

**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 JEFFREY FARRELL ON BEHALF OF
WHAKATĀNE DISTRICT COUNCIL**

PLAN CHANGES INITIATOR

10 August 2020

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1. EXECUTIVE SUMMARY

- 1.1. The 18 May 2005 debris flows that impacted Matatā, damaged and destroyed buildings and infrastructure. It was extremely fortunate that there were no fatalities.
- 1.2. It is estimated that the Awatarariki catchment generated 300,000m³ of debris.
- 1.3. Expert advice to the Whakatāne District Council (**District Council**) since the event has been consistent in that a future debris flow from the Awatarariki catchment poses a life threatening risk to people occupying the Awatarariki Fanhead; can occur at any time; and will occur at some point in the future.
- 1.4. A 2006 Building Act determination overturned a District Council proposal to prevent people returning to the Fanhead and repairing/replacing their damaged homes. Six properties owners subsequently rebuilt/replaced dwellings between 2007 and 2011.
- 1.5. In response to community preference, the District Council pursued an engineering solution to manage the risk from future debris flows from the Awatarariki catchment and allow property owners to continue to occupy the area. Engineering options that were investigated included: debris dams, flexible debris detention structures, and Fanhead located solutions.
- 1.6. No viable engineering solution could be identified.
- 1.7. In 2013, the District Council switched its risk management focus from an engineering approach to a planning-based approach. The Planning approach focused on achieving disaster risk reduction through applying a risk management framework. Based on expert advice, the District Council had previously accepted the Australian Geomechanics Society, 2007. Landslide Risk Management. Australian Geomechanics, Vol. 42, No.1, March 2007, as an appropriate framework for a Whakatāne and Ōhope Landslide Risk Management programme and this project was extended to Matatā.
- 1.8. Applying a risk management framework involved identifying and assessing the risk and then investigating risk reduction interventions.

- 1.9. The risk assessment of the Awatarariki Fanhead identified an annualised life-risk profile of 1% to 0.0001% existed across the Fanhead. An area with a risk level of 0.01% or greater was considered to have a risk level of 'High'.
- 1.10. The 'High' risk area of the Awatarariki Fanhead contains 45 properties in total, of which, at the commencement of this Plan Change process, 34 were in private ownership and 11 are owned by public entities. Of the 34 privately-owned properties, 16 contained dwellings, and 18 were vacant sites or sites with unconsented structures.
- 1.11. In 2015 the Council initiated a process of engagement through a group that involved six affected property owners, BOPRC, and the District Council. The Group became known as the Consensus Development Group (**CDG**). It was facilitated by David Stimpson and supported by technical specialists, including expert witnesses Prof. Tim Davies and Craig Batchelar.
- 1.12. A 2016 Building Act determination relating to two building consent applications for new dwellings proposed for properties within the high risk area, accepted the level of risk in the risk assessment and peer review and supported the District Council's BCA in its refusal to grant the building consents. This meant that owners of vacant sites within the High risk area would be unable to build until the life safety risk was reduced.
- 1.13. The CDG agreed that continuing with the status quo was not desirable and identified a number of workstreams for further work. The workstreams evolved into the Awatarariki Debris Flow Risk Management Programme.
- 1.14. The key workstreams relevant to the proposed Awatarariki Plan Changes included a review of the risk assessment, interventions to reduce the risk that would allow property owners to remain, and a voluntary managed retreat.
- 1.15. A peer review of the debris flow risk assessment recognised limitations in the modelling and extended the area of 'High' risk out to the modelled 0.001% risk contour line (one order of magnitude) in order to ensure the risk was not underestimated and to better reflect the area of high risk.

