



# AGENDA

## Ordinary Council meeting Monday, 25 March 2024

I hereby give notice that an Ordinary meeting of Council will be held on:

**Date:** Monday, 25 March 2024

**Time:** 8.30am

**Location:** Bay of Plenty Regional Council Chambers  
Regional House  
1 Elizabeth Street  
Tauranga

*Please note that this meeting will be livestreamed and the recording will be publicly available on Tauranga City Council's website: [www.tauranga.govt.nz](http://www.tauranga.govt.nz).*

**Marty Grenfell**  
Chief Executive

# Terms of reference – Council

---

## Membership

---

<b>Chairperson</b>	Commission Chair Anne Tolley
<b>Members</b>	Commissioner Shadrach Rolleston Commissioner Stephen Selwood Commissioner Bill Wasley
<b>Quorum</b>	<u>Half</u> of the members physically present, where the number of members (including vacancies) is <u>even</u> ; and a <u>majority</u> of the members physically present, where the number of members (including vacancies) is <u>odd</u> .
<b>Meeting frequency</b>	As required

---

## Role

- To ensure the effective and efficient governance of the City.
- To enable leadership of the City including advocacy and facilitation on behalf of the community.

## Scope

- Oversee the work of all committees and subcommittees.
- Exercise all non-delegable and non-delegated functions and powers of the Council.
- The powers Council is legally prohibited from delegating include:
  - Power to make a rate.
  - Power to make a bylaw.
  - Power to borrow money, or purchase or dispose of assets, other than in accordance with the long-term plan.
  - Power to adopt a long-term plan, annual plan, or annual report
  - Power to appoint a chief executive.
  - Power to adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
  - All final decisions required to be made by resolution of the territorial authority/Council pursuant to relevant legislation (for example: the approval of the City Plan or City Plan changes as per section 34A Resource Management Act 1991).
- Council has chosen not to delegate the following:
  - Power to compulsorily acquire land under the Public Works Act 1981.
- Make those decisions which are required by legislation to be made by resolution of the local authority.
- Authorise all expenditure not delegated to officers, Committees or other subordinate decision-making bodies of Council.
- Make appointments of members to the CCO Boards of Directors/Trustees and representatives of Council to external organisations.
- Consider any matters referred from any of the Standing or Special Committees, Joint Committees, Chief Executive or General Managers.

## **Procedural matters**

- Delegation of Council powers to Council's committees and other subordinate decision-making bodies.
- Adoption of Standing Orders.
- Receipt of Joint Committee minutes.
- Approval of Special Orders.
- Employment of Chief Executive.
- Other Delegations of Council's powers, duties and responsibilities.

## **Regulatory matters**

Administration, monitoring and enforcement of all regulatory matters that have not otherwise been delegated or that are referred to Council for determination (by a committee, subordinate decision-making body, Chief Executive or relevant General Manager).



## Order of Business

<b>1</b>	<b>Opening karakia</b> .....	<b>7</b>
<b>2</b>	<b>Apologies</b> .....	<b>7</b>
<b>3</b>	<b>Public forum</b> .....	<b>7</b>
<b>4</b>	<b>Acceptance of late items</b> .....	<b>7</b>
<b>5</b>	<b>Confidential business to be transferred into the open</b> .....	<b>7</b>
<b>6</b>	<b>Change to the order of business</b> .....	<b>7</b>
<b>7</b>	<b>Confirmation of minutes</b> .....	<b>7</b>
	Nil	
<b>8</b>	<b>Declaration of conflicts of interest</b> .....	<b>7</b>
<b>9</b>	<b>Deputations, presentations, petitions</b> .....	<b>7</b>
	Nil	
<b>10</b>	<b>Recommendations from other committees</b> .....	<b>7</b>
	Nil	
<b>11</b>	<b>Business</b> .....	<b>8</b>
	11.1 Egret Avenue / Te Mutu Crescent Land Categorisation.....	8
<b>12</b>	<b>Discussion of late items</b> .....	<b>26</b>
<b>13</b>	<b>Public excluded session</b> .....	<b>26</b>
	Confidential Attachment 1 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation 26	
	Confidential Attachment 2 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation 26	
	Confidential Attachment 3 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation 26	
	Confidential Attachment 5 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation 26	
<b>14</b>	<b>Closing karakia</b> .....	<b>27</b>



- 1 OPENING KARAKIA**
- 2 APOLOGIES**
- 3 PUBLIC FORUM**
- 4 ACCEPTANCE OF LATE ITEMS**
- 5 CONFIDENTIAL BUSINESS TO BE TRANSFERRED INTO THE OPEN**
- 6 CHANGE TO THE ORDER OF BUSINESS**
- 7 CONFIRMATION OF MINUTES**  
Nil
- 8 DECLARATION OF CONFLICTS OF INTEREST**
- 9 DEPUTATIONS, PRESENTATIONS, PETITIONS**  
Nil
- 10 RECOMMENDATIONS FROM OTHER COMMITTEES**  
Nil

## 11 BUSINESS

### 11.1 Egret Avenue / Te Mutu Crescent Land Categorisation

**File Number:** A15649330

**Author:** Phil Kai Fong, Team Leader: Strategic Property  
 Nick Swallow, Contractor: Corporate Solicitor

**Authoriser:** Alastair McNeil, General Manager: Corporate Services

**Please note that this report contains confidential attachments.**

Public Excluded Attachment	Reason why Public Excluded
Item 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation - Attachment 1 - Attachment 1 - Confidential - Tonkin Taylor EgretQLRA-1.0 - Final - 8.3.24	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons.
Item 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation - Attachment 2 - Attachment 2 - Confidential - Report to TCC - Jeff Farrell - Final (002)	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons.
Item 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation - Attachment 3 - Attachment 3 - Confidential - Preliminary Land Categorisation	s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons.
Item 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation - Attachment 5 - Attachment 5 - Confidential - Indicative Property Financial Assessment	s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).

