

AGENDA

Extraordinary Council Meeting

Membership:

Kahika - Mayor Moko Tepania - Chairperson
Kōwhai - Deputy Mayor Kelly Stratford
Cr Ann Court
Cr Felicity Foy
Cr Hilda Halkyard-Harawira
Cr Babe Kapa
Cr Penetaui Kleskovic
Cr Steve McNally
Cr Mate Radich
Cr Tāmati Rākena
Cr John Vujcich

Tuesday 24 September 2024

**Time: 12:30pm
Council Chamber,
Memorial Ave, Kaikohe**

Far North District Council
Extraordinary Council Meeting
will be held in the Council Chamber, Memorial Ave, Kaikohe on:
Tuesday 24 September 2024 at 12:30pm

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1 KARAKIA TIMATANGA / OPENING PRAYER

Ka tuku mātou kia kaha mai ngā māngai kua whiriwhirihia mō Te Kaunihera o Te Hiku o te Ika ki te mahi me te ngākau auaha me te whakamahi i ngā pūkenga me te mātauranga i roto i ngā wānanga me ngā whakataunga kia whakatūria ai tētahi Hapori e matatika ana, e tū kotahi ana ka mutu ka whakapiki anō i te oranga o tō tātou rohe, ka whakatau anō i ngā take o te rohe i runga i te tika me te pono.

We ask that through Council discussions and decisions the representatives we have elected may govern the Far North District with imagination, skill and wisdom to achieve a fairer and more united Community that enhances the wellbeing of our district and solves the District's problems efficiently and effectively.

2 NGĀ WHAKAPĀHA ME NGĀ PĀNGA MEMA / APOLOGIES AND DECLARATIONS OF INTEREST

Members need to stand aside from decision-making when a conflict arises between their role as a Member of the Council and any private or other external interest they might have. This note is provided as a reminder to Members to review the matters on the agenda and assess and identify where they may have a pecuniary or other conflict of interest, or where there may be a perception of a conflict of interest.

If a Member feels they do have a conflict of interest, they should publicly declare that at the start of the meeting or of the relevant item of business and refrain from participating in the discussion or voting on that item. If a Member thinks they may have a conflict of interest, they can seek advice from the Chief Executive Officer or the Manager - Democracy Services (preferably before the meeting).

It is noted that while members can seek advice the final decision as to whether a conflict exists rests with the member.

[Elected Member - Register of Interest 2023](#)

3 NGĀ TONO KŌRERO / DEPUTATIONS

No requests for deputations were received at the time of the Agenda going to print.

4 NGĀ KŌRERO A TE KAHIKA / MAYORAL ANNOUNCEMENTS

5 NGĀ PŪRONGO / REPORTS

5.1 FUTURE OF SEVERELY AFFECTED LAND - VOLUNTARY BUY-OUT AND RELOCATION POLICY - APPROVAL FOR PUBLIC CONSULTATION

File Number: A4885741

Author: Esther Powell, Manager - Climate & Action Resilience

Authoriser: Roger Ackers, Group Manager - Planning & Policy

TAKE PŪRONGO / PURPOSE OF THE REPORT

To obtain approval to release the proposed Future of Severely Affected Land Voluntary Buy-out and Relocation Policy for public consultation.

WHAKARĀPOOTO MATUA / EXECUTIVE SUMMARY

- On 6 June 2024, Council allocated funds to assess land in the Far North against Future of Severely Affected Land (FOSAL) criteria.
- On 8 August 2024, Council received notice from the Minister of Emergency Management and Recovery (the Minister) that government funding would end on 30 June 2025, requiring the further acceleration of the FOSAL Programme.
- A shortlist of 25 potentially affected properties is under review, with landowner engagement ongoing to confirm North Island Weather Events (NIWE) impact and FOSAL participation.
- Categorisation reports are due by 7 November, with an Options Report to Council due on 14 November 2024.
- A policy for voluntary buyouts and relocations is needed for transparency, with public consultation running alongside the categorisation process.
- The policy, based on other councils' models and approved by the Cyclone Recovery Unit, provides for insured (100%) vs. uninsured (80%) buyouts for fairness.
- Public consultation is recommended due to potential financial impacts, with a two-week period (26 Sept–10 Oct) aligning with the 30 June 2025 funding deadline.

TŪTOHUNGA / RECOMMENDATION

That Council:

- Approves the FOSAL Voluntary Buyout and Relocation Policy September 2024;**
- Approves the Proposal for the FOSAL Voluntary Buyout and Relocation Policy September 2024 for public consultation;**
- Agrees the period for making written submissions on the Proposal will be two (2) weeks.**

1) TĀHUHU KŌRERO / BACKGROUND

On 6 June 2024, Council determined that funds would be allocated in the Long-Term Plan (LTP) to undertake an assessment of land in the Far North district, to determine if there are residential properties that meet the FOSAL criteria.

On 8 August 2024 a letter was received from the Minister of Emergency Management and Recovery indicating that 30 June 2025 would be the cut-off date for government funding. This has necessitated that the FOSAL Programme be further accelerated, and for pieces of work to be undertaken concurrently to meet the Minister's deadline.

Following high-level risk and exposure modelling, a short list of 25 potentially affected properties has been developed. Staff have commenced engagement with these landowners to determine if a) they were significantly affected by NIWE and b) if they want to opt into the FOSAL Programme. Once

confirmation of both these criteria are received by staff, Tonkin+Taylor has been engaged to undertake the FOSAL categorisation assessment for each property. Categorisation reports will be completed by 7 November with an Options Report to be presented to Council on 14 November 2024.

To progress the FOSAL Programme, a policy is required that sets out how Council will undertake voluntary buyouts and relocations. This will provide transparency for the process and provide surety to impacted landowners by formalising the buyout, relocation eligibility criteria and procedures. Due to the extremely tight timeframes, the FOSAL Voluntary Buyout and Relocation Policy (the Policy) has been drafted for public consultation to run concurrently with the risk identification and categorisation process.

2) MATAPAKI ME NGĀ KŌWHIRINGA / DISCUSSION AND OPTIONS

Design of the Policy

Much of the Policy is operational and relates to terms and conditions, and the process for making an offer. The Policy has been developed based on the Gisborne District Council, Masterton District Council and Auckland Council policies, to leverage from their learnings and to expedite the drafting process. The Cyclone Recovery Unit has reviewed the Policy and is satisfied that it addresses the necessary components of the process.

Insured vs. Uninsured Properties

There is a strategic issue to be considered by Council, namely the difference in buyout and relocation offers for insured (100%) and uninsured properties (80%). The difference would provide equality between owners who were insured versus those who were uninsured on 12 February 2023. Section 8 of the Policy provides the ability to consider special circumstances to deviate from the Policy.

Proposed Property Purchase Offer

The Property Purchase Offer allows the Council to buy residential properties, including improvements. Uninsured properties receive 80% of their market value as of 12 February 2023. Insured property owners can choose either to receive the market value of the property minus unspent insurance and EQC payments or retain insurance proceeds for improvements while receiving the market value of the land, minus unspent EQC payments for land repairs.

Proposed Residential Relocation Offer

The Residential Relocation Offer allows the Council to purchase dwellings and residential improvements at market value as of 12 February 2023, and includes the rights for demolition, removal, and site reinstatement, considered necessary by the Council to make the site safe. The owner retains the land, with a covenant preventing residential activity in Category 3 areas. Uninsured properties receive 80% of the market value, minus a deduction equivalent to what EQC would have covered. Insured owners can choose between receiving the market value minus unspent insurance proceeds or retaining the insurance proceeds and forgoing payment for the dwelling, while remaining eligible for a relocation grant.

