



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 Locations: Kaupapa Māori Pathway Report

The following documents have been included in this release:

Title of paper: Future of severely affected locations: Kaupapa Māori pathway report-back (EWR-23-SUB-0075 refers)

Title of minute: Report of the Cabinet Extreme Weather Recovery Committee: Period Ended 1 September 2023 (CAB-23-MIN-0414 refers)

Title of minute: Future of Severely Affected Locations: Kaupapa Māori Pathway Report (EWR-23-MIN-0075 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

Office of the Minister for Māori-Crown Relations: Te Arawhiti

Office of the Minister for Māori Development

Chair, Cabinet Extreme Weather Recovery Committee

Future of severely affected locations: Kaupapa Māori pathway report-back

Proposal

- 1 This paper provides an update on progress toward developing the Kaupapa Māori pathway, established for Māori land and communities as part of work on the Future of Severely Affected Locations (FOSAL) following the North Island extreme weather events (NIWE).
- 2 It seeks agreement to an overarching support package for the pathway.

Relation to government priorities

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

Executive Summary

- 4 The Kaupapa Māori pathway aims to support people on whenua Māori and in Māori communities to relocate to safer places in response to the NIWE, as previously agreed by the Cabinet Extreme Weather Recovery Committee (EWR). In doing so it recognises the Crown's Treaty and legal obligations associated with whenua Māori. The pathway is being progressed in parallel with the wider FOSAL programme, including the Category 3 buyout scheme led by councils.
- 5 This paper proposes a policy response that is centred around the creation of a fund for the flexible provision of grants to support those affected and in scope. This builds on EWR's previous agreed parameters for the pathway and decision to advance a grant-based solution that ensures Māori retain ownership of their whenua. The proposal has been shaped by issues raised through Cyclone Recovery Unit (CRU)-led engagement to date with affected communities (particularly in Hawke's Bay), though further discussions are needed to build a complete picture of issues faced.
- 6 Agreeing the response now is key for achieving alignment with the timing of Hawke's Bay's Category 3 buyout offers and providing much needed certainty. However, this needs to be balanced with the building in of flexibility to allow for tailoring to unique circumstances in different locations and to recognise that further engagement may raise further issues for consideration. This flexibility is critical to uphold our Treaty obligations.

- 7 We propose the fund:

7.1 s 9(2)(j)

[REDACTED]

[REDACTED]

- 7.2 is targeted at Category 3 properties on whenua Māori with residential uses or culturally significant assets, with some specific exceptions for general title land and scope for discretion.
- 7.3 can be used for relocating residences, marae and other culturally significant assets, Crown assistance to facilitate the process of acquiring land, s 9(2)(f)(iv) and indirect relocation costs such as legal, technical, and consenting costs.
- 7.4 can be accessed at a resident, landowner, or community-level.
- 8 Further design details are still to be confirmed and we propose these are delegated to joint Ministers (of Finance, Crown-Māori Relations, and Māori Development). The Crown should be open to adapting the settings of the fund where relevant gaps are identified, and the fund will need to be supplemented by access to existing supports to address related needs.
- 9 This pathway involves multiple competing objectives, including upholding the Crown's Treaty obligations, accounting for the complexities for the whenua Māori regulatory system, providing certainty and flexibility maintaining community cohesion, ensuring equitable treatment relative to the Category 3 buyout scheme, and setting a sustainable precedent. While risks are unavoidable, our view is that the right balance has been struck.
- 10 Following EWR decisions the CRU (with support from Te Puni Kōkiri and Te Arawhiti) will continue to lead engagement with whānau, hapū, and relevant stakeholders to support them to develop proposed packages that they consider will meet their needs, within the parameters Ministers have agreed. This will enable communities and individuals to have certainty and be able to access Crown funding as quickly as is appropriate.

Background

- 11 The primary objective of the Kaupapa Māori pathway is to support people residing on Māori land and in Māori communities to move out of harm's way. It will provide support to move to a safer place in a way that recognises:
- 11.1 the Crown's Treaty and legal obligations
 - 11.2 complexities associated with whenua Māori, and
 - 11.3 the fact that voluntary buyouts will likely not be appropriate for Māori land and communities.
- 12 On 26 July 2023, EWR agreed the key parameters for the Kaupapa Māori pathway [EWR-23-MIN-0060 refers] – that it will be:
- 12.1 A Crown-led and funded process
 - 12.2 Focussed on:
 - 12.2.1 Category 3 land, and areas with the potential to move into Category 3;
 - 12.2.2 Māori communities with whenua Māori, cultural and residential Māori assets on whenua Māori, and Māori collectively owned assets on other Category 3 land.

- 12.2.3 The residential use of land, with the flexibility to consider non-residential solutions where appropriate.
- 12.3 Shaped by collaboration and engagement with iwi, hapū, whānau and affected Māori communities.
- 12.4 Flexible, to enable a response that is workable for Māori communities.
- 13 EWR also agreed that a grant-based solution to support relocation and ensure people can retain land ownership may be advanced as one option for this pathway.
- 14 As much as possible, the Kaupapa Māori pathway should allow affected whānau and communities to chart their own paths to recovery. A successful response will recognise the spiritual and holistic wellbeing of whānau and communities, as well as their ancestral connections to the whenua. It will also support a sustainable path for the Crown, given the potential precedent set for future events. He Ara Waiora, a framework that informs the policy advice of the Treasury, can guide us in considering the wellbeing of those affected.
- 15 This pathway is being progressed in parallel with the local government-led FOSAL pathways for Categories 2 and 3. EWR is considering a paper updating progress on these locally led pathways at the same meeting that the present paper is being considered.

Engagement update

- 16 Since EWR's July decisions, engagement in Hawke's Bay has progressed to include kanohi-ki-te-kanohi and online hui with landowners, shareholders, and trustees of Category 3 Māori land blocks in s 9(2)(a) [REDACTED]
- 17 Due to dynamics between land-block owners, shareholders, and trustees, it is taking time to encourage whānau to participate in hui directly, with some hesitant to meet with officials or provide information. This has meant we have not been able to engage directly on the options for each of the impacted land-blocks in the region and have not progressed engagement as far as we would have liked. It also means the feedback we have received does not represent the majority of interested parties. As a next step, officials will prioritise connecting with impacted whānau via a range of channels to increase participation in this engagement process.
- 18 Key themes from the engagement to date include:
- 18.1 The immediate need is for technical and legal resources for marae trusts, landowners, and shareholders to access adequate expertise to advocate and plan for their futures.
- 18.2 There is a desire from affected whānau and Māori to meaningfully participate in recovery planning across the region, with both central and local government.
- 18.3 Historic issues of land ownership, transfers, and acquisition for public works remain salient. Discussion about possible relocation options will frequently reflect that this will not be the first instance a marae has shifted, and a view that if the marae had remained on its original site, the impact would be significantly less.

- 18.4 There is a general preference for decisions to be made at the whānau and hapū level, with wellbeing and continued connection to whenua and takiwā as top priorities.
- 18.5 Complexity within governance structures will impact on collective decision-making ability. These internal relationship issues need to be considered when setting timelines as they will take time to work through.
- 19 As well as the above, we note that this feedback is building a more robust understanding of the impacted land blocks, which in turn has prompted site visits by council representatives to authenticate the categorisation process.

Updated data on affected properties within the Kaupapa Māori pathway

- 20 The following table sets out the most up to date data on provisional Category 3 whenua Māori blocks across Tairāwhiti and Hawke's Bay:

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



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

Note: Specific numbers of affected residential whare and whānau are to be confirmed.

- 21 Some Māori communities in these areas are amongst our most vulnerable. Deprivation levels are high across a range of metrics, and incomes are low. Specific statistical detail on communities is at Annex 1.
- 22 It is anticipated that many whānau in these areas may be under-insured or have no insurance. Whānau will have made choices on the affordability of insurance relevant to their specific situations. Marae trustees have also found that obtaining insurance on specific cultural assets such as marae has been challenging because of the ownership structures that are in place.

Policy decisions made now need to achieve certainty...

- 23 EWR has previously noted the importance of ensuring decisions on the Kaupapa Māori pathway keep in step with the general FOSAL pathways, including the Category 3 buyout scheme.
- 24 Hawke's Bay is the most advanced in developing its voluntary buyout scheme and we understand that it may be in a position to make offers from as early as early-October 2023. Proposals in this paper seek to achieve broad alignment with the timing of anticipated Hawke's Bay decisions and enable Government to provide clarity to communities about what support options are available and to whom.
- 25 We are aware of the stress communities are already under and the exacerbating effect prolonged uncertainty has on their mental and spiritual wellbeing. These proposals aim to provide greater certainty and consider both immediate needs as well as longer-term solutions. They also aim to ensure that the pace of this decision-making does not compromise the ability to deliver on overall wellbeing outcomes for Māori communities, exacerbate existing vulnerabilities or create new ones.
- 26 We are also aware that solutions for communities, and potentially landowners who may not wish to be part of a community solution, may take longer to resolve due to the multifaceted processes involved. As a point of comparison, it took three years of engagement before a solution was agreed for the s 9(2)(a) community; the only whenua Māori blocks red-zoned after the Canterbury earthquake. The community consisted of 10 properties on Māori freehold land, a few with multiple owners and some with individual owners. By contrast, the Kaupapa Māori pathway is significantly more nuanced, with a sizeable amount of whenua Māori in flood affected regions, held by multiple individual owners or in a number of collective ownership structures such as trusts, sometimes

without governance arrangements in place, and situated amongst some of our most vulnerable Māori populations.

- 27 The proposed policy decisions will help shape further engagement and provide the foundation for communities to progress solution options. Ongoing collaboration and engagement with Māori and local government will need to continue at pace to ensure that resolutions that work for communities are as timely as possible. We are aware the s 9(2)(a) [redacted] has expressed a desire for a fast response. While we appreciate this, moving forward will still require full engagement with the wider affected community.

... while building in sufficient flexibility to ensure a fit-for-purpose approach

- 28 The process needs to move forward as fast as is appropriate, while also aligning with agreed community needs and expectations. Engagement to date has reinforced the need for a policy approach that is flexible rather than prescriptive in order to achieve ‘the right solution in the right place’ and be tailored to the unique and often complex characteristics of whenua Māori. This includes that:

28.1 Marae are the focal point for most affected communities, meaning marae trustees, marae committees (usually different people), kaumātua, and post settlement governance entities representing the wider hapū and iwi associated with the marae need to be included in decision-making. All of these (and the whenua Māori owners and management entities) represent different layers of the Treaty-based rights and interests involved as well as tikanga-based interests; all of which the Crown has a Treaty based responsibility to consider and engage with.

