

**Voluntary Buy-out Support Scheme Terms
Document Control**

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Voluntary Buy-out Support Scheme Terms

Auckland Council has agreed with the Government to implement a voluntary buy-out scheme (Voluntary Buy-out Support Scheme) for Auckland homes severely affected by the extreme weather events over Auckland Anniversary Weekend, and Cyclone Gabrielle 2023 (severe weather events).

These terms describe the properties eligible for buy-out, the price, and the buy-out process.

1. Introduction

The severe weather events have had a devastating and lasting impact on many communities, families and individuals across Tāmaki Makaurau / Auckland. Flooding and landslides have damaged or destroyed thousands of homes and changed people's lives.

In response to the scale of damage across Auckland and other parts of the North Island, the government announced a locally-led, centrally-supported recovery package, with co-funding to be agreed between the government and affected councils.

Part of the package addresses the removal of risk to severely affected residential properties through voluntary buy-out. Under the agreement with Government, Auckland Council is responsible for setting the technical assessment criteria and buy-out rules.

2. Policy objectives

Auckland Council's overarching policy objective is to support Aucklanders to voluntarily relocate from residential housing situations on properties that pose an intolerable risk to their lives.

In deciding the terms of the Voluntary Buy-out Support Scheme, Auckland Council has balanced the following considerations:

- **Effective** – the speed and uptake of buy-out to remove the intolerable risk to life posed to households from their property.
- **Affordable** – the amount of funding available across the number of properties that need to be purchased to remove intolerable risk to life. Affordability assumptions and scenarios have been used to help make an assessment against this criterion as a high level of uncertainty exists.
- **Fair and consistent with policy intent** – our legal obligations to be fair and for the scheme to be consistent with the stated policy intent.
- **Equitable** – scheme equity for those most in need and those who fund the scheme.

3. Voluntary Buy-out Support Scheme

- (a) The Voluntary Buy-out Support Scheme has been approved by Auckland Council's Governing Body after public consultation, and as part of a co-funding agreement with Government.
- (b) The Voluntary Buy-out Support Scheme is a one-off, limited response to the exceptional circumstances of the severe weather events, and is not a permanent programme for future disaster relief.

4. Scope

The Voluntary Buy-out Support Scheme applies to "Category 3" residential properties in the Auckland Council territory that have a dwelling on them and were affected by the severe weather events. Auckland Council will offer to buy those properties on the basis described below.

5. Types of property

Only residential properties¹ will be eligible for buy-out:

- (a) The property must have a legally established residential dwelling on the site. This can include second-homes, baches and residential rental properties. If the property is mixed-use (for example, includes commercial or agricultural uses) then only the residential portion is eligible for buy-out. Auckland Council will negotiate this.
- (b) Properties that have changed hands since 26 January 2023 are only eligible at Auckland Council's discretion and/or on terms that Auckland Council agrees to².

6. Category 3

- (a) Category 3 residential properties are ones which, as a result of the severe weather events, are assessed by Auckland Council to represent:
 - An intolerable risk to life from land instability or flooding risk; and
 - There are no feasible mitigation solutions (either property-based or community-based) that would reduce that risk to tolerable levels.
- (b) Auckland Council has developed criteria for what constitutes an intolerable risk to life [\[LINK\]](#) and how to apply the "no feasible mitigation" threshold [\[LINK\]](#). Only properties that Auckland Council assesses as meeting these tests will be categorised as Category 3 and eligible for voluntary buy-out.

¹ "Residential properties" does not include any properties owned, managed or administered by the Crown or any of its entities or agencies.

² See guidance in Note A.