Public Consultation

There is no specific legislative requirement to undertake formal public consultation on the adoption of a FOSAL Policy. However, staff have considered statutory decision-making requirements under Part 6 of the Local Government Act 2002 (LGA02) and the significance of the decision to adopt a policy in terms of Council's Significance and Engagement Policy. The implementation of the Policy has the potential to impact ratepayers through unbudgeted financial expenditure and may attract a reasonably high level of public interest. It is therefore considered appropriate to undertake public consultation in accordance with the principles of consultation outlined under section 82 of the LGA02.

Due to the tight timeframes to develop and implement the Policy and complete the FOSAL Programme within deadlines imposed by the Minister, it is necessary to undertake a limited period of consultation of two (2) weeks (26 September to 10 October). This consultation period will still be sufficient to fulfil public engagement requirements and will ensure staff are able to report back and seek endorsement of the Policy at the 17 October Council meeting and work towards meeting the Minister's deadline of 30 June 2025.

To ensure wide communication of the consultation, a link to the webpage for making submissions will be emailed to Council's "subscribers" database and publicised on the Council's social media pages and "Have your Say" website. Council staff recommend that people are encouraged to present their views primarily via the Council's website. A small number of printed copies of the proposal document and submission form will be made available at Council offices for people to use if they are not able to print the documents themselves.

Option One (Recommended option)

Approve the draft Policy (see Attachment One) to be submitted for two weeks of public consultation from 26 September to 10 October.

Advantages:

- Clarity and consistency regarding the process
- Having clear guidelines to reduce ambiguity.
- Transparency of decisions.
- Reduction in delays and confusions by improving operational efficiency.
- Provides some legal protection in the event of disputes or legal challenge.
- Equity – ensures that all people are treated fairly.

Disadvantages:

None identified.

Option Two

Do nothing.

Advantages:

- More flexibility to tailor the approach to specific situations.
- Ability to experiment with alternative solutions on a case-by-case basis.

Disadvantages:

- Inconsistency in decision-making.
- Potential for confusion and miscommunication among staff and the public.
- Reduced transparency impacting reputation and trust in Council.
- Increased risk of legal challenge.
- Delays and inefficiencies.
- Unclear expectations for impacted property owners.
- Ad hoc decisions increase the risk of bias leading to unfair outcomes.

TAKE TŪTOHUNGA / REASON FOR THE RECOMMENDATION

Option One is recommended because the Policy is largely operational, outlining terms, conditions, and the process for making property purchase offers. It leverages policies from Gisborne, Wairarapa, and Auckland Councils, incorporating their learnings and expediting drafting. The Cyclone Recovery Unit has reviewed and approved the Policy, which addresses key procedural components. A strategic issue is the difference in buyout offers for insured (100%) and uninsured properties (80%), aiming for fairness. Public consultation, while not legally required, is recommended for transparency due to the potential impact on ratepayers. Given tight deadlines, a two-week consultation (26 September to 10 October) will ensure public engagement while meeting the Minister's 30 June 2025 deadline.

3) PĀNGA PŪTEA ME NGĀ WĀHANGA TAHUA / FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION

The ongoing work to undertake the FOSAL Programme was approved by Council through LTP decisions on 6 June 2024.

ĀPITI HANGA / ATTACHMENTS

1. FOSAL Voluntary Buyout & Relocation Policy - A4891285 [↓](#) 
2. FOSAL Voluntary Buyout & Relocation Policy Proposal - A4891286 [↓](#) 
3. Letter to the Far North District Council - A4892727 [↓](#) 

Hōtaka Take Ōkawa / Compliance Schedule:

Full consideration has been given to the provisions of the Local Government Act 2002 S77 in relation to decision making, in particular:

1. A Local authority must, in the course of the decision-making process,
 - a) Seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
 - b) Assess the options in terms of their advantages and disadvantages; and
 - c) If any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water sites, waahi tapu, valued flora and fauna and other taonga.
2. This section is subject to Section 79 - Compliance with procedures in relation to decisions.

He Take Ōkawa / Compliance Requirement	Aromatawai Kaimahi / Staff Assessment
State the level of significance (high or low) of the issue or proposal as determined by the Council's Significance and Engagement Policy	The implementation of the Policy has the potential to impact ratepayers through unbudgeted financial expenditure and may attract a reasonably high level of public interest. It is therefore considered appropriate to undertake public consultation in accordance with the principles of consultation outlined under section 82 of the LGA02.
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	The proposal aligns with Council policies and community outcomes. Specifically, the Climate Action Policy and emergency management recovery outcomes.
State whether this issue or proposal has a District wide relevance and, if not, the ways in which the appropriate Community Board's views have been sought.	The proposal has a district wide relevance and has therefore been recommended to be publicly consulted on district wide. The Community Boards have not been consulted due to tight timeframes and deadlines imposed by the Minister for Emergency Management and Recovery.
State the possible implications for Māori and how Māori have been provided with an opportunity to contribute to decision making if this decision is significant and relates to land and/or any body of water. State the possible implications and how this report aligns with Te Tiriti o Waitangi / The Treaty of Waitangi.	The categorisation of FOSAL land will enable affected iwi and hapu to enter into the Whenua Māori pathway and negotiate directly with the Crown. Te Kahu o Taonui have been brought into the FOSAL conversation with the Cyclone Recovery Unit.
Identify persons likely to be affected by or have an interest in the matter, and how you have given consideration to their views or preferences (for example – youth, the aged and those with disabilities).	The general public will be consulted to gather a range of views and preferences.

State the financial implications and where budgetary provisions have been made to support this decision.	There is currently no budgeted funds to implement the FOSAL Programme past the categorisation of land. It is unclear what the financial implications are until the categorisation process is completed. This is expected to be reported to Council on 14 November 2024 for a decision on the need for CAPEX expenditure.
Chief Financial Officer review.	The Chief Financial Officer has reviewed this report.



HE ARA TĀMATA
CREATING GREAT PLACES
Supporting our people

FOSAL Voluntary Buyout & Relocation Policy

Adopted: xxx

1. Background

Land classed as Category 3 land under the Future of Severely Affected Land (FOSAL) Programme, is land that was severely impacted by the North Island Weather Events (NIWE) of January and February 2023. This land includes areas impacted by Cyclones Hale, Gabrielle, and the Auckland Anniversary Floods, where there is an ongoing intolerable risk to human life from future severe weather events that cannot be mitigated.

The FOSAL Programme acknowledges the severe impact of these events and aims to reduce the risk of continued habitation on Category 3 land. This is a one-time policy to address 2023's exceptional circumstances. Costs for voluntary buy outs and relocations are shared equally between central government and Council. Demolition and removal costs are not included in the government funding arrangement and would become the responsibility of the Council.

Far North District Council (Council) is coordinating the voluntary buy-out and relocation programme for eligible landowners in the Far North District. To be eligible, landowners needed to own land assessed as Category 3 with one or more dwellings as at 13 February 2023.

Council is in the process of assessing and categorising land significantly affected by flooding and landslide during NIWE.

Council decided to provide for voluntary purchases of affected properties in recognition of the significant impact that those events had on people's lives and the risk associated with people continuing to live in Category 3 properties. Council recognises that there is significant loss and damage beyond what is covered by the Policy, however its scope is limited by the terms of the agreement with the Government.

Council recognises that there are likely to be similar events in the future. However, this Policy is a one-off, limited response to the exceptional circumstances of the Severe Weather Events of 2023 and is not a permanent policy for Council's response to any such future events. Council will consider the statutory and planning provisions available to address or mitigate the effects of such events in the future.

2. Application

This Policy only applies to those properties that Council identifies and confirms as being Category 3, being land that was significantly affected by the NIWE, where future severe weather event risk cannot be sufficiently mitigated and there is an intolerable risk to human life.

