

**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

**STATEMENT OF EVIDENCE OF GREG BALL
ON BEHALF OF WHAKATĀNE DISTRICT COUNCIL**

PROPERTY ACQUISITION

10 August 2020

**BROOKFIELDS
LAWYERS**

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1. INTRODUCTION

- 1.1. My full name is Gregory James Ball.
- 1.2. My evidence is given on behalf of the Whakatāne District Council (the **District Council**) in relation to the appeal to:
 - (a) Proposed Plan Change 1 (Awatarariki Fanhead, Matatā) to the Operative Whakatāne District Plan (**PC 1**); 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) (**PC 17**)

(together referred to as the **Plan Changes**).
- 1.3. My evidence relates to the property acquisition strategy pertaining to those 34 privately owned properties within the High Debris Flow Policy Risk Area for which the Awatarariki Managed Retreat Programme is being undertaken in parallel with the Plan Changes. My evidence, which overlaps with the evidence of John Reid, specifically covers:
 - (a) Development of a property acquisition strategy for the District Council that is being applied to 34 privately-owned properties in the High Debris Flow Risk area on the Awatarariki debris fan;
 - (b) The methodology to establish the 'Base Value' component of the Managed Retreat formula being utilised by the Council when calculating managed retreat offers for each property; and
 - (c) Implementation of the Acquisition Strategy dispute resolution process.
- 1.4. I attended the public hearing of submissions to the Proposed Plan Changes held in March 2020 and presented expert evidence to the Hearing Commissioners.

2. QUALIFICATIONS AND EXPERIENCE

- 2.1. I hold the position of Executive Director of The Property Group Limited (**TPG**), a company I established in 1999.
- 2.2. I have the following qualifications and experience relevant to this appeal:

- (a) 47 years' professional experience in New Zealand property advisory matters mainly relating to large scale public infrastructural projects, specialising in land acquisition, disposal and leasing;
 - (b) Property Institute of New Zealand (**PINZ**) Registered Property Advisor and Property Manager since 1998;
 - (c) Fellow of PINZ;
 - (d) Land Information New Zealand Crown Accredited Supplier to undertake and recommend public works property acquisition, disposal, management and legalisation activities on behalf of the Crown and Territorial Local Authorities; and
 - (e) Chartered Member of the Institute of Directors in New Zealand.
- 2.3. In the 1970's, I was employed by the New Zealand Government (Ministry of Works and Development) as a Land Purchase Officer in the Waikato, Bay of Plenty and King Country regions to negotiate and recommend property acquisition, disposal and management transactions on behalf of the Crown.
- 2.4. During the 1980's, I operated my own hospitality and property investment businesses.
- 2.5. From 1990 to 1995, I was engaged by the Department of Lands in Hamilton as a Crown Property Advisor undertaking similar work activities to those I'd undertaken in the 1970's.
- 2.6. In 1996, I was appointed to the Wellington based General Manager/Property role for the newly established State Owned Enterprise, Terralink NZ Limited, which delivered survey, mapping, geospatial and property services solutions to clients nationwide.
- 2.7. In 1999, I undertook a management buy-out of Terralink's Property Services Division and established TPG as its founder and Managing Director. TPG has grown from an initial team of 13 to currently 180 nationwide.
- 2.8. Apart from serving as a Board Member of PINZ for 10 years (2009-19), I also served as PINZ's President over the 2015-17 period.

2.9. Past assignments include:

- (a) Project Director for the Alexandra Flood Remediation Project (Crown/Contact Energy Limited). This 2001 project involved the development of a property acquisition strategy and subsequent implementation of this to negotiate land purchases to clear and retire land comprising 100 mixed use and flood prone properties. I managed a multi-disciplinary team on this project to successfully settle a long outstanding claim against the Crown;
- (b) Principal Crown Property Advisor, Canterbury Earthquake Recovery Authority (**CERA**) Project. In 2012 I developed a property acquisition strategy and associated land purchase budget for Cabinet's subsequent approval (the 2012 "Blueprint Plan") relating to the designation of 17 Anchor Projects situated within Christchurch's CBD involving 48 hectares of government funded commercial property purchases. I subsequently acted as Project Director to manage TPG's exclusive contract to undertake these acquisitions, being the largest government infrastructural property acquisition assignment in New Zealand's history. Over 2015/16, I was also seconded to CERA as its Manager of Land Advisory Services; and
- (c) Principal Property Acquisition Advisor for Tauranga City Council's (**TCC**) Bella Vista Project. Engaged by TCC in 2018 to develop a methodology to resolve and expedite settlement with homeowners affected by the failed Bella Vista residential subdivision development. TCC's prompt acceptance of our recommended compensation methodology resulted in settlement of all landowner claims thus avoiding a costly and time-consuming resolution via litigation.

3. CODE OF CONDUCT

- 3.1. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Consolidated Practice Note 2014. I also agree to comply with the Code when presenting evidence to the Court. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state that I rely upon the evidence of another expert witness. I also confirm that I have not omitted

to consider material facts known to me that might alter or detract from the opinions.

