

3 and 2 home relocations), and road/rail reinstatement. This may include potential Orders in Council.

Making any additional Orders in Council needed to remove red tape to speed up cyclone and flood recovery efforts is one of the Government's 100-day priorities. We are preparing advice on whether amendment of SWERLA is required to achieve these aspirations, or whether another legislative vehicle (such as a stand-alone omnibus Bill) is required.

Some of the concerns raised about consenting timeframes may be addressed in other government priorities, such as the amendments to the Resource Management Act 1991 to make it easier to consent new infrastructure (depending on the timeframe for those amendments).

The CRU will coordinate a process whereby portfolio ministers come to Cabinet by 23 February 2024 for policy decisions on any additional Orders in Council under the Severe Weather Emergency Recovery Legislation Act 2023 needed to speed up recovery efforts.

Limitations of Orders in Council under SWERLA

While in some instances using the Orders in Council mechanism is faster than amending primary legislation, it is not always so. The timeframe to enact Orders for complex and multi-interest Orders can take four or five months.⁹ Largely, the Orders being proposed now are complex.

The constraints of the legislation have become apparent as councils request regulatory relief for future-focussed resilience efforts. Because Orders need to be closely related to the Act's purpose of "respond[ing] to, and recover[ing] from, the impacts of the severe weather events", the use of SWERLA becomes more limited as time passes since the weather events.

For example, the Ministerial Inquiry into Land Use report proposed the use of Orders in Council to amend the National Environmental Standards for Plantation Forestry to immediately restrict harvesting in at-risk areas and limit clear-fell harvesting. It also directed a review of existing forestry consents to require current consent holders to comply with these new higher standards. s9(2)(h)

[REDACTED]

10

Councils have also raised the need for more permissive approaches to consenting, including creating new bespoke approvals processes. The CRU, in consultation with relevant agencies, is considering the most appropriate vehicle (e.g., an Order in Council under SWERLA, primary legislation such as a standalone Omnibus Bill) to progress the changes that are being proposed.

Flood and landslide affected properties

The FOSAL policy approach is about reducing intolerable risk to life from future severe weather events. The approach is focused on residential properties impacted by the NIWE, with locally

⁹ For example, the relatively simple and uncontroversial changes to extend completion dates for revaluations by Hastings District Council were completed within six weeks; whereas the extremely complex matter of reinstating roading and rail networks, which modified multiple pieces of legislation and required lengthy consultation, took four months to complete.

¹⁰ Legally privileged, not to be released.

led interventions to mitigate risk (where possible) or buyout properties (where there is no other viable option). More detail on FOSAL is provided in a separate companion briefing.

The objectives of FOSAL are to:

- provide people with as much certainty as possible about their situation, so that they can move forward with their lives;
- to the extent practicable, get the ‘right’ solution in the right place – this will mean different solutions in different locations; and
- avoid significant financial hardship – rather than avoiding any financial loss for those affected.

FOSAL policy responses are determined by categorising affected properties according to the framework shown in figure 3.

Figure 3: How risk is assessed

		How is risk assessed?				
		Categorisation is the process of councils placing properties or groups of properties into classes of policy response (Category 1, 2 or 3), based on the ability to mitigate intolerable levels of risk as revealed by NIWE:				
Category		1	2P	2C	2A	3
Description		Repair to previous state is all that is required to manage future severe weather event risk.	Property level interventions are needed to manage future severe weather event risk, possibly in tandem with community level interventions.	Community level interventions are needed for managing future severe weather event risk.	Significant further assessment is required to assess a property, as well as engagement with property owner.	Future severe weather event risk cannot be sufficiently mitigated. Some land uses may remain acceptable, but residential use carries an intolerable risk of injury or death.
Actions		Flood or landslide damage to repair, but no need for community or property level interventions.	Property specific measures are necessary, for example improved drainage, raising houses. Benefits accrue to property owners.	Local government could repair and enhance flood protection schemes to adequately manage the risk of future flooding events. Cost is shared by the community.	Interventions may be required or possible, but further information is needed. These may subsequently move between “2” categories or to categories 1 or 3.	In the face of enhanced climate risk to the property there is an unacceptable risk of future flooding or risk from land instability.

Responsibility for categorisation of properties sits with local authorities because they have the statutory responsibility for land-use decisions. Local authorities are also responsible for any voluntary buyouts of residential properties including the detailed approach and timeframe.

While the overall FOSAL objectives are the same, the approach to whenua Māori and marae is different due to whakapapa, collective governance and ownership agreements. For example, for Category 3 properties on whenua Māori, voluntary buyouts would likely not be appropriate.¹¹ The whenua Māori and marae pathway is led by central Government, in recognition that Treaty responsibilities towards whenua Māori and other taonga rests primarily

¹¹ For example, the alienation of Māori freehold land, Māori Customary Land, and Māori Reservations is subject to the provisions of Te Ture Whenua Māori Act 1993.

with the Crown. Central Government is also better able to work through the distinct statutory requirements governing Māori freehold land and its relatively complex ownership, governance and decision-making requirements. The Ministers for Cyclone Recovery, Māori Crown Relations and Māori Development have been responsible for whenua Māori policy decisions.

Cost sharing for Auckland, Tairāwhiti and Hawke’s Bay

Following the development of the FOSAL policy approach, the Crown entered negotiations to determine cost-sharing arrangements with councils in the three most severely affected regions.¹² Funding support was agreed for a 50 percent share of Category 3 voluntary buyouts and for contributions to Category 2 risk mitigation projects and some local transport projects.

The agreed funding has been allocated from the National Resilience Plan (NRP; further information provided from page 28). The total amount of funding support for the three regions is summarised in table 1.

Table 1: Funding support for local authorities in the most severely affected regions

Region	Category 3 buyouts	Category 2 projects	Transport projects	Other support	Total
Hawke’s Bay	\$67.5m	\$203.5m	\$252.6m		\$523.6m
Tairāwhiti	\$15m	\$64m	\$125m	Concessional financing: \$17m ¹³	\$221m
Auckland	\$387m	\$380m	\$110m		\$877m
Total	\$469.5m	\$647.5m	\$487.6m	\$17m	\$1,621.6m

Councils have consulted their respective ratepayers on the agreements and are at various stages of confirming the process and methodologies they will use for Category 3 buyouts. Funding Agreements¹⁴ to give effect to the cost-sharing agreements have been signed by the Crown and Auckland, Gisborne, and Hawke’s Bay councils.

Approaches in other NIWE regions

Some other NIWE-affected councils are also considering FOSAL policy responses. For some regions, isolated pockets of damage were sustained that may require intervention and funding. The CRU meets regularly with affected councils to support them as they progress their decision making.

¹² Cost-sharing agreements were reached between the Government and the Hawke’s Bay Councils (31 July), Gisborne District Council (24 August), and Auckland Council (24 August).

¹³ Concessional financing arrangement (\$30m, 10yr interest free loan) represents \$17m value to council.

¹⁴ Funding Agreements contain or refer to documents that councils are still finalising.

Councils in other regions affected by the NIWE were informed by the previous Minister for Cyclone Recovery on 25 September that – should they identify any Category 3 buyouts – the Crown would share the cost on the same basis as agreed with Auckland, Gisborne and Hawke’s Bay councils (i.e., 50 percent of the net cost, less insurance and EQC payments). Should any of the other affected councils choose to offer any Category 3 buyouts to property owners, you have the authority to approve a cost-sharing contribution from the Crown. The relevant council(s) would then need to enter into a Funding Agreement with the Crown.

Additionally, some councils will identify Category 2 properties, requiring either community or property level interventions. At this time, there is no clear indication of the scale of interventions that may be required. The CRU has advised councils of the funding pathways available (primarily the Local Government Flood Resilience Co-investment Fund and NRP; further information is provided from page 26) and continues to meet regularly with councils as they progress Category 2 risk mitigation projects and other flood resilience initiatives.

s9(2)(j), s9(2)(ba)(i), s9(2)(ba)(ii)

[Redacted content consisting of multiple horizontal grey bars]

FOSAL implementation

The implementation responsibilities for FOSAL are shared between central and local government:

- Local authorities lead on designing and delivering a FOSAL voluntary buyout scheme identifying, planning and delivering interventions for Category 2 areas.
- Central Government provides support for councils as they deliver these interventions, to ensure that the policy intent of the FOSAL programme is maintained and provide monitoring and assurance for the Crown’s financial support.
- Central Government implements the whenua Māori and marae pathway and works with affected individuals and communities to deliver appropriate relocation solutions.

The EWR (using its Powers to Act to take decisions on the Government’s response) agreed that the CRU will hold the overall lead central Government responsibility for FOSAL programme implementation.

Implementation support and administration of funding

In recognition of the significant investment the Government has made in the NIWE recovery, a focus for this next phase of the recovery is implementation and administration of funding, which requires:

- policy and communications support;
- contractual relationships with councils to fund initiatives;
- timely disbursement of Crown funding to local authorities; and
- coordination of monitoring of delivery of Crown funding and reporting to Ministers.