28.2 There are different types of dwellings in these communities. For example, in s 9(2)(a) [redacted] residences’ include cabins, caravans, and sheds that may be sub standard and/or over-crowded.

28.3 Ownership interests in dwellings are seldom straightforward. For instance, when the land has multiple owners¹, dwellings often do not belong to all the landowners, but rather to one owner or a single whānau. It is also possible that the dwellings may be owned by someone without an ownership interest in the land but who may have a close association like a whakapapa interest.

- 29 Annex 2 provides a fuller summary of the unique characteristics associated with whenua Māori.

- 30 Recent engagement has helped to build a reasonable understanding of affected areas in Hawke’s Bay and Tairāwhiti, though officials are working to develop a complete picture. Further engagement may identify additional issues and any changes to categorisation decisions could bring new communities into scope (i.e. from Category 2A to Category 3) with their own unique set of issues. Additional whenua Māori blocks in Category 3 (or 2A)

¹ One Category 3 land block in Tairāwhiti has over 800 owners.

may be identified in Auckland, but their categorisation and engagement is ongoing.

31 While the proposed policies in this paper have been informed by engagement, they have not been collaboratively developed with those affected. This means a careful balance is needed between:

31.1 avoiding an unduly narrow scope of discussions with communities on support options and solutions in a way that precludes the consideration of relevant needs or issues they face, while also

31.2 being clear about what is in scope and the Crown's expectations.

32 Annex 3 provides a summary table of issues raised through engagement and describes how these issues have shaped this proposal.

Summary of the proposed policy response

Establishing a flexible fund focused on relocation and retention of whenua

33 For the Kaupapa Māori pathway, we propose establishing a flexible grant system operationalised via a fund. The distribution of grants via a fund allows for a tailored approach to providing support in terms of the size and nature of support and the level of applicant (e.g. Māori community landowner, resident, or whānau-based). There may need to be ongoing review of the scope of the fund in light of engagement and as more detail comes to light.

34 The policy is predicated on Māori landowners retaining ownership of their whenua. To date, there has been no indication that any landowners have a desire to pursue a buyout option (and we consider it highly unlikely that a buyout will be sought). That said, it is important that landowners have access to the same support options as those in the Category 3 pathway, and we therefore recommend the Government keep the buy-out option available for affected Māori landowners. However, the process of alienating whenua Māori is complex and, in some cases, is not possible at all (e.g. Māori customary land and Māori Reservations). s 9(2)(g)(i)

[REDACTED]

35 In progressing the fund's implementation, the Crown has a responsibility to work with local government to understand the implications of planned solutions for infrastructure provision (including the effect on retained whenua), and to ensure that solutions for meeting any future infrastructure needs are workable for communities and whenua Māori landowners.

Wider responses

36 This fund should be supplemented by the utilisation of existing mechanisms and policy processes (e.g. the Regional Recovery Plan process) that cover the wider support needs of affected communities in scope for the Kaupapa Māori pathway (as well as other Māori-owned land and Māori communities affected by the NIWE). As funding needs are identified through ongoing engagement, there will be a choice about whether to include them in scope for the proposed fund or address them using existing mechanisms.

37 The wider response needs to cover both the immediate needs of communities and needs that will take longer to resolve. This includes temporary relocation solutions to avoid social harms and foster community wellbeing while a long-term solution is being worked through.

Key risks with the proposed response

38 In designing the proposed policy multiple competing objectives must be considered – for instance, delivering a response that is sufficiently timely, equitable, flexible, bespoke, and fiscally sustainable. Risks are unavoidable. We consider that the proposed flexible funding package is a well-balanced approach, though key risks that we have considered include:

38.1 **Inequity compared to the Category 3 buyout process** – The design of the Kaupapa Māori response must differ from the Category 3 buyout scheme in order to recognise the unique characteristics associated with whenua Māori and the Crown's Treaty and legal obligations. Given engagement is ongoing, it is also important for the proposed design elements to have more flexibility than the Category 3 buyout scheme. Where the proposed system deviates from the Category 3 buyout scheme, having a strong rationale is critical to mitigate the risk of inequities between the two responses. Even where differences are justified, a risk of perceived inequity remains, which could be mitigated to some degree through clear communications.

38.2 We consider that the deviations that involve the most material risks of perceived inequity on this basis include:

38.2.1 *Including selected types of Category 3 general title land as being eligible for support – s 9(2)(j)*

[Redacted content]

38.2.2 *Using a case-by-case approach to determining the level of support provided* – This approach reflects complexity around ownership arrangements and the need for a flexible approach that mitigates the risk of providing either too much or too little support. Furthermore, an approach purely based on the full capital valuation of a property (such as the expected approach for council Category 3 buyout schemes) may be materially insufficient to enable affected property owners to relocate nearby (where achievable) as a community so that they have an equivalent residential circumstance compared to pre-cyclone. This is because of potentially limited suitable

land available for relocation, as well as the depreciated value of existing buildings compared to the cost of a new build.

38.2.3 *Recognising potential future residential use* – For whenua Māori in scope of support through the Kaupapa Māori pathway, the level of support provided will be based on the whole block of land (and the value of any improvements) regardless of how much of the whenua is currently used for residential purposes. This approach differs from the approach we expect councils to take on the standard pathway (where for mixed use land, the buyout offer may only focus on the residential portion of the land), as it acknowledges the multifaceted ownership structures and interests (including intergenerational) in whenua Māori, and the importance of occupation rights for whenua Māori owners.

38.3 **Risk of failing to uphold the Crown’s obligations to Māori as a Treaty Partner** – The focus on agreeing the key design elements of the response now means that the proposed response has not been able to be collaboratively developed with affected Māori. In Treaty terms, this is a risk for the Crown if the options are not well received and a risk for affected communities if the options fail to provide a realistic solution. To mitigate these risks, we propose designing a fund that, while providing some certainty for whānau and communities, includes sufficient flexibility that specific community-by community solutions can be shaped collaboratively through engagement (which is ongoing). s 9(2)(f)(iv)

[Redacted text block]

38.4 **Risk of failing to meet legal obligations under Te Ture Whenua Māori Act 1993** – There is a risk to the Crown if it does not meet its obligations to facilitate and promote the retention, use, development, and control of whenua Māori as a taonga tuku iho in the hands of its Māori owners, their whānau, their hapu and their descendants, and that protects wahi tapu. This applies to the Crown as Treaty partner and the potential to exacerbate harm to Māori and their whenua if it is not addressed. s 9(2)(f)(iv)

[Redacted text block]

38.5 **Fiscal risk** – The flexible approach proposed (for instance, use of a case-by-case approach for setting the level of support) carries material fiscal risk as it is difficult to accurately ascertain the number and range of support requests the Crown will receive through this process. The overall costs could increase beyond what is currently being proposed to be set aside. s 9(2)(f)(iv)

[Redacted text block]

A clear communications plan to set reasonable expectations regarding the Crown's contributions will also help manage this risk.

- 38.6 **Precedent risk** – The proposed approach could set a precedent for how the Crown responds in future weather events, by setting expectations for the wider public. Making clear the unique circumstances regarding whenua, which have required the establishment of the Kaupapa Māori pathway, may assist to mitigate this. Work on the enduring framework for climate change adaptation is currently underway and involves complex decisions and engagement with Māori across New Zealand and needs to consider intergenerational issues. The FOSAL programme and Kaupapa Māori pathway does not pre-empt this work and is a one-off response to a severe weather event, though could influence people's perspectives on what the longer-term framework might be. It is noted there is very little whenua Māori in New Zealand, and a large portion of it is in low or uninhabited areas.

Design of the proposed fund

Purpose and objectives

- 39 In line with the primary objective for the Kaupapa Māori pathway, the overarching purpose for the fund is to enable people residing on whenua Māori and in Māori communities severely affected by the NIWE to move out of harm's way by relocating their residential and related uses to safer places.

- 40 We propose that the following additional objectives guide funding decisions. These recognise the importance of the Crown's Treaty obligations and obligations to promote the retention and use of whenua Māori, the unique characteristics associated with whenua Māori, the importance of community and the link between the whenua and the overall wellbeing of the people, and the need to allow for equity and efficiency considerations:

40.1 Manaakitanga

40.1.1 Enables people to relocate to physically safer places and be in at least in an equivalent residential circumstance as they were pre-weather event.

40.1.2 Provides certainty to people and communities and enables their aspirations.

40.1.3 Protects wairuatanga, so that the spiritual wellbeing of tangata whenua is protected, including through connection to whenua and community.

40.2 Kotahitanga

40.2.1 Supports community cohesion and upholds mana through a community-led, government-supported process.

40.3 Tikanga

40.3.1 Upholds the Treaty relationship.

40.3.2 Respects and maintains connection of people to their whenua and cultural values, and promotes the retention and use and development of whenua Māori in the hands of its owners.

40.4 Tiakitanga

40.4.1 Allows both immediate relief and community-led solutions, which may take longer to develop.

40.4.2 Enables stewardship of key systems, including administrative and fiscal sustainability, and the coherence of the overall response to current and future severe weather events.

Who can access the fund

41 Funding would be available for properties that meet all of the following characteristics:

41.1 Category 3 – this includes properties that may currently be designated as Category 2A that are then moved into Category 3. The focus on Category 3 reflects that these properties are deemed by councils to face unmanageable levels of risk to life and/or risk of injury.

41.2 Properties with residential uses or assets of cultural significance, including marae, papakāinga and urupā. Depending on the circumstance, non-residential land uses related to residential purposes may need to be part of the solution (as noted in EWR-23-MIN-0060). The inclusion of marae in scope reflects both their role in the heart of a community, and that communities do not have sufficient capacity or capability to actively protect their affected marae in terms of resources and funding. A theme from the engagement was the importance people placed on the location of the marae to inform their relocation decisions.

41.3 Māori freehold land, Māori customary land, Māori reservations, and assets of cultural significance that sit on general title land s 9(2)(a) as well as general title land that meets any of the following categories (to reflect their ancestral connections to the whenua):

41.3.1 General land that is owned by, and has been owned continuously by, members of the hapū associated with the whenua and is geographically connected to Māori freehold land, Māori customary land, or Māori reservations.

