

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2020-AKL-000064**

**I MUA I TE KOOTI TAIAO O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**IN THE MATTER**

of an appeal under the first  
schedule of the Resource  
Management Act 1991 (**RMA**)

**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

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**STATEMENT OF EVIDENCE OF CRAIG BATCHELAR  
ON BEHALF OF WHAKATĀNE DISTRICT COUNCIL**

**PLANNING**

**10 August 2020**

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## **1. EXECUTIVE SUMMARY**

- 1.1 I have been advising the Council on natural hazard planning issues at Matatā since shortly after the debris flow events in May 2005. My initial involvement was with applications for resource consents for “regeneration” projects” in several catchments affected by debris flows. I then assisted the Council with the development of the planning-based approach relating to the debris flow natural hazard risk mitigation for the Awatarariki stream.
- 1.2 I led the preparation of the Proposed Plan Changes, including authoring of the associated Section 32 Report dated 8 June 2018, and a subsequent update.
- 1.3 Under the RPS, the District Council is required to take steps to reduce natural hazard risk from high to medium (or lower where practicable). The Plan Changes are for the purpose of reducing a current high risk to life and property from a future debris flow event.
- 1.4 The Plan Changes are described in detail in the updated Section 32 Report.
- 1.5 Plan Change 1 to the Whakatāne District Plan establishes High, Medium, and Low Risk Debris Flow Policy areas. In the High Risk Debris Flow Policy Area, permanent occupation by susceptible activities would be a Prohibited Activity. In the Medium Risk Debris Flow Policy Area, land would retain a Residential Zone and would be subject to controls through the Resource Consent process restricting future development unless a reduced level of risk can be proven. In the Low Risk Debris Flow Policy Area, the level of risk would be identified in the District Plan and Land Information Memoranda and taken into account in any resource consent application proposing to intensify activities.
- 1.6 Regional Plan Change 17 to the Regional Natural Resources Plan will prohibit residential activities on specified sites subject to high risk debris flows from 31 March 2021. The reduction in risk on these sites through regulation requires the extinguishing of those rights of use and the residential use to cease, and this can only be achieved through a Regional Plan rule.

- 1.7 The District Council and its expert advisors have investigated engineering and other non-regulatory options for avoiding and mitigating the high risk to life. The evidence establishes that the only viable risk reduction measure to avoid and mitigate the high risk in the High Risk Area from future debris flows in the Awatarariki catchment is to retreat from the hazard. This is an appropriately precautionary approach given the risk to life.
- 1.8 Voluntary Managed Retreat (**VMR**) has been approved by central, regional and local government and is now a reasonably practicable option. The VMR programme has been substantially implemented. The District Council, in conjunction with the BOPRC and central government, is pursuing a VMR process to ease the process for affected property owners who will be affected by the Plan Changes. At the time of writing this statement, 75% of affected property owners had opted into this process and reached a settlement.
- 1.9 Regardless of the parallel VMR process that is occurring, the Plan Changes are required to avoid and mitigate natural hazard risk in the Awatarariki Debris Flow Policy Area due to the uncertainty of all residents opting into the VMR process and because risk will remain in the 'medium' risk area.

## **2. INTRODUCTION**

- 2.1 My full name is Craig Barry Batchelar.
- 2.2 My evidence is given on behalf of the Whakatāne District Council (the **District Council**) in relation to:
- (a) Proposed Plan Change 1 (Awatarariki Fanhead, Matatā) to the Operative Whakatāne District Plan; and
  - (b) Proposed Plan Change 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan (a private plan change request from the District Council) (together referred to as the **Proposed Plan Changes**).
- 2.3 My evidence relates to the planning issues raised in the appeals on the Proposed Plan Changes.