- 1.16. Local authorities within the Bay of Plenty region are required, through BOPRC's RPS natural hazard management provisions which came into force in 2016, to reduce areas identified as having 'High' natural hazard risk to 'Medium' or 'Low'.
- 1.17. An alternate escape route for residents from Clem Elliott Drive has been provided.
- 1.18. Emergency warning systems have been investigated three times and found to not be a viable risk reduction option for the Awatarariki Fanhead.
- 1.19. Active management of the Awatarariki catchment has been investigated and found to not be a viable risk reduction option for the Awatarariki Fanhead.
- 1.20. The Council has been criticised by some Awatarariki Residents Incorporated Society members for the amount of time, effort and money, invested in investigations and peer reviews. That criticism fails to recognise that the Council engaged nationally and internationally regarded experts in their fields to investigate risk reduction solutions and peer review those solutions to enable residents to continue to reside on the Awatarariki Fanhead. The results of expert investigations provided compelling evidence, that the only viable debris flow risk reduction for owners of properties on the Awatarariki Fanhead is managed retreat.
- 1.21. The estimated cost of a managed retreat programme from the 'High' risk area of the Awatarariki Fanhead is \$15.058M.
- 1.22. The District Council sought financial support for a voluntary managed retreat programme from BOPRC and the Crown. Both potential funding partners required the RMA plan change process to be instigated before agreeing to consider funding a managed retreat programme.
- 1.23. Late in 2019, the District Council, BOPRC and the Crown signed a Memorandum of Understanding to fund a voluntary managed retreat programme for the Awatarariki Fanhead 'High' risk area. The provisions of the programme include: the Proposed Plan Changes, a market valuation with no discounts for the hazard or multiple Maori ownership; flexible settlement arrangements; and financial incentives to encourage

property owners to accept acquisition offers and relocate to a safer environment. Delivery of the programme is through the District Council's Awatarariki Fanhead, Matatā, Acquisition Strategy.

- 1.24. As at 10 August 2020, the sales and purchases of 25 properties have either been settled or are subject to unconditional Agreements for Sale and Purchase. Updated information on the status of property acquisitions will be presented at the hearing.

2. INTRODUCTION

- 2.1. My full name is Jeffrey Robert Farrell.

- 2.2. My evidence is given on behalf of 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 reasons for the Proposed Plan Changes. It provides the background to how and why the District Council is the promoter of Plan Change 1 and requestor of Plan Change 17 and places the Plan Changes' within the wider context of work that makes up the District Council's Awatarariki Debris Flow Risk Management Programme (**ADFRMP**). Specifically, my evidence covers:

- (a) A summary of my evidence (**Executive Summary**)
- (b) An example of the natural hazard which other witnesses (McSaveney and Davies) will elaborate on;
- (c) Pictorial evidence obtained by the District Council of the effects of the 18 May 2005 debris flow event;
- (d) A high level oversight of the journey the District Council has taken to deliver a risk reduction solution for residents of the Awatarariki Fanhead, including key Council decisions made;

- (e) Two Building Act 2004 Determinations relating to the Awatarariki Fanhead where the District Council was the applicant;
- (f) The national and regional natural hazard risk management policy framework that the Council has had to manage its way through;
- (g) The Consensus Development Group engagement;
- (h) The Awatarariki Debris Flow Risk Management Programme;
- (i) The Awatarariki Fanhead Managed Retreat Programme;
- (j) The Awatarariki Fanhead Acquisition Strategy;
- (k) The Awatarariki Indicative Business Case;
- (l) Implementation of the Awatarariki Fanhead Acquisition Strategy;
- (m) The current status of acquisitions of properties in the High Debris Flow Risk Area;
- (n) Response to issues raised in the Notice of Appeal (**Response to Appeal**); and
- (o) Conclusions.

3. QUALIFICATIONS AND EXPERIENCE

- 3.1. I hold the position of Manager Strategic Projects at the District Council.
- 3.2. My qualifications include a Diploma in Public Health Inspection (2005) and a Masters in Public Management (Merit) from Victoria University of Wellington, New Zealand, awarded in 2006. I have also held accreditation under the Ministry for the Environment Making Good Decisions Programme since 2008.
- 3.3. I have been employed at the District Council since 1979. Prior to my current position, I held previous managerial positions where I was responsible for the regulatory activities of the District Council relating to

the Building Act, Resource Management Act (**RMA**), Health Act, Sale of Liquor Act, and parts of the Local Government Act (**LGA**).