41.3.2 General land that was previously Māori freehold land but ceased to have that status under

41.3.2.1 An order of the Māori Land Court made on or after 1 July 1993.

41.3.2.2 Part 1 of the Māori Affairs Amendment Act 1967.

41.3.3 Land held by a post-settlement governance entity for residential use.

42 In some situations, there may be some Category 3 properties in Māori communities with Category 3 land that do not meet the criteria above. Owners of these properties would receive a council buyout offer. Where a 'whole-of-community' solution is sought, having properties within a single community in

two separate processes may disrupt community cohesion, particularly given council buyouts are expected to only be offered for one year and solutions may take much longer than that to confirm.

43 Given this and that engagement is still ongoing, we propose:

43.1 Allowing for discretion to be applied on an exceptions basis to include other Category 3 general title properties, particularly where a community approach is pursued. Further engagement will help to identify in what cases such discretion might need to be considered.

43.2 s 9(2)(f)(iv)

44 Further discretion should be able to be applied to the inclusion of Category 2 properties on whenua Māori, given that there may be cases where including such properties in scope would promote the maintenance of community cohesion and wellbeing.

45 For these properties in scope, depending on local preferences, the fund can be accessed at the level of:

45.1 a resident of a property in scope regardless of whether they have ownership interests in the dwelling or whenua,

45.2 whenua Māori owner or governors, whānau and hapū level, and decision-making authorities (once established), and

45.3 a body representing a group of properties (i.e. a community).

46 Allowing for eligibility at these different levels maintains flexibility (since different affected areas could prefer different approaches) and gives individuals and whānau choices about whether they wish to relocate immediately to a safer place or work through solution options as a collective (which we understand to be desired for at least some communities).

47 The approach of providing for flexibility and choice however comes with equity-related risks that will need to be navigated. For instance, providing individuals/whānau-level access to the fund could risk undermining attempts to develop community-based options with effects on community cohesion, particularly if these solutions take longer to establish.

48 Where a community-based option is employed, there will be a need to identify which group or person(s) will have the mandate and authority to represent the community, and maintain relationships with the government agency administering the fund. While some whenua Māori has existing governance structures that represent and manage the whenua, others do not. Confirmation from landowners will be required to determine if existing governance structures will take on the leadership role for the community in the Kaupapa Māori pathway. For ungoverned whenua, further work is needed to confirm who might represent it to ensure it is protected and provided for. This may include a need to appoint through the Māori Land Court temporary agents to represent landowners.

What support options are in scope through the fund

49 Through engagement, communities have identified a range of financial needs involved with relocation. These centre around requests for direct support for the relocation of marae and associated residences (in a way that does not involve a change in land ownership), but also address indirect costs involved with technical support and engaging in the relocation process.

50 We propose that the fund can contribute to the below costs. While these support options are broad and directly informed by official engagements, the Crown should be open to expanding the scope where relevant gaps are identified through further engagement.

50.1 **Relocating a residence to a safer location**, including the costs of moving a dwelling, purchasing a dwelling or building a new dwelling, and purchasing or leasing land.

50.2 **Relocating marae and other culturally significant assets** s 9(2)(a)

[REDACTED]

This includes the cost of acquiring new land, rebuilding or moving a marae, including dismantling and reconstruction of marae in line with cultural practices.

50.3 **Crown assistance in facilitating the land acquisition process** in order to address any barriers to communities securing suitable sites to relocate to. This could include support through the process of negotiating with potential sellers (and does not involve any form of compulsory acquisition). s 9(2)(j)

[REDACTED]

50.4 **Legal, technical, consenting, compliance and engagement-related costs** required to establish workable relocation solutions. This includes costs from Māori Land Court processes such as application to the court, or the need to call a meeting of landowners, as well as costs to participate in the engagement process with the Crown. It may also need to consider costs for the Māori Land Court itself to provide expanded capacity to proactively support this kaupapa. Compliance costs will also arise from meeting local government building and consenting requirements. Affected communities have also expressed a need for appropriate technical expertise to aid the development of their relocation plans. Lack of support for these costs risks creating a barrier to successful solutions being worked through.

50.5 s 9(2)(f)(iv)

[REDACTED]

s 9(2)(f)(iv)

- 51 Different people and whānau may be entitled to different components of this funding (and different levels of funding within each component) dependent on the ownership and residential arrangements. Work will be needed to ensure that the funding components are paid to the correct recipients, and payment of one support component does not mean additional supports cannot be provided for other components if that is appropriate.
- 52 For some whānau or hapū they may be able to relocate residences, marae or culturally significant assets to a Category 1 or 2 area of their existing plot/land. In other cases this option will not exist and purchasing additional land within or near to their takiwā would be required.

Level of support

- 53 Given the unique characteristics associated with whenua Māori and the various components of the support package, establishing a single methodology for determining the level of support for those affected is not straightforward and risks not delivering a tailored response. Instead, we propose a case-by-case consideration of applications within specific funding parameters.
- 54 The objective of enabling people to relocate to physically safer places and be in at least similar residential circumstances as they were pre-cyclone will be difficult to achieve if the gap between the value of the existing dwelling and the cost of an equivalent replacement dwelling is too great. This could arise, for example, where an existing dwelling and curtilages are on a small portion of a larger block of whenua Māori without its own separate title. If there are no options to replicate that, the whānau will be left having to try to secure a regular section and dwelling, with practicalities and planning rules making it harder they could do that in another rural location. This risk is greatest in areas where there are known issues of deprivation and sub-standard housing.

55 s 9(2)(f)(iv)

56 At a minimum the level of support corresponding to a particular block of land should not be less than if it was in the general Category 3 pathway.

56.1 Officials understand that councils' buyout offers will be based on 95-100 per cent of the property's pre-event total value (land value plus improvement value) net insurance proceeds. Where a property is mixed-use, the valuation is based on the residential component of a property.

56.2 Sales involving whenua Māori are often transacted at a lower price compared to similar general land. This reflects that Te Ture Whenua Māori Act 1993 imposes significant restrictions on the alienation of whenua Māori. Rating valuations of whenua Māori also reflect lower values compared to similar land held in general title. These adjustments follow a rating valuation case known as “The Mangatu case” (Valuer-General v Mangatu Inc – [1997] 3 NZLR 641).

57 However, it is possible to value whenua Māori as if it were general land by adjusting for the effect of depressed valuations. This will ensure that landowners are not disadvantaged due to their land being whenua Māori and not general land and will align with the general Category 3 pathway.

58 We also propose that for whenua Māori in scope of support through the Kaupapa Māori pathway, the level of support provided is based on the whole block of land (and the value of any improvements), regardless of how much of the whenua is currently used for residential purposes. This would better ensure that whānau and communities are provided with sufficient financial support to enable them to find similar sized land to relocate to (where possible). This will ensure they can be in an equivalent position (to the extent possible) as they were pre-cyclone. This approach acknowledges the multifaceted ownership structures and interests in whenua Māori, and allows wider whānau needs and future plans for the whenua to be accommodated as much as possible.

59 Clarity will be needed regarding whom the grant is made to, to avoid inadvertently providing grant funding to persons that were not entitled to it. For example, the whenua may not be owned by the resident, and they would not be entitled to the whenua component as this would be a grant to the whenua owners.

60 Like the approach expected for the Category 3 pathway, we propose that insurance payments for damages to dwellings as a result of the NIWE should be taken into account when determining the level of funding support.

61 The longer time that may be required for communities to work through relocation options should not mean that people are disadvantaged.

61.1 We will seek advice from Treasury, Te Puni Kōkiri, Te Arawhiti and Ministry for the Environment (MfE) officials and propose delegating decisions on how the level of support provided should account for the effect of rising costs over time.

61.2 The fund will need to remain in place until such time that all affected communities have made final decisions on what they wish to do.

9(2)(f)(iv)

[Redacted content]

s 9(2)(f)(iv) [Redacted]

- [Redacted]
- [Redacted]
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Proactively Released

s 9(2)(f)(iv) [Redacted]

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Proactively Released

s 9(2)(f)(iv) [Redacted]

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Proactively Released

s 9(2)(j)

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Wider supports for affected communities

Interim relocation support

77 Given the time it could take to establish long-term solutions for affected communities, it is critical that people residing in Category 3 areas are provided immediate relocation opportunities.

78 So far, the CRU's engagement with affected communities has not resulted in any requests for immediate relocation. Should requests arise through upcoming engagement, we would expect them to be met from existing support channels in the first instance. However, we acknowledge that these channels may be under pressure so have requested officials work together to determine capacity and will report back to joint Ministers in September on this point. We also acknowledge there may be a need to provide support to communities to

² s 9(2)(j)

[Redacted text block]

lease land on to which temporary relocation solutions (e.g cabins) can be placed and propose this is in scope of the Kaupapa Māori pathway.

Support for the protection of marae and cultural assets

- 79 Some marae and culturally significant sites in Category 2 and 1 have also been heavily impacted by the severe weather events. While not specifically part of the Kaupapa Māori pathway, we consider there is merit in highlighting this issue in this paper given it has been raised through engagement feedback.
- 80 Marae taonga, comprising whenua, Māori built heritage assets, cultural harvest areas, urupā and the holders and practitioners of mātauranga (including Toi Māori) comprise an important area of need for Māori which requires a specific policy consideration and financial decisions. Failing to provide for them leaves a gap in the recovery response.
- 81 The CRU and Ministry for Social Development have advised that marae are included in the regional and iwi recovery plans that are under development. Alongside the Ministry for Social Development and the National Emergency Management Agency, agencies will be coordinating a response to such requests and updating Ministers on next steps in a briefing on 14 September.

Support for housing and infrastructure

- 82 There are existing support channels in place to enable and expand Māori-led housing and infrastructure capability, including Whai Kāinga Whai Oranga and the Māori Infrastructure Fund. These could provide support for affected communities as they establish new homes and marae.
- 83 We have asked officials to look at the suitability of these funds to support communities involved in the Kaupapa Māori pathway and to report back to joint Ministers in September.

Further issues to consider

84 The following issues require further consideration:

84.1 s 9(2)(f)(iv)
[Redacted text block]

84.2 s 9(2)(f)(iv)
[Redacted text block]

84.3 **Rights to existing whenua** – Receiving Crown support to relocate, while conditional upon no longer residing on existing whenua, does not affect landowners’ existing right to use the whenua for alternative uses.

