

Mitigation of debris flow risk – Awatarariki fanhead, Matatā - Update



Subject: **MITIGATION OF DEBRIS FLOW RISK – AWATARARIKI FANHEAD, MATATĀ - UPDATE**

To: **COUNCIL**

Meeting Date: **THURSDAY, 28 JULY 2016**

Written by: **MANAGER STRATEGIC PROJECTS**

File Reference: **A1100470**

1 REASON FOR THE REPORT

To present a Voluntary Retreat framework proposal for properties in the high debris flow risk area on the Awatarariki fanhead that is subject to sourcing adequate levels of external funding, and to seek approval to construct an alternative, western escape route from the Clem Elliott Drive area of the fanhead. Both measures are initiatives to mitigate life safety risks from future debris flows from the Awatarariki Stream catchment.

2 BACKGROUND

At the 23 February 2016 Policy Committee meeting, the Committee made the following resolutions:

1. **THAT** the report "Mitigation of debris flow risks – Awatarariki fanhead, Matatā - Update" be received; and
2. **THAT** the geographical area of the fanhead for retreat from debris flow risk be the area bounded by the black hatched lines in Figure 1 Quantitative Debris Flow Risk Assessment; and
3. **THAT** staff develop a project plan and project budget to establish an additional escape route for Clem Elliott Drive residents through the designated unformed public road to the west; and
4. **THAT** development of a debris flow early warning system not be pursued at this point in time due to the uncertainties around the effectiveness of the system; and
5. **THAT** the New Zealand Transport Authority be provided with a copy of the Opus report on the hazard to east bound traffic through west bound traffic turning right into Kaokaoroa Street from State Highway 2; and
6. **THAT** staff progress Workstream 2 – Property Valuations; and
7. **THAT** staff progress Workstream 7 - development of a voluntary managed retreat option.

This report provides an update on resolutions 3, 6 and 7.

3 DISCUSSION AND OPTIONS

3.1 Workstream 3 – Escape Routes

This workstream focuses on reducing the risk to occupiers of properties on the Awatarariki fanhead who are exposed to a high annualised loss of life risk from future debris flows by providing additional routes of escape during natural hazard events such as floods, debris floods, and debris flows. Opus International Consultants Ltd report on this workstream was received and accepted by the Policy Committee in February 2016. The report concluded:

1. For fanhead residents east of the Awatarariki Stream, the best escape routes are via Richmond and Arawa Streets; and
2. For fanhead residents west of the Awatarariki Stream, an additional route through unformed public roads to the west (Clem Elliott Drive/Tohi St/McPherson St) was viable with minimal physical works involved. The proposed route is shown in Figure 1.

Figure 1 Proposed Escape Route



Providing Clem Elliott Drive residents with an additional narrow metalled vehicular escape route along unformed public roads delivers an immediate life safety benefit at minimal cost.

Although no resource consent is required, the work will require outline approval. In this instance, this should be a straightforward process. The project has support from residents. Formal approval from iwi, and from KiwiRail to reposition a barrier on the heavy traffic bypass on the northern side of the rail line has yet to be received.

An estimate of costs to clear a vehicular route and complete the roading works is \$29,000. Further costs will be incurred to reposition the vehicular barrier arm and additional fencing; and provide a koha for the presence of a cultural monitor from Ngāti Rangitihī and from Te Rangitiratanga o Ngāti Rangitihī Inc. when earthworks are being undertaken. Standard koiwi discovery protocols will be in place. It is anticipated the work will be undertaken during August/September by the Council's roading contractor under supervision by Opus. This work has been budgeted. Approval is sought to proceed.

3.2 Workstream 2 - Property Valuations

A contract has been awarded to TelferYoung (Tauranga) Ltd to undertake the valuations of properties in the High Debris Flow Risk Area. The valuation process will provide five separate valuation assessments:

- 2004 rating value
- 2005 estimated market value
- 2013 rating value
- 2016 estimate market value recognising the natural hazard risk
- 2016 estimated market value ignoring the natural hazard risk.

The Property Group Ltd have been engaged to recommend a transparent defensible process to convert the valuation data into a base value which is a key input into the voluntary retreat proposal package.

