



# AWATARARIKI FANHEAD, MATATĀ ACQUISITION STRATEGY

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## **1. Purpose**

- 1.1. To provide strategic property acquisition advice in relation to the 45 properties on the fanhead of the Awatarariki Stream, Matatā. It should be made clear at the outset that this acquisition advice is provided on the basis of a policy of voluntary retreat. This means that residents have a choice to remain.

## **2. Background**

- 2.1. A severe rainfall event on 18 May 2005 triggered a debris flow in the Awatarariki Stream at Matatā.
- 2.2. In 2012 the Whakatāne District Council (Council) determined there were no viable engineering solutions to manage the debris flow risk to people and properties on the Awatarariki fanhead and agreed to pursue planning-based options, which include: information provision, rezoning and retreat from the site.
- 2.3. Since the beginning of 2015, the Council officers have worked as part of a Consensus Development Group, which includes six property owners, to investigate all available options.
- 2.4. An important point of agreement among the group was that a high risk of debris flow exists, while recognising that individual personal tolerance of this risk varies.
- 2.5. A review of the hazard and risk modelling has resulted in a recommendation to increase the geographical area at risk from future debris flows. The area includes 16 existing dwellings and 29 vacant sites of which ten are owned by central government agencies or the Council.
- 2.6. Doing nothing is not an option for the Council given the loss of life risk at Awatarariki. For the purposes of this acquisition strategy, the ten properties owned by the Council or central government have been excluded.
- 2.7. We understand that property acquisition and its associated transactional cost funding is yet to be secured for this proposed project. We are advised that the Council is in dialogue with both the Regional Council and central Government concerning their possible contributions towards these property acquisition costs. Without the benefit of the Council's commissioned external valuation advice, which is currently being obtained, we are unable to quantify the amount of funding required (however we broadly anticipate it to be in the circa \$10-15 million range).
- 2.8. An essential element of any property acquisition strategy is to have a confirmed funding package in place to enable meaningful property acquisition discussions and negotiations with property owners to occur. In this instance, the voluntary nature of the proposal introduces additional challenges. On the one hand, funding agencies will require certainty on the financial parameters which requires confirmation of the number of property owners who will sign up to the voluntary retreat package. Conversely, property owners require confirmation of the financial offer to voluntary retreat from the area before committing themselves. We support the Council's

proposed process to approach landowners with an indicative retreat offer that is subject to the Council receiving funding support from central and regional government. This gauge of property owner intent will enable the Council to enter into purposeful discussions with Government and the Bay of Plenty Regional Council.

### 3. Project Scope

3.1. The project focuses on those properties on the fanhead of the Awatarariki Stream in Matatā contained in Table 1.

Table 1: Properties within the Awatarariki Fanhead.

Reference	Address	Legal Description
1.	5 Pioneer Place	Allotment 360 Town of Richmond
2.	6 Pioneer Place	Allotment 361 Town of Richmond
3.	7 Pioneer Place	Allotment 362 Town of Richmond
4.	12 Arawa Street	Part Section 6 Block VI Awaateatua SD
5.	60 Arawa Street	Section 1 Block I Awaateatua SD
6.	94 Arawa Street	Lot 5 DPS 4869
7.	95 Arawa Road	Allotment 365 Town of Richmond
8.	96 Arawa Street	Lot 4 DPS 4869
9.	98 Arawa Street	Allotment 270 Town of Richmond
10.	99 Arawa Street	Allotment 363 Town of Richmond
11.	100 Arawa Street	Lot 1 DPS 16429
12.	102 Arawa Street	Lot 1 DP 306286
13.	103 Arawa Street	Section 1 SO 59029
14.	104 Arawa Street	Lot 2 DP 306286
15.	105 Arawa Street	Part Allotment 354 Town of Richmond
16.	16 Richmond Street	Crown Land Survey Office Plan 365/1
17.	21 Richmond Street	Lot 3 DPS 4869