Further work is needed to consider what, if any, mechanisms are appropriate to formalise the rights of use for the retained whenua.

- 84.4 **Land title for new whenua** – While this has not been raised in engagement yet, further work may be needed to confirm the approach to determining the land title for the new whenua that communities relocate to (e.g. either general title or Māori freehold land).

How the proposed approach is consistent with the Crown's Treaty responsibilities

- 85 Treaty principles require reasonable and good faith decision-making, Māori concerns and interests to be properly understood (including through engaging with Māori) and taken into account in any decisions, and that options involve active protection of Māori interests and no material impairment of the Crown's ability to take reasonable action to comply with Treaty principles.
- 86 The Treaty of Waitangi includes protections and acknowledgements of Māori rights and interests. Article 2 includes a promise that Māori will have the right to make decisions over resources and taonga they wish to retain and Article 3 promised that the Crown's obligations to New Zealand citizens are owed equally to Māori [CO (19) 5 and DPMC's Policy Methods Toolbox].
- 87 When Māori interests are overwhelming and compelling, that points towards the Crown partnering with Māori to develop and design solutions. The Waitangi Tribunal has said:
- 87.1 In the modern context, the Treaty's guarantee of tino rangatiratanga affords Māori – through iwi, hapū, or other organisations of their choice – the right to decision-making power over their affairs [2023 Hauora Report];
- 87.2 The requirement for the Crown to partner with Māori in developing and implementing policy is especially relevant where Māori are expressly seeking an effective role in this process, and is heightened where disparities in outcomes exist [2023 Hauora Report];
- 87.3 Māori interest in their taonga tuku iho, Māori land, is so central to the Māori Treaty partner that the Crown is restricted (and not unreasonably so) from simply following whatever policy it chooses [2016 Report on Claims about the Reform of Te Ture Whenua Māori Act 1993].
- 88 On 5 April 2023, EWR agreed that the rights and interests of iwi/Māori and the Crown's obligations as a Treaty partner will be central to any policy design for FOSAL [EWR-23-MIN-0030]; and
- 89 On 31 May 2023, EWR noted that:
- 89.1 engagement and policy development will be progressed with iwi by taking a Treaty partnership approach; and
- 89.2 resolution for certain land types and for Māori communities, including papakāinga and other community-held residential land, will require specific solutions to be developed, consistent with Treaty obligations and in consultation with local Māori [EWR-23-MIN-0044].

- 90 The following elements of our approach that are most critical to maintain consistency with the Crown's Treaty responsibilities and with the parameters set by EWR are:
- 90.1 the establishment of a kaupapa Māori pathway policy approach for Māori land and communities, aimed at ensuring final decisions are made in line with the processes for Māori engagement;
 - 90.2 development of an engagement process with Māori whānau, hapū, communities and landowners by the Cyclone Recovery Unit with support from other agencies;
 - 90.3 development of a policy approach that is flexible rather than prescriptive in order to achieve 'the right solution in the right place' and enable alignment with the needs and solutions identified by affected Māori landowners, whānau hapū and hapori themselves.
- 91 A challenge for the Crown is the need to ensure the Kaupapa Māori pathway runs in parallel with the general pathway so far as possible in order to avoid the risk of inequity and inconsistency with the Crown's Article 3 responsibilities while meeting Article 2 responsibilities to act reasonably to develop policy solutions in partnership with Māori and to make decisions that are informed by engagement.
- 92 In order to address these issues:
- 92.1 we are seeking agreement to the design and establishment of a Kaupapa Māori fund to support those in affected communities to relocate, with no less support than others will receive and support for their unique circumstances, to be announced within similar timeframes as support is initiated for those in the general pathway.
 - 92.2 we are proposing the fund operate as a flexible grant system enabling workable relocation solutions for residents, landowners and communities that can reflect jointly developed approaches.
- 93 The fund will not be the sole mechanism for the Kaupapa Māori pathway. For example, there will need to be provision for extended interim relocation support where it is needed, and support for the protection of marae and cultural assets.
- 94 Other factors where the Crown's Treaty responsibilities will require flexible and agile support include resource-intensive decision-making and compliance processes under Te Ture Whenua Māori Act 1993 and related factors illustrated by the following considerations:
- 94.1 Whenua Māori is a taonga tuku iho, deeply valued as an intergenerational cultural asset and a tangible marker of personal and collective identity for owners and members of the hapū connected with the whenua. Unsurprisingly, there has been firmly voiced opposition to any solution involving buyout of whenua Māori. Consistent with the cultural significance of whenua Māori and the principle of retention embodied in the Preamble to Te Ture Whenua Māori Act, support for people and communities to move from unacceptable danger should not involve the loss of their ancestral land.

94.2 There are limits to how far and where people and communities could realistically move. Locations outside the rohe of the relevant hapū or iwi would be difficult and would require conversations with those who are tangata whenua of the new location. Remaining close to existing sites is a priority for affected communities. For example, after the 1963 severe weather event at Tangoio in Hawke's Bay, a community member said "I don't know how much the Government understands, but the Māori does not want to leave the burial places of his father and grandfathers. We have no intention of leaving. All our people hold dear to them is here."

Treaty settlements

- 95 The Kaupapa Māori pathway includes interests held by post settlement governance entities in any Treaty settlement land held for the collective benefit of a claimant group. To date, there have been 11 Treaty settlements in the affected areas of Hawke's Bay and Tairāwhiti.
- 96 The post settlement governance entity for s 9(2)(a) [redacted] and the post settlement governance entity for s 9(2)(a) [redacted] and its catchment area. Both have rights of first refusal and deferred selection rights over properties in affected areas. It is not yet clear what the impact of the severe weather events is on the benefit and viability of these forms of redress for these groups or how this might affect the availability of land that might or might not be available for Category 3 landowners.
- 97 Further work is needed to determine the extent to which affected and categorised land includes housing programmes undertaken by post settlement governance entities. There is a possibility there will be affected housing schemes in Tāmaki Makaurau. A different approach is likely to be needed for impacted housing schemes operated by post settlement governance entities. At least some will have characteristics similar to social housing schemes.
- 98 Through Treaty settlements important rights and interests were recognised in these affected regions, and it is important that context is considered as we progress through the FOSAL work. Relationship agreements with various government agencies were also signed, and these need to be honoured given the significance of this work.

s 9(2)(h) [redacted]

[redacted]

[redacted]

s 9(2)(h) [Redacted]

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Implementation responsibilities and Ministerial oversight

- 107 Agencies are currently working through implementation roles and responsibilities for the Kaupapa Māori pathway and will report back to joint Ministers in September.
- 108 While we envisage a single agency will be responsible for administering the fund, we propose that decisions requiring approval of packages over \$5 million should be taken to the Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti, the Minister for Māori Development, and the Minister for Finance.

Next steps

- 109 We propose that the process for progressing the implementation of the pathway following agreement of policy decisions in this paper involves:
- 109.1 Announcing decisions to affected communities in two steps:
- 109.1.1 CRU leads specific engagement with affected communities and local government to set out the parameters of what has been agreed by EWR for the Kaupapa Māori pathway.
- 109.1.2 The Government makes announcements to the wider public on the decisions agreed for this pathway.
- 109.2 The CRU continuing to lead discussions with hapū, whānau, trustees, beneficial Māori landowners and owners of ungoverned whenua, shareholders and/or their nominated entity in s 9(2)(a) [redacted] (and any other communities with Category 3 whenua Māori that move into Category 3), with local government involvement, with the aim of:
- 109.2.1 Working with communities to confirm which group or person(s) will have the mandate and authority to represent them ahead of agreeing a community-level support package and where an individual land-block level solution is sought.
- 109.2.2 Agreeing support packages and identifying any additional priority financial needs that are not captured within scope and confirming any requests for support in facilitating land acquisition processes.
- 109.2.3 Building a clear understanding between all parties of the implications of potential solutions (including those where whānau remain in situ) for infrastructure provision.
- 109.3 Officials progressing work with the aim of the proposed fund being open for funding requests from individuals, whānau, hapū and communities that align with support packages by October 2023 (in order to align with the expected timing for the Hawke's Bay buyout offers), noting that at least one community s 9(2)(a) [redacted] is already advanced in its thinking about solutions.
- 109.4 Joint Ministers making delegated decisions regarding:
- 109.4.1 s 9(2)(f)(iv) [redacted]

- 109.4.2 The approach to ensuring that grants are adjusted over time to reflect changes in price.
- 109.4.3 How the level of support is adjusted to account for the depressed value of whenua Māori.
- 109.4.4 Other design details for the proposed fund not covered in this paper, as required.
- 109.4.5 s 9(2)(f)(iv)

109.5 CRU leading discussions with local government (and reports back to the Minister of Cyclone Recovery, Minister of Māori-Crown Relations: Te Arawhiti and Minister for Māori Development) about the approach to funding infrastructure provision for retained whenua and any new relocation sites, s 9(2)(f)(iv)

109.6 Joint Ministers (Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister of Māori Development) reporting back to EWR in November in progress toward implementing the agreed policy response.

- 110 In progressing the development and implementation of the funding package, priority will be given to developing supports for existing residents, marae and other assets of cultural significance in the first instance.
- 111 In addition to the Kaupapa Māori pathway, whenua Māori will also be considered in the longer-term policy work on climate change adaptation. The upcoming select committee inquiry on community-led retreat and adaptation funding will have a focus on upholding Māori rights and interest, including through protecting Māori and and upholding Treaty settlements. The inquiry also provides the opportunity to build on the Māori Affairs Committee briefing on Māori climate adaptation. The inquiry's findings will inform the development of the Climate Change Adaptation Bill in 2024.

Cost-of-living Implications

- 112 There are no immediate cost-of-living implications of the recommendations in this paper. For the longer-term, where affected landowners and communities choose to relocate there may be factors affecting cost-of-living that need to be considered, such as rates burdens and affected employment connections.

Financial Implications

- 13 The proposed initial funding package of s 9(2)(j) will be provided from the multi-category appropriation 'North Island Severe Weather Events – Crown Payments to Local Authorities and Other Eligible Stakeholders'. The single overarching purpose of this appropriation is to achieve the outcome of contributing to the management of properties and land impacted by the 2023 North Island severe weather events.

Legislative Implications

114 There are currently no identified legislative implications from this paper. If such requirements arise as the Kaupapa Māori pathway evolves, decisions on such changes will be brought to Cabinet for consideration.