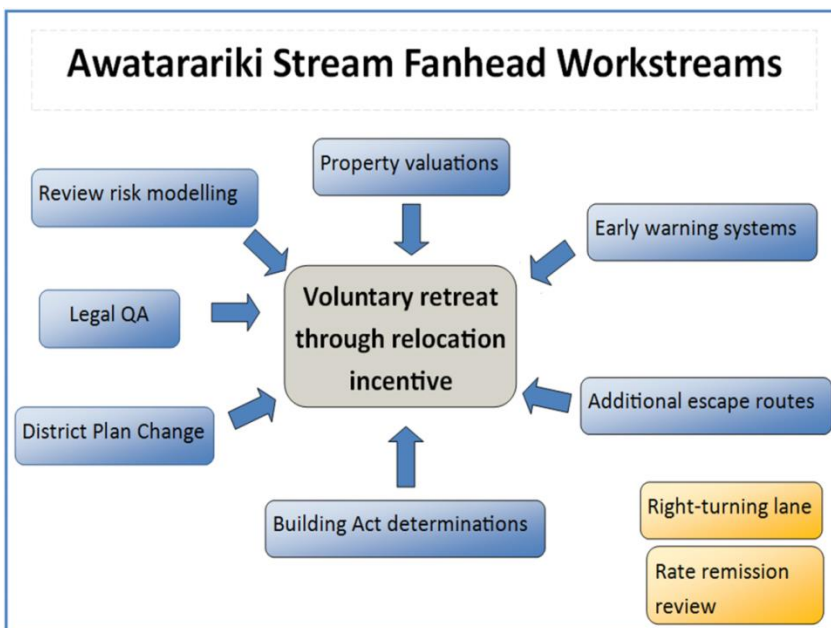
Valuations are expected to be completed by the end of July, followed by a one month peer review by an independent valuer. The results of the valuations will be reported to councillors in September.

3.3 Workstream 7 – Voluntary Retreat Package

3.3.1 Background

Work to date, including the work of the Consensus Development Group, has confirmed that voluntary retreat from the high loss-of-life risk to property owners from future debris flow events from the Awatarariki catchment is the best risk management option. The two primary input parameters of a voluntary retreat package are the geographical footprint defined through the debris flow risk modelling (Workstream 1), and the financial envelope defined through valuations of the affected properties (Workstream 2). A number of other workstreams within the Awatarariki Debris Flow Risk Management Programme have fed into, and complemented, voluntary retreat as the underpinning philosophy to manage this natural hazard risk. A high level view of the various workstreams is provided in Figure 2.

Figure 2 Awatarariki Debris Flow Risk Programme Workstreams



The high debris flow risk area is made up of 45 separate land parcels, of which ten are owned by the Crown, government agencies, or the Council. It is not intended that the voluntary retreat proposal

will apply to the ten properties in public ownership. Of the remaining 35 land parcels, 16 contain occupied dwellings and 19 are vacant sections. A map of the 45 land parcels with the public land highlighted is provided in Figure 3.

Figure 3 High Debris Flow Risk Area



3.3.2 Framework

There are a number of key steps in the Voluntary Retreat workstream. These are outlined in Appendix 1.

Although shown as a largely linear process, this is not the case in practice, with multiple work strands occurring in parallel.

3.3.3 Acquisition Strategy Principles

As evident in Appendix A, it is proposed that voluntary retreat from the properties in private ownership be managed through an acquisition strategy. The Property Group Ltd has been engaged to assist the Council develop an appropriate strategy. A copy of their report is included as Appendix 2 to this report. The strategy recognises:

1. Mitigating high loss-of-life risk is the key driver of the Strategy
2. Property owners have a choice to participate as the Whakatāne District Council has neither the statutory responsibility nor authority to remove existing use rights of property owners
3. Implementation of the Strategy is reliant on the Council securing funding support from the Government and the Bay of Plenty Regional Council (BOPRC). If funding is not received, and the Council has completed the alternative escape route and implemented a plan change, it will have exhausted all avenues to mitigate the loss-of-life risk to property owners. At that time, consideration will need to be directed to the form of advice the Council will provide to BOPRC and government around the residual risk lying with those bodies.
4. The process must be fair and legal. The Strategy has been designed to reflect the tried and tested principles underpinning Public Works Act (PWA) acquisitions. These principles are:
 - (a) **Equivalence** - The land owner should be no better or worse off after the acquisition and pay out

- (b) **Liberality** - The benefit of doubt must run in favour of land owner
- (c) **Ultra Vires** - The acquisition process must be in accordance with the law
- (d) **Natural Justice** - Full information and disclosure is required

It is important to note that although the core principles of the PWA have been applied, the PWA is not relevant to the Awatarariki fanhead properties because the land is not being compulsorily acquired for the purposes of a public work.

