



Proactive Release

The following document has been proactively released by the Department of the Prime Minister and Cabinet (DPMC), on behalf of Hon Mark Mitchell, Minister for Emergency Management and Recovery:

Future of Severely Affected Land: July 2023 Report

The following documents have been included in this release:

Title of paper: Future of severely affected land: July report back
(EWR-23-SUB-0060 refers)

Title of minute: Report of the Cabinet Extreme Weather Recovery Committee:
Period Ended 28 July 2023 (CAB-23-MIN-0334 refers)

Title of minute: Future of Severely Affected Land: July 2023 Report
(EWR-23-MIN-0060 refers)

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- section 9(2)(j), to enable negotiations to be carried on without prejudice or disadvantage.

Office of the Minister of Finance

Chair, Cabinet Extreme Weather Recovery Committee

Future of severely affected land: July report back

Proposal

- 1 This paper provides an update on central government support to councils as they progress categorisation and funding decisions for property severely affected by the 2023 North Island extreme weather events (NIWE), within the context of a locally-led recovery. It covers support to councils in implementing their response to Category 2 and 3 property interventions and progress on the Crown-led Kaupapa Māori pathway.

Relation to government priorities

- 2 This paper relates to the Government's ongoing recovery response to the 2023 North Island extreme weather events.

Executive Summary

- 3 At its meeting on 31 May, the Cabinet Extreme Weather Recovery Committee (EWR) invited a report back in July on the Future of Severely Affected Locations (FOSAL) work programme, specifically on development of a costed funding package for Category 3 properties, implementation of the Category 2 and 3 workstreams, and on engagement and implementation of the Kaupapa Māori pathway. This paper responds to that invitation.
- 4 Recommendations in this paper are based on previously agreed policy objectives and principles [EWR-23-MIN-0030, EWR-23-MIN-0044 and CAB-23-MIN-0056 refer].
- 5 I propose support for Category 2 interventions is guided by a business case process. Councils will need to meet eligibility criteria to be considered for funding through the National Resilience Plan. This process should consider all the PARA options (Protect, Accommodate, Retreat, Avoid), and would include property-level interventions where these are the most effective approach. There is also opportunity to fund projects through the Local Government Flood Resilience Fund.
- 6 This is a locally-led process and different councils are taking slightly different approaches. Officials are convening conversations with councils to bring together a common understanding of key issues, including risk categorisation approaches and thresholds, land use planning issues and buyout mechanisms. This will continue, and I intend to report back to EWR on these issues in August.
- 7 The Kaupapa Māori pathway is Crown-led and Crown-funded. Engagement is helping our initial understanding of the scale of the issues being dealt with at the community level. Alternative options to buyouts are being explored, with

relocation grants being an option to assist relocation. Although the Kaupapa Māori pathway may take a longer process to resolve, it is the Crown's responsibility to ensure that sufficient funding is available to implement options. Further engagement and a greater insight of Māori properties affected is required, but progress is being made. I intend to report back on these matters in August.

- 8 The FOSAL programme is moving towards implementation and recommendations in this paper seek some devolution of decision-making to Joint Ministers. While the focus has been on the Auckland, Tairāwhiti and Hawke's Bay regions, these policy settings equally apply to other regions impacted by the NIWE, but will also raise expectations of how government will respond to future extreme weather events.

Background

Policy objectives

- 9 Given the complexity of the FOSAL programme and the interplay between the Category 2, Category 3 and Kaupapa Māori pathways, it is timely to recap the objectives agreed to by Cabinet and EWR for the FOSAL work [EWR-23-MIN-0030, EWR-23-MIN-0044 and CAB-23-MIN-0056 refer], which are to:

- 9.1 Improve climate resilience and the avoidance of maladaptation.
- 9.2 Provide certainty to people about their situation, so they can move on with their lives.
- 9.3 Get the 'right solution in the right place', to the extent practicable.
- 9.4 Avoid significant financial hardship.

- 10 Cabinet also agreed the work would focus on:

- 10.1 Residential land, and for mixed-use properties, the residential component of those properties, and
- 10.2 Auckland, Hawke's Bay, and Tairāwhiti regions in the first instance, as the most severely impacted NIWE regions.

Principles

- 11 EWR also identified key principles for the FOSAL work – that it would:

- 11.1 Be locally-led and government-supported.
- 11.2 Maintain incentives for individuals, councils, and insurers to manage risks.
- 11.3 Be an appropriate and proportional response, utilising opportunities to reduce long-term risk to tolerable levels.

- 11.4 Provide government support to be at a level that can be sustainably offered for future events.
- 11.5 Ensure Treaty obligations and Māori rights and interests are central.
- 11.6 Target those worst affected and with the least means to recover.

[EWR-23-MIN-0030 and EWR-23-MIN-0044 refer]

Overall approach to categorisation of land by councils

- 12 Having undertaken their initial rapid assessments, councils are now starting detailed technical assessments of property risk, both through area-level and property-level assessments. As a result, the numbers of properties in each category remains in flux. The latest figures currently available are at Appendix 1.
- 13 To support Councils with their detailed technical assessments, officials have convened a series of workshops across councils with the aim of achieving consistency in the risk thresholds councils have used to distinguish between categories.
- 14 Council contacts agree that it is important their decisions to place certain properties or geographic areas into certain categories of policy response are robust and clear and help drive towards consistency across regions.
- 15 Two matters were not explicitly covered in the original objectives and principles, or the categorisation framework, but have policy and fiscal implications. These are the risk thresholds and criteria used to categorise properties. Both require confirmation by councils before they reach final decisions.
- 16 Councils have offered their initial views on these two matters, as set out below, though they have also indicated that they will need more time to confirm the approach.
- 17 The first matter is whether Category 2 and 3 areas are identified based on a broad range of risks (e.g., life, safety, property, infrastructure, environment) or a more targeted focus on risk to life and safety:
 - 17.1 Councils have indicated that their initial identification of FOSAL Category 2 and 3 areas are locations where risk to life and safety is considered intolerable – as revealed by the weather events – and where this risk needs to be reduced back to a tolerable level.
 - 17.2 This ‘gateway’ would not include wider risks, rather, it would serve to target limited central government and council resources to those locations facing the very highest impacts and future risk.
- 18 The second matter is the difference between Category 2 and Category 3. Council’s initial view is that the difference is the level of certainty that a buyout

or relocation grant (for Category 3) is the most cost-effective option to reduce intolerable risk to life and safety down to a tolerable level.

- 18.1 Category 2 business cases would need to demonstrate that the proposed interventions would address core considerations of risk to life and safety as well as setting out the range of co-benefits to reduced risk to property, infrastructure, and the environment.
- 19 Council's initial interpretation of the categories, if ultimately adopted by them, would target limited resources to the highest order risks. It would make the reduction of risk to life and safety the overall desired outcome for the FOSAL work, while risks to property, infrastructure and the environment would be co-benefits in those locations. Officials will continue to work with councils on the trade-offs involved in this policy choice.
- 20 As noted above, the above direction from councils is only initial. Councils have indicated that they will need more time to confirm the approach and that there are remaining questions still to be worked through, including:
- 20.1 If there are cases of land damage where there is tolerable risk to life and safety, that also need to be included in FOSAL.
- 20.2 The actual metrics used as risk thresholds, and any support required to councils to confirm them.
- 20.3 Confirming the difference between Category 2 and Category 1 as applied by councils as this determines which properties (i.e., Category 1 properties) are not eligible for any support.
- 21 Therefore, I intend to report back to EWR by the end of August 2023 to confirm the agreed understanding of the approach with councils.
- 22 Other workshops are also proposed to convene common approaches around land use planning, buyout design and the appeals process. Additional workshops will be convened with other NIWE affected councils.