Impact Analysis

Regulatory Impact Statement

115 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

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

Population Implications

117 Māori comprise 27.1 percent of the population in Hawke's Bay. The region has a deprivation index of 6.3 out of 10, where 1 is a low deprivation and 10 is high deprivation. Hawke's Bay regional median income is \$43,845 per annum. Māori comprise 52.5 percent of the population in Tairāwhiti. Its deprivation index is 7.8 out of 10 and the regional median income is \$43,010 per annum.

118 Refer to Annex 1 for further information on population statistics.

Human Rights

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

Use of external resources

120 The Ministry for the Environment and the Treasury have engaged short-term policy contractors (approx. 0.5 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

121 This paper has been prepared by the Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry for the Environment, and Cyclone Recovery Unit. 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; Ministry for Primary Industries, Ministry for Pacific Peoples; Ministry of Transport; Land Information New Zealand, Inland Revenue Department; Ministry of Social

Development; Ministry for Culture and Heritage; Reserve Bank of New Zealand; Department of Conservation; Toka Tū Ake Earthquake Commission; and Te Waihanga New Zealand Infrastructure Commission.

Communications

- 122 Decisions by EWR will be announced. We are recommending that it be undertaken in two steps. Step 1 will be to hold specific engagement with affected communities to set out the parameters of what has been agreed by Cabinet for the Kaupapa Māori parallel pathway. Step 2 will be broader announcements to the wider public on the decisions agreed for this pathway
- 123 Our rationale for taking this approach is to ensure we are good Treaty partners and take a no surprises approach with affected communities regarding the proposed parameters for the response.
- 124 Clear communications will be important for managing expectations around the level of support and mitigating the risk of perceived inequities in the design of the proposed policy that have well-grounded justifications

Proactive Release

- 125 We intend to proactively release this paper, and earlier Cabinet papers relating to the FOSAL programme where policy considerations have been completed. All papers will be subject to redactions as appropriate, consistent with the *Official Information Act 1982*.

Proactively Released

Recommendations

We recommend the Committee:

- 1 **note** that the Extreme Weather Committee (EWR) made decisions on 26 July 2023 on the key parameters of the Kaupapa Māori pathway [EWR-23-MIN-0060], including that it is
 - 1.1 A Crown-led and funded process
 - 1.2 Focussed on:
 - 1.2.1 Category 3 land, and areas with the potential to move into Category 3,
 - 1.2.2 Māori communities with whenua Māori, cultural and residential Māori assets on whenua Māori, and Māori collectively-owned assets on other Category 3 land.
 - 1.2.3 The residential use of land, with the flexibility to consider non-residential solutions where appropriate.
 - 1.3 Shaped by collaboration and engagement with iwi hapū and affected Māori communities
 - 1.4 Flexible, to enable a response that is workable for Māori communities.
- 2 **note** that EWR also agreed on 26 July 2023 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:
 - 2.1 Retaining ownership of their land; and
 - 2.2 Being free to use the grant as desired to enable residents to relocate to safe places.
- 3 **note** that the policy decisions proposed in this paper focus on solutions involving the retention of whenua ownership and there has been no indication from engagement that affected properties in scope for the Kaupapa Māori pathway desire to pursue a buy-out solution
- 4 **agree** that a buy out option in principle remains on the table to the extent that current legal frameworks allow to ensure that those in the Kaupapa Māori pathway have access to the same options as those in the Category 3 pathway
- 5 **note** that targeted engagement with affected communities has continued, is ongoing, and will need to continue until final decisions on plans on the way forward for communities and/or individuals are confirmed;
- 6 **note** it is anticipated that the Hawke's Bay local authorities may be able to make offers by early October to residents in the voluntary buyout scheme and that the proposals of this paper seek to achieve broad alignment with that timing to ensure equitable outcomes for Māori;
- 7 **note** that a flexible rather than a prescriptive approach will provide ability for the right solution in the right place that is tailored to the unique and often multifaceted components that comprise the Kaupapa Māori pathway;

Approach to the policy response for the Kaupapa Māori pathway

- 8 **note** that a flexible grant scheme is a constructive way forward to operationalise specific funding to meet the financial barriers associated with confirming workable relocation solutions for residents, landowners and communities;
- 9 **agree** to the establishing of a fund to support the flexible provision of grants to those in scope for the Kaupapa Māori parallel pathway,
- 10 **agree** that the overarching purpose of the proposed fund is to enable people residing on Māori land and in Māori communities severely affected by the NIWE to move out of harm's way by relocating their residential and related uses to safer places.
- 11 **agree** that the following additional objectives will guide decisions for the proposed fund, based on the principles of Manaakitanga, Kotahitanga, Tikanga and Tiakitanga:
- 11.1 Enables people to relocate to physically safer places and be in at least in an equivalent residential circumstance as they were pre-weather event
 - 11.2 Provides certainty to people and communities and enables their aspirations
 - 11.3 Protects wairuatanga, so that the spiritual wellbeing of tangata whenua is protected, including through connection to whenua and community.
 - 11.4 Supports community cohesion and upholds mana through a community-led, government supported process
 - 11.5 Upholds the Treaty relationship
 - 11.6 Respects and maintains connection of people to their whenua and cultural values, and promotes the retention and use and development of whenua Māori in the hands of its owners
 - 11.7 Allows both immediate relief and community-led solutions, which may take longer to develop.
 - 11.8 Enables stewardship of key systems, including administrative and fiscal sustainability, and the coherence of the overall response to current and future severe weather events.

Design elements of the fund

- 12 **agree** that funding will be available through the fund for properties that meet the following categories:
- 12.1 Category 3 (including properties that may currently be designated as Category 2A but are subsequently categorised as Category 3);
 - 12.2 In residential use or has assets of cultural significance, including marae, papakāinga and urupā.
 - 12.3 Māori freehold land, Māori customary land, Māori reservation land, assets of cultural significance that sit on general title land, and general title land that meets any of the following criteria:

- 12.3.1 General land that is owned by, and has been owned continuously by, members of the hapū associated with the whenua and is geographically connected to Māori freehold land, Māori customary land, or Māori reservations.
 - 12.3.2 General land that was previously Māori freehold land but ceased to have that status under
 - 12.3.2.1 An order of the Māori Land Court made on or after 1 July 1993.
 - 12.3.2.2 Part 1 of the Māori Affairs Amendment Act 1967.
 - 12.3.3 Land held by a post-settlement governance entity for residential use.
- 13 **agree** that on a case-by-case basis, discretion can be given to include Category 3 properties on general title land and Category 2 properties as eligible for support to enable relocation of residents with the rest of the community, where doing so would promote the maintenance of community cohesion and wellbeing;
- 14 **note** for properties in scope the fund can be accessed by:
- 14.1 A resident of a property in scope, regardless of whether they have ownership interests in the dwelling or whenua;
 - 14.2 Whenua Māori owner or governor whānau and hapū level, and decision-making authorities (once established);
 - 14.3 A representative body on behalf of a group of residents and landowners;
- 15 **note** that while recommendat on 14 maintains flexibility and provides individuals and whānau choices about if they wish to relocate immediately or work through solutions as a collective, equity-related risks will need to be navigated to ensure that attempts to develop community-based options are not undermined;
- 16 **note** for community based options there will be a need to identify and confirm a group or person(s) who will have the mandate and authority to represent that community in its planning and negotiations for developing and agreeing a support package.
- 17 **gree** that the proposed fund can be used to support the costs of:
- 17.1 Relocating a residence – including the costs of moving, purchasing or building the dwelling, and purchasing or leasing new land;
 - 17.2 Relocating marae and other culturally significant assets, including the cost of acquiring new land, rebuilding or moving marae buildings in a culturally safe way.
 - 17.3 Legal, technical, consenting, engagement and compliance costs required to establish workable relocation solutions.
 - 17.4 s 9(2)(f)(iv)

18 s 9(2)(f)(iv) [redacted]
[redacted]

[redacted] [redacted]
[redacted]

[redacted] [redacted]
[redacted]

[redacted] [redacted]
[redacted]

[redacted] [redacted]
[redacted]

[redacted] [redacted]
[redacted]
[redacted]

20 **agree** that a case-by-case approach is taken to determining the size of support provided for the different component of support, reflecting the unique characteristics associated with whenua Māori and that the gap between the pre-event value of the existing dwelling and the cost of an equivalent replacement block of land nearby may be significant;

21 **agree** that the minimum level of support provided for a given property should not be less than if it was in the general Category 3 pathway;

22 **agree** that the level of support provided for relocation, where appropriate, is based on a valuation of the whole block of land (and the value of any improvements), regardless of how much of the whenua is currently used for residential purposes;

23 **agree** that any valuations of whenua Māori used to determine the size of support include an adjustment to account for the depressed valuations of whenua Māori;

24 **agree** that insurance payments for damages to dwellings as a result of the NIWE should be taken into account, where appropriate, when determining the level of funding support;

25 **note** that the fund will need to remain in place until such time that all affected communities have made final decisions on what they wish to do;

Initial funding package for the Kaupapa Māori pathway

26 **agree** that the Crown provides a new funding package of up to s 9(2)(j) [redacted] for the Kaupapa Māori pathway;

27 **agree** that the above funding package be sourced from the National Resilience Plan;

- 28 **note** that this will leave a balance of s 9(2)(j) in the National Resilience Plan, which is already oversubscribed. This balance is made up of s 9(2)(j) in operating and s 9(2)(j) in capital funding;
- 29 **agree** that the s 9(2)(j) funding package is not a contestable fund, but rather it is a provisional amount of funding that may need to be increased as more information about the full costs emerges;

Implementation responsibilities and Ministerial oversight

- 30 **note** that agencies are currently working through implementation roles and responsibilities for the Kaupapa Māori pathway, including which agency will be responsible for administering the funding, and will report back to joint Ministers in September for decisions;
- 31 **authorise** the Minister of Finance, the Associate Minister of Finance (Woods), and other affected appropriation Minister(s) where relevant, to take decisions on the recovery of necessary fiscally neutral changes to appropriation(s), including establishing any new appropriation(s) as needed to enable the relevant agency(ies) to implement the Kaupapa Māori pathway;
- 32 **authorise** the Minister of Finance, the Associate Minister of Finance (Woods), and other affected appropriation Minister(s) where relevant, to set reporting requirements once the implementing agency(ies) has been agreed and the relevant appropriation has been established;
- 33 **note** that we anticipate some funding proposals from communities will be significant and that it is desirable that these receive a greater level of scrutiny;
- 34 **agree** that the prior approval of the Minister of Finance, the Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister for Māori Development will be required for packages over \$5 million;
- 35 **note** that it is expected that implementation activities will be managed through existing departmental baselines, and to the extent this creates pressures on other priority programmes, the Budget 2024 process provides an opportunity for the relevant appropriation Minister to seek additional funding as necessary;
- 36 **note** that officials will progress work with the aim of providing for the proposed fund to be operative and open for funding requests from individuals and communities by October 2023, to align with the expected timing for the Hawke's Bay general category buyout offers), noting that at least one community s9(2)(a) is already advanced in its thinking regarding adaptive solutions;