Some of the land classified as Category 3 may be Whenua Māori, where land is held in Māori Freehold title. The Government has developed a separate Whenua Māori pathway for this land. This separate pathway is intended to recognise and take account of the importance of the whenua, and how any settlement gives effect to Te Tiriti o Waitangi and previous Treaty settlements. As such, this Policy is not intended to apply to Whenua Māori generally. However, Whenua Māori landowners may elect to be subject to the Council's Policy, rather than the government's Whenua Māori pathway. If a party elects to use the Whenua Māori pathway, this policy does not apply.

3. Definitions

The following definitions apply to this Policy:

Category 3 Land means land which has been identified by and confirmed as Category 3 land by Far North District Council in that it was significantly impacted by the NIWE, where risk from future severe weather events cannot be feasibly mitigated and there is an ongoing intolerable risk to human life.

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

Dwelling means a building, or part of a building (including decks, patios and pergolas) that was, as at 12 February 2023, lawfully established, and was self-contained with the facilities necessary for day-to-day living on an indefinite basis (including somewhere to cook, sleep, live, wash, and use a toilet) and was or could be used by 1 or more persons to live in as their home.

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

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

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

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

Relocation Grant means a payment to the Owner of an amount that represents the difference in the market value of the land with and without the right to rebuild a Dwelling on the Category 3 Land.

Residential Improvements means lawfully established improvements ancillary to the residential use of the Dwelling, used by the owners or occupiers of the Dwelling for household purposes (such as for parking or storage, and residential recreation facilities) or for access to the Dwelling or to house infrastructure for the Dwelling (such as a shed housing a pump that supplies drinking water to the Dwelling) and includes pathways, driveways, landscaping, fences and gates associated with the Dwelling.

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

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

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

Valuation Process means the process of Council commissioning a Valuation from a registered valuer which takes into account (to the extent considered appropriate by the registered valuer) relevant information provided by landowners, and relevant Council information

4. Legislative Context

The Future of Severely Affected Locations (FOSAL) Programme aims to remove the risk to life for people living on Category 3 land.

There is no specific legislation that relates to FOSAL.

5. Objectives

- 5.1 Assist people who live on Category 3 land to relocate out of harm's way, based on the natural hazard risks arising from the Severe Weather Events of 2023, where there is:
- Imminent threat to life; or
 - Unacceptable future risk that cannot be managed; or
 - Land damage that makes rebuilding infeasible.
- 5.2 Only purchase as much land as necessary to meet Objective 5.1 (this also applies to relocation offers) and enable owners to retain ownership of land where this is practical.
- 5.3 Demonstrate manaakitanga to help our communities recover quickly.
- 5.4 Demonstrate responsible and prudent expenditure of ratepayer funds.

6. Principles

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

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

7. Policies

- 7.1 Council will make an offer under this Policy where the following criteria are met:
- a) Land:
 - (i) Is, or includes, Category 3 land identified by Council in response to the Severe Weather Events 2023; and
 - (ii) Is a Residential Property or a Mixed-Use Property; and
 - (iii) One or more Dwelling was, as at 12 February 2023, located within the part of the land classified as Category 3; and
 - (iv) Has not had a change of ownership since 12 February 2023, other than where a transfer has been made to a Related Party of the former Owner.
 - b) The Owner has provided written confirmation to Council that they wish to receive an offer under this Policy within one (1) month of receiving confirmation that the land is classified as Category 3.
- 7.2 The offer will be made to the Owner(s) of the Residential Property or Mixed-Use Property.

8. Special circumstances

At the request of an Owner, a departure from this Policy (including as to what is regarded as a Residential Property and a Mixed-Use Property; but not the classification of the property as Category 3) may be considered at the absolute discretion of the Chief Executive of Far North District Council. Any decision to depart from this Policy, which could include providing for a different process or outcome, will have regard to:

- a) The overarching objective of removing risk-to-life associated with residential activity within Category 3 areas and other objectives and principles of the Policy;
- b) The reasons for, extent of, and implications of any departure from the Policy; and

- c) Whether the departure involves any increased cost to the Council.
- d) Any decision to depart from the Policy in any way will be made by the Council or its delegate and recorded in writing, with reasons.

9. Review of the process

- 9.1 Other than in relation to determining Valuation (which is subject to clause 14.1 (c)), if an Owner believes that the Policy is not being applied correctly or in accordance with the principles set out in section 6, they may request a review of their case by the Council's Chief Executive or their delegate.
- 9.2 The review will be carried out within four (4) weeks of receipt of a written request and the outcome of the review will be communicated to the Owner.
- 9.3 In all other respects, because acceptance of the offer under the Policy is voluntary, there is no appeal process provided under the Policy.

10. Monitoring and Implementation

Implementation of the policy will be monitored by the Council.

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

11. Schedules

The schedules in this Policy may be amended at any time by Council resolution.

12. Schedule 1 – Content Of Offer

12.1 Outline

There are two bases on which offers are made – a Property Purchase Offer and a Residential Relocation Offer (as described in clauses 12.2 and 12.3 respectively).

Owners of Residential Properties can elect to pursue a Property Purchase Offer, or a Residential Relocation Offer as set out below. The election must be made prior to or within one (1) month of an offer being made.

Owners of Mixed-Use Properties are only eligible for a Residential Relocation Offer.

12.2 Property Purchase Offer

A Property Purchase Offer is made in accordance with the process set out at section 14 and shall include:

- a) Purchase by the Council of the Residential Property (including all Residential Improvements).
- b) Where the property is not insured, payment of 80% of the market value of the Residential Property as at 12 February 2023.
- c) Where the property is insured, the Owner may elect one of the following options:
 - (i) Payment for the market value of the Residential Property as at 12 February 2023, less any Insurance Proceeds that have not been spent, in good faith, on repairs to the Dwelling and any payment under the Earthquake Commission Act 1993 for damage to the land that have not been spent, in good faith, on repairs to the land; or
 - (ii) To retain any Insurance Proceeds related to the Dwelling and Residential Improvements, in which case payment shall be made for the market value of the land as at 12 February 2023, less any payment under the Earthquake Commission Act 1993 for damage to the land that have not been spent, in good faith, on repairs to the land.

12.3 Residential Relocation Offer

A Residential Relocation Offer is made in accordance with the process set out at section 14 and shall include:

- a) Payment comprising:
 - (i) Purchase by the Council, at market value as at 12 February 2023, of any Dwelling(s) and Residential Improvements on the Residential Property or that part of a Mixed-Use Property that is within the Category 3 area. The purchase shall include the rights necessary to undertake demolition and/or removal of the Dwelling and Residential Improvements, and such site reinstatement considered by the Council to be appropriate to make the site safe (including removal of septic tanks and capping of wells, where necessary); and
 - (ii) A Relocation Grant.
- b) The Owner will retain ownership of the land. A covenant in gross in favour of the Council or similar legal instrument will be registered on the title of the property, which will provide that no residential activity may occur within that part of the property categorised as Category 3 (which area will be shown on a plan included with the legal instrument).
- c) Where the property is not insured, payment under clause 12.3(a)(i) is for 80% of the market value of the Dwelling and Residential Improvements as at 12 February 2023 less a deduction for damage to the land based on what would have been covered by EQC had the property been insured. This is designed to ensure equity between owners who were insured and those who were uninsured.
- d) Where the property is insured, the Owner may elect one of the following options in relation to the payment under clause 12.3(a)(i):
 - (i) Payment at market value for the Dwelling and Residential Improvements as at 12 February 2023, less any related Insurance Proceeds that have not been spent, in good faith, on repairs to the Dwelling; or

- (ii) To retain any Insurance Proceeds related to the Dwelling and Residential Improvements, and not receive any payment from the Council for the purchase of the Dwelling and Residential Improvements (in which case the Owner will be eligible for the Relocation Grant only).

