risk to life within Category 3 areas by a considerable margin.

In terms of the option of applying the Rateable Valuation, we took advice from John Reid, a registered valuer advising the Councils, who noted that the 1 August 2022 Rating valuation for Hastings District Council was released to owners in June 2023 after the Valuer General requested more assurances during their Audit process. Mr Reid advised that these valuations are completed using mass appraisal techniques and are used primarily for assessing the local authority rates. In most cases the individual properties would not have been inspected and accordingly the valuations become a statistical average based on a basket of sales. We understand that only when there is a building consent or change to the land (subdivision, zone change or similar) would the valuation provider (Quotable Value) have reason to inspect the property and amend/upgrade the valuation. There are many properties that would not have been inspected for 20 or more years.

Mr Reid advised that for the purchase of circa 300 properties, the sum of the new 2022 valuations would give an approximate idea of the likely cost, but that there may be 25% that are too low and 25% too high based on a standard distribution. Mr Reid's view was that an individual property valuation would result in a much more accurate and fairer outcome.

In terms of the date for a valuation, we understand that some councils outside Hawke's Bay are investigating using a later date to reflect the fact that the property market may have fallen since early 2023, and a current valuation, adjusted to ignore the effects of Cyclone Gabrielle, would be appropriate to reflect the point at which the owners were re-entering the property market.

While recognising that may well be appropriate in other districts, we did not consider it would be a good fit for the Hastings or Napier areas. Valuation advice to the Councils is that the local market has been disrupted in many ways by the Cyclone. Damaged properties in flood impacted locations have not functioned efficiently and the few transactions are not reflective of the broader market. Segments of the property market have strengthened since the event, because of the insurance payouts and displaced property owners needing to purchase. Further, even if it is not correct, there may be a perception that any fall has been a result of or at least contributed to by Cyclone Gabrielle itself, so separating out the influence of the Cyclone would not be straightforward. We are also conscious that Category 3 owners have not been in a position to sell their property on an open and fully efficient market since the event and have therefore not had the opportunity to sell when prices were perhaps slightly higher. Much of the feedback from the community engagement supported an offer being set at a pre-event market valuation.

We agree that assessing value as at 13 February 2023, a day prior to Cyclone Gabrielle, is an appropriate measure of what people in Category 3 are being asked to give up. We consider this provides a level of payment that fairly represents what such owners had prior to the event, and which is consistent with allowing them to relocate out of Category 3 areas.

6.2.7 Measure of the Relocation Grant

For Mixed-Use properties, and those Residential Property Owners that wish to retain their land, they will be made a Residential Relocation offer, whereby a relocation grant will be made for their land. The Relocation grant will be determined based on the residential use right of the land. The value of residential use right is essentially the difference between what the land is worth with the right to build a dwelling versus there being no right to build a dwelling on a property. Generally, the smaller the property's size, the greater the portion of the value of the property is reflected in the right to build a dwelling.

For these properties the valuation of each property will be undertaken and will be valued on a dwelling and curtilage basis, being a fair apportionment of the total valuation. Effectively, the value of the curtilage is synonymous with the residential use right and therefore the basis of the grant payment, despite the owner of a Mixed-Use property retaining all of their land.

Different options were considered on how that Relocation grant could be determined including a fixed grant applicable to eligible properties across the Districts, a fixed grant payable to each property in a specified locality (e.g. Esk Valley), or based on valuation.

It was felt that applying a fixed amount would not reflect the circumstances of each property, and hence the fairest way of determining the amount was based on a valuation given the wide range of property types and values relating to the eligible properties. Further, as site visits and valuations would need to be undertaken in any event to value the dwelling and residential improvements it was felt it was best to undertake a complete valuation of the dwelling, residential improvements and curtilage that would provide a fairer and more objective basis for valuing the residential use right.

6.2.8 Standard terms

The recommended policy includes a number of ‘standard terms’ which will apply to any agreement to purchase a Residential Property or the house and relocation grant for a Mixed-Use property. Each of these terms was considered in detail through the development of the policy, however, in terms of their impact on landowners, they are likely less critical than some of the decisions which have been canvassed in more detail in this report. Therefore, rather than set out the full analysis for each proposed term, we have set out each term and explained why it is considered necessary, together with any alternative considered.

- *Following settlement, any Dwelling and Residential Improvements within Category 3 land will be removed from the Site if reasonably practicable or otherwise demolished by Council and the site appropriately reinstated. For the avoidance of doubt, reinstatement does not include removal of silt or full site clearance for use for any non-residential purpose.*

Given the overarching objective of removing risk to life from people living in Category 3 areas, it is considered important that dwellings be physically removed from the land. If not removed, there is a risk that, over time, the buildings will start to be used for residential activity once again, meaning the risk has not been appropriately addressed. Removing the dwellings and related improvements provides the opportunity for those areas of the properties to be used for other purposes, which is consistent with the objective of providing long term positive outcomes for the community and the environment.

We have suggested that there be a preference for relocation if reasonably practicable and viable. In many cases where dwellings have been significantly damaged by the Cyclone, relocation will not be possible, and there will be other situations where cost and other logistical issues mean relocation is not feasible. This clause simply indicates that the feasibility of relocation should be considered.

In some instances, an owner may wish to retain their house, on a new site. We anticipate that those types of discussions will be had at the preliminary meeting, described below, and the cost implications of that can be factored into the valuation and offer process. This will need to be assessed on a case-by-case basis.

- *From the date of execution of the Sale and Purchase Agreement, the Owner agrees not to remove any part of the Dwelling or Residential Improvements from the site.*

This clause reflects the fact that the Council and the Owner will have entered a contract to buy the Dwelling and Residential Improvements, and that, in short, the Council should receive what it has paid for.

We anticipate there may be items that the owners wish to take with them after the sale, however these should be identified at the preliminary meeting so they can be excluded from the valuation if necessary.

We understand that the Councils’ contracts for demolition are likely to include a salvage clause which provides for the contractor to sell what it can from properties. This enables the contractor to provide a lower price to the Councils, and is therefore consistent with the principle of providing affordability to ratepayers. Should a property owner wish to retain an item of value, then that would be a matter for negotiation between the property owner and the demolition contractor.

- *The Council and the Owner shall agree a mutually acceptable settlement date.*

We contemplated a set period within which settlement would be required to occur, particularly given the objective of removing risk to life and providing timely outcomes. However, given the wide range of personal circumstances that will apply across Category 3 property owners, we

considered it was appropriate – and consistent with the principles of acting in good faith and treating people with respect – to enable agreement as to a date for settlement.

- *The Council will agree to reimburse the Owner, on receipt of appropriate invoices, for the reasonable costs of a valuation by a Registered Valuer and legal advice where those costs have been incurred prior to the offer being presented to the Owner, up to maximum of \$5,000 (excl. GST). On the date of settlement the Council will also pay all reasonable legal costs related to finalising the sale and purchase agreement and conveyancing costs up to a maximum of \$5,000 (excl GST).*

Both Councils considered it important that owners be enabled to take proper advice about the offer process, and the implications of accepting or declining an offer. Providing funding for this purpose was considered to be consistent with the objective of providing a clear pathway for residents, and with the principles of acting in good faith and treating people with respect.

The reimbursement of costs up to \$5,000, excluding GST, for each property obviously has a cost, and this was evaluated against the objective of achieving affordability for ratepayers. However, provided the costs were capped, they were considered to be warranted in the circumstances. These costs, as well as a provision for legal costs of \$5,000, excluding GST, associated with finalising the sale and purchase agreement and conveyancing costs, have been factored into the Councils' budgets.

- *Any payment made by the Council under the offer, except payments made under clause 4.9, will be paid to the Owner's solicitor who will attend to any payment owing to any security holder (e.g. Owner's bank) where there is a mortgage or other equivalent encumbrance over the Property (except where the security holder agrees otherwise).*

Where there is still a mortgage or other form of security over a property, then it is incumbent that settlement payments are passed to the first registered security holder in the first instance. Legal advice from a property law expert was that the above was the appropriate way to describe the approach to payments. Reimbursement costs associated with assisting the property owner to receive appropriate support and advice (described in clause 4.9) would be made directly to the property owner on submission of supporting receipts.