### PURPOSE OF THE REPORT

1. This report seeks direction on the Council’s participation in the Future of Severely Affected Locations (“**FOSAL**”) programme.
2. A Council decision is sought on:
  - Participation in the FOSAL voluntary buyout programme;
  - Preliminary categorisation of impacted properties; and
  - Delegation to the Chief Executive to negotiate and enter into agreements with the owners of Category 3 properties and the Crown.



---

## RECOMMENDATIONS

That the Council:

- (a) Receives the report "Egret Avenue / Te Mutu Crescent Land Categorisation".
  - (b) Adopts the use of the Future of Severely Affected Locations process (**FOSAL**) for properties on Egret Avenue and Te Mutu Crescent noted in this report (**the Taipari Properties**).
  - (c) Approves the preliminary categorisation of properties as shown in **Confidential Attachment 3**.
  - (d) Approves the Resolution Framework in **Attachment 4**.
  - (e) Approves use of the Stormwater Reactive Reserve Fund to fund Council's proportionate share of Category 3 property acquisitions.
  - (f) Notes that Resolution (e) is inconsistent with Council's Stormwater Reactive Reserve Fund Policy (**SRRF Policy**) because the purpose of that policy is to address flooding issues rather than issues arising from landslides, notes that Resolution (e) is a one-off use of the Stormwater Reactive Reserve Fund, and that Council does not intend changing the SRRF Policy in response to this one-off issue.
  - (g) Instructs staff to progress an engineering brief for remediation / mitigation options for the Taipari Slips including (but not necessarily limited to) further geotechnical investigation, detailed design, consideration of consenting requirements, and final costing prior to any physical works being undertaken.
  - (h) Approves the purchase of Category 3 properties (should these be confirmed after consultation with relevant property owners) and delegates authority to the Chief Executive to implement FOSAL, including:
    - (i) Final decision on land categorisation following consultation with owners of the Taipari Properties;
    - (ii) Negotiation and entering into any associated contracts with the Cyclone Recovery Unit for the co-funded acquisition of properties categorised as Category 3 under FOSAL and the costs of any remediation / mitigation works to be funded through the Local Government Flood Resilience Co-investment Fund (**Flood Resilience Fund**); and
    - (iii) Negotiation and entering into agreements with property owners for the acquisition of any Category 3 Properties.
  - (i) Notes for the avoidance of doubt, that Council's adoption of FOSAL is a one-time only decision taken solely because of the offer of Crown contributions in response to the 2023 North Island severe weather events and is not intended to be representative of how Council may approach natural disaster recovery on an ongoing basis.
  - (j) Retains **Attachments 1 and 2** in confidential under section 7(2)(a) of the Local Government Official Information and Meetings Act 1987 until property owners have been notified of the outcome of this report and notes that part of Attachment 2 will be redacted on release for privacy reasons.
  - (k) Retains **Attachment 3** in confidential indefinitely under section 7(2)(a) of the Local Government Official Information and Meetings Act 1987 as it contains private information.
  - (l) Retains **Attachment 5** in confidential under section 7(2)(h) of the Local Government Official Information and Meetings Act 1987 indefinitely as it contains information that will continue to be commercially sensitive.
-

## EXECUTIVE SUMMARY

1. Recent landslips in 2022 and 2023 affected approximately 21 properties in Maungatapu, nine of which were on situated on the north-western side of the Maungatapu peninsula facing the Tauranga Harbour. Eleven of the properties were situated on the south-eastern side of the Maungatapu peninsula near the Taipari Reserve (facing towards Welcome Bay)<sup>1</sup>. Council initially advised property owners that it would not be responsible for the repair of slips affecting private property.
2. On 1 June 2023, the Crown announced it would enter into a funding arrangement with certain councils in cyclone and flood affected regions to help support affected communities.
3. In September 2023, Council received an offer from the Crown for financial support for properties categorised as Category 3 under FOSAL and possible funding for specific projects to mitigate risk to Category 2 properties (“the Crown Funding Offer”).
4. Council needs to make a decision as to whether it will participate in FOSAL, and apply that process to the Taipari Properties, given the availability of the Crown Funding Offer.
5. This report includes discussion and recommendations on the following issues:
  - (a) Council’s participation in FOSAL;
  - (b) Preliminary decision on FOSAL classification of the Taipari Properties;
  - (c) Methodology for FOSAL voluntary buyout scheme applicable to Category 3 properties; and
  - (d) Instructions to staff to progress the scope and completion of any mitigation works required to reduce risk to Category 2 properties.

## BACKGROUND

### Overview of land instability in Maungatapu and preliminary Council steps

6. The Maungatapu peninsula has had a long history of landslips. These historic slips had mainly affected coastal cliffs characterised by steep slopes around the edges of the elevated peninsula. However, in January 2023, an extreme rainfall event caused two large landslips on the Taipari Reserve (**Taipari Slips**) between Te Mutu Crescent and Egret Avenue in Maungatapu.
7. Council has a statutory obligation under the Building Act 2004 and/or the Civil Defence Emergency Management Act 2002 to assess whether buildings are considered dangerous where the property may be unsafe for residents, the wider public, or may cause damage to other properties. While Council will share assessment information collected with property owners, Council has no general obligation to repair or remediate the effects of a landslide entirely on private property.
8. Where a landslide involving Council land causes damage to private property, Council will consider any legal duties or obligations that it may owe to property owners in deciding how to respond.
9. The owners of properties affected by slips involving coastal cliffs around the edges of the Maungatapu peninsula were advised that Council would not proactively take steps to resolve the landslips (such as repairs to the cliffs or property purchases). However, Council has continued to work with the owners to help facilitate any steps they may wish to take (e.g. facilitating discussions with the Regional Council around resource consents for repairs).
10. The Taipari Slips resulted in damage, of varying degree, to five properties along Egret Avenue. Council’s initial response to owners of the Taipari Properties was that it was highly unlikely to take any steps beyond its regulatory function or take measures to remediate property damage.

---

<sup>1</sup> The remaining slip was between two residential properties and did not require any ongoing Council involvement.