13. Schedule 2 – Standard terms of offer

- 13.1 Following settlement, any Dwelling and Residential Improvements within Category 3 land will be removed from the Site if reasonably practicable or otherwise demolished by Council and the site made safe. For the avoidance of doubt, the offer does not include removal of silt or full site clearance for use for any particular purpose.
- 13.2 From the date of execution of the Sale and Purchase Agreement, the Owner agrees not to remove any part of the Dwelling or Residential Improvements from the site, except where specified in the terms of the Sale and Purchase agreement.
- 13.3 The Council and the Owner shall agree a mutually acceptable settlement date, no later than 3 months from the date of the execution of the Sale and Purchase Agreement.
- 13.4 The Council will agree to reimburse the Owner, on receipt of appropriate invoices, for legal costs related to finalising the sale and purchase agreement and conveyancing costs up to a maximum of \$1,500 (excl GST). If the Owner chooses to obtain their own valuation, it will be at their own cost.
- 13.5 Any payment made by the Council under the offer, except payments made under clause 13.4, will be paid to the Owner's solicitor who will attend to any payment owing to any security holder (eg. Owner's bank) where there is a mortgage or other equivalent encumbrance over the Property (except where the security holder agrees otherwise).
- 13.6 Acceptance of the offer made by the Council is voluntary. The Council and the Owner acknowledge that the land is not being taken for a public work, and that the Owner waives any right to have the property offered back to it or its successor if Council purchases but later decides to dispose of it.
- 13.7 The offer will include GST, if any.
- 13.8 For the avoidance of doubt, the offer will not extend to the purchase of chattels or home contents that could be subject to a contents insurance policy and any such items will be excluded in valuing the Property Purchase Offer or Residential Relocation Offer (as the case may be). The Owner will also remain liable for unpaid rates, charges for power, telecommunications or other unpaid monies owed by the landowner.
- 13.9 The Council may agree to extend any of the timeframes specified in this Policy.
- 13.10 Council may require shorter timeframes than those specified in this Policy, in any instance where it considers it is necessary to do so to ensure settlement under any Sale and Purchase Agreement is no later than 30 June 2025.

14. Schedule 3 – Process for offer

- 14.1 Offers will be made in the following manner:
 - a) Category 3 landowners will be offered an opportunity to voluntarily participate in the buyout scheme.
 - b) Through agreeing to participate, the Owner will be required to provide information (including insurance and mortgage information) and potential undertakings needed to finalise the offer. If the owner does not comply with any reasonable request for information within two (2) months, the Council may determine that the landowner no longer wishes to participate in the buyout scheme.
 - c) Valuation:
 - (i) The Council will prepare an offer based on the relevant Valuation obtained in accordance with the Valuation Process.
 - (ii) If a vendor provides their own valuation (from a registered valuer), via the negotiation process, that materially differs from the Council commissioned Valuation, the Council and vendor will arrange a

meeting of the two registered valuers to review their respective valuations and attempt to provide an agreed valuation. Where agreement cannot be reached, Council will appoint an independent valuer to review the matter and determine a final value, and no further consideration of value will be undertaken.

d) Council offer:

- (i) The Council's Representative will present the Owner with an offer, including a Sale and Purchase Agreement, in accordance with clause 4 and clause 5 and any further terms and conditions as appropriate.
- (ii) The Council will specify an expiry date for the offer, being no later than 31 March 2025.
- (iii) The offer will expire on the expiry date for the offer, unless a mutually agreed extension of time has been approved by Council.

- 14.2 If the Owner accepts the Council offer or the Owner and the Council agree a different amount, a deposit of 10% or \$50,000 (whichever is the higher amount) will be paid on execution and, as soon as practicable, settlement will be executed in accordance with the Sale and Purchase Agreement.
- 14.3 If at any stage prior to acceptance of an offer the Owner rejects the Council offer and advises the Council's Representative in writing that they wish to end the negotiation process, then the process is at an end and any Council Offer is treated as having been withdrawn. The Council has complete discretion as to whether to recommence the process should the Owner advise they wish to do so, having previously ended the process.
- 14.4 The Owner may advise the Council's Representative in writing at any stage prior to accepting an offer that they wish to pause the process. The Council will agree to a pause or an extension of time where there is good reason and progress towards an agreement is still being made in good faith.



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Proposal

FOSAL Voluntary Buyout & Relocation Policy

1 Context and Situation

Land classed as Category 3 land under the Future of Severely Affected Land (FOSAL) Programme, is land that was severely impacted by the North Island Weather Events (NIWE) of January and February 2023, and includes areas impacted by Cyclones Hale, Gabrielle, and the Auckland Anniversary Floods, where there is an ongoing intolerable risk to human life from future severe weather events that cannot be mitigated. The Far North District Council is coordinating a voluntary buyout and relocation programme for eligible landowners in Te Tai Tokerau, focusing on properties assessed as Category 3 as of February 13, 2023. The programme acknowledges the severe impact of these events and aims to reduce the risk of continued habitation on Category 3 land. This is a one-time policy to address the exceptional circumstances of the 2023 extreme weather events. Costs for voluntary buy outs and relocations will be shared equally between central government and Council. Demolition and removal costs are not included in the government funding arrangement and would become the responsibility of the Council.

On 6 June 2024, the governing body of the Council determined that funds would be allocated in the Long-Term Plan (LTP) to undertake an assessment of land in Te Tai Tokerau, to determine if there are residential properties that meet the FOSAL criteria. To progress the FOSAL Programme, a Policy is required that sets out how Council will undertake voluntary buyouts and relocations. This will provide clarity regarding the process involved and provide surety to Category 3 landowners by formalising the buyout and relocation eligibility criteria.

2 Proposal

The Council proposes to establish a new Voluntary Buy-Out and Relocation Policy for the FOSAL Programme. This Policy only applies to those properties that Council identifies and confirms as being Category 3, being land that was significantly affected by the NIWE, where future severe weather event risk cannot be sufficiently mitigated and there is an intolerable risk to human life.

3 Reasons for the proposal

The Policy is required to provide interested parties with a clear and consistent decision-making framework to address buyouts or relocation of any Category 3 properties that are identified by the FOSAL Programme. The Policy formalises the FOSAL buyout and relocations criteria and procedures to provide clarity and certainty for affected landowners.

4 Analysis of the reasonably practicable options

There are two options: 1) make a Policy 2) do not make a Policy. The advantages and disadvantages of these options are summarised in the following table.

1

Option	Advantages	Disadvantages
Make a Policy	<ul style="list-style-type: none"> • Clarity and consistency regarding the process • Having clear guidelines to reduce ambiguity. • Transparency of decisions. • Reduction in delays and confusion by improving operational efficiency. • Provides some legal protection in the event of disputes or legal challenge. • Equity – ensures that all people are treated fairly. 	<ul style="list-style-type: none"> • None identified.
Do not make a Policy	<ul style="list-style-type: none"> • More flexibility to tailor the approach to specific situations. • Ability to experiment with alternative solutions on a case-by-case basis. 	<ul style="list-style-type: none"> • Inconsistency in decision-making. • Potential for confusion and miscommunication among staff and the public. • Reduced transparency impacting reputation and trust in Council. • Increased risk of legal challenge. • Delays and inefficiencies. • Unclear expectations for impacted property owners. • Ad hoc decisions increase the risk of bias leading to unfair outcomes.