The Category 2 Business Case Process

- 23 Within the Auckland, Hawke's Bay, and Tairāwhiti regions, the latest categorisations show a total of:
- 23.1 2,783 properties categorised as 2C (community-level interventions will be effective in managing future risks)
- 23.2 2,578 properties categorised as 2P (needing property-level interventions), and
- 23.3 9,236 properties categorised as 2A (further assessment is needed to determine which interventions will be able to manage future risk).
- 24 The responsibility to fund repairs to Category 2 properties lies with property owners and their insurers. However, through the cost-sharing negotiations, we

have agreed to support council-led risk mitigation initiatives in these areas (see companion 26 July EWR paper *Cost sharing arrangements for councils in severely affected locations*).

Near-term initiatives

- 25 For funding for near-term risk mitigation initiatives, councils can apply for support from the Local Government Flood Resilience Co-investment Fund, a \$100 million operating tagged contingency established at Budget 2023.
- 26 Officials at the Cyclone Recovery Unit, the Treasury, Ministry for the Environment and Department of Internal Affairs are currently working with councils to identify low-regrets (lower-risk) initiatives suitable for support from this Fund (some likely projects are also being identified through councils' Regional Recovery Plans and as part of the cost-sharing negotiations). Following the identification of suitable initiatives, EWR will be asked (likely in mid-August) to approve an initial tranche of funding.
- 27 In August, EWR will be asked to approve the criteria for accessing the Fund, initial drawdowns and a process for future drawdowns (as well as other necessary implementation details).
- 28 Ministers will also be asked to authorise the Minister of Local Government and Minister of Finance jointly to agree future drawdowns from the Fund. At present, the Minister of Local Government, Minister for Regional Economic Development, Minister for Climate Change, and the Minister of Finance are jointly required to approve drawdowns from this tagged contingency.

Longer-term initiatives

- 29 For councils' longer-term Category 2 risk mitigation initiatives, we are providing pre-allocations from the \$6 billion National Resilience Plan (NRP) that we established in Budget 2023. As the cost-sharing paper explains, we have made/will make these allocations on the basis of councils' indicative lists of Category 2 risk mitigation projects that have been provided to the negotiation team and also included in their Regional Recovery Plans. For:
 - 29.1 Hawkes Bay, we have agreed a pre-allocation of \$203.5m.
 - 29.2 Tairāwhiti, we have tabled but not yet agreed a pre-allocation of \$44m.
 - 29.3 Auckland, we have not yet tabled a pre-allocation as discussions are less advanced.
- 30 To access funding from their pre-allocation, councils will be invited to submit business cases for eligible projects through the process detailed in the paper *National Resilience Plan – Phase 1* which was considered by Cabinet on 24 July. If a region cannot fill its pre-allocation with projects of the necessary quality, the excess remaining of its pre-allocation would be released back into the NRP.
- 31 Councils' business cases will be assessed against the criteria adopted for the NRP (apart from the risk profile assessment / strategic assessment requirement). In addition, as part of the invitation letters to councils I will note the expectation that they have:

- 31.1 Taken a programme wide, area-based approach to hazard risk management, including assets not owned by councils or residential property owners, such as state highways and commercial properties.
 - 31.2 Used the PARA (protect, accommodate, retreat, avoid) framework when considering options (see below).
 - 31.3 Considered cultural values and other non-monetary costs and benefits, such as environmental and equity impacts.
 - 31.4 Consulted with local communities, including affected Māori and owners of whenua Māori, and have considered Māori rights and interests are taken into account.
- 32 The PARA framework encourages the use of a wide range of interventions to manage risk. Examples include structural and nature-based flood protection, moveable temporary flood barriers, emergency preparedness (such as evacuation planning and early warning systems), property level interventions (such as retrofit or raising floor levels), planning interventions, and managed retreat / relocation.
- 33 Using a range of interventions increases options for determining the most cost-effective, longer-term approach, and the PARA framework is consistent with emerging best practice in hazard risk management. It was used in the recent Westport flood resilience project (funded through Budget 2023) and is encouraged by the National Adaptation Plan.
- As signalled to EWR on 31 May, I consider it desirable that business cases are delivered to the Government as soon as possible, but preferably by March 2024, to align with the 2024-25 financial year planning.

Funding for property-level interventions

- 34 The categorisation framework and use of the PARA framework means councils will likely put forward business cases which include property-level interventions (2P) as well as community-level interventions (2C).
- 35 The Crown has a choice on whether it supports these interventions. While some councils have supported property-level risk reduction interventions (e.g., in Westport), central government has not regularly funded interventions at the property level.
- 36 One benefit of the Crown supporting property-level interventions is that they may be the most cost-effective approach, and reduce the number of Category 3 buyouts otherwise required. For example, they may be cheaper than a buyout where a property faces an intolerable level of future risk (and therefore would move a property from Category 3 to Category 2).
- 37 At the same time, it is equally possible that, for properties initially classed as Category 2P, later assessment concludes that a buyout is the most cost-effective option. Therefore, there is uncertainty over the total future costs involved in these categories until further assessment is completed.

- 38 Funding support for property-level interventions may also incentivise uptake, especially for those facing affordability issues. In some locations, especially for rural properties, it may be the only viable risk reduction intervention.
- 39 Where property-level interventions are deemed an important component of the overall risk management, uptake would also avoid associated (future) costs being borne more widely. Examples include in the emergency response, provision of temporary accommodation and disruptions to education, employment and health and wellbeing of the people affected.
- 40 However, through the Crown providing funding toward property-level interventions, individual property owners are likely to benefit from the investment as it will be expected that the value and insurability of their property will be maintained. Therefore, some contribution to costs from the property owner may be appropriate, noting there is a risk property owners may decline to contribute if they perceive the result (of declining) would be a buyout or relocation grant at terms preferable to them.
- 41 Other risks pertaining to the funding of property-level interventions and/or wider government funding of FOSAL interventions, and proposals for mitigating these, are detailed in the table below:

Risk	Possible mitigation
Precedent risk: Have received requests from other NIWE and non-NIWE areas affected by other recent weather events. ¹	Clearly communicate this approach is specifically for NIWE-affected regions, while pointing to the Government's longer-term reforms in this area.
Fiscal risk: The number of properties in each category could considerably change over the next few months and over the course of the business case process, which makes the overall fiscal exposure to the Crown uncertain. The overall costs of risk reduction interventions are unknown and could be very high.	Calibrate cost-sharing negotiation settings to maintain incentives on councils to manage down costs (e.g., by ensuring they have skin in the game, taking a consistent approach to categorisation and encouraging them to make future-focused land use decisions if they know they may be liable for costs for future severe weather events). Ensure the business case process and cost-sharing negotiations identify councils' ability to bear costs of interventions and incentivise the best value for money proposals. Support councils to develop eligibility criteria that tightly control access to property-level support.
Moral hazard: The expectation of the provision of property-level support after an event may disincentivise people from investing in risk reduction measures.	Ensure that property owners bear an appropriate portion of the costs of any intervention, while recognising that post-event property owners will be bearing additional costs and significant disruption. Seek to increase awareness of flood risk and appropriate mix of incentives for pre-emptive risk reduction. E 9(2)(f)(v) _____ _____ _____ _____

¹ For example, the Mayor of Nelson has written to the Government, requesting clarification on the support we will provide for property owners who cannot afford to reduce their future flood risk to an acceptable level.

42 On balance, I consider there to be adequate provisions to manage risks and see overall benefit in supporting property-level interventions as part of a mix of risk reduction interventions.

43 For this reason, I propose the Crown provide support to councils to implement flood mitigation plans that may include property-level interventions (such as house raising), where they meet the funding eligibility criteria for the NRP.

Changes to land use will be needed to implement Category 2 decisions

44 Officials anticipate a significant volume of plan changes to mitigate development from future severe weather events and these are expected to take two to four years to complete. Some councils have indicated they may seek to use the streamlined planning process (SPP) to progress these plan changes in a timely fashion to enable recovery.

45 Orders in Council (OiC) under the *Severe Weather Emergency Recovery Legislation Act 2023* are not available to address long term issues, such as future severe weather events. This means the issues currently identified by councils will need new primary legislation if they require addressing in the short-term, rather than waiting for upcoming legislative reform.

The Category 3 Buyout Process

46 Councils are still forming their views on their preferred design for buyouts. Advice has been commissioned on behalf of the councils by Local Government New Zealand (LGNZ). It is unclear whether Auckland Council, which is not a member of LGNZ, will also receive this advice.

