

Guidance on the Application of Special Circumstances



Provision for Special Circumstances

1. Auckland Council has agreed a Nominated Categorisation Approach (**Categorisation Approach**) and Voluntary Buy-Out Support Scheme Terms (**Scheme Terms**). These documents will guide the council's implementation of the Government's categorisation framework (**Framework**) for Auckland homes severely affected by the weather events over the Auckland Anniversary Weekend and Cyclone Gabrielle 2023 (**severe weather events**).
2. The council has developed its Categorisation Approach and Scheme Terms in accordance with the Framework and as part of a one-off, limited response to the severe weather events. The scheme does not have a legislative basis and is not a permanent programme for disaster relief.
3. Any departure from the Categorisation Approach and/or Scheme Terms due to the applicability of "special circumstances" will be made at the council's discretion following the guidance set out in this document, and be recorded in writing.

Objective

4. On the application of a homeowner, the council may in its discretion depart from its Categorisation Approach or Scheme Terms on the basis of "special circumstances", where to do so is consistent with its policy objectives in adopting the scheme and with reference to the guidance set out in this document.

Factors relevant to consideration of Special Circumstances

5. Any decision to depart from the Categorisation Approach or Scheme Terms on the basis of "special circumstances" will be made on a case by case basis, having regard to:
 - a. The nature of the "special circumstances" and the extent of (and any implications of) departure from the Categorisation Approach or Scheme Terms.
 - b. The level of any increased cost to the council resulting from the departure from the Categorisation Approach or Scheme Terms.
 - c. Whether departure in an individual case is consistent with the overarching policy objective:
 - in respect of the Categorisation Approach, to permanently remove or reduce the intolerable risk to life posed by some residential properties due to the severe weather events; or
 - in respect of the Scheme Terms, to support Aucklanders to voluntarily relocate from residential housing situations on properties that pose an intolerable risk to their lives.
 - d. Whether departure in an individual case is consistent with the further objectives guiding the council's policy approach (i.e. whether departure is effective, affordable, fair and consistent with policy intent, and equitable).
6. A decision to depart from the Categorisation Approach or Scheme Terms on the basis of "special circumstances" will not extend to departures that:

- a. **Reset policy decisions already made.** The council has made policy decisions about the scheme that are reflected in its Categorisation Approach and Scheme Terms. Consistency of decision making is important to the council, and the purpose of considering “special circumstances” is not to reset the policy decisions that the council has already made, but to deal with exceptional cases where the application of Categorisation Approach may result in outcomes that are inconsistent with the council’s policy objectives in individual cases. Decisions based on special circumstances should not set a precedent which may have a wider impact on eligibility under the Categorisation Approach or payments under the Scheme Terms.
- b. **Are claims for financial hardship assistance.** The scheme is focused on relocating Aucklanders from residential housing situations on properties that pose an intolerable risk to their lives, and is not designed to relieve financial hardship or compensate for property loss suffered as a result of the severe weather events. Consequently, financial hardship is not a factor that will be considered in determining whether to depart from the Categorisation Approach or Scheme Terms on the basis of “special circumstances”.
- c. Are disputes or discretions already allowed for elsewhere in the Categorisation Approach or Scheme Terms.

Process for and review of consideration of Special Circumstances

7. On the application of a homeowner (a **special circumstances application**), the council will consider at its discretion (and with regard to the factors set out above), whether to depart from the Categorisation Approach or Scheme Terms, on the basis of special circumstances (a **special circumstances decision**).
8. If a special circumstances application relates to the council’s Categorisation Decision, a homeowner has three months from receiving their property category within which to raise special circumstances for the council’s consideration in relation to that Categorisation Decision.

If a special circumstances application seeks a departure from the Buyout Scheme Terms, a homeowner can raise an application at any point during the buyout process, however all special circumstances applications related to the operation of the Buyout Scheme Terms must be received by council no later than one month from a homeowner receiving council’s purchase offer.

9. A special circumstances decision will be made by the Group Recovery Manager together with the Director Policy, Planning and Governance, and will be recorded in writing and supported by reasons. If the Director Policy, Planning and Governance is unavailable or otherwise unable to make a decision (e.g. due to absence or conflict of interest arising), then the Director Resilience and Infrastructure will make this decision (together with the Group Recovery Manager). We will endeavour to communicate decisions to homeowners within 25 working days of receiving the application, subject to workflows.
10. Within 25 working days of notification of a special circumstances decision, a homeowner may request in writing that the council review the special circumstances decision. Any review of the special circumstances decision will be undertaken by the Chief Executive and the decision will be recorded in writing. The Chief Executive, at their discretion, may seek relevant advice to support their review.
11. The decision of the Chief Executive on review of a special circumstances decision is final and not subject to further dispute resolution processes.