- *Acceptance of the offer made by the Council is voluntary. The Council and the Owner acknowledge that the land is not being taken for a public work, and that the Owner waives any right to have the property offered back to it or its successor if Council decides to dispose of it.*

This clause requires an acknowledgement that the land is not being taken by way of compulsory acquisition under the Public Works Act or in any other form. The acquisition of land in order to enable removal of risk to life is not a typical activity for the Councils, as indicated by the fact that a new activity was introduced into the Councils' Long Term Plans to account for it.

Under the Public Works Act 1981, when land is held for a public work and is no longer required for that purpose, there are a number of obligations as to how it must be dealt with, including offering the land back to its former owner. As the land is not, in this case, being taken for or held for a public work, those obligations will not arise. The Councils are likely to look to sell much of the land to enable it to be used for other, most likely productive, purposes. It is appropriate to record this position in any sale and purchase agreement, for the avoidance of doubt.

- *The offer will include GST, if any.*

This is self explanatory and for the avoidance of doubt. Property owners will need to seek their own taxation advice, as relevant. We anticipate that the \$5,000 allowance can be used for this purpose, if required.

- *For the avoidance of doubt, the offer will not extend to the purchase of chattels or home contents that could be subject to a contents insurance policy and any such items will be excluded in valuing the Property Purchase Offer or Residential Relocation Offer (as the case may be).*

This clause is self-explanatory.

6.2.9 Summary of Evaluation of Options

Table 3 – Outright purchase versus relocation grant option

	OPTION 1: Purchase all eligible properties	OPTION 2: Purchase dwellings and provide relocation grant for all eligible properties	OPTION 3: Distinguish between purchasing properties 2ha or less, and purchasing dwelling and relocation grant for properties over 2ha
OVERARCHING OBJECTIVE Removal of risk to life associated with people living in Category 3 land.	Consistent but too broad: All properties with residential uses would become owned by Council (if offer accepted). However, Council would also own significant amount of land not used for residential purposes. Take up likely to be lower if owner has viable use for larger land.	Consistent. Purchasing house plus a relocation grant would enable people to relocate providing payment sufficient.	Consistent: Enables removal of risk to life associated with dwellings without being too broad.
OBJECTIVE Residents have clear pathways and certainty about the offer	Consistent: All Category 3 properties with dwellings would be subject to same offer, so clear.	Consistent: All Category 3 properties with dwellings would be subject to same offer, so clear, although valuing relocation grant may be tricky.	Consistent: Proposal is to provide a bright line test of 2 ha. Owners will know their entitlement based on lot size.
OBJECTIVE Long term positive outcomes for the whole community and the environment	Inconsistent: Council owning significant areas of land, particularly productive land, is a poor outcome.	Inconsistent: This approach would see many smaller parcels with no viable use other than residential likely abandoned and not cared for.	Mostly consistent: This approach addresses the disadvantages of options 1 and 2 by reducing the amount of land Council owns while trying to avoid the situation of abandoned land not suitable for other purposes.
OBJECTIVE Affordability for ratepayers	Inconsistent: Costs would be significant. Some costs may be able to be recouped by selling land back to market with residential rights removed, however demand assumed limited.	Somewhat consistent (depending on valuation): Costs would be limited to removing residential activity, however administrative costs associated with abandoned properties not owned by Council are unknown.	Somewhat consistent (depending on valuation): Council will still be required to buy significant areas of land but limited to smaller lots. Some costs may be able to be recouped by selling land back to market with residential rights removed, with

			potential for smaller lots to be amalgamated and sold for productive purposes. Demand assumed limited.
PRINCIPLES	Not inconsistent with principles.	Messaging around only providing a relocation grant may be confusing. Query whether community would be see this as acting in good faith.	Not inconsistent with principles.
OVERALL COMMENT	This option is considered unmanageable and unaffordable for Council, and likely to result in poor community and environmental outcomes.	This option is considered likely to result in land which is effectively abandoned which is a poor community and environmental outcome.	This option is considered to best capture the advantages of both options, while minimising the disadvantages.
<p>CONCLUSION: Option 3 is recommended – An offer to purchase the entire property should be made when the size is such that it is deemed to be primarily residential (identified as 2 ha, see analysis elsewhere) and an offer to purchase the dwelling plus provide a relocation grant where the size enables more than residential.</p> <p>However, in light of the fact that Council does not particularly wish to own land, it is also recommended that for smaller properties, the Owner have the option of retaining the land and taking the dwelling plus relocation grant option if they have a viable ongoing use for the land.</p>			

6.3 Conclusion on Content

The section of the Policy on the content of the offer is reasonably detailed, and the evaluation has focused on different aspects of the proposed approach. Stepping back from the individual components, we have considered whether the content of the offer overall delivers on the objectives and principles of the Policy. We consider:

- The proposed content is considered to provide a fair offer in an amount which should enable owners to relocate out of Category 3. Owners are also provided with access to financial support to obtain appropriate legal and valuation advice so they are properly informed. This is consistent with removing risk to life for people living on Category 3 land.
- We have sought to identify clear pathways for owners in different scenarios and to state upfront, to the extent possible, what an offer will likely include.
- We have sought to balance the impracticality of owners retaining smaller land sections with the undesirability of Councils owning large tracts of land. The differentiation between Residential Properties and Mixed-Use Properties seeks to achieve long term positive outcomes for the community and the environment.
- Similarly, we have borne in mind the need to achieve a programme that is affordable to ratepayers, while still achieving all of the above objectives. We consider a reasonable balance has been struck here, although this objective is primarily achieved through other aspects of the Policy (for instance, eligibility).
- Overall, we consider that the proposed content of the offer is consistent with the principles of the Policy, particularly in providing funding for owners to obtain professional advice, so that they can be fully informed about the process.

7 Offer Process

7.1 Option Identification and Evaluation Process

A range of options around the process for making an offer to owners was considered. The decision to use a market valuation approach, rather than using the rateable valuation, was taken given the individual complexities of the properties. This makes things slightly more complex, as there is no current, fixed, value which can simply become the basis of the offer.

The broad options considered (with a number of iterations of each being considered along the way) were:

- An offer based on a market valuation undertaken on behalf of Council;
- An offer based on a market valuation undertaken on behalf of Council, but with an opportunity for the owner to provide any information they wish to have taken into account at a preliminary meeting;
- A staggered approach, where the owner has the opportunity, should they wish, to secure a registered valuation (which is eligible for the Council to contribute towards its cost) and provides that to the Council's representative. The Council would also secure a registered valuation, and would use the valuations to inform the Council's offer.;
- A formal, simultaneous exchange of valuations approach, with an opportunity for arbitration to agree a price.

These are considered in the table below.

