

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURĀU ROHE

ENV-2020-AKL-000064

IN THE MATTER: of the Resource Management Act 1991

AND

IN THE MATTER: of an appeal pursuant to clause 14 of the
First Schedule to the Act

BETWEEN: **AWATARARIKI RESIDENTS
INCORPORATED**

Appellant

AND: **BAY OF PLENTY REGIONAL COUNCIL**

First Respondent

AND: **WHAKATĀNE DISTRICT COUNCIL**

**Second Respondent and Requestor of
Plan Change 17**

AND: **WHAKATĀNE DISTRICT COUNCIL
PLACES AND SPACES**

Section 274 Party

STATEMENT OF EVIDENCE OF JOHN BLAIR OLLIVER – PLANNING

10 AUGUST 2020

CooneyLeesMorgan
.....

247 Cameron Road
P O Box 143
TAURANGA
Telephone: (07) 578 2099
Facsimile: (07) 578 1433
Counsel : M H Hill / R C Zame
Email: mhill@clmlaw.co.nz /
rzame@clmlaw.co.nz

Qualifications and Experience

1. My full name is John Blair Olliver.
2. I am a planning consultant and a founding director of Bloxam Burnett & Olliver Ltd (BBO), a firm of consulting engineers, planners and surveyors based in Hamilton and Tauranga.
3. I have 38 years professional planning experience and I am a full Member of the New Zealand Planning Institute. I am also a Ministry for the Environment accredited hearings commissioner. I have managed or prepared many private and council-initiated plan changes, including s32 evaluations, and have appeared at hearings and presented evidence on them.
4. My recent experience relevant to these plan changes is:
 - (a) As s42A reporting officer for Waikato District Council on a private plan change to rezone land from Rural to Residential on Rangitahi Peninsula in Raglan. The site was a master-planned development and included significant archaeological and cultural values and natural character, open space and coastal access issues;
 - (b) Providing evidence in support of Plan Change 2, a private plan change to the Hamilton City District Plan to rezone a 62ha industrial-zoned site to a mixture of Residential, Business and Major Facilities (tourism and recreation) zones. Particular issues included geotechnical hazards as a result of the sites previous use as a quarry and its location adjacent to the Waikato River, and flood risk as a result of the sites proximity to the River;
 - (c) Management of, and provision of planning evidence in support of, a rezoning of 178ha of land at Ohinewai, near Huntly, from rural to urban zones. The rezoning process is taking place through submissions on the Proposed Waikato District Plan and includes consideration of flood hazards on the site, impacts on the Lower Waikato/Waipā Flood Protection Scheme, and the residual risk of stopbank failure. Wider issues of strategic land use allocation and infrastructure planning also apply.
5. I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2014 and I agree to comply with it. I confirm that the issues addressed in this statement of evidence are within my area of expertise, except where I state I

am relying on the specified evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from my expressed opinion.

Summary

6. Subsequent to a severe weather event in May 2005, Whakatane District Council (**WDC**) initiated the Awatarariki Debris Flow Risk Management Programme (**RMP**) to manage the loss-of-life and property damage risk from future debris flows within the Awatarariki Stream catchment in Matatā. The risk was highest for residential activity located within the stream fanhead.
7. The RMP comprised multiple work streams, ultimately identifying and promoting 'voluntary managed retreat' as the most effective measure to reduce risk on the Awatarariki fanhead. Amongst other things, managed retreat incentivised owners of properties in a high risk natural hazard area to relocate out of harm's way.
8. The voluntary nature of the managed retreat programme meant that WDC could not rely exclusively upon that approach to safeguard life and property, and to meet statutory obligations with regards to management of significant natural hazard risks. WDC consequently considered the feasibility of statutory and non-statutory options for management of risk on the fanhead.
9. For the reasons discussed in my subsequent evidence below, non-statutory mechanisms (such as engineering solutions and catchment management) were considered but dismissed by WDC as ineffective and / or impractical in managing risk. Whilst non-statutory mechanisms would potentially allow residents to remain within high risk areas of the fanhead, WDC could not guarantee their effectiveness and thus the safety of residents and property. A statutory approach was ultimately deemed necessary.
10. Plan Change 17 (**PC17**) is a proposed change to the Bay of Plenty Regional Natural Resources Plan (**RNRP**) and needs to be seen in the context of Plan Change 1 (**PC1**) to the Whakatane District Plan (**WDP**).
11. PC1 proposes the identification of the Awatarariki fanhead at Matatā as the Awatarariki Debris Flow Policy Area, within which there are identifiable 'High', 'Medium' and 'Low Risk' areas. Concurrently, PC1 seeks the rezoning of the High Risk Policy Area from Residential to Coastal Protection Zone and proposes that

residential activity within the High Risk Policy Area becomes a Prohibited Activity. From a planning perspective, this is a significant change for land which is currently identified as Residential in the WDP.

12. The s32 Evaluation used to support PC1 and PC17 demonstrates that prohibited activity status for residential activity is highly effective in managing risk to life and property in high risk areas of the fanhead. However, it has limitations insofar as it can only manage new or intensified residential activity: it cannot address the risk associated with existing residential activity which has existing use rights under s10 of the RMA.
13. Section 10 of the RMA specifies that the protection of existing use rights does not extend to a land use that is controlled under section 30(1)(c), which relates to regional council responsibilities for the control of land for the purpose of avoiding or mitigating natural hazards. Regional councils are therefore unfettered in terms of existing use rights and able to extinguish those rights in relation to natural hazards.
14. PC17 is a private plan change requested by WDC, designed to integrate with PC1. It seeks to insert provisions for debris flow risk management on the Awatarariki fanhead into the Natural Hazards chapter of the RMRP, the effect of which is to extinguish existing use rights for residential activity in high risk areas. In association with PC1 therefore, PC17 provides a 'belt and braces' approach to ensure that existing and proposed residential activity can no longer take place within high risk areas of the fanhead. For the reasons outlined in my evidence below, I support this approach.
15. In addition to the statutory controls afforded by PC1 and PC17, the RMP includes an incentivised funding option which enables affected landowners to sell their properties to WDC, at market values unaffected by either the debris flow hazard or the impacts of the Plan Changes. The funding option sits outside of the RMA process but is nonetheless an important component of the RMP and plays a potentially significant role in terms of landowner economic wellbeing.
16. I prepared a s42A Report for consideration by independent Hearing Commissioners which recommended approval of both Plan Changes, with amendments. The Commissioners' decision of March 2020 endorsed the recommendations of the s42A Report, with further minor amendments to PC17. I support the Commissioners' decisions for the reasons which follow.

Background and Scope of Evidence

17. I have been involved in this matter since August 2019.
18. I was engaged jointly by the Bay of Plenty Regional Council (**Regional Council**) and WDC to prepare a s42A report in relation to both PC1 and PC17.
19. Collectively I refer to PC1 and PC17 as the **Plan Changes**, as they are interrelated. A copy of my s42A Report dated 20 December 2019 is **attached** as Annexure A to my evidence.
20. In relation to this appeal, I have been engaged by the Regional Council as Respondent to provide planning evidence in relation to PC17. WDC has engaged Craig Batchelar to provide planning evidence on behalf of the District Council, which is the Respondent in relation to PC1. Mr Batchelar's evidence also addresses planning issues related to PC17, which was a private plan change requested by WDC and accepted rather than adopted by the Regional Council. I have worked with Mr Batchelar to ensure that our evidence is complementary and not repetitive. I have also reviewed Mr Batchelar's draft statement of evidence as it relates to PC17. To avoid repetition, I have adopted Mr Batchelar's evidence where I agree with it, and focussed on areas where I have additional comments.
21. I have also worked with Gerard Willis who has been engaged by the Regional Council to provide specific evidence on the implications of the operative Bay of Plenty Regional Policy Statement (**RPS**) for the Plan Changes, to ensure our evidence is complementary.
22. I also rely on the evidence of Kevin Hind, Maurice McSaveney, Timothy Davies and Peter Blackwood, witnesses for WDC, in relation to technical matters of natural hazard risk. At the time of preparation of this evidence I have viewed their draft evidence and refer to it.
23. My evidence will cover the following issues:
 - (a) Development and overall structure of PC17;
 - (b) Matters raised by the Appellant;
 - (c) Section 32 Analysis; and
 - (d) Conclusions.

Development and Overall Structure of PC17

Background

24. A description of the background to the Plan Changes is set out in paragraphs 2.1-2.12 of the s42A Report. The history and background is also set out in the updated s32 report appended to Mr Batchelar's evidence.
25. As noted in the s42A Report, PC1 and PC17 are interrelated and provide as follows:
 - (a) PC1 proposes the identification of the Awatarariki Fanhead at Matatā as the Awatarariki Debris Flow Policy Area. The proposed Policy Area is divided into 'High', 'Medium' and 'Low Risk' areas. Concurrently, PC1 seeks the rezoning of the High Risk Policy Area from Residential to Coastal Protection Zone. It also proposes that residential activity within the High Risk Policy Area becomes a Prohibited Activity. There are 34 properties within the High Risk Policy Area of which 16 contained houses at the time of preparation of the s42A report;
 - (b) PC17 is a private plan change requested by WDC. It seeks to insert provisions for debris flow risk management on the Awatarariki Fanhead into the Natural Hazards chapter of the RNRP. The purpose of PC17 is to manage the risk to people's safety by creating policies and rules that will end residential activity in the high risk area. Under PC17 those high risk properties will no longer have existing use rights, as they will be extinguished at a specified future date. PC17 is intended to integrate with PC1, so that the regional and district plans comprehensively address the risk of debris flow, taking into account the different functions of the two councils.
26. The Plan Changes apply to the Awatarariki fanhead which is located on the western fringe of Matatā. The wider location is illustrated in **Figure 1** below.



Figure 1: Plan Change Area in the wider context of Matatā

27. As stated above, PC17 is a private plan change. On 22 December 2017 WDC lodged a request that the Regional Council change the RNRP to include specific debris flow risk management provisions relating to the Awatarariki Fanhead. On 20 February 2018 the Regional Direction and Delivery Committee of the Regional Council considered the request and accepted it under clause 25(2)(b) of Schedule 1 to the RMA.
28. I understand from discussions with Regional Council staff and review of the meeting minutes that the Committee evaluated the options of 'adopting' or 'accepting' the plan change. The option of adopting it would mean that it would become a Regional Council plan change, whereas accepting it would mean that WDC would continue to lead the process as requestor of the plan change and the Regional Council would process the plan change request.
29. I understand that the Regional Council decided to accept the plan change request, as it recognised that WDC was leading the process of managing the Awatarariki fanhead debris flow risk and had been for several years. WDC had established the Awatarariki Debris Flow Risk Programme, and PC17 was one of eleven workstreams in that programme at the time and it integrated closely with PC1. Accepting the plan change

allowed WDC to continue to lead the overall Risk Management Programme which would thereby support an integrated management approach.

Notification and Submission Process

30. The Plan Changes were jointly notified by WDC and the Regional Council on 19 June 2018, with a closing date for submissions of 17 September 2018. A summary of submissions was notified by both Councils on 27 November 2018. The period for further submissions closed on 11 December 2018.
31. PC17 attracted eight submissions and two further submissions. In summary, the main issues raised by submissions included the following:
 - i. The Plan Change was considered contrary to Part 2 of the RMA insofar as it did not promote the principles of sustainable management;
 - ii. It was considered unlawful and ultra vires with respect to Council's statutory functions and powers;
 - iii. It relied upon imprecise modelling of landslide risk and debris flow;
 - iv. It relied upon imprecise modelling of probability of fatality or injury;
 - v. The assessment of risk was considered an uncertain science;
 - vi. The Plan Change was considered to breach the New Zealand Bill of Rights 1990;
 - vii. The Plan Change did not meet the requirements of Section 21 and Section 85 of the RMA;
 - viii. The Awatarariki community has been marginalised and discriminated against;
 - ix. The Plan Change is judicially untested and is designed to circumvent the Public Works Act 1981 and existing law relating to property;
 - x. Flow hazard would be significantly decreased if upstream farming/ forestry was better managed;
 - xi. Alternative engineering solutions have not been fully investigated; and

xii. A guaranteed funding proposal needs to be in place before existing use rights are extinguished.

32. WDC and the Regional Council jointly appointed independent hearing commissioners to hear and determine the submissions on PC1 and PC17. Public hearings were held from 2-4 March 2020. The Councils jointly notified the decision to approve the Plan Changes on 1 April 2020. One appeal, by Awatarariki Residents Inc, was subsequently lodged with the Environment Court.

Structure of PC17

33. PC17 is designed to integrate with PC1 by giving effect to the Natural Hazards policies in the RPS in the appropriate Regional Plan (the RNRP) and by specifically addressing existing use rights. Whereas PC1 introduced 'High', 'Medium' and 'Low' risk areas within a Debris Flow Policy Area, and rendered residential activity within 'High' risk areas a Prohibited Activity, those provisions are only effective in relation to new development or redevelopment. PC17 has been designed to extinguish existing use rights for residential properties in the High Risk Area, making the use of land for residential activity a prohibited activity from 31 March 2021.

34. PC17 gives effect to this purpose by inserting a new objective and policy framework into the Natural Hazards chapter of the RNRP, as well as one new rule. The following objective and policies are designed specifically to recognise the natural hazard risk on the Awatarariki fanhead at Matatā:

Objective NH 04: Avoidance or mitigation of debris flow hazard by managing risk for people's safety on the Awatarariki Fanhead.

Policy NH P6: To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matatā by undertaking a risk analysis using the methodology set out in Australian Geomechanics Society – Landslide Risk Management 2007.

Policy NH P7: To reduce the level of natural hazard risk associated with debris flow on the Awatarariki Fanhead by ensuring existing residential land uses retreat from the high risk hazard area as soon as reasonably practicable.

Policy NH P8: To ensure existing residential land uses retreat from the high risk hazard on the Awatarariki Fanhead by extinguishing existing use rights that would otherwise enable those residential land uses to continue.

35. Objective NH 04 and its associated policies recognise the Awatarariki fanhead as a natural hazard zone consistent with the zones identified in PC1, with debris flows being a high risk to life¹. RPS Policy NH 2B requires natural hazard risk to be classified into a framework of high-medium-low, and is explained further in the evidence of Mr Willis.
36. Policy NH P6 of PC17 gives effect to the methodology set out in the RPS by specifying the risk analysis methodology used for Awatarariki. PC17, as notified, referred to the Australian Geomechanics Society – Landslide Risk Management 2007 (AGS 2007), but the Commissioner’s decision deleted this reference and replaced it with reference to ‘a methodology that complies with Appendix L of the RPS’. The risk assessment methodology undertaken to support the plan changes is described in the updated s32 report and expert evidence².
37. RPS Policy NH 3B then specifies that:
- ‘In natural hazard zones subject to High natural hazard risk reduce the level of risk from natural hazards to Medium levels (and lower if reasonably practicable) ...’*
38. The term natural hazard zone is defined in the RPS³ to specifically refer to it being determined through a district or regional plan at the appropriate geographic scale to assess risk. PC1 has undertaken that task to define the three risk levels and apply them geographically to the Awatarariki Fanhead through the High Risk Debris Flow Policy Area, the Medium Risk Debris Flow Policy Area and the Low Risk Debris Flow Policy Area.
39. As the RNRP does not use geographical land use ‘zones’ or ‘policy areas’ in the way that the District Plan does, PC17 identifies the land affected by Rule NH R71 which prohibits residential activity, by way of the legal descriptions of the affected properties,

¹ Evidence of Timothy Davies, para 9.3

² s32 report and evidence of Timothy Davies

³ Natural hazard zone means that zone within a hazard susceptibility area defined by the relevant city or district plan, on the basis of existing or proposed land use, as the appropriate geographic scale to assess hazard risk. For the avoidance of doubt, a natural hazard zone may be an entire hazard susceptibility area or such smaller zone as is appropriate taking account of the nature and scale of actual and potential land uses that are exposed to the natural hazard.

as set out in Table NH3. This table is supported by a figure identifying the properties (Figure NH1).

40. Therefore, PC17 implements a natural hazard risk reduction approach whereby residential activities are relocated away from high existing risk areas and they are not allowed to re-establish. PC17 achieves this through rule NH R71 which is as follows:

From 31 March 2021, the use of land for a residential activity is a prohibited activity on any property listed below in Table NH 3.

41. Policy NH14C of the RPS allocates responsibilities for addressing natural hazards in accordance with section 62(1)(i) of the RMA. It allocates responsibility to WDC for developing land use rules, and PC1 is based on that. However, that policy specifically includes a footnote that the Regional Council also has the function to control land use for the avoidance or mitigation of natural hazards in accordance with section 30(1)(c)(iv) of the RMA. The primary responsibility for land use controls is with the district council. However, the footnote, and the explanation to Policy NH14C, specifically refers to the Regional Council's power to set rules addressing natural hazard risk to existing land uses. This provides a firm basis for Rule NH R71.
42. In my opinion the structure of PC17 is strongly founded on the approach to natural hazard risk management set out in detail in the RPS, and therefore gives effect to the RPS and I agree with the evidence of Gerard Willis⁴ in that respect.

Matters raised by the Appellant

43. Issues raised by the Appellant in the appeal documents are addressed under the sub-headings which follow.

Validity and Jurisdiction

44. The Appellant contends that elements of PC17 (and PC 1) are unlawful and *ultra vires* the Council's statutory functions and powers. Specifically, that there is no jurisdiction to remove existing use rights to occupy affected land, by using a plan change process to override s10 RMA; alternatively, that there is no jurisdiction, absent a requirement for reasonable compensation.
45. Based on my understanding of the relevant functions of the Regional Council under the RMA and how these are implemented under the RPS, I do not agree that PC17 is

⁴ Evidence of Gerard Willis, paragraph 65.

unlawful and *ultra vires*. The Regional Council has obligations under s30(1)(c)(iv) of the RMA to control the use of land for the purpose of avoiding or mitigating natural hazards and this is given effect to in detail in the RPS through a range of policies, including the policies referred to in paragraphs 34-41 above. Further, s10 of the RMA specifies that the protection of existing use rights does not extend to land use that is subject to provisions in a regional plan under s30(1)(c). Therefore, it is difficult to understand an argument that it lacks jurisdiction under s30(1)(c) to implement PC17.

46. In my opinion, and based on the supporting technical information which accompanied PC17 and as summarised in the updated s32 evaluation, the Regional Council has adopted an appropriate planning mechanism to reduce the risk in a High hazard risk area. In this case it is an existing risk, so to give effect to its obligations under s30(1)(c)(iv) of the RMA and the RPS policies, the appropriate approach (alongside the PC1 land use rules) is to extinguish existing use rights.
47. The Appellant further contends that revoking lawful occupation and residential activities under s10 RMA, without reasonable compensation, is an abuse of public power and is contrary to public policy and the relevant well beings and values in s5 and Part 2 RMA. I disagree with this for the following reasons.
48. Firstly, PC17 has been promoted hand-in-hand with a managed voluntary retreat programme, at the heart of which is a funding package available to affected landowners. The managed voluntary retreat package is described in detail in the evidence of Jeffrey Farrell for WDC. The funding package enables affected landowners to sell their properties at a value which is not discounted to reflect either the debris flow hazard or the impacts of the Plan Changes. Although the funding package and acquisition mechanism sit outside PC17 and the RMA, in my opinion they are relevant matters when assessing the plan change. The managed voluntary retreat programme was broadly modelled on the Public Works Act 1981 (**PWA**) land acquisition principles, although I note that a PWA acquisition process would discount the value of the land to take into account the hazard risk. The PWA model has been widely used and accepted for many years. In my opinion, the funding package and valuation methodology are robust and fair and amount to 'reasonable compensation', even if the package is not strictly described as such.

49. Secondly, although the RMA has a single purpose⁵, 'sustainable management' can take multiple forms. In my opinion it is not necessary for a proposal to achieve all wellbeing criteria in order to satisfy the purpose of the Act: inevitably, some wellbeings will be more achievable or more important than others and, from time to time, a trade-off is required. The provision for the wellbeings must always occur in a way which ensures the provision of health and safety. In this case the health and safety of people is paramount because a high probability of death or injury has been identified. Therefore, in my opinion PC17 (and PC1) must include methods that positively promote safety of people, rather than leaving it to subsequent consenting processes and accepting existing uses.
50. The managed retreat funding package is intrinsically linked to the outcome of PC17. In the circumstances, it makes a positive contribution towards the economic wellbeing of affected residents, in accordance with s5.
51. More obviously, PC17 enables the management of natural and physical resources in a way which provides for the health and safety of people and communities. In the circumstances, I consider the Plan Change to be well aligned with the wellbeing and sustainable management direction of s5.

Part 2 RMA

52. The Appellant contends that the decisions on PC17 and PC1 do not promote sustainable management, community wellbeing and relevant principles in Part 2 of the RMA. Further, that Society members are directly and substantially affected by the obligations imposed by the Plan Change.
53. I agree that Society members located within high risk areas of the fanhead are directly and substantially affected by PC17. However, I do not agree that the Plan Change is inconsistent with, or does not give effect to, the principles of sustainable management. As set out above, in my opinion the extent and degree of risk to health and safety in this case requires those elements to be actively promoted through plan provisions.
54. PC17 is supported by a s32 evaluation which gives consideration to the extent that the proposed new natural hazard objective is the most appropriate way to give effect to the purpose of the RMA, and thus ensure alignment with the purpose and

⁵ The purpose of the Act is to promote the sustainable management of natural and physical resources.

principles of the Act. I agree with the s32 evaluation that proposed objective NH4 is 'relevant', 'feasible' and 'acceptable'. The Plan Change objective reflects the specific circumstances that apply to the fanhead and the outcome is realistically able to be achieved within Council's powers and resources. Given that the debris flow risk has been identified as "High" and therefore is in my view a significant risk for the purposes of Council's statutory obligation under s6(h) of the RMA to recognise and provide for the management of significant risk from natural hazards, I consider PC17 to be consistent with Council's statutory functions (which include avoidance or mitigation of natural hazards under s30(1)(c)) and to be appropriate in terms of Part 2 of the Act.

Statutory Framework

55. I disagree with the view that PC17 is inconsistent with the relevant statutory functions of the Regional Council, that it fails to achieve integrated management and that the adverse impacts are disproportionate to the risks being managed. I also disagree that decisions regarding both Plan Changes fail to implement higher order instruments.
56. Section 30(1)(c)(iv) of the RMA identifies the function of a regional council as including the control and use of land for the purpose of 'avoidance or mitigation of natural hazards'. PC17 is not required to reflect both avoidance and mitigation; it can support one or the other, or both. It is accepted that PC17 is essentially an avoidance regime, but I consider this to be within the scope of s30(1)(c)(iv) given that engineered mitigation and other alternatives have been shown not to be reasonably practicable. In reaching that conclusion, I have relied upon the numerous technical assessments which formed part of the Plan Change documentation and s32 evaluation.
57. In my opinion, PC17 achieves integrated management insofar as it builds upon the Debris Flow Policy Area introduced by PC1 and seeks to manage issues (such as existing use rights) which cannot be addressed by way of District Plans. In that regard, PC17 seeks an integrated 'belts and braces' approach which is consistent with PC1 and the 'precautionary approach' (check reference) included in the RPS.
58. I acknowledge that there are potentially adverse social and economic impacts resulting from the Plan Changes. However, I rely upon the technical assessments which accompanied the Plan Change documentation that the Awatarariki fanhead is a significant natural hazard with ongoing potential for catastrophic damage and / or future loss of life, in the event of a repeat 2005 weather scenario. On that understanding, and accepting that avoidance or mitigation is not practically available

through engineering or other early warning systems, I disagree that the adverse effects are disproportionate to the risks being managed. There are social costs in implementing PC17, by way of disruption and relocation of households. However, those costs are, in my opinion, far less significant than the potential for loss of life, injury or destruction of property. My opinion is also supported by the way the social costs or disruption are offset by the voluntary managed retreat package.