- 3.4. I have 32 years of experience in the administration of natural hazard legislation under the RMA, Building Act, CDEM Act, and LGA and their predecessors.
- 3.5. During my time with the District Council, I have participated in 23 natural hazard emergency response and recovery activities ranging from the 1987 Edgecumbe earthquake through numerous floods, tornados, cyclones, landslides (including the landslide in 2011 that resulted in a fatality at West End Road, Ōhope), as well as the multiple debris flows at Matatā in 2005.
- 3.6. I was part of the District Council project team that introduced the District Plan coastal hazard policies for the Whakatāne District Council in the early 2000s.
- 3.7. More recently, I have led several of the District Council's projects that have had a natural hazard focus including landslide and debris flow risk management, and a liquefaction study of the subsoils within the Whakatāne CBD.
- 3.8. In 2013, the Ministry of Business, Innovation and Employment (**MBIE**) appointed me to the MBIE/New Zealand Society of Earthquake Engineers Governance Group overseeing the review of the guidelines to assess the seismic capacity of existing buildings. I was also a Summit Group Member for the MBIE Post Disaster Building Inspection Programme and a contributor to the associated MBIE Online learning programme.
- 3.9. I am the Deputy Chair of the BOP Natural Hazards Forum and have been a Recovery Manager for the District Council.
- 3.10. During development of Proposed Change 2 (Natural Hazards) to the Regional Policy Statement, I participated in: the technical experts' risk management workshop in Tauranga and pre-hearing discussions, and tested the proposed assessment methodology that subsequently formed Appendix L of that Plan Change. Together with Craig Batchelar, I presented evidence on behalf of the three Eastern Bay territorial

authorities at the hearing of Proposed Change 2 by the Bay of Plenty Regional Council (BOPRC) Hearings Committee.

- 3.11. Since 2016, as a consequence of recommendations by officials from the Department of Prime Minister and Cabinet, Department of Internal Affairs, and EQC, I have provided natural hazard risk management guidance to several other New Zealand local authorities including Kaikōura District Council and Auckland Council.
- 3.12. In 2016 I was asked to be a reviewer of the MBIE/NZGS/NZTA guidance document 'Rockfall: Design considerations for passive protection structures (2016).
- 3.13. In 2019 I was a Project Steering Group member for a National Science Challenge Project that looked at the challenges associated with managing risk to existing developed areas.¹
- 3.14. In preparing this evidence I have reviewed the documents and reports set out in the **Appendix 1** to my evidence.

4. MY ROLE

- 4.1. My role in the management of debris flow risk from the Awatarariki Stream has evolved over the 15^{1/2} years since the debris flows occurred at and adjoining the Matatā Township on 18 May 2005.
- 4.2. My initial involvement commenced at first light on 19 May 2005 as the Council's Civil Defence and Emergency Management Building Response Manager. As emergency response evolved to recovery I moved back to my business as usual role as a regulatory manager for the District Council that included responsibility for Building Control and other regulatory functions.
- 4.3. My role had expanded to include regulatory management of the RMA at the time a resource consent application was in preparation for a debris detention system in the upper catchment of the Awatarariki Stream.

¹ Grace ES, France-Hudson BT, Kilvington MJ. 2019. Reducing risk through management of existing uses, tensions under the RMA. Lower Hutt (NZ): GNS Science. 131p. (GNS Science report 2019/55). Doi:10.21420/27S5-E538.

- 4.4. When the District Council resolved in December 2012 to not progress with an engineering solution to manage the debris flow risk to the Awatarariki Fanhead and instead investigate planning-based options, I was a member of the project team that investigated those planning-based options.
- 4.5. From 2014, I became programme manager for the Awatarariki Debris Flow Risk Management Programme.

5. BACKGROUND

- 5.1. On 18 May 2005, a band of intense rain passed over the catchments behind the coastal settlement of Matatā. It triggered many landslips, and several large debris flows, which with their associated flooding, destroyed 27 homes and damaged a further 87 properties within Matatā. Several houses were carried along in the debris flows for distances that ranged between 40 and 180 metres. Fortunately, there were no fatalities. The evidence of Mr Blackwood, Dr. McSaveney, and Mr Bassett provides detail on the cause of the debris flows and their immediate consequences.
- 5.2. The volume of debris deposited on the Awatarariki fanhead during the event has been estimated variously at between 200,000 m³ and 600,000 m³ – refer Dr McSaveney's evidence (para. 12.1). The volume was subsequently revised by Tonkin and Taylor Ltd to 300,000 m³ as reported in the evidence of Mr Hind, Prof. Davies, and Mr Bassett. Photographs of the Awatarariki Fanhead taken shortly after the event are contained in **Appendix 2** to my evidence.
- 5.3. Prior to the event, the District Council was unaware that a debris flow hazard from the Awatarariki catchment existed. The initial subdivision of the Fanhead area was carried out by the Crown. Community and BOPRC input into subsequent residential subdivision applications processed by the District Council recognised flood and coastal hazards but no reference to a debris flow hazard was recorded.