5 How to give your views on the proposal

The Council encourages any person or organisation affected by, or having an interest in, the FOSAL Voluntary Buyout and Relocation Policy to present their views on the proposal to the Council by making a submission. Note that submissions close on 10 October. This timeframe is to meet the government's deadline for Council's participation in the FOSAL Programme. Council will not ask for formal verbal submissions on the decision to make the Policy or not because of the tight government deadline.

You can make a submission by using any of the following methods:

- online at the Council's website www.fndc.govt.nz/have-your-say
- email your submission to submissions@fndc.govt.nz
- drop-off your submission at any Council service centre or library, details of their locations and opening times are listed at www.fndc.govt.nz/contact or you can get that information by phoning the Council on 0800 920 029
- post your submission to: Climate Action and Resilience Department, Far North District Council, Private Bag 752, Kaikohe 0440

Please include your full name and email address or postal address in your submission if you want the Council to acknowledge receipt of your submission.

Any submissions that are out of scope, offensive, inappropriate, or late may not be accepted by the council. You will be notified if your decision is not accepted and, where appropriate, invited to resubmit.

[Privacy statement](#) – Please be aware, any submissions that are made on the new FOSAL Voluntary Buyout and Relocation Policy become part of the public consultation process. As such, all submissions, any summaries of submissions, and any documents provided with your submission, are copied and made available to the Council's governing body as well as the public. Any personal information included with a submission such as your name is treated as part of the submission and will also be released publicly. Your submission and any personal information that you supply such as your name will not be treated as confidential unless you specifically request it in your submission.

5.1 [Draft FOSAL Voluntary Buyout and Relocation Policy](#)

The draft policy is available to view at [www.#####](#):

A printed copy of the policy is available to be printed at any Council service centre or library

Hon Mark Mitchell

Minister of Corrections
Minister for Emergency Management and Recovery
Minister of Police



8 August 2024

Guy Holdroyd,
Chief Executive,
Far North District Council

Dear Guy,

Thank you for your letter of 5 July 2024 regarding your intention to carry out Future of Severely Affected Locations (FOSAL) categorisation in the Far North District.

I support your efforts to provide solutions to property owners that may have experienced significant impacts from the North Island Weather Events (NIWE) and who face an intolerable risk to life from future events to relocate out of harm's way.

To reiterate the points, I made in my letters of 26 March and 17 May 2024, the government's focus is firmly on speeding up recovery processes and ensuring people have certainty. I would strongly urge you to explore all possible avenues to speed up the timelines that you have set out in your letter, and to work closely with my officials in the Cyclone Recovery Unit (CRU) to discuss how this might be achieved.

I acknowledge the points you have raised relating to whenua Māori in the Far North and the challenges that mean that categorisation may be ongoing into 2025.

As you are aware, the Whenua Māori and Marae pathway is a Crown-led process, and engagement with affected owners and residents is led by the CRU. The CRU is well configured to be able to deliver on the Crown's obligations in a credible way. The council's role is limited to the initial categorisation process. It is vital that this is carried out quickly and effectively, with a clear understanding of the scope, and the limitations, of the pathway to avoid raising unrealistic community expectations.

Given this, I ask that you work closely with the CRU to progress your approach to both the general FOSAL and the Whenua Māori and Marae pathways. I have asked CRU officials to visit you in the Far North as a matter of priority, to discuss next steps.

Finally, I am setting out some of the key parameters regarding the FOSAL approach, so that you have full clarity regarding the Crown's position and requirements for cost-sharing support.

Key FOSAL parameters for Crown cost-sharing funding

For properties to be eligible for Crown FOSAL funding, they must meet all the following criteria. These are properties:

- that were in residential use at the time of the NIWE (or the residential parts of mixed-use properties – non-residential parts of a property are not eligible); and
- that were significantly impacted by the NIWE; and

- where people in those properties would face an intolerable risk to life from future severe weather events, which cannot feasibly be mitigated (Category 3).

There needs to be a robust categorisation methodology that underpins decisions on what properties meet those criteria. The Crown needs to review this methodology before finalising any cost-sharing agreement and may choose to commission expert advice to provide quality assurance.

For your district, given the significant time that has elapsed since the weather events, the Crown would require assurance that properties in question were significantly affected by those events themselves (rather than damaged by events since then, or by pre-existing or gradual damage over time).

You will also need to develop a FOSAL buyout policy, setting out the scope and processes for offering buyouts. While delivery of the FOSAL approach is a locally led process, and you are free to adopt a buyout policy that works best for your circumstances, the Crown's contribution is limited to what falls within a reasonable interpretation of FOSAL criteria. This means that not all aspects of a council's policy will necessarily be funded (or contributed to) by the Crown.

I would expect that any buyout policy approach is consistent with other affected regions that have already developed policies and are now implementing buyouts. This includes:

- limiting eligibility for buyouts to properties that are legally established and consented;
- ensuring that the size of properties being completely bought out is limited to what can reasonably be considered to be residential (other regions have applied 1 to 2 hectare limits, above which they are mixed-use and only the residential portion is bought out);
- providing clear time limits for property owners to engage in the buyout process and to consider and accept buyout offers;
- ensuring that the status of insurance and EQC cover is clear and that any relevant claims have been settled prior to a buyout; and
- having a dispute resolution process.

Aside from the Crown's 50% share of the buyout cost itself, and reasonable, capped contributions for property owners' legal or valuation costs (should the council decide to offer contributions), all other costs are the responsibility of the council. This includes the council's internal costs (including the costs of developing and administering a buyout scheme, and the council's own legal costs) and the costs of demolition or otherwise remediating a property that the council has purchased as well as the cost of a dispute resolution process.

The Crown's offer for cost-sharing relates only to Category 3 properties. Funding has been provided to the Far North for risk mitigation initiatives relating to other properties through the Local Government Flood Resilience Co-investment Fund, and I understand that these projects are now well underway.

Funding for the Crown's 50% cost share of buyouts will not be available after 30 June 2025. The costs of any buyouts after that time would need to be 100% met by the council.

Whenua Māori and Marae

If any of the Category 3 properties that you identify through categorisation are located on whenua Māori, or are Marae, then they may be eligible for the Crown-led Whenua Māori and

Marae pathway. In this case, you would need to notify the CRU that you have formally classified these properties as Category 3 – without this initial categorisation step by the council, properties are not able to be considered for the pathway.

The Whenua Māori and Marae pathway provides support to enable affected owners and residents to relocate out of harm's way. Under the pathway, ownership of the whenua is retained, but agreeing to relocate is a condition of any financial support. There is no funding for measures designed to increase resilience on the existing site.

The council would be responsible for communicating the categorisation to whenua Māori owners, iwi and Marae Trustees should it consider any of the Marae or whenua Māori to be Category 3. This will include advising that if such a categorisation is not successfully challenged, that whenua owners and Marae will not be able to reside on the properties and must relocate. The council would be responsible for managing and funding a dispute resolution process for any challenges to categorisation.

A number of Marae in Northland received funding through the Local Government Flood Resilience Co-investment Fund in September 2023, for initiatives to reduce future flood risk. As there has already been investment agreed for feasible risk mitigations for these Marae, they cannot be considered as Category 3 for the purposes of FOSAL categorisation and be in scope of the Whenua Māori and Marae pathway.

Anna Wilson-Farrell, Executive Director, Strategic Policy and Legislation, Cyclone Recovery Unit will be in contact to make arrangements for CRU officials to visit and discuss these matters further.

I look forward to further updates as you progress with your categorisation and once again urge you to proceed with speed given the time that has now elapsed since the events and since the first invitation for the council to opt into this process with the Crown.