By closely monitoring the investments it is responsible for administering, the CRU will be able to identify and manage risks, raise critical concerns to you in a timely manner, and provide you with system-level advice regarding additional support local authorities and communities may need across a range of avenues (including, but not limited to, financial support).

The CE-CR is overseeing the administration the funding for the three most affected regions set out in table 1, and funding be provided through the whenua Māori and marae pathway. Should other NIWE-affected councils identify Category 3 properties, the CE-CR will need to enter contractual relationships with those councils for the cost share of property buyouts.

A funding offer has also been made to Nelson City Council in response to the August 2022 severe weather event. The offer is for \$12.30 million, which includes a 50 percent share of property buyouts, remediation of several slips threatening residential properties, and funding for ongoing slip monitoring. The council has approved the offer, subject to public consultation that is expected to occur in March/April 2024.

The CE-CR is engaging Crown Infrastructure Partners Limited (CIP)¹⁵ for a period of five years to support delivery and monitor councils delivery on agreed initiatives funded through the FOSAL cost-sharing, Local Government Flood Resilience Co-investment Funding, and the Nelson support package. CIP has well-established assurance, monitoring, evaluation and reporting systems that will be invaluable in supporting delivery where needed and monitoring the nearly \$1.80 billion Crown funding being administered by the CE-CR. Funding has been secured for CIP to perform its stated recovery functions until 2028.

As the CE-CR and the CRU are time limited functions, its implementation and reporting functions will transition to enduring line agency(ies) from 2025. Options for transitioning the ongoing implementation functions will be provided to you in September 2024. The options will consider costs that would be incurred by the agency(ies) taking on the implementation functions after the CE-CR and CRU are stood down.

Recovery by region

The following pages provide snapshots of the current situation in each NIWE-affected region:

¹⁵ CIP is a Crown-owned company, which works as a multi-policy implementation agency that funds delivery partners (private sector and local government) to deploy infrastructure projects. Formerly known as Crown Fibre Holdings, with a purpose focused on building telecommunications infrastructure (e.g., ultra-fast broadband, rural broadband and mobile voice and data coverage), CIP had its purpose formally widened (and name changed) in September 2017 to include infrastructure-related activities. CIP has several policy Ministers (Minister of Finance, Minister for Infrastructure, Minister for the Digital Economy and Communications) and shareholding Ministers (Minister of Finance and Minister for State-Owned Enterprises).



Coversheet

Overview of the Future of Severely Affected Locations Policy and Implementation

Date:	27/11/2023	Report No:	DPMC-2023/24-457
		Security Level:	_____
		Priority level:	Medium

	Action sought	Deadline
Hon Mark Mitchell Minister for Emergency Management and Recovery	note the information in this briefing	N/A

Name	Position	Telephone		1 st Contact
Katrina Casey	Chief Executive, Cyclone Recovery	9(2)(g)(ii)	9(2)(g)(ii)	✓
9(2)(g)(ii)	Executive Director, Strategic Policy and Legislation	9(2)(g)(ii)	9(2)(g)(ii)	

Minister's Office

Status:

Signed

Withdrawn

Comment for agency

Appendix: Yes

Briefing

Overview of the Future of Severely Affected Locations Policy and Implementation

To: Hon Mark Mitchell
Minister for Emergency Management and Recovery

Date	27/11/2023	Security Level	IN-CONFIDENCE
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Purpose

1. This briefing provides you with an overview of the Future of Severely Affected Locations (FOSAL) policy approach and an update on implementation progress.

Executive Summary


2. The FOSAL policy approach is a locally led, centrally supported process to address the future use of land that was severely affected by the North Island Weather Events (NIWE). It is intended to reduce intolerable risk to people from extreme weather related natural hazards by mitigating risk where possible, and moving people out of harm's way where those risks cannot be mitigated.
3. Regional councils and unitary authorities are responsible for categorising land based on the underlying risk of flooding and landslides from severe weather events and delivering the appropriate policy responses. This includes risk mitigation projects and, where necessary, voluntary residential property buy-outs. Central Government's role is to set the high-level framework, provide funding support to councils and co-ordinate implementation. The Cyclone Recovery Unit (CRU) coordinates the Government's responsibilities, including trouble shooting, monitoring, and reporting on delivery and Crown expenditure.
4. Alongside the locally led FOSAL approach, the Government has established a parallel pathway to address severely affected whenua Māori and marae. This pathway recognises the distinct challenges that arise with whenua Māori, including relatively complex governance and compliance requirements, and multiple or fragmented ownership. The pathway also affirms the Crown's duties toward the protection of whenua Māori and associated values and practices.
5. FOSAL implementation is underway in the three regions most affected by the NIWE – Hawke's Bay, Tairāwhiti and Auckland. The Crown has agreed to over \$1.6 billion of FOSAL funding support for councils in these three regions. The first buyout offers are now being made by some councils and we expect some to be finalised before the end of the year.

6. Agreed risk mitigation projects are in various stages of readiness to progress, although given the scale and complexity involved, completion of all these projects will take several years. The funding support packages for severely affected whenua Māori, which are subject to Ministerial approval, will be implemented later than the start of the council led buyouts, as further policy, investigation, and procedural work is undertaken.
7. Other councils in regions outside of the three most affected regions are also considering FOSAL policy responses but are further back in the process. The scale is much smaller in these regions (we anticipate that only a small number of buyouts and risk mitigation projects will be required) but the overall impact and corresponding need for Crown funding is still to be determined.
8. As the implementation of FOSAL gathers momentum, we anticipate a range of issues will emerge that may require some degree of intervention from central Government. These may include:
- Councils seeking to access funding rapidly to get risk mitigation projects underway.
 - Cost-sharing agreements needing to be revisited to accommodate changing property categorisation numbers.
 - Perceived inequities in the scope, terms, and timing of property buyouts between different regions.
 - Property buyouts leading to disputes and legal challenges.
 - Long timeframes to complete risk mitigation projects.
 - Councils seeking regulatory options to speed up consenting processes.
 - Ongoing uncertainty about solutions and funding needs in other NIWE-affected regions.

Recommendations

We recommend you:

1. **note** the contents of this briefing.

 Katrina Casey Chief Executive Cyclone Recovery
27/11/2023

Hon Mark Mitchell Minister for Emergency Management and Recovery
..../..../2023

Development of the FOSAL approach

1. In April 2023, the Extreme Weather Events Cabinet Committee (EWR) considered advice on a principles-based framework for decisions that need to be made to support communities and property owners to repair, rebuild or move [EWR-23-MIN-0030 refers].
2. FOSAL policy development has been co-ordinated by the CRU and jointly led by the Treasury and the Ministry for the Environment (MfE). Lead responsibility for co-ordinating the Crown's role in implementation was assigned to the Chief Executive, Cyclone Recovery in August 2023.
3. EWR agreed to three overall objectives for the approach:
 - Provide people with as much certainty as possible about their situation, so that they can move forward with their lives.
 - To the extent practicable, get the 'right' solution in the right place – this will mean different solutions in different locations.
 - Avoid significant financial hardship – rather than avoiding any financial loss for those affected.
4. EWR also agreed to a set of principles that would underpin any interventions in affected areas:
 - Maintain incentives on individuals, communities, local government, and insurers to manage risks.
 - Any support is appropriate and proportionate to enable individuals and communities in severely affected locations to recover from recent extreme weather and satisfactorily adapt to current and future risks.
 - Seek opportunities to reduce long-term risk from natural hazards.
 - Risk and options assessments and risk management to be locally led and centrally supported.
 - Manage risk to tolerable levels rather than eliminating it.
 - Set any central Government support at a level that can be sustainably offered in response to future events.
 - Ensure that Treaty obligations and the rights and interests of Iwi / Māori are central.
 - Target those worst affected and with the least means to recover.
5. To determine the appropriate responses required in different locations, the Treasury and MfE, supported by the Cyclone Recovery Taskforce, worked with councils through April and May to develop a framework for categorising residential properties. The final categorisation framework is shown in figure 1.

Figure 1: FOSAL Categorisation framework

Categorisation is the process of councils placing properties or groups of properties into classes of policy response (Category 1, 2 or 3), based on the ability to mitigate intolerable levels of risk as revealed by NIWE:

Category	1 	2P 	2C 	2A 	3 
Description	Repair to previous state is all that is required to manage future severe weather event risk.	Property level interventions are needed to manage future severe weather event risk, possibly in tandem with community level interventions.	Community level interventions are needed for managing future severe weather event risk.	Significant further assessment is required to assess a property, as well as engagement with property owner.	Future severe weather event risk cannot be sufficiently mitigated. Some land uses may remain acceptable, but residential use carries an intolerable risk of injury or death.
Actions	Flood or landslide damage to repair, but no need for community or property level interventions.	Property specific measures are necessary, for example improved drainage, raising houses. Benefits accrue to property owners.	Local government could repair and enhance flood protection schemes to adequately manage the risk of future flooding events. Cost is shared by the community.	Interventions may be required or possible, but further information is needed. These may subsequently move between "2" categories or to categories 1 or 3.	In the face of enhanced climate risk to the property there is an unacceptable risk of future flooding or risk from land instability.