Reference	Address	Legal Description
18.	23 Richmond Street	Lot 2 DPS 4869
19.	24 Richmond Street	Section 2 Block I Awaateatua SD
20.	25 Richmond Street	Lot 1 DPS 4869
21.	3 Clem Elliott Drive	Lot 3 DPS 54496
22.	4 Clem Elliott Drive	Lot 4 DPS 15351
23.	5 Clem Elliott Drive	Lot 2 DPS 54496
24.	6 Clem Elliott Drive	Lot 1 DPS 87255
25.	7 Clem Elliott Drive	Lot 1 DPS 54496
26.	8 Clem Elliott Drive	Allotment 323 Town of Richmond
27.	10 Clem Elliott Drive	Allotment 322 Town of Richmond
28.	12A Clem Elliott Drive	Lot 4 DP 308147
29.	12B Clem Elliott Drive	Lot 3 DP 308148
30.	14A Clem Elliott Drive	Lot 1 DP 308149
31.	14B Clem Elliott Drive	Lot 2 DP 308150
32.	16 Clem Elliott Drive	Lot 1 DPS 46347
33.	17 Clem Elliott Drive	Lot 3 DP 306286
34.	18 Clem Elliott Drive	Lot 1 DPS 46347
35.	18A Clem Elliott Drive	Lot 1 DPS 46347
36.	19 Clem Elliott Drive	Lot 4 DP 306286
37.	20 Clem Elliott Drive	Lot 3 DP 306004
38.	21 Clem Elliott Drive	Lot 20 DP 306286
39.	22 Clem Elliott Drive	Lot 1 DP 306004
40.	22A Clem Elliott Drive	Lot 2 DP 306004

Reference	Address	Legal Description
41.	24 Clem Elliott Drive	Allotment 318 Town of Richmond
42.	28 Clem Elliot Drive	Allotment 317 Town of Richmond
43.	32 Clem Elliott Drive	Allotment 316 Town of Richmond
44.	2 Kaokaoroa Street	Allotment 373 Town of Richmond
45.	1 State Highway West	-

Properties owned by the Crown, Government Agencies or the Council are shaded.

Table 2: Properties Numbers by Category

Site Summary	Private	Publicly Owned	Total
Pre 2005 house continuing	10	0	10
Pre 2005 house rebuilt	6	0	6
<b>Total homes 2015</b>	<b>16</b>	<b>0</b>	<b>16</b>
Pre 2005 house now vacant	4	1	5
Site vacant pre & post 2005	15	9	24
<b>Vacant sites 2015</b>	<b>19</b>	<b>10</b>	<b>29</b>
<b>TOTAL</b>	<b>35</b>	<b>10</b>	<b>45</b>

3.2. Some of the properties are unimproved (bare land). As the focus of this project is to reduce the loss of life risk it needs to be determined if this Strategy applies to unimproved land. It is acknowledged that unimproved land is unlikely to be occupied and therefore is unlikely to have 'life' on it during another event. Nevertheless we consider it is reasonable to take the view that unimproved land is purchased assuming the owner's probable intent is to develop it in the future, which will not be possible in this case. If land owners were allowed to exercise the right to build, there would be a loss of life issue. It would be unfair to disadvantage those owners just because they have not yet built on their site. Further, land values are impacted in this case regardless of the status of improvements. Therefore, we consider it to be unreasonable to not treat these property owners in the same way as those of improved sites, with the exception of some package components which are detailed further on within this strategy document. We recommend the Council includes all properties (except the 10 publicly owned properties) within the fanhead of the Awatarariki Stream in the retreat package offering whether or not they contain improvements.

## **4. Methodology to Develop the Retreat Package Offering**

4.1. On the basis of the context described above, it is our understanding that valuers have been instructed to undertake three valuations of the properties listed in Table 1, with specific regard to the 1/9/2004 and 1/9/2013 rating valuations as follows:

- 4.1.1. The first assessment being pre-event market values;
- 4.1.2. The second assessment being current market value as at 1 July 2016 ignoring the event; and
- 4.1.3. The third being as at 1 July 2016 based on the future planning provisions (i.e.: existing use rights for developed properties, no practical right of residential use for vacant land, and a change of zoning in the District Plan). This third valuation would most likely comprise a land value and a 'sale for removal' value of any improvements.