Caps, valuations and offers

47 Indications from the Hawke's Bay Regional Recovery Agency (representative of Hawke's Bay councils' views) is that they prefer:

47.1 no cap at all,

47.2 individual property by property valuations rather than blanket type approaches as used in the Residential Red Zone,

47.3 offers at 100% of pre-event value, not less, and

47.4 that second homes would be eligible.

48 Part of the reasoning behind this approach is to address possible litigation risks and the imperative to achieve high levels of uptake to reduce exposure to risk.

Insurance treatment

- 49 Officials have engaged with insurers while direct discussions between insurers and councils are being set up.
- 50 Councils will need to manage relationships with insurers including receipt of assigned claims, and communications to property owners on implications for pay-outs already received or spent.

Property types

- 51 Councils agree that pure residential properties and rental properties will be included. They agree that for mixed-use properties, the offer will be a grant to enable the owner to relocate whilst maintaining non-residential uses, where this is safe to do so.
- 52 As noted above, Hawke’s Bay’s initial approach is to include second homes, including holiday homes. Gisborne District Council and Auckland Council have not yet offered a view on this.

s 9(2)(f)(iv)

[Redacted content]

Potential land use changes relating to Category 3

- 55 The proposed locally-led buyout process for Category 3 properties is voluntary. The design of the buyout offers is being determined by councils, as they will be issuing the offers. We understand that councils are seeking to design the buyout offers in ways which incentivise their uptake. Councils will then be able to progress the necessary *Resource Management Act 1991* (RMA) plan changes to prohibit residential use on land that they have acquired.
- 56 The approach to the buyout of the residential component of mixed-use properties is also under consideration, including the legal powers to prohibit residential use on a high-risk area within a property.
- 57 It is possible (and expected) that some landowners will not accept a voluntary buyout offer. At this stage, it is not clear what approach councils may wish to take in this situation. Some councils have indicated they consider they do not have the necessary tools under the RMA to change land use if a voluntary buyout offer is not accepted.
- 58 However, we note that the Environment Court found that use of RMA powers to extinguish existing residential uses in Matatā (as a response to an

unacceptably high risk to life from a natural hazard) was lawful and the most appropriate way to achieve the purposes of the RMA in those circumstances.

- 59 Future regulatory and legislative changes that are proposed will better assist councils to plan for and respond to natural hazard risks. This includes the Spatial Planning Bill, the Natural and Built Environment Bill, the National Planning Framework, the proposed Climate Change Adaptation Bill and proposed national direction on natural hazards under the RMA. To avoid negatively impacting housing affordability, restrictions on the use of land in high-risk areas will need to be combined with a greater ability to use land for housing in low-risk areas, consistent with the retreat option in the PARA framework.
- 60 With voluntary buyouts possibly starting from September, and detailed engagement on this topic with councils in July and August, officials expect to provide further advice before the end of 2023.

Ministry of Social Development payments

- 61 Payments received as a result from Category 3 buyouts could affect people's eligibility to financial assistance from the Ministry of Social Development (MSD). MSD officials are currently developing advice for the Minister for Social Development and Employment on whether to progress income and cash asset exemptions for land buyouts, insurance pay-outs, and donations related to FOSAL.

Progress with the Kaupapa Māori pathway

- 62 The primary objective for the Kaupapa Māori pathway is to enable people to move out of harm's way by relocating their residential and related uses to safe places.
- 63 The pathway recognises the Crown's Treaty and legal obligations, complexities associated with whenua Māori and the fact that voluntary buyouts would likely not be appropriate for Māori land and communities due to:
- 63.1 Cultural considerations, such as Māori whakapapa to the whenua.
 - 63.2 Ownership complexity (i.e., multiple ownership structures require specific considerations to be followed through before any change is agreed).
 - 63.3 Legal limitations (for example the alienation of Māori freehold land, Māori Customary Land, and Māori Reservations is subject to the provisions of *Te Ture Whenua Māori Act 1993* (TTWM Act)).
- 64 I propose the following parameters for the Kaupapa Māori pathway – that it will be:
- 64.1 **A Crown-led and funded process** – Unlike the Category 2 and Category 3 pathways that are led by councils, the Crown is leading

engagement and implementation for the Kaupapa Māori pathway, with support from councils. As a Crown-led process, the Crown will fund the costs of its policy response (from the NRP, as with the other FOSAL costs). Although the Kaupapa Māori pathway may take a longer process to resolve (compared to the Category 2 and 3 pathways), it will be the Crown's responsibility to ensure that sufficient funding is available to implement options.

Although there will be differences between the Crown-funded policy response in the Kaupapa Māori pathway and the pathway for other Category 3 property, I believe it is appropriate that the Crown designs and funds bespoke, appropriate solutions for affected whenua Māori, owing to the risk of inequity arising from the significantly different regulatory framework, tenure system and ownership structures for whenua Māori and also to the unique role of the Crown as a Treaty partner, and the Crown's obligations under TTWM Act.

64.2 **Focused on Category 3** – The pathway is focused on areas initially placed in Category 3 and areas with the potential to move into Category 3 (i.e., Category 2A). There may be cases where owners of Category 2 whenua Māori property wish to relocate. A range of risk management solutions should be worked through before relocation support from the Crown is considered, though it should be acknowledged that the possibility of Category 3 owners relocating within a Māori community could have implications for other properties and the viability of that community more broadly.

64.3 **Focused on Māori communities with whenua Māori, cultural and residential Māori assets on whenua Māori, and Māori collectively-owned assets on other Category 3 land** – Discussions with Māori communities are focused on whenua Māori, including Māori customary land, Māori freehold land and Māori Reservations, Māori assets on these lands, as well as culturally significant Māori collectively-owned assets on general land (such as marae, urupā and papakāinga).

Collectively-owned assets such as marae are included in the scope of the Kaupapa Māori pathway given their cultural significance. They are essential infrastructure at the heart of the community, available for the use of the people for a various range of activities, such as for tangi, hui and significant events where manaakitanga often extend to providing a place to sleep and eat. Communities could risk suffering harm to their wellbeing and cultural identity if their marae is left in a Category 3 zone without any support. Other community components, such as urupā, would be assessed on a case-by-case basis.

64.4 **Focused on residential and related land uses**– the focus of the policy response will be whenua Māori with residential uses (defined broadly to include uses such as marae). However, whenua Māori can have mixed-uses that are interconnected and difficult to isolate and we expect Māori will desire a holistic approach to any solutions. As such,

where appropriate, the Crown will consider solutions that encompass a wider set of land uses.

- 65 Māori rights and interests and the Crown's obligations as a Treaty partner extend beyond the Kaupapa Māori pathway. As such, the Crown will continue to engage with Māori on the full FOSAL work programme and support the locally-led processes for the Category 2 and 3 pathways to ensure that Māori rights and interests, and the unique impacts for Māori, are identified, understood and addressed, as far as possible, in the responses.
- 66 Importantly, engagement with Māori and decisions on the pathway should keep in step with wider FOSAL processes and decisions, such as final categorisation decisions and the design of the buyout scheme, in order to avoid inequitable outcomes for Māori. Given the importance of progressing those wider processes and the complexity around the Kaupapa Māori pathway, engagement and policy design effort will need to continue at pace.