### **3. QUALIFICATIONS AND EXPERTISE**

- 3.1 I hold the position of Planner at Boffa Miskell Limited. I am a Partner in the firm. I am currently the national Technical Leader for the company's planning discipline and Te Hihiri (Māori cultural advisory) discipline.
- 3.2 My planning qualification is Bachelor of Regional Planning (1st Class Hons) obtained from Massey University in 1984. I have been a full member of the New Zealand Planning Institute since 1988.
- 3.3 I have worked in the planning profession for 35 years in central and local government and the private sector.
- 3.4 From 1989 to 2000, I was employed by Tauranga City Council as a planner in a variety of roles including management of the Council's Environmental Services Group from 1995 to 2000. This included development of the Council's policy and practice for natural hazard risk management.
- 3.5 I managed the Tauranga City Council's "Dunewatch" initiative. This was a unified planning strategy which involved coastal hazard susceptibility mapping and risk assessments, a Plan Change (coastal hazard zones), building and site development guidelines, and the implementation of a coast care programme to restore dunes and increase natural resilience to erosion events. The Plan Change element was successfully defended in the Environment Court where I provided a statement of planning evidence.
- 3.6 I was also engaged in Civil Defence while employed by Tauranga City Council. This included a term as Local Controller for the joint Western Bay of Plenty Tauranga Civil Defence and Emergency Management organisation.
- 3.7 From 2000 to 2004 I was self-employed as a planning consultant. My projects included an engagement as Technical Director for the western Bay of Plenty subregional "SmartGrowth" initiative during 2000-2003. Part of this assignment included natural hazard susceptibility mapping as an input to the development of a subregional settlement pattern (Spatial Plan).

- 3.8 Since joining Boffa Miskell Ltd in 2004, I have assisted both local government and private sector clients with a wide range of regional and district policy and plan development, structure planning, private plan changes, and resource consents.
- 3.9 I have provided planning consultancy services to the District Council in several capacities over the last 15 years including the preparation of applications for resource consent for several Council projects; processing applications for resource consent; giving planning evidence to consent hearings and the Environment Court; and providing a range of policy advice including being engaged as planning expert to report on District Plan structure plan and rules provisions for a major marina/residential development site at Piripai.
- 3.10 Boffa Miskell Ltd has also provided other planning, landscape architecture, urban design, ecology and Māor.cultural consultancy services to the District Council during this time.

#### **4. MY ROLE**

- 4.1 I have been advising the District Council on natural hazard planning issues at Matatā since shortly after the debris flow events in May 2005.
- 4.2 Boffa Miskell was engaged to prepare applications for regional and district resource consents for several post event “regeneration” projects including the Ohinekoao Stream works, Waimea Stream works, Matatā Lagoon restoration, Awatarariki Stream flood mitigation works, and Waitepuru Stream debris flow diversion works.
- 4.3 The District Council decisions on the Matatā lagoon restoration, Awatarariki Stream flood mitigation works, and Waitepuru Stream debris flow diversion works were appealed to the Environment Court. I provided statements of planning evidence. The Council resource consent decisions were substantially upheld.
- 4.4 I worked closely with the District Council/consultant project team on developing proposals for engineering-based debris flow risk mitigation for properties on the Awatarariki Fanhead to the point where this

'structural' approach was found to be unviable, and the District Council's risk management strategy changed to a planning-based approach.

4.5 I have assisted the District Council with the development of the planning-based approach relating to the debris flow natural hazard risk mitigation for the Awatarariki stream. This has included:

- (a) Engaging with engineering experts during the preparation of the landslide hazard risk assessment for the Whakatāne/Ōhope/Matatā landslide and Awatarariki debris flow hazards and providing planning-related feedback on draft reports (2013);
- (b) Managing a joint Bay of Plenty Regional Council (**BOPRC**)/District Council landslide risk management project team (2013-2014);
- (c) Preparing an issues and options paper to promote community awareness and understanding of landslide and debris flow hazards affecting land at Whakatane Township, Ohope Beach and Matatā, and involvement with associated community engagement (2013);
- (d) Preparing an issues and options paper on strategies for the Awatarariki Fanhead, and involvement with associated community engagement (2013/2014);
- (e) Preparing and presenting a Section 42A report to Council for the hearing of submissions on the Proposed Whakatāne District Plan Natural Hazards Section (2014) which included reference to the management of debris flows and landslides at Matatā;
- (f) Assisting Whakatāne District Council, Opotiki District Council and Kawerau District Council with joint submissions on the Regional Policy Statement (**RPS**) Natural Hazard Plan Change. I participated in the Plan Change process including attending a community risk workshop. I took part in pre-hearing discussions. I presented planning evidence at the hearing of submissions. and

contributed to the “testing” of the RPS risk assessment methodology led by AECOM for BOPRC (2014-2016).