Yours sincerely,



Hon Mark Mitchell
Minister for Emergency Management and Recovery

CC: Moko Tepania, Mayor, Far North District Council
Kelly Stratford, Deputy Mayor, Far North District Council
Katrina Casey, Chief Executive, Cyclone Recovery

5.2 REVIEW OF LAND DRAINAGE BYLAW

File Number: A4835051

Author: Donald Sheppard, Policy Advisor

Authoriser: Roger Ackers, Group Manager - Planning & Policy

TAKE PŪRONGO / PURPOSE OF THE REPORT

To seek approval to continue the Land Drainage Bylaw 2019 with amendment.

WHAKARĀPOPOTO MATUA / EXECUTIVE SUMMARY

- There are four land drainage districts in the Far North, all situated in Te Hiku Ward: Kaitaia, Motutangi, Waiharara and Kaikino.
- The Local Government Act 2002 gives Council the power to make bylaws to regulate the use and management of these drainage assets.
- The Land Drainage Bylaw 2019 (the Bylaw) was made on 03 October 2019, replacing the Land Drainage Bylaw 2009.
- Under Section 158 of the Local Government Act 2002, the Bylaw is due for review by 03 October 2024. In the review, Council is required to consider whether the Bylaw is still the most appropriate way of addressing the perceived problem with respect to land drainage, whether the Bylaw has the most appropriate form, and whether it has any Bill of Rights implications.

TŪTOHUNGA / RECOMMENDATION

That Council:

1. Approve, under section 155(1) of the Local Government Act 2002, that a bylaw is still the most appropriate way of addressing problems related to land drainage in the four land drainage districts in Te Hiku Ward;
2. Approve, under 155(2) of the Local Government Act 2002, that the current form of the Land Drainage Bylaw is not the most appropriate;
3. Approve, under section 155(2) of the Local Government Act 2002, the Land Drainage Bylaw does not give rise to any implications under the New Zealand Bill of Rights Act 1990.
4. Approve, the Land Drainage Bylaw 2019 continues with amendment.

1) TĀHUHU KŌRERO / BACKGROUND

The Land Drainage Bylaw 2019 (the Bylaw) came into force on 07 October 2019, replacing the Land Drainage Bylaw 2009.

Under section 158 of the Local Government Act 2002, the Bylaw is due for review by 03 October 2024. The Council is required under section 160 of the Local Government Act 2002 to consider whether the Bylaw;

- is still the most appropriate way of addressing the perceived problem with respect to land drainage;
- is still the most appropriate form of bylaw; and
- gives rise to any implications under the New Zealand Bill of Rights Act 1990.

Council staff have now reviewed the Bylaw. See the attached Research Review Report (Attachment One).

Council's role relating to the drainage districts

Managing and maintaining land drainage infrastructure aligns with the following community outcomes, stated in the Long-term Plan:

- Communities that are healthy, safe connected and sustainable by reducing the risk of damage from flooding to individual properties.
- Resilient Communities that are prepared for the unexpected by reducing the risk of flooding.
- A wisely managed environment that recognises the role of tangata whenua as kaitiaki by providing a safe living environment for affected communities.

The Bylaw:

- ensures Council access to drainage channels
- addresses connections of private drains to drainage channels
- includes provisions to ensure drainage channels are not obstructed or altered
- regulates stopbanks, crossings, and watering places
- covers damage, maintenance and repair to drainage assets, inspections, obstruction of officers, and penalties for breaching the Bylaw.

2) MATAPAKI ME NGĀ KŌWHIRINGA / DISCUSSION AND OPTIONS

Problems to be addressed

The problem stated when the Bylaw was made is that improperly managed and maintained land drainage assets can impact negatively on contiguous properties. This included:

- a) The unsafe and inefficient creation, operation, maintenance and renewal of the land drainage network;
- b) Improper hazard management to prevent or minimise flooding and erosion, minimise adverse effects on the local environment particularly freshwater ecological systems quality, and not assisting in maintaining water quality;
- c) Lack of protection of Council land drainage assets, for example, by not setting out acceptable types of connection to land drainage networks;
- d) Risks to the health and safety of council employees.

Review findings

Council staff have identified that improperly managed and maintained land drainage assets can still impact negatively on contiguous properties.

The review identified that a bylaw is still the most appropriate way to address problems relating to the land drainage network.

The review also identified that the form of the Bylaw is not appropriate, with amendments required to provide greater certainty to the Bylaw:

- the Bylaw should not refer to the Interpretation Act 1999, which was replaced by the Legislation Act 2019;
- maps of the drainage districts should be included in a Schedule to the Bylaw with accompanying provisions in the Bylaw applying to this Schedule (e.g. the Schedule may be amended by resolution of Council);
- while the provisions in the Bylaw appear fit for purpose, engagement and consultation with key stakeholders may identify further changes that should be made to the Bylaw.

The review found that the Bylaw does not give rise to implications under the New Zealand Bill of Rights Act 1990. However, a full assessment will need to be conducted following any possible amendments.

Option One: Continue the Bylaw without amendment

The current Bylaw stays in force with no changes.

Advantages:

- Regulation will continue of land drainage assets.

Disadvantages

- Bylaw will not be as certain (clear) as it could be.

Option Two: Continue the Bylaw with amendment (recommended option)

The current Bylaw is amended.

Advantages:

- Regulation will continue of land drainage assets.
- Bylaw will be more certain (clear).

Disadvantages:

- None identified

Option Three: Do nothing – allow the Bylaw to revoke in two years

The current Bylaw will still apply until 03 October 2026 when it will automatically revoke.

Advantages:

- None identified.

Disadvantages:

- Regulation of the land drainage assets will only continue for two more years.
- Until the Bylaw revokes, it will not be as certain (clear) as it could be.
- After the Bylaw revokes, no policy instrument will apply to regulate land drainage assets and ad hoc decisions will occur regarding the management of these assets. For regulation to continue, a new bylaw will need to be made.

Option Four: Revoke the Bylaw

Revoking the Bylaw is not a reasonably practicable option.

TAKE TŪTOHUNGA / REASON FOR THE RECOMMENDATION

A bylaw is still the most appropriate way of addressing the problems of Land Drainage. Amendments to the Bylaw will make it more certain (clear).

Next Steps

A draft amended Bylaw will be prepared following engagement and input from key stakeholders, including the Land Drainage Boards, Te Hiku Community Board, and subject matter experts from the Infrastructure Group at Council.

3) PĀNGA PŪTEA ME NGĀ WĀHANGA TAHUA / FINANCIAL IMPLICATIONS AND BUDGETARY PROVISION

The operational costs for amending the Bylaw are expected to be minimal (less than \$1,000 plus staff time and resources) and will be met from existing operational budgets.

ĀPITI HANGA / ATTACHMENTS

1. Review Research Report - Land Drainage Bylaw 2019 - A4893315 [↓](#) 

Hōtaka Take Ōkawa / Compliance Schedule:

Full consideration has been given to the provisions of the Local Government Act 2002 S77 in relation to decision making, in particular:

1. A Local authority must, in the course of the decision-making process,
 - a) Seek to identify all reasonably practicable options for the achievement of the objective of a decision; and
 - b) Assess the options in terms of their advantages and disadvantages; and
 - c) If any of the options identified under paragraph (a) involves a significant decision in relation to land or a body of water, take into account the relationship of Māori and their culture and traditions with their ancestral land, water sites, waahi tapu, valued flora and fauna and other taonga.
2. This section is subject to Section 79 - Compliance with procedures in relation to decisions.

