

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU 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

**MEMORANDUM OF COUNSEL FOR BAY OF PLENTY REGIONAL COUNCIL RELATING TO
DETERMINATION SOUGHT**

26 NOVEMBER 2020

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MAY IT PLEASE THE COURT

1. Bay of Plenty Regional Council (**Regional Council**) is the First Respondent to this appeal which relates to proposed Plan Change 17 to the Bay of Plenty Natural Resources Plan (**PC17**), and proposed Plan Change 1 to the Whakatane District Plan.
2. Together, those Plan Changes would rezone residential land on the Awatarariki Fanhead to ensure that residential activity can no longer occur on the land in order to reduce the natural hazard risk of a future debris flow. A regional plan change (PC17) was required in order to remove the existing use rights associated with existing residential activity on the Fanhead.
3. PC17 is a private plan change promoted by Whakatane District Council (**District Council**), which was accepted rather than adopted by the Regional Council, primarily because the District Council has led the process of establishing and managing the Awatarariki Debris Flow Risk Programme, which includes the two Plan Changes as part of a number of integrated workstreams.
4. The Regional Council has participated in discussions leading to settlement of the appeal and is a party to the settlement agreement reached. It supports the approach of seeking a determination from the Court based on affidavit evidence and after hearing from the parties, given the public interest in the matter and the importance of the issues raised, which relate to risk to people and property.
5. The planner engaged by the Regional Council in relation to the appeal, Gerard Willis, has prepared a joint affidavit together with the planner engaged by the District Council, Craig Batchelar. That affidavit (dated 23 November 2020):
 - (a) Addresses the requirements of the Bay of Plenty Regional Policy Statement (**RPS**) to reduce risk in areas of high natural hazard risk; the rationale for the effective date of 31 March 2021 for the prohibited activity rule NH R71 in PC17 (**Effective Date**); and the proposal to extend the Effective Date by one year to 31 March 2022 for 10 Clem Elliot Drive, Matatā (**the Whalley Property**);
 - (b) Concludes that extending the Effective Date for the Whalley Property to recognise the potential delay in the provisions taking effect, while not ideal, would not be contrary to the RPS principle that reducing risk to an acceptable level should occur as soon as practicable, and that a better overall risk reduction outcome could be achieved by agreeing to extend the Effective

Date for the Whalley Property by one year because it would enable early resolution of the appeal in relation to other properties, which would shorten the timeframe for reducing risk; and

- (c) Proposes some suggested amendments to PC17 to give effect to the extension of the Effective Date by one year for the Whalley Property, being proposed new rule NH R72 (Exhibit "C" to the affidavit).
6. The Regional Council, as regional planning authority ultimately responsible for PC17, and First Respondent to the appeal, supports the proposed amended wording in Exhibit C.
 7. The Regional Council endorses and adopts the legal submissions made on behalf of the District Council dated 23 November and does not intend to file separate legal submissions.
 8. Counsel will be attending the hearing scheduled for Tuesday 15 December should the Court have any questions relating to the Regional Council's position.



M H Hill
Counsel for Bay of Plenty Regional Council

DATED 26 November 2020