Data on Māori communities

- 67 Several communities in Hawke's Bay and Tairāwhiti have been severely impacted by Cyclone Gabrielle and have significant amounts of Māori-owned land. Forty-two whenua Māori blocks, totalling 536 hectares, have been identified as being provisionally classified as Category 3 to date (see table below, a further breakdown is at Appendix 2).
- 68 Across the Hawke's Bay, approximately ^{§ 9(2)(a)} whenua Māori blocks in Category 3 (§ 9(2)(a)) and Category 2A (§ 9(2)(a)) areas have either homes or marae. Work is underway to provide more precise data on the extent of residential use (and for land in Tairāwhiti).

s 9(2)(a), 9(2)(j)

s 9(2)(a), 9(2)(j)



Engagement overview

- 69 Since the oral update to EWR on 28 June, we have engaged further with Māori communities. These engagements have been led by the Cyclone Recovery Unit and have included other central government agencies and local council officials. A summary of engagements, both held and forthcoming, and insights from these events, are included in Appendix 3.
- 70 On 18 July, central government and council officials met with trustees and shareholders of whenua Māori in Hawke’s Bay, in the s 9(2)(a) communities. Common themes resulting from these engagements included that property buyouts are not appropriate for whenua Māori, but that there is openness to other options, such as grants. The different challenges and complexities for each location lends itself to bespoke solutions.
- 71 Officials made it clear that given the untenable risk to life, it would not be appropriate for people to continue living on Category 3 land, but there is a desire to allow the use of that land for other purposes, so that hapū are not alienated from the land. Officials will continue these discussions at block level.

A grant-based solution may support relocation

- 72 For those affected landowners who wish to relocate, an alternative to buyouts is a grant-based solution whereby owners of whenua Māori in Category 3:
- 72.1 retain ownership of their land, and
 - 72.2 receive a grant which owners are free to use as they desire to enable relocation to safe places (for instance to acquire suitable land for relocation and build replacement structures).
- 73 A grant-based approach will likely work well in situations where affected property owners are able to acquire suitable alternative land, however finding a suitable alternative location will be a challenge for some communities and could take considerable time. It is expected that communities will favour relocating nearby, particularly given there may be important local areas of importance that cannot be relocated (for example, urupā, pā sites, and wāhi tapu). Opportunities may exist in some cases to relocate housing to a safer area within the same block of whenua Māori if, for example, that includes some Category 2 areas.
- 74 Where barriers exist to acquire suitable alternative land, the Crown may need to play a more active role to support the design of solutions to ensure they meet the needs of affected communities. For instance, there may be opportunities for the Crown to assist by acquiring private land on behalf of affected Māori. The provision of suitable public land may also be an option, though initial analysis from officials indicates that suitable public land is likely to be very limited (if at all available) and there could be legal constraints to making such land available. Officials can explore these opportunities further where landowners identify such approaches as a preferred solution.
- 75 In addition to the provision of relocation grants, other possible forms of support could include:
- 75.1 Remedying vulnerable retained whenua: The TTWM Act outlines the Crown's obligations to ensure that whenua is actively protected and that its retention – including for protection, utilisation and development purposes – is promoted.
 - 75.2 Facilitating wellbeing support (e.g., mental health support) to affected communities: Where there is unmet need, this would be provided outside the FOSAL work programme.
- 76 How any grants are determined will be a key design aspect to work through, in particular:
- 76.1 Eligibility for support.
 - 76.2 Level of support: this could be set with reference to the Category 3 buyout scheme to achieve consistency (e.g., where properties are mixed-use, the grant could reflect the value of the residential portion of the property).

- 76.3 Valuation of land: this will need to consider factors that are specific to these types of land titles and the local community (e.g., cultural significance and the conditions imposed by the TTWM Act). The Office of the Valuer-General is able to support the valuation of whenua.
- 77 I propose that:
- 77.1 The Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development have the power to approve an options package for the Kaupapa Māori pathway, including, but not limited to, the design of a grant-based solution (including eligibility), the approach to the valuation of land, and the level of any support to be provided.
- 77.2 Final decisions on the appropriate Crown support for each affected community in the Kaupapa Māori pathway will be determined by Cabinet, based on the recommendations of the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development.
- 78 Clarity on the future level of council infrastructure on Category 3 land will be necessary for the design of any grant-based solution and for individuals and communities to determine whether they will remain or relocate. Although this is relevant for all Category 3 property owners, it is particularly relevant to the Kaupapa Māori pathway owing to the significance of whenua Māori and the Crown's obligations under the TTWM Act.
- 79 The Crown will continue to engage with councils on the future provision of infrastructure in Category 3 areas. Such engagement should be iterative, as communities require an understanding of councils' plans to retain and maintain infrastructure, in order to determine whether relocation is a preferred option, councils also require an understanding of communities' intentions in order to determine the future level of infrastructure in a given location.

Bespoke solutions to address complex ownership and legal frameworks

- 80 Solutions will need to be bespoke, reflecting the heterogeneity of affected communities with differing preferences, land ownership and governance arrangements, mixes of land uses and relocation options. A grant-based approach does not override the Crown's responsibility to identify and design solutions through collaboration and genuine engagement with iwi, hapū and affected Māori communities.
- 81 In particular, solutions (and processes to agree solutions) will need to be workable within the complex ownership and legal frameworks unique to whenua Māori and Māori property while respecting associated cultural values.
- 81.1 The TTWM Act sets out the regulatory framework for protecting against the disposal of whenua Māori to other interests, recognising whenua Māori as taonga tuku iho of special significance to Māori. As a result,

solutions that involve a change in land ownership tend to be more complex and in some cases are not permitted under the legislation.

81.2 Engagement currently underway will vary, depending for instance, on themes coming through from earlier engagement, whether a dwelling is situated on a larger block of Māori land, the legal basis for the dwelling to be there, and the number of beneficial owners of the land (and where they are located).

81.3 Some whenua Māori provisionally identified as Category 3 is ungoverned, meaning the views of these landowners may be difficult (or impossible) to obtain within a reasonable timeframe. It will be critical that the overall process for providing support to Māori communities is not held up as a result. The TTWM Act provides a process for an agent to be appointed for ungoverned whenua. Work is underway to resolve governance issues, and to assess options to deal with remaining ungoverned blocks.

82 Where relocation occurs, there would need to be agreement that Category 3 land being vacated could no longer be available for residential use, as well as the form of the ongoing title for vacated land, and the investment that may be needed to remedy the retained whenua.

Crown Law advice [legally privileged]

83 s 9(2)(h) [Redacted text block]

s 9(2)(h) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Treaty of Waitangi considerations

87 The Crown's obligations as a Treaty partner extend across the wider FOSAL programme, including the locally-led Category 2 and Category 3 pathways and the Crown-led Kaupapa Māori pathway.

88 The Crown's lead role in developing and implementing the Kaupapa Māori pathway means it can directly influence the policy response in partnership with affected communities to ensure it is aligned with the Crown's Treaty obligations and recognises the significant rights and interests of owners of whenua Māori and Māori communities. This engages, for example, the Treaty principles of informed decision-making (informed by the views of Māori) and

active protection, and recognises the potential for Māori to be impacted differently to other New Zealanders due, in part, to the nature of Māori land ownership and tenure.

- 89 Importantly, the Kaupapa Māori pathway is being developed in an evolving context and needs to take a flexible and agile approach that navigates achieving the multiple objectives of providing Māori communities with early certainty so they can move on with their lives, developing well-considered and fit-for-purpose solutions based on genuine engagement, and ensuring the policy response establishes a sustainable precedent.
- 90 The Crown's supporting role in the locally-led Category 2 and Category 3 processes means that more indirect levers will be needed to ensure that the Crown's Treaty obligations are upheld, including that decision making is informed by a clear understanding of impacts for Māori. The Crown should work with councils and provide support in meeting this guidance where needed, while continued Crown engagement with Māori on the full FOSAL work programme will also be important.

Next Steps

- 91 Officials are having inter-agency discussions on future responsibilities for the implementation of the FOSAL work programme. The Cyclone Recovery Unit will take a greater role in this work as it moves from policy to implementation. Aspects of implementation that agencies will take responsibility for will be reported to EWR in August.
- 92 For the Kaupapa Māori pathway, the coming weeks will involve significant engagement with communities in Hawke's Bay and Tairāwhiti. Informed by this engagement, advice will be provided to Ministers on the scope and scale of support to be offered to communities (including indicative costs) and how this support may be implemented (including which entity will be responsible for administering any grant or other support for a particular location).
- 93 This paper seeks to authorise the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development to approve an options package for the Kaupapa Māori pathway, including, but not limited to, the design of a grant-based solution (including eligibility), the approach to the valuation of land, and the level of any support to be provided. Subject to the progression of community engagement and the crystallisation of support offers, the next update to EWR will confirm the decisions taken by the Ministers listed above.