Building Act Determination 2006

- 5.4. Following the May 2005 debris flows, the District Council received expert advice from GNS Science (**GNS**)² and Tonkin and Taylor Ltd (**T&T**)³ that: the catchments were unstable; streambeds had aggraded (especially in the lower reaches); and any future moderate rainfall event could have life-threatening impacts upon any person occupying buildings beyond the immediate debris fan affected area.
- 5.5. On 13 June 2005, acting under delegated authority, I exercised the District Council's powers under section 124(1) of the Building Act 2004 and served notice on the owners and occupiers of eight dwellings on the Awatarariki Fanhead requiring them not to occupy those buildings.
- 5.6. In 2006, property owners who had been out of their homes since the event wanted to reoccupy their properties and to do so at their own risk. Mindful of the expert advice from GNS and T&T, and with no risk mitigation undertaken, the Council was not supportive of property owners repairing or rebuilding their homes until risk mitigation works had been undertaken.
- 5.7. I was tasked with testing the Building Act provisions relating to the use of dangerous building notices where the danger was an off-site natural hazard that had not been mitigated (as opposed for example to a building that was dangerous by reason of the condition of its structure).
- 5.8. The District Council, through its lawyers, applied to the Department of Building and Housing (**DBH**) for a Building Act Determination in August 2006. The matters for determination related to the Building Act powers concerning dangerous buildings (Section 124). Two questions were specifically asked of the DBH:
- (a) Were the buildings dangerous in terms of section 121; and
 - (b) If the buildings were dangerous, should the Council exercise its power under section 124 of the Act to require the buildings to remain unoccupied until mitigation works were undertaken to reduce the danger?

² The 18 May 2005 debris flow disaster at Matatā: Causes and mitigation suggestions, Institute of Geological & Nuclear Sciences, July 2005

³ Tonkin & Taylor Ltd (2005), The Matatā Debris Flows Preliminary Infrastructure and Planning Options Report, Client Report for Whakatāne District Council

- 5.9. The DBH determination decision⁴ concluded that the houses were not dangerous in terms of section 121, and the Council should remove the section 124 notices. This decision resulted in 10 houses within the High Debris Flow Risk Policy Area of the Awatarariki Fanhead being repaired and 6 houses being rebuilt between 2007 and 2011.

Debris Detention Structure

- 5.10. As described in the evidence of Mr Bassett, between 2005 and 2008 the Council investigated a range of engineering options to mitigate the debris flow risk to residential properties on the Awatarariki Fanhead and consulted with the community over those options. The Council's decision to proceed with engineering options analysis to manage the debris flow hazard from the Awatarariki catchment was heavily influenced by the community's desire to reoccupy the Fanhead.
- 5.11. Further community feedback resulted in the preferred design solution moving from a debris dam to a flexible ring net debris detention structure. Information on the ring net debris detention structure design is covered in the evidence of Mr Hind.
- 5.12. By 2010, my role had expanded to include responsibility for the Council's administration of the RMA. In this capacity I was responsible for ensuring the engineering design complied with various regulatory requirements. I also engaged an independent commissioner to make the relevant RMA notification and substantive decisions on a debris flow control system for the Awatarariki catchment. The notification decision was issued but a substantive decision was not.
- 5.13. Ensuring design compliance involved co-ordinating expert peer review input early into the design development process for the proposed flexible ring-net debris flow detention structure. As a consequence of more information being generated through the detailed design and peer review processes, it became clear that the design was not viable. In March 2012, T&T recommended to the Council's Chief Executive that the project be comprehensively reviewed.