6. Responsibility for categorisation of properties sits with councils because they have the statutory responsibility for land use decisions. Councils are also responsible for delivering the resulting policy response.
7. In May 2023, EWR agreed to a policy approach for the different property classifications [EWR-23-MIN-0044 refers]. As the least affected and relatively lower risk areas, Category 1 properties do not require any policy response. Property owners are in the process of working with their insurers to repair any damage resulting from NIWE and moving on with their lives.
8. For Category 2 or 3 areas, there is a significant risk to life for residents from future flooding or landslides. The exact risk thresholds used differ between councils, but broadly the threshold for Category 2 and 3 is that these areas face an intolerable risk to life from future extreme weather events.
9. While the level of risk for Category 2 and 3 is similar, the response is different. The key difference is that for Category 2 properties, there is a viable solution to reduce risk to a tolerable level, while for Category 3, there is no viable solution that could reduce this risk.
10. For Category 2, risk mitigations may be at an individual property (2P) level (e.g., raising houses or improving drainage) or at a community (2C) level (e.g., building improved stopbanks). Councils also identified properties as Category 2A, for areas that required further assessment before making a final categorisation.
11. For Category 3, as there is no viable way to reduce risk, the policy response is for local councils to offer to buy the affected properties from individual owners, to ensure that the land can no longer be used for residential purposes. Councils are responsible for establishing the detailed approach, conditions, and timeframes for buyouts, but in all cases,

buyouts are made on a voluntary basis. Councils will take ownership of the property if the offers are accepted.

12. The FOSAL approach has been primarily focused on Hawke's Bay, Tairāwhiti and Auckland, as the three most affected regions. However, other NIWE affected regions are also able to consider FOSAL responses and may be eligible for Crown financial support.
13. The CRU's role is to lead and co-ordinate central Government implementation, including the administration of agreed funding support for buyouts and risk mitigation projects. This also includes responsibility for ensuring legal requirements on the expenditure of Crown funding are met, monitoring delivery, and reporting to the Government on delivery progress, associated issues and Crown expenditure.

A parallel approach has been developed for whenua Māori

14. A parallel approach has been developed for severely affected land that is whenua Māori (primarily Māori freehold and customary land, as defined by the Te Ture Whenua Māori Act 1993), and severely affected marae. It involves relocating people residing on Category 3 whenua Māori out of harm's way; retiring that whenua from future residential use; and contributing to the relocation of severely affected marae to mitigate risks to persons staying on site. Māori will retain ownership of whenua Māori.
15. This pathway was developed in recognition of the fact that the voluntary buyout approach may not be appropriate for whenua Māori, due to the relative paucity of whenua left in Māori ownership, the complexities of Māori land ownership and governance, and the distinct statutory requirements governing Māori freehold land.
16. In contrast to the FOSAL approach for general property owners, the whenua Māori and marae pathway is led by central Government. The reasons for this include historically poor experiences, low levels of trust Māori have of local authorities; and the overarching view that central Government (the Crown) has direct Treaty of Waitangi responsibilities towards protection of whenua Māori, and partnership relationships with hapū and iwi that cannot be delegated to local government. As much as possible, the whenua Māori pathway is intended to run in parallel with the regular FOSAL approach led by councils.
17. Further details on the pathway are provided in paragraphs 73-93 *Whenua Māori and marae pathway – policy and implementation*.

Cost-sharing with local government

Cost-sharing agreements have been reached with the three most affected regions

18. Following the development of the FOSAL policy approach, the Crown entered into negotiations with councils in the most affected regions (Hawke's Bay, Tairāwhiti and Auckland) to determine cost-sharing arrangements between central and local government (negotiations were led by the Treasury, with Sir Brian Roche, Chair of the Cyclone Recovery Taskforce, playing a key role).

19. Negotiations focused on what proportion of the costs the Crown would contribute for Category 3 buyouts and Category 2 risk mitigation projects. Crown funding contributions were also offered for regional transport projects, to help ensure that councils were not left in undue financial hardship because of their recovery costs.
20. To manage expectations and help to ensure that future funding would be more sustainable, the Crown’s negotiating position was based on a 50:50 cost share between central and local government for property buyouts. Throughout the negotiations, the Crown’s negotiating team was conscious of the potential precedent being set for future extreme weather events and the level of financial support that would be provided from the Crown.
21. The Crown agreed cost-sharing packages with Hawke’s Bay councils¹ on 31 July, with the Gisborne District Council (GDC) on 24 August and the Auckland Council on 24 August. After public consultation, and further negotiations on the terms of the packages, the final details were confirmed through Funding Agreements between the Crown and councils, signed on 6 October with Auckland and Tairāwhiti and with the Hawke’s Bay councils on 10 October.
22. The cost-sharing agreements consist of:
 - A 50 percent Crown share (less any insurance and EQC proceeds) of the cost of voluntary Category 3 buyouts.
 - A contribution towards risk mitigation projects for Category 2 properties.
 - A contribution toward regional transport projects, to reduce cost pressures on councils.
 - A concessional financing arrangement for the GDC. The Council is receiving a \$30 million, 10-year loan from the local government Funding Authority, with the Crown covering the interest costs of the loan (approximately \$17 million).
23. The total amount of funding support agreed for councils is summarised in table 1.

Table 1: Agreed funding for FOSAL cost-sharing

Region	Cat 3 buyouts	Cat 2 projects	Transport projects	Other support	Total
Hawke’s Bay	\$67.5m	\$203.5m	\$252.6m		\$523.6m
Tairāwhiti	\$15m	\$64m	\$125m	Concessional financing – representing \$17.0m value to council	\$221m
Auckland	\$387m	\$380m	\$110m		\$877m
Total	\$469.5m	\$647.5m	\$487.6m	\$17.0m	\$1,621.6m

¹ Councils include Hastings District, Napier City, Wairoa District, Central Hawke’s Bay District and Hawke’s Bay Regional Councils.

24. After reaching agreement with the Crown, councils consulted their respective ratepayers on whether to accept the agreements during September and October. The Auckland Council and the Hawke's Bay councils confirmed acceptance of the Crown offer by early October. The GDC confirmed acceptance on 1 November.

Cost-sharing has been formalised through Funding Agreements with the Crown

25. Contractual arrangements have been made to formalise and give effect to cost-sharing agreements. The three regions have signed individual Umbrella Funding Agreements with the Crown, which set out the terms and conditions under which councils will receive Crown funding.

26. Funding Agreements include details of the methodology used to categorise properties and the methodology for conducting buyouts. These methodologies have been developed independently by councils. Provision of funding is conditional on councils carrying out buyouts in accordance with the approach set out in these documents.

27. Funding Agreements also include lists of Category 2 and local transport projects for which funding has been allocated. While the funding has been secured for these projects, councils still need to complete delivery plans for each project (or group of smaller projects) to ensure that they can be successfully delivered and will provide the expected benefits. Councils will enter into individual project level agreements that sit underneath the Umbrella Agreement, setting out project milestones and funding profiles.

28. At the time of signing the Funding Agreements, councils were still developing their categorisation and buyout methodologies and project lists. These remain in draft until councils provide final versions. Finalising these documents is a condition of Crown funding – no funding will be provided until these final documents have been provided. We will advise you as these are received or if we have any concerns about their delivery.

29. Since the Agreements were signed, we have already been advised that Category 2A properties in some areas are being recategorised as Category 3 as viable risk mitigation solutions cannot be delivered. This will have implications for the cost-sharing arrangements between councils and the Crown and could require some renegotiation of terms and potentially additional funding.

30. 9(2)(g)(i)
[Redacted text block]

FOSAL implementation in Hawke’s Bay, Tairāwhiti and Auckland

Hawke’s Bay

31. Following the Government’s release of the initial FOSAL risk categories in early May, the Hawke’s Bay Regional Council (HBRC) developed a process and a technical framework to identify the future risk to life at affected properties.
32. On 1 June, the first maps showing which areas had been provisionally placed into each category were publicly released, covering thousands of homes. Those maps continue to be updated as the Council and its engineers undertake more detailed property specific assessments.
33. Early estimates identified 236 properties in Category 3, including s 9(2)(a) properties and s 9(2)(a) , and 2,526 properties in Category 2. Letters/emails were sent to those property owners advising of the initial categorisation.
34. The HBRC is leading land categorisation decisions on behalf of the four Hawke’s Bay councils. It has relied on a wide range of data, including high-resolution imagery taken by plane after the cyclone, information from stickered house assessments (provided by individual councils), insurance information, data and pictures collected by trawling social media, as well as site visits. The HBRC also has its own extensive data on flood risks and catchments. Property owners can provide further information to support a categorisation change or review.
35. The initial maps released on 1 June were produced by the HBRC in a matter of weeks, and more detailed assessments were required for Category 2A areas. This has meant the number of properties in Category 3 has been growing since June – from 236 homes on 1 June to 287 by early October.
36. Of these 287, only 140 have residential dwellings on them. The remainder would only be eligible for a buyout under special circumstances (see details of the Hawke’s Bay buyout policy in paragraph 43).