59. Sections 4.54 to 4.69 of my s42A Report variously address alignment with higher order instruments including the New Zealand Coastal Policy Statement (NZCPS). In summary, however, I consider PC17 to be consistent with the NZCPS insofar as Policy 25 clearly encourages changes in land use, as well as managed retreat, as a means of reducing risk from natural hazards. For that reason, I disagree that the decision on PC17 wrongly relied upon Policy 25. In any case, that reference is only one of many reasons in the decision.
60. Sections 4.60 to 4.69 of my s42A Report address alignment with the RPS. I have reconsidered those conclusions in light of the Decision and the Appeal, and they remain unchanged. Of particular relevance is Policy NH3B which identifies risk outcomes relative to a natural hazard scale. In natural hazard zones subject to 'high' risk (such as areas of the Awatarariki fanhead), the RPS imposes a requirement to reduce the levels of risk to a 'medium' level, and lower if reasonably practicable. These outcomes are to be promoted through Policy NH12A, which seeks to manage natural hazard risk through regional and district plans. PC17 is therefore well aligned with the policy intent of the RPS, as is PC1.
61. The Appellant further contends that the Plan Change does not give effect to the relevant provisions of the RPS insofar as alternative means of risk avoidance or mitigation are available, such as those identified in Appendix M of the RPS. I note that a number of examples within Appendix M (such as the 'modification of existing development' and 'promoting the use of natural defences') were considered but dismissed by WDC and its consultants as being either impractical, ineffective or unreliable and therefore in section 32 terms were not appropriate. I agree that consideration of Appendix M is relevant, but I remain of the view that, overall, the Plan Change gives effect to the relevant provisions of the RPS.

Section 85

62. The Appellant contends that relevant provisions within PC17 (and PC1) are in breach of s85 of the RMA and should be withdrawn because they would render land incapable of reasonable use and place an unfair and unreasonable burden on the owners of that land. This will be addressed further in legal submissions for the Regional Council, however I provide some comments below from a planning perspective.
63. I agree that, in effect, PC17 will render properties within high risk areas of the Awatarariki fanhead incapable of ongoing residential use. I also accept that alternative land use options are extremely limited given the District Plan constraints applicable to the proposed zone. In my opinion, however, residential activity is not a reasonable use in the context of a high risk natural hazard area, especially one which has ongoing potential for catastrophic property damage (ie the potential for complete destruction of the residential use) and / or loss of life in the event of a repeat of the 2005 weather scenario.
64. Reasonable use does not just refer to the individual use of the property; it also refers to the reasonableness of the use in the wider community context. This needs to take into account the risk to other members of the community who may have to respond to a debris flow emergency, and the costs of repair and reinstatement of infrastructure and structures.
65. Section 85(3A) gives the Environment Court the ability to direct District and Regional Councils to modify, delete or replace plan provisions, providing the criteria in s85(3B) are met. The grounds referred to in s85(3B) are that the provisions or proposed provisions:
- (a) make land incapable of reasonable use; and
 - (b) places an unfair and unreasonable burden on any person who has an interest in the land.
66. I note that the Court would need to be satisfied that both arms of the s85(3B) criteria were met before directing the Councils to withdraw or modify the Plan Changes. That being the case, in my opinion an unfair and unreasonable burden is not placed on persons with an interest in the land, given the incentivised and voluntary managed retreat programme that is available to all affected landowners.

67. As noted in paragraph 37 of the Commissioners' decision, "*the 'voluntary managed retreat' funding package enables property owners who wish to participate in the voluntary managed retreat programme to sell their properties at an assessed 2019 baseline market value that is not discounted to reflect either the debris flow hazard or the plan changes*". I agree that the terms of the funding package fairly discount the impacts of the hazard and of the proposed Plan Changes to avoid any unfair and unreasonable financial burden on landowners.

Adverse Effects

68. Decisions on PC17 are cited as creating significant adverse effects by limiting or prohibiting residential activities within risk areas with consequential impacts in terms of s5 wellbeings. In this regard, it is contended that the voluntary managed retreat funding package fails to avoid, remedy and mitigate adverse impacts on landowners represented by the Society.
69. I agree that PC17 would prevent ongoing residential activity within high risk areas and that in turn has the potential for adverse effects on social and cultural wellbeing. In my opinion, those adverse effects are more than offset by significantly reduced risk of harm during extreme weather events, which ultimately benefits the health and safety of the wider community including residents directly affected by the Plan Changes.
70. I accept that some Society members have intergenerational history with Matatā, and for that reason PC17 will inevitably have adverse effects upon social and other wellbeings. However, I disagree that the voluntary managed retreat funding package will not remedy or mitigate at least some adverse impacts on affected landowners, not least in terms of economic redress and likely increased social and cultural wellbeing once they re-establish their lives free from the ongoing stress and uncertainty likely to be suffered by living in harm's way.

Risk Assessment

71. In general terms, the Appellant contends that the risk assessment used to inform PC17 is flawed. This is consistent with the submission by the Appellant which questioned the methodology and modelling used to determine hazard and risk, and which has led to a perceived overly conservative and precautionary approach. As previously stated, the prohibited status is considered 'disproportionate' given the uncertainties of risk assessment. At the submission stage, the Appellant also questioned whether it was appropriate for PC17 to rely upon the Australian

Geomechanics Landslide Risk Management methodology (AGS 2007) as the methodology for assessing natural hazard risk.

72. For the purposes of addressing that issue in my s42A Report, I relied upon the technical assessments which supported the s32 Evaluation including the '*Awararariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study*' by TRH Davies (2017) and the '*Quantitative Landslide and Debris Flow Hazard Assessment*' by Tonkin and Taylor (2013), amongst others.
73. The conclusions reached in my s42A Report are essentially unchanged. That is to say, although I agree that risk assessments contain elements of uncertainty, I am unaware of any expert evidence to the contrary which demonstrates that the methodology and modelling used to inform PC17 is flawed. Further, I note that industry confidence in AGS 2007 is such that it is a recognised assessment methodology in the RPS Natural Hazard Risk Assessment User Guide.
74. I disagree that prohibited status is a disproportionate response given the uncertainties of risk. In particular, in the case of Awatarariki, the 'consequence' element of the risk is well understood as a result of the impact of the 2005 event on property, buildings and people. The 'probability' aspect of the risk includes some uncertainties. I am guided by the technical assessments which accompanied the s32 Evaluation that areas of the Awatarariki fanhead have 'high' natural hazard risk. That being the case, the RPS imposes a requirement on Councils to reduce 'high' levels of risk to a 'medium' level, and lower if reasonably practicable. The '*Awararariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study*' (TRH Davies, 2017) demonstrates that alternative methodologies to achieve 'medium' or lower levels of risk are unreliable and / or impractical and unaffordable, and this is confirmed in the evidence⁶. Based on the supporting s32 documentation, I consider prohibited status to be a necessary and appropriate element of a managed retreat strategy.

Alternatives

75. The s32 evaluation used to support PC17 relies upon a significant array of technical reports, many of which have been peer reviewed by specialists in those fields. That includes but is not limited to the '*Awararariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study*' (TRH Davies, 2017) which I relied upon for my s42A Report. That reporting considered the feasibility of alternative options which might

⁶ Evidence of Timothy Davies, paragraph 1.4.

otherwise have allowed residents in high risk areas to remain within their homes; but those alternatives were found neither to be practical, nor sufficiently reliable.

76. At a higher level, the s32 evaluation considered alternative options at a district and regional level to give effect to the objectives of the Plan Change. Some of the alternatives would have had lesser impacts on individual properties but were shown to be less efficient and effective in achieving the objectives. I agree with the findings and recommendations in the s32 Evaluation regarding alternative options. Overall, therefore, I disagree that the Plan Changes fail to address, or at least consider, reasonably available alternative options.

Requested Relief

77. In order of preference, the Appellant seeks the following:
- (a) Withdrawal of PC17 and PC1, or deletion of the Plan Changes pursuant to s85 of the RMA;
 - (b) Amendment of PC17 and PC1 to address the matters identified in the Appeal and relief sought in the Appellant's submissions. Without limiting that relief, amend the identification of high risk properties and ensure that residential activity may lawfully continue in properties identified as high risk.
78. I do not support the requested relief for the reasons outlined in this evidence. I agree with the Commissioner's decision to approve PC17.

Section 32 Analysis

79. The Plan Changes are supported by a s32 evaluation prepared in June 2018. As required by s32, the evaluation examined the extent to which the new objective was the most appropriate way to achieve the purpose of the RMA and whether the provisions are the most appropriate way to achieve the objective. That evaluation also considered the efficiency and effectiveness of the proposal, taking into consideration benefits and costs and the risk of acting or not acting.
80. In my opinion the s32 evaluation that supports the Plan Changes was very robust because WDC put extensive effort over many years into investigating engineering and management options, so as to maximise the opportunities for the residents to be protected and remain on the fanhead. It was only when the multiple engineering

options were found to be unreliable and had been discarded, that the planning response was fully developed as an option.

81. In my opinion, the s32 Evaluation meets the statutory requirements of the RMA and contains a level of detail which corresponded with the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the proposal.
82. I provide a planning assessment of the s32 evaluation in sections 4.24 to 4.33 of my s42A Report. I would not make any changes to the conclusions I reached at that time as a result of the Decision or Appeal. I have also reviewed the updated s32 analysis section of Mr Batchelar's evidence and agree with it.
83. For the above reasons, I do not support the notion that the "*decisions are not appropriate, efficient or effective in terms of the relevant statutory tests in s32 RMA*⁷". I note further that there is no requirement under s32 of the RMA for proposed methods to 'avoid', 'remedy' or 'mitigate' costs, as inferred within the Notice of Appeal⁸.
84. I have reviewed the s32AA analysis carried out by the Hearings Panel in section 9 of the Decision. I agree with the additional words included in Policy 18.7.1 of PC1 which cross-reference Rule NH R71 in PC17. These strengthen the integration between the two Plan Changes.
85. I do not consider that the issue raised in paragraph 178 of the Decision about whether AGS 2007 meets the criteria in Appendix L yet, because the amendment does not yet form part of an operative plan change, is material. The intent of including AGS 2007 in PC1 is more about use in future assessments than for these Plan Changes. These Plan Changes have appropriately drawn on it regardless of whether it forms an operative part of the Plans. I agree with Gerard Willis that the intent will be achieved by eventual inclusion in PC1 as an 'endorsed' methodology, and that processing the Plan Changes contemporaneously with the inclusion of AGS 2007 is a transparent and practical method⁹. I note that the Commissioners agreed with my assessment of this issue in terms of section 32AA, that the efficiency and effectiveness of including an alternative risk assessment methodology through the process set up by Appendix

⁷ Notice of Appeal by Awatarariki Residents Incorporated, Paragraph 12

⁸ Notice of Appeal by Awatarariki Residents Incorporated, Paragraph 12

⁹ Evidence of Gerard Willis, paragraph 31.

L is still achieved by PC1 and it is not essential that AGS 2007 be specifically referred to in both plan changes.

86. I agree with the Commissioners' other findings to the extent that the proposed minor amendments represent reasonably practicable options for better achieving objectives and no additional evaluation is necessary.

Conclusions

87. In my opinion, and based on the events of May 2005, the Awatarariki fanhead can reasonably be described as subject to a significant natural hazard risk. AGS 2007 has been used to identify levels of risk within the Awatarariki Debris Flow Policy Area, with areas of 'high' risk having ongoing potential for property damage and / or loss of life in the event of a repeat 2005 weather scenario. The risk to life and property is significant in terms of s6(h) of the RMA, so addressing the risk is a matter of national importance.
88. The s32 evaluation has considered regulatory and non-regulatory means to avoid, remedy or mitigate natural hazard risk. Supporting documentation demonstrates that there are no feasible engineering or catchment management alternatives that would lower 'high' levels of risk to 'medium' (or 'lower' if reasonably practicable), as is required under Policy NH3B of the RPS. Therefore, I support the Commissioner's conclusion that "*non-regulatory options simply do not provide a realistic means of reducing the current intolerable risk of loss of life from future debris flows*"¹⁰.
89. Regulatory alternatives to PC17 were considered in s10 of the s32 Evaluation. I support the finding that, on balance, Option 2¹¹ (i.e. PC17) is the most effective and reasonably practicable option for achieving the objectives of the Plan Change. Whilst it is accepted that PC17 will inevitably have adverse social and economic impacts for affected landowners, I consider those adverse effects to be outweighed by the wider community benefits, including benefits to affected residents, resulting from reduced risk to life and property. In my opinion, adverse economic effects are also substantially mitigated and potentially enhanced by the voluntary retreat programme which seeks to recompense significantly affected landowners, albeit that that programme sits outside of the Plan Change process.

¹⁰ Commissioners' Decision, s7.1, paragraph 149.

¹¹ Residential use of high risk sites on Awatarariki fanhead is a Prohibited Activity.

90. Overall, PC17 is the most appropriate way of achieving the purpose of the Plan Change, which is to recognise and better manage natural hazard risk within the Awatarariki fanhead. Specifically, Rule NH R71 and its associated policies are the most appropriate methods to achieve objective NH4, and the proposed objective is the most appropriate to achieve the purpose of the RMA and give effect to the RPS.
91. PC17 is a necessary and critical adjunct to PC1, without which existing residential activity would continue to face unacceptable levels of risk within high risk areas of the fanhead.

John Blair Olliver
10 August 2020

Attachments:
Annexure A s42A Report

"Annexure A"

Proposed Plan Change 1 to the Whakatāne District Plan

&

Proposed Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan

Awatarariki Stream Debris Flow Risk Management

S.42A

Planning Report on Submissions and Further Submissions

20 December 2019



1	Introduction	3
2	Background	4
3	Summary of Plan Changes	6
4	Plan Change Assessment	8
4.1	Purpose of the Plan Changes	8
4.2	Technical Reviews.....	9
4.3	Pre-notification Process	10
4.4	Notification Process - Submissions and Late Submissions.....	11
4.5	Decision Making.....	12
4.6	Statutory Framework.....	12
4.7	Resource Management Act Policy Direction	17
4.8	Consultation and Development of the Plan Change	23
4.9	Material Included my Reference.....	24
4.10	Updates Since Notification	25
5	Submissions and further submissions	29
5.1	Introduction	29
5.2	Submission Topic Area.....	29
5.3	Whakatāne District Plan (WDP) - General Submissions.....	29
5.4	Whakatāne District Plan (WDP) - Chapter 3 - Zone Descriptions.....	39
5.5	Whakatāne District Plan (WDP) - Chapter 18 - Natural Hazards - Objectives, Policies, Rules.....	41
5.6	Whakatāne District Plan (WDP) - Chapter 21 - Definitions, Advice Notes and Other Methods.....	47
5.7	Whakatāne District Plan (WDP) - Planning Maps	48
5.8	Regional Natural Resources Plan (RNRP) – General Submissions	50
5.9	Regional Natural Resources Plan (RNRP) - Natural Hazards – Objectives, Policies and Rules.....	57
6	Conclusions and Recommendations	70
6.1	Part A – Plan Change I (Whakatāne District Plan).....	70
6.2	Part B – Plan Change I7 (Bay of Plenty Regional Natural Resources Plan).....	71

Appendix 1:
Submissions and Further Submissions

Appendix 2:
Recommended Amendments to Plan Changes

Appendix 3:
Schedule of Background Technical Reports

Appendix 4:
Matatā Flooding 18 May 2005: Meteorology Update, 22
November 2019

Appendix 5:
Technical Assessment: Debris Flow Risk Management, GHD,
31 October 2019, and Planning Policy Assessment by Enfocus
Ltd

Appendix 6:
Managed Retreat Programme Update

1 Introduction

- 1.1 My name is John Blair Olliver. My qualifications are Bachelor of Arts and Diploma of Town Planning. I am a planning consultant and a founding director of Bloxam Burnett & Olliver Ltd (BBO), a firm of consulting engineers, planners and surveyors based in Hamilton. I have 38 years professional planning experience and I am a Member of the New Zealand Planning Institute. I am also a Ministry for the Environment accredited hearings commissioner.
- 1.2 I have been engaged to prepare this report as an independent planner, in accordance with s42A of the Resource Management Act 1991 (RMA) on behalf of Whakatāne District Council (WDC) and the Bay of Plenty Regional Council (BOPRC).
- 1.3 I am familiar with the site and its environment and have visited the locality on a number of occasions.
- 1.4 Although this is a Council Hearing, I am familiar with the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014. I have complied with that code when preparing my written statement of evidence and I agree to comply with it when I give any oral evidence. I have considered all of the material facts that I am aware of that might alter or detract from the opinions expressed here.

2 Background

- 2.1 A severe rainfall event on 18 May 2005 triggered several large debris flows in the Awatarariki, Waitepuru and Ohinekoao stream catchments at Matatā. The debris flow caused significant damage to land, buildings, and road and rail infrastructure on the Awatarariki fanhead. Although the event caused no deaths or injuries, the destructive force of the debris flow was such that fatalities could easily have occurred.
- 2.2 The severity of the 2005 event resulted in investigations to understand the cause of the debris flow and identify potential solutions to avoid a repeat scenario. At that stage, high level options to reduce Matatā's exposure to what remained a high-risk natural hazard included:
 - Retreat (removal of existing dwellings that would be in the path of potential future events);
 - Dam options (debris detention in the stream catchment with a flood channel on the fanhead); and
 - Fanhead options (directing debris flows with a flood channel on the fanhead).
- 2.3 In August 2005, WDC identified a debris dam and debris flood channel as the initial preferred means of hazard mitigation. The preferred measure recognised a desire to protect existing dwellings and the desire of residents to continue to live in the area. A subsequent cost benefit analysis concluded that this option offered the greatest net benefit to the Matatā community and a process of design development followed¹.

¹ Tonkin and Taylor Ltd, *The Matatā Debris Flows 18 May 2005: Preliminary Infrastructure and Planning Options Report* – August 2005

- 2.4 A range of debris detention structure design proposals were presented to the Matatā community during the design development stage. The community raised concerns about a number of these structures, based on environmental outcomes, cost and affordability and cultural concerns. The community feedback resulted in the preferred engineering design being a flexible ring net proposal in the upper catchment with deflection bunds and raised building platforms on the fanhead. That proposal is described in a 2009 report by Tonkin and Taylor² with a flow control system comprising the following:
- A flexible barrier net constructed within the catchment that would retain approximately half of the design debris flow event (100,000m³);
 - A spillway to direct the remaining damaging debris flow material to the coastal strip and away from the town; and
 - The control of flows on the fanhead using 1.5m high berms and raised building platforms.
- 2.5 Concerns were raised about the durability and stability of the ring net structure during the detailed design phase and, ultimately, those concerns could not be satisfactorily resolved. Following an independent review of the project in June 2012³, it was recommended that WDC take no further action to implement the debris flow control system. Lower catchment solutions were re-evaluated later that year by WDC which reached the conclusion that there were no viable engineering solutions to manage the debris flow risk to people and properties on the Awatarariki fanhead that would meet community engagement outcomes, engineering viability or feasibility. WDC resolved to pursue non-structural planning-based options instead.
- 2.6 WDC commissioned a hazard and risk assessment for landslides and debris flows at Ōhope, Whakatāne and Matatā in 2013⁴. That assessment confirmed that the risk to life and property on the Awatarariki fanhead was ‘high’.
- 2.7 Investigatory work commenced on planning options to manage landslide and debris flow risks, and strategies for the management of risk on the Awatarariki fanhead were included within a community consultation document issued in February 2014⁵. This work was put on hold until new natural hazard policies under the Bay of Plenty Regional Policy Statement (RPS) became operative and provided guidance to territorial authorities on how they should manage natural hazard risk. The Natural Hazards provisions of the RPS became operative in 2016.
- 2.8 WDC formed a Consensus Development Group in 2015 to investigate options for risk management on the Awatarariki fanhead. This resulted in formation of the Awatarariki Debris Flow Risk Management Programme (Risk Management Programme), which promoted multiple work streams to manage the loss-of-life and property damage risk from future debris flows within the Awatarariki Stream catchment. These work streams are now significantly advanced or completed.

² Report Whakatāne District Council Debris Flow Control System Awatarariki Stream, Matatā

³ Alan Bickers (Jayal Enterprises) – *Review of Awatarariki Catchment Debris Control Project*, June 2012

⁴ Risk Assessments for Ōhope, Whakatāne and Matatā by Tonkin and Taylor, 2013

⁵ Draft Awatarariki Fanhead Strategy Issues and Options, February 2014.

- 2.9 The Risk Management Programme identified ‘managed voluntary retreat’ as the most effective measure to reduce risk. The methodology incentivises owners of properties in a natural hazard area that have been assessed as having an unacceptable loss-of-life risk, and for which no viable risk mitigation options exist, to relocate out of harm’s way.
- 2.10 In conjunction with BOPRC and Central Government, WDC prepared a business case to support funding of managed voluntary retreat. At the time there was uncertainty as to whether BOPRC would seek to extinguish existing use rights for residential activities in the high-risk areas. Significantly, ‘managed voluntary retreat’ would potentially default to ‘managed retreat’ if BOPRC exercised its powers to extinguish existing use rights through a new regional plan rule as residential buildings and activities would not be permitted to remain.
- 2.11 In July 2019, following consideration of the business case, Central Government confirmed financial assistance towards managed retreat from the Awatarariki fanhead. The contribution from Central Government equates to a one third share with equal contributions previously confirmed from WDC and BOPRC.
- 2.12 Due to the lack of effective and efficient engineering options, the resource management approach for managing debris flow risks on the Awatarariki fanhead needs to change in order to appropriately recognise and address the significant risk from debris flow hazards. That is the purpose of Proposed Plan Change 1 to the Operative Whakatāne District Plan and Proposed Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan. The details of the plan changes are described more fully in following sections of this report.

3 Summary of Plan Changes

Table 1: Plan Change 1 Summary

Whakatāne District Plan	
Status of Document	Operative 21 st June 2017
Name of Plan Change	Plan Change 1 – Awatarariki Fanhead, Matatā
Date of notification	19 June 2018
Closing date for submissions	17 September 2018
Number of submissions received	8 in total (1 of which is a late submission)
Closing date for further submissions	11 December 2018
Number of further submissions received	4
Main issues emerging from submissions	<ul style="list-style-type: none"> - Plan change rules are too stringent - Hazard maps are based on flawed information - Risk of property inundation can be mitigated. - Preference for alternative engineering solutions. - Plan change does not promote sustainable management, is unlawful or breaches the statutory framework. - A method and rules regime is preferred to the notified Plan Change. - Perceived impacts on KiwiRail activity.