- (g) Participating as a planning expert in a Consensus Development Group, identifying and evaluating a range of risk management options for the Awatarariki Fanhead (Awatarariki Debris Flow Risk Management Programme) (2015);
- (h) Assisting the District Council with the ‘strategic case’ elements of the business case for the VMR programme (2016);
- (i) Leading the preparation of the Proposed Plan Changes, including authoring of the associated Section 32 Report dated 8 June 2018 (**Section 32 Report**);
- (j) Preparing an assessment report for District Council of “like for like” options for relocation of residential property within the Matatā township as part of the VMR proposal for high risk sites on the Awatarariki fanhead (2018);
- (k) Participation in prehearing meetings and communications with various submitters and joint BOPRC and WDC reporting officer;
- (l) Preparing and presenting expert planning evidence to the hearing commissioners, and attendance during the hearing from 2 to 4 March 2020; and
- (m) Updating the Section 32 Report to incorporate new information and amended plan change provisions following the hearing commissioners’ decision.

4.6 The Proposed Plan Changes and the Section 32 Report were developed with input from a multi-disciplinary, multi-agency project team comprising several engineering and planning consultants, legal advisers, officers from the District Council and BOPRC, and officers from the Ministry for the Environment.

4.7 I have visited the Awatarariki Stream catchment and fanhead area on several occasions. I took a helicopter flight over the area with other



expert witnesses and walked up the lower reaches of the catchment above the railway in August 2019.

- 4.8 I attended the public hearing of submissions to the Proposed Plan Changes held in March 2020 and presented expert evidence to the Hearing Commissioners.

## **5. CODE OF CONDUCT**

- 5.1 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.

## **6. SCOPE OF EVIDENCE**

- 6.1 In this statement of evidence, I:

- (a) Outline background to the Proposed Plan Changes, with reference to the Section 32 Report as updated following the Hearings Commissioners decisions, and highlighting key issues;
- (b) Describe the scope of the proposed District Plan provisions (Plan Change 1) and Regional Plan provisions (Plan Change 17), and highlight key issues;
- (c) Discuss non-regulatory options available to meet the objectives of the Proposed Plan Changes;
- (d) Discuss the regulatory options under the District and Regional Plans and the reasons that I support the adopted approach; and
- (e) Assess matters raised in the notice of appeal by Awatarariki Residents Incorporated (**ARI**).

- 6.2 With respect to (a) above, the Council requested that I update the Section 32 Report following the Hearings Commissioners decisions to incorporate:

- (a) The current status of the VMR Programme;

- (b) Relevant new information provided through submissions, further technical reports, and evidence given to the Commissioner Hearing, and;
- (c) The Commissioners' decision including the amended Proposed Plan Change provisions.

In addition to these updates I have corrected grammar and spelling errors.

6.3 I have not repeated material in my evidence that is contained in technical reports that I authored, and I cross-refer to that material, primarily in the updated Section 32 Report.

## 7. BACKGROUND

7.1 The background to the Proposed Plan Changes is set out in Section 1.2 of the Section 32 Report.

7.2 The term "Natural hazard" is defined in section 2 of the Resource Management Act 1991 (**RMA**), which states:

"natural hazard means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment."

7.3 The Bay of Plenty Regional Policy Statement identifies a "*debris flow/flood*" as a natural hazard resulting from "*Extreme (prolonged or intense) rainfall*"<sup>1</sup>.