7.2 Evaluation of Process Options

Table 4 – Process Options

	OPTION 1: Single Offer	OPTION 2: Full Negotiation	OPTION 3: Bespoke Process including preliminary meeting, TBD Process with provision for owner to engage valuer
OVERARCHING OBJECTIVE Removal of risk to life associated with people living in Category 3 land.	Consistent: This process would involve a fair market value offer being made, although lack of opportunity to participate in the valuation may reduce acceptance.	Consistent: This process would involve a fair market value offer being made, although timeliness is an issue.	Consistent: This process also involves a fair market offer being made and seeks to allow for owner engagement while maintaining timeliness.
OBJECTIVE Residents have clear pathways and certainty about the offer	Consistent: Owners would have certainty of the offer at an early stage.	Somewhat consistent: While being a clear pathway, the level of certainty associated with it is lower as the process of negotiation over price would be protracted and the outcome uncertain.	Consistent (once process is available): It is intended that a clear process will be set out in the Valuation Process document.
OBJECTIVE Long term positive outcomes for the whole community and the environment	Consistent	Consistent	Consistent
OBJECTIVE Affordability for ratepayers	Consistent: Market value would be paid in all options, but this option has the lowest overhead cost to reach it (valuer only).	Inconsistent: Market value would be paid in all options but this option involves high overheads including Council paying for the owner's valuation, both valuers' time for a meeting and then for all parties to participate in arbitration.	Somewhat consistent: Market value would be paid in all options. This option has a higher overhead cost as it involves paying for the owner to engage a valuer and has process costs in between the other options.
PRINCIPLES	This option has the potential to be perceived as inconsistent with acting in good faith and treating people with	This option has the potential to be inconsistent with achieving timely outcomes, as a full negotiation process	This option is considered to be consistent with all principles.

	respect, as they have no opportunity to engage in the valuation process.	is expected to take significant time to reach an outcome.	
OVERALL COMMENT	While efficient, this option is likely to be viewed with scepticism by owners and may result in lower acceptance rates.	This option is considered to be too unwieldy to be useful, resulting in delays and probably stress to owners, as well as being costly to operate.	This option is designed to allow for owner participation, through providing information and obtaining their own valuation, and being cost-efficient.
<p>CONCLUSION: Option 3 is recommended – A Valuation Process will be prepared as its own document which clearly sets out the process to be followed in preparing and making an offer under the Policy. The Process will provide an opportunity for an initial meeting for the owner and their support people to ensure the valuer has appropriate information about their property, and an opportunity for the owner to obtain a valuation from a registered valuer which will be taken into account in preparing the offer to the Owner. Provision for a capped contribution to valuation fees is proposed to be a term of the agreement as outlined above.</p>			

7.3 Conclusion on Process

While we spent considerable time considering different approaches to valuation, in the end we found it unnecessary for the Policy to specify this, and considered it appropriate for a valuation process to be set out in a separate document that can be provided to owners. This allows the process to be discussed with those engaged to deliver the offers (with the process for engaging these people having commenced but not concluded at the time of the Policy preparation) and to be slightly more flexible than if it is written into the Policy itself.

Nevertheless, to ensure the process achieves the objectives and principles of the Policy, we have recommended some minimum steps and requirements that owners can expect, including:

- A preliminary meeting where the owner can explain any particular aspects of their property or situation they wish to have taken into account, or aspirations for the future that may be relevant to the valuation or terms of the offer. We consider this to be consistent with the principle of treating people with respect, and ultimately should enable a fit-for-purpose offer meaning higher take-up;
- A valuation process which at a minimum involves the council obtaining a valuation from a registered valuer and enabling the owner to do the same. This is consistent with acting in good faith and with respect, while also seeking to achieve affordability for ratepayers by using professional registered valuers;
- An offer being made to the owner which is open for 3 months, with provision for that to be extended if substantive progress is being made towards an agreement. Having a clear offer open for acceptance for a set period is consistent with providing a clear pathway and certainty, as well as the principle of working to achieve timely outcomes.

Overall, we consider the process identified represents an appropriate approach which will provide owners with a pathway to relocate away from Category 3 land, thereby achieving the overarching outcome of the Policy.

8 Special Circumstances / Disputes and Appeal Processes

8.1 Option Identification and Evaluation Process

We have already outlined our consideration of the application of the Policy to properties in Category 3 which do not currently have a dwelling but where a dwelling was in genuine contemplation. We have recommended a separate section of the Policy on that.

We also considered whether a general 'Special Circumstances' section would be likely to be required, given the wide range of property characteristics and circumstances affected by a Category 3 classification. Broad options considered were:

- No provision for departure from the policy;
- Broad discretion to enable appropriate outcomes;
- Limited discretion for departure from the policy, with guidance provided.

We also considered options for a dispute process, including:

- No dispute process
- Full dispute or appeal process with recourse to mediation or determination by a higher body
- Limited dispute process by way of review by the Council's Chief Executive.

Our assessment is discussed below.

8.2 Evaluation of Options for Special Circumstances

When we initially started drafting the Policy, we did not anticipate a need for a special circumstances category. However, anecdotes from many people we engaged with, and as shown in the submissions received, revealed the wide range of situations at play across Hastings and Napier as a result of Cyclone Gabrielle, and the need to be alive to those matters. In addition, every time there is a threshold put in place, there will inevitably be someone just on the wrong side of that threshold for their situation – an example of this is that there are several properties in Category 3 in Napier which are only marginally over the 2 ha threshold for being a Residential, as opposed to a Mixed Use Property.

Rather than try to anticipate every situation in a policy, we have suggested there be an ability for discretion to be exercised on a limited basis.

In order to ensure the intent of the Policy is not undermined by decisions which dramatically depart from it, we have recommended there be matters listed to which regard must be had. The matters we consider should be required to be had regard to in any ‘special circumstances’ situation are:

- The overarching objective of removing risk-to-life associated with residential activity within Category 3 areas and other objectives and principles of the Policy;
- The reasons for, extent of, and implications of any departure from the Policy;
- Whether the departure involves any increased cost to the Council.

We have also recommended that any decision be made by the Council or its delegate and recorded in writing.

The intention is that any decision would have at its heart the overarching objective of removing risk-to-life, and would consider whether strict application of the Policy in the particular circumstances would fail to achieve that outcome and the remaining objectives and principles. Reference to considering the reasons for, extent of, and implications of departing from the Policy, will allow regard to be had to whether a decision would be unfair to other owners who have had the Policy apply strictly to them; or undermine the ability of the Councils to continue to administer the Policy on its own terms (i.e. whether an adverse precedent might be set).

We also consider it critical to emphasise that the financial implications of any decision to depart from the Policy should be expressly considered. This is not intended to ‘double count’ the objective of affordability to ratepayers, but does require particular attention to the real cost of a decision.

8.3 Evaluation of Options for Disputes and Appeal Processes

Because the acceptance of an offer is voluntary, if an owner is not happy with an offer that has been made under the policy, they have the absolute discretion to reject it. That being said, and acknowledging that such an outcome is not the Councils’ desire, we recommend a limited dispute process, by which an owner can request a review of their complaint by the Chief Executive, and that this will be responded to within 4 weeks.

We considered this to be an appropriate balance between the extremes of providing no formal complaint process and providing a full appeal or mediation process. The ‘in-between’ approach was considered in respect of the objectives and principles because:

- Providing a method of dispute resolution is consistent with trying to ensure offers are ultimately accepted and owners can relocate out of Category 3;

- This option provides a clear pathway, without introducing complexity and uncertainty into the process;
- A limited complaints mechanism is affordable for the ratepayer compared to a fully mediated option.

8.4 Conclusion on Approach to Special Circumstances / Disputes and Appeals

For the reasons above, it is considered appropriate to provide some discretion to depart from the Policy in limited circumstances where to do so is consistent with the outcomes being sought through the Policy, as stated in the objectives and principles.

Similarly, where an owner believes the Policy is not being administered in a way that reflects the objectives and principles, it is appropriate to provide a clear method of seeking to resolve disputes in a timely way.

We consider these clauses will aid the Councils to deliver on the Policy's overarching objective.

9 Conclusion

As was acknowledged at the outset of this document, this Policy is not the mechanism to address the myriad of issues facing residents and communities as a result of Cyclone Gabrielle. However, we consider that the Policy developed will make a material contribution to an important aspect of the recovery which, given what we now know about the risk to life in some areas, will enable people to move on with their lives.