⁴ Determination 2006/119 available at:
<https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2006/2006-119.pdf>

- 5.14. In April 2012, Mr Alan Bickers was engaged to undertake a formal review of the project. I assisted Mr Bickers with that review. Mr Bickers' review⁵ recommended that the District Council not proceed further with the ring-net proposal, nor any other options upstream of the escarpment. The District Council's Project and Services Committee accepted that recommendation and resolved accordingly on 4 July 2012. At the same meeting, the Committee also resolved to commence a process of re-evaluation of downstream (i.e. Fanhead) options for debris flow risk mitigation. These resolutions were subsequently confirmed by the District Council at its meeting on 1 August 2012.

Fanhead Solutions

- 5.15. Fanhead engineering options were investigated between August 2012 and December 2012. The Project and Services Committee subsequently considered a report titled *Awatarariki Downstream Options Study Report* from the General Manager Infrastructure at its meeting of 12 December 2012. The Committee resolved to abandon further studies of engineering options to manage debris flow risk from the Awatarariki catchment and to develop for consideration, two planning options:
- (a) An information-based option triggered through either a land information memorandum application or a building consent application; and
 - (b) Establishment of event-based hazard zones.

The District Council confirmed these resolutions at its meeting of 6 March 2013.

- 5.16. The decision to abandon investigations into any engineering solution to mitigate debris flow risk from the Awatarariki catchment was a significant decision for the District Council and for property owners. It meant that owners of properties on the Awatarariki Fanhead would continue to be exposed to levels of risk associated with any future debris flow. It also meant a change in focus for the District Council from pursuing an engineering solution to manage debris flow risk from the Awatarariki catchment, to investigating a planning approach.

⁵ Bickers, A (2012), Review of Awatarariki Catchment Debris Control Project

Risk Assessment

- 5.17. At the time of the 6 March 2013 District Council decision, I was project managing a landslide risk assessment project for the Whakatāne and Ōhope escarpments which commenced in 2011. The project was initiated in response to a large number of landslides from these escarpments between 2004 and 2011. The aims of the project were to understand the levels of life safety risk associated with landslides from these escarpments, and to develop appropriate landslide management objectives, policies and rules for the District Plan Review Project that was underway. The Australian Geomechanics Society, 2007. Landslide Risk Management. Australian Geomechanics, Vol. 42, No.1, March 2007(AGS Guidelines) were accepted by the District Council, on the recommendations of its advisors (T&T and GHD) as an appropriate natural hazard risk management framework for this project.
- 5.18. When the District Council resolved to investigate a planning approach to manage the Awatarariki debris flow risk, the Whakatāne and Ōhope landslide assessment programme brief was extended to Matatā. I remained as project manager and T&T were retained as engineering advisors.
- 5.19. The first stage of the Matatā component of the project was to undertake a quantitative landslide and debris flow hazard and risk assessment using the AGS Guidelines. Mr R Beetham of GHD Ltd undertook a peer review of the hazard and risk assessment. This was subsequently followed by a debris flow risk assessment of the Awatarariki fanhead, the detail of which is covered in the evidence of Kevin Hind.
- 5.20. The Quantitative Landslide and Debris Flow Hazard and Risk Assessment for Matatā indicated a High hazard area over a large portion of the Awatarariki Fanhead⁶.
- 5.21. Affected landowner consultation was carried out in mid-2013 on the Quantitative Landslide Hazard and Risk Assessments for Whakatāne, Ōhope and Matatā. A report from the Senior Policy Planner to the 11 December 2013 Policy Committee stated that around 420 property

⁶ Tonkin & Taylor, 2013a. Quantitative Landslide Risk Assessment, Matatā Escarpment. Report to Whakatāne District Council dated November 2013 – Appendix F, Sheet 1.

owners participated through 160 face-to-face meetings and 70 neighbourhood group meetings. A draft Landslide Management Strategy was developed from this consultation.

- 5.22. The more detailed Supplementary Debris Flow Risk Assessment report indicated that an annual loss-of-life-risk profile of 1% to 0.0001% existed across the Awatarariki Fanhead. The Council noted information in the reports that there was no New Zealand Standard prescribing what constituted acceptable or unacceptable life safety risk from a natural hazard however internationally there was evidence that an annual life safety risk of 0.01% for an existing development had been accepted by several jurisdictions as an unacceptable threshold. The Council also noted that this 0.01% threshold had been applied by Christchurch City Council to properties subject to landslide and falling debris hazards following the Canterbury earthquakes in 2010-2011.
- 5.23. The T&T debris flow risk assessment reinforced a 2005 report by Prof. Davies⁷ published not long after the debris flow event. Prof. Davies report focused on the inevitability of a destructive debris flow event occurring at Matatā and concluded that an annualised loss of life risk for properties on debris flow fanheads like that of Matatā was about 1% to 0.1%. Professor Davies comments that “... *it was extremely fortunate no lives were lost at Matatā, in general, occupants of areas impacted by debris flows are in very serious danger of being killed.*” (p.1)
- 5.24. Consultation with affected landowners on the Draft Supplementary Debris Flow Risk Assessment for the Awatarariki fanhead was carried out in January 2014.