7.4 Several of the expert statements provide descriptions of debris flow as a natural hazard including, for example, Professor Tim Davies<sup>2</sup>:

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<sup>1</sup> 2.8 Natural hazards; Policy NH 3A: Identifying areas susceptible to natural hazards; Method 73: Provide information and guidance on natural hazards

<sup>2</sup> Para 7.7 Prof Tim Davies EIC

“A debris flow occurs when enough fine sediment enters a steep stream (e.g. from a hillslope failure) to turn the stream flow into a thick, muddy slurry; in this state the flow is able to erode and transport rocks and boulders of virtually any size. The whole flow transforms into the consistency and density of wet concrete and moves down-valley as a wave or surge carrying boulders and trees.”

## **8. PLAN CHANGE 1**

8.1 The scope of Plan Change 1 to the Whakatāne District Plan is described in Section 1.3.1 of the Section 32 report.

8.2 In the High Risk Debris Flow Policy Area, permanent occupation by susceptible activities would be a Prohibited Activity. The existing residentially zoned land would be re-zoned Coastal Protection Zone reflective of its limited development potential, and future use and relationship to the adjacent coastal reserve.

8.3 A new residential building on a vacant section in the High Risk Debris Flow Policy Area will be prohibited under Plan Change 1. Minor buildings and structures associated with a passive future recreational use could be erected.

8.4 In the Medium Risk Debris Flow Policy Area, land would retain a Residential Zone and would be subject to controls through the Resource Consent process restricting future development unless a reduced level of risk can be proven.

8.5 In the Low Risk Debris Flow Policy Area, land would retain a residential zoning. The level of risk would be identified in the District Plan and Land Information Memoranda and taken into account in any resource consent application proposing to intensify activities.

## **9. PLAN CHANGE 17**

9.1 The scope of Plan Change 17 to the Regional Natural Resources Plan is described in Section 1.3.2 of the Section 32 report.

- 9.2 Regional Plan Change 17 will prohibit residential activities on specified sites subject to high risk debris flows from 31 March 2021.
- 9.3 Plan Change 17 provisions will apply only to those properties with dwellings on them, which are those listed in Table NH3. These are the sites where existing use rights will apply under Section 10 of the RMA once District Plan Change 1 becomes operative.
- 9.4 The reduction in risk on these sites through regulation requires the extinguishing of those rights and the residential use to cease, and this can only be achieved through a Regional Plan rule.
- 9.5 The definition of ‘residential activity’ under Plan Change 17 is deliberately broader than the District Plan to ensure that the prohibited activity captures all likely forms and scales of permanent or semi-permanent residential use or occupation whether formal (e.g. needing Council consent) or informal.
- 9.6 The following properties were included in Plan Change 17 to avoid any doubt on the requirement for the residential activity to cease:
- a) Two properties (100 and 104 Arawa St) have unconsented structures with people living in them; and
  - b) One property (18/18A/16 Clem Elliott) is made up of 3 cross-leases of which 2/3 is vacant, and 1/3 contains buses with people living intermittently in them.
- 9.7 The extent of the High Risk Debris Flow Policy Area referred to in Plan Change 17 is the same as the High Risk Debris Flow Policy Area in Plan Change 1. However, for the purposes of Plan Change 17 there was no regulatory reason to map the full extent of the High Risk Debris Flow Area.
- 9.8 Plan Change 17 as notified referred to a regional plan “user guide” as a source of background information. From preliminary discussions with the BOPRC staff, I anticipated a user guide being included in Regional Natural Resources Plan (**RNRP**) that was being consolidated into single document at the time Plan Change 17 was drafted. However, a user guide did not eventuate when the consolidated NRRP was published in

September 2017. Unfortunately, I was unaware of this when drafting of Plan Change 17. The user guide in proposed Plan Change 17 was appropriately deleted in the Commissioners decision. The updated Section 32 Report and associated technical reports will now provide the appropriate background information and explanation for plan users.