Table 2: Plan Change 17 Summary

BOP Regional Natural Resources Plan	
Status of Document	Operative 1 December 2008
Name of Plan Change	Plan Change 17 - Awatatariki Fanhead, Matatā
Date of notification	19 June 2018
Closing date for submissions	17 September 2018
Number of submissions received	8
Summary of Submissions Notified	27 November 2018
Closing date for further submissions	11 December 2018
Number of further submissions received	2
Main issues emerging from submissions	<ul style="list-style-type: none"> - Contrary to Part 2 of the RMA and does not promote the principles of sustainable management. - Unlawful and ultra vires with respect to Council’s statutory functions and powers. - Imprecise modelling of risk landslide and debris flow. - Imprecise modelling of probability of fatality or injury. - Uncertain science as to the assessment of risk. - Breaches the New Zealand Bill of Rights 1990. - Does not meet the requirements of Section 21 and Section 85 of the Resource Management Act 1991. - The Awatatariki community has been marginalised and discriminated against. - The Plan Change is judicially untested and is designed to circumvent the Public Works Act 1981 and existing law relating to property. - Flow hazard would be significantly decreased if upstream farming/ forestry was better managed. - Alternative engineering solutions have not been fully investigated. - Guaranteed funding proposal needs to be in place before existing use rights are extinguished.

3.1 Proposed Plan Change 1 proposes the identification of the Awatarariki fanhead at Matatā as the Awatarariki Debris Flow Policy Area. The proposed Policy Area is divided into ‘high’, ‘medium’ and ‘low risk’ areas. Concurrently, the Plan Change seeks the rezoning of the high risk area from Residential to Coastal Protection Zone. The Plan Change proposes that residential activity within the High Risk Policy Area will become a Prohibited Activity. There are 34 properties within the High Risk area of which 16 contain houses.

- 3.2 Proposed Plan Change 17 was requested by Whakatāne District Council. It seeks to insert provisions for debris flow risk management on the Awatarariki fanhead into the Natural Hazards chapter of the Bay of Plenty Regional Natural Resources Plan. The purpose of Plan Change 17 is to manage the risk to people's safety by creating policies and rules that will end residential activity in high risk areas. Those high risk properties will no longer benefit from existing use rights, as they will be extinguished. Plan Change 17 is intended to integrate with Plan Change 1.
- 3.3 A schedule of background documents referenced in the Plan Change Summary and / or the notified Section 32 Evaluation Report is included in Appendix 3.
- 3.4 For the purposes of this report, regard has also been had to a number of post-notification documents which were commissioned by WDC and BOPRC to assist in the reporting process and to address issues raised by submitters. Those documents are summarised from paragraph 4.93 of this report below and where relevant included as appendices.

4 Plan Change Assessment

Purpose of the Plan Changes

- 4.1 Whakatāne District Council is promoting a change to the Operative Whakatāne District Plan (Plan Change 1) and to the Bay of Plenty Regional Natural Resources Plan (Plan Change 17). These Plan Changes are hereafter called 'the Plan Changes'.
- 4.2 Jointly, the purpose of the Plan Changes is to recognise and address the significant risk from debris flow hazard associated with the Awatarariki fanhead. Specifically, Plan Change 1 identifies an Awatarariki Debris Flow Policy Area on the planning maps and categorises the policy area according to risk. Simultaneously, the Plan Change promotes a re-zoning of the 'high risk' area from Residential to Coastal Protection Zone and prohibits all activities within the high risk area other than those relating to transitory recreational use of open space.
- 4.3 Plan Change 1 is designed to manage risk resulting from new or intensified land use activity within the Debris Flow Policy Area. However, Plan Change 1 has no effect upon existing use rights because s10 of the RMA specifies that land may be used in a manner that contravenes a rule in a District Plan or Proposed Plan if the use was lawfully established before a rule became operative or a Proposed Plan was notified. Consequently, changes to the District Plan are only effective in managing new development or redevelopment.
- 4.4 Therefore, concurrently with Plan Change 1, a change is proposed to the Bay of Plenty Regional Natural Resources Plan (Plan Change 17) to the effect that residential activity ceases within high risk areas. Plan Change 17 achieves this by extinguishing existing use rights in the high risk area. The Regional Council is able to do this because one of its functions under s30(1)(c)(iv) of the RMA is to control the use of land for the purpose of avoiding or mitigating natural hazards. Further, s10 of the RMA specifies that the protection of existing use rights does not extend to land use that is controlled under s30(1)(c)(iv).

- 4.5 Therefore, concurrently with Plan Change 1, a change is proposed to the Bay of Plenty Regional Natural Resources Plan (Plan Change 17) to the effect that residential activity ceases within high risk areas. Plan Change 17 achieves this by extinguishing existing use rights in the high risk area. The Regional Council is able to do this because one of its functions under s30(1)(c)(iv) of the RMA is to control the use of land for the purpose of avoiding or mitigating natural hazards. Further, s10 of the RMA specifies that the protection of existing use rights does not extend to land use that is controlled under s30(1)(c)(iv).
- 4.6 The Plan Changes refer to the Awatarariki fanhead which is located on the western fringe of Matatā. The location is illustrated in **Figure 1** below.



Figure 1: Plan Change Area in the context of Matatā

Technical Reviews

- 4.7 The Plan Changes rely on specialist assessments relating to debris landslide hazards, risk assessment and engineering options for hazard mitigation, amongst others. These technical assessments have been variously prepared and peer reviewed between 2005 and 2018 with the key documents being referenced in Appendix 3. The specialist nature of the subject matter has meant that those technical reviews were predominantly completed by external consultants (i.e. non-Council staff) with recognised national expertise in those fields. Those technical reviews informed the eventual plan change documentation, including the assessment of benefits and costs and the risk of acting or not acting, as required under s32 of the RMA.

Pre-notification Process

- 4.8 Plan Change 17 is a private plan change. On 22 December 2017 WDC requested that BOPRC change its Natural Resources Plan to include specific provisions relating to the Awatarariki Fanhead. On 20 February 2018 the Regional Direction and Delivery Committee of BOPRC considered the request and accepted it under clause 25(2)(b) of Schedule 1 to the RMA.
- 4.9 The Committee evaluated the options of 'adopting' or 'accepting' the plan change. The option of adopting it would mean that it would become a BOPRC plan change, whereas accepting it would mean that WDC would continue to lead the process as requestor of the plan change and BOPRC would process the plan change request. Accepting the plan change for processing does not indicate BOPRC has made any decision on its merits; that is subject to the subsequent submission and hearing process.
- 4.10 The main reason BOPRC decided to accept the plan change request was that it recognised that WDC was leading the process of managing the Awatarariki fan-head debris flow risk and had been for several years. They had established the Awatarariki Debris Flow Risk Programme. Plan Change 17 was one of eleven workstreams in that programme at the time. It integrates closely with Plan Change 1. Accepting the plan change allowed WDC to continue to lead the overall Risk Management Programme which would thereby support an integrated management approach.
- 4.11 Method 23B of the Bay of Plenty Regional Policy Statement (BOPRPS) provides that investigating options for addressing existing use or development subject to high risk and applying the most appropriate regulatory or non-regulatory risk-reduction measures is to be shared between regional and district councils. Method 23B does not require the regional council to take the lead, and the shared responsibility of the Plan Changes is consistent with this method.
- 4.12 This decision to accept the plan change allowed for Plan Change 17 to be publicly notified alongside Plan Change 1 to the Whakatāne District Plan.
- 4.13 The plan changes include references to the risk management methodology included in the Australian Geomechanics Society document; Australian Geomechanics Society, '*Landslide Risk Management*', Vol 4 No1 March 2007 (AGS 2007). Clause 34 of Schedule 1 of the RMA requires that if a document is to be included by reference in a district or regional plan the council must make it available for comment prior to notification of the plan changes. A reasonable opportunity for comments must be provided and the council must consider any comments received.
- 4.14 Accordingly, the AGS 2007 document was made available for comment by the public for the period from 1 May 2018 to 22 May 2018. Four comments were received and I comment on them in section 6 of this report.

Notification Process - Submissions and Late Submissions

- 4.15 The Plan Changes were jointly notified by Whakatāne District Council and the Bay of Plenty Regional Council on 19 June 2018, with a closing date for submissions of 17 September 2018. A summary of submissions was notified by both Councils on 27 November 2018. The period for further submissions closed on 11 December 2018.
- 4.16 Plan Change 1 attracted eight (8) submissions and four (4) further submissions were received. One submission by Glenn Baker was received late.
- 4.17 The submission lodged by Glen Baker was only received one day late. It does not raise any issues that are not raised in the other submissions so there is no prejudice in accepting and considering it.
- 4.18 Plan Change 17 attracted eight (8) submissions and two (2) further submissions. There were no late submissions with respect to Plan Change 17.
- 4.19 Plan Change 17 attracted eight (8) submissions and two (2) further submissions. There were no late submissions with respect to Plan Change 17.
- 4.20 The names of all submitters and further submitters are listed in Table 1 below. It includes reference to submissions that have been withdrawn. Copies of the submissions and further submissions are contained in **Appendix 2**.

Table 1: Submissions and Further Submissions Received

Plan Change 1	
Submitter Number	Submitter
1	Awatarariki Residents Incorporated (Society)
2	Bay of Plenty Civil Defence Emergency Management Group
3	Glenn Baker
4	Keith Sutton
5	KiwiRail
6	Margaret Gracie
7	Matatā Residents Association
8	Te Runanga o Ngāti Awa
Further submissions	
FS1	Awatarariki Residents Incorporated (Society)
FS2	Glenn Baker
FS3	New Zealand Defence Force
FS4	Te Mana o Ngāti Rangitahi Trust
Plan Change 17	
Submitter Number	Submitter
1	Te Runanga o Ngāti Awa
2	Katherine Stevens
3	Margaret Gracie
4	Bay of Plenty Civil Defence Emergency Management Group
5	Matatā Residents Association
6	Awatarariki Residents Incorporated (Society)
7	Withdrawn (Mark and Greta Nicholson)
8	Matatā Action Group

Further Submissions	
FS1	Withdrawn (Mark and Greta Nicholson)
FS2	Awatarariki Residents Incorporated (Society)

Decision Making

- 4.21 When making its decision, the Council is required, under clause 10 of the First Schedule of the RMA to give reasons for accepting or rejecting any submissions. The decision of the Council may also include consequential amendments arising out of submissions and any other matters the Council considers relevant and within the scope of aspects raised in submissions. This report addresses these requirements with recommendations for the Commissioners, based on the information I currently have available.

Statutory Framework

- 4.22 The Plan Changes are governed by Part 2 of Schedule 1 of the RMA. Regardless of whether they are ‘council-initiated’ or ‘requested’ plan changes, there is a degree of commonality between them in terms of Schedule 1 procedure, Plan Change 1 is a Council-initiated plan change while Plan Change 17 is a private plan change to the BOP Regional Natural Resources Plan, requested by WDC. Schedule 1 includes provisions for making submissions, decisions, and appeals. Other provisions of the RMA, including sections 31, 32, 72, 74 and 75, and Part 2 of the RMA, including the purpose and principles of the RMA, apply to changes to a district or regional plan.

Section 31

- 4.23 Under 31(1) of the RMA, WDC as a territorial authority has a number of functions for the purpose of giving effect to the RMA in its district. They include the establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district, and the control of the effects of the use of land for the purpose of avoidance and mitigation of natural hazards.

Section 32

- 4.24 Under cl 5 and 22(1) of Schedule 1 to the RMA, a plan change must “contain an evaluation report prepared in accordance with section 32 for the proposed plan or change”.
- 4.25 Section 32 of the RMA provides that an evaluation report must examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA under subsection (1)(a), and whether the provisions in the proposal (i.e. policies, rules and other methods) are the most appropriate way of achieving the objectives under subsection (1)(b). The evaluation must also consider the efficiency and effectiveness of a proposal, taking into consideration benefits and costs and the risk of acting or not acting. An assessment of alternatives, costs and benefits is provided in the Section 32 Evaluation Report dated 8 June 2018.

- 4.26 An evaluation under section 32(1) must also contain a level of detail that corresponds to the scale and significance of the environmental, economic, social and cultural effects that are anticipated from the proposal. In my opinion, the level of detail included within the Plan Change is appropriate, relative to the scale and significance of the anticipated effects. The Plan Change is in response to complex environmental issues and relies heavily on technical assessments and peer reviews. However, it also only applies to a small geographical area. The evaluation reflects that.
- 4.27 The Plan Changes constitute ‘amending proposals’ under s32(3) because they seek to amend existing Plans. As amending proposals, therefore, the evaluation against the “objectives” is limited to new objectives that are part of the proposal and any objectives of the respective Plans that are relevant to the proposed new objectives. The Plan Changes have primarily been designed to be incorporated within the existing structure and framework provided by the objectives and policies in the respective plans. In my opinion, both Plan Changes satisfy s32(1)(b) because they are able to be inserted into the existing RMA plans with minimal impact on the plans’ existing policy frameworks.
- 4.28 A key aspect of the s32 analysis is that neither Plan Change requires amendment to the existing objectives and policies in the District and Regional Plans, because the amending proposal is already consistent with them; this is despite the proposed rezoning from Residential to Coastal Protection zone in the Whakatāne Operative District Plan (WDP). Importantly, the Plan Changes include supplementary objectives and policies to better recognise and manage risk within the Awatarariki fanhead, and the statutory limitations with respect to existing provisions (i.e. the control of existing uses).
- 4.29 No new objectives are proposed for Plan Change 1, and only one new objective is proposed for Plan Change 17. The new objective and new policies are necessary to address site-specific risks at Awatarariki that were not fully understood when the District and Regional Plans were prepared.
- 4.30 I agree with the findings of the s32 evaluation that proposed new objective NH 04 to the Regional Natural Resources Plan is the most appropriate way to achieve the purpose of the RMA.
- 4.31 The s32 analysis assesses both Plan Change 1 and Plan Change 17. It is narrow in scope but necessarily comprehensive in its approach because of the complexity of the issue and the significant consequences for existing landowners. In my opinion the Plan Changes are a good fit in terms of being able to be adopted with minimal impact on the existing Plans, whilst at the same time contributing to the achievement of wider natural hazard objectives within them.

- 4.32 Following from the s32 evaluation of options, the option chosen for Plan Change 1 is Option 4; a Coastal Protection Zone with an overlay of Áwatarariki' Debris Flow Policy Areas. As noted in the evaluation this option is not fully effective in reducing high loss of life risk because of retention of existing use rights which would allow for ongoing residential occupation of the area together with some limited redevelopment rights. The option chosen for Plan Change 17 is Option 2 which includes extinguishing existing use rights. For both Plan Changes there is a significant risk of not acting. Now that the information is available to confirm the high level of loss of life risk, the risk of not acting would be potential property loss and loss of life if a similar event to the 2005 debris flow occurred. In my opinion this risk far outweighs the risks of acting by implementing the Plan Changes. It is acknowledged that acting by implementing the Plan Changes does have negative social and property-related impacts by leading to the relocation of property owners away from the site.
- 4.33 I agree with the overall s32 evaluation that the combination of Option 4 for Plan Change 1 and Option 2 for Plan Changes 17 is the most effective planning and policy response.

Section 74

- 4.34 Section 74 outlines the matters which must be considered by territorial authorities when changing their District Plans.
- 4.35 The respective Councils must change their Plans 'in accordance with', among other things, their functions under s 31 above, the provisions of Part 2, their obligations to have particular regard to the s 32 analysis discussed above, and any national policy statements or national planning standards.
- 4.36 Under s 74, Councils must 'have regard to', among other things, any proposed regional policy statements or proposed regional plans, management plans and strategies prepared under other Acts, and the extent to which the WDP needs to be consistent with the plans or proposed plans of adjacent territorial authorities. The Western Bay of Plenty and Opotiki District Councils are the adjacent territorial authorities and no aspects of the proposal are considered to be in conflict with those District Plans given the Plan Changes are a site-specific response to a particular hazard. There are no proposed regional policy statements or plans currently notified. In this case, the only relevant management plan is the Ngāti Rangitihī Iwi Environmental Management Plan.
- 4.37 My opinion with respect to these documents is addressed in the following sections.

Section 75

- 4.38 In addition to setting out what the ODP must and may state, s 75(3) says that the ODP must "give effect to" (relevantly):
- a) any national policy statement;
 - b) a national planning standard; and
 - c) any regional policy statement.

- 4.39 The relevant National Policy Statement is the New Zealand Coastal Policy Statement which became operative in 2010. There are no national planning standards that are applicable to the proposal. The relevant regional policy statement is the Bay of Plenty Regional Policy Statement (BOPRPS), which became operative in 2014 and was most recently updated in December 2018 to insert housing targets in response to the National Policy Statement on Urban Development Capacity.
- 4.40 In addition, the ODP must not be inconsistent with (relevantly) a regional plan for any matter specified in s 30(1) of the RMA, which relates to the functions of regional councils under the RMA, which as noted above includes use of land to avoid or mitigate natural hazards.
- 4.41 I consider these matters below in subsequent sections of my report.

Section 85

- 4.42 Section 85 of the RMA enables the Environment Court to give directions in respect of land subject to certain land use controls. Section 85(1) states that an interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in the RMA. Any person with an interest in land to which a provision or proposed provision applies, and who considers that the provision would render that land incapable of reasonable use can challenge those provisions on application to the Environment Court or appeal to the Environment Court (section 85(2)). If the Environment Court is satisfied that the proposed provisions make land incapable of reasonable use and place an unfair and unreasonable burden on any person with an interest in that land, it can direct a local authority to modify, delete or replace the provisions (section 85(3)).
- 4.43 Together, proposed Plan Changes 1 and 17 will remove existing use rights for activities that would be significantly and adversely affected by a debris flow event and will replace the current zoning with a zoning that does not allow for any residential use in the future. The Plan Changes are founded on risk assessments which conclude that high risk debris flow areas should not be occupied. A number of submitters contend that their land is rendered incapable of 'reasonable use' and that the Plan Change provisions create an 'unreasonable burden' on those affected landowners under s85 of the RMA.
- 4.44 Based on the technical reporting which accompanies the proposed Plan Changes, I consider that there is a genuine loss of life risk within high risk areas of the Awatarariki fanhead from future debris flow events. Therefore, it is not a 'reasonable use' of the land to occupy it in a situation where there is a high loss of life risk. It would not be logical or reasonable to allow for future residential use of the land. I understand that case authority on section 85 states that the question of whether a land use is 'reasonable' is not an assessment of whether it is reasonable to the owner, by affecting their private property rights. Rather, the question is whether it is reasonable in the wider statutory sense of promoting sustainable use of natural and physical resources, which involves consideration of wider public interests. In this case, those wider public interest issues I have discussed above clearly support the proposed restrictive plan provisions.

- 4.45 In addition, on 28 July 2016 the Ministry of Building, Innovation and Employment (MBIE) issued determinations under the Building Act 2004 confirming that based on the high probability of loss of life a Building Consent Authority should not grant waivers for building consent applications for dwellings subject to debris flows and debris flood natural hazards. This further reinforced the position that residential use of the land is not 'reasonable'.
- 4.46 The detailed knowledge of the natural hazard risk on the Awatarariki Fanhead has only become available after development had already taken place, so it is acknowledged that this places landowners in a difficult position having invested physically, financially, and in some cases emotionally, in their land and buildings in good faith. However, the Councils are duty bound to act once they have sufficient information of the hazards. I acknowledge that the issues have created a burden on landowners through uncertainty as to the appropriate approach to managing the risk, and then uncertainty as to whether they would be an opportunity for a buyout of their properties. However, in my opinion the burden is now not 'unfair and unreasonable' for the following reasons;
- Residential use of land in an area of high loss of life risk is not 'reasonable use' of that land;
 - The managed voluntary retreat programme provides landowners with the ability to sell their properties at market value (as though no hazard risk existed and no plan changes were notified). This essentially puts landowners in a better position than if neither the plan changes or the managed retreat programme were going ahead;
 - Landowners also have the option under the voluntary managed retreat package to relocate their homes to another site, recognising the emotional connection to properties that some residents have.
- 4.47 I consider these matters further in Section 5 of my report below.

Part 2 – Purpose and Principles

- 4.48 As identified above, Plans must be changed in accordance with the provisions of Part 2 of the RMA. The RMA has a singular purpose which is to promote the sustainable management of natural and physical resources (Section 5 RMA – Purpose). The Awatarariki fanhead is a natural resource, and therefore it is incumbent on the Plan Changes to demonstrate how that resource will be sustainably managed.
- 4.49 The Supreme Court in *Environmental Defence Society Inc. vs the New Zealand King Salmon Co Ltd* has said that the definition of sustainable management in s 5(2) of the RMA should be read as an "integrated whole", and that the use of "while" between the parts of the provision that are seen to be enabling, supporting growth, development and improvement of facilities and people's way of life and the restrictions inherent in subsections (a) – (c) means that they must be achieved "at the same time as" each other.

- 4.50 Traditionally, the Courts have taken an overall broad judgement' approach to the assessment of plan changes against the various matters in section 5,6,7 and 8 of the RMA, in addition to the other statutory requirements. In determining whether or not to approve a plan change, the Supreme Court in *King Salmon*, in the context of a plan change, held that there was no need to refer back up the hierarchy of plan provisions to Part 2 to determine a plan change, absent invalidity, uncertainty, or incomplete coverage in the documents promulgated under it, because other high level planning instruments (in this case the New Zealand Coastal Policy Statement and the RPS) were deemed to have given effect to Part 2 at the national regional and district level.
- 4.51 One possible challenge to the validity of a higher-order document is that where a document has been prepared prior to the release of a higher-order planning instrument (such as an NPS or RPS), it cannot be assumed to give effect to it and so recourse back through up the planning hierarchy (and, potentially, to Part 2) is permitted. The reference to "incomplete coverage" above acknowledges that there may be instances where the higher-order planning document does not "cover the field", and so a decision-maker will have to consider whether Part 2 provides assistance in dealing with the matters not covered. To the extent that any provisions in a higher-order planning document are uncertain, reference to Part 2 may well be justified to assist in a full and purposive interpretation of that provision.
- 4.52 As such, the role of Part 2 in decision-making processes for plan changes has changed; however, the statutory requirement for plans to be developed "in accordance with" Part 2 remains.
- 4.53 In my opinion, the RPS, the Regional Natural Resources Plan and the ODP have generally been prepared in accordance with the matters in Part 2, and so recourse back through the planning hierarchy is not considered necessary. They are all up to date documents.

Resource Management Act Policy Direction

National Instruments

- 4.54 There are currently no National Policy Statements or Environmental Standards that are directly relevant to assessment of the proposed Plan Changes, other than the New Zealand Coastal Policy Statement (NZCPS). The New Zealand Coastal Policy Statement is addressed below.
- 4.55 A National Policy Statement on natural hazards was signalled on the [Forward agenda for national direction](#) in 2016, but this is being reconsidered in light of the recommendations of the Climate Change Adaptation Technical Working Group in the publication: [Adapting to climate change in New Zealand: Recommendations from the Climate Change Adaptation Technical Working Group](#) which was released in 2018.