3.3.4 Acquisition Strategy Components

Subject to the Government and BOPRC providing funding support, the Acquisition Strategy will lead to a Voluntary Retreat Proposal being offered to property owners who may or may not accept the proposal. There are a number of components within the strategy that will be considered when individual proposals are prepared. Several components are standard and applicable to all owners; others are discretionary on a case-by-case-basis subject to individual circumstances.

3.3.4.1 Standard components

The proposal is on a one-time offer basis. This provides certainty to property owners and funding agencies that would understandably have concerns over a proposal with an open-ended timeframe. The one-time offer basis also reflects the single purpose of the retreat concept; to reduce risk to life from future debris flow events. It will be important that property owners understand that a voluntary retreat proposal will not be offered again, and that BOPRC has the statutory authority to extinguish existing use rights without compensation to property owners due to the high debris flow risk to life.

If a property owner is dissatisfied with the Base Value of the Voluntary Retreat Proposal, they will have an ability to seek a second valuation through a managed process. The managed process contains two options: selection of a valuer from a panel of independent valuers approved by the Council and briefed on the natural hazard risk and voluntary retreat concept; or selection of a valuer of choice who has been provided with a Valuation Brief by the Council outlining the methodology upon which the property valuations are to be conducted.

Owners of rented properties have obligations to their tenants under the Residential Tenancies Act which will require recognition in any Voluntary Retreat Proposal offering.

It is proposed that a capped contribution of \$1,200 towards legal fees for the sale of the property to the Council be included as a standard component. Where a property owner purchases a new property within two years, the property owner would qualify for a further \$1,200 contribution towards legal fees for the new property.

Where the property on the Awatarariki fanhead is the primary place of residence, a contribution of \$2,500 towards relocation costs is proposed.

3.3.4.2 Discretionary components

Discretionary components will be considered on a case-by-case genuine need basis. These include:

- Some property owners may incur costs through settling their mortgage early as a result of accepting the voluntary retreat package. In such cases, it is proposed that mortgage break fees be reimbursed.
- A deferred settlement term of up to 3 years will be available to owners in special circumstances. These include where the property is the primary place of residence and the property owner is very elderly and does not consider relocation to be an option for them at this stage in their life.

- Where a property owner requires time to manage the relocation of improvements on their property, or to find and secure a replacement property, a deferred settlement term of up to 6 months is proposed.

3.3.5 Recent Sales

A small number of properties have changed ownership over the last three years. It is not the intent of this strategy that those owners who have purchased properties at a discounted rate due to the available knowledge of the debris flow risk, make a capital gain through the Voluntary Retreat Acquisition Strategy implementation. In these circumstances, it is proposed to substitute the market sale price paid for the Base value in the Voluntary Retreat Proposal formula. Other baseline and discretionary factors would apply equally.

3.3.6 Acquisition Strategy Component Template

A framework of how the various components integrate with property occupancy scenarios to form voluntary retreat proposals is detailed in Figure 4.

Figure 4 Voluntary Retreat Proposal Scenarios

	Base Value					Discretionary (case by case basis)	
	Base Value	\$1,200 Legal Costs	\$2,500 Relocation Expenses	\$1,200 Legal Costs for new property (within 2 years)	Purchase Price	Deferred Settlement	Mortgage Break Costs
Properties occupied by owner as principal dwelling	✓	✓	✓	✓		?	?
Properties not occupied by owner as principal dwelling	✓	✓		✓		?	?
Vacant sites	✓	✓		✓		?	?
Recent sales (principal dwelling)		✓	✓	✓	✓	?	?