He Take Ōkawa / Compliance Requirement	Aromatawai Kaimahi / Staff Assessment
State the level of significance (high or low) of the issue or proposal as determined by the Council's Significance and Engagement Policy	In line with the Significance and Engagement Policy, the recommendation to continue the Land Drainage Bylaw with amendment will have little effect on the financial thresholds, ratepayers, specific demographics, or levels of service. The recommendation is consistent with existing plans and policies. Therefore, the level of significance is low.
State the relevant Council policies (external or internal), legislation, and/or community outcomes (as stated in the LTP) that relate to this decision.	<ul style="list-style-type: none"> • Land Drainage Bylaw 2019 • Local Government Act 2002 • New Zealand Bill of Rights Act 1990 • Far North District Council – Te Pae Ata – Three-Year Long-Term Plan 2024-2027 (Section 7 – Wai Ua me Hapuwai Stormwater and Drainage) • Land Drainage Act 1908 • Interpretation Act 1999 • Legislation Act 2019 • Resource Management Act 1991
State whether this issue or proposal has a District wide relevance and, if not, the ways in which the appropriate Community Board's views have been sought.	This issue has relevance within Te Hiku Ward. Engagement will be required with Te Hiku Community Board to further understand the issues and problems relating to Land Drainage.
State the possible implications for Māori and how Māori have been provided with an opportunity to contribute to decision making if this decision is significant and relates to land and/or any body of water. State the possible implications and how this report aligns with Te Tiriti o Waitangi / The Treaty of Waitangi.	<p>Appropriate engagement with iwi and hapū will need to occur to ensure any appropriate amendments are made to the Bylaw.</p> <p>Māori are kaitiaki of the land and are therefore an important voice in issues of Land Drainage.</p>
Identify persons likely to be affected by or have an interest in the matter, and	All interested parties will be given an opportunity to share their views and preferences including Te Hiku

how you have given consideration to their views or preferences (for example – youth, the aged and those with disabilities).	Community Board, the Land Drainage Board, Land Drainage Committees, affected land owners, Infrastructure Group subject matter experts, and iwi/hapū.
State the financial implications and where budgetary provisions have been made to support this decision.	The operational costs for amending the Bylaw is expected to be minimal (less than \$1000 plus staff time and resources) and will be met by existing operational budgets.
Chief Financial Officer review.	The Chief Financial Officer has reviewed this report.



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Research Report

Review of the Land Drainage Bylaw (2019)

1 Purpose

To describe and discuss the review of the Land Drainage Bylaw 2019.

2 Context

There are four land drainage districts in the Far North District, all situated in the Te Hiku Ward. These are:

- The Kaitaia Land Drainage district which covers the flood plain area from just south of Kaitaia Township through to Awanui and to its northern extremity at Paparore.
- Three smaller districts: Motutangi, Waiharara and Kaikino. These are all situated on the east coast.

The origin of many of these drainage areas dates to the early 20th century, when they were developed to convert wetlands and swamps into productive farmland. They were then expanded to help protect the district's urban areas. Now the land drainage areas reduce flooding in urban Kaitaia and Awanui, while they also protect rural land by lowering groundwater levels to improve productivity.

Managing these drainage areas is split between the Far North District Council (which manages farm drainage) and the Northland Regional Council (responsible for rivers and main tidal flows). The drainage districts are overseen by Council staff and managed in conjunction with the landowners of the various districts through drainage committees. Targeted rates are collected separately in the respective areas.

The Local Government Act 2002 gives the Council the power to make bylaws to regulate the use and management of these drainage assets.

The Land Drainage Bylaw 2019 was made on 03 October 2019, replacing the Land Drainage Bylaw 2009 which had not been reviewed in the time required by section 158 of the Local Government Act 2002.

The Land Drainage Bylaw:

- Ensures Council access to and along the banks of drainage channels and restricts landowner actions which may interfere with this access
- Places restrictions on connecting private drains to drainage channels
- Places obligations on landowners and other persons to ensure that drainage channels and the flow of water is not obstructed (requiring the removal of obstructions if any occur)
- Governs alterations to the drainage channel and the construction and use of stop banks, crossings, and watering places
- Sets out requirements relating to damage, maintenance and repair to drainage assets
- Contains provisions relating to inspections, obstruction of officers, and penalties for breach of the bylaw.

Under section 158 of the Local Government Act 2002, the Council's Land Drainage Bylaw 2019 (the Bylaw) is due for review by 03 October 2024. Under section 160 of the Local Government Act 2002 the review requires the Council to consider whether the Bylaw:

- is still the most appropriate way of addressing the perceived problem with respect to land drainage
- is still the most appropriate form of bylaw
- gives rise to any implications under the New Zealand Bill of Rights Act 1990.

3 Problem definition

3.1 Original problem statement

The problem identified for the original Bylaw was that improperly managed and maintained land drainage assets can impact negatively on contiguous properties. This included:

1. Unsafe and inefficient operation of the land drainage network
2. Improper hazard management to prevent or minimise flooding and erosion, and assist in maintaining water quality
3. Lack of protection of Council land drainage assets
4. Risks to the health and safety of Council employees.

3.2 Other problems relating to the drainage districts not currently controlled or addressed by the Bylaw

No other problems have been identified that could be controlled or addressed by a bylaw.

3.3 Scope

In scope

Problems relating to the drainage districts which are a function of Council to control or address.

Out of scope

Environmental problems are the responsibility of Northland Regional Council.

4 Council's role relating to the drainage districts

Council is responsible for regulating the use and management of the Land Drainage districts.

Under section 10 of the Local Government Act 2002, the purpose of local government is to "... promote the social, economic, environmental, and cultural wellbeing of communities, in the present and for the future". Regulating land drainage can provide social wellbeing benefits by protecting the community and its infrastructure from the harmful effects of flooding. It aligns with the economic wellbeing by ensuring land is viable for crops and farming. It also aligns with environmental wellbeing by minimising the impacts of flooding on the land and waterways (although this is the role of the Regional Council).

4.1 Local Government Act 2002

The Bylaw was made by Council under sections 145 (a and b) and 146 (b)(i) of the Local Government Act 2002:

Council can make a bylaw under section 145 of the Act for the following purposes:

- a) protecting the public from nuisance
- b) protecting, promoting, and maintaining public health and safety
- c) minimising the potential for offensive behaviour in public places.

Under section 146 (b) (i) Council can also make a bylaw for the purpose of:

"managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with water races".

4.2 Other Legislation

The Bylaw was also made pursuant to Part 29 of the Local Government Act 1974 and the Land Drainage Act 1908 and also states that it is made under every other enabling power and authority.

The Bylaw refers to the Interpretation Act 1999 which was replaced by the Legislation Act 2019. This will need to be amended in the Bylaw.

The Bylaw does not remove the need for any necessary resource consents from Northland Regional Council (under the Resource Management Act 1991).

5 Review of Bylaw

The purpose of the Bylaw is to regulate land drainage assets within the land drainage areas in the Te Hiku Ward.

5.1 Protecting public health and safety

The following sections of the Bylaw are appropriate under section 145(b) of the Local Government Act 2002, which deals with protecting, promoting, and maintaining public health and safety.

Restricting access to and along drains

To protect the safety of people and stock, the Bylaw restricts access to and along drains. Having clear areas around drainage infrastructure ensures the safety of people and stock, particularly in emergency situations.

Preventing obstructions to the flow of water

To protect the safety of people and stock, the Bylaw aims to prevent blockages in drains. Water buildup caused by obstructions may overflow onto adjacent land and neighbouring property endangering the safety of people and stock.

Restricting pollution

To protect the safety of people and stock, the bylaw prevents pollutants from being discharged into drainage channels. This includes having dead stock or animals removed so as not to contaminate any water within the drainage channels. It is likely that any pollutants that are in a drainage channel will consequently pollute everything downstream of the source of the pollution.