11. Council commissioned Tonkin & Taylor Limited (**T+T**) to undertake regular visual monitoring of the Taipari Slips to record any significant changes to the area which could indicate further instability or require action. The most recent inspection was undertaken on 31 January 2024 and indicated the following:
  - (a) Groundwater flow, which had been regular and persistent for several months following the Taipari Slips, had decreased since initial observations;
  - (b) While there were some shallow failures to some areas, there were no significant changes to the landslide geomorphology; and
  - (c) No obvious tension cracks or evidence of ground surface movement were observed in the Te Mutu properties above the Taipari Slips.

## DISCUSSION

### Development of the FOSAL Process

12. FOSAL is a “one-off” policy developed by the Crown to aid recovery from certain defined severe weather events in 2023. It represents a way to classify land use risk to help support affected communities and intended to provide certainty to residents so they can move on from the effects of storm damage as soon as possible. It also provides an opportunity to secure Crown funding for the voluntary buyout of affected homeowners where there is an intolerable risk of injury or death in the event of future severe weather events that cannot be sufficiently mitigated. In some circumstances, financial support may also be provided by the Crown for any physical works to make land safe again.
13. The Cyclone Recovery Unit (**CRU**) was established in March 2023 to lead, coordinate and monitor recovery from severe weather events. The CRU is part of the Department of Prime Minister and Cabinet.
14. A critical element of FOSAL is a funding package and process underpinning the programme which is entirely voluntary for councils and property owners. The funding package and process is administered by the CRU. FOSAL has no specific written policy – rather, it is a set of principles that local authorities can adopt with a degree of local variation. The CRU have advised specifically that “*Councils have flexibility in how they respond and should consider what is appropriate and fit for purpose for them*”. In practice, FOSAL was being developed in real-time as responses to the 2023 severe weather events were being undertaken.
15. The first phase of FOSAL was particularly focused on the most severely impacted areas in Auckland, Tairāwhiti and Hawke’s Bay. The second phase of FOSAL included other affected regions including Northland, Waikato, Bay of Plenty, Manawatū-Whanganui and Wellington (Wairarapa). Councils included in the second phase were directed to the response from Hawke’s Bay Councils (Hastings District Council in particular) to understand how the FOSAL policy operated in practice. The Hawke’s Bay events were largely related to flooding. However, Auckland Council had extensive landslips in addition to flooding and accordingly, the response by Auckland Council in relation to landslip affected properties has been directly relevant to Council’s response to the Taipari Slips in Tauranga.
16. FOSAL involves properties being categorised according to the level of risk to life and whether that risk can feasibly be reduced to acceptable levels through mitigation works. There are essentially three categories:
  - **Category 1** where risk to life is low and repairs to property are all that is required to manage the risk from future severe weather events.
  - **Category 2** where the risk to life from future severe weather events is too high but can be mitigated by physical works.
  - **Category 3** where the risk to life from future severe weather events is intolerable and cannot be sufficiently mitigated.

17. FOSAL can also include a number of sub-categories for Category 2 where Councils may have to determine if property level interventions or community level interventions are needed to manage risk from future severe weather events. However, as Tauranga is only dealing with a relatively small number of properties affected by landslides, it is recommended that Council adopt a streamlined approach to the risk categories without reference to the sub-categories for Category 2. If Council adopts this streamlined process, then the three categories for Tauranga will be classified on the following basis:

<b>Category 1</b>	These properties are considered low / acceptable risk from future land instability events. This means the home can be repaired / remain.
<b>Category 2</b>	Future land instability risk is present and more than low / tolerable, but community or property-level interventions will be capable of managing future land instability risks.
<b>Category 3</b>	Future land instability risk cannot be sufficiently mitigated. Properties in this risk category are not safe to live in because of the unacceptable / intolerable risk of future land instability and loss of life.

18. For Category 3 residential properties, the Crown is supporting councils to offer a voluntary buyout of those properties. The cost of the property buyouts are shared between the Crown and the local authority.
19. FOSAL is also tied to a “best of science” technical assessment. CRU have a clear expectation that a “best of science” approach will be undertaken when assessing land categorisation. For example, eligibility for Category 3 buyout contributions will require an assessment of the intolerable level of risk to life and the inability to feasibly or economically mitigate that risk.
20. For Category 2 works, the Crown has established the Local Government Flood Resilience Co-investment Fund (**Flood Resilience Fund**). This is a contestable fund where priority was given to applications that would deliver tangible near-term resiliency, and focusing primarily on initiatives that will make people safer, sooner. The CRU received numerous submissions during the first 2 application tranches, to the extent that the Flood Resilience Fund is all but exhausted.

**Potential application to Tauranga**

21. Heavy rainfall commencing on 26 January 2023 and ending on 3 February 2023 in the Northland, Auckland, Waikato, and Bay of Plenty regions has been colloquially referred to as the “2023 Auckland Anniversary Weekend severe weather event” (**Auckland Anniversary weather event**).
22. The CRU facilitated FOSAL workshops for councils outside of the three main impacted areas in August and September 2023. While FOSAL is not backed by legislation (i.e. there is no statutory requirement for councils to participate), the workshops indicated that implementation of FOSAL should be a simpler process to how it was applied in Auckland, Tairāwhiti and Hawke’s Bay because of the small scale of impact, although other Councils would be guided by the same principles.
23. With the potential for FOSAL to apply more broadly across other affected areas, both Council staff and affected residents considered whether there was some basis for Council to revisit its previous approach, where Council would meet its statutory and regulatory obligations only.

24. As part of its response, Council consulted Jeff Farrell (Strategic Project Manager – Whakatane District Council) given his experience in providing advice on landslide risk management to a number of other councils, as well as his participation on multiple national working groups relating to natural hazard risk management.
25. Mr Farrell recommended to Council that they undertake a Quantitative Landslide Risk Analysis (**QLRA**) of the properties impacted by the 2 landslides which occurred the night of 28 January 2023 during the Auckland Anniversary weather event, together with properties immediately above those landslides, and to users of the public road (Egret Avenue) and public walkway running along the Fantail Drive and Taipari Street Reserves. The QLRA would be used to inform decision-making on this issue. Auckland Council staff had previously advised that QLRA assessments were also being used as the basis for the FOSAL response in Auckland.
26. On 22 September 2023, Council received notification of the Crown Funding Offer where the Crown advised that it would be prepared to share 50% of the buyout costs for Category 3 properties, less any private insurance or Earthquake Commission proceeds.