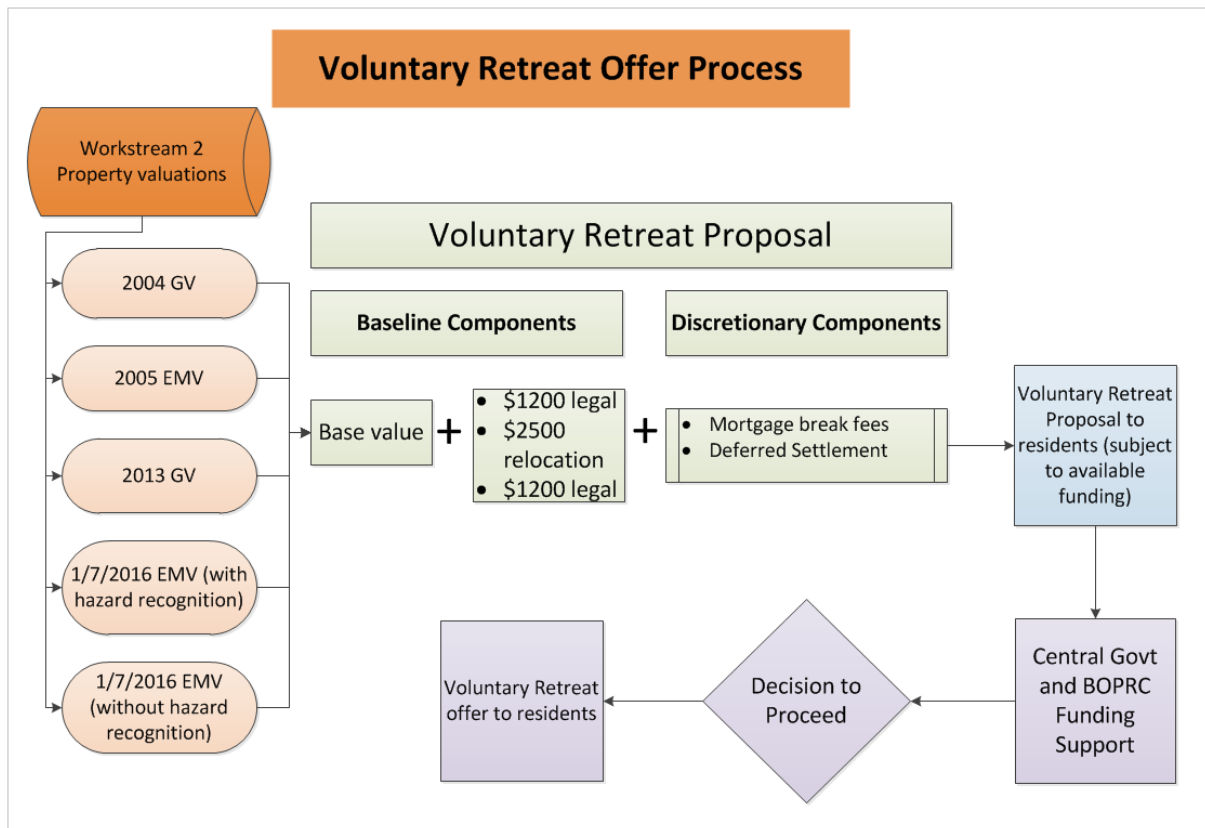
3.3.7 Voluntary Retreat Proposal Offer Process

A Voluntary Retreat Proposal to an individual landowner will be made up of a combination of: a Base Value from a range of property valuation data; plus standard components; plus discretionary components that will be considered in on a genuine need case-by-case basis. The Property Group Ltd will provide the Council with the Base Value that will be the result of a transparent defensible decision-logic. Property owners will be provided with an opportunity to challenge the Base Value through an independent valuation funded by the Council.

In order to fully understand the financial requirements for funding agencies, property owners will be provided with a qualified indicative retreat proposal and asked for feedback. The qualification relates to the proposal only being viable if adequate funds can be sourced. Confirmation of the number of property owners who will commit to the qualified voluntary retreat proposal will enable

the Council to enter into purposeful funding discussions with Government and BOPRC. The process is depicted in Figure 5.

Figure 5 Voluntary Retreat Offer Process



With supportive funding partners, formal Voluntary Retreat Agreements could be offered to property owners in July/August 2017 with retreat commencing shortly thereafter.

3.4 Next Steps

Key milestones for this workstream (Workstream 7) are outlined in the following table.