4.2. On the basis of this valuation information, it will then be possible to determine the Base Value (refer to 'Voluntary Retreat Offer Process' Diagram) to support reasonable formula-based offers to the property owners, bearing in mind that acceptance of the offer is a voluntary one. Any such offer will need to be underpinned by clear messages from the Council regarding:

- 4.2.1. The offer being subject to funding support from central, regional, and local government, with certainty of outcome for property owners as soon as practicable;
- 4.2.2. Creating confidence for people to be able to move forward with their lives;
- 4.2.3. Creating confidence in decision making processes;
- 4.2.4. Using the best available information to inform decisions; and
- 4.2.5. Having a simple process in order to provide clarity for property owners and residents.

4.3. In assessing appropriate levels of property purchase offers for affected property owners (and for the purposes of this report the term 'retreat package' will be used), the quantum of the incentive to relocate should be pitched at fair and reasonable current market levels that are justifiable, defensible and supported (where possible) by comparable market evidence. Any retreat package will be established on the basis of the 'willing buyer, willing seller' principle due to the voluntary nature of the retreat package.

4.4. What is vitally important when agreeing on appropriate levels of retreat package offers and subsequent settlements achieved, is that equality and fairness are applied across all affected property owners. Any property owners with unreasonable and unjustifiable retreat package expectations and demands should not receive enhanced retreat package payments in comparison with similarly affected property owners.

## **5. Associated Matters and Retreat Package Components Discussed**

5.1. We consider it appropriate to discuss the following matters and components, and whether they should form part of the retreat package offering.

### **5.1.1. Managing the Risk to Property Owners who choose to remain**

- 5.1.1.1. Previous Council reports outline the hazard and risk modelling of the area and the dangers associated with residents remaining in the area. The Council acknowledges that residents have a choice to remain and some residents may indeed choose to do so. Accordingly a feasible alternative escape route for Clem Elliot Drive residents has been identified.

### **5.1.2. Existing Use Right**

- 5.1.2.1. The voluntary nature of the proposed package reflects the legislative provision under the Resource Management Act 1991 (RMA). Property owners have an existing use right that can only be revoked by a Regional Council through a Regional Plan rule, although there is no known example in New Zealand of this occurring in the circumstances of hazard prone residential land.

Compulsory acquisition under the Public Works Act 1981 (PWA) is not available as the acquisition is not for a public work.

### **5.1.3. One Time Offer**

- 5.1.3.1. Another aspect to consider is whether any retreat package offer by the Council should be on the basis that it is a one time offer.

- 5.1.3.2. A 'one time' offer will mitigate the Council's risk of ongoing financial liability through the possibility of the current property owner, or a subsequent property owner requesting the property be purchased, in some cases many years after the initial retreat package offer. It will enable the Council to 'draw a line in the sand'. Should a property owner choose to decline the retreat package offer this should be recorded on the respective property file held by the Council and thereby form part of the information included within a LIM and/or recorded by way of a Caveat, or other appropriate instrument, on the Property's Certificate of Title. This will ensure the mitigation of successful future acquisition demands on the Council.

- 5.1.3.3. Property owners will be provided with an opportunity to obtain a second valuation if they are dissatisfied with the quantum of the retreat package. This will result in delays to settlements and additional cost will be incurred by the Council. It will be important that the second valuation is undertaken by valuers who are fully informed on the natural hazard risk and voluntary retreat proposal. For these reasons, valuers undertaking a second valuation should be provided with a copy of the Valuation Brief by the Council

outlining the methodology upon which the property valuations are to be conducted. An alternative option is for the Council to appoint a panel of independent valuers from which property owners can select a valuer for the purposes of a second valuation.

- 5.1.3.4. Our recommendation is that the retreat package be a 'one time' offer with property owners able to request a second valuation on a Council managed basis. The second valuation would be at the Council's cost.

