

## Briefing Paper:

Reporting Officer: Roger Ackers – Group Manager Planning and Policy

Date: 31 May 2024

### Ngā whāinga | Purpose

To seek a Council decision to opt-in or to opt-out of the Future of Severely Affected Land (FOSAL) Programme.

Staff recommend that Council agree to opt-in to the FOSAL Programme and instruct staff to; (i) notify the Minister of Emergency Management and Recovery of the decision; (ii) make available a \$700,000 fund in the 2024-27 Long Term Plan to establish a FOSAL Programme in Te Tai Tokerau; and (iii) establish a project team to initiate and administrate a FOSAL programme. It is recommended by staff that the costs for the establishment of the programme be spread across the LTP as follows; Year One: \$300,000, Year Two: \$200,000, Year Three: \$200,000.

### Horopaki | Context

Central government, led by the Cyclone Recovery Unit, have developed the Future of Severely Affected Land (FOSAL) programme for residential properties affected by the 2023 severe weather events (Cyclones Hale and Gabrielle).

#### ***What is the Future of Severely Affected Land (FOSAL) programme?***

The FOSAL programme is limited to those properties that would face a risk to life from future severe weather events.

The Programme is intended to apply district wide, and in some cases can be applied regionally. Properties affected by the 2023 Weather events require categorisation into the three categories. These are:

- **Category 1:** repair only needed.
- **Category 2:** works are needed to manage or reduce future risk, broken down into:
  - **2A:** further assessment of the property needed to determine type of work required (i.e., to the individual property or community level works),
  - **2P:** works to individual properties (i.e., raising houses, improving drainage),
  - **2C:** community level protection works (i.e., stop banks, stormwater works),
- **Category 3:** risk to life in future severe weather is intolerable and works would not manage or reduce risk.

The Programme can lead to voluntary buy out policies for Category 3 properties. Costs are shared equally between Council and central government if a Council opts in to the programme.

For Category 2 properties (where there is risk, but the risk can be managed through works to the property or within the community) negotiations are entered into between Council and central government on cost sharing as part of opting into the programme.

Whenua Māori including marae are assessed through a Kaupapa Māori pathway which is led by the Cyclone Recovery Unit. Costs for Category 3 whenua Māori is funded by central government and does not include funding from the relevant council. However, for iwi and hapu to access this funding, the Council must opt into the FOSAL programme and categorize residential properties on Whenua Māori.

The Far North District Council has, to date, not opted into the programme.

In March, the Minister for Emergency Management and Recovery (Rt Hon Mark Mitchell) requested the Council decide on FOSAL participation by April 2024. Northland's councils requested a six-month extension from April to October 2024, which was declined on 20 May 2024.

Council can still opt-in to the FOSAL Programme at this time so must decide whether to formally opt-in or opt-out of the FOSAL Programme and inform the Minister. It is unknown when the Minister will formally close access to FOSAL.

## Ngā kōrerorero | Discussion

If the Council opts into FOSAL, it must develop policies, identify, and categorize affected properties, including on Whenua Māori, and share costs of interventions (cost unknown) and buyouts (50%). The costs of demolition and removal will fall on Council (cost unknown).

Based on how other councils who opted in to FOSAL, it must be recognised that this is a complex process which needed dedicated staff to identify properties, and panels of technical experts (engineers or similar) to do risk and feasibility assessments to work out if there was an intolerable risk to life or if works could be done to the property to reduce that risk. The categorisation process took months to complete by the councils who have opted in.

Councils in Auckland, Hawke's Bay and Tairāwhiti, as the most severely impacted regions, have adopted buy out policies for Category 3 properties and are progressing processes for Category 2 properties. The funding arrangements are:

- **Auckland Council:** Funding from central government of \$1,076 million. Auckland Council to provide additional funding of \$908 million which includes an amount of \$387 million for Category 3 buy outs.
- **Gisborne (Tairāwhiti) District Council:** Funding from central government of \$204 million. Gisborne District Council to provide additional funding \$21.4 million which includes an amount of \$15 million for Category 3 buy outs.
- **Hawke's Bay (Hastings District Council, Napier City Council, Wairoa District Council, Central Hawke's Bay District Council and Hawke's Bay Regional Council – *negotiated as a group*:** Funding from central government of \$556 million. The councils are to provide additional funding of \$92.5 million for Category 3 buy outs.

While FOSAL participation is currently voluntary, the potential consequences of not opting in are unclear. There's uncertainty if councils can join FOSAL for future events if they don't opt in now. Not joining could lead to future legal liability if properties should have been classified under FOSAL following the 2023 Weather events. Additionally, there's a significant risk of reputational damage if future events result in harm or death and Council did not opt in to the programme.