### **Decision on the application of FOSAL to Maungatapu slips**

27. With the availability of the Crown Funding Offer, and given that FOSAL is a voluntary programme, Council is required to make a decision on whether to adopt FOSAL and the extent of its application.
28. The 3 main criteria for FOSAL are:
  - a. Residential properties;
  - b. Significantly impacted by the North Island Severe Weather Events (**NIWE**) in 2023; and
  - c. Where people in those properties would face a risk to life from future severe weather events.
29. The Chief Executive advised a number of residents in Egret Avenue and Te Mutu Crescent by letter dated 31 October 2023, that it would progress consideration of FOSAL subject to formal confirmation from Council. It is now recommended that Council affirms that process and adopts the use of FOSAL as noted in Recommendation (b).
30. The properties affected by slips involving coastal cliffs around the edges of the Maungatapu peninsula are more complex. Cliff-top erosion is an ongoing issue throughout Tauranga and the regression of the coastal edge is a constant process (albeit sudden and dramatic slips can occur). A number of landslips affecting coastal cliffs occurred prior to 2023 and do not meet the criteria for FOSAL.
31. Council's Coastal Structures Policy 2020 was also considered. The policy provides that Council will not construct coastal protection structures that are intended to primarily benefit private or commercial property.
32. On 31 October 2023, the Chief Executive advised owners of properties affected by coastal cliff landslips that Council would not apply FOSAL to cliff-top properties.

### **FOSAL Categorisation**

33. A QLRA was undertaken by T+T. The final QLRA entitled "*Quantitative Landslide Risk Analysis – Egret Avenue Landslides, Maungatapu*" dated March 2024 (**T+T QLRA**) is included as **Confidential Attachment 1**. The T+T QLRA determined that:
  - a. 7 properties have a level of risk to Loss of Life that is High.
  - b. 2 properties have a level of risk to Loss of Life that is Medium.
  - c. 2 properties have a level of risk to Loss of Life that is Low.

---

<sup>2</sup> The descriptors for the level of risk are taken from the Bay of Plenty Regional Policy Statement (see below).

34. The T+T QLRA also identified a number of conceptual remediation options including the following:
- a. Catch fence;
  - b. Debris bund;
  - c. Drainage;
  - d. Earthwork slopes (partial or full buttressing of the slopes); and/or
  - e. Soil nailing.
- All of the conceptual options discussed in the T+T QLRA would require further investigation, detailed design, consideration of consenting requirements, and final costing prior to any physical works being undertaken.
35. The T+T QLRA was Peer Reviewed by Dr Tim Davies who concluded in his summary that the risk analysis had been carried out in line with accepted methodologies and within relevant regulatory frameworks and standards.
36. Following review of the T+T QLRA, Jeff Farrell has provided a summary of the QLRA process and its application to FOSAL (**Farrell Summary**). The Farrell Summary is included as **Confidential Attachment 2** and outlines a number of properties that Mr Farrell concludes would meet the criteria for a Category 3 voluntary buyout programme. The Farrell Summary also concludes that there are a number of properties that do not meet all of the necessary criteria to be included in FOSAL. This relates to a recent clarification from the CRU that actual damage to properties is needed to be eligible for the Crown Funding Offer.
37. Subject to Council adopting FOSAL and its application to the Taipari Slips, and taking into account the T+T QLRA and the Farrell Summary, Council staff recommend that the categorisation of properties as shown in **Confidential Attachment 3** is confirmed and the owners of those properties notified accordingly.
38. The Farrell Summary notes that next steps for Council should include scoping a brief for engineering consultants to submit proposals for an engineering option in its risk management programme for the Taipari Slips. Accordingly, it is recommended that Council instructs staff to
- a. Progress the engineering brief for remediation / mitigation options for the Taipari Slips including (but not necessarily limited to) further geotechnical investigation, detailed design, consideration of consenting requirements, and final costing prior to any physical works being undertaken; and
  - b. Delegates authority to the Chief Executive to negotiate the terms of an agreement with CRU for the costs of any remediation / mitigation works to be funded through the Flood Resilience Fund.

### **Category 3 properties – Voluntary Buyout Framework**

39. Subject to Council adopting the categorisation of properties as requested in paragraph 37 above, Council is required to approve the basis on which voluntary offers will be made to owners of Category 3 properties.
40. A Resolution Framework for Category 3 properties has been prepared by Council staff with the assistance of external legal support (**Resolution Framework**) and is included as **Attachment 4**. The Resolution Framework incorporates a streamlined process of the buyout approach in Auckland and Hawkes Bay to reflect the limited number of properties involved.
41. Staff recommend that Council:
- a. Approves the adoption of the Resolution Framework;
  - b. Delegates authority to the Chief Executive to negotiate the terms of any agreements eligible for voluntary buyout substantially in accordance with the principles set out in the Resolution Framework; and
  - c. Delegates authority to the Chief Executive to negotiate a cost-sharing agreement with the CRU in accordance with the Crown Funding Offer.

## STRATEGIC / STATUTORY CONTEXT

42. Council adopted the Response to Landslides Policy 2024 on 19 February 2024. However, clause 2.1 of that policy provides that it only applies to the council response to landslides which occur wholly or partially within Tauranga City Council boundaries after the date of adoption of the policy. The Taipari Slips occurred prior to the adoption of that policy.
43. Acceptance of the Crown Funding Offer and adoption of FOSAL is intended to be a one-off decision arising from the Crown response to the 2023 North Island Severe Weather Events and is not intended to create any precedent for how Council may respond to future natural hazard events in Tauranga.