Cost-of-living Implications

- 94 Councils may need to increase rates to property owners to cover the costs of intervention measures. Targeted council rates for impacted properties should provide an equivalent benefit for those property owners, however general rate increases for all properties across a council area will adversely impact property owners who receive no direct benefit from interventions. Category 3

property owners who accept a voluntary buyout would likely retain the pre-event value of their property.

Financial Implications

- 95 As described in the companion 26 July EWR paper *Cost sharing arrangements for councils in severely affected locations*, the Crown's fiscal exposure to Category 3 buyouts and Category 2 interventions is being managed through a cost-sharing arrangement with councils, which creates an imperative for both to manage costs. In addition, the Crown's contribution will be capped. If there are Category 3 properties that remain unpurchased after the cap is reached, the Crown will assess the reasons for the cap being met, to determine whether an additional Crown contribution is justified. Some NRP funding will also be provided, with variability between councils based on their ability to contribute.
- 96 The Kaupapa Māori pathway sits outside the cost-sharing arrangements with councils, reflecting that this is a Crown-led and Crown-funded pathway. Officials will work with councils to clarify the relationship between the Kaupapa Māori pathway and other FOSAL pathways and how these are communicated to affected communities. Costings for the Kaupapa Māori pathway are not yet known as the number of properties in scope is unclear and design details are still to be worked through. Once these factors are clear, Cabinet agreement will be sought to the fiscal costs associated with this pathway.
- 97 For Category 2, the *Cost sharing arrangements for councils in severely affected locations* paper seeks agreement to authorise the Minister of Finance and the relevant appropriation Minister(s) to jointly take decisions on appropriation and fiscal management treatment. Decisions are yet to be made as to the agency responsible for assessing FOSAL Category 2 business cases, and an appropriation for this assessment may or may not need to be established.
- 98 For Category 3 and the Kaupapa Māori pathway, costs will, in the first instance, be met through the Vote Finance *North Island Severe Weather Events – Crown Payments to Local Authorities and Other Eligible Stakeholders MCA*, which has already been established.
- 99 All the above costs will be managed against our \$6 billion National Resilience Plan (NRP) and/or the \$100 million North Island Weather Events: Local Government Flood Resilience Co-Investment Fund, both established at Budget 2023.

Legislative Implications

- 100 Changes to existing legislation, and/or the introduction of new legislation, may be required. Requests from councils for legislative changes will be carefully considered.

Impact Analysis

Regulatory Impact Statement

- 101 This paper does not require a Regulatory Impact Statement as it does not specifically propose the introduction of new legislation or changes to, or the repeal of, existing legislation.

Climate Implications of Policy Assessment

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

Population Implications

- 103 Displacement and relocation interventions, while for the purpose of removing people away from high-risk areas, may also disproportionately impact Māori communities, due to the areas where Cyclone Gabrielle had the greatest impact also having higher levels of Māori residency. Pasifika communities, particularly in Auckland and Hawke's Bay affected areas, have also been disproportionately impacted.

Human Rights

- 104 The proposals in this paper are not considered to have human rights implications and are not considered inconsistent with the *New Zealand Bill of Rights Act 1990* (NZBORA) or the *Human Rights Act 1993*.
- 105 Initial advice suggests that proposed options for the Kaupapa Māori pathway could be considered discriminatory when compared to options for the Category 3 pathway, but can be argued on the basis of the Crown's Treaty obligations. The advice considers this is likely to be within the reasonable limits test of section 5 of the NZBORA – to be within reasonable limits that can be demonstrably justified in a free and democratic society. This advice will be reviewed as the detailed policy is further developed.

Use of external resources

- 106 The Ministry for the Environment and the Treasury have engaged short-term policy contractors (approx. 2.5 FTE) to assist permanent and fixed-term staff in the development of policy, Cabinet papers and associated briefings. This is due to the breadth and complexity of the Government's ongoing recovery response to the NIWE.

Consultation

- 107 This paper has been prepared by the Ministry for the Environment and the Treasury. Consultation has been undertaken with the Department of Prime Minister and Cabinet; Department of Internal Affairs; Ministry of Business, Innovation and Employment; Ministry of Housing and Urban Development ; Toke Tu Ake Earthquake Commission, Ministry for Primary Industries; Ministry for Pacific Peoples; Ministry of Transport; Land Information New Zealand; Te Puni Kōkiri; Te Arawhiti; National Emergency Management

Agency; Financial Markets Authority; Inland Revenue Department; Ministry of Social Development; Department of Conservation; and Te Waihangā New Zealand Infrastructure Commission.

- 108 Feedback from agencies included the following predominant themes:
- 108.1 Concern with equity implications for other NIWE-affected regions and for past and future events.
 - 108.2 Inequity between treatment for Category 3 under Kaupapa Māori and non-Kaupapa Māori pathways.
 - 108.3 Lack of clarity regarding overlap, interaction, and timing of Kaupapa Māori and other pathways.
 - 108.4 Treatment of non-residential land in Category 2 and 3 areas is not well addressed. (note: FOSAL programme focuses on residential land).
 - 108.5 Kaupapa Māori pathway:
 - 108.5.1 The roles of various government agencies are not clear.
 - 108.5.2 Need to ensure that the likely slower pace of the Kaupapa Māori pathway does not disadvantage Māori.
 - 108.5.3 Clarity needed on types of applicable land use, such as residential, marae, papakainga, and whether these are developed.
 - 108.6 Need for clarity on who is leading FOSAL implementation, specific pathways and workstreams within FOSAL, and government agencies that should be involved in policy design and decision-making.
- 109 These comments and views have been addressed, to the extent possible, in this final version. Officials are in ongoing engagement with agencies to resolve outstanding issues.
- 110 Officials are also engaging in ongoing discussions with councils. Councils consulted are Auckland Council, Hawke's Bay Regional Council, Gisborne District Council, Hastings District Council, and Wairoa District Council.

Communications

- 111 Decisions made by EWR will need to be clearly communicated to affected property owners in a way that provides reasonable certainty while clearly explaining the limitations on existing data and process detail. Officials are developing messages to support these announcements, noting that these will be high-level and further detail will be provided when available.
- 112 There are important lessons to be learnt from the FOSAL process that will influence medium- and long-term policy settings. However, there should be clear communication that the FOSAL categorisation framework and

associated policy supports are not an indication of future direction for natural hazard management or climate change adaptation policy.

- 113 To this end, announcements on funding support provided to councils or Māori as part of the FOSAL process should be coordinated with announcements on the proposed Issues and options paper and Select Committee Inquiry on Community-led Retreat and Adaptation funding. I have directed officials from the Cyclone Recovery Unit, the Treasury, and the Ministry for the Environment to work together to coordinate future announcements.

Proactive Release

- 114 I do not intend to proactively release this Cabinet paper at this time. The proposals in this paper continue to be developed in greater detail and release at this point would be premature. A proposal to proactively release earlier FOSAL-related Cabinet papers will be provided in the next report back to EWR.