Appendix A – Recommended Policy

CATEGORY 3 VOLUNTARY BUY-OUT POLICY

1. INTRODUCTION

- 1.1 In February 2023, Te Matau a Māui Hawke's Bay faced devastation and loss from Cyclone Gabrielle – one of the largest natural disasters in the history of Aotearoa New Zealand. Across the region, our communities have endured significant impact to their lives, livelihoods, whānau, homes, farms, orchards, vineyards, commercial enterprises and neighbourhoods.
- 1.2 In May 2023, the Government announced three risk categories for Cyclone affected land, with the most at-risk areas, referred to as Category 3, being identified as areas “*not safe to live in because of the unacceptable risk of future flooding and loss of life*”. As part of a wider package to assist the recovery of Hawke's Bay, the Crown entered into an agreement with the local authorities which include a 50:50 cost share for the purchase of Category 3 residential properties or any relocation grant paid for mixed-use properties.
- 1.3 On 14 September 2023, Hastings District Council and Napier City Council resolved separately to adopt changes to their Long Term Plans to provide for the new activity of undertaking the purchase of Category 3 Residential Property and Residential Property Rights. They also separately adopted this Policy which sets out how those purchases will be undertaken.
- 1.4 Hawke's Bay Regional Council has carried out a process of assessing and categorising all flood affected land. Category 3 applies to land where “*Future severe weather event risk cannot be sufficiently mitigated. In some cases some current land uses may remain acceptable, while for others there is an intolerable risk of injury or death*”.
- 1.5 The purchase of Category 3 properties is a response to Cyclone Gabrielle and the major flooding event that it caused, which had a significant impact on Hawke's Bay individuals and communities. The Councils have chosen to undertake these purchases in recognition of the substantial impact that the Cyclone had on people's lives and the risk associated with people continuing to live in these Category 3 areas. The Councils recognise that there is significant loss and damage beyond what is covered by the Policy, however its scope is limited by the terms of the agreement with the Crown and is targeted at achieving the objectives below.
- 1.6 They also recognise that there are likely to be events in future which will not be covered by the Policy. There are various statutory and planning provisions which will supersede this type of approach in the future, and the Councils do not intend that the Policy will set an expectation for responses to any future events.
- 1.7 Some of the land classified as Category 3 in Hastings District is Whenua Māori, where land is held in Māori Freehold title. Two marae and 31 Whenua Māori land holdings, some with papakāinga housing, have been severely impacted by the Cyclone. The Crown has undertaken to consult directly with affected mana whenua and tangata whenua and there will be a separate Kaupapa Māori parallel pathway in respect of Whenua Māori. The separate pathway is intended to enable recovery and recognise and take account of the importance of the whenua, and how any settlement gives effect to Te Tiriti o Waitangi and previous Treaty settlements. As such, while Hastings District Council is supporting hapū, marae and Māori entities where it can in the process of Crown negotiations, the Policy is not intended to apply to Whenua Māori.

2. OBJECTIVES AND PRINCIPLES OF THE POLICY

2.1 The Councils have identified objectives and principles that have been used to develop the Category 3 Voluntary Buy-out Policy (**the Policy**) and will be relevant to any issue of interpretation or situation where special circumstances may arise.

Objectives

- (a) Overarching objective - The removal of risk-to-life associated with people living on Category 3 land.
- (b) Further objectives:
 - (i) Residents have clear pathways and certainty about the offer.
 - (ii) Long term positive outcomes for the whole community and the environment.
 - (iii) Affordability for ratepayers.

Principles

2.2 In achieving the Objectives, the Councils will apply the following principles:

- (a) Acting in good faith.
- (b) Treating people with respect.
- (c) Working to achieve timely outcomes.
- (d) Communicating clearly.

3. ELIGIBILITY FOR OFFER

3.1 An offer under this Policy will be made where the following criteria are met:

- (a) Land:
 - (i) Is, or includes, Category 3 land; and
 - (ii) Is a Residential Property or a Mixed-Use Property; and
 - (iii) One or more Dwelling was, as at 13 February 2023, located within the part of the land classified as Category 3.
- (b) The Owner has signed and adhered to the preliminary agreement described at clause 5.1(vi).

3.2 The offer will be made to the Owner(s) of the Residential Property or Mixed-Use Property and is subject to clause 5.5.

4. CONTENT OF OFFER

Outline

- 4.1 There are two primary bases on which offers are made – a Property Purchase Offer and a Residential Relocation Offer (as described in clauses 4.4 and 4.5 respectively).
- 4.2 Owners of Residential Properties can elect to pursue a Property Purchase or a Residential Relocation Offer as set out below. The election can be made at the time of the initial meeting, outlined in clause 5.1(a) below, or at the time of the Council's offer, outlined in clause 5.1(c) below.
- 4.3 Owners of Mixed-Use Properties are only eligible for a Residential Relocation Offer.

Property Purchase Offer

- 4.4 A Property Purchase Offer is made in accordance with the process set out at clause 5 and shall include:
- (a) Purchase by the Council of the Residential Property (including all Residential Improvements);
 - (b) Where the property is not insured, payment for the market value of the Residential Property as at 13 February 2023, less a deduction equivalent to what would otherwise have been payable under the Earthquake Commission Act 1993 for damage to the land had the property been insured.
 - (c) Where the property is insured, the Owner may elect one of the following options:
 - (i) Payment for the market value of the Residential Property as at 13 February 2023, less any Insurance Proceeds that have not been spent, in good faith, on repairs to the Dwelling; or
 - (ii) To retain any Insurance Proceeds related to the Dwelling, in which case payment shall be made for the market value of the land as at 13 February 2023, less any payment under the Earthquake Commission Act 1993 for damage to the land that have not been spent, in good faith, on repairs to the land.
 - (d) The Owner of a Residential Property may elect to accept a Residential Relocation Offer instead of a Property Purchase Offer where they wish to retain ownership of the land.

Residential Relocation Offer

- 4.5 A Residential Relocation Offer is made in accordance with the process set out at clause 5 and shall include:
- (a) Payment comprising:
 - (i) Purchase by the Council, at market value as at 13 February 2023, of any Dwelling(s) and Residential Improvements on the Residential Property (where the Owner elects to consider a Residential Relocation Offer) or Mixed-Use Property that is within the Category 3 area, including any necessary rights to undertake demolition and/or, removal of the Dwelling and Residential Improvements, and site reinstatement related to the demolition (including removal of septic tanks and capping of wells); and
 - (ii) A Relocation Grant.
 - (b) The Owner will retain ownership of the land.
 - (c) A covenant in gross in favour of the Council or similar legal instrument will be registered on the title of the property providing that:
 - (i) No residential activity may occur within that part of the property categorised as Category 3 (which area will be shown on a plan included with the legal instrument); and
 - (ii) The owner shall not oppose or otherwise participate in or fund any third party to participate in any regional or district plan change or variation, or similar proposal, which seeks to remove or restrict the ability to undertake residential activity within the locality of the property.
 - (d) Where the property is not insured, payment under clause 4.5(a)(i) is for the market value of the Dwelling and Residential Improvements as at 13 February 2023.

- (e) Where the property is insured, the Owner may elect one of the following options in relation to the payment under clause 4.5(a)(i):
- (i) Payment at market valuation for the Dwelling and Residential Improvements as at 13 February 2023, less any related Insurance Proceeds that have not been spent, in good faith, on repairs to the Dwelling; or
 - (ii) To retain any Insurance Proceeds related to the Dwelling and Residential Improvements, in which case the Owner will be eligible for the Relocation Grant only.

Standard terms of offer

- 4.6 Following settlement, any Dwelling and Residential Improvements within Category 3 land will be removed from the Site if reasonably practicable or otherwise demolished by Council and the site appropriately reinstated. For the avoidance of doubt, reinstatement does not include removal of silt or full site clearance for use for any non-residential purpose.
- 4.7 From the date of execution of the Sale and Purchase Agreement, the Owner agrees not to remove any part of the Dwelling or Residential Improvements from the site.
- 4.8 The Council and the Owner shall agree a mutually acceptable settlement date.
- 4.9 The Council will agree to reimburse the Owner, on receipt of appropriate invoices, for the reasonable costs of a valuation by a Registered Valuer and legal advice where those costs have been incurred prior to the offer being presented to the Owner, up to maximum of \$5,000 (excl. GST). On the date of settlement the Council will also pay all reasonable legal costs related to finalising the sale and purchase agreement and conveyancing costs up to a maximum of \$5,000 (excl GST).
- 4.10 Any payment made by the Council under the offer, except payments made under clause 4.9, will be paid to the Owner's solicitor who will attend to any payment owing to any security holder (eg Owner's bank) where there is a mortgage or other equivalent encumbrance over the Property (except where the security holder agrees otherwise).
- 4.11 Acceptance of the offer made by the Council is voluntary. The Council and the Owner acknowledge that the land is not being taken for a public work, and that the Owner waives any right to have the property offered back to it or its successor if Council decides to dispose of it.
- 4.12 The offer will include GST, if any.
- 4.13 For the avoidance of doubt, the offer will not extend to the purchase of chattels or home contents that could be subject to a contents insurance policy and any such items will be excluded in valuing the Property Purchase Offer or Residential Relocation Offer (as the case may be).