## **10. NON-REGULATORY OPTIONS**

- 10.1 Several non-regulatory options (risk acceptance, engineering or structural interventions, catchment management, warning and evacuation systems) are identified in Section 8 of the Section 32 report as having potential to achieve the objectives of the proposal but excluded because they are not “reasonably practicable” as required under Section 32(1)(b)(i) of the RMA.
- 10.2 VMR was initially excluded as a reasonably practicable option for the reason that it remained subject to central and local funding approval. However, this situation has changed with funding approval now in place. VMR is now a reasonably practicable option and the VMR programme has been substantially implemented as described in Section 8.5 of the updated Section 32 Report.

## **11. REGULATORY OPTIONS – DISTRICT PLAN**

- 11.1 Reasonably practicable options for achieving the objectives of the proposal through changes to the Whakatāne District Plan (**WDP**) are described and evaluated in Section 9 of the Section 32 report.
- 11.2 The option on which Plan Change 1 is based (Option 4 - Coastal Protection Zone with “Awatarariki Debris Flow Policy Area”) was selected as being the most appropriate option because it provides a clear statement on the nature and implications of the debris flow natural hazard risk and differentiates between the three levels of risk: high risk, medium risk and low risk.
- 11.3 This option sets a clear direction on land use management and is consistent with the Operative District Plan structure.
- 11.4 At the time the plan change was publicly notified, the option was also assessed as being consistent with the format of pending National

Planning Standards as indicated through Ministry for the Environment consultation. Those standards have now been formally promulgated. I have assessed the selected option as being consistent with the National Planning Standards, albeit that the District Plan will require substantial redrafting to be fully in line with the standards. The debris flow “Risk Areas” are likely to equate to an “Overlay”<sup>3</sup> under the National Planning Standards.

- 11.5 Under the selected District Plan option, as for all District Plan options, existing use rights will continue to apply under section 10 of the RMA. The District Plan would therefore remain consistent with the objective of reducing high loss-of-life risk as required by the Bay of Plenty Regional Policy Statement but constrained in being able to affect an actual reduction in existing risk on certain sites.

## **12. REGULATORY OPTIONS – REGIONAL PLAN**

- 12.1 Reasonably practicable options for achieving the objectives of the proposal relating to reduction of high risk to existing uses through changes to the RMRP are described and evaluated in Section 10 of the Section 32 Report.
- 12.2 The option on which Plan Change 17 is based (Option 2 - Residential Use of High Risk Sites on Awatarariki Fanhead a Prohibited Activity) was selected as being the most appropriate option because it most effectively and efficiently reduces the risk to life in the identified High Risk Area, making it consistent with the policy of reducing high natural hazard risk to medium risk or lower as required by the Bay of Plenty Regional Policy Statement<sup>4</sup>.
- 12.3 The Section 32 evaluation recognised that there will be an inevitable impact of loss of homes and property rights for affected owners/occupiers and indirect social and economic impacts from displacement of part of the community. The Section 32 Report records

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<sup>3</sup> An “Overlay” spatially identifies distinctive values, risks or other factors which require management in a different manner from underlying zone provisions.

<sup>4</sup> RPS Policy NH 3B: Natural hazard risk outcomes

that these effects are outweighed by the economic and social benefits from reducing the risk to life.

- 12.4 When combined with the District Plan change, Plan Change 17 provides an integrated response from both the District Council and the BOPRC, within the current planning framework, that achieves a reduction in the risk that the landowners and other residents are currently exposed to in the High Risk Debris Flow Area of the Awatarariki Fanhead.

### **13. MATTERS RAISED IN APPEALS**

#### **Validity and jurisdiction**

- 13.1 The statutory basis for the Proposed Plan Changes is set out in Sections 2 and 3 of the updated Section 32 Report.

#### **Part 2 RMA**

- 13.2 The relevant parts of Part 2 RMA are considered in Sections 2.1 through 2.3 of the updated Section 32 Report.
- 13.3 The Proposed Plan Changes give effect to the operative Regional Policy Statement which takes a risk-based approach to natural hazard management consistent with RMA Section 6(h).
- 13.4 Section 6(h) requires that persons exercising functions and powers under the RMA shall recognise and provide for the management of significant risks from natural hazards as a matter of national importance. The Awatarariki Fanhead is subject to significant risks from natural hazards (debris flows).