Proactively Released

Recommendations

I recommend the Committee:

- 1 **note** that on 31 May 2023, the Cabinet Extreme Weather Recovery Committee (EWR) invited the Associate Minister of Finance (Wood) to report back on:
 - 1.1 the development of a costed funding package for Category 3 properties;
 - 1.2 implementation progress of the Category 2 and Category 3 support processes; and
 - 1.3 progress on engagement and implementation of the parallel Kaupapa Māori pathway [EWR-23-MIN-0044 refers];

Overall approach to categorisation of land by councils

- 2 **note** that councils are revising their assessments of properties on an ongoing basis, with 722 residential properties now classified as Category 3;
- 3 **note** that councils are assessing individual residential properties, and it is likely there will be further movement between the number of Category 2 and Category 3 properties;
- 4 **note** that councils are still working through their final preferred approach to categorisation methods not explicitly covered in the original categorisation framework, especially whether to target risk to life and/or wider risks to property and the environment, and the risk threshold which would apply to Category 2 and/or 3;
- 5 **note** that councils' initial view on these questions is to:
 - 5.1 make the risk to life and safety the primary determinant of which properties or areas are classed as Category 2 and 3;
 - 5.2 the difference between Category 2 and 3 will be the level of certainty that a buyout is the most cost-effective option to reduce risk to a tolerable level;
- 6 **note** that I support the initial direction signalled by councils as set out in recommendation 5 above, as it targets limited central and local government resources to areas facing the highest order of risk (life and safety), whilst still delivering on risks to property, infrastructure and the environment as co-benefits in those locations;
- 7 **note** there are further details to work through with councils, including the treatment of land damage, and councils' work to finalise the risk metrics;

Support for Category 2 interventions is guided by a business case process

- 8 **note** that councils will be invited to submit business cases for eligible Category 2 risk mitigation projects through the process detailed in the paper *National Resilience Plan – Phase 1* which was considered by Cabinet on 24 July;
- 9 **agree** that as part of the invitation letters to councils I will note the expectation that they have:
- 9.1 Taken a programme wide, area-based approach to hazard risk management, including assets not owned by councils or residential property owners, such as state highways and commercial properties.
 - 9.2 Used the PARA (protect, accommodate, retreat, avoid) framework when considering options (see below).
 - 9.3 Considered cultural values and other non-monetary costs and benefits, such as environmental and equity impacts.
 - 9.4 Consulted with local communities, including affected Māori and owners of whenua Māori, and have considered Māori rights and interests are taken into account.
- 10 **note** that in a locally-led process, councils are responsible for considering trade-offs between property- and community-level solutions;
- 11 **note** that property-level interventions can be the most effective approach to mitigating future risks in many cases;
- 12 **note** Crown funding of property-level interventions involves risk of private benefit, precedent, fiscal and moral hazard risks;
- 13 **agree** the Crown may provide support to councils to implement flood mitigation plans that may include property-level interventions, where those interventions meet the NRP business case funding eligibility criteria;
- 14 **note** that the *Severe Weather Emergency Response Legislation Act 2023* is not available to manage the effects of future theoretical severe weather events;
- 15 **note** that advice on legislation will be provided when the scale and significance of the issues raised by councils are better understood;
- 16 **note** that councils have identified issues they consider may hinder the ability to implement plan changes that give effect to land use categorisations under current *Resource Management Act 1991* settings;
- 17 **note** the issues identified by councils are anticipated to be addressed over the next two to ten years by a combination of:
- 17.1 the Spatial Planning Bill;

- 17.2 the Natural and Built Environment Bill;
 - 17.3 the proposed Climate Change Adaptation Bill;
 - 17.4 the National Planning Framework; and
 - 17.5 the proposed national direction on natural hazards under the *Resource Management Act*;
- 18 **note** that the *Cost sharing arrangements for councils in severely affected locations* paper seeks agreement to authorise the Minister of Finance and the relevant appropriation Minister(s) to jointly take decisions on appropriation and fiscal management treatment for Category 2.
- 19 **note** decisions are yet to be made as to the agency responsible for assessing FOSAL Category 2 business cases, and an appropriation for this assessment may or may not need to be established.

The Category 3 Buyout Process

- 20 **note** that councils are establishing their preferred design for buyouts and grants under FOSAL and working through advice they have received on their ability to enact buyout grants under FOSAL;
- 21 **note** that councils are in general agreement that pure residential properties and rental properties will be included in Category 3 and that for mixed-use properties the offer will be a grant to enable the owner to relocate while maintaining non-residential uses where safe;
- 22 **note** that Hawke's Bay Regional Recovery Agency's initial view, representative of Hawke's Bay councils' views, is for buyout offers without caps, at 100 percent of pre-event value, and to include second homes;
- 23 **note** that a consequence of buyout offers for Category 3 land being voluntary is that, in the absence of buyout offers being accepted or land use controls being changed, current and future residential occupiers may be exposed to unacceptable levels of life safety risk;

Kaupapa Māori pathway

- 24 **note** the primary objective for the Kaupapa Māori pathway is to enable people to move out of harm's way by relocating their residential and related uses to safe places in a way that recognises the Crown's Treaty and legal obligations, complexities associated with whenua Māori and the fact that voluntary buyouts would likely not be appropriate for Māori land and communities;
- 25 **agree** that the Kaupapa Māori pathway is:
- 25.1 Crown-led and funded;
 - 25.2 focused on:

- 25.2.1 Category 3 land, and areas with the potential to move into Category 3;
- 25.2.2 Māori communities with whenua Māori, cultural and residential Māori assets on whenua Māori, and Māori collectively-owned assets on other Category 3 land;
- 25.2.3 the residential use of land, with the flexibility to consider solutions that involve non-residential uses where appropriate; and
- 25.2.4 solutions that do not necessarily involve the relinquishing of land ownership;
- 25.3 shaped by collaboration and engagement with iwi, hapū and affected Māori communities;
- 25.4 flexible, to enable a response that is workable for Māori communities and tailored to their circumstances;
- 26 **note** that the Crown-led and Crown-funded Kaupapa Māori pathway sits outside the cost-sharing arrangements with councils, but councils continue to have a role supporting this pathway, especially in relation to local infrastructure;
- 27 **note** that officials will work with councils to clarify the relationship between the Kaupapa Māori pathway and the other FOSAL pathways (including in public communications), particularly in regard to the timing of each pathway and the need for aligned solutions for affected Māori communities;
- 28 **agree** that a grant-based solution may be advanced as one option for the Kaupapa Māori pathway, and would include owners of whenua Māori in Category 3:
 - 28.1 retaining ownership of their land; and
 - 28.2 being free to use the grant as desired to enable residents to relocate to safe places;
- 29 **note** that councils will be asked to consider and clarify future infrastructure intentions, with a specific request for whenua Māori to be considered earlier in the assessment so that individuals and communities can determine whether they wish to remain or relocate;
- 30 **note** that the design of Kaupapa Māori solutions will need to be workable within complex ownership and legal frameworks, while respecting cultural values;
- 31 **agree** that the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development can approve an options package for the Kaupapa Māori pathway, including, but not limited to, the

design of a grant-based solution (including eligibility), the approach to the valuation of land, and the level of any support to be provided;

- 32 **agree** that final decisions on the appropriate Crown support for each affected community in the Kaupapa Māori pathway will be determined by Cabinet, based on the recommendations of the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development;
- 33 **note** the Crown Law advice in relation to the Kaupapa Māori pathway;

Other matters

- 34 **invite** the Minister of Finance to report back to the Committee in August, including on:
- 34.1 an agreed final understanding of the categorisation approach with councils;
 - 34.2 progress on implementation of the Category 2 and Category 3 pathways;
 - 34.3 progress on implementation of the Kaupapa Māori pathway;
 - 34.4 arrangements for ongoing departmental responsibilities of the implementation of the FOSAL programme; and
 - 34.5 proactively releasing earlier FOSAL programme Cabinet papers where policy consideration has now concluded.