5. PROCESS FOR OFFER

- 5.1 Offers will be made in the following manner:
- (a) Initial meeting:
 - (i) The Council's Representative will make contact with the Owner and arrange a meeting to discuss the process, the options available to the Owner, and for the Owner to provide any information they consider relevant to the valuation process.
 - (ii) The Owner may attend the meeting with a support person and/or professional advisor of the Owner's choosing.

- (iii) The Council's valuer will typically attend the meeting.
 - (iv) The Owner will have the opportunity to make any relevant elections (e.g. for Residential Property, whether they wish to receive a Property Purchase Offer, a Residential Relocation Offer, or both; If insured, which option they wish to pursue). These elections may also occur at any time up to the final Offer being presented.
 - (v) The Council's Representative will make a record of the meeting, including any elections made by the Owner and any information provided by the Owner relevant to the valuation process, and a copy of this record will be provided to the Owner within 5 working days of the meeting;
 - (vi) If the Owner wishes to receive an offer, they will be required to sign a preliminary agreement either at or following the initial meeting that records the agreed process and respective undertakings needed to finalise the offer, and provide the Council with a copy of all relevant insurance claim settlement information, including the Scope of Works and the Insurance Settlement Sheet that the Owner's Insurer has provided. Where necessary, the Council's Representative may require the Owner's permission to seek clarifying information from their Insurer and provision of such information by the Owner's Insurer may be a condition of the Council being required to proceed with an offer.
- (b) Valuation
- (i) The Council will prepare an offer in accordance with the Valuation Process.
- (c) Council Offer
- (i) The Council's Representative will present the Owner with an offer, including a Sale and Purchase Agreement, in accordance with clause 4 and clause 5(b) and any further terms and conditions discussed at the initial meeting.
 - (ii) The offer will remain open for three months after the Owner receives the offer, and agreements to an extension of time will not be unreasonably withheld where in the Council's reasonable opinion, substantive progress is being made towards an agreement.
- 5.2 If the Owner accepts the Council offer, a deposit of 10% will be paid on execution and as soon as practicable, settlement will be executed in accordance with the Sale and Purchase Agreement.
- 5.3 If at any stage prior to acceptance of an offer the Owner rejects the Council offer or advises the Council's Representative in writing that they wish to end the process, then the process is at an end and any Council Offer is treated as having been withdrawn. The Council has complete discretion as to whether to recommence the process should the Owner advise they wish to do so, having previously ended the process.
- 5.4 The Owner may advise the Council's Representative in writing at any stage prior to accepting an offer that they wish to pause the process. A mutually agreed extension of time will not be unreasonably withheld by the Council where there is good reason and progress towards an agreement is still being made in good faith.
- 5.5 No offer will be made where the ownership of the Property has changed after 13 February 2023, other than to a related party of the previous Owner.

6. SPECIAL CIRCUMSTANCES - APPLICATION OF POLICY TO LAND WITHOUT AN EXISTING DWELLING

6.1 At its absolute discretion, at the request of the Owner, the Council may extend an offer to the Owner of Category 3 land which did not contain a Dwelling as at 13 February 2023.

6.2 A request under this clause may be made by the Owner where either:

- (i) As at 13 February 2023, residential activity on the land was a Permitted Activity under the relevant District Plan. For land within the Hastings District, the land must be located outside the River Hazard Overlay in the Hastings District Plan and for land within Napier City, the land must be located outside the River Hazard Area in the Napier Operative District Plan; or
- (ii) As at 13 February 2023 there was a valid resource consent applying to the property authorising construction of a Dwelling; and

6.3 When exercising its discretion under clause 6.1, without limitation, the Council will have regard to the objectives and principles set out in clause 2 and any information provided by the Owner that demonstrates that, as at 13 February 2023, they had a genuine intention to construct a Dwelling for use by the Owner and/or their family on the Category 3 Land, such as:

- (i) Construction of a new Dwelling having lawfully commenced;
- (ii) Application having been made for a certificate of compliance under the Resource Management Act 1991 and/or building consent under the Building Act 2004;
- (iii) Plans for a new Dwelling on the Category 3 portion of the land having been obtained;
- (iv) Finance having been obtained for the build;
- (v) Any evidence that suggests it was more likely than not that a Dwelling would be built on the Category 3 Land.

6.4 Once a decision has been made under this clause to make an offer, the process outlined in clause 5 will apply with any such modifications reasonably necessary to address the specific circumstances of the case.

7. OTHER SPECIAL CIRCUMSTANCES

7.1 At the request of an Owner, a departure from the position outlined in the Policy (including as to the threshold between a Residential Property and a Mixed-Use Property) may be considered at the absolute discretion of the Council. Any decision to provide for a different process or outcome will have regard to:

- (a) The overarching objective of removing risk-to-life associated with residential activity within Category 3 areas and other objectives and principles of the Policy;
- (b) The reasons for, extent of, and implications of any departure from the Policy;
- (c) Whether the departure involves any increased cost to the Council.

7.2 Any decision to depart from the Policy position will be made by the Council or its delegate and recorded in writing, with reasons.

8. DISPUTES AND APPEAL PROCESSES

- 8.1 If an Owner believes that the Policy is not being applied correctly or in accordance with the principles set out in clause 2.2, they may request a review of their case by the Council's Chief Executive or his or her delegate.
- 8.2 The review will be carried out within four weeks of receipt of a written complaint and the outcome of the review will be communicated to the Owner.
- 8.3 In all other respects, because acceptance of the offer under the Policy is voluntary, there is no appeal process provided under the Policy.

9. REVIEW DATE

- 9.1 The Policy will be reviewed by the Council on or before 30 June 2025, including as to whether it should continue to apply.

CONFIDENTIAL DRAFT NOT COUNCIL POLICY

DEFINITIONS

Category 3 Land means land which has been identified by and confirmed as Category 3 land by Hawke's Bay Regional Council

Council means Hasting District Council for properties located in the Hastings District, and Napier City Council for properties located in Napier City.

Council's Representative is a person to whom the 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, the Council's representative will only have authority to present an offer that has been subject to the Council's internal approval process.

Dwelling means a building, or part of a building (including decks, patios and pergolas) that was, as at 13 February 2023, lawfully established, and 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.

Insurance proceeds includes any payments to the Owner or their mortgagee related to the repair or replacement of the Dwelling and Residential Improvements of the property from an insurer, and includes any relevant payments under the Earthquake Commission Act 1993.

Mixed-Use Property means land on which one or more Dwelling was located as at 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 means the legal owner of the Residential Property or Mixed-Use Property.

Relocation Grant means 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.

Residential Improvements means lawfully established 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) and includes pathways, driveways, landscaping, fences and gates.

Residential Property means land on which one or more Dwelling was located as at 13 February 2023 and which is 2 ha or less in size.

Valuation Process means a process to be developed by the Councils that prescribes the basis on which valuation of the property will be undertaken and the process by which the Council's valuation and the Owner's valuation, if any, is reflected in the Council offer. At a minimum, the Valuation Process will include the Council commissioning a valuation from a registered valuer which takes into account (to the extent considered appropriate by the registered valuer) relevant information shared with the Council at the initial meeting and the Owner having the option to commission their own valuation from a registered valuer.

Appendix B – Summary of feedback from engagement

Category 3 Policy Engagement Key Themes

Engagement Question 1: Do you have any comments on the guiding principles?