#### **Statutory framework**

- 13.5 The statutory functions of the Regional and District Councils are set out in Sections 2.5 and 2.6 of the updated Section 32 Report. The Proposed Plan Changes seek to achieve closely integrated management between regional and district functions under the RMA.
- 13.6 It is accepted that the management response to natural hazards should be proportionate to the level of risk. This is inherent in the risk-based approach required under Section 6 (h).

- 13.7 The evidence on the level of risk to life from debris flows on the Awatarariki Fanhead is that it is high and, therefore, intolerable. The evidence on the appropriate planning response to reduce this risk is that the only acceptable solution is to move people out of harm's way through retreat. Lesser forms of hazard management have been thoroughly evaluated and found to be unacceptable.
- 13.8 Higher order instruments have been carefully considered in the development of the Proposed Plan Changes. The Proposed Plan Changes were developed in collaboration with the Regional Council and the Ministry for the Environment to ensure that the higher order policy instruments were properly understood and taken into account.
- 13.9 The costs borne by the landowners have been taken into account in the evaluation of options. There will be an inevitable impact of loss of homes and property rights for affected owners/occupiers and indirect social and economic impacts from displacement of part of the community, but this is outweighed by the social and economic benefits from reducing the risk to life.

### **Section 85**

- 13.10 The provisions of section 85 were taken into account in the development of the Proposed Plan Changes as set out in Section 2.9 of the updated Section 32 Report.
- 13.11 Given the loss of life risk from future debris flow events, the proposed controls are not considered to render the land incapable of reasonable use as they appropriately serve the statutory purpose of promoting sustainable management of natural and physical resources and do not place an unfair and unreasonable burden on those with interests in these properties.
- 13.12 Notwithstanding this, it is recognised that PC17 introduces the additional element of requiring existing dwellings to be vacated. The VMR programme provides a formal commitment by the District Council to acquire land which enables the burden on landowners to be alleviated to the fullest extent that is available within the current scope of the District Council's statutory powers.



### **Adverse Effects**

13.13 The impact of loss of homes and property rights for affected owners/occupiers and indirect social and economic impacts from displacement of part of the community are inevitable, but this is outweighed by the economic and social benefits from reducing the risk to life. Social and economic impacts are mitigated by the VMR to the full extent available to the District Council. This conclusion is consistent with the evidence of Amelia Linzey<sup>5</sup>.

### **Risk Assessment**

13.14 The hazard risk assessment follows best practice and has been undertaken and reviewed by appropriately qualified and experienced experts. There is currently no additional information provided to revise the assessed risk levels. The statement of Gerard Willis addresses the appropriateness of the “AGS” risk assessment methodology that supports the plan changes<sup>6</sup>. I agree with Mr Willis’ opinion.

13.15 Some submissions contended that the tolerability of natural hazard risk is a matter that requires consideration of the perspectives of homeowners, some of whom are willing to remain in the area in spite of the assessed risks. In this context, risk acceptance should therefore be considered as a practicable option.

13.16 One of the purposes of the RPS Natural Hazard Plan Change was to establish a regionally consistent framework on risk acceptability to avoid ad hoc or inconsistent outcomes in the development of lower level hazard management policy and the assessment of risk for development proposals. The risk-management approach to natural hazards management includes a framework of risk levels that provides a basis for consistent land use management decisions<sup>7</sup>. Under this framework, high levels of risk must be reduced. The RPS framework of risk levels was developed following technical advice and community input. There

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<sup>5</sup> Amelia Linzey Evidence in Chief Para 8.1-8.4

<sup>6</sup> Paras 27-31 Gerard Willis EIC

<sup>7</sup> Explanation to Policy NH 2B: Classifying risk

is no recognition of, or provision for, individuals or communities that may be more risk tolerant in the RPS.

