

CATEGORY 3 VOLUNTARY BUYOUT POLICY

1. INTRODUCTION

- 1.1 In early 2023, Gisborne/Tairāwhiti faced devastation and loss from a series of severe weather events, particularly Cyclone Gabrielle. Across the region, our communities have endured significant impact to their lives, livelihoods, whānau, homes, farms, commercial enterprises and neighbourhoods.
- 1.2 In May 2023, the Government announced several risk categories for land affected by the North Island "Severe Weather Events" (as defined under the Severe Weather Emergency Recovery Legislation Act 2023). The most at-risk areas, referred to as Category 3, were described as areas "*not safe to live in because of the unacceptable risk of future flooding and loss of life*"¹. As part of a wider package to assist the recovery of Tairāwhiti, the Crown entered into an agreement with the local authorities which includes a 50:50 cost share for the purchase of Category 3 residential or mixed-use properties (under which the relevant property would not be further used for residential purposes).
- 1.3 On 1 November 2023, Gisborne District Council (Council or GDC) resolved to provide for the new activity of undertaking the purchase of Category 3 Residential Property and Residential Property rights. Council also separately adopted this Policy, which sets out the process for how those purchases will be undertaken.
- 1.4 Council is in the process of assessing and categorising all flood and landslide-affected land. This policy only applies to those properties that Council identifies and confirms as being Category 3, being 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 Future of Severely Affected Land FOSAL Information Pack, Department of Prime Minister and Cabinet, 2023
[chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.dPMC.govt.nz/sites/default/files/2023-07/Future-of-Severely-Affected-Land-FOSAL-Information-Pack.pdf](https://www.dPMC.govt.nz/sites/default/files/2023-07/Future-of-Severely-Affected-Land-FOSAL-Information-Pack.pdf)



- 1.5 The purchase of Category 3 properties is a response to the impact of the severe weather events of 2023. In Gisborne, these impacts included major flooding, landslides, and initiation of land instability in rural and urban areas. The Council decided to provide for voluntary purchases in recognition of the substantial impact that the events had on people's lives and the risk associated with people continuing to live in these Category 3 areas. The Council recognises 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 Government and is targeted at achieving the objectives below.
- 1.6 Council also recognises that there are likely to be similar events in the future. However, this Policy is a one-off, limited response to the exceptional circumstances of the Severe Weather Events, and is not a permanent policy for Council's response to any such future events. Council will consider the statutory and planning provisions available to address or mitigate the effects of such events in the future.
- 1.7 Some of the land classified as Category 3 is Whenua Māori, where land is held in Māori Freehold title. The Government has developed a separate Kaupapa Māori pathway in respect of Whenua Māori. This separate pathway is intended to 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, this Policy is not intended to apply to Whenua Māori generally, however, Whenua Māori landowners may elect to be subject to the Council's Policy, rather than the government's Kaupapa Māori pathway. If a party elects to use the Kaupapa Māori pathway, this policy does not apply.

2. OBJECTIVES AND PRINCIPLES OF THE POLICY

- 2.1 The Council has adopted objectives and principles that have been used to develop the Category 3 Voluntary Buyout Policy (**the Policy**) and which will be relevant to any issue of interpretation or situation where special circumstances may arise.

Objectives

- (i) Help people get out of harm's way, based on the natural hazard risks arising from the Severe Weather Events, where there is:
- Imminent threat to life; or
 - Unacceptable future risk that cannot be managed; or
 - Land damage that makes rebuilding infeasible.



- (ii) Only purchase as much land as necessary to meet Objective 1 (this also applies to relocation offers) and enable owners to retain ownership of land where this is desired.
- (iii) Demonstrate manaakitanga to help our communities recover quickly.
- (iv) Demonstrate responsible and prudent expenditure of rate-payer funds.

Principles

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

- (a) Act in good faith
- (b) Treat people with respect
- (c) Provide realistic options to people
- (d) Work to achieve timely outcomes
- (e) Communicate clearly
- (f) Be fair and objective
- (g) Understand the individual views and aspirations of Māori landowners

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 identified by Council in response to the Severe Weather Events; and
 - (ii) Is a Residential Property or a Mixed-Use Property; and
 - (iii) One or more Dwelling was, as at 12 February 2023, located within the part of the land classified as Category 3.
 - (iv) Has not had a change of ownership since 12 February 2023, other than where a transfer has been made to a Related Party of the former Owner.
- (b) The Owner has provided written confirmation to Council that they wish to receive an offer under this Policy within 3 months of receiving confirmation that the land is classified as Category 3.

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



4. CONTENT OF OFFER

Outline

- 4.1 There are two 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 Offer or a Residential Relocation Offer as set out below. The election can be made prior to, or within one month of after an offer is made.
- 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 of the market value of the Residential Property as at 12 February 2023.
 - (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 12 February 2023, less any Insurance Proceeds that have not been spent, in good faith, on repairs to the Dwelling and 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; or
 - (ii) To retain any Insurance Proceeds related to the Dwelling and Residential Improvements, in which case payment shall be made for the market value of the land as at 12 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.