If the Council assesses land before joining FOSAL, it must act on findings to avoid risks. It's important to note that FOSAL hasn't been specifically limited to the 2023 weather events, so opting in might mean inability to opt out later. If opting into FOSAL, limiting the Programme to the 2023 weather events would be prudent to keep Council's future options open.

## E whai ake nei | Next Steps

The FOSAL Programme carries significant financial implications. Estimating the cost of opting in depends on various factors, such as setup methods and categorization programs. Collaboration among North Island councils may yield savings by adopting existing policies and programs. However, costs for public engagement and iwi and hapu partnerships remain. Implementation expenses vary based on program design, and buyout costs hinge on program outcomes. It is unclear what costs would be incurred for demolition and removal.

## Issues & Options

# Future of Severely Affected Land (FOSAL)

## 1 Introduction

In 2023, central government lead by the Cyclone Recovery Unit (CRU), developed the Future of Severely Affected Land programme (FOSAL). The programme addresses residential properties that were damaged by the extreme North Island Weather Events (NIWE) of 2023. Affected properties are categorised by risk (see figure 1). The most at-risk properties (Category 3) where there is an intolerable risk of injury or to life in future events, are eligible for a voluntary buy out scheme. Costs for voluntary buy outs are shared equally between central government and councils who have adopted into the programme. Categories 2P and 2C are property and community level interventions. The CRU has not indicated that there is funding available for measures related to these categories (2P and 2C). There is a separate Category 3 Whenua Māori FOSAL Pathway that the CRU will fund directly, but Council is required to undertake the categorisation process. Demolition and removal costs are not included in the government funding arrangement and would become the responsibility of the Council.

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

Figure 1: FOSAL risk categorisation framework.

The Far North District Council and other Northland Councils have not yet opted into the programme. The Minister for Emergency Management and Recovery (Rt Hon Mark Mitchell) (the Minister) has instructed that Council's should indicate their intention on whether they will opt in or opt out of FOSAL.

The Far North District Council continues to maintain a watching brief and participate in regional and national conversations on FOSAL.

The following table provides indicative costs of setting up and implementing programme alongside some indicative costs associated with the buying out of properties if Council opted in.

Action	Estimated Cost	Comments
Policy Suite Development	\$100,000	1x FTE (3 months) includes iwi-hapu & community consultation & legal (possible cost share with Northland Councils & resource pooling with other councils).
Design of categorisation programme	\$100,000	1x FTE (3 months) + costs & legal (possible cost share with Northland Councils & resource pooling with other councils).
Implementation of categorisation programme	\$500,000	3x FTE inspections, engineering assessments, hazard assessments, systems administration & legal.
Cost of buy-out 2 houses at median value	\$745,000	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.
Cost of buy-out 5 houses at median value	\$1,862,500	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.
Cost of buy-out 10 houses at median value	\$3,725,000	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.
Cost of buy-out 20 houses at median value	\$7,450,000	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.

## Ngā tāpiritanga | Attachments

Issues and Options – FOSAL – May 2024

## 2 Purpose

This report identifies the known risks and benefits of opting in or not opting into the FOSAL programme based on current information (20 May 2024). It provides a discussion on the issues relating to adopting or not adopting the FOSAL Programme but does not include a recommendation. The decision to opt-in or opt-out of FOSAL has significant social, economic and cultural implications and is at the full discretion of the Council.

## 3 Context and Situation

The intent of the FOSAL buy-out is to remove people from harm's way and to adapt before future extreme climatic events. The National Institute of Water and Atmospheric Research (NIWA) predicts that Northland will experience more intense climate events because of climate change. Therefore, it is highly likely that communities will be negatively impacted by future severe weather events. FOSAL represents a post-event strategy to aid people to recover from harm and reduce their future risk.

A briefing paper was provided to Council on 11 December 2023 that provided information on voluntary buy out policies other councils have adopted as part of FOSAL. That briefing paper was in response to enquiries from a resident (Kaeo property) asking Council to opt-into FOSAL. That resident continues to make enquires to the Deputy Mayor – Kowhai, as they consider that their property would be categorised as a Category 3 under the FOSAL Programme and are seeking a buyout.

If Council opts into the FOSAL programme, it will be required to:

1. Write a suite of policies on how FOSAL will be applied district wide,
2. Identify affected properties including on Whenua Māori,
3. Undertake categorisation of affected property,
4. Potentially partially fund any property and community level interventions (Categories 2P and 2C), and
5. Fund 50% of any voluntary buy outs (Category 3).