7. Price

The buy-out price will be the “reference valuation” less all insurance and EQC proceeds, and less the specified homeowner contribution, as follows:

- (a) The reference valuation will be market value of the property as at 26 January 2023 (being the day before the Auckland Anniversary Weekend floods), as assessed by a registered valuer appointed by Auckland Council.
- (b) Auckland Council will appoint registered valuers to assess the reference valuations. Where possible valuers will work in specific areas to help consistency across the valuations.
- (c) Insurance and EQC proceeds include all payments made, payable or which should have been payable in respect of the severe weather events, with the following allowances:
 - Auckland Council will still offer to buy-out eligible properties that are uninsured, under-insured, or where the property owner has become disqualified from payouts (for reasons other than fraud).
 - Auckland Council may, in its discretion, top-up for any insurance or EQC proceeds that the property owner has spent in good faith on property remediation prior to Auckland Council’s buy-out offer. This will require a statutory declaration and receipts. Council will not top-up insurance proceeds spent on other things.
- (d) Subject to any exceptions in these terms, a homeowner contribution will be deducted from the buy-out price as follows:
 - Insured property: 5% of the reference valuation
 - Uninsured property: 20% of the reference valuation

Council may in its sole discretion (and with reference to the Guidance on Uninsured Individual Circumstances³) reduce the uninsured homeowner contribution to the same basis as an insured property if there are individual circumstances that mean it is fair to do so having regard to the purpose of the scheme, for example if:

- there was little or no insurable loss;
- the owner was not able to obtain insurance because of previous weather events; or
- the owner can demonstrate a history of payment of house insurance premiums .

³ See guidance in Note B.

Example

Sally lived in her West Auckland home which Auckland Council has assessed as Category 3 because of land instability from the severe weather events, which cannot feasibly be mitigated.

Auckland Council's valuer has assessed its market value as \$1.6m as at 26 January 2023. Sally has received an EQC payout of \$300,000 and private insurance of \$500,000. She spent \$20,000 on repairs.

Auckland Council will pay \$740,000.

Being the \$1.6m valuation, less EQC payout of \$300,000, less unspent insurance payout of \$480,000, less the homeowner contribution of \$80,000 (being 5% of 1.6m).

8.

Process

The buy-out process will generally proceed as follows:

- (a) **Categorisation:** Assessment as Category 3 by Auckland Council.
- (b) **Opt-in:** Opt-in indication from property owner within 3 months of Auckland Council confirming Category 3 status to a property owner. Property owner completes and signs opt-in indicative form, confirming things such as insurance status and providing authority for disclosure of personal information for the purposes of the Scheme.

If the property owner does not complete and sign the form within 3 months of receiving it from the council, the council may reasonably take it that the property owner does not wish to opt-in to the Scheme.

- (c) **Council costs contribution:** Payment of contribution to property owner of \$5,000 (including GST) in good faith for professional costs for property owners opting-in to the process. This is intended to assist with costs like legal, valuation and other professional/expert services. Council may require reasonable evidence at settlement (eg receipts) to show the funds have been spent as intended. Opting-in and accepting the contribution does not mean a property owner has to accept council's offer or that a property owner cannot dispute the reference valuation.
- (d) **Valuation:** Market valuation of property as at 26 January 2023 by Auckland Council engaged registered valuer.
- (e) **Offer:** The property advisor will present an offer to the property owner, which will include a copy of council's registered valuation, accompanied by a conditional sale and purchase agreement with completed offer price (based on Auckland Council's registered valuation, net of insurance and EQC and incorporating the homeowner contribution) (offer).
- (f) **Acceptance:** The property owner has 1 month within which to accept the offer and sign the Sale and Purchase Agreement. Property owners who do not agree with the reference valuation underlying the offer can seek a review under the Scheme's dispute resolution process (see paragraph 9 below). The period for accepting the

offer will be extended to allow for engagement with the dispute resolution process, if necessary.

(g) **Signing Sale and Purchase Agreement:** Signing a Sale and Purchase Agreement for the finally accepted price, noting:

- **GST:** The buy-out price will include GST (if any)⁴.
- **Insurance:** Settlement will be conditional on the payout to the property owner of all EQC and insurance claims to Auckland Council's satisfaction (which may include payout certificate from insurers and EQC, and supporting documentation of damage report and claims assessment). Council expects property owners to have taken all reasonable care to have maximised insurance claims.
- **Repairs:** Auckland Council may make an allowance for insurance proceeds being spent on repairs to the property, subject to the property owner providing a supporting statutory declaration with satisfactory evidence of repair costs (if applicable).
- **Sale and Purchase Agreement:** Will include:
 - **Third party claims:** A warranty from the property owner that they have exercised reasonable care and diligence to make and settle any claims available against third parties relating to matters which contributed to the property's Category 3 status.
 - **Assignment of residual claims:** An assignment of all residual claims from settlement to council.
 - **Buy-back waiver:** Acknowledgement from the property owner that the property is not being taken for a public work and that the property owner waives any right to have the property offered back to it or its successor if the council later disposes of it.
 - **Chattels and property condition:** Acknowledgement from the property owner that the buy-out does not include the council purchasing chattels or home contents, and that the property owner will need to (to the extent possible), remove any belongings from the property, disconnect all utilities and leave it in a tidy state, free from rubbish at its cost in the usual way.

(h) **Settlement:** Settlement of the buy-out (payment, and transfer of title to Auckland Council). Property owners are responsible for paying all utilities and outgoings for their properties until settlement. The parties' lawyers will address wash-ups for items like rates and water charges at settlement as is usual practice.

Property owners must engage their own lawyer to assist with settlement of the sale process (like a normal house sale).

Once settled, the property will belong absolutely to Auckland Council, and the council will have the benefit of any further claims against insurers, consultants or others for damage

⁴ Auckland Council may reassess this where necessary for GST registered property owners.

or loss in respect of the property. Recovery of any such amounts will be for Auckland Council's benefit to off-set the council's cost of buying-out the property.

9. Dispute resolution

Auckland Council has established a dispute resolution process [LINK] for valuation disputes (e.g., if someone thinks Auckland Council's valuation is too low).

10. Special circumstances

At the request of a property owner, Auckland Council at its discretion will consider whether to make a departure from a buy-out position set out in these Scheme Terms.

Any decision to apply a different process or outcome will be made in accordance with the council's Guidance on the application of special circumstances [LINK], and will have regard to:

- (a) The nature of the special circumstances and the extent of (and any implications of) departure from the Scheme Terms.
- (b) The level of any increased cost to the council resulting from departure from the Scheme Terms.
- (c) Auckland Council's overarching policy objective to support Aucklanders to voluntarily relocate from residential housing situations on properties that pose an intolerable risk to their lives.
- (d) Auckland Council's further objectives guiding its policy approach. This will involve consideration of whether a departure from the Scheme Terms is Effective; Affordable; Fair and Consistent with policy intent; and Equitable.

11. Regulatory role

Nothing in the Scheme affects or limits any of Auckland Council's statutory and regulatory responsibilities. For example, irrespective of the buy-out status of a property:

- (a) Auckland Council is still required to manage property safety placarding and notation of LIMs.
- (b) None of Auckland Council's powers under the Public Works Act 1981 to acquire properties and undertake public works are limited.

12. Limitations

The Voluntary Buy-out Support Scheme is the total funding Auckland Council is making available for buy-out of severe weather events affected properties, and payments by Auckland Council are limited to payments under these Scheme Terms. No additional payments will be made.

Auckland Council does not accept any liability for remediation, compensation or infrastructure delivery to mitigate any other harm or loss arising from the severe weather events. The council will make separate decisions about its wider response to the severe weather events and ongoing mitigation works.

END

Note A

Guidance note for 'change of hands'.

Examples of 'changes of hands' after 26 January 2023 that would still be eligible:

- **Prior agreements:** Settlement of transactions (sale and purchase agreement, call/put options) that were entered into before the severe weather events.

Evidence: Statutory declaration that the transaction was entered into before the severe weather events.

Certified copy of original sale and purchase agreement/option agreement dated before the severe weather events.

- **Changes of trustees:** Transfers of ownership to new/replacement trustees of the same trusts.

Evidence: Certified copies of deed of retirement and appointment of trustees and relevant landonline transfer instrument.

- **Relationship property:** Transfers of relationship property.

Evidence: Certified copies of settlement agreement and/or court orders, and relevant landonline transfer instrument.

- **Death of an owner:** For the avoidance of doubt, a transmission of ownership following the death of one owner is not considered a change of hands for the purposes of this Scheme.

Note B

Guidance on Uninsured Individual Circumstances [[Link](#) or paste]