Community consultation and confirmation of categorisation

37. The initial categorisations identified that of the four councils, Category 3 residential properties were in two council areas. From mid-June to early September, the Hastings District and Napier City Councils undertook public consultation with provisional Category 3 communities, explaining the categorisations settings and the upcoming work to refine the initial categorisation of properties. Community meetings were held across Hawke’s Bay to assist property owners to make submissions by 7 September.
38. From early September until early October the HBRC considered submissions from Category 3 property owners. Councils also consulted ratepayers on whether to accept the Crown’s cost-sharing package for Hawke’s Bay.
39. On 4 October, 287 properties across Hastings and Napier were confirmed as Category 3, marking a significant milestone in the HBRC’s land categorisation process. This

confirmation allows for buyouts of Category 3 residential properties across Hawke’s Bay to commence. Updated numbers of properties categorised as provisional Category 2P, 2C, 2A or confirmed Category 3 across the Hawke’s Bay region are as follows.

Table 2: FOSAL categorisation numbers for Hawke’s Bay as at 3 October 2023

Council	Cat 2P	Cat 2C	Cat 2A	Cat 3	Total
Hastings	1	149	88	265	503
Napier	-	-	-	22	22
Central Hawke’s Bay	8	-	127	-	135
Wairoa	-	-	667	-	667
Total	9	149	882	287	1,327

40. Since the numbers in table 2 were confirmed, the HBRC has informed the CRU that one location provisionally identified as 2A (s 9(2)(a) [redacted] – which has 37 affected properties) is now likely to be reclassified as Category 3, as the intended risk mitigation solution is not viable. The CRU is engaging with the Council to determine the impact of this decision on the cost-share agreements and potentially funding.

Buyout process

41. On 9 October, the Hastings District and Napier City Councils sent letters to the 287 Category 3 general title property owners, informing them of next steps – including detail about the buyout process and a guide for residents to help navigate the process.
42. A council-led voluntary buyout office has been operating since 24 October to support Category 3 property owners who want to consider an offer. Councils are now meeting with property owners to discuss the specific details of an offer. Once these preliminary meetings have been held and owners have indicated they want to progress, the property’s insurance status will be confirmed, a valuation will be completed, and a formal offer will be made. Councils have submitted a payment request of \$1.7 million for six buyouts, (four in Hastings and two in Napier), that they anticipate will be completed by 22 December 2023.
43. The key elements of the Hawke’s Bay voluntary buyout policy are:
- It applies to residential property, or mixed-use property on Category 3 land, that had a dwelling prior to Cyclone Gabrielle.
 - Residential land without a dwelling is excluded, except at the discretion of councils in special circumstances (such as where a resource consent is in place and there is evidence of a genuine intention to begin building a dwelling).
 - Two offers are available – a purchase offer where ownership of the property is transferred to the council; or a relocation offer for mixed-use property (>2ha) where

the council purchases the dwelling, but property owners retain the land (a covenant will be registered on the title to prevent future residential activity).

- The council will base its offer on a 100 percent valuation of the property as at 13 February 2023, and it is uncapped.
- There is no distinction in the offer applied to insured or uninsured property.
- Councils will provide property owners up to \$5,000 for an independent valuation, and \$5,000 for legal costs.
- Property owners may request a review of their case from the council's Chief Executive, but no further local dispute process is being provided as the offer is voluntary.
- Buyout offers will remain open for three months after it is first made to the property owner (although extending this period is possible if progress is being made towards a final agreement).

44. The dispute process provided for in the buyout policy only applies to the terms of the buyout that the Hastings District or the Napier City Council is offering (such as the valuation amount or terms of the offer). It does not consider disputes about categorisation. Decisions about which category a property falls into are made by the HBRC, on behalf of all the Hawke's Bay councils. It is unclear how separate dispute processes may align or be coordinated between councils and the CRU is following up on this as details emerge.

Tairāwhiti

45. The GDC released provisional FOSAL Category 2 and 3 maps on 9 June. Early estimates identified 18 Category 3 and 1818 Category 2 properties.² Letters/emails were sent all Category 2 and 3 property owners advising of the initial categorisation.
46. Council led community hui were held across the region to explain the categorisation settings and the upcoming work to refine the initial categorisation of properties.
47. As at 1 November, 51 properties are provisionally Category 3, including s 9(2)(a) properties and s 9(2)(a), with a further 770 homes in Category 2A, requiring some form of property or community level flood protection intervention to make them safe to live in.
48. The Crown and the GDC cost-sharing agreement was announced on 24 August. Based on this package, the GDC consulted its community from 2 to 16 October on whether to establish a new activity to purchase Category 3 properties, and whether to accept the Crown's cost share package.

Buyout process

49. The GDC considered the results of community consultation on 1 November and has confirmed that it will accept the cost share package and the approach that it will take to buyouts. The GDC is writing to all Category 3 property owners to set out next steps now

² Most of these properties were identified as Category 2A, requiring further assessment.

that this decision has been made. The most recent information from the GDC is that it will start making formal buyout offers from the end of January 2024.

50. The GDC has not yet provided the Crown with its final buyout methodology. However, the policy agreed by the council on November 1 includes the following settings:
- Residential property, or mixed-use property on Category 3 land, that had a dwelling prior to Cyclone Gabrielle is eligible.
 - Properties larger than 1 hectare will be treated as mixed-use and only offered a relocation offer rather than outright purchase, properties smaller than 1 hectare may receive a relocation or purchase offer.
 - Offers will be for 100 percent of the property value, based on an individual market valuation as at 12 February 2023, and it is uncapped.
 - There is no distinction in the offer applied to insured or uninsured property.
 - Property owners are eligible for up to \$1,500 for legal costs (other costs such as an independent valuation are not included).
 - Property owners may request a review of their case from the council’s Chief Executive, but no further local dispute process is being provided as the offer is voluntary.
 - The council will specify the expiry date for an offer, which will be no later than 31 March 2025.

Auckland

51. In May, the Auckland Council estimated that there would be approximately 700 Category 3 properties, based on the number of red stickered properties following rapid building assessments. This included areas severely affected by landslides in Muriwai, Piha and Karekare, along with flood affected properties across the Auckland isthmus.

Categorisation process

52. On 14 June, the Auckland Council began engaging with affected property owners to progress a risk assessment process that enabled each property to be categorised.
53. Approximately 7,000 property owners were contacted via email or letter during June and invited to provide further information about their property online. The letter explained that their property may be Category 2 or 3 and therefore considered high-risk, needing further assessment. These 7,000 properties were either red, yellow, or white stickered properties. Approximately a quarter of property owners contacted responded. It is unclear how many whenua Māori properties are severely affected, though officials have identified a set of s 9(2)(a) Māori land blocks within what the Council has determined to be the region’s 13 “high risk localities”.
54. The Council contracted ten geotechnical suppliers, using over 100 specialist engineers and consultants to complete the assessments. Individual properties were then given an initial FOSAL categorisation based on the available data and information. For properties in

landslide affected areas, the Council contracted a comprehensive geotechnical study of Muriwai, Piha and Karekare as the basis for risk categorisation decisions.

55. Property owners that responded to the Council had their properties reviewed through desktop assessments. These assessments involved information collection from property files, photographs, published geological information and LiDAR data to calculate slope angles. For properties deemed Category 2 or 3 following this desktop assessment, an onsite assessment was scheduled with the property owner to determine a final categorisation.
56. By late October, the Council received more than 2100 responses from property owners – and had completed more than 1300 desktop assessments and 900 site visits.
57. The Council has provided 321 property owners with final categorisation decisions and confirmed Category 3 property owners have been invited to begin buyout conversations with the Council.
58. Further confirmation of final categorisation decisions are now expected on a consistent basis, although the assessment process will not be complete until March 2024. At this stage, the estimate of 700 Category 3 properties is still the most up to date figure.
59. Approximately 20-40 Category 3 properties are Kāinga Ora owned properties. The Council has confirmed that these houses (and any Crown owned land) will not be included in the buyout scheme. Under the locally led approach, the Council has determined the buyout parameters that it considers appropriate and consistent with the principles and intent of the policy process. It has made these decisions without Crown direction of any kind. The
9(2)(g)(i)

Buyout process

60. Consultation with ratepayers on whether they supported the cost-share deal with the Crown started on 14 September, concluding with the Auckland Council Governing Body agreeing to accept the Crown's offer on October 6.
61. The Council publicly released its buyout methodology on 2 November. The first sale-and-purchase agreements will likely be made to landslide affected properties in Muriwai and several flood-affected properties in West Auckland.
62. The key elements of the Council's buyout policy are:
 - It applies to residential property, with a dwelling, that is identified as Category 3.
 - Only the residential portion of a mixed-use property will be eligible (the Council will negotiate this).
 - The buyout price will be based on the market value of the property as at 26 January 2023, to be determined either by a registered valuer, or via a desktop valuation.
 - The Council will deduct a "homeowner contribution" from the buyout price:
 - 5 percent for insured property

- 20 percent for any uninsured property (although the Council can, at its discretion, reduce this contribution).
 - The Council will provide a contribution to legal and advisory costs of up to \$5,000. It will establish a dispute resolution process for both categorisation and valuation decisions.
 - Once an offer is made, property owners will have one month to elect whether to accept it (although this would be extended if the dispute resolution process is activated).
63. On November 2, the Council announced that a “feasible and affordable” test will apply to Category 2P mitigations – if the cost of mitigation is up to 25 percent of the property’s value, it will be eligible for 2P funding. Further details are still to be provided, but the implication of this test is that if the cost is greater than 25 percent, a buyout would need to be considered. Auckland Council is seeking to amend the terms of their funding agreement, to enable funding for Category 3 buyouts to be used for Category 2P mitigations.
64. Summaries of the nature and status of FOSAL implementation in each of the three most affected regions are provided in appendix 1.