4. MY ROLE

- 4.1. In May 2016 I was engaged by the District Council to provide the following services:
 - (a) Initial assistance with general policy framework development advice for this project; and
 - (b) The subsequent July 2016 presentation of our Awatarariki Fanhead, Matatā Acquisition Strategy Report for District Council consideration, acceptance and approval.
- 4.2. In essence, the Matatā Acquisition Strategy Report provides a recommended formula for financial settlement packages to be offered to affected property owners to consider in a Voluntary Managed Retreat Proposal. The financial package provides for a combination of baseline and discretionary factors.
- 4.3. The baseline components comprise:
 - (a) An assessed base property value;
 - (b) An allowance for the owner's legal fees for the sale of their existing property and purchase of a replacement property (if applicable); and
 - (c) A relocation allowance if the property is the owner's primary place of residence.
- 4.4. The discretionary components were recommended to be considered on a case by case basis and were to provide for deferred settlement options and payment of mortgage break fees.
- 4.5. Further consideration of the methodology and clarifications applied to the formula to determine the base value component of the package were made in TPG's Reports dated 31 October 2016 and 9 March 2018. The recommendations contained in these were subsequently approved by the District Council and incorporated into a 12 December 2018 update of our original July 2016 Report.

- 4.6. In developing a recommended financial settlement package, key considerations for me included; that it be fair and reasonable, even handed, pitched with a degree of moderate liberality and a recognition that fiduciary prudence is to be exercised as this involves the expenditure of public funds.
- 4.7. Following the submission of settlement packages (incorporating District Council commissioned valuers TelferYoung (Tauranga) Ltd base value assessments) affected property owners have the opportunity to seek their own independent valuation advice. Were the owner's assessment significantly higher than the District Council's, then an agreed step available to both parties was that the respective valuers meet in a without prejudice and non-binding mediation process chaired by myself in an endeavour to resolve the valuation differences and reach mutual agreement on a fair base value. From late 2019 to mid-2020, I have chaired numerous mediation meetings involving 15 properties and their three respective valuers. Although an agreed base value was only reached in relation to three properties, with respect to the other 12 properties, significant progress was made in closing the gap and reducing the size of the differences of the market values between the respective valuers.
- 4.8. As at the date of the preparation of this evidence, I am aware that settlement agreements have been reached with 25 property owners (refer to the evidence of Mr Farrell). In July 2016, I undertook a site visit to inspect all of the subject properties on a drive-by (curb-side) basis and in August 2019, also participated in an aerial helicopter inspection of these properties and the associated Awatarariki Fanhead upper catchment area. Having lived and owned property in the region and also frequently holidayed close by over many years, Matatā is a settlement I'm very familiar with.
- 4.9. In preparing this evidence I have reviewed the following TPG documents and reports:
- (a) Awatarariki Fanhead, Matatā, Acquisition Strategy, July 2016 and updated on 12 December 2018;

- (b) Methodology to Determine Base Value for Awatarariki Fanhead Voluntary Retreat Offers, 31 October 2016; and
- (c) Base Value for Recent Sales – Voluntary Retreat Package, 9 March 2018.

5. RESPONSE TO APPEAL GROUNDS

- 5.1. Awatarariki Residents Incorporated (the **Society**) claim the PC 17 and PC 1 decisions result in significant adverse effects by limiting or prohibiting residential activities in residential properties within the identified risk areas. Landowners represented by the Society claim that the managed retreat funding package does not avoid, remedy or mitigate adverse landowner impacts.
- 5.2. Whilst it cannot be denied that PC 1 is intended to prevent vacant sites within the High Debris Flow Risk Policy Area from being developed in the future and PC 17 will prevent landowners ongoing occupation of their properties after 31 March 2021, this is offset by ensuring that those landowners choosing to leave will receive a fair market value payment for their property which provides an opportunity to escape from the natural hazard risk and re-establish their lives in a less hazardous location. I am firmly of the opinion that the District Council's voluntary managed retreat funding package does provide a generous financial reimbursement package to landowners.
- 5.3. A significant consideration for me with the Property Acquisition Strategies I've developed relating to natural disasters and large-scale infrastructural projects, is that when determining the landowner financial settlement package components of these, it is that all landowners are treated equally, with respect and receive fair and reasonable financial settlements with a degree of liberality applied. I can confirm that these principles have been adopted in the Awatarariki Fanhead Voluntary Retreat Programme and applied.
- 5.4. In my extensive experience in managing the negotiation process for property acquisitions involving the expenditure of public funds, this has invariably required universal acceptance and agreement by property owner vendors that they will not object or oppose the purpose for which their property is being purchased. These have generally involved

property acquisitions for public works for the public good and a specific condition in the acquisition agreement is included that a vendor owner withdraws (or will withdraw) their objection to the works or the purpose for which the property is being acquired, once the transaction proceeds.

- 5.5. This is a commonly accepted principle that also applies in commercial transactions. For example, if a supermarket operator were to pay a fair market value to acquire a property for the development of a new supermarket operation, it is totally appropriate and expected that the Sale and Purchase Agreement would include a condition to the effect that the vendor owner would not object to a resource consent process the supermarket operator purchaser may be required to undertake.

6. CONCLUSIONS

- 6.1. The District Council's Awatarariki Fanhead Voluntary Retreat process and formula for determining the associated financial settlement package offers to affected property owners are very fair and very reasonable.
- 6.2. The District Council has adopted an open, transparent and robust process in their dealings with all affected property owners.

Greg Ball

10 August 2020