#### **5.1.4. Tenanted Properties**

- 5.1.4.1. Where properties are rented the obligations on the property owner as landlord under the Residential Tenancies Act will need to be considered as part of the retreat package offering. It is anticipated the required notice to vacate of 42 days will be the key consideration.

#### **5.1.5. Legal Fees**

- 5.1.5.1. As part of any retreat package, legal fees of the property owners should be factored in as part of the overall appropriation required for the project. We consider it would be unreasonable to expect property owners to pay for their own legal fees associated with either the sale of their Matatā property or the purchase of their replacement property. A contribution towards legal fees of \$1,200 per transaction is recommended.
- 5.1.5.2. The fixed legal fee for the Matatā property acquisition will be paid to the property owner by the Council on settlement. We acknowledge that some property owners may not purchase a replacement property or may delay the purchase for a number of years. To limit the Council's associated liability period in this regard we recommend that the Council pay the fixed legal fee associated with the replacement property on receipt of documentation that verifies the purchase but only if it occurs within two years of the sale of the property owners' Matatā property.

#### **5.1.6. Relocation Costs**

- 5.1.6.1. Should the property be the owners' primary place of residence we recommend the Council contribute a set amount of \$2,500 towards their cost to relocate. Relocation costs will be a Baseline component and offered to all qualifying property owners.

### **5.1.7. Mortgage Break Fees**

5.1.7.1. Mortgage Break Fees may be a cost imposed on a property owner who settles their mortgage early as a result of accepting the voluntary retreat package. Remortgaging with the same bank is unlikely to trigger mortgage break fees. We recommend that the Council reimburse a property owner genuine break fee costs and therefore Mortgage Break Fees be included within the Discretionary component, to be considered on a case by case basis.

### **5.1.8. Deferred Settlements and Deferred Purchases**

5.1.8.1. We consider it important that the Council has a process in place to manage the requirement for a deferred settlement. We suggest this be available for properties that are the owners' primary place of residence, under the following two circumstances:

5.1.8.1.1. Should a property owner be very elderly and they simply do not consider relocating an option for them at this stage of their life it is recommended that they be offered the retreat package plus the discretionary deferred settlement component. The term would be for a maximum of three years. Therefore such Deferred Settlements will only be offered where it can be determined with reasonable certainty that the property owner's requirement to reside at the property will be three years or less. Under such an offering an Agreement for Sale and Purchase would be entered into between the property owner and the Council, a 10% deposit paid, with settlement delayed until the property owner is no longer able to occupy the subject property as a result of their death or their need to move to alternative accommodation.

5.1.8.1.2. Where the property owner requires time to manage the relocation of improvements on their property or to find and secure a replacement property. We recommend a maximum time period be set under these circumstances of say, 6 months.

### **5.1.9. 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

substantive capital gain through the Voluntary Retreat Acquisition Strategy implementation. Our recommendation, in these circumstances, is 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.

#### **5.1.10. Communication of process**

5.1.10.1. When presenting retreat package offers, communication of the parameters for making the offers is critical.

5.1.10.2. It is recommended that once the Council has finalised and ratified a retreat package formula, an initial face to face meeting is held with each affected property owner to outline the steps associated with the presentation of that package. Although valuation work may still be underway to ascertain the package offers, it is vital that all property owners are aware of what is happening and when. This adds weight to the messages of fairness and consistency which will be important when presenting the offers.

## **6. Anticipated Outputs**

6.1. The delivery of the outputs of the process is usually dictated by the resource requirements at the time and whether the organisation delivering the project (in this case the Council) is adequately resourced to deliver these in a timely manner. In the event there is not sufficient resource internally, external consultants could be engaged to deliver the project for the Council. Potential outputs would include:

6.1.1. Initial meetings to be held with each property owner as soon as practicable to outline the broad terms of the voluntary retreat package;

6.1.2. When the Council's valuations are available, and at a date agreed by the Council, to meet individually with property owners to provide and explain the retreat package and address their subsequent questions including obtaining a second valuation if this is included within the package;

6.1.3. Preparation of a standard agreement for Sale and Purchase (including any special conditions), then to arrange for execution of agreements by the property owners and submit them to the Council officers for execution;

6.1.4. Attend to settlement matters; and

6.1.5. Prepare and maintain a spreadsheet containing key information such as: valuation information, agreed retreat package amounts, special conditions and dates of signing and settlement.