Wider supports

- 37 **note** that addressing the range of needs for affected communities will require consideration of whether needs are within scope of the proposed Kaupapa Māori pathway fund or are responded to through existing support mechanisms and policy processes, e.g. the Regional Recovery Plan process;
- 38 **note** that there have been no specific requests through engagement for temporary relocation support but officials will work with relevant agencies to determine whether there is scope within existing support channels to meet

any future demand and will report back to joint Ministers in September on this point;

39 **note** that within the proposed funding package there is scope for leasing of land if required to support temporary relocation solutions;

40 **note** that several marae and culturally significant sites in Category 2 and Category 1 have also been heavily impacted by the severe weather events that are not specifically part of the Kaupapa Māori pathway, but have been identified through engagement as seeking support;

41 **note** that the Cyclone Recovery Unit, Ministry for Social Development and the National Emergency Management Agency will be working with relevant agencies to coordinate a response to such requests, and updating relevant Ministers on next steps in a briefing on 14 September 2023;

Delegated decisions

42 **agree** that decisions on the following aspects related to the design of the fund scheme are delegated to Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister of Māori Development;

42.1 s 9(2)(f)(iv) [redacted]

42.2 How the level of support is adjusted to account for the depressed value of whenua Māori.

42.3 How the level of support should account for rising costs over time.

42.4 Other design details for the proposed fund not agreed to in this paper, as required.

43 s 9(2)(f)(iv) [redacted]

Next steps

44 **note** that we propose that the process for progressing the Kaupapa Māori pathway following agreement of policy decisions in this paper includes announcing decisions in two steps:

44.1 The Cyclone Recovery Unit will lead specific engagement with affected communities and local government to set out the parameters of the policy agreed by EWR for the Kaupapa Māori parallel pathway; and

44.2 The Government will make announcements to the wider public on the decisions agreed for this pathway once the Cyclone Recovery Unit has completed its step.

45 **note** that the Cyclone Recovery Unit will continue to lead discussions with hapū, whānau, trustees, beneficial Māori landowners, ungoverned whenua owners, shareholders and/or their nominated entity in s 9(2)(a) [redacted] (and any other communities with Category 2A whenua Māori that move into Category 3), with local government involvement, with the aim of:

- 45.1 Working with communities to confirm which group or person(s) will have the mandate and authority to represent them ahead of agreeing a community-level support package and where an individual land-block level solution is sought;
 - 45.2 Agreeing support packages and identifying any further financial needs that are not captured within scope and confirming requests for non-financial support (i.e. facilitation of land acquisition processes);
 - 45.3 Building a clear understanding between all parties of the implications of potential solutions (including those where whānau remain in situ) for infrastructure provision.
- 46 **agree** that Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister of Māori Development will report back to EWR in November on progress toward implementing the agreed Kaupapa Māori policy response.

Authorised for lodgement

Hon Grant Robertson

Minister of Finance

Hon Kelvin Davis

Minister for Māori Crown Relations

Hon Willie Jackson

Minister for Māori Development

Annex 1: Key statistics for regions within Hawke's Bay and Tairāwhiti

Region	Key statistics
Hawke's Bay	<p>Population – 177,822. For this region:</p> <ul style="list-style-type: none"> • Māori comprise 27.1% of the population. • Regional median income \$43,845. • The region has a deprivation level index of 6.3 out of 10, where 1 is low level of deprivation and 10 high level of deprivation. • 66% of the total population are employees, 9.6% self-employed, 23.7% unemployed. • 47% of people own or partly own their homes. • 183 people are living in community housing. <p>Key industries for employment are agriculture, forestry and fishing; health care and social assistance; and manufacturing.</p>
s 9(2)(a)	<ul style="list-style-type: none"> • 18.8% of the population is Māori. • s 9(2)(a) has a deprivation level index of 5 out of 10. • 46% of the population own or partly own their homes. <p>Note s 9(2)(a) consists of 6 SA1.</p>
s 9(2)(a)	<ul style="list-style-type: none"> • 14.0% of the population is Māori. • s 9(2)(a) has a deprivation level index of 3 out of 10. • 53% of the population own or partly own their homes. <p>Note s 9(2)(a) consists of 4 SA1.</p>
s 9(2)(a)	<ul style="list-style-type: none"> • 13.0% of the population is Māori. • s 9(2)(a) has a deprivation level index of 3 out of 10. • 38% of the population own or partly own their homes. <p>Note s 9(2)(a) consists of 17 SA1.</p>
s 9(2)(a)	<ul style="list-style-type: none"> • 56.3% of the population is Māori. • s 9(2)(a) has a deprivation level index of 9 out of 10. • 27% of the population own or partly own their homes. <p>Note s 9(2)(a) consists of 4 SA1.</p>
s 9(2)(a)	<ul style="list-style-type: none"> • 44.7% of the population is Māori. • s 9(2)(a) has a deprivation level index of 8 out of 10. • 42% of the population own or partly own their homes. <p>Note s 9(2)(a) consists of 4 SA1 which includes the main township, beach area and 2 others.</p>
Tairāwhiti	<p>Total population 51,072. For this region:</p> <ul style="list-style-type: none"> • Regional median income is \$43,010. • 52.5% of the population is Māori. 56.5% is European. • The region has a deprivation level index of 7.8 out of 10.

	<ul style="list-style-type: none"> • 54 people are living in community housing. • 39 % of the population own or partly own their homes. • 63.3% are employees, 7.5% self-employed and 28.4 % unemployed. <p>Key industries for employment are agriculture, forestry and fishing; health care and social assistance, and construction.</p>
s 9(2)(a)	<ul style="list-style-type: none"> • 76.0% of the population is Māori. • s 9(2)(a) has a deprivation level index of 10 out of 10. • 40% of the population own or partly own their homes. <p>Note s 9(2)(a) consists of 3 SA1.</p>

Note: SA1 is a statistical area boundary defined by Stats NZ as having an ideal size range of 100-200 residents, and a maximum population of about 500.

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

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



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Annex 3: Alignment of Engagement Themes with Policy Direction

Note on content: there is a recognised privacy risk for individuals with sharing some of this information publicly. Sensitivities exist which preclude sharing specifics in some cases. The CRU can provide guidance.

The table below describes the key issues iwi and Māori stakeholders have raised through national, regional and local engagement on FOSAL and wider cyclone recovery matters.

The CRU has attended and led a range of iwi, community and marae-level engagements since local councils began announcing their FOSAL provisional categorisations on 31 May (Gisborne District Council) and 1 June (Hawke's Bay councils). Auckland Council is poised to confirm its categorisation of Auckland affected properties in coming weeks.

Hawke's Bay

- Severely affected whenua Māori land blocks are largely concentrated in the Hawke's Bay's s 9(2)(a) so CRU engagement effort has focused largely on s 9(2)(a) land interests and related stakeholders, including the s 9(2)(a) severely affected marae in the region, and the iwi authority, s 9(2)(a).
- Through a publicly notified process the CRU is also talking to trustees, owners and residents of provisional Category 3 whenua Māori, with support from local councils, s 9(2)(a). There is an ongoing engagement challenge with, in some instances, large and dispersed groups of owners, unknown governance/trusteeship and/or contact details to work with; and some whānau reluctance to relocate and, therefore, engage in the FOSAL process.
- More broadly, the CRU and Te Arawhiti are aware of, and will manage, concerns the various PSGEs have that the FOSAL and cyclone recovery work not undermine their Treaty settlements and, where practicable, complement their post settlement duties and objectives.

Tairāwhiti

- s 9(2)(a). CRU has supported all the Gisborne District Council-led engagements with affected communities, including East Coast and other communities with relatively high Māori populations, and is seeking direct dialogue with the Category 3 affected residents and owners.
- CRU's broader cyclone recovery engagement with Tairāwhiti iwi and Māori stakeholders has taken place against the backdrop of a breakdown in relationships between the Gisborne District Council (GDC) and three of the region's four main iwi, s 9(2)(a). In recent weeks GDC and local iwi leaders have recommitted to a unified cyclone recovery and wider collaborative approach, and the leaders acknowledge their access to recovery Ministers, the CRU and other parts of central government to progress their recovery, Ministerial Inquiry into Land Use and other aims.

- Of the four main iwi, s 9(2)(a) [redacted]
[redacted] This is important context for the recovery dialogue with the Mahaki principals, and their concerns for the protection and future availability of Māori land in their rohe.

Auckland

- In Auckland the CRU has, to date, undertaken very limited engagement on whenua Māori and/or support for council-led engagements with local communities. The latter was put on hold pending Auckland Council's commissioning of geo-tech and household information, and confirmation of central government funding to support FOSAL and recovery work. The summary of key themes is, therefore, absent of substantive content from the region.
- Across the 13 'high risk localities' identified by Auckland Council as a precursor to its categorisations, there are two main localities that include whenua Māori: s 9(2)(a) [redacted]. Through Auckland Council's marae liaison staff, CRU is aware of only two local marae impacted by the Auckland Anniversary floods: one (s 9(2)(a)) has up to s 9(2)(a) papakāinga units at risk of landslips; and one s 9(2)(a) [redacted] is a marae site impacted by road closures since the floods.
- More broadly, agencies are aware that local iwi will be concerned to maintain the integrity of their respective Treaty settlements with the Crown, including environmental accords and commercial property instruments.