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 12 February 2023, of any Dwelling(s) and Residential Improvements on the Residential Property or that part of a Mixed-Use Property that is within the Category 3 area. The purchase shall include the rights necessary to undertake demolition and/or removal of the Dwelling and Residential Improvements, and such site reinstatement considered by the Council to be appropriate in order to make the site safe (including removal of septic tanks and capping of wells, where necessary); and
 - (ii) A Relocation Grant.
 - (b) The Owner will retain ownership of the land. A covenant in gross in favour of the Council or similar legal instrument will be registered on the title of the property, which will provide that 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).
 - (c) 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 12 February 2023.
 - (d) 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 value for the Dwelling and Residential Improvements as at 12 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, and not receive any payment from the Council for the purchase of 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 made safe. For the avoidance of doubt, the offer does not include removal of silt or full site clearance for use for any particular 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, except where specified in the terms of the Sale and Purchase agreement.
- 4.8 The Council and the Owner shall agree a mutually acceptable settlement date, no later than 3 months from the date the execution of the Sale and Purchase Agreement.
- 4.9 The Council will agree to reimburse the Owner, on receipt of appropriate invoices, for legal costs related to finalising the sale and purchase agreement and conveyancing costs up to a maximum of \$1,500 (excl GST). If the Owner chooses to obtain their own valuation, it will be at their own cost.
- 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 purchases but later 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). The Owner will also remain liable for unpaid rates, charges for power, telecommunications or other unpaid monies owed by the landowner.
- 4.14 The Council may agree to extend any of the timeframes specified in this Policy.
- 4.15 Council may require shorter timeframes than those specified in this Policy, in any instance where it considers it is necessary to do so to ensure settlement under any Sale and Purchase Agreement is no later than 30 June 2025.



5. PROCESS FOR OFFER

5.1 Offers will be made in the following manner:

- (a) Category 3 landowners will be offered an opportunity to voluntarily participate in the buyout scheme.
- (b) Through agreeing to participate, the owner will be required to provide information (including insurance and mortgage information) and potential undertakings needed to finalise the offer. If the owner does not comply with any reasonable request for information within 3 months, the Council may determine that the landowner no longer wishes to participate in the buyout scheme.

(c) Valuation

- (i) The Council will prepare an offer based on the relevant Valuation obtained in accordance with the Valuation Process.
- (ii) Valuation Process means the process of Council commissioning a Valuation from a registered valuer which takes into account (to the extent considered appropriate by the registered valuer) relevant information provided by landowners, and relevant Council information.

If a vendor provides their own valuation (from a registered valuer), via the negotiation process, that materially differs from the Council commissioned Valuation, the Council and vendor will arrange a meeting of the two registered valuers to review their respective valuations and attempt to provide an agreed valuation. Where agreement cannot be reached, Council will appoint an independent valuer to review the matter and determine a final value, and no further consideration of value will be undertaken.

(d) 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 and any further terms and conditions as appropriate.
- (ii) The Council will specify an expiry date for the offer, being no later than 31 March 2025.
- (iii) The offer will expire on the expiry date for the offer, unless a mutually agreed extension of time has been approved by Council.

5.2 If the Owner accepts the Council offer or the Owner and the Council agree a different amount, a deposit of 10% or \$50,000 (whichever is the higher amount) 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 and advises the Council's Representative in writing that they wish to end the negotiation 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. The Council will agree to a pause or an extension of time where there is good reason and progress towards an agreement is still being made in good faith.

6. SPECIAL CIRCUMSTANCES

- 6.1 At the request of an Owner, a departure from this Policy (including as to what is regarded as a Residential Property and a Mixed-Use Property; but not the classification of the property as Category 3) may be considered at the absolute discretion of the Chief Executive of Gisborne District Council. Any decision to depart from this Policy, which could include providing 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; and
 - (c) Whether the departure involves any increased cost to the Council.
- 6.2 Any decision to depart from the Policy in any way will be made by the Council or its delegate and recorded in writing, with reasons.



7. REVIEW PROCESSES

- 7.1 Other than in relation to determining Valuation (which is subject to clause 5.1 (c)), 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.
- 7.2 The review will be carried out within four weeks of receipt of a written request and the outcome of the review will be communicated to the Owner.
- 7.3 In all other respects, because acceptance of the offer under the Policy is voluntary, there is no appeal process provided under the Policy.

8. POLICY REVIEW DATE

- 8.1 The Policy will be reviewed by the Council on or before 30 June 2025, including as to whether it should continue to apply. If the policy has not been reviewed by that time it will continue to apply.

DEFINITIONS

Category 3 Land means land which has been identified by and confirmed as Category 3 land by Gisborne District Council.

Council's Representative is a person to whom the Council has delegated authority to undertake certain actions on the Council's behalf.

Dwelling means a building, or part of a building (including decks, patios and pergolas) that was, as at 12 February 2023, lawfully established, and was 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 was or could be used by 1 or more persons to live in as their home.

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

Mixed-Use Property means land on which one or more Dwelling(s) was located as at 12 February 2023 and which is greater than 1 ha in size, regardless of whether activities other than residential activities were occurring on the land at that date.

Owner means the legal owner of the Residential Property or Mixed-Use Property.



Related Party means for the purpose of this policy, a party who the council is satisfied is closely connected to the landowner, including by family, marriage, adoption or whangai, or a person that has inherited a property through a deceased estate.

Relocation Grant means a payment to the Owner of 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 associated with the Dwelling.

Residential Property means land on which one or more Dwelling(s) was located as at 12 February 2023 and which is 1 ha or less in size.

Valuation means, as the case may be, and in each case as at 12 February 2023:

- (a) the market value of the Residential Property;
- (b) the market value of the land excluding the Dwelling(s) and Residential Improvements on the land;
- (c) the market value of the Dwelling(s) and Residential Improvements on the land;
- (d) the difference between the market value of the land with the right to rebuild a Dwelling and the market value of the land without the right to rebuild a Dwelling.
- (e) In any case where the property was affected in a Severe Weather Event prior to 12 February 2023, the valuation will be undertaken on the basis that the property had not been affected as at 12 February 2023.

Valuation Process means the same as described in Clause 5.1 (c) (ii).