New Zealand Coastal Policy Statement 2010

- 4.56 The New Zealand Coastal Policy Statement (NZCPS) is a national policy statement under the Resource Management Act 1991 (RMA) intended to guide local authorities in their day to day management of the coastal environment. Section 73(3)(b) of the RMA requires that District and Regional Plans give effect to the NZCPS.
- 4.57 The Awatarariki fanhead is within the coastal environment as defined by the NZCPS⁶ and as illustrated in Appendix I (Map 25) of the RPS. The *NZCPS 2010 Guidance Note: Coastal Hazards* defines 'coastal hazards' as "hazards in the coastal environment". Debris flows are not cited as specific examples of coastal hazard, but the definition is open ended and does not preclude debris flows from being a coastal hazard if they occur in the coastal environment.
- 4.58 In my opinion the Plan Changes give effect to the NZCPS. Most notably, the proposal is aligned with Policy 25 of the NZCPS which is as follows:
*'Policy 25; Subdivision, use and development in areas of coastal hazard risk
In areas potentially affected by coastal hazards over at least the next 100 years:*
- a. *avoid increasing the risk of social, environmental and economic harm from coastal hazards;*
 - b. *avoid redevelopment, or change in land use, that would increase the risk of adverse effects from coastal hazards;*
 - c. *encourage redevelopment, or change in land use, where that would reduce the risk of adverse effects from coastal hazards, including managed retreat by relocation or removal of existing structures or their abandonment in extreme circumstances, and designing for relocatability or recoverability from hazard events;*
 - d. *encourage the location of infrastructure away from areas of hazard risk where practicable;*
 - e. *discourage hard protection structures and promote the use of alternatives to them, including natural defences...'*
- 4.59 Insofar as the Plan Changes will result in a change in land use by removing residential land use in the high risk area, and as a means of reducing exposure to hazard risks, they are consistent with the intent of Policy 25. I agree with the conclusions reached in s2.10 of the s32 evaluation report that retreat also has the potential to promote the restoration of natural character⁷, provide public open space⁸ and provide walking access to and along the coast⁹.

Bay of Plenty Regional Policy Statement

- 4.60 District and Regional Plans are required to give effect to an operative regional policy statement. The Bay of Plenty Regional Policy Statement (BOPRPS) provides an overview of the resource management issues of the region and establishes policies and methods to achieve integrated management of natural and physical resources.

⁶ NZCPS Policy 1: Extent and Characteristics of the coastal environment.

⁷ NZCPS Policy 14: Restoration of natural character

⁸ NZCPS Policy 18: Public open space

⁹ NZCPS Policy 19: Walking Access

- 4.61 District and Regional Plans are required to give effect to an operative regional policy statement. The Bay of Plenty Regional Policy Statement (BOPRPS) provides an overview of the resource management issues of the region and establishes policies and methods to achieve integrated management of natural and physical resources.
- 4.62 The BOPRPS imposes a duty on WDC for land use planning, susceptibility mapping and detailed risk assessment relating to landslides and flooding (including debris flows). In accordance with Policy NH1B of the BOPRPS, the Whakatāne District Plan gives effect to that requirement by identifying areas susceptible to natural hazards, assessing the natural hazard risk and then managing that risk. That risk management approach is important to ensure that levels of land use control correspond with levels of risk.
- 4.63 Policy NH3B identifies risk outcomes relative to natural hazard scale. In natural hazard zones subject to 'high' risk (such as the Awatarariki fanhead), the BOPRPS imposes a requirement to reduce the levels of risk to a 'medium' level, and lower if reasonably practicable. The BOPRPS hazard provisions are based on a comprehensive risk assessment approach which defines what these risk levels are. The natural hazard risk outcomes set out in Policy NH3B are promoted through Policy NH12A, which seeks to manage natural hazard risk through regional, city and district plans.
- 4.64 Policy NH 14C is of specific relevance to this Plan Change because it relates to the allocation of responsibility for land use controls in response to natural hazards. The policy identifies that the regional, city and district Councils are responsible for specifying objectives, policies and methods for the purpose of controlling the use of land for the avoidance or mitigation of natural hazards. That joint responsibility relates to all land except land located within the coastal marine area (CMA)¹⁰, which is the sole responsibility of the Regional Council.
- 4.65 Importantly, Policy NH14C includes the following footnote which provides additional context for Plan Change 17 and which should be read in conjunction with the policy:

'Under section 30(1)(c)(iv) of the RMA, the Regional Council has the function to control the use of land for the purpose of avoidance or mitigation of natural hazards. The Act allows the Regional Council to exercise that function in such a way as to override any existing use rights available under section 10(1) of the Act. The allocation of responsibilities under this policy does not remove the right of the Regional Council to exercise its functions and powers in that regard. Should it choose to do so, any such provisions will be subject to a plan or plan change process under Schedule 1 to the Act.'

¹⁰ Coastal marine area: the area between mean high water spring tides and the '12' mile limit of the territorial seas.

- 4.66 Policy NH14C and its associated footnote recognise the power conferred upon the Regional Council to set land use rules to address natural hazard risk relating to existing land uses, and to address natural hazard risk on all land in the CMA. Although the Awatarariki fanhead extends into the CMA (as a physical aftermath of the 2005 debris flow event), the private properties affected by the Plan Change are located outside of the CMA, albeit still within the coastal environment. The Plan Changes give effect to this policy because both the District and Regional Plans are proposing mechanisms to control land use for the avoidance of natural hazards. In accordance with the policy intent, the scope of Plan Change 1 is limited to land outside of the CMA whereas the scope of Plan Change 17 includes land inside and outside the CMA.
- 4.67 In accordance with the policy footnote, Plan Change 1 is limited to the control of future development or the intensification of existing activities, whereas Plan Change 17 seeks to manage existing activities through the removal of existing use rights. In so doing, the Plan Changes give effect to the BOPRPS natural hazard policies.
- 4.68 Section 1.7 of the BOPRPS also refers to taking a ‘precautionary approach’. It states that a precautionary approach is expected to be taken to management of natural and physical resources where there is uncertainty, including scientific uncertainty, and a threat of irreversible adverse effects. The debris flow risk addressed by the Plan Changes is an example of such a situation, and therefore requires a precautionary approach to be taken.
- 4.69 Appendix 6 of the s 32 Evaluation includes a detailed assessment of the Plan Change against the BOPRPS. I agree with that assessment.

Regional Natural Resources Plan

- 4.70 The Regional Natural Resources Plan (RNRP) was formerly the Bay of Plenty Regional Water and Land Plan, which became operative in December 2008. The RNRP provides direction regarding the use, development and protection of natural resources in the Bay of Plenty Region, as well as objectives, policies, methods and rules for the avoidance or mitigation of natural hazards.
- 4.71 Relevant to this Plan Change is the ability of the Regional Council to avoid or mitigate natural hazards through rules in the Regional Plan. As noted within the Section 32 Evaluation, existing use right protections do not apply to land uses controlled by a Regional Plan and as such, they are able to be extinguished through specific Regional Plan rules if they relate to natural hazards. Plan Change 17 to the RNRP is a specific use of that power, so that the RNRP can work in tandem with the District Plan to manage not only new or intensified land use activity, but also existing activities.

Iwi Management Plans

- 4.72 Section 66(2A)(a) of the RMA requires that when Councils prepare or change a Regional Plan, they must take into account any relevant planning document recognised by an iwi authority. Section 74(2A) imposes a similar requirement regarding the preparation or change to District Plans. It requires Councils to take into account any relevant planning document recognised by an iwi authority, to the extent that its content has a bearing on the resource management issues of the district.
- 4.73 The Ngāti Rangitihī Iwi Environmental Management Plan (EMP) is relevant to these Plan Changes. The EMP was prepared by the Te Mana o Ngāti Rangitihī Trust in 2011. The purpose of the management plan is to assist iwi with managing natural and cultural resources of importance to Ngāti Rangitihī. It does this by articulating a policy framework and identifying a range of aspirations and methods for achieving them.
- 4.74 Of specific relevance are the objectives and policies relating to natural hazards and the risks that they pose to people, property and the environment. The provisions are summarised in Table 3 below.

Table 3: Relevant EMP Objectives and Policies

Objectives	Policies	Methods
To avoid, remedy, or mitigate the adverse effects of natural hazards on human life, property and the environment, while minimising the adverse effects of measures implemented to reduce risks of natural hazards.	<p>Natural hazard management is an important role of Councils, Civil defence and other agencies.</p> <p>Before provision is made enabling significant development or redevelopment of land which will result in intensification of land use, any flood hazards and measures to avoid or mitigate their adverse effects shall be identified.</p> <p>Development shall not be permitted if it is likely to accelerate, worsen or result in inundation of other property, unless it can be demonstrated that the adverse effects can be avoided or mitigated.</p> <p>Construction of mitigation works shall be encouraged only where people, property and the environment are subject to unacceptable risk from flood hazards.</p> <p>In the coastal environment, new subdivision, use or development</p>	<p>BPRC will co-ordinate the management of natural hazards throughout the Region by setting standards and ensuring consistency among TAs.</p> <p>The BPRC and TAs will jointly advocate methods to avoid, remedy, or mitigate the adverse effects of natural hazards on the environment.</p> <p>Ngāti Rangitihī will promote a comprehensive catchment-wide approach to flood management.</p> <p>TAs will ensure that any required hazard mitigation works are undertaken, and that they are adequately maintained.</p> <p>BPRC will implement objectives, policies and rules with respect to coastal hazards in the coastal environment, through the provisions in the Regional Plan – Coastal, which will encourage subdivision, use and development in the coastal environment to locate in appropriate areas.</p>

	<p>should be located and designed, so that the need for hazard protection measures is avoided.</p> <p>Where existing subdivision, use or development is adversely affected by a coastal hazard, coastal protection works should be permitted only where they are the best practicable option for the future.</p> <p>The abandonment or relocation of existing structures and the use of non-structural solutions should be considered among the options.</p>	<p>TAs will ensure that current information about known hazards is available to all persons.</p>
--	--	--

- 4.75 The EMP’s natural hazard objective seeks to avoid, remedy, or mitigate the adverse effects of natural hazards on human life, property and the environment. At the same time the EMP recognises that measures used to reduce natural hazards (such as physical structures and engineering works) can also have adverse effects. For that reason, the EMP seeks to ensure that new subdivision, use or development in the coastal environment is located and designed to avoid the need for hazard protection measures. Although the avoidance of hazard protection measures is not a key driver for Plan Change 1, the outcomes promoted by the Plan Change are nonetheless well aligned with the strategic aspirations of the EMP.
- 4.76 The Ngati Awa Environmental Plan; Te Mahere Whakarite Matatiki Taiao o Ngati Awa has very recently been released, such that it has not been able to be reviewed as part of this report. However it will be a relevant document in terms of decision making.

Whakatāne District Long Term Plan (LTP)

- 4.77 Whakatāne District Council adopted the 2018 - 2028 Long Term Plan (LTP) on 28 June 2018. The LTP plan sets the Council’s priorities for the next 10 years, in the context of significant challenges and opportunities.
- 4.78 The LTP recognises the District’s vulnerability to natural hazards. ‘Resilient people and places’ is identified as one of the LTP’s key priority areas, the intent being to ensure that communities are able to withstand difficulties and recover from adversity quickly.
- 4.79 Managing risk in the Awatarariki Stream fanhead is identified as a location-specific project. The LTP notes that initial plans for an engineering solution to Awatarariki fanhead risk were abandoned in 2012 because experts assessed that approach as being unworkable and unaffordable. The LTP recognises that the risk to life and property along parts of the lower Awatarariki Stream is unacceptably high. Further, the most effective way to reduce that risk is ‘managed retreat’, enabling property owners to relocate away from the high-risk area. The LTP recognises that managed retreat is not an affordable option for Council alone, and therefore a case to support that approach was being pursued in conjunction with the Regional Council and Central Government.

Consultation and Development of the Plan Change

4.80 Whakatāne District Council undertook consultation in the development of the proposed Plan Changes. A summary of the consultation is provided below, as recorded in section 5.0 of the Section 32 Evaluation Report.

4.81 Consultation included the groups identified in the following sub-headings.

Matatā Community

4.82 Consultation with the Matatā community has taken the form of general engagement following the 2005 debris flow, and targeted consultation for residents within the High and Medium risk areas of the fanhead. The latter occurred between August and October 2017.

4.83 The Section 32 Evaluation records that feedback from residents within High risk areas typically fell into one of two categories. One category generally accepted that risk to life was high and favoured a Voluntary Managed Retreat to enable people to move on with their lives as soon as possible.

4.84 The other group questioned the credibility of the risk assessments undertaken by Council and its consultants, including the peer reviews. That group generally opposed the Plan Changes but agreed that the Managed Voluntary Retreat package should be concluded as quickly as possible.

Ministry for the Environment

4.85 As noted in the Section 32 Evaluation, Ministry for the Environment staff attended project team meetings and provided feedback on the development of Plan Change documentation. Statutory consultation obligations with respect to this stakeholder are considered to have been met.

Tangata Whenua

4.86 Clause 4A of Schedule 1 of the RMA requires local authorities to provide a copy of a draft plan to iwi and to allow adequate time for iwi to consider the proposal and respond to Council. WDC has consulted with Ngāti Awa, Ngāti Rangitahi and Ngāti Rangitahi Raupatu Trust, each of whom has indicated support for retreat from the High risk area of the fanhead. This is reflected in the submissions subsequently received from Ngāti Awa and Ngāti Rangitahi, which are discussed in section 5 of this report below.

4.87 Council has also consulted with Ngāti Hinerangi Trust which owns properties within the fanhead. Trust aspirations are to utilise Trust-owned properties within Clem Elliot Drive, Arawa Street and McPherson Street as a commemorative site for the battle of Kaokaoroa. WDC consultation is ongoing with respect to this issue, but in principle an outcome of a commemorative site within a reserve is compatible with the Coastal Protection Zone proposed by Plan Change 1.

- 4.88 WDC has also sought comment from Ngāti Tuwharetoa ki Kawerau, though at the time of its preparation, the Section 32 Evaluation was unable to confirm the outcome of that approach.
- 4.89 Council staff attended a hui with the Chairman and Secretary of the Mataatua District Maori Council (MDMC) in September 2017. That hui confirmed support for the Plan Change request which seeks retreat from the fanhead. Although other natural hazard issues were raised by the MDMC in relation to other or nearby areas, they are to be addressed separately from this Plan Change.
- 4.90 Insofar as WDC has consulted with relevant iwi in the preparation of this Plan Change and has recorded outcomes of that consultation in accordance with Section 32(4A) of the RMA, statutory consultation obligations with respect to this stakeholder are considered to have been met. Nonetheless, it is recommended that WDC continue to engage with iwi to ensure that cultural concerns are taken into account as the Plan Changes progress.

Bay of Plenty Regional Council

- 4.91 The BOPRC has been party to development of the Plan Change documentation and WDC has presented to elected members of the BOPRC on three occasions. BOPRC staff provided feedback on draft assessments and provided WDC staff with advice regarding alignment of the Plan Change with the RNRP.

KiwiRail

- 4.92 Consultation with KiwiRail identified that, whilst most works can be carried out within the existing railway designation, there were efficiencies to be had by ensuring that the Plan Change rules provided for the retention, maintenance and enhancement of the existing railway line.
- 4.93 KiwiRail made a subsequent submission to recognise that, whilst network utilities are typically located on Council or Government managed land, private land can also host utility conduits and pipes. Therefore, KiwiRail seeks amendment to the Plan Change 1 rules to ensure that utility operations are a Permitted Activity, regardless of whether infrastructure is located on public land. This is addressed in section 5 of my report.

Material Included by Reference

- 4.94 Both plan changes refer to a document by reference, being the 'Australian Geomechanics Society – Landslide Risk Management 2007 (AGS 2007)'. As noted previously the proposal to include reference to this document was advised as a 'pre-notification' process to seek comments. As recorded in the s32 report dated 8 June 2018 comments were received from four parties. They were Matatā Action Group, Awatarariki Residents Society, Keith Sutton (also on behalf of Nola Neale) and Greta Nicholson.

- 4.95 The AGS 2007 includes a methodology for assessing natural hazards risks. It is referred to in several of the technical documents in support of Plan Changes 1 and 17.¹¹ It is a complex technical document so it is not practicable to include it in the plan changes in its entirety.
- 4.96 Currently the BOPRPS includes a methodology for natural hazard risk assessment in Appendix L, including a default methodology. However, Appendix L also refers to compliance with the risk assessment approach being achieved by use of a 'recognised risk assessment methodology including in a regional, city or district plan.' The 'User Guide' that supports (but is not part of) the BOPRPS refers to AGS 2007 as an acceptable alternative risk assessment methodology. By including AGS 2007 in the ODP and the Regional Natural Resources Plan through these Plan Changes, the option will become available to use it for risk assessment as required under the BOPRPS. This is an effective and efficient approach as it is an approach that is well recognised and relied upon, consistent with the experience at Awatarariki.
- 4.97 Several of the pre-notification comments indicated that the document was very technically complex and difficult to understand and raised concerns that as an Australian document it may not be relevant to New Zealand. WDC and BOPRC responded to the comments by way of letters in June 2018 and the responses are summarised in the s32 evaluation dated June 2018. I acknowledge that it is a technical document but given the BOPRPS approach that requires that risk be assessed in a quantified manner as far as practicable, it is appropriate that it be referred to.
- 4.98 Note that the full title of the document is; 'Australian Geomechanics Society, 2007. *Landslide Risk Management*, Australian Geomechanics, Vol 42, No 1, March 2007'. For the purpose of certainty, this is the reference that should be included in the Plan Changes in place of the more informal reference currently included in the Plan Changes as notified.

Updates Since Notification

Voluntary Managed Retreat Programme and Financial Package

- 4.99 On 1 July 2019 the Cabinet Business Committee approved funding of up to \$5.019 million in 2019/2020 to support a managed retreat of residents in Matatā who are in extreme danger of injury or death from debris flow events. This equates to a third-share of the \$15.058 million total cost of a managed retreat, with the other two equal shares being provided by Whakatāne District Council and Bay of Plenty Regional Council.
- 4.100 In effect, the funding package provides a mechanism for landowners who wish to participate in the voluntary managed retreat programme, to sell their properties in a high natural hazard risk area at a value that is not discounted because of the hazard, and relocate to a safer location. The outcome of the WDC application to Central Government was not known at the time the Plan Changes were notified and therefore landowners could not be certain that the financial package would be available for loss of existing use rights and subsequent relocation.

¹¹ For example, Supplementary Risk Assessment; Debris Flow Hazard Matatā, Bay of Plenty, Tonkin and Taylor, July 2015.

- 4.101 WDC undertook property valuations in 2016 to provide an indication of the level of funding required for the managed retreat programme. A re-assessment of market movement was undertaken post-notification in October 2018 by Telfer Young (Tauranga) Ltd, the purpose of which was to understand the change in residential market value since the original 2016 valuations. The updated valuations included allowance for further movement in the market through to July 2019. This established a high level of confidence that the funding package would meet fair and reasonable acquisition requirements.
- 4.102 WDC met with landowners on 16 July 2019 to provide updates on the managed retreat buy-out programme. Details of the managed retreat programme were provided to all eligible property owners. The landowner meeting gave rise to queries regarding a number of issues, including valuation methodology and applicability of the Public Works Act 1981. The Public Works Act is not applicable as it can only be used to acquire land that is required for a public work, and in this case there is no public work. A key issue was the desire by landowners to delay the Plan Change hearing to allow the managed retreat programme to progress. This resulted in the Councils agreeing to move the hearing from late November/early December 2019 to March 2020.
- 4.103 With this financial package now in place, the ‘voluntary managed retreat’ approach can be delivered, which addresses the landowners concerns over suffering potential financial loss for their land and buildings.
- 4.104 Attached as Appendix 6 is an update on the Managed Retreat Programme as at 13 December 2019. As set out in that report, 32 of the 34 properties in the High Debris Flow Risk Area have entered the programme. Three of the properties have been purchased and the buildings on them have been removed. A further 8 properties have unconditional sale and purchase agreements in place. Negotiations are under way with the other 21 property owners. One of those properties is the subject of an application for a Maori Reservation under Part 17 of Te Ture Whenua Maori Act 1993. Once confirmed this outcome will be consistent with the land use provisions in the High Debris Flow Risk Area in Plan Change 1.
- 4.105 This update indicates that the Managed Retreat Programme is progressing well and that the buyout aspects of it are assisting in offsetting the social and economic costs that would otherwise be imposed by the Plan Changes, and particularly Plan Change 17 which extinguishes existing use rights. Further updates on progress with this package will be provided by WDC prior to the hearing.

Meteorological Update

- 4.106 A 2005 background report entitled “*Matatā Flooding 18 May 2005: Meteorology*”¹² was updated by way of a further report dated 22 November 2019 by Peter Blackwood and Tom Bassett¹³. The report provides updated information on rainfall frequency and takes into account the latest information on climate change estimates.

¹² “*Matatā Flooding 18 May 2005: Meteorology*”, Peter Blackwood, 28 June 2005, File 5810 03 2005-06-28

¹³ “*Matatā Flooding 18 May 2005: Meteorology Update*”, Peter Blackwood and Tom Bassett, 22 November 2019

- 4.107 The updated meteorological report identifies four Representative Concentration Pathways (RCPs) to provide a more accurate assessment of rainfall intensities than was available when first reported in June 2005. Taking into account global warming, the RCPs describe four alternative futures in which scenarios of human activities result in different concentrations of greenhouse gasses in the atmosphere. The scenarios include:
- a low-emissions, mitigation scenario (RCP2.6) in which global carbon dioxide emissions stop after 2080, after which some emissions are removed from the atmosphere;
 - a high-emissions, business as usual scenario (RCP8.5); and
 - two middle scenarios (RCP4.5 and RCP6.0) which represent futures where global emissions stabilise at different levels.
- 4.108 Based on these scenarios, the updated meteorological report includes forecast changes in frequency (years) of the 18 May 2005 rainfalls for the period 2018-2100. It concludes that *“rainfall events of the nature that occurred at Matatā on 18 May 2005 will occur much more frequently. By the end of this century, under RCP 8.5 scenario these storms could be expected to occur on a 40 to 50 year return period (and) under RCP 6.0 on a 60-80 year return period”*.
- 4.109 This compares to a frequency of 200-500 years for the 2005 Matatā debris flows as estimated in 2015¹⁴. This update is considered significant because it demonstrates that the rainfall event that occurred at Matatā on 18 May 2005 is likely to become more frequent than was envisaged at the time of preparation of the plan changes in 2018.

Risk Management Review

- 4.110 In June 2018 BOPRC commissioned GHD Limited to review the hazards and risk assessments that had been prepared to support the Plan Changes. The brief for the review included considering whether the policy response of extinguishing existing use rights was appropriate or whether options of a reduced number of impacted properties or a longer operative date than 31 March 2021 were practicable. The GHD report reviewed the hazard and risk matters but stated that the question of the appropriate policy response is better addressed by way of independent planning and policy expertise. The report was finalised on 31 October 2019 and is included as Appendix 5.
- 4.111 The GHD review confirms that the quantitative assessments of Loss of Life risk have been prepared in accordance with industry best practice, through using the AGS 2007 document. The review also notes that if the specifics of dwellings type, occupancy rate and occupant demographics were factored in, it is possible that a property -by-property loss of life risk assessment could be undertaken, leading to different risks for different properties. An example is occupancy by the aged or infirm as well as infants who have a higher vulnerability than able-bodied adults.
- 4.112 In accordance with GHD’s disclaimer an independent planning and policy assessment of their review has been prepared by Gerard Willis of Enfocus Ltd, and a copy is also included in Appendix 5. That assessment considers GHD’s suggestions from a planning perspective and concludes that they are not appropriate because:
- The RPS (Policy NH3B) requires risk assessment to be carried out at the ‘natural hazard zone’ scale, not at a property-by-property scale.