Other NIWE-affected regions

65. With affected homeowners overwhelmingly concentrated in Hawke’s Bay, Tairāwhiti and Auckland, the focus has been on these areas. However, there is a relatively smaller number of property owners in other NIWE-affected regions³ who experienced similar levels of damage.
66. Some of the other NIWE-affected councils are considering FOSAL categorisation and policy responses. Progress on property-by-property risk assessment is more advanced in some regions than others, but we anticipate that all councils will finalise any categorisation decisions by no later than the end of February 2024.
67. The CRU engages regularly with other councils to discuss their approaches and intentions. Many councils have expressed some hesitancy about how and whether FOSAL should apply in their areas. Concerns raised with the CRU include:
- Expectation about locally led responses that a buyout process could raise in their communities.
 - Risks of not identifying, or miscategorising properties.
 - Complications engaging with and/or offering buyouts for unconsented and uninsured properties.
 - Practical considerations about reducing landslide risks to individual or small groups of properties, where the risks are from neighbouring private, or Crown owned land.

³ Other affected councils include those in Northland, Waikato, Bay of Plenty, Manawatū-Whanganui, and Wellington (Wairarapa)

- Equity concerns about properties affected by other, non-NIWE weather events, or at risk from future natural hazards (including coastal erosion) but that were not severely affected by NIWE.
 - Financial implications for councils that have existing financial pressures, debt constraints and low rating bases.
68. We expect that at least two, and possibly up to four councils may pursue Category 3 buyout offers. A greater number will seek financial support for Category 2 risk mitigation projects:
- The Masterton District Council is considering offering buyouts to between s 9(2)(a) property owners affected by Cyclone Gabrielle flooding in Tinui. The Council estimates that this would cost approximately \$5 million (with the Crown's share \$2.5 million), although this number is still subject to change if other mitigation solutions are feasible (for example, lifting and moving houses within an affected piece of land). The Council is undertaking a two-week public consultation period, which began on 20 November, on whether it should adopt a buyout scheme.
 - The Tauranga City Council is assessing up to s 9(2)(a) above and below a landslide that damaged homes during the Auckland Anniversary Floods. The Council expects that two to three properties may require buyouts, where there is no viable engineering solution to reduce the ongoing landslide risk (this includes one property that was severely damaged and has since been demolished). It is not expecting to have engineering assessment work finalised until late this year or early 2024.
 - The Waikato District Council is considering options for up to 5 properties in Port Waikato at risk from future landslides. The Council is assessing whether there are viable property level solutions to minimise risk and avoid the need for buyouts.
 - The Thames-Coromandel District Council has indicated that it is not expecting to make any buyout offers at this stage, although it is considering alternative risk mitigation options for less than 10 properties it considers may be facing an intolerable risk from landslides. Some of these properties face risks that involve neighbouring Department of Conservation (DoC) land, although the origin and nature of landslide risks is not always clear without commissioning geotechnical assessments. The CRU is involved in ongoing conversations with DoC and the Council about conducting these assessments, to inform which would inform potential remediation solutions.
 - At this stage, none of the three district councils in Northland have indicated that they are intending to progress with categorisation and buyouts, although they have not ruled it out completely. The CRU has been in regular discussions with the councils, and we will continue to work with them. We will advise you if we have any further updates.
69. Councils were informed by the previous Minister for Cyclone Recovery on 25 September that – should they identify any Category 3 buyouts – the Crown would share the cost on the same basis as agreed with other regions, i.e., 50 percent of the net cost less insurance and

EQC payments. It is not envisaged that the total cost would be more than \$10 million across all other affected regions.

70. Should any of these other councils choose to categorise properties and offer any Category 3 buyouts to property owners, councils will write to you to seek a funding contribution from the Crown. This contribution would be funded from the National Resilience Plan (NRP), the same source as previously agreed cost-sharing funding for the three most affected regions. There is currently no specified funding amount set aside for this purpose.
71. Subject to your agreement, the CRU would then work with the relevant council(s) to confirm the amount and the relevant terms of a Crown offer. This would be formalised through the development of a binding Funding Agreement between the council(s) and the Crown.
72. Central Government has also advised councils of the funding pathways available to them for Category 2 risk mitigation projects – either the Local Government Flood Resilience Co-investment Fund, or the next phase of NRP funding. None of the potential responses listed above have been formally identified for funding from either pathway.

Whenua Māori and marae pathway – policy and implementation

73. The whenua Māori and marae pathway is a flexible approach that involves the Crown engaging directly with Category 3 Māori property interests and their local communities, to determine appropriate case-by-case solutions, including fair and reasonable funding support from the Crown.
74. This pathway is an unprecedented public policy approach, and further policy and operational development work needs to be undertaken, in consultation with relevant agencies. We expect to provide Ministers with further advice on the detailed design to give effect to policy decisions, and to seek agreement to any further policy decisions that may be needed, in early 2024.

Engagement with affected land interests is ongoing

75. Whenua Māori engagement across the three most significantly impacted regions (Auckland, Hawke's Bay & Tairāwhiti) is ongoing and is progressing at different stages. It is running in parallel to the council-led engagement with property owners through the general FOSAL pathway, though the development of support packages will require more policy and scoping to be completed.
76. Within the whenua Māori pathway, the current focus is on building relationships with owners, trustees, and residents to better understand the level of impact to their whenua, including residential dwellings and marae. This is necessary to work towards enabling whānau to relocate to safe places, taking into account the Crown's Treaty and legal obligations.
77. As councils complete assessments and categorise properties within their districts, the CRU is identifying and engaging with impacted landowners' representatives, trustees (where they exist) and residents. This engagement has informed the policy work and advice to Ministers to date; and is supporting Treasury's forecasting of funding and affordability.

78. Indicative numbers of properties and marae are shown in table 3.

Table 3: Estimated number of properties in scope of the whenua Māori and marae pathway

Region	Whenua Māori land blocks categorised as Category 3	Marae located on Category 3 land
Hawke's Bay	s 9(2)(a)	
Tairāwhiti		
Auckland		
Total		

79. Currently the Hawke's Bay region is the most progressed, with approximately s 9(2)(a) Māori land blocks identified as Category 3, including s 9(2)(a).

80. In the severely affected s 9(2)(a) community, in Hawke's Bay, local iwi have sought a collective solution that incorporates the relocation of their Category 3 marae and up to s 9(2)(a) affected whanau households residing on Category 3 whenua. A multi-agency 'Taskforce', co-led by the CRU and Te Arawhiti, is working with local iwi on the proposal and will report to Ministers in December on its viability. There may be other Category 3 locations where a collective solution, and Taskforce approach, has merit, although there are specific circumstances at s 9(2)(a) that lend itself to this.

81. In Tairāwhiti, the GDC is nearing completion of its categorisations, following a major disruption to its process due to further flooding in June. The GDC has identified s 9(2)(a), including s 9(2)(a), which it has asked the CRU to assess for eligibility for the whenua Māori pathway. As at mid-November the GDC has advised it may add a further s 9(2)(a) to Category 3.

82. The Auckland Council is undertaking a series of geotechnical and other specialist assessment as a precursor to its property categorisations and has not finalised its whenua Māori category 3 properties. While this occurs, the CRU is working with Te Puni Kōkiri to develop a (worst case) estimate of the number and location of severely affected whenua Māori properties across Auckland. In all, there are s 9(2)(a) that are potentially within scope of the whenua Māori pathway, including s 9(2)(a) that may be Category 3.

Scope and funding parameters have been set for the whenua Māori pathway

83. Policy advice on the pathway was coordinated by the CRU, and led by the Treasury, working with Te Puni Kōkiri and Te Arawhiti. 9(2)(j)
 . 9(2)(f)(iv), 9(2)(g)(i)
 9(2)(g)(i), 9(2)(f)(iv)

84. Further decisions were made by joint Ministers with delegated authority from EWR, to set maximum and minimum parameters for Crown contributions. Ministers also agreed that the Chief Executive, Cyclone Recovery, would be responsible for the overall implementation of the whenua Māori pathway and administration of the fund, supported by Te Puni Kōkiri and Te Arawhiti.

85. The fund will be used to provide flexible grants to those in scope of the pathway, who voluntarily opt in. Funding is available for properties that are Category 3, are in residential use and/or have assets of cultural significance, and are on Māori freehold, customary or reservation land. Some general title land is also eligible (and excluded from the council-led buyout pathway) if the property:

- is owned by members of the hapū associated with the whenua and is geographically connected to it; or
- was previously Māori freehold land but was compulsorily converted to general land due to government legislation; or
- is Treaty settlement land held by a post-settlement governance entity for residential use.