Building Act Determination 2014

- 5.25. The Draft Supplementary Debris Flow Risk Assessment became the best information on the debris flow risk to Awatarariki Fanhead properties known at the time and was relied upon by other sections of the District Council, and in particular, the District Council’s building consent authority (**BCA**) that I was still managing.

⁷

Davies T (2005). The Matatā debris flows of 2005–Inevitable events, predictable disaster. Natural Hazards Research Centre, Department of Geological Sciences, University of Canterbury

- 5.26. The BCA was in receipt of two building consent applications for new dwellings at 100 Arawa Street and 6 Clem Elliott Drive. Both properties are located within the area of the Awatarariki Fanhead identified as being of High risk, i.e. the area with an annualised life safety risk of 0.01% or greater.
- 5.27. The natural hazard provisions of the Building Act⁸ provide for BCAs to consider the granting of building consents on land that is subject or likely to be subject to one or more natural hazards. Of particular relevance is section 72 which requires BCAs to grant a building consent for building on land subject to a natural hazard that has not been mitigated where:
- (a) The building work to which an application for a building consent relates will not accelerate, worsen, or result in a natural hazard on the land on which the building work is to be carried out or any other property;
 - (b) The land is subject or is likely to be subject to 1 or more natural hazards; and
 - (c) It is reasonable to grant a waiver or modification of the building code in respect of the natural hazard concerned.
- 5.28. When a BCA grants a building consent subject to section 72, the risks associated with that building, including any adverse effect on other property caused by that building, become the responsibility of the building owner; in other words, the Council is exempt from those responsibilities.
- 5.29. The District Council BCA considered that the information on the level of life safety risk that had been identified within the High risk area on the Awatarariki Fanhead through the T&T Supplementary Debris Flow Risk Assessment, was such that it was not reasonable for the BCA to grant a waiver from the building code for the two building consent applications referred to in paragraph 5.29. Prior to formally declining to grant a building consent, the BCA, in consultation with the two building consent applicants, applied to the Ministry of Business, Innovation and Employment (**MBIE**) (successor to the DBH as the Central Government

Regulator of the Building Act) for a determination on 2 July 2014. I was the author of that application.

- 5.30. Although the determination focused on the two building consent applications, the BCA's application included the following paragraph:

“Although the application relates to two specific properties, the two properties belong to a wider geographical area that has been identified through research as being subject to future debris flow events with a high annualised loss of life risk potential. Because the two specific properties are indicative of a broader geographical situation, the outcome of the determination will therefore be of wider application.”

- 5.31. Thus, it was clear that the Council intended the Determination decision to be applied to other properties on the Awatarariki Fanhead that were exposed to a similar level of life safety risk from future debris flows. This was also acknowledged by the MBIE Determinations Manager in Section 1.7 of the subsequent Determination (2016/034)⁹:

“I acknowledge that although this determination relates to the second applicants' and owners' proposed buildings, there is likely to be a wider application for other buildings in the Awatarariki Stream area.”

- 5.32. The determination process explored the basis of the risk assessment the BCA had relied on in forming its view that it was not reasonable to grant a waiver from the building code. The process included the issue of two draft Determinations and a hearing in February 2015 by the Determinations Manager for MBIE, assisted by expert advisors (a risk specialist engineer from Australia and a lawyer). The owners of the subject properties attended the hearing. The District Council was represented by a councillor, myself, and expert advisors (Prof. Davies and Kevin Hind).