## OPTIONS ANALYSIS

44. **Option 1 - Participate in FOSAL**
  - a. If Council decides to participate in FOSAL, then it will need to determine which of the three land categories apply (on a preliminary basis).
  - b. If Category 1 land is identified, no actions are required, given the risk is considered to be low.
  - c. If Category 2 land is identified, the risk is considered to be high, but capable of being mitigated to an acceptable level. For the Taipari Properties, Council would lead remediation options as land may be required to provide future resilience to other properties.
  - d. If Category 3 land is identified, a voluntary buyout process is to be adopted setting out the scope and methodology for Council's participation. This is set out in the Resolution Framework.
45. For Category 3 properties, notwithstanding financial support from the Crown, any properties acquired under FOSAL will be owned by Council. There is an expectation from the Crown that Category 3 properties purchased under FOSAL will not be habitable and are likely to be demolished. Council will separately need to consider the future use of land acquired under FOSAL. This may include use of land for remediation works to provide future resilience to other properties as noted in paragraph 44 above.

*Implications of non-participation in voluntary buy-out scheme*
46. Landowners are not required to participate in any buyout process nor to vacate Category 3 land. However, any decision to remain on this land may have significant implications for not only the value of the land but also possibly for future insurance and whether future building consents will be granted.
47. **Option 2 – Do not participate in FOSAL**
  - a. If Council chooses not to participate in FOSAL, property owners will be placed in a position where there is a known risk owing to the slips, and no external financial support to move or make their dwelling safe from future landslip events. It is possible that private and EQC insurance will be insufficient to restore property owners to the same financial position they may have been in prior to the landslip event.

48. Advantages and Disadvantages of Option 1 and Option 2 are set out in the table below:

Option	Advantages	Disadvantages
<p>Option 1 – Participate in FOSAL</p> <p><b>Recommended</b></p>	<ul style="list-style-type: none"> <li>• Recognises the unprecedented nature of this situation and the need to provide resolution and certainty to landowners.</li> <li>• Ensures suitable financial support for the most severely affected properties (through the Category 3 process) and helps identify where remedial measures are suitable (through the use of Category 2).</li> <li>• Supports the wellbeing of vulnerable members of our community directly impacted by the slips on Council’s reserve as a result of the Auckland Anniversary severe weather event by assisting them to move on.</li> <li>• Is consistent with the approach of other Councils who have been affected by 2023 severe weather events.</li> </ul>	<ul style="list-style-type: none"> <li>• Incurs financial consequences for Council and the wider ratepayer community.</li> <li>• Legal/negotiation expertise required to establish process and to buyout properties.</li> <li>• Independent valuation expertise required to value properties prior to the 2023 Auckland Anniversary severe weather event.</li> <li>• Government contribution is capped at 50% after private insurance and EQC payouts are deducted from property valuations.</li> <li>• Doesn’t include other miscellaneous costs including removal of dwelling and infrastructure.</li> <li>• Potential creation of moral precedent to respond to future severe weather events.</li> </ul>
<p>Option 2 – Do not participate in FOSAL</p> <p><b>Not recommended</b></p>	<ul style="list-style-type: none"> <li>• Does not incur financial consequences to Council or wider ratepayer community</li> <li>• Council will not own land that it has to remediate or maintain.</li> <li>• No creation of a moral precedent to respond to future events.</li> </ul>	<ul style="list-style-type: none"> <li>• Does not recognise or reflect the unique circumstances and unprecedented nature of this situation.</li> <li>• Does not provide resolution or certainty to property owners.</li> <li>• Does not ensure suitable financial support for the most severely affected properties (through the Category 3 process) or help identify where remedial measures are</li> </ul>



		<p>suitable (through the use of Category 2).</p> <ul style="list-style-type: none"> <li>• Does not support wellbeing of impacted members of community.</li> <li>• Does not remove risk to life for any Category 3 properties if those owners moved back into their properties.</li> </ul>
--	--	---

**FINANCIAL CONSIDERATIONS**

49. Council’s 50% share of any Category 3 property acquisitions is effectively a “top-up” following payouts or settlements from private insurance and EQC cover. An example is provided below:

House & Land Valuation	\$1,100,000
(Less) Insurance for damage	(\$200,000)
(Less) EQC payment	(\$50,000)
Balance	\$850,000
Council’s 50% share	\$425,000

50. Based on the provisional Category 3 assessments, the indicative cost to Council is set out in **Confidential Attachment 5**.

51. The financial assessment is based on a number of assumptions:

- a. The estimated cost is using Council’s rating values before the 2023 Auckland Anniversary severe weather event.
- b. The cost of demolition of any properties purchased by Council (a possible requirement for Crown buyout) is based on a \$75,000 cost per property (excluding GST), which is an estimate (not a quote). The demolition costs will be excluded from the Crown’s share of the buyout costs.
- c. Where properties have insurance, any entitlement to a claim settlement will be taken into account under the buyout policy and in the buyout offer. Any EQC payments will also be taken into account under the policy and in the buy-out offer.

52. Council is restricted in its options to fund property acquisitions as it does not have surplus/unallocated revenue. Council’s Stormwater Reactive Reserve Fund (**TCC Stormwater Fund**) currently has a balance of approximately \$14 million. In the event that Council funds its contribution for property buyouts from the TCC Stormwater Fund, debt will increase by the proportionate amount. Offsetting savings will be required throughout the business to enable the debt impact to be minimised.

53. On 7 December 2015, Council adopted the Stormwater Reactive Reserve Fund Policy (**SRRF Policy**). The objectives in clause 2 of that policy provide for the utilisation of the TCC Stormwater Fund following intense rainfall events that result in flooding.

54. While there were some properties affected by inundation and siltation, the majority of damage from the Taipari Slips was caused by the impact of landslide runoff debris.

55. Notwithstanding its intended application to flooding events, the SRRF Policy includes a number of general principles which would be consistent with Council’s response to the Taipari Slips including:

- a. Emergency response and recovery (clause 3);
- b. Potential property purchase (clause 3);
- c. Assessment of risk to life / ability to reduce the risk to life (clause 5.1).