### **Alternatives assessment**

- 13.17 Alternatives or options are addressed in Sections 8.0, 9.0 and 10 of the updated Section 32 Report.
- 13.18 The assessment of alternatives is supported by appropriate evidence and evaluation.

### **Planning instruments - NZCPS**

- 13.19 An assessment of the provisions of the NZCPS is set out in Section 2.10 of the updated Section 32 Report.
- 13.20 The debris flow in this case causes “inundation of the coastal environment” and the at-risk residential development is in the coastal environment, although the physical drivers and processes that cause a debris flow are not within the coastal environment. I do not consider that the references to coastal hazards in Policy 24 of the NZCPS contemplate this type of hazard, so they do not have direct application.
- 13.21 However, the subject area is also susceptible to coastal hazards (coastal erosion and shoreline instability, coastal flooding by storms and tsunami, and high groundwater). In that regard, the Proposed Plan Changes are broadly consistent with NZCPS policies that encourage change in land use where that would reduce the risk of adverse effects from coastal hazards.
- 13.22 Although not the reason for retreat from the affected area, retreat and the planned use of the area for passive recreation also have a secondary benefit of promoting restoration of natural character, providing public open space, and providing enhanced walking access to and along the coast.
- 13.23 On this basis, the Proposed Plan Changes do not rely on the NZCPS but are consistent with it.

### **Planning instruments – Regional Policy Statement**

- 13.24 An assessment of the Natural Hazards provisions of the RPS is set out in Section 2.11 of the updated Section 32 Report, with a detailed analysis tabulated in Appendix 6. The evidence of Gerard Willis also provides a comprehensive analysis of the RPS<sup>8</sup>. I agree with Mr Willis' assessment and conclusions.
- 13.25 The precautionary approach of the RPS outlined in Section 2.11.2 of the updated Section 32 Report underpins the risk assessments that support the Proposed Plan Changes. The Proposed Plan Changes address a situation where there is uncertainty, including scientific uncertainty, and a threat of irreversible adverse effects.
- 13.26 The need for a precautionary approach is outlined in the statement of Professor Tim Davies<sup>9</sup>.
- 13.27 There is certainty that another debris flow will occur at this location. My understanding is that debris flows are the underlying geological process that created the area subject to the Plan Changes. There is certainty that a debris flow is fast moving and highly destructive as evidenced by the event in 2005, with potential deadly consequences. However, there is uncertainty on when an event may occur, and when it does, how big it may be and what specific areas may be impacted.
- 13.28 In these circumstances the RPS expects a precautionary approach to be taken.
- 13.29 Based on this assessment, my opinion is that the proposed debris flow hazard management provisions for the Awatarariki Fanhead give appropriate effect to the RPS natural hazard policies, having regard to the level of risk.
- 13.30 Appendix M is not specifically referred to in any of the natural hazard policies but is noted in the Explanations to Policy NH 4B Managing natural hazard risk on land subject to urban development and NH12A, Managing natural hazard risk through regional, city and district plans.

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<sup>8</sup> Paras 32-66 Gerard Willis EIC

<sup>9</sup> Para 1.7 Prof Tim Davies EIC

13.31 RPS Appendix M identifies measures for management of natural hazards. The list is not exclusive and does not prescribe what measures apply to specific hazards and localities. I agree with the assessment of the Appendix M measures in Ms Saunders' evidence.<sup>10</sup>

13.32 Managed retreat is not listed in Appendix M. Policy NH 14C: Allocation of responsibility for land use control for natural hazards refers to powers to override existing use rights which is an inherent part of regulating for retreat where this is necessary to reduce high risk.

### **Alternatives**

13.33 The four generalised alternatives listed in the appeal have been appropriately evaluated in the updated Section 32 Report having regard to the level of risk.

13.34 In my opinion, and based on the evidence, none of these alternatives can achieve the outcome sought by the RPS to reduce the high risk to medium (and lower if reasonably practicable).

**Craig Batchelar**

**10 August 2020**

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<sup>10</sup> Paras 8.2 – 8.12 Wendy Saunders EIC