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s 9(2)(a)

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s 9(2)(a)

Proactively Released

s 9(2)(a)



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Annex 4: Explained differences Between the Proposed Kaupapa Māori Policy Response and the Category 3 Buyout Scheme

Design issue	Proposed approach for Kaupapa Māori Pathway	Approach (either confirmed or expected) for the Cat 3 buyout scheme	Identified rationale for difference in proposed Kaupapa Māori approach and the Cat 3 buyout scheme
<p>Those without ownership interests in their dwelling or the underlying whenua</p>	<p>The fund can be accessed by a resident of a property in scope, regardless of whether they have ownership interests in the dwelling or whenua</p>	<p>Not eligible. Must have ownership interests in the dwelling to receive a buyout offer (e.g. renters do not receive support). However, they may have made improvements to the dwelling at their expense to make it habitable and a case-by-case assessment will be needed for these limited cases to provide a portion of the dwelling cost to them.</p>	<p>While those eligible in the KM pathway may be compared to renters in the standard Category 3 pathway (who would not be eligible for any support through buyout offers), this would fail to recognise their ties to the whenua and the community, or occupation based on colour of right not on a tenancy. Such residents may whakapapa to the whenua, have a right to occupy under the Māori Land Court, or have other long-standing connections (e.g., through marriage). They are an integral part of the community and were accommodated for reflecting Te Ao Māori approach to whanau. They may have continued living on the whenua had it not been for the impacts of the weather events and the categorisation. Therefore, not providing any relocation support for this group could be detrimental to community cohesion.</p>
<p>Treatment of Category 3 general title land</p>	<p>All Category 3 general title land is eligible where land:</p> <ul style="list-style-type: none"> • Is owned by, and has been owned continuously by, members of the hapū associated with the whenua and is geographically connected to Māori freehold land, Māori customary land, or Māori reservations. • Was previously Māori freehold land but ceased to have that status under <ul style="list-style-type: none"> ○ in order of the Māori Land Court made on or after 1 July 199 ○ Part 1 of the Māori Affairs Amendment Act 1967. • Land held by a post-settlement governance entity for residential use. 	<p>Buyout offers provided to all Cat 3 general title land owners.</p>	<p>Through community engagement we have heard that there will be general title land owned by hapū members within their takiwā (i.e., geographically connected to other Category 3 whenua Māori) that is of cultural or historical significance, such as land returned through the Treaty settlement process or that was compulsorily converted to general title under the Māori Affairs Amendment Act 1967. Currently, such land will go through the separate council-led buyout pathway, which would mean owners lose connection to their whenua.</p>

Treatment of Category 2 land	Eligibility for relocation support considered on a case-by-case basis (with an expected focus on cases where a Cat 2 residents wishes to relocate with the Cat 3 residents in their community).	Buyout offers limited to Cat 3 property owners	Allowing discretion for Category 2 landowners will help ensure relocation solutions can be developed in a way that does not unnecessarily isolate some members of the community.
Approach to mixed use properties	Eligibility focussed on residential use but with flexibility to consider non-residential uses connected to residential uses where appropriate (Kōhanga Reo as a practical example). The approach to determining size of support in such cases is case-by-case.	Relocation grant offered based on the CV of the residential component of the property, with no change in ownership.	Whenua Māori can have mixed-uses that are interconnected and difficult to isolate and it is expected Māori will desire a holistic approach to any solutions. As such, where appropriate, it is proposed that there is flexibility for solutions that encompass a wider set of land uses.
Retention of land ownership	Landowners retain ownership.	Council obtains ownership of the property upon reception of the buyout offer.	Providing relocation support options that enable retained ownership recognises the landowners' ancestral connections to the land and the principle of active protection under the Treaty of Waitangi.
Facilitation of support for the acquisition of new land (e.g. support in the process of negotiating)	Support in scope	Support not in scope.	The inclusion of this support in the KM pathway recognises that 1) in some cases relocation solutions can involve shifting larger groups of people together as a community, creating unique barriers to finding workable solutions and 2) the strong desire for communities to remain in their takiwā limits based on their ancestral connections limits opportunities for relocation.
s 9(2)(f)(iv)			

Legal, technical, consenting, compliance and engagement-related costs¹	Support in scope	Not in scope	This inclusion reflects that the process of developing solutions as a community and among landowners, engaging with the Crown and costs associated with the Māori Land Court are either unique or especially pertinent for owners of whenua Māori and Māori communities.
Support for relocation of marae and other culturally significant assets	Support offered to support relocation for assets such as marae and urupā	Support limited to residential properties	The inclusion of marae in scope reflects both their role in the heart of a community, and that communities do not have sufficient capacity or capability to actively protect their affected marae in terms of resources and funding. A theme from the engagement was the importance people placed on the location of the Marae to inform their relocation decisions.
Level of direct relocation-related support (i.e. <u>excluding</u> support such as ongoing support for remedying land and legal, technical etc costs)	Level of support determined on a case-by-case basis, with the objective of enabling people to relocate to physically safe places and to be in at least in an equivalent residential circumstance as they were pre-weather event, and no worse off than if they had gone through the general C3 pathway. s 9(2)(f)(iv)	Buyout offer based on 95-100% of the CV of the purchased property.	<p>The strong desire for communities to remain in their takiwā limits based on their ancestral connections (and the complexities and cultural implications involved in establishing themselves within the takiwā of a different group) limits opportunities for relocation and means that the cost of relocation could be more expensive (as sellers could ask for higher prices). Therefore, an approach purely based on the 100% of the CV of a property (adjusted for the depressed value of whenua Māori), akin to the Cat 3 buyout formula, may be less likely to produce an outcome where people are enabled to relocate and be in a similar residential circumstance compared to pre-cyclone.</p> <p>The case-by-case approach also reflects complexity around ownership arrangements and the need for a flexible approach that mitigates the risk of providing either too little or too much support based on the unique circumstances of a particular land block.</p>
Recognition of a loss of future right to build a residential dwelling on a property	The level of support provided will be based on the value of the whole block of land (and the value of any	There is uncertainty about the approach councils will take to bare residential land. For mixed-use properties, the basis for buyout offers	The whenua is a safety net for many when they cannot afford to buy land or acquire housing. There may also be owners who live elsewhere currently but have intentions to return to their whenua in the future. If communities relocate to smaller parcels of land that

¹ This includes costs from Māori Land Court processes such as application to the court, or the need to call a meeting of landowners, as well as costs to participate in the engagement process with the Crown. It may also need to consider costs for the Māori Land Court itself to provide expanded capacity to proactively support this kaupapa. Compliance costs will also arise from meeting local government building and consenting requirements. Affected communities have also expressed a need for appropriate technical expertise to aid the development of their relocation plans.

	improvements) regardless of how much of that land is currently used for residential purposes.	is expected to be the residential proportion of the land.	cannot accommodate those who may wish to live there in the future, there is a case for recognizing the diminished opportunity for residence.
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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 1 September 2023

On 4 September 2023, Cabinet made the following decisions on the work of the Cabinet Extreme Weather Recovery Committee for the period ended 1 September 2023:

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
EWR-23-MIN-0075	Future of Severely Affected Locations: Kaupapa Māori Pathway Report Portfolios: Māori Crown Relations: Te Arawhiti / Finance / Māori Development	CONFIRMED
[REDACTED]	[REDACTED]	[REDACTED]

Rachel Hayward
Secretary of the Cabinet



Cabinet Extreme Weather Recovery Committee

Revised

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.

Future of Severely Affected Locations: Kaupapa Māori Pathway Report

Portfolios **Māori Crown Relations: Te Arawhiti / Finance / Māori Development**

On 30 August 2023, the Cabinet Extreme Weather Recovery Committee (EWR) exercising its Power to Act in accordance with its terms of reference:

Background

1 **noted** that on 26 July 2023, EWR made decisions on the key parameters of the Kaupapa Māori pathway, including that it is:

1.1 a Crown-led and funded process;

1.2 focussed on:

1.2.1 Category 3 land, and areas with the potential to move into Category 3,

1.2.2 Māori communities with whenua Māori, cultural and residential Māori assets on whenua Māori, and Māori collectively-owned assets on other Category 3 land;

1.2.3 the residential use of land, with the flexibility to consider non-residential solutions where appropriate;

1.3 shaped by collaboration and engagement with iwi, hapū and affected Māori communities;

1.4 flexible, to enable a response that is workable for Māori communities;

[EWR-23-MIN-0060]

2 **noted** that EWR also 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:

2.1 retaining ownership of their land; and

2.2 being free to use the grant as desired to enable residents to relocate to safe places;

[EWR-23-MIN-0060]

- 3 **noted** that the policy decisions proposed in the paper under EWR-23-SUB-0075 focus on solutions involving the retention of whenua ownership, and that there has been no indication from engagement that affected properties in scope for the Kaupapa Māori pathway desire to pursue a buy-out solution;
- 4 **agreed** that a buy-out option in principle remains on the table to the extent that current legal frameworks allow, to ensure that those in the Kaupapa Māori pathway have access to the same options as those in the Category 3 pathway;
- 5 **noted** that targeted engagement with affected communities has continued, is ongoing, and will need to continue until final decisions on plans on the way forward for communities and/or individuals are confirmed;
- 6 **noted** that it is anticipated that the Hawke's Bay local authorities may be able to make offers by early October 2023 to residents in the voluntary buyout scheme, and that the proposals in the paper under EWR-23-SUB-0075 seek to achieve broad alignment with that timing to ensure equitable outcomes for Māori;
- 7 **noted** that a flexible, rather than a prescriptive, approach will provide the ability for the right solution in the right place that is tailored to the unique and often multifaceted components that comprise the Kaupapa Māori pathway;

Approach to the policy response for the Kaupapa Māori pathway

- 8 **noted** that a flexible grant scheme is a constructive way forward to operationalise specific funding to meet the financial barriers associated with confirming workable relocation solutions for residents, landowners and communities;
- 9 **agreed** to the establishment of a fund to support the flexible provision of grants to those in scope for the Kaupapa Māori parallel pathway (the fund);
- 10 **agreed** that the overarching purpose of the fund be to enable people residing on Māori land and in Māori communities severely affected by the North Island weather events (NIWE) to move out of harm's way by relocating their residential and related uses to safer places;
- 11 **agreed** that the following additional objectives will guide decisions for the fund, based on the principles of Manaakitanga, Kotahitanga, Tikanga and Tiakitanga:
- 11.1 enables people to relocate to physically safer places and be in at least in an equivalent residential circumstance as they were pre-weather event;
 - 11.2 provides certainty to people and communities, and enables their aspirations;
 - 11.3 protects wairuatanga, so that the spiritual wellbeing of tangata whenua is protected, including through connection to whenua and community;
 - 11.4 supports community cohesion and upholds mana through a community-led, government-supported process;
 - 11.5 upholds the Treaty relationship;
 - 11.6 respects and maintains connection of people to their whenua and cultural values, and promotes the retention and use and development of whenua Māori in the hands of its owners;