56. In accordance with section 80 Local Government Act 2002, it is recommended that Council:
- a. Acknowledges that use of the Stormwater Reactive Reserve Fund for properties affected by landslides may be inconsistent with the provisions of the SRRF Policy;
  - b. Approves utilisation of the Stormwater Reactive Reserve Fund to meet Council's contribution to the acquisition of Category 3 FOSAL properties; and
  - c. Confirms that it does not intend to amend the SRRF Policy to accommodate this decision.

## LEGAL IMPLICATIONS / RISKS

57. FOSAL is ultimately a means to reduce risk to life and properties that goes further than how Councils would ordinarily respond to such events. It may therefore represent a reduction in legal risk.
58. Council is accountable to the wider ratepayer community. Use of the Stormwater Reactive Reserve Fund and participation in FOSAL may not be perceived as being in the wider public interest.

## CONSULTATION / ENGAGEMENT

59. Public consultation is not considered necessary on this matter. The strict parameters for the application of FOSAL means that the widespread application of FOSAL in other parts of Tauranga is not realistic, while the CRU has been clear that FOSAL is a one-off response. In terms of the area where it is proposed to apply FOSAL, only a limited scale of Category 3 land is recommended (with attendant limited financial implications), while the likely availability of Crown funding for either buyouts or any remediation works further reduces any financial implications.
60. Consideration has been given to the level of engagement and consultation on Council's decision to adopt FOSAL and the potential financial implications. In broad terms, and in consideration of the Local Government Act 2002's requirement that when making decisions Council needs to "give consideration to the views and preferences of persons likely to be affected by, or to have an interest in, the matter", it is considered that Council has a good understanding of the likely position of community stakeholders. In particular, there has been consideration of 4 particular groups of the community:
- a. Owners of properties included in the T+T QLRA – There has been extensive communications with this group throughout the process including correspondence, phone discussions, and face-to-face meetings. This group has widely supported Council's adoption of FOSAL.
  - b. Owners of properties in close proximity to the properties included in the T+T QLRA – While there has not been any significant level of engagement with this group, it is anticipated that they would support Council's adoption of FOSAL on the basis that it will help increase future resilience in the area.
  - c. Owners of other properties on the Maungatapu peninsula affected by landslips – Council has engaged directly with a number of other property owners including correspondence, phone discussions, and face-to-face meetings. This group would be expected to reluctantly agree with Council's adoption of FOSAL because of potential future effects.
  - d. General ratepayer community – the expectation is that the response from this group would be mixed. This is the general experience from consultation undertaken in Auckland, Tairāwhiti and Hawke's Bay. Those expressing support have noted the moral obligation to participate, support wellbeing impacts and council assistance to support access to safe homes and certainty for future. Those objecting to FOSAL have cited that it is not the role of councils to supplant private and EQC insurance, and the possibility of creating precedent.

## SIGNIFICANCE

61. The Local Government Act 2002 requires an assessment of the significance of matters, issues, proposals and decisions in this report against Council's Significance and Engagement Policy. Council acknowledges that in some instances a matter, issue, proposal or decision may have a high degree of importance to individuals, groups, or agencies affected by the report.
62. In making this assessment, consideration has been given to the likely impact, and likely consequences for:
  - (a) the current and future social, economic, environmental, or cultural well-being of the district or region
  - (b) any persons who are likely to be particularly affected by, or interested in, the decision.
  - (c) the capacity of the local authority to perform its role, and the financial and other costs of doing so.
63. In accordance with the considerations above, in particular the points noted in the consultation section, and the criteria and thresholds in the policy, it is considered that the decision is of medium significance.



## ENGAGEMENT

64. Taking into consideration the above assessment, that the decision is of medium significance, officers are of the opinion that no further engagement is required prior to Council making a decision.

## NEXT STEPS

65. If Council adopts FOSAL and resolves to proceed as set out in this report, the next steps are to:
  - a. Advise property owners of FOSAL categorisation;
  - b. Enter into negotiations for the acquisition of any Category 3 properties; and
  - c. Enter into negotiations with the Crown under the Crown Funding Offer.

## ATTACHMENTS

1. **Attachment 1 - Confidential - Tonkin Taylor EgretQLRA-1.0 - Final - 8.3.24 - A15693987 - Public Excluded**
2. **Attachment 2 - Confidential - Report to TCC - Jeff Farrell - Final (002) - A15693990 - Public Excluded**
3. **Attachment 3 - Confidential - Preliminary Land Categorisation - A15693995 - Public Excluded**
4. **Attachment 4 - Resolution Framework - A15693999**  
5. **Attachment 5 - Confidential - Indicative Property Financial Assessment - A15694002 - Public Excluded**

# Egret Avenue / Te Mutu Crescent Land Categorisation

## Draft Resolution Framework

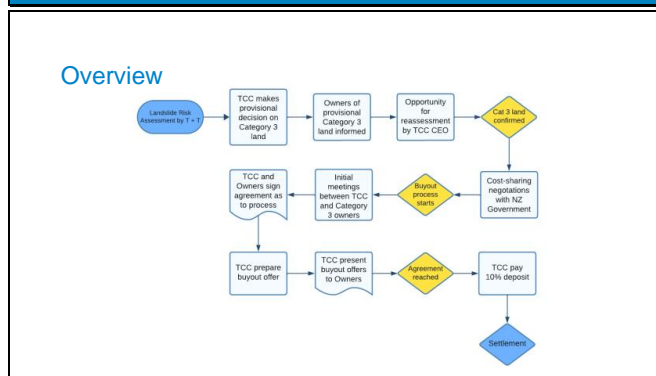
(as at 1 November 2023)

**Resolution Framework for Category 3 properties on Egret Avenue and Te Mutu Crescent, Maungatapu**

Te Tai Whanake  
We're here to make Tauranga better  
Together, we can



1.



2.