General Themes	Majority agree with principles <ul style="list-style-type: none"> • Broadly reasonable • Practical
	Clarification of inclusions/process (land)
	Offer <ul style="list-style-type: none"> • Dwelling or not (all properties) • Focus on land • Insured vs Uninsured • Ability to negotiate • Ability to purchase elsewhere • Compensation for loss of income/stock • Pre-cyclone market value or 2022 RV • Equal assessment of properties
	Timely and fair process
	Mitigation options
	Considerations for community <ul style="list-style-type: none"> • Hardship (financial) likely
Area specific key themes	
Pakowhai	Majority agree with principles <ul style="list-style-type: none"> • Others not wanting to leave property
	Registered valuer <ul style="list-style-type: none"> • Pre-cyclone market value
	Fair offer <ul style="list-style-type: none"> • Ability to purchase elsewhere • Compensation for loss of stock/income • Considerations of land • Not including insurance
	Mitigation options
	Clarity on inclusion <ul style="list-style-type: none"> • Residential uses/rights
Esk Valley	Majority agree with principles <ul style="list-style-type: none"> • Clarity of inclusions • Consistency with Public Works Act
	Buyout of land <ul style="list-style-type: none"> - Dwelling or not (residential uses) - Eligibility criteria (ie. 10Ha or less) - Legal titles (residential) - Insurance irrelevant - Consideration for loss of land/ability to reside - 2022 RV valuation <ul style="list-style-type: none"> ▪ Individually assessed
	<ul style="list-style-type: none"> • Mitigations
	<ul style="list-style-type: none"> • Broader inclusions of categories/land uses <ul style="list-style-type: none"> - Supporting people's safety in area
	<ul style="list-style-type: none"> • Fair and transparent process

Tangoio	<ul style="list-style-type: none"> • Reasonable principles
	<ul style="list-style-type: none"> • Residential land treated equally <ul style="list-style-type: none"> - Dwelling or not - Considerations of consents - Insured and uninsured - Residential land rights
	<ul style="list-style-type: none"> • Pre-Cyclone market value
	<ul style="list-style-type: none"> • More clarification on process/inclusions
	<ul style="list-style-type: none"> • Ability to purchase elsewhere
Dartmoor	<ul style="list-style-type: none"> • Mitigation options
	<ul style="list-style-type: none"> • Buy-out offer <ul style="list-style-type: none"> - Focus on land purchases - Insurance <ul style="list-style-type: none"> ▪ Moral hazard around uninsured ▪ Shouldn't include personal contents
	<ul style="list-style-type: none"> • Equal process <ul style="list-style-type: none"> - Assessed on same basis
Omahu	<ul style="list-style-type: none"> • Mitigation options
	<ul style="list-style-type: none"> • As fair as practical principles
	<ul style="list-style-type: none"> • Equal treatment of insured and uninsured properties
Bay View	<ul style="list-style-type: none"> • Consideration of banks (regarding mortgages)
	<ul style="list-style-type: none"> • Clause for those who decline offer (remain on Category 3 property)
Unspecified Areas	<ul style="list-style-type: none"> • Clarity of dwelling inclusions
	<ul style="list-style-type: none"> • Offer <ul style="list-style-type: none"> - Equality for insured vs uninsured <ul style="list-style-type: none"> ▪ Net insurance - Market valuation - Residential zoned land
	<ul style="list-style-type: none"> • Clear & timely process
<ul style="list-style-type: none"> • Mitigation options 	
Category specific key themes	
Provisional Category 2	<ul style="list-style-type: none"> • Most agree with current principles
	<ul style="list-style-type: none"> • Buy-out of land <ul style="list-style-type: none"> - Dwelling or not - Insured and uninsured - All residential land treated equally - Intentions to build (consents) - Land value
	<ul style="list-style-type: none"> • Considerations for community <ul style="list-style-type: none"> - Hardship (financial) likely
	<ul style="list-style-type: none"> • Mitigation <ul style="list-style-type: none"> - Stop bank
	<ul style="list-style-type: none"> • Progress at pace <ul style="list-style-type: none"> - Decisions and communications
Provisional Category 3	<ul style="list-style-type: none"> • Clarification on process/inclusions
	<ul style="list-style-type: none"> • Majority agree with principles <ul style="list-style-type: none"> - More clarity - Some not wanting to leave property
	<ul style="list-style-type: none"> • Timely processes
<ul style="list-style-type: none"> • Fair offer 	

	<ul style="list-style-type: none"> - Dwelling or not (legal title/ residential uses) - Insured vs uninsured - Ability to negotiate - Ability to purchase elsewhere - Compensation for loss of income and stock
	<ul style="list-style-type: none"> • Clear valuation process <ul style="list-style-type: none"> - Registered valuer - Pre-flood market valuations - Individual valuations
	<ul style="list-style-type: none"> • Mitigation / Evacuation options

Engagement Question 2: Should all property owners that have a dwelling on their Category 3 land receive an offer from the Council?

General Themes	Majority agree <ul style="list-style-type: none"> • Dwelling or not • Not just residential area • Intentions/potential to build
	Equality of offers (Insured vs uninsured) <ul style="list-style-type: none"> • Pre-cyclone market value
	Possibility of significant hardship
	Mitigations and future use
Area specific key themes	
Pakowhai	Majority agree <ul style="list-style-type: none"> • Insured and uninsured • Dwelling or not (including land)
	Offer <ul style="list-style-type: none"> • Residential dwellings only, no commercial buildings, sheds etc • Intentions/Potential to build
	Mitigation options
Esk Valley	<ul style="list-style-type: none"> • Majority agree
	Equality over uninsured vs insured properties <ul style="list-style-type: none"> • Insurance should not be part of decision
	Offer <ul style="list-style-type: none"> • Future investment (intentions to build) • Including lifestyle blocks • Legal titles (Commercial uses) • Loss of property value • Pre-Cyclone market value • Ability to negotiate
	Support options
Tangoio	All submitters agree <ul style="list-style-type: none"> • Dwellings included • Intentions to build
	Consider affects on property owners <ul style="list-style-type: none"> • Financial hardship
	Equality of Māori freehold land and general land owned by Māori <ul style="list-style-type: none"> • Both should be addressed by Crown
	Clarity on inclusions (Types of dwellings) <ul style="list-style-type: none"> • Demolition

Dartmoor	Majority agree <ul style="list-style-type: none"> • Dwelling or not • Regardless of size • Pre-cyclone market value
	Insurance equality
Omahu	All submitters agree
Bay View	Submitters agree <ul style="list-style-type: none"> • Equality of offers (Insured vs uninsured) • Market value
	Flood mitigations
Unspecified Areas	Majority agree
	Support people to relocate
Category specific key themes	
Provisional Category 2	Majority agree <ul style="list-style-type: none"> • Dwelling or not • Intentions to build • Fair offer <ul style="list-style-type: none"> - Lessen financial burdens for property owners • Clear explanation of offer
	Pre-cyclone market value
	Future focus <ul style="list-style-type: none"> • Removal of titles, dwellings etc
Provisional Category 3	Majority agree <ul style="list-style-type: none"> • Dwelling or not • Regardless of size • Legal title (whole area of legal title) • Market value basis • Loss of property value
	Moral hazard around insurance <ul style="list-style-type: none"> • Insured vs uninsured • EQC payments to be kept
	Mitigations <ul style="list-style-type: none"> • Future to support horticulture purposes • Instead of buy-out
	Clarity on process <ul style="list-style-type: none"> • Demolition • Inclusions (dwellings, land)

Engagement Question 3: What matters do you consider important to support the offer process?