86. In relation to these properties, the fund can be accessed by whenua Māori owners, representative bodies, or residents of a property in scope (regardless of whether they have ownership interests in the whenua or dwelling). However, given the potential complexities about ownership and occupation, a Crown funding offer will be subject to formal ratification processes and compliance with Māori land statutory requirements.

87. Ministers have agreed to parameters that will inform the maximum and minimum for Crown contributions to different components of support packages to be offered. 9(2)(j)

[Redacted text]

88. 9(2)(j)

[Redacted text]

89. 9(2)(j)

[Redacted text]

[Redacted text]

90. The Chief Executive, Cyclone Recovery has delegated authority to agree funding packages within these parameters up to a value of s 9(2)(j) . Packages over s 9(2)(j) , must be approved by the Minister of Finance, Minister for Māori Crown Relations, Minister for Māori Development, and yourself.
91. Some policy decisions on the whenua Māori and marae pathway are still to be made. Most of these are at an operational policy level (e.g., any specific approached needed to land valuation, or an appropriate contribution to legal or transactional costs) which the CRU will determine, in consultation with other agencies, under the authority delegated to the Chief Executive, Cyclone Recovery.
92. 9(2)(g)(i) .
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.
.
93. Progress updates on the pathway will be provided as engagement progresses, including if the parameters need to be adjusted or if further funding may be required to reach solutions for all Category 3 whenua blocks. A progress update is currently scheduled to be provided to Cabinet in November, but this timeframe may be amended to December, depending on the timing of Cabinet and Cabinet committees.

Administration of Crown funding

94. The Chief Executive, Cyclone Recovery is responsible for overseeing the administration of the Crown's financial support to councils for Category 2 interventions, Category 3 buyouts, and the local transport packages agreed with councils through cost-sharing negotiations. However, the CRU does not have the capacity or necessary expertise to undertake all aspects of implementation.
95. To support the delivery of agreed funding, Crown Infrastructure Partners Limited (CIP), has been engaged by the CRU, given its operational and commercial expertise and proven track record of helping deliver complex infrastructure projects.
96. CIP is responsible for administering the provision of Category 3 funding to councils, subject to the terms of the Umbrella Funding Agreements signed between the Crown and councils. CIP will receive payment requests from councils for the Crown's share of buyout costs and confirm that any requests are in accordance with requirements, before releasing funding.
97. For Category 2 and transport projects, CIP will work directly with councils to review council delivery plans, to provide assurance that plans contain an appropriate level of information to meet agreed FOSAL and NRP criteria for funding.

98. Councils have been advised of CIP's role. A series of introductory meetings, with the CRU, CIP, and councils, is underway, with meetings taking place between finance teams to discuss drawdowns and reporting, and site visits with engineers. Work is ongoing with councils to finalise the documentation required to finalise Funding Agreements, and to understand councils' prioritisation, timing, and sequencing for the delivery of projects.
99. Based on CIP's recommendation, the Chief Executive, Cyclone Recovery, will be responsible for seeking approval from you for projects to proceed. Subject to approvals, CIP will execute project level funding agreements with councils, oversee and monitor councils' delivery, and report to on progress. The CRU will report to Ministers on progress of delivery, emerging and actual issues, and potential solutions.
100. CIP will also have a similar role in the administration of funding agreed for Nelson City Council and for projects funded through the Local Government Flood Resilience Co-investment Fund.
101. If the need eventuates CIP will support the delivery of FOSAL funding for any councils in other NIWE-affected regions and will also support the distribution of whenua Māori and marae funding. If additional support is required from CIP for these purposes, we will provide you with advice and negotiate an extension of CIP's mandate for these functions.
102. Monitoring and reporting on council delivery and the expenditure of Crown funding will be a key part of CIP's role. The amount of funding, over \$1.6 billion is substantial and will be subject to scrutiny by Ministers and by the Auditor-General. To ensure that there is sufficient oversight, CIP will provide regular monthly reporting to the CRU which will include:
- Updates on councils' progress on buyouts and project delivery against agreed milestones.
 - A summary of funding distributed compared to forecast expenditure.
 - Any material issues that CIP has identified that may impact on a council's delivery of an agreed project.
103. The Chief Executive, Cyclone Recovery and CIP are in the process of finalising a contractual agreement to deliver these services. 9(2)(f)(iv), 9(2)(g)(i)

[Redacted text block]

Emerging issues

104. As FOSAL implementation continues, we expect there will be a range of issues that emerge from councils' buyout processes and delivery of risk mitigation projects. Other, unexpected issues will no doubt arise as councils progress through their implementation. Some of the key areas of concern that we have identified to date are outlined below.

Councils seeking to access funding rapidly to get risk mitigation projects underway

105. Councils that have Funding Agreements in place want to get risk mitigation and transport projects underway and receive Crown funding as soon as possible. Some councils have expressed concerns that central Government processes and requirements will be onerous and time consuming.
106. The CRU is working closely with CIP and councils as delivery plans are agreed for individual projects. We are seeking to balance the need to deliver funding quickly and to recognise that FOSAL responses are locally led, with fiscal responsibility requirements for Crown funding.
107. Moving rapidly is dependent on councils providing satisfactory final documentation to enable the Funding Agreements to come into force and funding to be released. We anticipate that this will be provided by the end of November and will inform you if there is any unexpected delay in this process.

Cost-sharing agreements needing to be revisited to accommodate changing property categorisation numbers

108. As councils finalise their property categorisation process and complete the detailed planning required for implementation, they are seeking to amend what has been agreed through cost-sharing negotiations. As the number of properties in each category change compared to what was expected when the agreements were first made, this will have an impact on the relative amounts of funding agreed for buyouts and different types of projects.
109. In particular, and as already noted (in paragraphs 35 and 40) regarding the Hawke's Bay, a council may determine that a Category 2 intervention is no longer viable, or further assessment of a Category 2A property determines that there is no viable mitigation solution. This means that the properties could move into Category 3 and become eligible for a buyout. In this scenario, the Funding Agreements with councils include provisions that require the Crown and councils to negotiate in good faith whether to amend agreed funding amounts.

110. s 9(2)(f)(iv)

111. s 9(2)(f)(iv)

Perceived inequities in the scope, terms, and timing of property buyouts in different regions

112. Each of the three regions that are preparing to make buyout offers to residents are taking different approaches to the scope of their buyout policies and applying different terms and

conditions. This includes the treatment of different property types, different valuation approaches, contribution amounts for legal and other costs, and dispute mechanisms. In particular, Hawke's Bay and Tairāwhiti are offering 100percent buyouts (for both insured and uninsured property), while Auckland is offering a maximum contribution of 95percent for insured properties and 80percent for uninsured properties.

113. These differences are likely to create a perception of inequity in the approach taken in different regions. However, this is a result of the locally led approach. Central Government has worked with councils to enable information sharing between them and to encourage consistency where possible but is not able to prescribe the settings of individual councils' buyout policies. The CRU has ensured that councils are making their decisions with the knowledge of what other councils are proposing to do.
114. Some councils in other affected areas are still considering their approach, with some not expecting technical assessments to be completed until early 2024. This would mean that the timeframe for any property buyouts is likely to be later than those in other regions.
115. The Crown has also agreed to provide the Nelson City Council with funding support for property buyouts from a severe weather event in August 2022 [EWR-23-MIN-0076 refers]. This is broadly like the FOSAL approach.
116. The Council has indicated that engaging in buyouts would be subject to a public consultation process on its Long-Term Plan. This is not planned until March-April 2024. Affected residents have expressed concern about the timeframe, given the time that has now elapsed since the Nelson weather event and the fact that residents in other regions may have resolution sooner, despite the NIWE events occurring later.

Property buyouts leading to disputes and legal challenges

117. Given the number of likely buyouts and the significance of offers for individual property owners, it is likely that the buyout process will lead to disputes and legal challenges (e.g., about categorisation decisions, or valuation outcomes). This is likely to affect councils in the first instance, as the responsible decision makers, but the overarching FOSAL approach may also be called into question.
118. The CRU has had initial conversations with other government agencies and local authorities to identify potential options for review or appeals. While central Government has provided the FOSAL categorisation framework and provided funding to enable councils to implement the approach, FOSAL buyout policy is locally led. Any dispute resolution/review/appeal function would need to maintain the appropriate bounds of locally led and centrally supported.
119. This review/appeal process differs from others (such as buyouts resulting from the Christchurch and Kaikoura earthquakes) in that the Crown is at arms' length and not buying the properties, making decisions about which properties will be offered buyouts, or what the terms of those buyouts will be. There is no statutory basis for a review/appeal model apart from existing Ombudsman and judicial review rights. Therefore, any solution will need to be agreed to by the councils and property owners as binding. There is currently no source of funding for a bespoke review process.

120. The spectrum of options for central Government runs from providing guidance and advice to councils on how they might establish their own review/appeal system, through to the creation of a bespoke Ombudsman, dispute resolution system, or even a tribunal. Behind all those options sits the use of the (existing) Ombudsman and the High Court judicial review process, which are always available to people.