Authorised for lodgement

Hon Grant Robertson
Minister of Finance

Appendix 1: Current numbers of properties in each category

Auckland Council	Number of properties				
	2C	2P	2A	2 Total	3
Previous (1 June 2023)	2650	2550	6315	11515	401
Updated (N/A)	N/A	N/A	N/A	N/A	N/A
Tairāwhiti Gisborne District Council					
Previous (1 June 2023)	60	9	426	495	68
Updated (19 July 2023)	0	0	1800	1800	55
Wairoa District Council					
Previous (1 June 2023)	0	0	684	684	0
Updated (19 July 2023)	0	0	789	789	0
Napier City Council					
Previous (1 June 2023)	0	0	179	179	20
Updated (19 July 2023)	0	s 9(2)(a)			20
Hastings District Council					
Previous (1 June 2023)	0	0	1084	1084	216
Updated (19 July 2023)	133	19	205	357	246
Central Hawke's Bay District Council					
Previous (1 June 2023)	0	0	579	579	0
Updated (19 July 2023)	0	s 9(2)(a)	127	135	0
All Regions					
Previous (1 June 2023)	2710	2559	9267	14536	705
Updated (19 July 2023)	2783	2578	9236	14597	722
Net difference:	+73	+19	-31	+61	+17

Key:

Red = increase since previous update

Green = decrease since previous update

Black = no change since previous update

Appendix 2: Whenua Māori blocks in Category 3 (provisional)

s 9(2)(a)



Proactively Released

s 9(2)(a)

Proactively Released

Appendix 3: Māori engagement on FOSAL

Cyclone Recovery Unit (CRU) engagements

Region	Complete	Upcoming	Ongoing
Hawke's Bay	<p>May and June 2023: The CRU has attended most council-led community engagement during May and June 2023, participated in iwi and hapū-led hui, and held conversations with PSGE representatives, marae, hapū and Taiwhenua Chairs and Trustees.</p> <p>18 July: the CRU participated in hui at s 9(2)(a) to initiate conversations relating to land categorisations and options for relocation.</p>	<ul style="list-style-type: none"> • Conversation with s 9(2)(a) (date tbc) • Conversation with s 9(2)(a) (date tbc) • Community hui in s 9(2)(a) scheduled for 6 August 	<ul style="list-style-type: none"> • The CRU is liaising with representatives from s 9(2)(a) • s 9(2)(a) <p>Engagement with councils on risk assessment and decision-making process.</p>
Tairāwhiti	<p>Council-led community engagements on the provisional assessments formally started on 16 June 2023 with a 'drop-in' clinic at council. The CRU supported a hui with the largely Māori s 9(2)(a) community on 18 June 2023.</p> <p>Severe flooding in mid/late June delayed the council-led FOSAL engagements. However, the CRU supported further council hui on 2 July at Tokomaru Bay, a largely Ngāti Porou community, and in the week of 7 July 2023, at Hangaroa (inland from Gisborne) and at Gisborne. s 9(2)(a)</p>	TBC	<p>Working with agencies to facilitate a Crown response to affected marae at s 9(2)(a)</p> <p>Support options for owners and residents of two Category 3 Māori land blocks.</p>
Auckland	<p>Community engagement on risk assessments is due to start on 23 July.</p>	<p>Liaising with Auckland council on sites of significance for targeted engagement.</p>	<p>Supporting Te Arawhiti to manage risks to the durability of Treaty settlements; and redress options for iwi still pursuing their settlements. CRU-led engagement on whenua Māori will be a mix of local-level engagement s 9(2)(a)</p>

Themes from Tangoio engagements, 18 July 2023

- The Cyclone Response Unit (CRU), Treasury and Te Arawhiti officials attended three meetings with a cross-section of Tangoio whanau members and residents, marae and land block trustees. Staff from Hawke's Bay Regional Council (HBRC) and Hastings District Council, the chair of Hawke's Bay Regional Council attended.
- s 9(2)(a), 9(2)(f)(iv)

Themes on Whenua Māori in (provisional) C3 category.

- Concerns about the council-led categorisation process, and the need for council assessors to engage with whanau/residents and conduct on-site visits as part of their final categorisation decisions. Attendees made unfavourable comparisons to adjacent general land provisionally given Category 2 categorisation.
- Attendees urge the Government to develop Category 3 options that will not alienate local Māori from the small amount of land retained in their ownership.
- A cultural bottom-line is that relocation sites be within their (collective) hapū takiwā. The attendees recognised the difficulty that this poses to whanau and the Crown.
- Concerns about the consequential impacts of remaining on whenua Māori that is Category 3, including insurability; and ongoing access to power and other utilities.
- Attendees sought assurance that the Crown understands that many owners/ shareholders are not living locally, and that decision-making must be by the owners.

Themes on s 9(2)(a)

- s 9(2)(a), 9(2)(f)(iv)

- Papakainga falls within scope of the marae facility.

Other policy and implementation issues

- Will the Crown consider a mechanism similar to an RFR/protection mechanism to other (general) Category 3 lands bought out, especially lands that hold high cultural significance to the hapū.
- Owners/whanau with Category 3 whenua will likely require advice and navigation support to work with Crown/council to understand and activate their options. Can the Crown help with resourcing for this?
- What will be the basis of funding packages for Category 3 buyouts (or alternatives) to owners? Concerns about how valuation methods will be applied to whenua Māori, especially if owners are expected to buy new (general title) land on the 'open market'.

Next steps

- a. CRU is working with s 9(2)(a)
- b. HBRC to confirm area/property site visits and engagement with local whanau as part of its final categorisation process. This will be carried out as a matter of urgency.

Insights from Te Puni Kōkiri's May 2023 engagements

Opportunities	Insights
Community building	<p>Community building was a key opportunity noted by all, as hapori Māori start to look at opportunities given their whānau are vulnerable.</p> <p>For example, in Ōmahu 'retreat' is seen as an opportunity for whānau from outside the rohe to come back to whenua.</p> <p>It was also seen as an opportunity to ensure communities weren't displaced from people leaving (due to conditions).</p> <p>Projects that were not supported by some communities prior to the cyclone, were noted as now being looked upon more favourably if there was a community building / resilience aspect to it.</p>
Improved access	Looking to move in a way that is constructive for the community (i.e., better access to roads) is seen as an opportunity, and something that has been done previously by hapori Māori.
Conditions for change	
Major event	Cyclone Gabrielle has meant communities themselves are now having discussions about managed retreat without any initiation (due to potential red zoning or not).
Access to information	Getting information to whānau and hapū so they can make informed decisions is crucial.
Trust in leadership	Trust in whoever is leading the kōrero, be that hapu, marae trustees or PSGE's is imperative.
Suitable whenua to move to	<p>The delicate part of this discussion is the actual move. This involves deciding:</p> <ul style="list-style-type: none"> - Moving slightly (within hapū boundaries) - Moving anywhere (outside of hapū boundaries) - Staying (however not clear on who would pick up the costs). <p>There are other barriers that need to be kept front of mind, such as the ability to purchase land, even with funding.</p> <p>There is an element of self-set parameters of staying within hapū boundaries.</p>
Access to funds	Whether there is a desire to move, or stay, access to funding plays a crucial role in decision making.
Community cohesion	There is a strong desire to keep the community together.
Tolerance levels	Tolerance levels could be linked to which communities are most likely to discuss moving.
Mātauranga Māori	<p>Let nature take its course, if she pushes us out, then it is what it is.</p> <p>Moving marae is not a new thing, particularly on the coast.</p>
Collective decision making	All examples discussed involved whānau and hapū involvement. If there was disharmony that seemed to be a barrier.
Trade-offs	
Conflicting motivations	PSGE/whānau motivations can be different – whānau are driven by culture / heritage / community, PSGE driven by cost effectiveness.
Self-determination vs risk	To decide for themselves and not be told what to do.



Cabinet

Minute of Decision

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

Report of the Cabinet Extreme Weather Recovery Committee: Period Ended 28 July 2023

On 31 July 2023, Cabinet made the following decisions on the work of the Cabinet Extreme Weather Recovery Committee for the period ended 28 July 2023:

EWR-23-MIN-0060 **Future of Severely Affected Land: July 2023 Report** CONFIRMED
Portfolio: Cyclone Recovery / Finance

Rachel Hayward
Secretary of the Cabinet

Proactively Released



Cabinet Extreme Weather Recovery Committee

Minute of Decision

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Future of Severely Affected Land: July 2023 Report

Portfolios Cyclone Recovery / Finance

On 26 July 2023, the Cabinet Extreme Weather Recovery Committee, exercising its Power to Act in accordance with its terms of reference:

Background

- 1 **noted** that on 6 June 2023, Cabinet invited Ministers to report back on:
 - 1.1 the development of a costed funding package for Category 3 properties;
 - 1.2 implementation progress of the Category 2 and Category 3 support processes;
 - 1.3 progress on engagement and implementation of the parallel Kaupapa Māori pathway;
- [CAB-23-MIN-0206.01]