Action	Timeframe
Receive Indicative Business Case	15 September 2016
Council decision to release valuation results and qualified indicative voluntary retreat proposals to owners	15 September 2016
Informal funding discussions with Government and BOPRC	Ongoing to March 2017
Council decision to continue	Early March 2017
Submissions to WDC and BOPRC annual plans	March/April 2017
Budgets confirmed	30 June 2017
Formal agreements offered to property owners	July 2017
Signed formal agreements received	Late July/early August 2017
Cash payout (subject to regional and central government support)	> August 2017
Central Government elections	October 2017

3.5 Other Actions

3.5.1 Building Act Determination

The Council has requested that the Ministry of Business Innovation and Employment (MBIE) release their final determination on this matter. The second draft determination was issued on 12 January 2016. This reinforced the first draft determination which confirmed the Council was correct to refuse to issue building consents for two proposed new dwellings in the high debris flow risk area within the Awatarariki Stream fanhead. The Manager of Determinations and Assurance for MBIE wrote to all parties on 19 April 2016 advising that no substantive submission had been received from either of the other parties, and that a second hearing would only occur if new information is provided in the form of submissions. One of the parties to the determination has just applied for a second hearing but has not provided any evidence to support an alternate position. MBIE has responded requiring that party to clarify by 18 July 2016 what new information the party will present to a hearing and why a second hearing is required. An update will be provided to the Council at its meeting.

3.5.2 District Plan Change

The recently released Plan Change 2 (Natural Hazards) to the Regional Policy Statement introduces a risk-based approach to natural hazard management. Of particular relevance is the requirement in natural hazard zones subject to high natural hazard risk to reduce the level of risk to medium (and lower if reasonably practicable).

As a consequence of Plan Change 2 becoming operative, both the District Plan and Regional Plans must give effect to:

- Identifying areas susceptible to natural hazards
- Assessment of natural hazard risk at the time of plan development
- Managing natural hazard risk at the time of plan development.

Plan Change 2 places responsibility for landuse planning, susceptibility mapping and detailed risk assessment for “extreme (prolonged or intense) rainfall hazard” that can result in landslides, debris flows/floods, flooding) on city and district councils within the region.

WDC has completed susceptibility mapping and detailed risk assessment of landslide risks at Whakatāne, Ōhope and Matatā, and debris flow risk at Matatā. This work is recognised in the Whakatāne Proposed Plan as being underway at the time the Proposed Plan was prepared. With the work having been completed, and the Building Act draft determinations supporting the Council’s decisions to not issue building consents for new dwellings on the fanhead due to the natural hazard risk, a plan change to the natural hazard provisions of the Proposed Plan should be considered. It is recommended that this process be initiated once the final determination is received.

Amending the District Plan to recognise completion of the work fulfils the responsibilities, in relation to this natural hazard, that are imposed on the Council under the RMA, and under Plan Change 2 to the RPS.

3.5.3 Rates Remission Policy Application Review

An independent review of the application of the Council’s rates remission policy to Awatarariki fanhead properties is currently being undertaken (Workstream 5). This review will be reported to Council in September 2016.

4 ASSESSMENT OF SIGNIFICANCE

The decisions or matters of this report are part of a process to arrive at a decision that may be significant in accordance with section 3.3 of the Council's Significance and Engagement Policy. This states that a matter shall be determined to be significant if/when the impact or consequences of the proposal or decision on the affected persons (being a number of persons) will be substantial, or when the financial implications of the proposal or decision on the Council's overall resources are substantial. If funding arrangements with BOPRC and the government can be realised, an assessment will be required against the Significance Policy criteria to determine whether or not public consultation will be required. The intention is for certainty to be reached on funding prior to the next Annual Plan.

5 COMMUNITY INPUT AND PUBLICITY

There has been regular contact between staff and property owners through provision of update reports, phone conversations, and more recently, arrangements for valuations of properties. Face-to-face meetings are proposed to present the Voluntary Retreat Proposals to property owners if the Acquisition Strategy is approved.

6 CONSIDERATIONS

6.1 Management of Debris Flow Risk

The risk to people and property from a debris flow from the Awatarariki catchment was identified in May 2005. During the intervening period, several solutions have been investigated. In December 2012, the Council was advised an engineering solution was not viable and resolved to pursue a planning solution. The planning solution followed best-practice which resulted in a risk-based approach to natural hazard management being followed. Analysis of the risk to life from future debris flow events confirmed a very high loss of life risk existed in the High Debris Flow Risk Area.