## 7. Recommended Formula for Financial Settlements

7.1. It is recommended, in the interests of financial certainty from the outset for the Council and other contributing agencies, that a financial policy is adopted, utilising the following framework:

7.1.1. Sufficiently in advance of the final retreat package being offered to the property owners the Council to meet face to face with each property owner to explain the process and address their queries. This will ensure that the property owners are informed and aware of what will actually be offered to them (albeit the property value will not yet be known) and what the Council must address prior i.e. secure funding for the acquisitions. On making the final offer to the property owner we recommend the offer have a deadline date for acceptance of up to four weeks from the date the final offer is made. Where property owners can show circumstances of genuine hardship, the Council may have discretion to extend the offer period on a case by case basis. Genuine hardship criteria will need to be developed and defined as a matter of policy before the offers are made.

7.1.2. The valuations will be completed with sufficient confidence in their accuracy that the figures can be relied on by the Council. The valuations and supporting data will be considered by TPG. TPG will, through the application of a process and decision logic that is transparent and defensible to property owners, the Council, central government, and BOPRC, provide the Council with a Base Value for each property. The Base Value will be one of the Baseline components.

7.1.3. The offer to comprise of a combination of Baseline and Discretionary factors.

7.1.3.1. The Baseline components to be offered as part of the retreat package are:

- 7.1.3.1.1. the assessed Base Value; the property value determined through the abovementioned process, plus
- 7.1.3.1.2. an allowance for the owner's legal fees for each the sale of their existing property and the purchase of their replacement property of \$1,200 per property, therefore a total of \$2,400, plus (if applicable)
- 7.1.3.1.3. where the property is the property owner's primary place of residence a Relocation allowance of \$2,500.

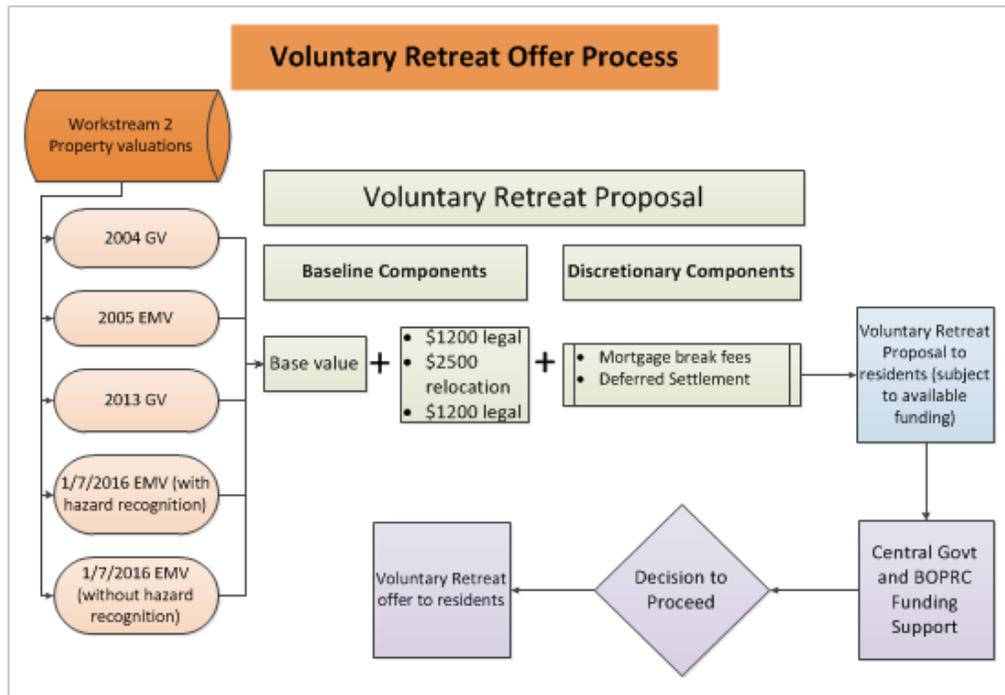
Note: All amounts are inclusive of GST.