Long timeframes to complete risk mitigation projects

121. The scope of the work required to complete all FOSAL related infrastructure projects, as well as efforts to repair, rebuild, and construct new homes is extensive. The recovery work will likely take years.
122. Limitations such as the availability of construction materials, workforce capability and capacity, equipment availability, environmental considerations such as ground saturation and seasonal conditions mean that not all infrastructure projects can simultaneously get underway. Agencies are working to improve understanding of the workforce requirements of infrastructure rebuild projects to see where they can assist. At this time, this work requires more information from councils on their proposed plans and sequencing of their significant projects.
123. The implications for affected residents may be significant. Properties identified as Category 2 face an ongoing risk to their safety while mitigation works are progressed. This is likely to cause anxiety among residents. It may also lead to concerns about the ongoing availability and/or affordability of insurance for affected properties. Private insurance companies have been seeking assurance that mitigation works will be completed and deliver the intended benefits, so that they can continue to offer affordable insurance.
124. In addition, should any of the Category 2 risk mitigation projects not be able to be completed, then the properties in question would likely need to be recategorised as Category 3 and receive a buyout offer instead.
125. As council delivery plans are developed, the CRU will work with councils and central Government agencies to consider options to provide additional support, including whether legislative levers are needed to speed up delivery.

Councils seeking regulatory options to speed up consenting processes

126. Some councils have asked the CRU for assistance with navigating a variety of consent-related matters where shortening processes or timelines would enable greater opportunities for residents to be relocated quickly, or infrastructure projects to get underway. The CRU has had a number of meetings with councils about the need for regulatory relief, although to date councils have not been able to articulate clear examples of situations needing relief and the nature of relief required. We will continue to work with councils to clarify these needs.
127. The CRU is working with MfE and other agencies to build a suite of potential response options – although this work remains dependant on greater clarity from councils about what is required. Options could include:

- Enabling councils to allow more intensity of residential building on rural land with restrictive district plan rules in place.
 - Regulatory relief or Orders in Council to progress flood protection works and housing relocation, as raised by the Hawke's Bay Regional Recovery Plan.
128. You may have to play a role in linking the work of other Ministers' portfolios, such as Environment or Local Government, to expedite the implementation of the FOSAL programme. Some of these decisions may have to come in the short term and involve linking operational level workstreams; some solutions may require either secondary or primary legislation changes, so will be a more involved process.
129. The use of Orders in Council through the Severe Weather Emergency Response Legislation Act (SWERLA) is frequently raised by councils as a potential solution to some of these problems. However, as we move further away from the weather events, the use of SWERLA becomes more limited. This is becoming particularly apparent as councils are requesting regulatory relief for future-focussed resilience efforts that would be likely to be out of scope of the Act.
130. Additionally, councils are raising the need for more permissive approaches to consenting, including creating new bespoke approvals processes. The ability to achieve this under SWERLA is limited, as the Act only allows amendments and modifications to processes in current legislation, not the creation of new processes or their application to new subject matters.
131. The CRU has sought Crown Law Office advice on the continued application of SWERLA, given the time that has passed since the severe weather events. We will update you once this advice is finalised.

Ongoing uncertainty about solutions and funding needs in other NIWE-affected regions

132. Outside of the three most affected regions, where NIWE cost-sharing funding packages have been agreed, councils are still determining their responses, including whether they wish to engage in FOSAL categorisation and what their funding needs may be as a result.
133. Councils are at different stages of their recovery process, but many are still at the point of engaging technical experts to assess impacts and possible solutions, and it may still be some months for the full recovery costs for severely affected properties in these areas becomes clear. The scale of any Crown funding support that might be requested is still unknown.
134. There are also some potentially complicated ownership or liability issues across all regions that are yet to be fully resolved, such as interventions that may be needed on Crown owned land (e.g., DoC land in Thames-Coromandel) or the future of Kāinga Ora properties on Category 3 land in Auckland.

Appendix 1: Nature and Status of FOSAL Regional Summaries

Proactively Released

Future of severely affected locations: Auckland

Auckland's recovery effort is of a different scale to the other regions; it received significant levels of damage in areas distributed around the wider region, including multiple residential areas. This means that its cost sharing agreement is the largest.

All umbrella cost sharing agreements signed in October require local authorities to provide further information, including the final buyout methodology and cost sharing project detail, before funding can be disbursed.



Cost-sharing approach

The Auckland Council agreed a cost sharing arrangement with central Government in August, subject to community consultation that finished on 24 September. The total agreed is \$877 million dollars, which includes \$387 million for 50 percent of Auckland's Category 3 buyouts, \$380 million for risk mitigation projects, \$110 million for local transport.

According to the Auckland Council, the Crown contribution will be a part of three elements of its strategy: Category 3 buyouts (total \$774 million), 'Making Space for Water' - a broader flood and stormwater resilience initiative (total \$820 million), Transport Network Recovery (total \$390 million).

9(2)(j), 9(2)(g)(i)

FOSAL status

In October, the Auckland Council agreed some of the key principles of its Category 3 buyout policy.

- It applies to residential property, with a dwelling, that is identified as Category 3
- Only the residential portion of a mixed-use property will be eligible (the council will negotiate this). Vacant sections are not eligible for a buyout
- The buyout price will be based on the market value of the property as at 26 January 2023, to be determined either by a registered valuer, or via a desktop valuation
- The Council will offer 95% of the value of an insured property, less any insurance buyout (including EQC), meaning that the property owner will make a 5% contribution towards the cost of the buyout
- The Council will provide a contribution to legal and advisory costs of up to \$5,000
- For uninsured properties, the Council will offer at least 80%, up to 95% of the value of the property, meaning that the property owner will makeup to a 20% contribution towards the cost of the buyout

In November, the Auckland Council stated its approach to Category 2P properties. This has two components; whether a solution is possible, and whether it is affordable and can be delivered in a reasonable timeframe

- Affordability is set at 25 percent of the properties CV, while the mitigations need to be completed within two years

The Auckland Council has also announced that its dispute resolution process applies to both categorisation and valuation and will have an internal and external review process. The Council have stated it will provide further information on this process to households when their categorisation is confirmed.

Whenua Māori and Marae programme

The Auckland Council's categorisation approach, involves undertaking a series of geotechnical and other specialist assessment as a precursor to its property categorisations.

In the absence of the Council's categorisations, the CRU has worked with Te Puni Kōkiri to develop a (worst case) estimate of the number and location of severely affected whenua Māori properties across Auckland. 9(2)(a)

Region at a glance

Category 3	Whenua Māori land blocks	Marae
Approximately 700	9(2)(a)	s 9(2)(a)

Categorisation process

≈7000	Property owners contacted (red, yellow or white stickered)	<i>In the absence of final numbers of houses in each category, the figures from the Auckland Council's categorisation process are provided as a rough proxy for the quantity of properties considered</i>
≈2100	Responses from homeowners	
1300	Desktop assessments	
900	Site visits	

Future of severely affected locations: Hawke's Bay

Hawke's Bay has progressed the furthest towards implementing Category 3 buyouts of any region, and we are expecting buyouts to start shortly. It is also the area with the largest amount of whenua Māori land affected.

All umbrella cost sharing agreement signed in October requires local authorities to provide further information, including the final buyout methodology and cost sharing project detail, before funding can be disbursed.



Cost-sharing approach

Hawke's Bay's five councils collectively signed a cost sharing agreement with the Government in July, which was agreed to following public engagement on 15 September. The total agreement is for \$556 million, that includes \$92.5m for 50 percent buyout of Category 3 buyouts, \$203.5m for Flood Protection, \$260m for reinstating bridges and connectivity to isolated communities.

The Hawke's Bay has five affected local authorities—Hawke's Bay Regional Council, Hastings District Council, Napier City Council, Wairoa District Council and the Central Hawke's Bay District Council. The Hawke's Bay Regional Recovery Agency was established to coordinate a recovery plan between these authorities, iwi and the local community.

FOSAL status

On 9 October, Hastings and Napier councils sent letters to Category 3 general title households outlining detail about the buyout process. A buyout office has been operating since 24 October, to support property owners who want to consider an offer. The key elements of the buyout policy are:

- The policy applies to residential or mixed-use properties that had a dwelling prior to the weather events
 - Category 3 properties without a residential dwelling can receive a buyout at the council's discretion, if they can meet strict criteria (i.e. had consent and plans for a house pre-Cyclone)
- Two offers are available:
 - A purchase offer where the council takes ownership of the land; or
 - A relocation offer for mixed use property (>2 hectares) where the council purchases the dwelling but owners retain the land (and a covenant is established to prevent residential activity)
- Offers are based on 100 percent valuation of the property as at 13 February 2023
- There is no distinction in the offer applied to insured or uninsured property
- Councils will provide up to \$5,000 for an independent valuation, and \$5,000 for legal costs
- Property owners may request a review of their case from the council's Chief Executive, but there is no further dispute process as the offer is voluntary

There are 1040 properties currently in all Category 2 areas, most in Category 2C. The large number of properties in Category 2A could change based on further work, i.e. be placed into Category 2C if a community-level project is feasible, or into Category 3 if one is not.