The Council worked with a group of residents under the umbrella of a Consensus Development Group. BOPRC was represented on the group. An important point of agreement among the group was acceptance that a high risk of debris flow exists, while recognising that individual personal tolerance of this risk varies. The group also identified that a managed voluntary retreat was the best option for management of the debris flow hazard to Awatarariki fanhead properties.

A managed voluntary retreat is not a risk management strategy that is affordable if it is to be funded solely by Whakatāne District ratepayers. A combined multi-agency and property owner voluntary retreat package offers the best solution to managing debris flow risk to Awatarariki fanhead residents.

The next phase of the programme focuses on presenting individual property owners with indicative, qualified voluntary retreat proposals and engaging with the Government and BOPRC over possible funding arrangements.

7 CONCLUSION

The provision of an additional narrow metalled vehicular escape route along unformed public roads will deliver an immediate life safety benefit to Clem Elliott Drive residents, at a minimal cost. The work has the support of residents and iwi, and has an approved budget. This work should proceed as

soon as agreement with KiwiRail is reached over relocation of the vehicular barrier on the Heavy Traffic Bypass and associated fencing.

The results of the Property Valuation workstream will be presented to Council in September 2016.

The Voluntary Retreat workstream brings together outputs from many other Awatarariki Debris Flow Risk Management workstreams. Risk modelling identified 45 properties within the High Debris Flow Risk area. The Voluntary Retreat Proposal will apply to the 35 properties in private ownership, of which 16 have occupied dwellings.

It is proposed that voluntary retreat from the properties in private ownership be managed through an Acquisition Strategy. An Acquisition Strategy developed by The Property Group Ltd recognises:

- Mitigating high loss-of-life risk is the key driver of the Strategy
- Property owners have a choice to participate
- Implementation of the Strategy is reliant on the Council securing funding support from the Government and the Bay of Plenty Regional Council (BOPRC)
- The process must be fair and legal. Despite the Public Works Act not being applicable in this instance, it's tried and tested acquisition principles have been incorporated

The Acquisition Strategy is made up of a number of standard formularised components, and discretionary components which will be applied on a genuine need case-by-case basis.

Implementation of the Acquisition Strategy is not intended to provide recent purchasers with an opportunity to make a capital gain.

There are defined processes around preparation of a Voluntary Retreat Proposal and establishing property owner commitment to enable purposeful funding discussions to occur with Government and BOPRC.

If everything went optimally, formal offers to landowners could occur as early as July/August 2017.

A proposal to initiate a plan change to update the natural hazards provisions of the Proposed District Plan will be developed for consideration of Council later this year.

RECOMMENDATIONS:

1. **THAT** the report "Mitigation of Debris Flow Risk – Awatarariki Fanhead, Matatā – Update" be received;
2. **THAT** construction of an alternate vehicular escape route using unformed sections of Clem Elliott Drive and Tohi Street proceed once agreement with KiwiRail over the relocation of the vehicular barrier on the State Highway Heavy Traffic Bypass and associated fencing and Outline Plan approval have been obtained;
3. **THAT** the Council adopts the Acquisition Strategy prepared by The Property Group Ltd and dated July 2016 as the basis for developing Voluntary Retreat Proposals to owners of the 35 private properties in the high debris flow risk area as detailed in Table 1 of the Acquisition Strategy;
4. **THAT** owners of the 35 properties in the high debris flow risk area be provided with copies of the Acquisition Strategy;
5. **THAT** the Council continues to engage with the Government and the Bay of Plenty Regional Council over funding arrangements to enable Voluntary Retreat from the high debris flow risk area to be realised;
6. **THAT** staff prepare for Council consideration a Plan Change to the natural hazard provisions of the Proposed District Plan.

Attached to this report:

- Appendix 1 - Voluntary Retreat Framework
- Appendix 2 - Acquisition Strategy

Report Authorisation

Report writer:	Jeff Farrell	Manager Strategic Projects
First Approval:	David Bewley	General Manager Planning, Regulatory and Corporate Services
Final Approval:	Marty Grenfell	Chief Executive

Appendix 1 Voluntary Retreat Framework