Overall approach to categorisation of land by councils

- 2 **noted** that councils are revising their assessments of properties on an ongoing basis, with 722 residential properties now classified as Category 3;
- 3 **noted** that councils are assessing individual residential properties, and that it is likely there will be further movement between the number of Category 2 and Category 3 properties;
- 4 **noted** that councils are still working through their final preferred approach to categorisation methods not explicitly covered in the original categorisation framework, especially whether to target risk to life and/or wider risks to property and the environment, and the risk threshold that would apply to Category 2 and/or Category 3;
- 5 **noted** that councils' initial view on these questions is:
 - 5.1 to make the risk to life and safety the primary determinant of which properties or areas are classed as Category 2 and Category 3;
 - 5.2 that the difference between Category 2 and Category 3 will be the level of certainty that a buyout is the most cost-effective option to reduce risk to a tolerable level;

- 6 **noted** that the Minister for Cyclone Recovery supports the initial direction signalled by councils as set out in paragraph 5 above, as it targets limited central and local government resources to areas facing the highest order of risk (life and safety), whilst still delivering on risks to property, infrastructure and the environment as co- benefits in those locations;
- 7 **noted** that there are further details to work through with councils, including the treatment of land damage, and councils' work to finalise the risk metrics;

Support for Category 2 interventions is guided by a business case process

- 8 **noted** that councils will be invited to submit business cases for eligible Category 2 risk mitigation projects through the process detailed in the paper *National Resilience Plan – Phase 1* which was considered by Cabinet on 24 July 2023 [CAB-23-MIN-0329];
- 9 **agreed** that as part of the invitation letters to councils, the Minister for Cyclone Recovery will note the expectation that they have:
- 9.1 taken a programme-wide, area-based approach to hazard risk management, including assets not owned by councils or residential property owners, such as State highways and commercial properties;
 - 9.2 used the PARA (protect, accommodate, retreat, avoid) framework when considering options (see below);
 - 9.3 considered cultural values and other non-monetary costs and benefits, such as environmental and equity impacts;
 - 9.4 consulted with local communities, including affected Māori and owners of whenua Māori, and have taken into account Māori rights and interests;
- 10 **noted** that in a locally-led process, councils are responsible for considering trade-offs between property- and community-level solutions;
- 11 **noted** that property-level interventions can be the most effective approach to mitigating future risks in many cases;
- 12 **noted** that Crown funding of property-level interventions involves the risk of private benefit, precedent, fiscal and moral hazard risks;
- 13 **agreed** that the Crown may provide support to councils to implement flood mitigation plans that may include property-level interventions, where those interventions meet the National Resilience Plan business case funding eligibility criteria;
- 14 **noted** that the Severe Weather Emergency Response Legislation Act 2023 is not available to manage the effects of future theoretical severe weather events;
- 15 **noted** that advice on legislation will be provided when the scale and significance of the issues raised by councils are better understood;
- 16 **noted** that councils have identified issues they consider may hinder the ability to implement plan changes that give effect to land use categorisations under current Resource Management Act 1991 settings;

- 17 **noted** that the issues identified by councils are anticipated to be addressed over the next two to ten years by a combination of:
- 17.1 the Spatial Planning Bill;
 - 17.2 the Natural and Built Environment Bill;
 - 17.3 the proposed Climate Change Adaptation Bill;
 - 17.4 the National Planning Framework;
 - 17.5 the proposed national direction on natural hazards under the Resource Management Act;
- 18 **noted** that the separate paper on *Cost Sharing Arrangements for Councils in Severely Affected Locations* under EWR-23-SUB-0061 seeks authority for the Minister of Finance and the relevant appropriation Minister(s) to jointly take decisions on the appropriation and fiscal management treatment for Category 2;
- 19 **noted** that decisions are yet to be made as to the agency responsible for assessing Future of Severely Affected Locations (FOSAL) Category 2 business cases, and that an appropriation for this assessment may or may not need to be established;

The Category 3 buyout process

- 20 **noted** that councils are establishing their preferred design for buyouts and grants under FOSAL and are working through advice they have received on their ability to enact buyout grants under FOSAL;
- 21 **noted** that councils are in general agreement that pure residential properties and rental properties will be included in Category 3, and that for mixed-use properties the offer will be a grant to enable the owner to relocate while maintaining non-residential uses where safe;
- 22 **noted** that the Hawke's Bay Regional Recovery Agency's initial view, representative of Hawke's Bay councils' views, is for buyout offers without caps, at 100 percent of pre-event value, and to include second homes;
- 23 **noted** that a consequence of buyout offers for Category 3 land being voluntary is that, in the absence of buyout offers being accepted or land use controls being changed, current and future residential occupiers may be exposed to unacceptable levels of life safety risk;

Kaupapa Māori pathway

- 24 **noted** that the primary objective for the Kaupapa Māori pathway is to enable people to move out of harm's way by relocating their residential and related uses to safe places in a way that recognises the Crown's Treaty and legal obligations, the complexities associated with whenua Māori, and the fact that voluntary buyouts would likely not be appropriate for Māori land and communities;
- 25 **agreed** that the Kaupapa Māori pathway be:
- 25.1 Crown-led and funded;

- 25.2 focused on:
- 25.2.1 Category 3 land, and areas with the potential to move into Category 3;
 - 25.2.2 Māori communities with whenua Māori, cultural and residential Māori assets on whenua Māori, and Māori collectively-owned assets on other Category 3 land;
 - 25.2.3 the residential use of land, with the flexibility to consider solutions that involve non-residential uses where appropriate; and
 - 25.2.4 solutions that do not necessarily involve the relinquishing of land ownership;
- 25.3 shaped by collaboration and engagement with iwi, hapū and affected Māori communities;
- 25.4 flexible, to enable a response that is workable for Māori communities and tailored to their circumstances;
- 26 **noted** that the Crown-led and Crown-funded Kaupapa Māori pathway sits outside the cost-sharing arrangements with councils, but that councils continue to have a role supporting this pathway, especially in relation to local infrastructure;
- 27 **noted** that officials will work with councils to clarify the relationship between the Kaupapa Māori pathway and the other FOSAL pathways (including in public communications), particularly in regard to the timing of each pathway and the need for aligned solutions for affected Māori communities;
- 28 **agreed** that a grant-based solution may be advanced as one option for the Kaupapa Māori pathway, and would include owners of whenua Māori in Category 3:
- 28.1 retaining ownership of their land; and
 - 28.2 being free to use the grant as desired to enable residents to relocate to safe places;
- 29 **noted** that councils will be asked to consider and clarify future infrastructure intentions, with a specific request for whenua Māori to be considered earlier in the assessment so that individuals and communities can determine whether they wish to remain or relocate;
- 30 **noted** that the design of Kaupapa Māori solutions will need to be workable within complex ownership and legal frameworks, while respecting cultural values;
- 31 **authorised** the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development to approve an options package for the Kaupapa Māori pathway, including, but not limited to:
- 31.1 the design of a grant-based solution (including eligibility);
 - 31.2 the approach to the valuation of land; and
 - 31.3 the level of any support to be provided;

- 32 **agreed** that final decisions on the appropriate Crown support for each affected community in the Kaupapa Māori pathway will be determined by Cabinet, based on the recommendations of the Minister of Finance, the Minister for Māori Crown Relations: Te Arawhiti and the Minister for Māori Development;
- 33 **noted** the Crown Law advice in relation to the Kaupapa Māori pathway;

Other matters

- 34 **invited** the Minister of Finance to report back to the Cabinet Extreme Weather Recovery Committee in August 2023, including on:
- 34.1 an agreed final understanding of the categorisation approach with councils;
 - 34.2 progress on the implementation of the Category 2 and Category 3 pathways;
 - 34.3 progress on implementation of the Kaupapa Māori pathway;
 - 34.4 arrangements for ongoing departmental responsibilities of the implementation of the FOSAL programme; and
 - 34.5 proactively releasing earlier FOSAL programme Cabinet papers where policy consideration has now concluded.

Janine Harvey
Committee Secretary

Present:

Hon Carmel Sepuloni
Hon Grant Robertson (Chair)
Hon Damien O'Connor
Hon David Parker
Hon Peeni Henare
Hon Kieran McAnulty
Hon Barbara Edmonds

Officials present from:

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