¹⁴ Supplementary Risk Assessment, Debris Flow Hazard, Matatā, Bay of Plenty, Tonkin and Taylor, July 2015 p7

- The natural hazard zone scale allows Councils to take a community wide view of risk, which may be lost if it was reduced to an individual property assessment.
- The assessment of 'temporal' aspects of each property (eg. where occupants were retired or work full time, for example) is impractical to implement through planning rules.
- Plan provisions provide for categories of activities to take place (eg residential) currently and in the future without unreasonably restricting them over time. Planning rules that specified certain levels or types of occupation would be impractical to monitor and enforce.

4.113 The conclusion of the Enfocus letter is that a property-scale risk assessment is inappropriate and to comply with the BOPRPS it should be at a natural hazard zone scale. It also concludes that property-level planning regulations would be inappropriate and impractical.

4.114 I agree with the Enfocus assessment. In my opinion a property-scale risk assessment and subsequent planning provisions are likely to be inefficient and ineffective because planning rules are designed to apply to multiple properties that generally exhibit similar characteristics, as commonly applied through land use zones. Such provisions are readily enforceable as they allow for a degree of freedom for people to do as they wish, to change the way they use their property or sell to someone who uses it differently. If such a property-specific approach were taken it is highly likely that the necessary degree of control over use would not be able to be achieved within the current RMA planning and administrative framework. This is likely to lead to non-compliance, which in turn would lead to effect not being given to the BOPRPS.

5 Consideration of submissions and further submissions

Introduction

5.1 This section contains a summary of the submissions and further submissions received on PC1 and PC17. To assist the Commissioners considering the submissions, they have been categorised according to topic. The topics broadly coincide with the relevant sections of the Operative Whakatāne District Plan (WDP) and the Regional Natural Resources Plan (RNRP). Submissions are summarised in the table which follows, with full copies of each submission contained within Appendix 1. Further submission numbers are prefixed by FS and are in *Italic* font.

Submission Topic Area

5.2 5.2.1 Submission topics are categorised as follows:

- Whakatāne District Plan - General Submissions
- Whakatāne District Plan - Chapter 3 - Zone Descriptions
- Whakatāne District Plan - Chapter 18 - Natural Hazards – Objectives, Policies, Rules
- Whakatāne District Plan - Chapter 21 – Definitions, Advice Notes and Other Methods
- Whakatāne District Plan - Planning Maps
- Regional Natural Resources Plan – General submissions
- Regional Natural Resources Plan - NH Natural Hazards - Objectives, Policies, Rules
- Regional Natural Resources Plan - Glossary and Table NH 3

Operative Whakatāne District Plan (WDP) - General Submissions

Analysis:

Te Runanga o Ngāti Awa (WDP 1.1) has submitted in support of Plan Change 1. The submitter recognises that the geography of the catchment and the difficulty in managing soil stability mean that events similar to the May 2005 occurrence are likely to happen in the future. Te Runanga o Ngāti Awa further recognise that options aimed at allowing people to remain in their homes in the Awatarariki fanhead have been exhausted. The proposed retreat option is supported because it removes homes

and families from a location in harm's way and because the prohibited activity status will protect people from making investments in high risk areas. The submitter also wishes to promote Council's awareness and provisions for the reserve area in which koiwi recovered from the Matatā area have been reinterred.

A further submission by **Te Mana o Ngāti Rangitihi Trust** (*FS WDP 9.1*) has been lodged in support of Te Runanga o Ngāti Awa and a further submission by the **Awatarariki Residents Incorporated Society** (*FS WDP 11.2*) has been lodged in opposition to the Ngāti Awa submission. The further submission in opposition is on the basis that there is no guarantee that central government agencies will contribute financially to the relocation of families into new homes in a safe location. Nor is there consideration in the submission by Ngāti Awa as to what will happen to families who are forced to leave their homes with no compensation if central government agencies do not contribute financially to the relocation of families into new homes in a safe location.

Response:

Submissions by Te Runanga o Ngāti Awa and Te Mana o Ngāti Rangitihi Trust are supported because they align with the conclusions and recommendations of the natural hazard technical assessments, a significant number of which have been peer reviewed and assessed as appropriate. Guided by those assessments, I agree with Te Runanga o Ngāti Awa and Te Mana o Ngāti Rangitihi Trust that practical alternatives have been exhausted and that changes to the ODP are necessary to ensure the safety of residents within the Awatarariki fanhead.

Opposition from the Awatarariki Residents Incorporated Society (the Incorporated Society) stems from uncertainty as to whether central government agencies would contribute financially to the relocation of affected families. In the interim since notification of the Plan Change, central government funding has been confirmed and a voluntary retreat package has been implemented. Property valuations and buyout offers have been made to landowners who have chosen to engage in that process. Mechanisms have also been put in place to ensure that landowners affected by the Plan Change are not financially disadvantaged with respect to valuations, legal or relocation costs. The stated grounds for opposition are therefore outdated and no longer reflect the current situation. For that reason, the further submission by the Incorporated Society is not supported.

The submission by **Keith Sutton** (*WDP 3.1*) is lodged on behalf of a family member (Nola Neale) who owns properties on Clem Elliot Drive. The submission contends that the Plan Change provisions are unfair and unreasonable and opposes the Plan Change in its entirety until such times as the voluntary retreat package can be agreed between Council and landowners. The Plan Change rules are considered too stringent and the hazard maps based on flawed information. The submitter contends that future inundation of that property can be mitigated by alternative means. It is further submitted that Nola Neale is disadvantaged by Whakatāne District Council's non-compliance regarding a Council consent for large scale earthworks (RC 64647 issued in July 2009), which required building platforms on 28 and 32 Clem Elliot Drive to be raised. The submitter considers that raising the platforms on 26 and 32 Clem Elliot Drive to 6m RL would mitigate the risk of future inundation and make the land suitable for residential and / or camping activity.

A further submission by the **New Zealand Defence Force** (*FS WDP 10.2*) supports the submission by Keith Sutton / Nola Neale. The submitter shares concerns that the Plan Change rules are too restrictive and would severely restrict NZDF operations within the 'high' and 'medium' risk areas of the Debris Flow Policy Area. Amendments are sought to enable Temporary Military Training Activities within the 'high' and 'medium' risk areas.

Response:

I disagree that the Plan Change provisions are unfair and unreasonable and therefore the submission by Keith Sutton is not supported. In the interim since notification of the Plan Change, a voluntary retreat package has been implemented and property valuations and buyout offers have been made to landowners who wish to engage in that process. The hazard maps which have been used to promulgate the Plan Change are based upon industry best practice and the findings have been subject to multiple peer reviews¹⁵. I rely upon those findings for definition of the hazard extents and on that basis disagree that the Hazard Maps are based on flawed information. Prior assessments from 2009¹⁶ and 2012¹⁷ also confirm that engineering and structural options to reduce risk have been thoroughly investigated and proven not to be reasonably practical, as have alternative approaches such as catchment management and early warning / evacuation options. Based on the technical assessments that have been completed to date, it is my opinion that the combination of voluntary retreat and the Plan Changes are the most practicable and efficient means of addressing the natural hazard risk.

I am unable to determine the extent to which the Neale property may or may not have been disadvantaged by resource consent RC 64647 as this is considered beyond the scope of the Plan Change assessment. However RC 64647 was not acted on because additional advice became available confirming that engineering solutions (including raising building platforms) were not viable. The submitter's assertion that raising the platform on 26 and 32 Clem Elliot Drive to RL 6m would mitigate the risk of future inundation is not supported by the findings and recommendations of the technical assessments. Consequently, the submission by Keith Sutton is not supported and no changes to the Plan Change are recommended with respect to these issues.

In consideration of the further submission by the New Zealand Defence Force, it is acknowledged that the restrictive nature of the Plan Change would prohibit temporary military training activities within the High and Medium risk areas of the fanhead: this was likely not an envisaged activity at the time the Plan Change was drafted. 'Temporary Military Training Activities' are defined in the WDP but the definition does not specify the extent to which there may be residential occupation. It would be helpful if the submitter could clarify that. The further submission by the New Zealand Defence force is supported in principle because the requested activities within high and medium risk areas of the fanhead are of a temporary nature and represent a potentially sustainable use of an otherwise challenging land resource. Furthermore, temporary use of the fanhead by the New Zealand Defence Force is unlikely to put the wider community at risk in comparison with conventional residential activity. A change to accommodate the needs of the New Zealand Defence Force is supported. The recommended amendment to the Plan Change is included within Appendix 2 of this report.

Matatā Residents Association (WDP 6.1) oppose Plan Change 1 and request that it be put aside until alternative engineering solutions are fully investigated. Specifically, the Matatā Residents Association requests that Whakatāne District Council fully investigate the feasibility of a combined bunding and early warning system as an alternative to the Plan Change.

Response:

¹⁵ Peer Review of Tonkin and Taylor's Quantitative Landslide Risk Assessment - GNS, April 2013

Peer review of Tonkin and Taylor's Quantitative Risk Assessment Report - GHD, June 2013

¹⁶ Debris Flow Control System, Awatarariki Stream, Matatā – Tonkin and Taylor, June 2009

¹⁷ Review of the Awatarariki Catchment Debris Control Project – Alan Bickers, June 2012

WDC has extensively explored non-regulatory options for the remediation of hazard risk and has sought that advice from national experts in that field. Engineering options such as dams, raised building platforms, debris barriers and bunds and channels have been variously considered on an area-wide basis. This report is guided by the findings of the technical assessments (including peer reviews) which concluded that these options were not reasonably practicable.

Consideration has also been given to catchment management options (such as tree planting and the active management of debris build-up), and warning and evacuation options, such as that suggested by the Residents Association. The effectiveness of catchment management is shown to be uncertain and likely to have only minor influence on the size and impact of a debris flow event. Investigations into early warning systems¹⁸ found that, whilst these systems are technically feasible, they are unlikely to provide sufficient warning time due to likely velocity of flows, proximity of dwellings and likely length of evacuation time. Although trip wire detection systems are potentially effective for road and rail corridors, the same cannot be said for residential areas. Council investigations demonstrated that risk to life for residents cannot be reduced by provision of a debris-flow warning system.

A late submission by **Glenn Baker** (WDP 8.1) opposes Plan Change 1. The submitter attributes the debris flow hazard to poor management of forestry slash, which is a nation-wide problem. The submitter is opposed to the relocation of citizens because of growing pressure from economic sources (such as the insurance and forestry industries) and requests that the issue is addressed at a central governmental level.

Response:

In terms of forestry practices and whether forestry slash may or may not have contributed to the 2005 Matatā, I refer to the GNS report '*The 18 May 2005 debris flow disaster at Matatā: Causes and Mitigation Suggestions*'¹⁹. That report confirmed that the catchment was well vegetated in secondary, largely native forest and the forestry cover was in excellent condition. It concluded that the forest cover neither inhibited, nor contributed to the debris flow. Based on this forestry slash does not appear to be a contributory factor. I do not agree that the relocation of citizens away from the Matatā fanhead is driven by pressure from economic sources. Rather, extensive technical reporting demonstrates that there is a high loss-of-life exposure to a number of Matatā properties from future debris flow events.

An inability to rely upon engineering or catchment management solutions as a means of remediating that risk, means that alternative solutions, including managed retreat, must be considered. The submitter has requested that the Plan Change cease until such times as central government can address these issues nationally. The submission is not supported because the issue of managed voluntary retreat has now been addressed collaboratively between central and local government and offers of financial buyout are now available to affected landowners. In the meantime, Council has a statutory obligation to provide for the management of significant risks, which it would be unable to do if the Plan Change process were halted in the interim.

It is recommended that the late submission by Glenn Baker be accepted. The submission was only one day late and sought similar outcomes to other submissions. There is no prejudice to anyone in having it considered.

A submission by the **Awatarariki Residents Incorporated Society** (WDP 7.1) (the Incorporated Society) is representative of 25 Matatā residents and landowners who oppose Plan Change 1.

¹⁸ Awatarariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study, TRH Davies, Dept of Geological Sciences, University of Canterbury, December 2017

¹⁹ The 18 May 2005 debris flow disaster at Matatā: Causes and Mitigation Suggestions, GNS, June 2005, p25

In consideration of community wellbeing (social, economic and cultural), the Incorporated Society contends that the Plan Change is effectively an eviction notice from March 2021. It will have an immediate sterilising effect which will prevent members from building, borrowing money or insuring their homes. The Plan Change does not assess what will happen to people's homes located in high risk areas from 2021 and the prospect of members owning homes they cannot occupy and land they cannot use is not identified in the cost-benefit analysis for the Plan Change. The regime advocated by the Plan Change does not support social, economic and cultural wellbeing. The Plan Change is also considered to be inconsistent with (or does not give effect to) the principles of sustainable management.

The Plan Change is considered inconsistent with Council's statutory functions and not appropriate in terms of Part 2, sections 30, 31, 32AA, 63-68, 85 and the 1st Schedule of the RMA. Whilst the submission acknowledges that there is a wider community interest in managing risk, the Incorporated Society contends that affected owners in the 'high' risk zone merit greatest weight when evaluating appropriate outcomes under the statutory framework.

In terms of validity and jurisdiction, the Incorporated Society considers Plan Change 1 to be unlawful and ultra vires Council's statutory functions and powers. The removal of people from their homes and the revocation of existing use rights without reasonable compensation is considered an abuse of power. Further, lesser alternatives exist that can manage or mitigate hypothetical risks without removing existing use rights.

The submission contends that, to the extent relevant, the Plan Change does not give effect to the New Zealand Coastal Policy Statement. Nor does it give effect to, or reflect, the relevant provisions of the Regional Policy Statement. Reasons for that assertion are outlined in full in the attached submissions.

The Incorporated Society considers Plan Change 1 to be in breach of s85 of the RMA insofar as it renders the subject land owned by members of the Society incapable of reasonable use and places unfair and unreasonable burden on the owners of that land. Consequently, the submitter intends to seek grounds for direction under s85(3A) in the event that the Plan Change is confirmed in its notified form.

In consideration of alternatives, the Incorporated Society contends that the Plan Change does not allow for lesser interventions and alternatives such as: the mitigation of hazard risk whilst enabling members to remain in their homes; adopting an information-based approach to managing hazard risk or; adopting an events based approach to managing hazard risk. Nor does the Plan Change appropriately address a combination of management systems to address hazard risk, such as catchment management, monitoring and early warning systems.

With respect to 'hazard and risk', the Plan Change is considered to rely upon imprecise modelling of risk of landslide and debris flow, of probability of fatality or injury and upon uncertain science as to the assessment of risk for properties identified as 'high risk'. The risk assessments are considered to involve speculative or unfounded assertions of risk with the resultant 'prohibited activity' status being a disproportionate response given the difficulties with risk assessment. The submitter also questions whether it is appropriate for the Plan Change to rely upon the Australian Geomechanics Guideline as the methodology for assessing natural hazard risk.

As risk involves probability plus consequence, a different approach to acceptability of risk is considered necessary in relation to existing residential activity, as distinct from land use planning for future residential uses. This is not reflected in the prohibited status regime for existing residential activities beyond 2021.

The **New Zealand Defence Force** has lodged a Further Submission (FS WDP 10.3) in support of the Awatarariki Residents Incorporated Society. The submitter shares concerns that the Plan Change rules are too restrictive and would severely restrict NZDF operations within the 'high' and 'medium' risk areas of the Debris Flow Policy Area. Amendments are sought to Rule 18.2.6 to enable Temporary Military Training Activities within the 'high' and 'medium' risk areas.

Response:

In consideration of the Incorporated Society submission, I agree that the Plan Changes will have a largely sterilising effect for landowners located within the 'high risk' areas. Further, the Plan Change will only support social and cultural wellbeing to the extent that passive recreation will be provided for within 'high risk' areas. Notwithstanding that, economic and social wellbeing is nonetheless being addressed in parallel with, but outside of the Plan Change process, in the form of a voluntary managed retreat buyout programme. I accept that the issues that the Plan Changes deal with are difficult and have impacted individual property owners significantly.

I do not support the notion that the Plan Change is inconsistent with, or does not give effect to, the principles of sustainable management. The Plan Change relies upon existing hazard objectives and no new objectives are proposed. The existing WDP hazard objective (Haz 1) is already deemed to be the most appropriate way to give effect to the purpose of the RMA, being the sustainable management of natural and physical resources. The continued occupation of the Matatā fanhead by residential activity is not considered sustainable due to the high levels of risk to life and property which cannot be practicably managed through engineering solutions. The s32 Evaluation has identified and evaluated other reasonably practicable options and has adequately assessed their efficiency and effectiveness. The provisions promoted by this Plan Change are considered the most appropriate to support existing objectives. Insofar as the Plan Change provides a pathway to safeguard the health and safety of the Matatā community, and a framework which is appropriate to land use constraints for the land, it promotes the sustainable management of a natural and physical resource.

The notion that the Plan Change is 'unlawful' and ultra vires Council's statutory functions is not supported. The use of a policy overlay and associated rules are tried and tested mechanisms for the effective management of land use activity. Council has a statutory responsibility through RPS policies to reduce the level of natural hazard risk from High to Medium, and lower if reasonably practicable. The most effective means of achieving that is to ensure that inappropriate activities cannot continue to establish in High risk areas. The regulatory options provided by the Plan Change will better enable Council to fulfil its statutory obligations under section 6(h) of the RMA and to give effect to the RPS. Although the Plan Change is not without significant consequence for some landowners, that does not equate to an abuse of power, especially in light of the buyout opportunity which is now afforded by the Managed Voluntary Retreat Programme.

I do not support the notion that the Plan Change fails to give effect to the NZCPS and relevant provisions of the RPS. Whilst it is acknowledged that the debris flow hazard is not a coastal hazard per se, the fanhead is nonetheless located within the 'Coastal Environment' and the after-effects of a debris flow clearly have potential to become a natural hazard. The NZCPS supports the principle of managed retreat from natural hazards. The NZCPS encourages change in land use where that would reduce the risk of adverse effects from coastal hazards. For that reason, I am in agreement with the conclusions reached in sections 2.11 and Appendix 6 of the Section 32 Report that the proposed provisions give effect to the NZCPS natural hazard policies.

Section 85 of the RMA provides for persons with an interest in land to challenge provisions which render that interest in land 'incapable of reasonable use'. Challenge can be via the submission process to a proposed plan or plan change, or directly to the Environment Court. The Environment Court has the potential to require Councils to purchase said land, providing the reasonable use threshold can be met. I agree that, in effect, the Plan Changes will render properties within high risk areas incapable of

their zoned residential use. This is because of the prohibited status under the WDP for new development, and the proposed extinguishing of existing use rights under Plan Change 17. Work undertaken since the Residential zone was put in place has demonstrated that it is no longer suitable and would not be reasonable use of the land.

Remaining options for land use are extremely limited, relative to the flexibility afforded by the Residential zoning. However, the Plan Change is being progressed in parallel with the Managed Voluntary Retreat Programme, which will result in buyouts commensurate with the market values of their properties for landowners who choose to accept it. The buyout programme is considered reasonable insofar as property valuations are based on a 'no-risk' scenario, with additional allowances made for legal costs, relocation costs and mortgage break fees, if applicable. The programme is designed to ensure that landowners are not financially disadvantaged by the Plan Change. Therefore, whilst it is agreed that the Plan provisions will render land in high risk areas incapable of residential use, the unfair and unreasonable burden placed on those landowners will be offset by the buyout opportunity afforded through the Managed Voluntary Retreat Programme.

Section 8.0 of the s32A Report gives consideration to non-regulatory alternatives, such as engineering options, catchment management and early warning systems. The technical assessments and peer reviews that have been completed to date (refer Table 3.3 above) demonstrate that allowing residents to remain in their homes in conjunction with other methods is not a feasible alternative. Although residents have indicated varying degrees of acceptance of the risk, WDC and BOPRC have statutory obligations to act on behalf of communities to reduce or mitigate risk to life from natural hazards. A repeat of the May 2005 scenario would not only put remaining residents at risk, but also the lives of emergency services who would inevitably be involved in landowner rescue. Therefore, the risks associated with the continued occupation of homes are not confined to the residents alone.

Technical assessments demonstrate that engineering options to reduce risk have been thoroughly investigated and proven not to be reasonably practicable. The feasibility of early warning systems has been considered in the report by T Davies (University of Canterbury) in December 2017.²⁰ That 2017 review concluded that a debris-flow warning system was feasible for road and rail users crossing the Awatarariki fanhead, but that debris-flow warning systems would not be feasible with respect to properties located within the fanhead. This is due a combination of factors, including the lack of calibrated data and the time that would be required to collect such data (estimated 'decades' to 'centuries'). Early warning systems were also predicted to give rise to a high proportion of false alarms, which potentially leads to complacency. A trip wire system was also considered for residential properties within the fanhead but was dismissed as impractical because of the short distance between the detector sites and dwellings, as well as the need to apply a realistic factor of safety to calculations of warning and evacuation times. I am guided by the findings of the Feasibility Study that a trip wire would not provide adequate warning time to guarantee the ability of residents to exit dwellings and reach safety.

With respect to the validity of the risk analysis and the appropriateness of the Australian Geomechanics Landslide Risk Management methodology (AGS 2007), the submitter considers this to be an imprecise and speculative assessment based upon uncertain science. Risk assessments contain elements of uncertainty and to some extent, may be dependent upon inadequate datasets, or best available data at that time. Although they are not therefore a precise science, I rely upon the 2013 'Quantitative Landslide and Debris Flow Hazard Assessment' by Tonkin and Taylor that confirms that AGS 2007 is the model generally followed in New Zealand when a quantitative assessment of risk is required. The applicability of AGS 2007 to the Matatā situation has been determined by expert geotechnical practitioners and the outcomes of that assessment have been extensively peer reviewed. Industry confidence in AGS 2007 is such that it is a recognised risk assessment methodology in the BOPRPS Natural Hazard Risk Assessment User Guide. Therefore, I do not share the Incorporated Society concerns regarding the suitability or otherwise of AGS 2007.

²⁰ Awatarariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study, TRH Davies, Dept. of Geological Sciences, University of Canterbury, December 2017.

The further submission by the New Zealand Defence force is supported in principle because the requested activities within high and medium risk areas of the fanhead are of a temporary nature and represent a potentially sustainable use of an otherwise challenging land resource, subject to clarification of the extent of temporary residential occupation. Temporary use of the fanhead by NZDF is less likely to put the wider community at risk in comparison with conventional residential activity.