7.1.3.2. The Discretionary components will be considered on a case by case basis and therefore not necessarily be offered to every property owner. The details of these are explained in Section 5 above.

- 7.1.3.2.1. Deferred Settlement option,
- 7.1.3.2.2. Mortgage Break Fees

- 7.1.4. Acceptance of the offer by the property owner will be completely voluntary. Property owners are under no obligation to participate in the process.
- 7.1.5. Without being aware at this stage of the nature of the ownership of the properties, it would be unwise to recommend a different approach for property owners who own more than one property in terms of changing the components of the retreat package offer.

Figure 1: Voluntary Retreat Offer Process



## 8. Summary

- 8.1. When the Council makes the voluntary retreat offers, property owners need to appreciate that these are essentially a ‘take it or leave it’ offer, albeit there will be provision for a second valuation to be obtained to verify the Base Value offered. The Council will not be repeating the offer process at a later date. A degree of timeliness should be imposed concerning property owners’ acceptance or otherwise of any offers made to ensure the project is concluded with a known ‘who’s in, who’s out’ outcome within a relatively short period of time. Whilst it is agreed that the Council is unable and unwilling to force property owners to accept any offers made, the Council will however have used their best endeavours possible to make fair and reasonable assessments with all the offers made. As ‘guardians of the public purse’, the Council is obliged to exercise fiduciary responsibility with expenditure of public funds. Being open to public scrutiny, the options are very limited when considering making any overly generous or excessive settlement offers.

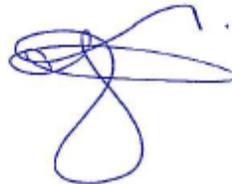
- 8.2. Property owners should already appreciate that given the well-known possible negative impacts on property ownership in this affected catchment, the open market saleability of their properties now, and in the future, will be extraordinarily difficult to achieve given the vendor disclosures required of them and their selling agents. It should also be acknowledged that in these proposed property transactions, property owners (vendors) will not be required to meet real estate agent commission costs when selling their properties.
- 8.3. This draft strategy recommends a reasonable formula-based approach with the adoption of settlement package offers. We consider it imperative that the Council is united on all components of the retreat package and therefore the message is that of one voice. Prior to finalisation, the Council feedback is sought to enable incorporation into an agreed final document.
- 8.4. With respect to the Council agreement in deciding the appropriate level of voluntary retreat package offers, consideration should be given to the formulation of a package that provides for decisive property owner negotiation. However, if an even-handed and fair approach is adopted with all offers made and these are pitched with a degree of moderate liberality, then they should result in a high level of property owner acceptance.
- 8.5. When determining an agreed final settlement offer package, the Council may wish to consider various options which may include:
- 8.5.1. Providing for a fixed contribution towards reasonable property owner transaction and relocation expenses in two separate categories being; bare land and those where the property is the owner's primary place of residence;
  - 8.5.2. Securing an option to purchase with a prescribed timeline for the vendor/purchaser to avail themselves of the offer and subsequently settle the transaction;
  - 8.5.3. Deferred settlement options to allow the property owner an agreed period of time to finalise their relocation arrangements or manage the impracticality of them relocating due to advanced age;
  - 8.5.4. If properties are tenanted, sufficient notice under the Residential Tenancy Act will need to be given;
  - 8.5.5. For properties purchased with dwellings/buildings insitu whereby the property owner seeks to undertake the removal and relocation of the said dwellings/buildings to another site, the Council's associated disposal/recovery costs will need to be factored into the acquisition cost (noting that some improvements may only have a demolition value);

8.6. TPG can provide further advice on any of these options and any others the Council may wish to investigate in its consideration of determining fair settlement package options for this project.



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