**Background**

- Like many areas in Aotearoa, Tauranga is still working through the effects of the 2023 North Island Severe Weather Events (**NIWE**).
- Two landslides occurred behind 15 and 18 Egret Avenue in Maungatapu during heavy rainfall on 28 January 2023, causing damage to several properties.
- Geotechnical engineers continue to closely monitor the two landslides on Egret Avenue for any changes to the slip faces or surrounding land.
- The situation is complex, but TCC is conscious of the ongoing and severe impacts for affected residents, particularly those who have lost their home, or who cannot return.

3.

4. 

### Background (continued)

  - Until recently, the New Zealand Government has been focussed on the significantly affected areas of Hawkes Bay, Tairāwhiti and Auckland.
  - However, the Government has now reached out to lesser-impacted areas, including Tauranga, and signalled support including cost-sharing for any properties that need to be purchased.
  - There must be compelling evidence that landslide risk cannot be sufficiently and cost effectively reduced to tolerable levels.
  - Listening to affected owners, and now receiving the Government's signal of support, has led to the creation of this Resolution Framework.
  
5. 

### Objectives

  - Removing risk to life for people living on Egret Avenue and Te Mutu Crescent where there is an intolerable risk of land instability.
  - Providing certainty and a clear pathway for owners that were significantly affected by the 2023 NIWE.
  - Being affordable for Tauranga ratepayers.
  - Following the Government's recommendation that councils should consider buyouts where there is a compelling reason to do so.
  - TCC recognises that there are likely to be events in future which will not be covered by this Framework. There are various statutory and planning provisions which will supersede this type of approach in the future, and this Framework will not be used for future events.

Te Tai Whānake  
 We're here to make Tauranga better  
 Together, we can
  
6. 

### Principles


  - Being locally-led and government-supported.
  - Acting in good faith.
  - Treating people with respect.
  - Working to achieve timely outcomes.
  - Communicating clearly.

Te Tai Whānake  
 We're here to make Tauranga better  
 Together, we can
  
7. 

### Eligibility for buyouts

  - Only land on Egret Avenue and Te Mutu Crescent (shown in the blue polygon on the next slide) will be the subject of a detailed risk assessment.
  - Of that land, only properties classified by TCC as Category 3 will be considered for buyouts.
  - Buyouts will only be offered by TCC if it is able to negotiate a suitable cost-sharing approach (net of insurance and EQC proceeds) with the New Zealand Government. TCC expects a 50/50 approach like that offered in other areas of the Country.
  - Owners must have signed and adhered to a preliminary agreement at or following an initial meeting with TCC. The preliminary agreement is detailed in later slides but records the agreed process and respective undertakings needed to finalise any buyout offers.

### Properties that may be considered for buyout



- Eligible properties are those within the blue polygon on this slide. The area covers the two landslides behind 15 and 18 Egret Avenue, Maungatapu (including those properties), and from the area of land between the two active landslide faces, as well as the immediately adjoining edges of the two active faces.
- In addition, the properties immediately above the two landslides being 19, 21, 23A and 23B Te Mutu Crescent.

Te Tai Whānake  
We're here to make Tauranga better  
Together, we can

8.

### TCC's process for classifying Category 3 land

3

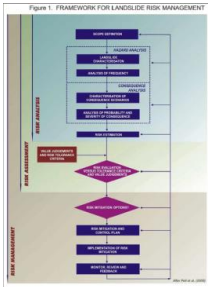
Future severe weather event risk cannot be sufficiently mitigated. Some land uses may remain acceptable, but residential use carries an intolerable risk of injury or death.

In the face of enhanced climate risk to the property there is an unacceptable risk of future flooding or risk from land instability.

- Decisions on classifying Category 3 land are being made by TCC under a locally-led, centrally-supported approach.
- The assessment methods and approaches taken in Hawke's Bay, Tairāwhiti and Auckland have provided useful guidance for TCC, but our process is simpler, due to the smaller scale of impact from NIWE, the fact that no public consultation is needed, Long Term Plan Amendments aren't required and there being no consideration of mixed use properties.
- Where the future risk to residential properties from land instability is intolerably high and where that risk cannot be sufficiently mitigated, those properties will be classified as "Category 3". This is a technical question that is being considered by experts alone.

9.

### Landslide Risk Management Framework (AGS, 2007)



- In August 2023 TCC commissioned Tonkin + Taylor to carry out a quantitative landslide risk assessment (QLRA).
- T + T has been asked to use the Australian Geomechanics Society Guidelines for Landslide Risk Management 2007, which is the same tool Auckland Council is using.
- T + T's work is well underway and is expected to be completed by early 2024.
- T + T's assessment will be peer reviewed by Professor Tim Davies at the University of Canterbury.
- Expert opinions will inform TCC's decision to classify land, if any, as Category 3.


10.

### How Category 3 owners will be informed

- Once TCC has received and considered T + T's peer-reviewed risk assessment, it will make a provisional decision about Category 3 land (if any).
- Owners of provisional Category 3 land will be told at an in-person meeting with TCC, which will be followed up in writing.
- Category 3 Owners will have 14 days to request reassessment of their land.
- Reassessment will be considered by TCC Chief Executive, Marty Grenfell.
- A final decision on Category 3 land will be made within 14 days of any request for reassessment.

Te Tai Whānake  
We're here to make Tauranga better  
Together, we can

11.

- 12. **Cost-sharing negotiations between TCC and NZ Government**
  - Before considering cost-sharing proposals, the NZ Government requires Category 3 properties to be identified (see earlier slides for TCC's process).
  - However, the Government has signalled that support and cost-sharing is available in appropriate situations.
  - Given the limited number of affected properties, TCC doesn't expect cost-sharing negotiations with the Government to be complicated or drawn-out.
  - TCC's expectation is a 50/50 cost-sharing approach (net of insurance and EQC proceeds) for the voluntary buyout of Category 3 residential properties.
  
- 13. **Initial meeting between TCC and individual Category 3 owners**
  - Once TCC and the Government have agreed a cost-sharing approach, TCC will invite individual Category 3 owners to an initial meeting.
  - Owners may attend the meeting with a support person and/or professional advisor.
  - TCC's valuer will likely attend the meeting.
  - Owners will have the opportunity to indicate whether they wish to engage in buyout discussions.
  - TCC will make a record of the meeting and a copy will be given to the Owners within 5 working days.
  - If the Owners wish to receive an offer from TCC, they will be required to sign a preliminary agreement either at or following the initial meeting (see next slide for details).
  