- 11.7 allows both immediate relief and community-led solutions, which may take longer to develop;
- 11.8 enables stewardship of key systems, including administrative and fiscal sustainability, and the coherence of the overall response to current and future severe weather events;

Design elements of the fund

- 12 **agreed** that funding will be available through the fund for properties that meet the following categories:
 - 12.1 Category 3 (including properties that may currently be designated as Category 2A but are subsequently categorised as Category 3);
 - 12.2 in residential use or have assets of cultural significance, including marae, papakāinga and urupā;
 - 12.3 Māori freehold land, Māori customary land, Māori reservation land, assets of cultural significance that sit on general title land, and general title land that meets any of the following criteria:
 - 12.3.1 general land that is owned by, and has been owned continuously by, members of the hapū associated with the whenua and is geographically connected to Māori freehold land, Māori customary land, or Māori reservations;
 - 12.3.2 general land that was previously Māori freehold land but ceased to have that status under:
 - 12.3.2.1 an order of the Māori Land Court made on or after 1 July 1993;
 - 12.3.2.2 Part 1 of the Māori Affairs Amendment Act 1967;
 - 12.3.3 land held by a post-settlement governance entity for residential use;
- 13 **agreed** that on a case-by-case basis, discretion can be given to include Category 3 properties on general title land and Category 2 properties as eligible for support to enable the relocation of residents with the rest of the community, where doing so would promote the maintenance of community cohesion and wellbeing;
- 14 **noted** that for properties in scope, the fund can be accessed by:
 - 14.1 a resident of a property in scope, regardless of whether they have ownership interests in the dwelling or whenua;
 - 14.2 Whenua Māori owner or governors, whānau and hapū level, and decision-making authorities (once established);
 - 14.3 a representative body on behalf of a group of residents and landowners;
- 15 **noted** that while paragraph 14 above maintains flexibility and provides individuals and whānau choices as to whether they wish to relocate immediately or work through solutions as a collective, equity-related risks will need to be navigated to ensure that attempts to develop community-based options are not undermined;

- 16 **noted** that for community-based options, there will be a need to identify and confirm a group or person(s) who will have the mandate and authority to represent that community in its planning and negotiations for developing and agreeing a support package;
- 17 **agreed** that the fund can be used to support the costs of:
- 17.1 relocating a residence, including the costs of moving, purchasing or building the dwelling, and purchasing or leasing new land;
 - 17.2 relocating marae and other culturally significant assets, including the cost of acquiring new land, rebuilding, or moving marae buildings in a culturally safe way;
 - 17.3 legal, technical, consenting, engagement and compliance costs required to establish workable relocation solutions;
- 18 s 9(2)(f)(iv)
- 19 **agreed** that a case-by-case approach be taken to determining the size of support provided for the different components of support, reflecting the unique characteristics associated with whenua Māori, and that the gap between the pre-event value of the existing dwelling and the cost of an equivalent replacement block of land nearby may be significant;
- 20 **agreed** that the minimum level of support provided for a given property should not be less than if it were in the general Category 3 pathway;
- 21 **agreed** that the level of support provided for relocation, where appropriate, be based on a valuation of the whole block of land (and the value of any improvements), regardless of how much of the whenua is currently used for residential purposes;
- 22 **agreed** that any valuations of whenua Māori used to determine the size of support include an adjustment to account for the depressed valuations of whenua Māori;
- 23 **agreed** that insurance payments for damages to dwellings as a result of the NIWE should be taken into account, where appropriate, when determining the level of funding support;
- 24 **noted** that the fund will need to remain in place until such time that all affected communities have made final decisions on what they wish to do;

Initial funding package for the Kaupapa Māori pathway

- 25 **agreed** that the Crown provide a new funding package of up to s 9(2)(j) for the Kaupapa Māori pathway;
- 26 **agreed** that the above funding package be sourced from the National Resilience Plan;
- 27 **noted** that this will leave a balance of s 9(2)(j) in the National Resilience Plan, which is already oversubscribed (this balance is made up of s 9(2)(j) in operating and s 9(2)(j) in capital funding);
- 28 **agreed** that the s 9(2)(j) funding package is not a contestable fund, but rather a provisional amount of funding that may need to be increased as more information about the full costs emerges;

Implementation responsibilities and Ministerial oversight

- 29 **noted** that agencies are currently working through implementation roles and responsibilities for the Kaupapa Māori pathway, including which agency will be responsible for administering the funding, and will report back to joint Ministers in September 2023 for decisions;
- 30 **authorised** the Minister of Finance, the Associate Minister of Finance (Hon Dr Megan Woods), and other affected appropriation Minister(s) where relevant, to take decisions on the recovery of necessary fiscally neutral changes to appropriation(s), including establishing any new appropriation(s) as needed, to enable the relevant agency(ies) to implement the Kaupapa Māori pathway;
- 31 **authorised** the Minister of Finance, the Associate Minister of Finance (Hon Dr Megan Woods), and other affected appropriation Minister(s) where relevant, to set reporting requirements once the implementing agency(ies) has been agreed and the relevant appropriation has been established;
- 32 **noted** that it is anticipated that some funding proposals from communities will be significant, and that it is desirable that these receive a greater level of scrutiny;
- 33 **agreed** that the prior approval of the Minister of Finance, the Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister for Māori Development will be required for packages over \$5 million;
- 34 **noted** that it is expected that implementation activities will be managed through existing departmental baselines, and to the extent this creates pressures on other priority programmes, the Budget 2024 process will provide an opportunity for the relevant appropriation Minister to seek additional funding as necessary;
- 35 **noted** that officials will progress work with the aim of providing for the fund to be operative and open for funding requests from individuals and communities by October 2023, to align with the expected timing for the Hawke's Bay general category buyout offers, noting that at least one community s 9(2)(a) is already advanced in its thinking regarding adaptive solutions;

Wider supports

- 36 **noted** that addressing the range of needs for affected communities will require consideration of whether needs are within scope of the proposed Kaupapa Māori pathway fund or are responded to through existing support mechanisms and policy processes, e.g. the Regional Recovery Plan process;
- 37 **noted** that there have been no specific requests through engagement for temporary relocation support, but that officials will work with relevant agencies to determine whether there is scope within existing support channels to meet any future demand and will report back to joint Ministers in September 2023 on this point;
- 38 **noted** that within the proposed funding package, there is scope for the leasing of land if required to support temporary relocation solutions;
- 39 **noted** that several marae and culturally significant sites in Category 2 and Category 1 have also been heavily impacted by the severe weather events that are not specifically part of the Kaupapa Māori pathway, but have been identified through engagement as seeking support;

40 **noted** that the Cyclone Recovery Unit, the Ministry for Social Development and the National Emergency Management Agency will be working with relevant agencies to coordinate a response to such requests, and will provide an update to relevant Ministers on next steps in a briefing on 14 September 2023;

Engagement with affected communities

41 **noted** that ongoing engagement is required to ensure affected communities are aware of the high-level parameters of the Kaupapa Māori pathway for whenua Māori, and of the possible funding available;

42 **noted** that to appropriately engage and negotiate with impacted communities, a targeted, consistent and specialised approach is needed to get a clear picture of what will work for each community;

43 **agreed** to establish a specialised Kaupapa Māori taskforce under the Cyclone Recovery Unit, to be led by officials from Te Arawhiti, to strengthen relationships and begin negotiations with impacted communities;

44 **agreed** that the taskforce referred to above will:

44.1 be of an appropriate size, and comprised of seconded officials across government;

44.2 have access to funding and resources available to the Cyclone Recovery Unit;

44.3 operate for an initial period of 2-3 months;

45 **directed** the taskforce to report back to the Minister for Māori Crown Relations: Te Arawhiti, Minister of Finance, Minister for Cyclone Recovery, Minister for Māori Development and Minister of Local Government with negotiated solutions;

46 **authorised** the Ministers referred to in paragraph 45 above to finalise decisions on negotiated options in the Kaupapa Māori pathway, including associated implementation planning;

Delegated decisions

47 **agreed** that decisions on the following aspects related to the design of the fund be delegated to the Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister of Māori Development:

47.1 the approach to setting maximum and/or minimum ‘guardrails’ for Crown contributions to the different components of the support package;

47.2 how the level of support is adjusted to account for the depressed value of whenua Māori;

47.3 how the level of support should account for rising costs over time;

47.4 s 9(2)(f)(iv)

47.5 s 9(2)(f)(iv)

47.6 other design details for the fund not outlined above, as required;

48 s 9(2)(f)(iv)

Next steps

- 49 **noted** that the process for progressing the Kaupapa Māori pathway will include announcing decisions in two steps:
- 49.1 the Cyclone Recovery Unit will lead specific engagement with affected communities and local government to set out the parameters of the policy agreed by EWR for the Kaupapa Māori parallel pathway; and
 - 49.2 the government will make announcements to the wider public on the decisions agreed for this pathway once the Cyclone Recovery Unit has completed the above step;
- 50 **note** that the Cyclone Recovery Unit will continue to lead discussions with hapū, whānau, trustees, beneficial Māori landowners, ungoverned whenua owners, shareholders and/or their nominated entity in s 9(2)(a) (and any other communities with Category 2A whenua Māori that move into Category 3), with local government involvement, with the aim of:
- 50.1 working with communities to confirm which group or person(s) will have the mandate and authority to represent them ahead of agreeing a community-level support package and where an individual land-block level solution is sought;
 - 50.2 agreeing support packages and identifying any further financial needs that are not captured within scope and confirming requests for non- financial support (i.e. facilitation of land acquisition processes);
 - 50.3 building a clear understanding between all parties of the implications of potential solutions (including those where whānau remain in situ) for infrastructure provision;
- 51 **invited** the Minister for Cyclone Recovery, the Minister for Crown-Māori Relations: Te Arawhiti and the Minister for Māori Development to report back to Cabinet in November 2023 on progress toward implementing the agreed Kaupapa Māori policy response.

Janine Harvey
Committee Secretary

Present:

Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Willie Jackson
Hon David Parker
Hon Kieran McAnulty
Hon Barbara Edmonds
Hon Willow-Jean Prime

Officials present from:

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