Restricting crossings across drainage channels

To protect the safety of people and stock, the Bylaw restricts people, stock, vehicles, goods, materials, or infrastructure from crossing drainage channels. The Bylaw states that Council needs to grant permission to anyone wanting to construct these crossings and may also request crossings to be built or maintained.

Further research is required to understand how these issues relating to land drainage are impacting on public health and safety and whether these continue to apply.

5.2 Protection from nuisance

The following sections of the Bylaw are appropriate under section 145(a) of the Local Government Act 2002, which deals with protecting the public from nuisance.

Restricting pollution

To protect people and stock from nuisance, the bylaw restricts people from discharging pollutants into drainage channels. These pollutants may create further nuisance to people, stock, crops, and adjoining waterways downstream from where the pollutants entered the drainage channel.

Minimising obstruction to the flow of water

To protect people and stock from nuisance, the bylaw restricts anyone depositing any debris or rubbish, in or on land in the drainage channel which may create flood water that might encroach and cause a nuisance. An

obstruction in drainage channels may cause flood water to flow through adjoining land or neighbouring property, causing damage to crops and infrastructure, and restrict access to property or stock.

Preventing obstruction to Officers

The Bylaw prevents anyone, whether on private land or not, from obstructing any member, appointee, employee or agent of Council, while carrying out their land drainage duties. Obstructing an officer from their duties would cause nuisance and impact on an officers' ability to carry out their land drainage work.

Further research is required to understand how these issues related to land drainage are impacting on public nuisance and whether these continue to be an issue.

5.3 Minimising damage to land drainage assets

The following sections of the Bylaw are appropriate under section 146 (b) (i) whereby Council can make a bylaw for the purpose of managing, regulating against, or protecting from, damage, misuse, or loss, or for preventing the use of, the land, structures, or infrastructure associated with water races.

The Bylaw minimises unintentional damage to drainage channels by requiring consents for:

- access to and along drainage channels
- connections of private drains to existing drainage channels
- obstruction of drainage channels through foreign material, barriers, or plants
- alteration to drainage channels
- erecting or removing stopbanks alongside drainage channels
- allowing people animals or stock to cross drainage channels
- construction of culverts, bridges or crossings over drainage channels
- construction of watering places for stock.

The land drainage assets are considered infrastructure associated with land under the control of Council. Council has the power to recover for damage by wilful or negligent behaviour under section 175 of the Local Government Act 2002. Also, bylaws can act as a deterrent and therefore having a bylaw in place can prevent damage to these assets.

5.4 Protecting the environment

Council does not have the power to make a bylaw protecting the environment under the Local Government Act 2002. Therefore, a bylaw is not the most appropriate regulatory tool for protecting the environment. Note, there is no mention of protecting the environment in the Bylaw.

5.5 Other requirements

The provisions of this Bylaw do not remove the need for any resource or other consents required under the Resource Management Act 1991 or Building Act 2004. Where consents are required by the Bylaw and by other Acts or regulations, all shall be lodged with the Council at the same time.

5.6 Is the bylaw certain?

In determining if a bylaw is the appropriate form of bylaw, the bylaw needs to be certain e.g., it uses clear wording so people will understand what they are required to do. In general, the Bylaw is consistent with modern legislative drafting styles.

However, while the Bylaw says, "this Bylaw applies to land drainage areas identified in schedules to this Bylaw", the Bylaw does not actually include these schedules. Also, there are no provisions in the Bylaw relating to these schedules; for example, a bylaw will typically say that the Council may amend the content of the schedule by resolution.

5.7 Alignment with other relevant laws and legislation

The Bylaw was made by Council under sections 145 (a & b) and 146 (b) (i) of the Local Government Act 2002.

The Bylaw states that the Interpretation Act 1999 applies to the Bylaw. The Interpretation Act 1999 was replaced by the Legislation Act 2019. This will need to be amended in the Bylaw.

The Bylaw does not remove the need for any necessary resource consents from the Northland Regional Council (under the Resource Management Act 1991).

6 Discussion

6.1 Is a bylaw still the most appropriate way to address the regulate land drainage assets within land drainage areas identified

The review has identified that a bylaw is still the most appropriate way to address the following problems relating to Land Drainage:

- Protecting public health and safety including:
 - Access to and along drains
 - Obstruction to flow
 - Pollution and nuisances
 - Crossings
- Protection from nuisance including:
 - Pollution and nuisances
 - Obstruction of flow
 - Obstruction to Officers
- Minimising damage to land drainage assets including:
 - Access to and along drains
 - Private drain connection
 - Obstruction to flow
 - Removal of obstructions
 - Alterations to drainage channels
 - Stop banks
 - Crossings
 - Watering Places
 - Damage, maintenance and repair
 - Inspections.

6.2 Is the bylaw the most appropriate form of bylaw?

The form of a bylaw is about its content and how it is drafted. A bylaw will be appropriate if it meets several criteria. See the table below:

Criteria	Meeting the criteria	
Does the Bylaw deals with identified problems?	Yes	The Bylaw has provisions which deal with the identified problems.
Does it meet the objectives it is intended to achieve?	Yes	The Bylaw meets its purpose to regulate land drainage assets within land drainage areas.
Is it certain e.g. it uses clear wording so people will understand what they are required to do	In part	Language is clear but there is a need to include maps of the drainage districts in Schedules to the Bylaw.

Criteria	Meeting the criteria	
Is it enforceable and able to be implemented and administered effectively and efficiently	Yes	The Bylaw appears enforceable and able to be implemented and administered effectively and efficiently. The Monitoring Team currently does not have the technical expertise to investigate RFS complaints regarding the drainage channels. A solution to this issue is being worked on by Council staff. This issue does not affect enforcement provisions in the Bylaw.
Does it comply with all relevant laws and legislation?	In part	The Bylaw does comply with relevant Acts such as the Local Government Act 2002, the Local Government Act 1974 and the Land Drainage Act 1908. However, it should refer to the Legislation Act 2019, not the Interpretation Act 1999.

Given there are some issues with the form of the Bylaw, the Bylaw is not the most appropriate form of bylaw and should be amended.

6.3 Does the Bylaw give rise to any implications under the New Zealand Bill of Rights Act 1990?

As required by section 155(2)(b) of the Local Government Act 2002, before a local authority makes a bylaw it must determine whether the proposed bylaw has any implications under the New Zealand Bill of Rights Act 1990.

Part 2 of the New Zealand Bill of Rights Act 1990 sets out civil and political rights that may only be subject to reasonable limits that can be demonstrably justified in a free and democratic society.

The rights or freedoms under the Bill of Rights Act potentially affected by the Bylaw are likely to be:

- 1) the right to freedom of movement in relation to the restriction of access to the land drainage channels for people and vehicles (section 18 of the New Zealand Bill of Rights Act 1990). This is warranted to protect these assets and protect the safety of people and stock.
- 2) the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise (section 21 of the Bill of Rights Act). This is because the Bylaw gives the Council powers to enter private land to inspect parts of the drainage system. However, the Bylaw provisions are fully within the scope of powers the Council already has under sections 171 to 174 of the Local Government Act 2002 and section 332 of the Resource Management Act 1991.

Therefore, the current Bylaw does not raise any implications under and is not inconsistent with the Bill of Rights because any limitations of rights are reasonably justified.

If Council accepts the recommendation by staff to amend the Bylaw, a final assessment of any implications under the Bill of Rights Act will not be possible until these amendments are made.

7 Conclusion

A bylaw is the most appropriate way to regulate the use of land drainage to protect public health and safety, and minimise nuisance and damage. The Bylaw needs to be amended to address some issues with the form of the Bylaw.

6 KARAKIA WHAKAMUTUNGA / CLOSING PRAYER

7 TE KAPINGA HUI / MEETING CLOSE