Opting in to FOSAL should not be a reaction to solve standalone issues. Council needs to consider if it is the correct decision for the overall district. If Council opts into FOSAL there will be a cost to establish a new team of specialists or engage consultants to design the process, identify properties affected by the 2023 events, undertake engagement, and undertake feasibility and risk analysis. Further costs will arise from mitigation and remediation works undertaken for Category 2 areas and costs of buy-out for Category 3 properties if they are identified. This would be a significant cost to the ratepayer therefore adopting FOSAL must be effective and necessary.

There are anecdotally two freehold properties (Kaeo and Opua) and an unknown quantity of Whenua Māori settlements/property that might be categorised as Category 3 properties. It is noted that no investigation of these properties has been undertaken by a suitably qualified and experienced professional to substantiate these assertions.

There is a network of councils across the motu who have opted-in and have not opted-in to FOSAL, who are sharing resources and learnings. If Council opted-in to FOSAL it is expected that savings could be made in resources and funding for the setting up of a FOSAL programme. The Northland Councils (Kaipara District Council, Whangarei District Council, Northland Regional Council and Far North District Council) are working together to identify areas where we can collaborate and pool resources.

In late March Council received a letter from the Minister for Emergency Management and Recovery (Rt Hon Mark Mitchell) requesting that Council indicate whether it was going to opt into the FOSAL Programme

before the end of April 2024. The combined Northland Mayors and Chair requested an extension of six months (to October 2024) to enable each council's Elected Members to decide whether to opt-in or opt-out of FOSAL. On 20 May a response was received from the Minister declining the Council's request for extension. Therefore, Council must decide to opt-in or opt-out of FOSAL based on the information to hand.

This report is required to enable the Council to decide on whether to opt-in or opt-out of the FOSAL programme.

## 4 Problem Definition

There are several key issues.

### 4.1 The extent of residential property in the Far North District that would qualify under FOSAL following the 2023 NIWE is unknown due to many reasons including the number of dwellings that are unconsented, are generational housing and/or for other reasons damage was not reported to Council.

The FOSAL buyout Category 3 applies to properties that were directly affected by the 2023 weather events where there is an ongoing intolerable risk to human life or injury from future severe weather. Often the term 'red-sticker' is used to describe houses that are subject to the FOSAL categories, however this is misleading because if a house is classed as damaged to the extent it is unliveable (i.e. red-stickered) it does not mean that there is an ongoing risk to human life or harm. Therefore, a red-stickered house does not automatically qualify as a Category 3 property and eligible for voluntary buy-out under FOSAL. A red-stickered home may indicate that further investigation is required for FOSAL purposes and can help to identify FOSAL land. Following the severe weather events of 2023, the Far North District Council red-stickered one property (Russell). This property was subject to a under slip, and once the slip and the house repaired, it was deemed liveable. The Kaeo and Opuia properties were not red-stickered after the cyclones. No residential buildings on Whenua Māori were red-stickered.

The red-stickering of houses does not indicate whether there is a risk to human life, the only way to determine if a property meets a FOSAL category would be to engage technical experts to undertake feasibility and risk analysis. This would require engagement and buy-in from iwi and hapu, communities and properties directly affected by the 2023 events. Justice and equity issues will arise as Council could be required to determine how to value unconsented dwellings and how to address insured verses uninsured properties.

It's been some 14 months since the NIWE in 2023, and it's likely that property owners who were going to come forward to the Council would have done so by now. The Council is aware of two specific properties in Kaeo and Opuia that would require assessment for the FOSAL Programme. However, occupants on Whenua Māori may not know about the available assistance from the CRU or may prefer no government or Council involvement in their recovery. If the Council opts into the FOSAL Programme, it must conduct a district-wide data collection to determine the program's scope in the district.

### 4.2 If Council doesn't opt in to the FOSAL programme, Council could be liable in the event of future damage to properties if they would have been categorised under FOSAL, and significant reputational damage if there is a loss of life or harm in a future event.

While the FOSAL programme is currently voluntary it is unclear what any future ramifications of not opting into the programme will be. It is also unknown whether the programme will be available for future events by councils who do not opt-in now. If a property should have been classed Category 3 after the 2023 events but was not as Council did not opt-in to the programme, Council has the potential to be legally liable, this has not



been tested in court. If in a future event there is a loss of life or harm and Council did not opt-in to FOSAL, there is a significant risk of reputational damage.

If Council undertakes an assessment of land to determine categorisation prior to opting-in to FOSAL, Council would be obligated to act on the reports. Not to do so could expose Council to reputational and potential legal challenge.