Sub Name Further Sub Name	Sub. Point FS Point	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Te Runanga o Ngāti Awa	WDP 1.1	General	Support	Retain the Plan Change as notified	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
Keith Sutton	WDP 3.1	General	Oppose	Remove Plan Change 1 in its entirety until such times as a voluntary retreat package has been fully implemented.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. Implementation of the Managed Voluntary Retreat Programme is in progress and funding is now confirmed by central and local government.
Matatā Residents Association	WDP 6.1	General	Oppose	Put aside Plan Change 1 until alternative engineering solutions have been fully investigated (preference for a combination of bunding and early warning system).	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change.
Glenn Baker	WDP 8.1	General	Oppose	Cease Plan Change 1 and seek that central government address this problem nationally.	Accept the late submission by Glenn Baker. Reject the requested relief.	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The matter of a buyout opportunity for affected landowners has been

						addressed through the Managed Voluntary Retreat Programme, which is jointly funded by central and local government and which is now in progress.
Awatarariki Residents Incorporated Society	WDP 7.1	General	Oppose	<ol style="list-style-type: none"> 1. Withdraw Plan Change 17 or delete pursuant to s85 of the RMA. 2. As a second preference, amend the Plan Change to address the matters identified in the submission. 3. In addition to (1) and (2), if the Plan Change is confirmed, acquire properties listed in NH3 under the Public Works Act 1981, subject to written consent of individual property owners or persons with an interest in the land. 	Reject	<p>The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard.</p> <p>Affected properties are unable to be acquired under the Public Works Act. However, an alternative and reasonable buyout opportunity is made available under the Voluntary Managed Retreat Programme, which is jointly funded by central and local government and which is now in progress.</p>
Te Mana o Ngāti Rangitiki Trust	FS WDP 9.1	General	Support	Te Mana o Ngāti Rangitiki Trust has lodged further submission in support of Te Runanga o Ngāti Awa and has requested that the Plan Change is retained as notified.	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
New Zealand Defence Force	FS WDP 10.2	General	Support	<p>The New Zealand Defence Force has lodged further submission in support of Nola Neal, who opposes the Plan Change.</p> <p>Amend Rule 18.2.6.3 to include:</p> <ol style="list-style-type: none"> i) Temporary Military Training Activities that comply with the 	Accept in part	The proposed amendment supports the purpose of the RMA and will not give rise to unsuitable development within high and medium risk areas.

				<p>relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.4 to include:</p> <p>b) Temporary Military Training Activities that do not comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.6 to include:</p> <p>d) Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p>		
New Zealand Defence Force	FS WDP 10.3	General	Support	<p>The New Zealand Defence Force has lodged further submission in support of the Awatarariki Residents Incorporated Society, who opposes the Plan Change.</p> <p>Amend Rule 18.2.6.3 to include:</p> <p>i) Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.4 to include:</p> <p>b) Temporary Military Training Activities that do not comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.6 to include:</p>	Accept in part	The proposed amendment supports the purpose of the RMA and will not give rise to unsuitable development within high and medium risk areas.

				d) Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.		
Awatarariki Residents Incorporated Society	FS 11.1	General	Oppose	The Awatarariki Residents Society has lodged further submission in opposition to the Bay of Plenty CDEM Group, who support Plan Change 1. The decision sought is unspecified.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard.
Awatarariki Residents Incorporated Society	FS WDP 11.2	General	Oppose	The Awatarariki Residents Society has lodged further submission in opposition to Te Runanga o Ngāti Awa. The decision sought is unspecified.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard.

Whakatāne District Plan (WDP) - Chapter 3 - Zone Descriptions

Analysis:

The Bay of Plenty Civil Defence Emergency Management Group (WDP 5.1) supports the inclusion of an Awatarariki Debris Flow Policy Area and the categorisation of the Policy Area according to 'high', 'medium' or 'low' risk areas. It also supports the rezoning of the Policy Area from Residential to Coastal Protection Zone as well as the introduction of new policies and rules to manage that natural hazard risk. The submission by the Bay of Plenty CDEM Group also supports the Managed Voluntary Retreat Programme which is running in parallel with the Plan Change process.

A further submission by the **Awatarariki Residents Incorporated Society** (FS WDP 11.1) opposes the submission of the Civil Defence Emergency Management Group. This is on the basis that there is no guarantee that the Managed Voluntary Retreat Programme will be approved by central government, the Bay of Plenty Regional Council and Whakatāne District Council. Further, there is no consideration in the CDEM submission of what will happen to families who are forced to leave their homes without compensation if the voluntary retreat strategy is not progressed.

Response:

The submission by Bay of Plenty CDEM Group is supported. Funding for the Managed Voluntary Retreat Programme is now confirmed by relevant government agencies and the programme is now underway, therefore superseding some aspects of the further submission. Although there is no guarantee that agreement will be reached on proposed levels of buyout offered, the option of whether to accept or decline that offer ultimately rests with the landowners. In the circumstances, the further submission by the Incorporated Society is not supported.

Awatarariki Residents Incorporated Society (WDP 7.2) opposes provision 3.2.5 'Awatarariki Debris Flow Policy Area' on the basis that it does not promote sustainable management, is unlawful or breaches the statutory framework.

Response:

The notion that the provisions do not promote sustainable management and are 'unlawful' is not supported. Provision 3.2.5 articulates levels of risk within the Awatarariki Debris Flow Policy Area and provides high level guidance as to the types of development that may or may not be acceptable in those locations. Insofar as the Policy Area provides a mechanism for Council to identify risk and safeguard the health and safety of people and communities, it can be said to promote the sustainable management of a natural and physical resource (i.e. land as building resources). The inclusion of a Debris Flow Policy Area is not in itself 'unlawful' and, as a planning tool in its own right, the use of a policy overlay it is not in breach of the RMA statutory framework. Rather, provision 3.2.5 better enables Council to fulfil its statutory obligations under section 6(h) of the RMA.

Sub Name <i>Further Sub Name</i>	Sub. Point <i>FS Point</i>	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Bay of Plenty Civil Defence Emergency Management Group	WDP 5.1	3.2.5	Support	Adopt Plan Change 1 as notified.	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
Awatarariki Residents Incorporated Society	WDP 7.2	3.2.5	Oppose	<ul style="list-style-type: none"> a. Withdraw Plan Change 1; or b. Delete Rule 3.2.5 and delete amendment to Rule 3.7.25; or c. Reclassify high risk areas as medium / low risk areas. 	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change.
Awatarariki Residents Incorporated Society	<i>FS WDP 11.1</i>	3.2.5	Oppose	The Awatarariki Residents Incorporated Society has lodged further submission in opposition to the submission by CDEM Group. The relief sought by the further submission is unspecified.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change.

Whakatāne District Plan (WDP) - Chapter 18 - Natural Hazards - Objectives, Policies, Rules

Analysis:

The Bay of Plenty Civil Defence Emergency Management Group (WDP 5.2) supports the introduction of a new policy framework and rules to manage the identified hazard risk within the Awatarariki fanhead.

Awatarariki Residents Incorporated Society oppose the policies contained within Section 18.1 (ODP 7.3) and the Rules contained within Section 18.2 (ODP 7.4). Opposition is on the basis that it does not promote sustainable management, is unlawful or breaches the statutory framework. Alternative methodologies may be appropriate. The Incorporated Society also oppose the proposed change to the activity status table in Rule 3.4.1.1 (ODP 7.5) which would result in activities located within the Awatarariki High Risk Debris Flow Area being classified as a Prohibited Activity.

Response:

Submission points 7.3 and 7.4 by the Awatarariki Residents Incorporated Society are not supported. Plan Change 1 relies upon existing objectives and no new objectives are proposed. The existing ODP hazard objective (Haz 1) is already deemed to be the most appropriate way to give effect to the purpose of the RMA, being the sustainable management of natural and physical resources.

Proposed Policy 18 reflects the methodology generally accepted by practitioners for the assessment of risk in New Zealand and was one of the methodologies used by Council to assess the natural hazard risk at Matatā. Proposed Policy 19 reflects the outcomes of the Awatarariki Risk Assessment and Council's statutory obligations with respect to High Risk areas.

The proposed rules within section 18.2 are a practical response to the findings of the Awatarariki Risk Assessment and are necessary to safeguard the ongoing health and safety of people and communities. Nonetheless, amendments are recommended to section 18.2 in response to WDP 4.1 and FS10.1 (below) to ensure that network utilities and temporary military training activities are not unnecessarily excluded from the Debris Flow Policy Area.

I agree that amendment is necessary to Activity Status Table 3.4.1.1 if Council wishes to prevent permanent occupation of the High Risk Debris Flow Area by susceptible activities. The proposed Prohibited Activity status provides a clear statement of the degree of risk associated with the Awatarariki debris flow hazard. It recognises that engineering and structural options to reduce that risk have been thoroughly investigated and proven not to be reasonably practical, as have alternative approaches such as catchment management and early warning / evacuation options. Plan Change 1 recognises that Prohibited Activity status will be effective in achieving reduced loss-of-life risk in the context of new or by avoiding land use activity.

The relief sought by the Incorporated Society variously seeks lesser activity status (or no restriction) for residential activities in High or Medium Risk locations, or grandparenting rights for pre-existing activities and / or an offset regime which compensates owners for loss of landuse rights. Lesser activity status is not considered appropriate given the severity of the natural hazard risk and the potential for undesirable outcomes. The prohibited status is an appropriate mechanism to give effect to Council's statutory obligations under the RPS to reduce high levels of risk to medium or as low as reasonably practicable. WDC has already given effect to part of the relief requested by the Incorporated Society by making available a buyout programme supported by the Regional Council and Central Government. As per the submission

recommendation, the methodology for calculation of payment is based broadly on the valuation principles that apply under the equivalent Public Works Act processes. Significantly, the valuations are based on a 'no-risk' scenario, with additional allowances made for legal costs, relocation costs and mortgage beak fees, if applicable.

KiwiRail Holdings Ltd opposes in part Rule 18.2.6.3 (WDP 4.1) because, whilst the rule is intended to enable the development of new network utilities or the upgrade and maintenance of existing utilities in 'high risk' areas, it is predicated on those facilities being 'in a public place'. KiwiRail notes that whilst network utilities are typically located on Council or Government managed land, private land can also host utility conduits and pipes. Therefore, the maintenance and operation of existing utilities on all land should be enabled to retain connections of benefit to the community. KiwiRail also opposes in part Rule 18.2.6.6 (WDP 4.2) with respect to utility works within 'medium risk' areas. KiwiRail supports Rule 18.2.6.3(e) which provides for the removal of network utilities as a permitted activity within 'high risk' areas (WDP 4.3).

New Zealand Defence Force has lodged a further submission in support of KiwiRail Holdings (FS 10.1) and has requested that accommodation be made for Temporary Military Training Activities (TMTA) within the 'high risk' and 'medium risk' areas of the Awatarariki fanhead. The amendment sought by the New Zealand Defence Force would enable TMTA as a Permitted Activity within the 'high risk' and 'medium risk' areas of the fanhead, subject to compliance with relevant noise standards. A default Restricted Discretionary status is sought for TMTA within 'high risk' areas that do not comply with noise standards.

Response:

As drafted, rules 18.2.6.3(c) and 18.2.6.6(c) provide for network utilities on public land only. The amendment sought by KiwiRail is a subtle but important change to ensure that utilities are provided for. The proposed amendments will not give rise to unsuitable development within high or medium risk areas and is otherwise consistent with the purpose of the RMA. KiwiRail's requested amendment is supported.

The further submission by the New Zealand Defence force is supported in principle because the requested activities within high and medium risk areas of the fanhead are of a temporary nature and represent a potentially sustainable use of an otherwise challenging land resource, subject to clarification of the extent of temporary residential occupation. Temporary use of the fanhead by NZDF is also unlikely to put the wider community at risk in comparison with conventional residential activity.

Sub Name <i>Further Sub Name</i>	Sub. Point <i>FS Point</i>	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Bay of Plenty Civil Defence Emergency Management Group	WDP 5.2	Section 18.1 Section 18.2	Support	Adopt Plan Change 1 as notified.	Accept	

Awatarariki Residents Incorporated Society	WDP 7.3	Section 18.1	Oppose	<p>Withdraw Plan Change 1; or</p> <p>Delete Policies 18 & 19; or</p> <p>Delete reference to high risk areas; or</p> <p>Include a new policy that requires provision for social, economic and cultural wellbeing of owners and occupants of properties in the high, medium and low risk areas.</p>	Reject	<p>The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the efficiency and effectiveness of the Plan Change.</p> <p>The social, economic and cultural wellbeing of owners is being addressed through the provisions of the Managed Voluntary Retreat Programme, which sits outside of the RMA process.</p>
Awatarariki Residents Incorporated Society	WDP 7.4	Section 18.2	Oppose	Delete rules 18.2.6.3, 18.2.6.4 7 18.2.6.5 and retain activity status under the relevant Residential Zone.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change and would not give effect to the BOPRS.
Awatarariki Residents Incorporated Society	WDP 7.5	Rule 3.4.1.1 Activity Status Table	Oppose change to prohibited status	<p>Amend Plan Change 1 to include methods and rules as follows (or a combination of the following):</p> <ul style="list-style-type: none"> a. No restrictions on residential activities for high and medium risk properties. Mitigation options limited to nonregulatory or non rule-based methods to avoid and manage hazard risk such as educative or early warning systems; and/or b. A grandparenting regime for high and medium risk properties; c. permitted status for residential activities for high risk properties 	Reject in part / Accept in Part.	<p>The principle of buyout and offsetting for owners of high risk properties is supported through the provisions of the Managed Voluntary Retreat Programme which is now funded and under way. Central and local government have now committed to landowner buyout, as requested by subsection (g) of the Incorporated Society submission. This aspects sits outside the RMA so does not require any amendment to the Plan Change</p> <p>Remaining submission points are rejected because the Plan Change is necessary and a reasonably practical</p>

				<p>where residential activity was established prior to notification of PC1;</p> <ul style="list-style-type: none"> d. controlled status for any increase or change in character, intensity and scale of existing residential activities in high risk properties; e. As alternative to (i), delete prohibited status and substitute controlled status for residential activities for high risk properties. Limit controlled status criteria to presence of early warning detection system or equivalent for credible landslide or debris flow events; and/or f. Methods (which may include rules) that require the District Council to establish a hazard identification and monitoring regime to provide an early warning system for owners and occupants of high risk properties in the event of a credible landslide or debris flow event; and/or g. Without prejudice to grounds stated and above relief, if the decision -maker decides that prohibited status is appropriate having regard to the statutory criteria, then introduce an environmental compensation and offsetting regime that involves payment to owners of high risk properties of reasonable compensation for changing 		<p>option for the sustainable management of a significant natural hazard. Further, the requested relief would undermine the effectiveness and efficiency of the Plan Change.</p>
--	--	--	--	---	--	--

				<p>residential activities to prohibited status.</p> <p>h. Introducing rules and other methods that require payment of reasonable mitigation, environmental offsetting and/or environmental compensation by the District Council to the owners of high risk properties as a consequence of the intended prohibited status rule for residential activities. Such a rules regime may require Augier undertakings by the Regional or District Council to be enforceable; or may involve condition precedents for the rules framework (and change in activity status of residential activities) to be triggered.</p> <p>i. Methods for calculation of mitigation, offsetting and/or environmental compensation are to reflect recognised valuation principles that apply under the equivalent Public Works Act processes;</p> <p>j. Absent any financial compensation or offsetting regime, the prohibited status rule does not have effect;</p> <p>k. A new Method that requires annual competent peer review by qualified persons in relation to PC1 assumptions about management of acceptable risk from landslide or debris flow, with ability to revisit the rules regime and prohibited</p>		
--	--	--	--	--	--	--

				status based on the findings of the peer review.		
KiwiRail Holdings Ltd	WDP 4.1	Section 18.2	Oppose in Part	Amend Rule 18.2.6.3 clause (c) by deleting the words 'in a public place' from the end of the clause.	Accept	The amendment is consistent with the purpose of the RMA and will not give rise to unsuitable development within high risk areas.
KiwiRail Holdings Ltd	WDP 4.2	Section 18.2	Oppose in Part	Amend Rule 18.2.6.6 clause (c) by deleting the words 'in a public place' from the end of the clause.	Accept	The amendment is consistent with the purpose of the RMA and will not give rise to unsuitable development within medium risk areas.
KiwiRail Holdings Ltd	WDP 4.3	Section 18.2	Support	Retain Rule 18.2.6.3(e) as notified.	Accept	The provision is consistent with the purpose of the RMA and will not give rise to unsuitable development within high risk areas.
New Zealand Defence Force	FS WDP 10.1	Section 18.2	Support	<p>A further submission by the New Zealand Defence Force has been lodged in support of KiwiRail. It seeks to amend Rule 18.2.6.3 to include:</p> <p>i. Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.4 to include:</p> <p>b. Temporary Military Training Activities that do not comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.6 to include:</p> <p>d) Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p>	Accept	The amendment is consistent with the purpose of the RMA and will not give rise to unsuitable development within high risk areas.

Whakatāne District Plan (WDP) - Chapter 21 - Definitions, Advice Notes and Other Methods

Analysis:

Awatarariki Residents Incorporated Society oppose the proposed reference to the Awatarariki ‘High’, ‘Medium’ and ‘Low’ Risk Debris Flow Policy Areas within Chapter 21 – Definitions (WDP 7.6). Opposition is on the basis that it does not promote sustainable management, is unlawful or breaches the statutory framework. The Incorporated Society also oppose Advice note 18.2.6.2 (WDP 7.7) and 18.7.1 (WDP 7.8) on similar grounds.

Response:

The submission by the Incorporated Society is not supported. Proposed rules within Section 18 of the WDP make multiple references to the Awatarariki ‘High’, ‘Medium’ and ‘Low’ Risk Debris Flow Policy Areas and the rules are cross-referenced with planning map 101A. The definitions reflect the findings of technical reports which were specifically commissioned to assess risk, and which were subsequently peer reviewed. The findings support a graduated reflection of risk. Although the definitions add clarity to the interpretation of rules, that clarity could be further enhanced if the definitions were also cross-referenced with Planning Map 101A; an amendment to that effect is recommended in attachment 2 of this report.

The s32 Evaluation adequately addresses alignment with sustainability principles and demonstrates that the proposed provisions are the most appropriate way to give effect to the purpose of the RMA. The ‘definitions’, ‘advice notes’ and ‘other methods’ reflects the specific circumstances that apply to the Awatarariki fanhead and the outcomes that are realistically able to be achieved within Council’s powers, skills and resources. The Advice Notes and Other Methods articulated in sections 18.2.6.2 and 18.7.1 are consistent with the provisions promoted elsewhere in the Plan Change and are for the purpose of enabling people and communities to make informed decisions with respect to property risk.

Sub Name <i>Further Sub Name</i>	Sub. Point <i>FS Point</i>	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Awatarariki Residents Incorporated Society	WDP 7.6	Section 21 Definitions	Oppose	<ul style="list-style-type: none"> a. Delete High, Medium, Low risk areas; or b. Amend High risk areas to medium or Low risk; or c. Identify Awatarariki Policy Area as a natural hazard area, but do not state whether it is High, Medium or Low risk. 	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change.

Awatarariki Residents Incorporated Society	WDP 7.7	18.2.6.2 Advice note	Oppose	Delete amendment to advice note.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change.
Awatarariki Residents Incorporated Society	WDP 7.8	18.7.1 Other Methods	Oppose	Delete amendment to methods.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard. The requested relief would undermine the effectiveness and efficiency of the Plan Change.

Whakatāne District Plan (WDP) - Planning Maps

Analysis:

The Bay of Plenty Civil Defence Emergency Management Group (WDP 5.3) supports amendment to Planning Map 101B Matatā to show a Coastal Protection Zone underlying the Awatarariki High Risk Debris Flow Policy Area. The submitter also supports amendment to Planning Map 101A Matatā to show ‘high’, ‘medium’ and ‘low’ risk areas within the Debris Flow Policy Areas. A submission by **Margaret Gracie** (WDP 2.1) is also supportive of the zone change.

Response:

The submissions by the CDEM Group and Margaret Gracie are supported because amendment to the planning maps is necessary in order to give effect to the objective, policy and rule changes sought in Chapters 3 and 18 of the WDP. No further changes are necessary as a consequence of these submissions.

Awatarariki Residents Incorporated Society opposes amendment to the planning maps because the Plan Change does not promote sustainable management, is unlawful or breaches the statutory framework (WDP 7.9).

Response:

The submission by the Awatarariki Residents Incorporated Society is not supported. The s32 Evaluation addresses alignment with sustainability principles. It gives consideration to the extent that the Plan Change provisions are the most appropriate way to give effect to the purpose of the RMA, and thus ensure consistency with the sustainability principles of the Act. In my opinion, the proposed provisions, including the planning maps, are ‘relevant’, ‘feasible’ and ‘acceptable’. The planning maps support Council’s statutory obligation under s6(h) of the RMA and are appropriate in terms of Part 2. Although the Plan Change has significant consequence for some

landowners, that does not necessarily equate to being unlawful or a breach of statutory obligations. Those matters have been addressed in preceding sections of this report.

Sub Name <i>Further Sub Name</i>	Sub. Point <i>FS Point</i>	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Bay of Plenty Civil Defence Emergency Management Group	WDP 5.3	Planning Maps	Support	Adopt Plan Change 1 as notified.	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
Awatarariki Residents Incorporated Society	7.9	Planning Maps	Oppose	<ul style="list-style-type: none"> a. Reject amendment to the planning maps; or b. Delete 'high risk' and substitute with 'medium' or 'low' risk areas; or c. Identify Awatarariki Policy Area as a natural hazard area, but do not state whether the risk is 'high', 'medium' or 'low'. 	Reject	The Planning maps are a necessary and a reasonably practical option for identifying hazards and promoting the sustainable management of resources. The requested relief would undermine the effectiveness and efficiency of the Plan Change.
Margaret Gracie	2.1	Planning Maps	Support	Adopt Plan Change 1 as notified.	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.

Regional Natural Resources Plan (RNRP) – General Submissions

Analysis:

Te Runanga o Ngāti Awa (RNRP1-1) has submitted in support of Plan Change 17. The submitter recognises that the geography of the catchment and the difficulty in managing soil stability mean that events similar to the May 2005 occurrence are likely to happen in the future. Te Runanga o Ngāti Awa further recognise that options aimed at allowing people to remain in their homes in the Awatarariki fanhead have been exhausted. The proposed retreat option is supported because it removes homes and families from a location in harm's way and because the prohibited activity status will protect people from making investments in high risk areas. The submitter also wishes to promote Council's awareness and provisions for the reserve area in which koiwi recovered from the Matatā area have been reinterred.

A further submission by the **Awatarariki Residents Incorporated Society** (FS 2.2) has been lodged in opposition to the Ngāti Awa submission. Opposition is on the basis that there is no guarantee that central government agencies will contribute financially to the relocation of families into new homes in a safe location. Nor is there consideration in the submission by Ngāti Awa as to what will happen to families who are forced to leave their homes with no compensation if central government agencies do not contribute financially to the relocation of families into new homes in a safe location.

Margaret Annie Gracie (RNRP 3.1) supports Plan Change 17 in its entirety because of improved safety and the closure it affords to Matatā residents. It also enables residents to 'move on'.