General Themes	Fair offer <ul style="list-style-type: none"> • Doesn't leave people in hardship • Provides opportunities to rebuy (doesn't put people in worse position) • Case by case basis • Zoned residential (consider intentions to build) • Pre-cyclone market value or QV • Keep insurance pay-outs • Time to consider or negotiate offer
	Alternative options <ul style="list-style-type: none"> • Mitigation

	Transparent and timely process <ul style="list-style-type: none"> • Demolition of dwellings (responsibility)
	Clear, regular communications <ul style="list-style-type: none"> • Process and principles • Individual conversations
	Affects on community <ul style="list-style-type: none"> • Cultural/spiritual considerations
Area specific key themes	
Pakowhai	Fair offer <ul style="list-style-type: none"> • Money • Value of land • Intent to build • Pre-cyclone market value • Alternative options
	Timely and transparent process <ul style="list-style-type: none"> • Time to consider offer • Demolition of dwellings (responsibility)
	Consistent valuations <ul style="list-style-type: none"> • Accurate data
	Consideration of effects on residents
	Individual conversations
	Mitigation options
Esk Valley	Fair offer <ul style="list-style-type: none"> • Ability to purchase again (like for like) • Pre-cyclone market value or QV • Proportion of property in Category 3 • cultural/spiritual links to land • Loss of property value • Insurance equality • Retain ownership of property
	Alternative options <ul style="list-style-type: none"> • Mitigation • For unaccepted buyout situations
	Process <ul style="list-style-type: none"> • Ability to consider offer • Timely • Case by case • Demolition of dwellings (responsibility)
	Communication <ul style="list-style-type: none"> • Individual site visits • Clarity on process • Community connector • Ongoing support options
Tangoio	Fair offer <ul style="list-style-type: none"> • Money (no insolvency/purchase elsewhere) • Residential land treated equally (dwelling or not) • Intentions of building (any improvements) • Case by case basis (section size) • Pre-cyclone market value
	Clear communications

	<ul style="list-style-type: none"> • Processes • Objectives • Individual
	Review and appeals/dispute process
	Independent advice available for property owners
Dartmoor	<p>Clear communication of principles</p> <ul style="list-style-type: none"> • Land inclusions • Dwellings or not • Insurance
	<p>Valuations</p> <ul style="list-style-type: none"> • Based on QV • Transparent
	Alternative options when buyout declined
Rissington	Confirmation of property/dwelling inclusions
Omahu	<ul style="list-style-type: none"> • Timely, clear process
	<p>Buy-out for residential aspect of property</p> <ul style="list-style-type: none"> • Business compensation considerations • Retain ownership of properties • Able to purchase like for like
Bay View	Flood mitigations
	Options to relocate (relocation like for like)
	Support for those who decline the offer
Unspecified Areas	<p>Fair and consistent process</p> <ul style="list-style-type: none"> • Future intentions of land/dwellings use • Quick decisions
	<p>Offer</p> <ul style="list-style-type: none"> • Fair, timely and transparent • Ability to negotiate • Market value • Retain ownership of properties
	<p>Alternative options</p> <ul style="list-style-type: none"> • Mitigation
Category specific key themes	
Provisional Category 2	<p>Consider</p> <ul style="list-style-type: none"> • Residential zoning • Granted consents • Building underway (including improvements)
	<p>Mitigation options</p> <ul style="list-style-type: none"> • Future flood process/limits
	<p>Communications</p> <ul style="list-style-type: none"> • Clear, timely, transparent • Individual • Increased communication
Provisional Category 3	<p>Fair offers</p> <ul style="list-style-type: none"> • Retain full ownership of properties • Amount of money (purchase land/house elsewhere) • Ability to negotiate • Regardless of insurance pay-out • Intent to build • Cultural/spiritual links to land

	<p>Alternative options</p> <ul style="list-style-type: none"> • Mitigation • Movement to safe area within land • Fixed term restrictions on bought land • Options if offer declined
	Demolition of dwellings (responsibility)
	<p>Valuation</p> <ul style="list-style-type: none"> • Individual conversations • Registered valuer • Accurate data • Market value or greater • Land and house value
	<p>Timely, transparent, clear communication</p> <ul style="list-style-type: none"> • Principles (land, dwelling) • Decisions and process • Individual conversations
	Consider community affects
	Future warning systems / infrastructure

Engagement Question 4: Do you have any other views and/or suggestions?

General Themes	<p>Engagement with residents</p> <ul style="list-style-type: none"> • Engage with care <ul style="list-style-type: none"> - Fragile communities - Sense of loss • Clear direction of outcomes and decisions • Individual over group meetings • Offer/negotiation • Confirmation of categories
	<p>Give options</p> <ul style="list-style-type: none"> • Mitigation / warning options • ability to build on safe parts of land • Future planning (regulation)
	Process doesn't feel voluntary
	<p>Fair offer</p> <ul style="list-style-type: none"> • Dwelling or not • Equality over offers • Timely • No strings attached to offers • Land considerations (size, ownership, re-zoning)
	<p>Lack of trust in Council</p> <ul style="list-style-type: none"> • Previous decisions • Government responsibility
	<p>Questions</p> <ul style="list-style-type: none"> • Process
Area specific key themes	
Pakowhai	Mitigation options
	<p>Engagement and opportunities for negotiation</p> <ul style="list-style-type: none"> • Views heard • More information on process/milestones

	<ul style="list-style-type: none"> • Decisions made (land categorisation)
	Fair, timely offer and process
	<p>Questions</p> <ul style="list-style-type: none"> • Market value determination • Removal of dwellings
	Not voluntary
Esk Valley	Timely and considerate process
	Inflexible guiding principles
	Decisions made
	<p>Future policy / regulation</p> <ul style="list-style-type: none"> • Compensation policy (account for loss of property rights) • Clear drainage plan • Relocation support • Demolition
	<p>Alternative options</p> <ul style="list-style-type: none"> • Mitigation
	<p>Future uses</p> <ul style="list-style-type: none"> • Consideration of other/future natural hazards • Limitations on land uses • Retainment of land ownership
	Category 3 land revalued and rates adjusted accordingly
Tangoio	<p>Communication</p> <ul style="list-style-type: none"> • Timely manner • Individually meet people • Trust previously put into Council (Subdivision approval) • Regular updates • Decisions made (land categorisations)
	<p>All residential land equal</p> <ul style="list-style-type: none"> • Dwelling or not
	Mitigation options
	<p>Support options</p> <ul style="list-style-type: none"> • Mental health considerations
Dartmoor	Appreciate views being heard
	<p>Questions on process</p> <ul style="list-style-type: none"> • Inclusions of buyout • Valuations • Zoning
Rissington	Timely process
Omahu	Negotiations of offer
	Timely process
Bay View	<p>Prevention of event</p> <ul style="list-style-type: none"> • Upkeep of mitigations/warnings
	<p>Compensation</p> <ul style="list-style-type: none"> • Displacement costs after event
	<p>Future</p> <ul style="list-style-type: none"> • Consent decisions • Future natural hazard mitigations
Unspecified Areas	Category 3 land revalued and rates adjusted accordingly
	Individual meetings
	<p>Alternative options</p> <ul style="list-style-type: none"> • Mitigation • Developing for future

	Quick decisions <ul style="list-style-type: none"> • Land categorisations
	Process doesn't feel voluntary
Category specific key themes	
Provisional Category 2	Consideration of owners/residents <ul style="list-style-type: none"> • Financially and their mental health
	Fair offer <ul style="list-style-type: none"> • Residential zoned land and dwellings • Consider loss of value in land
	Mitigation options <ul style="list-style-type: none"> • Other/future natural hazards
	Clear communication <ul style="list-style-type: none"> • Process and timeframes • Meet with people • Quick decisions / decisions made • Regular updates
	Ability to negotiate <ul style="list-style-type: none"> • Offer • Future land use • Zoning
	Trust in Council <ul style="list-style-type: none"> • Previously approved subdivisions • Government responsibility
Provisional Category 3	Communications <ul style="list-style-type: none"> • Timely • Individual owners • Decisions made • Understanding/consideration of situation
	Mitigation/warning options
	Process doesn't feel voluntary
	Consideration for undamaged dwellings
	Cat 3 land revalued and rates adjusted accordingly
	Fair offer <ul style="list-style-type: none"> • All Cat 3 landowners • Timely • No strings • Considering land (size) • Retainment of land ownership
	Future uses <ul style="list-style-type: none"> • Consideration of other/future natural hazards • limitations on land uses
	Support options for impacted property owners
	Questions on process <ul style="list-style-type: none"> • Inclusions of buyout • Valuations • Timings • Zoning • Removal of dwellings

Appendix C – Extract from Report of Working Group on Managed Retreat

Outcomes and principles

E15. We consider that community relocation should contribute to eight essential outcomes.

