

HASTINGS DISTRICT COUNCIL AND NAPIER CITY COUNCIL

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 unless Council determines that a specific Offer should be made plus GST, if any, while considering the Policy objective of affordability for ratepayers.
- 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 Letter summarising the outcome of the Valuation Process and relevant buy-out options under sections 4.4 and 4.5 of the Policy.
- (c) Council Offer
- (i) The Council's Representative will present the Owner with the Offer Letter for the Owner's consideration.
 - (ii) The offer will remain open for three months after the Owner receives the Offer Letter and the owner shall advise Council whether they wish to proceed to receiving a formal sale and purchase agreement from Council within that time. 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.

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.