- 14. **Preliminary agreement**
  - The preliminary agreement will record the agreed process and respective undertakings needed to finalise the offer.
  - Owners will need to provide the Council with a copy of all relevant insurance claim settlement information, including the Scope of Works and the Insurance Settlement Sheet that the Owner's Insurer has provided.
  - Where necessary, TCC's representative may require the Owners' permission to seek clarifying information from their insurer and provision of such information by the Owners' insurer may be a condition of TCC being required to proceed with an offer.
  - The preliminary agreement will include and attach an Agreement for Sale and Purchase of Real Estate for use and include the details as to the Valuation Process and Standard Terms. Some, but not all, of this detail is summarised in the following slides.

Toi Te Whānake  
We're here to make Tauranga better  
Together, we can
  
- 15. **Valuation process**
  - All buyout offers of Category 3 land by TCC will be made on the following prescribed basis (**Valuation Process**).
  - The Valuation Process will involve TCC commissioning a valuation from a registered valuer, which takes into account (to the extent considered appropriate by the registered valuer) relevant information shared with TCC at the initial meeting and the Owners having the option to commission their own valuation from a registered valuer.
  - All buyout offers made by TCC will be at a market valuation as at 27 January 2023 (i.e. the day before the landslides) and as if the landslides had not occurred. This provides a level of payment that fairly represents what Owners had prior to the event and will support them being able to relocate away from Category 3 land.
  - Owners will be invited to get their own registered valuation, which will be paid for by TCC, on the standard terms outlined in the next slide. Owners will also be reimbursed for certain legal costs.

16. **Standard terms of buyout offer**
- TCC will agree to reimburse the Owners, on receipt of appropriate invoices, for the reasonable costs of a valuation by a Registered Valuer and legal advice where those costs have been incurred prior to offer being presented to the Owners, up to a maximum of \$5,000 excluding GST. On the date of settlement, the Council will also pay all reasonable costs related to finalising the sale and purchase agreement and conveyancing costs up to a maximum of \$5,000 excluding GST.
  - Following settlement, any Dwelling or Residential Improvements within Category 3 land will be removed from the land if reasonably practicable or otherwise demolished by TCC and the site appropriately reinstated.
  - 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.
  - TCC and the Owners shall agree a mutually acceptable settlement date.
  - TCC reserves the right to have the purchase of the land declared a 'public work' for the purposes of the Public Works Act 1981.

17. **Standard terms of buyout offer (continued)**
- Any payment made by TCC under the offer will be paid to the Owners' solicitor who will attend to any payment owing to any security holder (e.g. the Owners' bank) where there is a mortgage or other equivalent encumbrance over the Property (except where the security holder agrees otherwise). <sup>NSO</sup>
  - Acceptance of the offer made by the Council is voluntary. TCC and the Owners acknowledge that the land is not being taken for a public work, and that the Owners waive any right to have the property offered back to it or its successor if TCC decides to dispose of it.
  - The offer will include GST, if any.
  - 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 offer.
  - Agreement to buyout will require an acknowledgement of full and final settlement of all and any claims (past, present or future) by the Owners against TCC in relation to the Property.

18. **Settlement day**
- Once TCC and Owners agree on the terms of the buyout, TCC will pay a 10% deposit.
  - Settlement of the buyout will occur on the agreed settlement date.
  - On settlement day, TCC will pay the balance of the agreed purchase price and settlement will occur.
  - TCC hopes that owners of Category 3 land will then be in a position to move on with their lives.
- Te Tai Whānake  
 We're here to make Tauranga better  
 Together, we can

19. **Expected timeline**
- 
- ```

    graph TD
        subgraph Jan_2024 [January 2024]
            A[Public release of initial site assessment by TCC completed]
        end
        subgraph Feb_2024 [February 2024]
            B[TCC makes purchase decision on Category 3 land]
            C[Owners of previous Category 3 land informed]
        end
        subgraph Mar_2024 [March 2024]
            D[Cost sharing negotiations with NZ Government completed]
            E{Cat 3 land identified}
            F[Opportunity for reimbursement by TCC CEO]
        end
        subgraph May_2024 [May 2024]
            G{Buyout process starts}
            H[Initial meetings with Owners, Preliminary agreement signed, Valuations and buyout offers presented]
        end
        subgraph Aug_2024 [August 2024]
            I{Settlement day}
        end
        A --> B
        B --> C
        C --> F
        F --> E
        E --> D
        D --> H
        H --> G
        G --> I
    
```

\*NB below





20.

\*Timelines were noted as at 1 November 2023 when Draft Resolution Framework was initially prepared. There will be an alteration to the Expected timeline to account for delay in completion of Quantitative Landslide Risk Analysis.

**12 DISCUSSION OF LATE ITEMS**

**13 PUBLIC EXCLUDED SESSION**

**Resolution to exclude the public**

**RECOMMENDATIONS**

That the public be excluded from the following parts of the proceedings of this meeting.

The general subject matter of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48 of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

| General subject of each matter to be considered                                               | Reason for passing this resolution in relation to each matter                                                                                                                                | Ground(s) under section 48 for the passing of this resolution                                                                                                                                                                 |
|-----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Confidential Attachment 1 - 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation</b> | s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons                                             | s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |
| <b>Confidential Attachment 2 - 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation</b> | s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons                                             | s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |
| <b>Confidential Attachment 3 - 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation</b> | s7(2)(a) - The withholding of the information is necessary to protect the privacy of natural persons, including that of deceased natural persons                                             | s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |
| <b>Confidential Attachment 5 - 11.1 - Egret Avenue / Te Mutu Crescent Land Categorisation</b> | s7(2)(i) - The withholding of the information is necessary to enable Council to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations) | s48(1)(a) the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist under section 6 or section 7 |

**14 CLOSING KARAKIA**