It is an important consideration that FOSAL has not been specifically limited to the events of 2023. If after a future event FOSAL continues to be applied, then Council could be in a position where it has no ability to opt-out having previously opted into the Programme. Should Council opt-in to FOSAL it would be prudent to be very clear that FOSAL is restricted to the NIWE of 2023.

#### **4.3 The Whenua Māori Pathway is only available to iwi & hapu if Council opts into the FOSAL programme.**

Iwi and hapu have an alternative pathway for funding directly through the CRU. The current advice from the CRU is that for iwi and hapu to access that funding, the Council has to opt-in to the FOSAL programme and undertake categorisation of residential properties. The role of Council as assessor on Whenua Māori would need to be managed carefully and require building strong partnerships and trust to preserve iwi and hapu rights to self-determination. Iwi and hapu should be involved as partners in the process to ensure an equitable outcome particularly considering generational and/or unconsented buildings.

#### **4.4 If Council opts-in to the FOSAL programme significant unbudgeted resourcing will be required.**

The cost of setting up and implementing the FOSAL programme will include resourcing appropriate staffing levels, policy development, design, and implementation of the categorisation programme, and then the cost of 50% buy-out of Category 3 properties and possible contributions to Category 2 properties if identified. The costs for demolition and removal are not included in the buy-out of Category 3 properties and the cost would fall to Council. The programme could be a significant cost to ratepayers and the Council.

Action	Estimated Cost	Comments
Policy Suite Development	\$100,000	1x FTE (3 months) includes iwi-hapu & community consultation & legal (possible cost share with Northland Councils & resource pooling with other councils).
Design of categorisation programme	\$100,000	1x FTE (3 months) + costs & legal (possible cost share with Northland Councils & resource pooling with other councils).
Implementation of categorisation programme	\$500,000	3x FTE inspections, engineering assessments, hazard assessments, systems administration & legal.
Cost of buy-out 2 houses at median value	\$745,000	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.
Cost of buy-out 5 houses at median value	\$1,862,500	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.
Cost of buy-out 10 houses at median value	\$3,725,000	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.
Cost of buy-out 20 houses at median value	\$7,450,000	Median value sourced from Infometrics (Dec 2023) approximately \$745,000 – Council contribution of ½.

Table 1: Possible costs of implementing the FOSAL Programme.

#### 4.5 Investment in reducing exposure and vulnerability to hazards is prudent.

If Council opts into the FOSAL programme it is an opportunity to better understand natural hazard risk on residential property and people throughout the district. This will enable better planning for severe weather events and build resilience in communities fostering understanding of risk and promoting preparedness while reducing harm and risk of loss of life. Council can use the risk/assessed category information to inform land use planning, guide investment, reduce exposure of infrastructure including roads, and to drive pre-event planning and investment in Civil Defence.

## 5 Objective

***Goal: Elected members determine whether to opt-in or opt-out of FOSAL.***

To provide sufficient background information to support a Council decision on how to proceed with FOSAL and to signal Councils intent regarding FOSAL to the Minister for Emergency Management and Recovery.

## 6 Options

### 6.1 Option One:

Council opts-out of FOSAL in Te Tai Tokerau and informs the Minister of its decision.

### 6.2 Option Two:

Council opts-in to FOSAL as it relates to the NIWE 2023 and informs the Minister of its decision. Council instructs staff to develop a project plan to initiate and administrate a FOSAL programme in Te Tai Tokerau.

## 7 Conclusion

The FOSAL Programme aims to relocate people from high-risk areas and adapt to future extreme climate events, which are expected to become more frequent and severe in Northland due to climate change. The FOSAL Category 3 buyout applies to properties affected by the 2023 weather events that pose ongoing intolerable risks to human life. The Council is aware of specific properties in Kaeo and Opua that may require FOSAL assessment, but occupants on Whenua Māori may be unaware of available assistance or prefer no external involvement. Opting into FOSAL will require district-wide data collection to determine the program's scope. Determining FOSAL eligibility requires technical feasibility and risk analysis, with engagement from affected communities, iwi, and hapu. Issues of justice and equity will arise, particularly concerning the valuation of unconsented dwellings and insured versus uninsured properties.

The FOSAL Programme has a high potential cost to rate payers and could require significant investment by Council to fund the Programme particularly if numerous Category 3 properties are identified. Iwi and Hapu will not be able to access funding from the CRU if Council does not opt-in to FOSAL. If Council does not opt-in to FOSAL it may be exposed to liability after future severe weather events and may even be unable to access FOSAL in the future. Building on Councils existing hazard management, adopting FOSAL has the potential to reduce vulnerability and exposure of people and places to hazards. It would enable Council to plan for the effective and efficient use of district resources while enabling people to activity reduce risk of significant harm or loss of life.