Response:

Submissions by Te Runanga o Ngāti Awa and Margaret Annie Gracie are supported because they align with the conclusions and recommendations reached by the various hazard and risk assessments referenced in the s32 Evaluation. Based on those assessments, I am in agreement that practical alternatives have been exhausted and that changes to the RNRP are a necessary course to ensure the ongoing safety of Matatā residents.

Opposition by the Incorporated Society stems from uncertainty as to whether central government agencies will contribute financially to the relocation of affected families. In the interim since notification of the Plan Change, funding from central government has been confirmed and the Managed Voluntary Retreat Programme is well under way. Most landowners have engaged with that process. The Voluntary Retreat programme includes mechanisms to ensure that landowners who ascribe to the programme are not financially disadvantaged with respect to property valuations, legal and relocation costs. As the stated grounds for opposition no longer reflect the current situation, the further submission by the Incorporated Society is not supported.

At the time of its lodgement, the **Awatarariki Residents Incorporated Society** submission (RNRP 6.1) was representative of 25 Matatā residents and landowners who opposed Plan Change 17. In consideration of community wellbeing (social, economic and cultural), the submission contends that the Plan Change is effectively an eviction notice from March 2021. It will have an immediate sterilising effect which will prevent members from building, borrowing money or insuring their homes. The Plan Change does not assess what will happen to people's homes located in high risk areas from 2021 and the prospect of members owning homes they cannot occupy and land they

cannot use is not identified in the cost-benefit analysis for the Plan Change. The regime advocated by the Plan Change does not support social, economic and cultural wellbeing. The Plan Change is also deemed to be inconsistent with (or does not give effect to) the principles of sustainable management.

The Incorporated Society submission also contends that the Plan Change is inconsistent with Council's statutory functions and not appropriate in terms of Part 2, sections 30, 31, 32AA, 63-68, 85 and the 1st Schedule of the RMA. Whilst it is acknowledged that there is a wider community interest in managing risk, the submitter contends that affected owners in the 'high' risk zone merit greatest weight when evaluating appropriate outcomes under the statutory framework.

In terms of validity and jurisdiction, the Incorporated Society considers Plan Change 17 to be unlawful and ultra vires Council's statutory functions and powers. The removal of people from their homes and the revocation of existing use rights without a reasonable buyout opportunity is considered an abuse of power. Further, lesser alternatives exist that can manage or mitigate hypothetical risks without removing existing use rights.

The submission contends that, to the extent relevant, the Plan Change does not give effect to the New Zealand Coastal Policy Statement (NZCPS). Nor does it give effect to, or reflect, the relevant provisions of the Regional Policy Statement (RPS). Reasons for that assertion are outlined in full in the attached submissions.

As with Plan Change 1, Plan Change 17 is considered in breach of s85 of the RMA insofar as it renders the subject land owned by members of the Society incapable of reasonable use and place unfair and unreasonable burden on the owners of that land. Consequently, the submitter intends to seek grounds for direction under s85(3A) in the event that either Plan Change is confirmed in its notified form.

In consideration of alternatives, the Plan Change does not allow for lesser interventions and alternatives such as: the mitigation of hazard risk whilst enabling members to remain in their homes; adopting an information-based approach to managing hazard risk or; adopting an events based approach to managing hazard risk. Nor does the Plan Change appropriately address a combination of management systems to address hazard risk, such as catchment management, monitoring and early warning systems.

With respect to 'hazard and risk', Plan Change 17 is considered to rely upon imprecise modelling of risk of landslide and debris flow, of probability of fatality or injury and upon uncertain science as to the assessment of risk for properties identified as 'high risk'. The risk assessments are considered to involve speculative or unfounded assertions of risk with the resultant 'prohibited activity' status being a disproportionate response given the difficulties with risk assessment. The submitter also questions whether it is appropriate for the Plan Change to rely upon the Australian Geomechanics Guideline as the methodology for assessing natural hazard risk.

As risk involves probability plus consequence, the Incorporated Society contends that a different approach to acceptability of risk is required in relation to existing residential activity, as distinct from land use planning for future residential uses. It is considered that this is not reflected in the prohibited status regime for existing residential activities beyond 2021.

A further submission by the **New Zealand Defence Force** (FS RNRP 10.3) is lodged in support of the Incorporated Society submission. The further submission seeks amendment to Rules which would otherwise prevent or restrict temporary military training exercises within high and medium risk areas of the fanhead.

Response:

I agree that Plan Change 17 will have a largely sterilising effect for landowners located within the 'high risk' areas, potentially well before March 2021 when existing use rights are scheduled for removal. Further, the Plan Change will support social and cultural wellbeing to the extent that passive recreation will still be provided for within 'high risk' areas. Economic, social and cultural wellbeing is nonetheless also addressed parallel with, but outside of the Plan Change process, in the form of a Managed Voluntary Retreat Programme. The Retreat Programme includes provision for property owners in the High risk area to sell their properties at the current market value with no deduction for the debris flow risk that exists²¹. Despite that, it is acknowledged that some landowners have chosen not to participate in the Voluntary Retreat Programme and thus benefit from the advantages that the programme offers.

The s32 Evaluation gives consideration to the extent that the new objective within the Plan Change is the most appropriate way to give effect to the purpose of the RMA, and thus ensure consistency with the sustainability principles of the Act. I agree with the s32 Evaluation that proposed objective NH 04 is 'relevant', 'feasible' and 'acceptable'. The Plan Change objective reflects the specific circumstances that apply to the fanhead and the outcome is realistically able to be achieved within Council's powers, skills and resources. Given Council's statutory obligation under s6(h) of the RMA and the RPS, the Plan Change is consistent with Council's statutory functions and is appropriate in terms of Part 2 of the Act. Although the Plan Change has significant consequence for some landowners, that does not equate to an abuse of power.

I do not support the assertion that the Plan Change fails to give effect to the NZCPS and relevant provisions of the RPS. Whilst it is acknowledged that the debris flow hazard is not a coastal hazard per se, the fanhead is nonetheless located within the Coastal Environment and the after-effects of a debris flow clearly have potential to become a coastal hazard. NZCPS supports the principle of managed retreat from natural hazards. The NZCPS encourages change in land use where that would reduce the risk of adverse effects from coastal hazards. I agree with the conclusions reached in sections 2.11 and Appendix 6 of the Section 32 Report that the proposed provisions give effect to the RPS natural hazard policies.

Section 85 of the RMA provides for persons with an interest in land to challenge provisions which render that interest in land 'incapable of reasonable use'. Challenge can be via the submission process to a proposed plan or plan change, or directly to the Environment Court. The Environment Court has the potential to require Councils to purchase the land, providing the reasonable use threshold can be met. I agree that, in effect, the natural hazard risk, as reflected in the Plan Changes, will render properties within high risk areas incapable of residential use. This is because of the prohibited status under the WDP for new development, and the extinguishing of existing use rights under the RMRP. Remaining options for land use are extremely limited, relative to the flexibility currently provided by the Residential Zoning. However, the Plan Change is being progressed in parallel with the Voluntary Managed Retreat Programme, which will result in landowners who choose to participate in that programme being able to sell their properties with no discount for the debris flow risk. The buyout programme is considered reasonable insofar as property valuations are based on a 'no-risk' scenario, with additional allowances made for legal costs, relocation costs and mortgage break fees (if applicable). Therefore, whilst it is agreed that the Plan provisions will render land in high risk areas incapable of residential use, it is my opinion that the burden placed on those landowners will be offset by the buyout afforded through the Voluntary Managed Retreat Programme.

Section 8.0 of the s32A Evaluation gives consideration to non-regulatory alternatives, such as engineering options, catchment management and early warning systems. The technical assessments and peer reviews that have been completed, demonstrate that allowing residents to remain in their homes in conjunction with other methods is not a feasible alternative. Although residents have indicated varying degrees of acceptance of the natural hazard, WDC and BoPRC have statutory obligations to act on

²¹ Land valuations are based upon current market value of properties, ignoring the debris flow risk. Financial assistance includes additional contributions towards legal expenses, relocation costs and mortgage break fees, where applicable.

behalf of communities to reduce or mitigate risk to life safety from natural hazards. As noted previously in this report, a repeat of the 2005 debris flow event would not only put remaining residents at risk, but would also risk the lives of emergency services personnel who would inevitably be involved in landowner rescue. Therefore, the risks associated with the continued occupation of homes are not confined to the residents alone.

The technical assessments used to inform the s32 Evaluation demonstrate that engineering options to reduce risk have been thoroughly investigated and proven not to be reasonably practicable. The feasibility of early warning systems was considered in the study by T Davies²² in 2017. That study concluded that a debris-flow warning system was feasible for road and rail users crossing the Awatarariki fanhead, but that debris-flow warning systems would not be feasible with respect to properties located within the fanhead. These were deemed unfeasible due a combination of factors, including the lack of calibrated data and the time that would be required to collect such data (estimated 'decades to centuries'). Early warning systems were also predicted to give rise to a high proportion of false alarms, which could lead to complacency. A trip wire system was also considered for residential properties within the fanhead. This was dismissed as impractical because of the short distance between the detector sites and dwellings and the need to apply a realistic factor of safety to calculations of warning and evacuation times; it would not provide adequate warning time to guarantee the ability of residents to exit dwellings and reach safety.

With respect to the validity of the risk analysis and the appropriateness of the Australian Geomechanics Landslide Risk Management methodology ('AGS 2007'), the Incorporated Society considers this to be an imprecise and speculative assessment based upon uncertain science. I agree that risk assessments contain elements of uncertainty and are often dependent upon best available data at that time. Although not a precise science therefore, I am reliant upon the 2013 '*Quantitative Landslide and Debris Flow Hazard Assessment*' by Tonkin and Taylor that AGS 2007 is the model generally followed in New Zealand when a quantitative assessment of risk is required. The applicability of AGS 2007 to the Matatā situation has been determined by expert practitioners in that field and the outcomes of that assessment have been extensively peer reviewed. Industry confidence in AGS 2007 is such that it is a recognised risk assessment methodology in the RPS Natural Hazard Risk Assessment User Guide. For that reason, I do not agree with the Incorporated Society's concern regarding use of AGS 2007.

The further submission by the New Zealand Defence force is supported in principle as outlined above, because the requested activities within high and medium risk areas of the fanhead are of a temporary nature and represent a potentially sustainable use of a challenging land resource. Temporary use of the fanhead by NZDF is also less likely to put the wider community at risk in comparison with conventional residential activity.

The **Matatā Action Group** (RNRP 8-1) oppose Plan Change 17. The submission contends that Whakatāne District Council has ignored the spirit of the New Zealand Bill of Rights Act 1990 and has placed severe limitations on the lives and freedoms of the residents and property owners bordering the Awatarariki Stream at Matatā. The Plan Change is considered to fall outside reasonable public expectation of functional operation and clearly defined statutory obligations of Council, including those relating to Sections 3, 5, 8 and 19 of the Zealand Bill of Rights. It is also deemed to create unprecedented legislation allowing authorities to acquire private property without compensation, by removing existing usage rights "*on the basis that some yet to be accurately calculated element of risk to life exists within or in close proximity of that property, as a result of the presence or perceived potential presence of a genuine Natural Hazard*".

²² Awatarariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study, TRH Davies, Dept. of Geological Sciences, University of Canterbury, December 2017.

Relative to section 85 of the RMA, the Matatā Action Group considers the Plan Change to be unlawful as it renders the financial interests of the land and property within an 'alleged' high risk area incapable of reasonable use. The Plan Change is therefore deemed to place an unfair and unreasonable burden on those parties with an interest in the land. The submission by the Matatā Action Group also refers to historic commercial operations by Council as a contributor to the May 2005 event, and which needs to be recognised moving forward with solutions.

Response:

The Bill of Rights sets out the rights and fundamental freedoms of anyone subject to New Zealand law as a Bill of Rights. It is part of New Zealand's uncodified constitution, designed to restrain the government's ability to limit an individual's rights. In short, it is designed to protect individuals and legal bodies from the actions of the state.

Section 3 of the Bill of Rights Act relates to the applicability of the statute. It confirms that the Bill of Rights applies to acts passed by the legislative, executive, or judicial branches of the Government of New Zealand, but only those acts. The RMA is an act created by the legislative branch of the Government. Therefore, territorial authorities are bound by the New Zealand Bill of Rights Act 1990 (and by association the Human Rights Act 1993), including in the exercise of jurisdiction under the RMA. Although the Bill of Rights Act is part of New Zealand law as applied under the RMA, section 4 of the Act specifically denies the Bill of Rights any supremacy over other legislation. It states that Courts cannot implicitly repeal or revoke, or make invalid or ineffective, or decline to apply any provision of any statute made by Parliament, whether before or after the (Bill of Rights) Act was passed because it is inconsistent with any provision of the Bill.

It is acknowledged that section 5 of the Bill of Rights Act provides for limitations on the rights and freedoms contained within the Act, in circumstances where reasonable limitations (prescribed by other Acts) can be demonstrably justified. In this instance, a limitation is prescribed by the RMA and, on the basis of the technical assessments and recommendations used to inform the Plan Change, I consider those limitations to be reasonable and justified.

The Action Group contends that Plan Change 17 is inconsistent with Section 8 of the Bill of Rights Act which provides that no one be deprived of life except on grounds established by law and in consistency with the principles of fundamental justice. The Plan Change does not affect the 'right to life' in the manner intended by the Act. Therefore, the Plan Change does not offend Section 8 of the Bill of Rights Act.

Section 19 of the Bill of Rights provides that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993. Implicit in the Matatā Action Group submission is that Plan Change 17 discriminates against residents within the Awatarariki fanhead. However, the rights in section 19 must be read in conjunction with the Human Rights Act 1993, which sets out the prohibited grounds of discrimination, namely: sex, marital status, religious belief, ethical belief, colour, race, ethnic/national origin, disability, age, political opinion, employment status, family status, sexual orientation. Whilst residents and landowners within the Awatarariki fanhead are indeed the exclusive focus of Plan Change 17, there is no correlation between the circumstances of the Plan Change and the prohibited discrimination grounds identified in the Human Rights Act 1993. Again therefore, in my opinion, the Plan Change does not offend Section 19 of the Bill of Rights: nor does it discriminate against residents in a manner inconsistent with the spirit of the Bill of Rights Act.

It is acknowledged that Plan Change 17 will place severe limitations on the lives and freedoms of residents within the Awatarariki fanhead, by removing existing use rights. The decision to remove existing use rights is based on identification of the Awatarariki fanhead as an area of 'significant natural hazard risk', and one which cannot practically be mitigated to acceptable levels by way of engineering or other physical solutions such as catchment management and early warning systems. Section 6(h) of

the RMA imposes a statutory requirement on Council to recognise and provide for the management of significant risks as a matter of national importance. Given the limited options available, I disagree that the Plan Change is unlawful and outside the functional and statutory obligations of Council.

Plan Change 17 has been promulgated on the basis that it goes hand in hand with a Managed Voluntary Retreat Programme, a key component of which is a buyout opportunity for loss of existing use rights. At the time of preparing this report a number of landowners had subscribed to the programme as set out in the report at Appendix 6. Although funding for the Managed Voluntary Retreat Programme was not confirmed until after notification of the Plan Change, it was clearly not the intent of the Plan Change that authorities acquire private property without payment. In the circumstances, submitter concerns regarding that issue are unfounded.

No commentary is provided on the historic commercial operations of Council and the extent that it may or may not have contributed to the cause of the 2005 debris flow event because that is considered beyond the scope of this s42A report. The natural causes are documented in the the GNS report; *'The 18 May 2005 debris flow disaster at Matatā: Causes and mitigation suggestions'* June 2005.

Sub Name <i>Further Sub Name</i>	Sub. Point <i>FS Point</i>	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Te Runanga o Ngāti Awa	RNRP1-1.1	General	Support	Retain the Plan Change as notified	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
Awatarariki Residents Incorporated Society	RNRP 6.1	General	Oppose	<ol style="list-style-type: none"> 1. Withdraw Plan Change 17 or delete pursuant to s85 of the RMA. 2. As a second preference, amend the Plan Change to address the matters identified in the submission. 3. In addition to (1) and (2), if the Plan Change is confirmed, acquire properties listed in NH3 under the public Works Act 1981, subject to written consent of individual property owners or persons with an interest in the land. 	Reject	<p>The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard.</p> <p>Affected properties are unable to be acquired under the Public Works Act. However, an alternative buyout opportunity is made available under the Managed Voluntary Retreat Programme, which is funded and now in progress.</p>

Matatā Action Group	RNRP 8.1	General	Oppose	<p>Withdraw Plan Change 17 or delete. Or in the alternative:</p> <p>Withhold the process until the proceedings to date have been reviewed judicially and ruled upon.</p>	Reject	<p>The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard.</p> <p>Proceedings are able to be judicially reviewed irrespective of whether the Plan Change proceeds to a hearing stage.</p>
Margaret Annie Gracie	RNRP 3.1	General	Support	Adopt Plan Change 17 as notified.	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
New Zealand Defence Force	FS RNRP 10.3	General	Support	<p>A further submission by the New Zealand Defence Force has been lodged in support of the Awatarariki Residents Incorporated Society. It seeks to amend Rule 18.2.6.3 to include:</p> <p>i) Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.4 to include:</p> <p>b) Temporary Military Training Activities that do not comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.</p> <p>Amend Rule 18.2.6.6 to include:</p>	Accept in part	The proposed amendment is consistent with the purpose of the RMA and will not give rise to unsuitable development within high risk areas.

				d) Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Activity Noise Limits.		
Awatarariki Residents Incorporated Society	FS RNRP 2.2	General	Oppose	Further submission RNRP 2.2 is assumed to be in opposition to the submission by Te Runanga o Ngāti Awa, which is supportive of the Plan Change.	Reject	The Plan Change is necessary and a reasonably practical option for the sustainable management of a significant natural hazard.

Regional Natural Resources Plan (RNRP) - Natural Hazards – Objectives, Policies and Rules

Analysis:
<p>Katherine Margaret Stevens (RNRP 2.1) opposes proposed Objective NH04 and its associated policies. The submitter contends that if farming and forestry was better managed upstream of the fanhead, the debris flow hazard would be significantly decreased. The submission specifically opposes Policy NH P6 on the basis that reference to an Australian Standard is not relevant to New Zealand. Residents and landowners within the fanhead are aware of the risks of living there and should be left alone.</p> <p><u>Response:</u> Proposed Objective NH04 is consistent with, and assessed as, the most appropriate way to achieve the purpose of the RMA. It also implements of RPS Objective 31 which requires the avoidance or mitigation of natural hazards by managing risk to people’s safety and the protection of property. The associated rules are reasonably practicable, having regard to effectiveness and efficiency, and the associated provisions within Plan Change 1. Land use in the catchment was described and taken into account in the GNS report dated June 2005²³ and did not identify farming or forestry as contributing factors. For the reasons outlined previously in this report, I do not agree that AGS 2007 is an inappropriate standard. It is an industry-recognised risk assessment methodology (RRAM) commonly used in Australasia, including New Zealand. The methodology is also recognised in the RPS Natural Hazard Risk Assessment User Guide.</p> <p>Enabling residents and landowners to remain within high risk areas of the fanhead is not considered a reasonably practical planning option, irrespective of whether residents are prepared to live with that risk. In terms of Council meeting its statutory obligations, that scenario is only feasible if there is mitigation in place to reduce levels of risk to that required by the BOPRPS. Engineering assessments have established that structural mitigation and early warning systems and active catchment</p>

²³ The 18 May 2005 debris flow disaster at Matatā: Causes and Mitigation suggestions, GNS, June 2005, p26

management are not reasonably practicable, and nor can safety be assured through District Plan provisions alone. I agree with the s32 Evaluation that the risks relating to continued occupation of the high risk area are not confined to current residents. Community risks remain for those engaged in any future response to a debris flow event and the potential need for affected landowners to be rescued by emergency staff. Consequently, the submission by Katherine Stevens is not supported.

The **Bay of Plenty Civil Defence Emergency Management Executive Group** (RNRP 4.1) supports the objectives, policies and rules promoted by Plan Change 17. The Plan Change is consistent with the Civil Defence Emergency Management Act 2002 and the objectives of the Bay of Plenty CDEM Group Plan 2018-2023.

A further submission by the **Awatariki Residents Incorporated Society** (FS RNRP 2.1) has been lodged in relation to the submission by Bay of Plenty CDEM Group. Although it does not specify whether the further submission is in support or opposition to the CDEM Group submission, it notes that there is no guarantee that managed voluntary retreat will be approved by governmental bodies. It notes further that the CDEM Group's submission gives no consideration as to what will happen to families forced out of their homes with no compensation if the managed voluntary retreat strategy is not progressed.

Response:

The submission by Bay of Plenty CDEM Group is supported.

The further submission by the Incorporated Society has been overtaken by post-notification circumstances. At the time the further submission was lodged, confirmation of central government funding towards the Managed Voluntary Retreat Programme was still pending. That confirmation is now in place and the buyout programme is under way for those who have subscribed to it. It is acknowledged that not all landowners have chosen to take part in the Voluntary Retreat Programme, and it is possible that some landowners may not reach agreement on agreed valuations. But the prospect of families being forced out of homes without being offered an opportunity to participate in a programme where they are paid the market value for their properties, is now effectively removed. In the circumstances, the further submission by the Incorporated Society is not supported.

The **Matatā Residents Association** (RNRP 5.1) oppose the change to the Regional Natural Resources Plan and specifically oppose Policies NHP7, NHP8 and Rule NH R71. The submitter requests that the Regional Council fully investigate a combination of bunding on the Awatariki Stream and early warning system, including rainfall gauge instruments and ground moisture content monitors. The Association submits that bunding is able to be created by utilising the material which is already deposited in the fanhead from the 2005 debris flow event. The early warning system is able to be connected to alarms in individual houses, thereby notifying residents of impending danger and the need to self-evacuate.

Response:

Council has extensively explored non-regulatory options for the remediation of hazard risk and has sought that guidance from recognised experts in that field. Engineering options such as dams, raised building platforms, debris barriers and bunds and channels have been variously considered on an area-wide basis. I am guided by the findings of the technical assessments in Table 3.3 of this report, including peer reviews, that these engineering and early warning options are not 'reasonably practicable'.

Consideration has also been given to catchment management options (such as tree planting and the active management of debris build-up), and warning and evacuation options, such as that suggested by the Residents Association. The effectiveness of catchment management is shown to be uncertain and likely to have only minor influence on the size and impact of a debris flow event. Investigations into early warning systems²⁴ found that, whilst these systems are technically feasible, they are unlikely to provide sufficient warning time due to likely velocity flows, proximity of dwellings and likely length of evacuation time. Although trip wire detection systems are potentially effective for road and rail corridors, the same cannot be said for residential areas. Council investigations demonstrate that risk to life for residents cannot be reduced by provision of a debris-flow warning system. Irrespective of the practicality of early warning systems, their effectiveness is ultimately subject to human response. In the event that residents failed to self-evacuate in time, community risks remain for those engaged in the rescue of affected landowners. Those residual risks should not be downplayed. The submission by the Residents Association is rejected for the above reasons.

The **Awatarariki Residents Incorporated Society** (RNRP 6.1) oppose Plan Change 17 and its associated objectives, policies and rules for the reasons stated in section 5.3 of this report above.

