

Category 3 voluntary buy-out offers for properties affected by Cyclone Gabrielle

Legislation	Ombudsmen Act 1975
Agency	Hastings District Council
Ombudsman	John Allen
Case number(s)	010569; 027234; 023892; 027282
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Four investigations into the process followed by Hastings District Council (the Council) when it made offers under the Category 3 voluntary buy-out scheme for properties affected by Cyclone Gabrielle—Chief Ombudsman considered the valuation process was made as independent as possible; the Council supported owners with financial assistance to obtain their own property valuations and legal advice; and appropriate provision was made for the circumstances owners were in—Chief Ombudsman accepted there was no responsibility on the Council to compensate owners for financial losses and additional expenditures—Chief Ombudsman formed the opinion that the Council’s approach to valuations and buy-outs of properties was not unreasonable.

Background

On 1 June 2023, the New Zealand Government announced its intention to enter into funding arrangements with councils in areas affected by the extreme weather events to offer voluntary buy-outs for owners of high-risk residential properties.¹ The buy-out scheme (the scheme) was delegated to local authorities for implementation. There was no scope in the scheme to consider fault for the effects of the extreme weather events.

The Chief Ombudsman investigated four complaints from owners of properties in the Hastings district that were categorised as Category 3 following the adverse impacts of Cyclone Gabrielle and were subsequently purchased by the Council under the Category 3 buy-out scheme.

¹ <https://www.beehive.govt.nz/release/govt-support-councils-buyout-and-better-protection-cyclone-and-flood-affected-properties>

The complaints were made individually and investigated separately. While the circumstances of each complaint varied, the owners had common concerns about:

1. the independence of the Council's valuation process;
2. the valuation and offer processes not sufficiently accounting for the trauma that owners experienced and the difficult circumstances they were in after Cyclone Gabrielle; and
3. the buy-out offers not addressing financial losses and expenditures, such as consent and planning costs for the construction of dwellings on sites that were later deemed Category 3, and rental and mortgage costs incurred while the buy-out process took place.

Investigation

The Council's Category 3 buy-out policy was adopted in a meeting of the full council on 14 September 2023. The power to enter agreements for acquiring property or property rights in accordance with the policy was delegated to the Chief Executive at a full council meeting on 14 November 2023. The Chief Ombudsman's investigations focused on the adequacy of the process that the Council followed in valuing the properties in question and making buy-out offers.

The independence of the valuation process

The valuation process followed by the Council is outlined in its Category 3 Voluntary Buy-Out Valuation Process document.² This explains the key steps that were involved, including the Council's contribution of up to \$5,000 for the owner's valuation, the role of the Valuation Manager, and the consideration of the valuation report(s) received from the Council's and owner's valuers. The Category 3 Voluntary Buy-out Policy is also publicly available on the Council's website.³

A critical objective of the scheme was ensuring that the valuation process was independent and led by independent experts—in order to mitigate the risk of valuations as a source of conflict with owners and any perception that the process was controlled by the Council as the purchaser.

Information supplied by the owner about their property was collated by the Council's Voluntary Buyout Office (VBO) and provided to the Valuation Manager. The VBO had no other input into the valuations.⁴

The Valuation Manager assigned a registered valuer (from a panel of six valuers representing five Hawke's Bay companies) and provided the same information to the owner's valuer. Upon

² <https://www.hastingsdc.govt.nz/assets/Document-Library/Cyclone-Land-Categorisation-Documents/Category-3-Voluntary-Buy-out-valuation-commissioning-information-and-process.pdf>

³ <https://www.hastingsdc.govt.nz/assets/Document-Library/Cyclone-Land-Categorisation-Documents/Updated-Category-3-Voluntary-Buy-out-Policy-28.03.24.pdf>

⁴ As discussed below, the VBO did have other input during the offer phase.

receiving the valuation reports from both valuers, the Valuation Manager prepared a Valuation Review Report for the VBO, which provided a recommended final valuation for the property. This concluded the valuation phase of the Council's buy-out process.

The Council provided the owner with a copy of its valuer's valuation report and the Valuation Review Report for their property, on request.

The Valuation Manager wrote about the Category 3 buy-out process, and their experience, in a report for the Valuers Education and Integrity Foundation in August 2025. They stated:

My review and recommendation was in compliance with International Valuation Standards, being a professional valuer engaged to review the work of another valuer and as part of that review they may perform certain valuation procedures and/or provide an opinion of value. The respective valuation reports were critically analysed against market information that I held, including a large number of valuations completed for the same purposes, including accepted offers. The strengths and weaknesses of valuations were noted where appropriate before setting out my apportioned market valuation, together with the possible components for a relocation offer.