- People must be kept physically and psychologically safe.
- People must have access to adequate and affordable places to live.
- People must have the opportunity to build more secure and resilient futures and to maintain or enhance their well-being.
- Socio-economic inequalities must not be exacerbated and need not be preserved.
- Risks from climate-related and other natural hazards should be reduced.
- The rights and interests of Māori must be respected and given effect.
- Environmental standards must be met, and ecological values must be protected.
- Opportunities for improvement should be realised (eg, in relation to housing, infrastructure, transport, and urban form).

E16. There are ten principles to guide how community relocation should be undertaken to achieve the desired outcomes.

- Be informed by the best available evidence and expert advice.
- Reflect important community values and aspirations.
- Take a proactive and precautionary (ie, cautious and risk-averse) approach to the timing and pace of relocation, despite the absence of perfect information.
- Provide certain, timely and predictable outcomes.
- Be adaptable to meet the pace, scale, and variable circumstances of relocation.
- Be simple to operate and minimise compliance costs.
- Minimise moral hazard and other perverse incentives.
- Give effect to te Tiriti o Waitangi (te Tiriti) and honour the intent of settlements.
- Comply with the New Zealand Bill of Rights Act 1990 where applicable.
- Maintain the sound functioning of markets (eg, in relation to property, construction, insurance and banking).

Appendix D – Councillor Identification of Matters of Importance

Napier City Council

Outcomes	Values	Principles
Residents are satisfied with the deal and don't come back to complain	Transparency	Acting "in good faith" for the community
Residents feel heard by the council	Honesty	Simplicity of language around the process, making it easy for residents to understand
The council + crown process is seen as transparent by the public	Clarity of process	Good communication
Residents are able to understand their options, it is explained simply to them	Equitable	Consistency of process across councils
Mana Whenua feel included and listened to	Hope	Give options wherever available
Risk of legal challenge is mitigated to the best of our ability	Innovation	Learn from past occurrences but stay committed to thinking innovatively
Property owners have a clear understanding of OUR role and how the roles of other contributing parties differ. They get the different "lanes"	Mokopuna-view	It is about both people and place. Don't forget the land/taiao. Don't limit how it may be used in the future unless one hundred percent sure.
Residents are able to move forward with their lives	Fair	Consider what implications are created or the impact on our people affected by climate events in the future

Hastings District Council (bolded represent top 3 as identified by Councillors)

Outcomes	Values	Principles
Fair and equitable outcome for all (and amongst Cat 3 Owners)	Empathy	Works at pace (but don't rush)
Minimal discrepancies between owners	A listening ear	Clear communication
Defined timeframes	Good faith actions	Opportunity for Community Input
Justified Decisions	Respect	Community feels valued – timeliness lead by community
Transparency versus Privacy	Equity of opportunity (support for some to participate)	Consistent messaging
Reduced future risk	Integrity	Very tight policy
Reduce financial risk to individuals	Right thing to do	Limited red tape
Cushion Hawke's Bay from monetary stress (affordability for ratepayers)	No unintended outcomes (particularly for the vulnerable)	
Satisfaction with Council / Council's reputation in tact	Long term positive outcomes for the environment – No precedent	
Ability to be heard		
Clarity of Process		
Recognition of Whenua Maori		
No litigation (legally robust)		

Appendix E – Assessment by John Reid as to threshold between Residential Property and Mixed-Use Property

File Ref: 5519D

31 August 2023

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LAND SIZE FOR FULL ACQUISITION OFFER

Further to our discussions of 29 August, we have carried out further analysis to assist with the decision around what is a fair size to consider a full acquisition. This question is answered firstly by reference to the draft objectives of the Category 3 Residential Property and Residential Property Rights Policy. The overarching objective being *“The removal of risk-to-life associated with Category 3 land”*.

Many of the category 3 properties contain land greater than what is required for a residential use and predominant use rights under their zoning for a wide range of activities. In the Plains Production Zone which covers a large number of category 3, these include, plus others:

- PP1 Land Based Primary Production
- PP2 One Residential Building per site
- PP3 One Supplementary Residential Building
- PP4 Retailing within specified limits
- PP5 Commercial activities within specified limits
- PP6 Industrial activities within specified limits

Accordingly, many have legal opportunities to use their property for a residential use plus other mixed uses, because of their land size.

The valuation of these properties reflects these rights, where residential is generally the strongest motivation followed by the use of the land for productive purposes (land based primary production).

Having considered the category 3 properties (21 August data), we have completed indicative valuations on all of those with residential improvements. Each property has a land value quantum, which includes what we describe as “the right to build or a vacant curtilage value” together with the balance, being the non-residential, rural or productive portion.

In determining the land area to qualify for an option to purchase the whole property, we have examined the location and other physical attributes when deriving a land value. While it is clear that a property under 2,500 m² would be considered fully residential the picture for larger properties is variable, hence our analysis on the sample of 82 properties, with land area up to 4.0 hectares.

HDC CAT 3 PROPERTIES (with a dwelling)	0-1.0 ha	1.01-1.5 ha	1.51-2.0 ha	2.01-3.0 ha	3.01-4.0 ha
Number	43	11	2	17	9
Curtilage % of LV- average	97%	77%	89%	66%	55%
Residential improvements & curtilage as a % of total value	98%	90%	96%	74%	75%

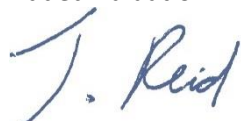
Up to 2.0 hectares, our analysis clearly shows the properties to have near 100% residential improvement value plus curtilage value, compared to the total property value. Above 2.0 hectares there is a combination of increased non-residential land value plus in some situations commercial plantings and or non-residential improvements.

On balance we consider up to 2.0 hectares to be a good threshold for determination of a residential property, and greater than 2.0 hectares being a mixed use and mixed value proposition i.e they contain a significant portion of non-residential value when looked at objectively. Council does not want to own large areas of land and would ideally see them retained for productive use where possible.

Please feel free to call and discuss any of this advice.

Kind regards

Added Valuation Limited



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Appendix F – Selected Index of Documents referred to in preparing Policy

Natural Hazards Insurance Act 2023
Resource Management Act 1991
Natural and Built Environments Act 2023
Civil Defence and Emergency Management Act 2002
“Community-led retreat and adaptation funding: Issues and options”, Ministry for the Environment, August 2023
“Report of the Expert Working Group on Managed Retreat: A Proposed System for Te Hekenga Rauora / Planned Relocation”
“Roles, responsibilities and funding of public entities after the Canterbury earthquakes”, Office of the Auditor General, October 2012
<i>Quake Outcasts v Minister for Canterbury Earthquake Recovery</i> [2015] NZSC 27
<i>Quake Outcasts v Minister for Canterbury Earthquake Recovery</i> [2017] NZCA 332
“Residential Red Zone Offer Recovery Plan”, Canterbury Earthquake Recovery Agency, July 2015
“Awatarariki Fanhead, Matatā, Acquisition Strategy”, Whakatane District Council / the Property Group, July 2016
Proposed Plan Change 1 to Whakatane District Plan and Proposed Plan Change 17 to Bay of Plenty Regional Natural Resources Plan, Report and Hearing of the Hearing Commissioners, 26 March 2020
Awatarariki Fanhead, Matatā, Workstream 2 – Property Valuation Brief for Valuers Engaged by Property Owners, Whakatane District Council, 15 August 2019
Awatarariki Managed Retreat Programme, Whakatāne District Council website, https://www.whakatane.govt.nz/residents/awatarariki-managed-retreat-programme
Hanna, C, White I, Glavovic B (2018), “Managed retreat governance: Insights from Matatā, New Zealand”, Report for the National Science Challenge: Resilience to Nature’s Challenges, University of Waikato, New Zealand.
Project Twin Stream case study: Large-scale property purchase without recourse to compulsory purchase, Ministry for the Environment, July 2011