Response:

I agree that the Plan Change will have a largely sterilising effect for landowners located within the 'high risk' areas. Further, the Plan Change only supports social and cultural wellbeing to the extent that passive recreation is still provided for within 'high risk' areas. Economic wellbeing is nonetheless addressed parallel with, but outside of the Plan Change process, in the form of a Managed Voluntary Retreat Programme. The programme provides a buyout opportunity to landowners who are impacted by loss of existing use rights.

I do not agree that the Plan Change is inconsistent with, or does not give effect to, the principles of sustainable management. Plan Change 17 proposes one new objective (NH 04) which seeks avoidance or mitigation of debris flow hazard by managing risk for people's safety. The objective is considered the most appropriate way to achieve the purpose of the RMA. It implements RPS Objective 31 which seeks the avoidance or mitigation of natural hazards by managing risk for people's safety and the protection of property and lifeline utilities. Objective NH 04 stops short of 'managing risk to protection of property and lifeline utilities', as per RPS Objective 31. This is considered appropriate in the circumstances, given that 'property protection' is deemed not reasonably practicable by supporting engineering reports.

The continued occupation of the Matatā fanhead by residential activity is not considered sustainable due to the high levels of risk to life and property which cannot be practicably managed by engineered mitigation alone. The s32 Evaluation has identified and evaluated other options and has adequately assessed their efficiency and effectiveness. The provisions promoted by Plan Change 17 are considered the most appropriate to support the proposed objective. Insofar as the Plan Change provides a pathway to safeguard the health and safety of the Matatā community, it promotes the sustainable management of a natural and physical resource.

The assertion that the Plan Change is 'unlawful' and ultra vires Council's statutory functions is not supported. Section 30(1)(c)(iv) of the RMA identifies the function of a regional council as including the control and use of land for the purpose of 'avoidance or mitigation of natural hazards'. The Plan Change is not required to reflect this dual function; it can be one or the other, or both. It is accepted that the Plan Change is essentially an avoidance regime, but this is considered within the scope of s30(1)(c)(iv) given that engineered mitigation has been shown *not* to be reasonably practicable. The extinguishing of existing use rights under the RMA is not predicated on the

²⁴ Awatarariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study, TRH Davies, Dept of Geological Sciences, University of Canterbury, December 2017

acquisition of properties. Nonetheless, a buyout opportunity is available under the Managed Voluntary Retreat Programme, which is now fully funded and under way at the time of preparing this s42A Report.

As noted previously, Section 85 of the RMA provides for persons with an interest in land to challenge provisions which render that interest in land 'incapable of reasonable use'. Challenge can be via the submission process to a proposed plan or plan change, or directly to the Environment Court. The Environment Court has the potential to require Councils to purchase said land, providing the reasonable use threshold can be met. I agree that the Plan Changes will render properties within the high risk areas incapable of their zoned residential use. This is because of the prohibited status under the WDP for new development, and the extinguishing of existing use rights under the RNRP. Remaining options for land use are extremely limited, relative to the flexibility currently provided by the Residential Zoning. However, the Plan Change is being progressed in parallel with the Managed Voluntary Retreat Programme, which will result in a buyout opportunity to landowners who choose to accept it. The buyout programme is considered reasonable insofar as property valuations are based on a 'no-risk' scenario, with additional allowances made for legal costs, relocation costs and mortgage break fees (if applicable). Therefore, whilst it is agreed that the Plan provisions will render land in high risk generally incapable of continued residential use, it is my opinion that the burden placed on those landowners will be offset by the payments afforded through the Managed Voluntary Retreat Programme.

I do not agree that the Plan Change fails to give effect to the NZCPS and relevant provisions of the RPS. Whilst it is acknowledged that the debris flow hazard is not a coastal hazard per se, the fanhead is nonetheless located within the 'Coastal Environment' and the after-effects of a debris flow clearly have potential to become a natural hazard. NZCPS supports the principle of managed retreat from natural hazards. The NZCPS encourages change in land use where that would reduce the risk of adverse effects from coastal hazards. I agree with the conclusions reached in sections 2.11 and Appendix 6 of the Section 32 Report that the proposed provisions give effect to the RPS natural hazard policies.

Section 8.0 of the s32A Report gives consideration to non-regulatory alternatives, such as engineering options, catchment management and early warning systems. The technical assessments and peer reviews referenced in the s32A Report demonstrate that allowing residents to remain in their homes in conjunction with other methods is not a feasible alternative. Although residents have indicated varying degrees of acceptance of the natural hazard, WDC and BPRC have statutory obligations to act on behalf of communities to reduce or mitigate risk to life safety from natural hazards. For the reasons outlined previously, the risks associated with the continued occupation of homes are not confined to the residents alone.

Technical assessments demonstrate that engineering options to reduce risk have been thoroughly investigated and proven not to be reasonably practicable. The feasibility of early warning systems has been considered in the report by T Davies²⁵. That report concluded that a debris-flow warning system was feasible for road and rail users crossing the Awatarariki fanhead, but that debris-flow warning systems would not be feasible with respect to properties located within the fanhead. These were deemed unfeasible due a combination of factors, including the lack of calibrated data and the time that would be required to collect such data (estimated 'decades to centuries'). Early warning systems were predicted to give rise to a high proportion of false alarms. A trip wire system was also considered for residential properties within the fanhead. This was dismissed as impractical because of the short distance between the detector sites and dwellings and the need to apply a realistic factor of safety to calculations of warning and evacuation times; it would not provide adequate warning time to guarantee the ability of residents to exit dwellings and reach safety.

²⁵ Awatarariki Fan, Matatā: Debris-Flow Early Warning Systems Feasibility Study, TRH Davies, Dept. of Geological Sciences, University of Canterbury, December 2017.

With respect to the validity of the risk analysis and the appropriateness of the Australian Geomechanics Landslide Risk Management methodology ('AGS 2007'), the submitter considers this to be an imprecise and speculative assessment based upon uncertain science. As I outlined previously, risk assessments rely on, or best available data at that time. Although they are not therefore a precise science, I rely upon the 2013 'Quantitative Landslide and Debris Flow Hazard Assessment' by Tonkin and Taylor that AGS 2007 is the model generally followed in New Zealand when a quantitative assessment of risk is required. Further, industry acceptance of AGS 2007 is such that it is a recognised risk assessment methodology in the RPS Natural Hazard Risk Assessment User Guide.

The further submission by the New Zealand Defence force is supported in principle as discussed above, because the requested activities within high and medium risk areas of the fanhead are of a temporary nature and represent a potentially sustainable use of a challenging land resource. Temporary use of the fanhead by NZDF is less likely to put the wider community at risk in comparison with conventional residential activity.

The **Matatā Action Group** (RNRP 8) oppose Plan Change 17 for multiple reasons, including but not limited to, the belief that the Plan Change relies upon assumptions, inexact science and a hypothetical or perceived risk. The Plan Change is also considered to support a secondary objective of providing Council with undisclosed commercial and cultural opportunities and a short cut for circumventing the Public Works Act.

Specifically, the Action Group opposes Objective NH 04 because it is unlawful and / or breaches the statutory framework of Local Authority functions. Further, it does not reflect the 13 years of neglect associated with a risk that has genuinely been quantified beyond the piles of debris that remains on private properties.

Policy NH P6 is opposed because there are a number of aspects within the Australian Geomechanics Society (AGS 2007) document including acceptable assumptive error allowances, that should not be relied upon to accurately calculate or assess a Perceived Risk with perceived tolerance levels, and perceived margins of error. In New Zealand, GIS mapping along with the use of Melton ratio formulae is considered a dependable process for assessing a streams susceptibility to real debris flow risk, rather than perceived risk, as is promoted within the methodologies of the AGS document. Debris flow prone streams in New Zealand identified using the Melton ratio are almost entirely those streams that have an R factor of above 0.50, whereas the Awatarariki Stream is only 0.17. The AGS methodology does not explain that anomaly.

Policies NH P7 and NH P8 are opposed because they are deemed to be unlawful and / or breach the statutory framework of Local Authority functions as well as being potentially in breach of the New Zealand Bill of Rights. Reducing risk was within the scope of Council's management and statutory obligations but did not occur with respect to the 2005 debris flow event. Policy NH P8 is considered an extreme example of avoiding potential liability for previous wrongdoing. It is deemed to be inconsistent with Section 5 of the New Zealand Bill of Rights and with the Resource Management Act, in that it does not promote sustainable resource management.

Rule NH R71 is cross-referenced with Table NH3. The rule imposes a timeline beyond which, the use of land within Table NH3 for residential purposes will be deemed a prohibited activity. The submitter contends that NHR71 does not reflect the full extent of what was previously shown to be the entire area affected by the 2005 debris flow and is therefore inconsistent with the process promoted to gain natural hazard zoning classification. NH R71 sets a date at which time the 'as yet untested' property acquisition process is expected to have been lawfully applied. It is submitted that, like the bulk of Plan Change 17, the provision is based on an assumption that the Plan Change will be successful in its application and law. In practice, however, it is considered that there are too many vagaries, omissions and inconsistencies within the evaluation process to date to assume that the Plan Change and Council actions to date will survive a judicial review.

Response:

Based on the s32 Evaluation, I do not agree that Council has a secondary objective of obtaining undisclosed commercial and cultural opportunities and that the Plan Change is a mechanism for circumventing the Public Works Act. The Public Works Act is not available because there is no 'public work'. Council has a statutory obligation to address natural hazards, and that is the sole purpose of the Plan Change, as described in the s32 Evaluation. The supporting documentation for the s32 Evaluation demonstrates that hazard assessment is a complex field, which inevitably includes assumptions based upon best available data. The Tonkin and Taylor Quantitative Hazard Assessment²⁶ does not purport to be a precise science, but is based on best practice and therefore it does not necessarily render the outcomes of the Plan Change 'unlawful' or 'in breach of statutory functions'.

Specifically, I support Objective NH04 as the most appropriate way to achieve the purpose of the RMA. It implements RPS Objective 31 which requires the avoidance or mitigation of natural hazards by managing risk for people's safety and the protection of property. Notwithstanding, proposed Objective NH04 is appropriately limited in its scope to 'risk for people's safety', because 'protection of property' is not practically achievable in the case of the Awatarariki fanhead.

In consideration of Policy NHP6, I make no comment on the appropriateness of AGS 2007 versus the Melton ratio formulae because this is beyond my expertise. I am nonetheless guided by the findings of the s32 Evaluation and supporting technical reports that AGS 2007 is an industry recognised risk assessment methodology (RRAM) commonly used in Australasia, including New Zealand. As noted previously, it is also referenced in the RPS Natural Hazard Risk Assessment User Guide as an available risk assessment tool.

In consideration of submitter concerns regarding Policy NHP7, I make no comment on the level of risk that was already present at the time of the 2005 event because that is beyond my expertise. Nonetheless, I consider Policies NHP7 and NHP8 to be reasonably practicable, having regard to effectiveness and efficiency, and to the associated provisions within Plan Change 1 based on information that is now available. I do not support the view that Policy NHP8 fails to promote sustainable resource management. The policy relates to the management of a land resource in order to provide for the health and safety of the Matatā community, both for existing and for future generations. Consistency or otherwise of Policy NHP8 with the New Zealand Bill of Rights has already been addressed in section 5.8 of this report above.

Sub Name Further Name	Sub Name	Sub. Point FS Point	Plan Provision	Sub. Type	Summary of decision sought	Recommendation	Reasoning
Katherine Margaret Stevens		RNRP 2.1	NH 04 NH P6	Oppose	Leave the fanhead residents alone.	Reject	The Plan Change is a necessary and reasonably practical option for the sustainable management of a significant natural hazard.

²⁶ Quantitative Landslide and Debris Flow Hazard Assessment, Matatā Escarpment – Tonkin and Taylor 2013

Bay of Plenty Civil Defence Emergency Management Executive Group	RNRP 4.1	General	Support	The Plan Change is adopted as notified.	Accept	The submission supports the sustainability principles of the RMA and better enables Council to fulfil its statutory functions with regards the identification and management of natural hazards.
Matatā Residents Association	RNRP 5.1	General	Oppose	Plan Change 17 to be put aside until alternative engineering solutions are fully investigated.	Reject	Alternative engineering solutions have been investigated by WDC and found not to be reasonably practicable.
Awatarariki Residents Incorporated Society	RNRP 6.2	Objective NH04	Oppose	Withdraw PC 17; or Amend NH04 by adding: a) “..while providing for the economic, social and cultural wellbeing of owners and occupants of properties listed in NH3”.	Reject	The Plan Change is a necessary and reasonably practical option for the sustainable management of a significant natural hazard. The economic, social and cultural wellbeing of owners and occupants of properties listed in NH3 is being addressed through the Managed Voluntary Retreat Programme, which sits outside of the RMA process.
Awatarariki Residents Incorporated Society	RNRP 6.3	Policies NHP6, NHP7, NHP8	Oppose	Delete NH R71; or Amend NH P6 by deleting the words: <i>“... using the methodology set out in Australian Geomechanics Society – Landslide Risk Management 2007.”</i> Amend NH P7 by deleting the words: <i>“... by ensuring existing residential land uses retreat from high risk hazard area as soon as reasonably practicable.”</i> Delete NH P8.	Reject	The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard.

<p>Awatarariki Residents Incorporated Society</p>	<p>RNRP 6.4</p>	<p>Rule NH R71</p>	<p>Oppose</p>	<p>Delete NH R71; or</p> <p>Delete NH R71 and replace with a rules regime that enables continued occupation of the properties identified in NH3, without requirement for resource consent.</p> <p>Method and rules regime may include the following. These are listed as alternatives, but a rules regime may include a combination of these. Amending PC17 to include the rules and other methods listed below may require additional issues, objectives and policies to be included to ensure vertical and horizontal integration within the Regional plan:</p> <ul style="list-style-type: none"> a) No restrictions on existing use rights for properties identified in NH3. Mitigations options limited to non-regulatory or non-rule based methods to avoid and manage hazard risk such as educative or early warning systems; and / or b) A grandparenting regime for properties listed in NH3: <ul style="list-style-type: none"> i. Permitted status for existing use rights for residential activities for properties in NH3 from 2021. ii. Controlled status for any increase or change in character, intensity and scale 	<p>Reject</p>	<p>The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard.</p> <p>The requested relief undermines the efficiency and effectiveness of the Plan Change and does not adequately address significant risk hazards.</p>
---	-----------------	--------------------	---------------	---	---------------	--

				<p>of existing residential activities in properties listed in NH3 from 2021.</p> <p>iii. As alternative to (i), delete prohibited status and substitute controlled status for residential activities for properties identified in NH3 from 2021. Limited controlled status criteria to presence of early warning detection system or equivalent for credible landslide or debris flow events; and / or</p> <p>c) Methods (which may include rules) that require the District Council to establish a hazard identification and monitoring regime to provide an early warning system for owners and occupants of properties in Table NH3 in the event of a credible landslide or debris flow event; and / or</p> <p>d) Without prejudice to grounds stated and above relief, if the decision maker decides that prohibited status is appropriate having regard to the statutory criteria, then introduce an environmental compensation and offsetting regime that involves payment to owners of properties identified in NH3 of reasonable compensation for</p>		
--	--	--	--	---	--	--

				<p>loss of existing use rights and inability for continued occupation of residentially zoned land.</p> <p>e) This will require introducing rules and other methods that require payment of reasonable mitigation, environmental offsetting and / or environmental compensation by the Regional / District Councils to the owners of the properties identified in Table NH3 as a consequence of the intended prohibited status rule for existing use rights for residential activities. Such a rules regime may require <i>Augier</i> undertakings by the District or Regional Council to be enforceable; or may involve condition precedents for the rules framework (and changes in activity status for residential activities) to be triggered.</p> <p>i. Methods for calculation of mitigation, offsetting and / or environmental compensation are to reflect recognised valuation principles that apply under the equivalent Public Works Act processes;</p> <p>ii. Absent any financial compensation or offsetting</p>		
--	--	--	--	---	--	--

				<p>regime, the prohibited status rule does not have effect by 2021 (or any relevant date);</p> <p>iii. A new method that requires annual competent peer review by qualified persons in relation to PC17 assumptions about management of acceptable risk from landslide or debris flow, with ability to revisit the rules regime and prohibited status based on the findings of the peer review.</p> <p>f) Delete or amend Table NH3 to reflect that the alleged areas of High Risk are not accurate or appropriate.</p>		
Mark and Margreta Nicholson	RNRP 7.1	Policy NHP8	Oppose	Unspecified, but assumed to be <i>'delete or amend Policy NHP8 to ensure that the surrender of existing use rights does not happen until funding proposals are in place with affected landowners'</i> or similar.	Reject	<p>The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard.</p> <p>The requested relief undermines the efficiency and effectiveness of the Plan Change and does not adequately address significant risk hazards.</p> <p>A property buyout opportunity is available through the Managed Voluntary retreat Programme. For those landowners to choose to accept it, the payment is available prior to the surrendering of existing use rights.</p>

Matatā Action Group	RNRP 8.2	Objective NH 04	Oppose	Withdraw Plan Change 17	Reject	The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard.
Matatā Action Group	RNRP 8.3	Policies NH P6, NH P7, NH P8, Rule NH R71	Oppose	Withdraw Plan Change 17; or Withhold the process until it has been established by the Human Rights Commission whether or not the authority has breached the rights of affected parties.	Reject	The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard.
Awatarariki Residents Incorporated Society	FS RNRP 2.1	General	Unspecified	The further submission is assumed to oppose the Bay of Plenty CDEM Group because there are no guarantees that the voluntary retreat strategy will be successful and because there is no consideration of what will happen to families forced to leave their homes without compensation.	Reject	The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard. The outcomes sought by the CDEM submission support the sustainability principles of the RMA and better enable Council to fulfil its statutory functions with regards the identification and management of natural hazards.
Mark and Greta Nicholson	FS RNRP 1.1	Objectives, Policies, Rules	Support	The further submission supports the opposition of the Matatā Residents Association in favour of alternative engineering solutions. It requests more than one bunding option.	Reject	The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard. Alternative engineering solutions have been considered but are shown not to be reasonably practicable.

Mark and Greta Nicholson	<i>FS RNRP 1.2</i>	Objectives, Policies, Rules	Support	The further submission supports the opposition of the Matatā Action Group on the basis that the Plan Change has potentially breached the New Zealand Bill of Rights. The Plan Change should not recommence until the managed retreat process has been completed.	Reject	The Plan Change and its associated policy / rule framework are a necessary and reasonably practical option for the sustainable management of a significant natural hazard.
--------------------------	----------------------------	-----------------------------	---------	--	--------	--

6 Conclusions and Recommendations

Proposed Plan Change 1 to the Whakatāne District Plan

- 6.1 This report has been prepared pursuant to s42A of the RMA to address the planning-related issues associated with Proposed Plan Change 1 to the Whakatāne District Plan. Broadly, the Plan Change seeks to identify and manage natural hazard risks associated with the Awatarariki Stream fanhead at Matatā. Specifically, it seeks to:
- Identify an Awatarariki Debris Flow Policy Area on the planning maps, including ‘high risk’, ‘medium risk’ and ‘low risk’ areas;
 - Rezone the high risk area from ‘Residential’ to ‘Coastal Protection Zone’;
 - Prohibit all activities in the high risk area, other than those relating to transitory recreational use and open space; and
 - Making any new activities and intensification of existing activities in the medium risk area subject to a discretionary resource consent application.
- 6.2 The risk assessments and accompanying peer reviews confirm that the Awatarariki fanhead is subject to a high loss of life risk from a debris flow event. WDC has an obligation under the BOPRPS to take steps to reduce that risk to at least medium level, or lower if reasonably practicable. Plan Change 1 is therefore focussed on controlling inappropriate new or intensified land use activity through overlays, rezoning, policies and rules.
- 6.3 Plan Change 1 is considered appropriate to achieve the purpose of the RMA, taking into account the limitations of the District Plan with respect to existing use rights and the fact that high levels of risk are unable to be reduced by practicable engineering solutions.
- 6.4 The Plan Change is in accordance with the requirements of the RMA, including the evaluation of alternatives, and costs and benefits. It contains a level of detail which is appropriate to the significance of the proposal and therefore the actual and potential effects of the Plan Change are well understood by affected parties.
- 6.5 Based on the information and evidence I have available, I consider that the purpose of the RMA would be served by the rejecting and / or accepting of submissions in accordance with the recommendations in sections 5.3 to 5.7 of this report. My recommended amendments result from acceptance of some submissions, together with minor amendments to improve the clarity of the provisions, including by cross-referencing to the planning maps. They are shown as highlighted yellow in Appendix 2. I have recommended acceptance of the NZDF further submissions requesting inclusion of Temporary Military Training Activities as permitted activities in the High Risk and Medium Risk areas. However, this is subject to clarification from the submitter as to the extent of any temporary residential occupation.
- 6.6 On the basis of my analysis and reasons in Section 5 above, and to address the requirements of Clause 10 of the First Schedule of the RMA, I recommend that:

- (a) Plan Change 1 is approved, with amendments to the notified version, as per the recommendations in section 5 and Attachment 2 of this report.
- (b) The submissions that support Plan Change 1 are accepted for the reasons outlined in section 5 of this report.
- (c) The submissions that opposed Plan Change 1 in part or in whole are rejected for the reasons outlined in section 5 of this report.

Proposed Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan

- 6.7 BOPRC has an obligation under the BOPRPS to take steps to reduce high natural hazard risks to at least medium level , or lower if reasonably practical. Plan Change 17 signals that intent by introducing new objectives and policies with specific reference to risk on the Awatarariki fanhead.
- 6.8 At the heart of Plan Change 17 is a new rule (NH R71) which renders residential activity in the high risk area of the fanhead a Prohibited Activity with effect from 31 March 2021. In effect, the Plan Change will extinguish existing use rights for residential use within high risk areas. This is a mechanism available through Regional Plans under the RMA but not through District Plans.
- 6.9 Plan Change 17 is considered appropriate to achieve the purpose of the RMA, taking into account the limitations of the RMA in relation to district plans and the fact that high levels of risk are unable to be reduced by practicable engineering solutions.
- 6.10 The notified Plan Change is in accordance with the requirements of the RMA, including the evaluation of alternatives, costs and benefits. It contains a level of detail which is appropriate to the significance of the proposal and therefore the actual and potential effects of the Plan Change are well understood by affected parties.
- 6.11 Based on the information and evidence I have available, I consider that the purpose of the RMA would be served by the rejecting and / or accepting of submissions in accordance with the recommendations in sections 5 of this report.
- 6.12 On the basis of my analysis and reasons within section 5 above, and to address the requirements of Clause 10 of the First Schedule of the RMA, I recommend that:
- (a) Plan Change 17 is approved, with amendments to the notified version, as per the recommendations in section 5 of this report.
 - (b) The submissions that support Plan Change 17 are accepted for the reasons outlined in section 5 of this report.
 - (c) The submissions that oppose Plan Change 17 in part or in whole are rejected for the reasons outlined in section 5 of this report.

Late Submission

6.13 I recommend that the late submission by Glenn Baker be received and considered.

**John Olliver
Bloxam Burnett and Olliver
Planning Consultant
20 December 2019**