The next phase in the Council's buy-out process—the offer phase—started when all information was available to enable the calculation of an offer for the property. The Council established an Independent Advisory Panel (IAP) to review all buy-out offers before these were made to property owners. The IAP comprised non-Council appointees and was chaired by a retired District Court Judge.

A buy-out offer was first calculated and presented by the VBO to the IAP, which considered whether the offer had been constructed correctly and complied with the Council's buy-out policy. If endorsed by the IAP, the offer was then presented to the owner. The owner had a three-month period to consider the offer, followed by a mutually agreed period for settlement. The offer phase concluded with a legal settlement.

Accounting for trauma and difficult circumstances

The Council acknowledged that not all owners who accepted a buy-out had a positive experience. The Council considered this was inevitable, and that Category 3 owners suffered considerable trauma after the flooding from Cyclone Gabrielle.

The Cyclone Gabrielle: Category 3 Voluntary Buy-Out Policy Summary Evaluation Report set out the matters considered by the Council in formulating the buy-out policy.⁵ It explicitly stated that the scope of the policy was not intended to address all of the profound effects that the cyclone had on people and did not seek to address all of the damage caused, nor to address existing issues such as a housing shortage and cost-of-living crisis.

⁵ <https://www.hastingsdc.govt.nz/assets/Document-Library/Cyclone-Land-Categorisation-Documents/Category-3-Voluntary-Buy-out-Policy-Summary-evaluation-report.pdf>

Owners were concerned that they did not have the opportunity to negotiate their buy-out offer with the Council, especially where the valuation provided by their valuer was higher than that of the Council's valuer.

The Council explained that while a meeting of the respective valuers was an option that was open to the Valuation Manager to take where they determined this was required, in line with the valuation process, this step was not taken if thought unnecessary, as it added to the costs for those involved. When such a meeting was arranged, it was not a negotiation but rather undertaken to understand the reasons that led to differences in the valuations (if these were not already clear).

The Chief Ombudsman considered that it would have infringed upon the independent nature of the Valuation Manager's role if the Council directed them to convene a meeting in response to owners' concerns about the recommended valuation.

Additional expenditures and financial losses

The Council's buy-out policy did not include compensation for financial losses and expenditures, and no owners received offers which covered such matters.

One of the objectives of the buy-out policy was affordability for ratepayers, alongside the Council's over-arching objective of removing the risk-to-life associated with people living on Category 3 land.⁶

The Chief Ombudsman appreciated that the impacts of Cyclone Gabrielle, and the associated buy-outs of properties, resulted in costs and losses to some owners that could not have been foreseen when they purchased their properties—including where bare sections had been purchased, and resource and building consent processes initiated.

However, the Council's Category 3 buy-out policy, in line with the scheme envisioned by the Government, did not seek to determine fault for the effects of the extreme weather events, and it did not include compensation for financial losses and expenditures incurred by property owners.

Outcome

The Chief Ombudsman considered that the Council endeavoured to establish an independent process to the extent this was possible, given that its panel of valuers, the Valuation Manager and the IAP were all by necessity funded by it, and engaged in contractual relationships with it, in order to implement the buy-out scheme.

⁶ <https://www.hastingsdc.govt.nz/assets/Document-Library/Cyclone-Land-Categorisation-Documents/Updated-Category-3-Voluntary-Buy-out-Policy-28.03.24.pdf>

The Council provided financial assistance to owners to enable them to commission their own valuations, which were assessed alongside those of the Council's valuer. The Chief Ombudsman considered that this enhanced the fairness and equity of the valuation process.

The IAP provided additional independent assurance that the offer construction process had been undertaken in accordance with the Council's policies. There was no evidence to suggest that the Council's valuers were directed to undervalue properties, that the buy-out offers always aligned with the Council's valuation, nor that the Valuation Manager accepted any under-valuations.

The Chief Ombudsman was aware of instances where the Council valuer's valuation was higher than the owner's, and where the buy-out offer was greater than the Council valuer's valuation.

The Chief Ombudsman considered that the Council recognised the difficult circumstances that many Category 3 property owners would be in after Cyclone Gabrielle. The provision of financial assistance to owners to obtain legal advice in relation to the buy-out offers contributed to a fair and equitable process, and the Chief Ombudsman considered that the three-month offer period gave owners sufficient time to assess their options. There was also provision to extend the offer period in some cases.

The Chief Ombudsman considered the Council made appropriate allowance for the circumstances of owners in the buy-out process, while acknowledging that many owners were left financially disadvantaged by Cyclone Gabrielle. The Chief Ombudsman noted that compensation from the Council beyond the market value of a property would likely have been opposed by ratepayers and would not have been financially prudent of the Council.

The Chief Ombudsman formed the opinion that the Council had not acted unreasonably in the process it followed when it made offers under the Category 3 voluntary buy-out scheme for properties affected by Cyclone Gabrielle.

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