Whenua Māori and Marae programme

Hawke's Bay includes 9(2)(a) of whenua Māori provisionally categorised as Category 3. Severely affected whenua Māori land blocks are largely concentrated in the 9(2)(a). These two localities account for almost all known Category 3 whenua Māori across the recovery regions. s 9(2)(a) in Hawke's Bay are in Category 3; 9(2)(a) 9(2)(a) h 9(2)(a) 9(2)(a)—in Category 2A.

The CRU has attended community meetings in Hawke's Bay since June and completed profiles of land blocks for most of the 50 Category 9(2)(a) affected properties with approximately 9(2)(a). Engagement has focused largely on 9(2)(a) Māori land interests and related stakeholders, including the 9(2)(a) 9(2)(a) 9(2)(a). The CRU is also talking to trustees, owners and residents of provisional Category 3 whenua Māori, with support from local councils, 9(2)(a)

Ongoing engagement challenges include 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, concerns have been raised by the various PSGEs that the FOSAL and cyclone recovery work does not undermine their Treaty settlements and, where practicable, complements their post settlement duties and objectives.

Region at a glance

	Whenua Māori land blocks	Marae
Cat 3	9(2)(a)	
Cat 2A	9(2)(a)	

	Hastings	Napier	Central HB	Wairoa	Total
Cat 3	265	22			287
Cat 2A	88		127	667	882
Cat 2P	1		8		9
Cat 2C	149				149
Total	503	22	135	667	1,327

Future of severely affected locations: Tairāwhiti

The cost sharing agreement for Tairāwhiti includes a no-interest loan that enables the Gisborne District Council (GDC) to pay its share of Category 3 buyouts. The large number of Category 2 properties will need further investigation to determine the appropriate solution (whether property- or community-level) to mitigate the risk.

All umbrella cost sharing agreement signed in October requires local authorities to provide further information, including the final buyout methodology and cost sharing project detail, before funding can be disbursed.



Cost-sharing approach

The GDC signed a cost sharing agreement with the Government in August, which was approved on 1 November following community consultation. The total agreement is for \$204 million, which includes \$15m for 50 percent buyout of Category 3 properties, \$64m for Flood Protection, \$125m to reinstate bridges and crucial roads. In addition, the GDC received a 10-year interest free loan (with the Crown paying the \$17m interest on the loan).

FOSAL status

The GDC is finalising its buyout methodology. We understand that it will cover:

- Residential or mixed use property on Category 3 land that had a dwelling prior to the North Island Weather Events.
- Properties larger than 1 hectare will be treated as mixed-use and only offered a relocation offer rather than outright purchase, properties smaller than 1 hectare may receive a relocation or purchase offer.
- Offers will be for 100% of the property value, based on an individual market valuation as at 12 February 2023, and is uncapped
- There is no distinction in the offer applied to insured or uninsured property
- Owners are eligible for up to \$1,500 for legal costs (other costs such as an independent valuation are not included)

Of the 770 Category 2 houses in Tairāwhiti, 200 houses (approx. half in Te Karaka) will be required to be lifted in order to reduce vulnerability and mitigate significant risks. Council and Iwi have received \$15m in Crown support through the Flood Resilience Co-investment fund to lift these homes.

For the remaining Category 2 properties, solutions and funding for these will need to be identified.

Whenua Māori and Marae programme

The GDC has identified 9(2)(a) properties and 9(2)(a), although a further 9(2)(a) may also be moved into Category 3.

The CRU has supported all the GDC-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.

The CRU's broader cyclone recovery engagement with Tairāwhiti iwi and Māori stakeholders has taken place between the GDC and three of the region's four main iwi, including the largest, Ngāti Porou. GDC and local iwi leaders have committed to a unified cyclone recovery and wider collaborative approach.

Of the four iwi, Te Aitanga a Mahaki, whose tribal area takes in Te Karaka and the Waipaoa catchment, has yet to settle its Treaty claims with the Crown. This is important context for any discussions about the recovery (and iwi concerns for the protection and future availability of Māori land in their rohe).

Region at a glance

Region at a glance		
Category		Note
3	51	Figures for Category 2 are not currently broken down into sub-categories, but most are indicated to be Category 2A – needing further categorisation
2	770	
Whenua Māori		
Residential properties	9(2)(a)	
Marae		

Future of severely affected locations: Regional Overview

The Future of Severely Affected Locations programme is applicable to all regions affected by the North Island Weather Events (NIWE), beyond Auckland, Tairāwhiti and Hawke's Bay. All of the NIWE regions were informed of the Government's approach to categorisation and cost sharing (a 50/50 split for Category 3 households) in September.

Given that this is a voluntary, locally-led process, each region chooses to take their own approach to categorisation. The CRU has been engaging with each region about their specific circumstances and to provide any support and information or advice required.

Currently we are expecting that at least two, and possibly up to four councils may pursue Category 3 buyout offers. It is likely most regions will seek support for Category 2 risk mitigation projects.

Northland

Northland councils are still considering whether to take a categorisation approach to residential properties that were damaged in the NIWE.

Waikato

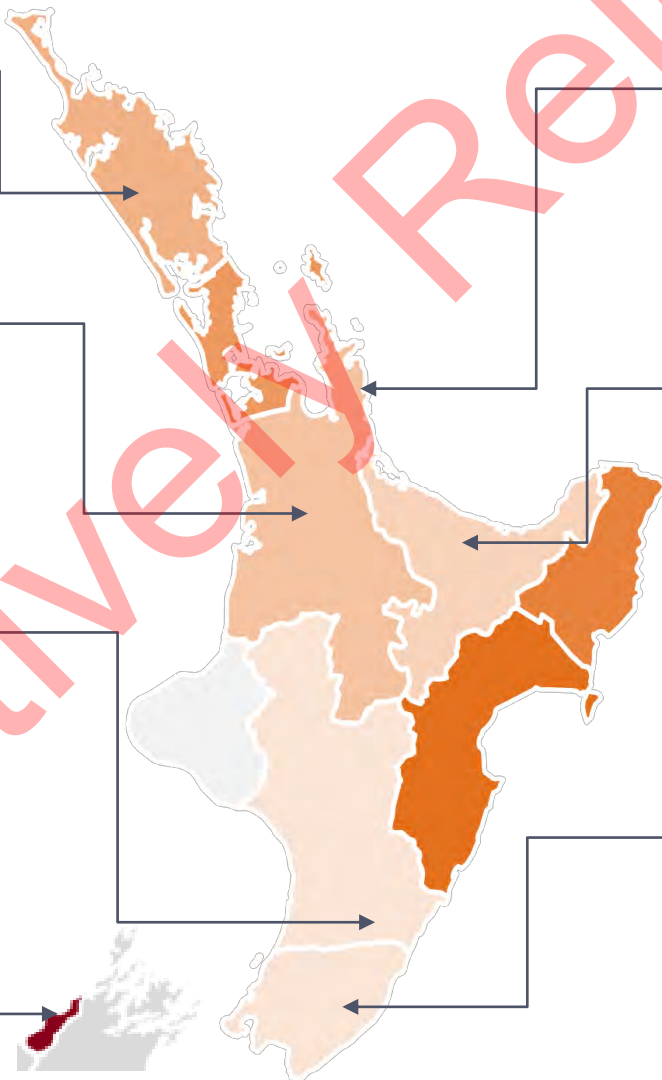
Waikato is considering up to six properties that may fall into the categorisation framework, but the council is investigating potential property-level risk mitigation options that would avoid the need for buyouts.

Taranaki

The Government will invest \$640,000 to support the design, modelling and physical upgrades to areas in the Pohangina catchment as councils and the community work through longer-term risk mitigation options. These options could lead to councils investigating categorisation.

Nelson

Although outside the NIWE area, the approach to addressing locations in Nelson severely affected by a 2022 weather event broadly matches the treatment for North Island locations, with a 50/50 split for what would be Category 3 houses, and Crown funding for projects to increase resilience. The total package offered was \$12.3 million, which was approved by the Nelson Council. This is subject to public consultation that will take place in March/April 2024 simultaneous with the Long-Term Plan.



Thames Coromandel

The Thames-Coromandel District Council has indicated that it is not expecting to make buyout offers. Instead, it is investigating alternative options to mitigate the risk from further landslips for fewer than 10 households.

Tauranga/Bay of Plenty

The Tauranga District Council is assessing up to s9(2)(a) both above and below a landslide; it expects two to three properties may require a buyout. Categorisation/engineering work is due to be finished in January 2024. The council have been engaging the CRU on its potential approach.

Wairarapa

The Masterton District Council is concluding its categorisation and risk assessment work and has identified between nine and s 9(2)(a) properties that may be Category 3 or 2P, all in or around Tinui.

The cost is estimated at around \$5 million, subject to change if alternative solutions, like moving a residence to a different site on the same property, are feasible.

The CRU continues to meet with the Masterton District Council and Greater Wellington Regional councils to discuss next steps.