- 5.33. The final Determination was issued on 25 July 2016. The decision concluded that a high probability for loss of life existed on the Awatarariki Fanhead and, as risk reduction building mitigation options were not

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Determination 2016/034 is available at:
<https://www.building.govt.nz/assets/Uploads/resolving-problems/determinations/2016/2016-034.pdf>

viable, the BCA was correct to refuse to issue a waiver from the building code.

- 5.34. This determination was important in that the determination process added a layer of scientific robustness through having an independent expert, engaged by a Government Agency, review the risk assessments carried out on the Awatarariki fanhead by T&T. The fact that the determination conclusion acknowledged the risk to life safety was high and that houses should not be permitted to be built there, also provided confidence to the District Council in the risk assessment that had been undertaken.
- 5.35. The determination meant that owners of vacant sites within the High Risk area were unable to construct habitable buildings on their properties unless the life safety risk was reduced.

Consensus Development Group

- 5.36. During the period that MBIE was considering the Building Act determination application, the District Council wanted to engage with affected property owners within the High Risk area to explore a way forward to manage the debris flow risk. The evidence of David Stimpson outlines the establishment of a Consensus Development Group (**CDG**), the process involved, and the recommendations reached. I was a member of the CDG.
- 5.37. At the time of the CDG workshops, Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement had been notified (1 October 2014). Change 2 introduced a risk-based approach to natural hazard management within the Region and was receiving considerable opposition. This meant there was considerable uncertainty about its final content.
- 5.38. What it also meant was that there was no formal national or regional guidance in place on what an acceptable/unacceptable life-safety threshold should be for natural hazards affecting New Zealand communities and individuals for the CDG members to rely upon. This created uncertainty, not only for the CDG participants, but for all affected

property owners and District Council elected representatives and officials.

- 5.39. What was evident during the CDG workshops was the variability that existed in the way people and organisations perceive and deal with risk effects. Issues of different perceptions of risk, different methodological approaches undertaken to form a view on what might be an acceptable/unacceptable threshold of risk, and who should have the responsibility for determining what that threshold should be, have been at the heart of subsequent discussions between property owners and District Council elected representatives and officials.
- 5.40. From my observations, property owners have approached risk perception based on their personal views with some individuals having a greater tolerance for risk than others. In contrast, the District Council approached the issue objectively through a structured decision-making process involving scientific engineering advice, multi-faceted experience of managing the response and recovery of many natural hazard events within its District, and its statutory responsibilities. It is therefore understandable how some property owners arrived at a position on risk acceptance that was different from that of the District Council.
- 5.41. Levels of life safety risk from a natural hazard within the Bay of Plenty region were finalised on 5 July 2016 when the approved version of Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement (**RPS**) was adopted. An annual individual fatality risk of 0.01% or greater is specified as 'High'.
- 5.42. Although consensus amongst CDG members was not always achieved, one point of common agreement was that to continue with the status quo was not desirable for any of the parties.

Awatarariki Debris Flow Risk Management Programme

- 5.43. A key output of the CDG stakeholder engagement was the identification of a number of streams of work by CDG members that led to the establishment of the Awatarariki Debris Flow Risk Management Programme (**ADFRMP**) in 2015. In a new role within the Council of Manager Strategic Projects, the ADFRMP was one of the strategic projects that I was responsible for.

- 5.44. This programme eventually encapsulated 11 workstreams. The workstreams with direct relevance to this hearing are:
- (a) Workstream 1 – Review hazard and risk zones;
 - (b) Workstream 3 – Investigate escape routes;
 - (c) Workstream 4 – Investigate early warning systems;
 - (d) Workstream 7 – Develop voluntary retreat option;
 - (e) Workstream 9 – District Plan Change; and
 - (f) Workstream 11 – Regional Plan Change.
- 5.45. Workstream 11 – Regional Plan change was not specifically identified by the CDG. Workstream 11 was added when the limitations of a District Plan Change alone, in reducing high loss of life risk were fully understood, and when the Minister of Local Government advised the Mayor and Chief Executive that implementing the RMA Plan Change provisions would be a pre-requisite to Government consideration of support to a managed retreat programme.

Workstream 1 – Review Hazard and Risk Zones

- 5.46. The differences in perception of risk between participants within the CDG were compounded by a lack of acceptance by some participants of the levels of risk defined in the T&T Supplementary Debris Flow Risk Assessment report. It was agreed that the report would be reviewed by GNS Science. Subsequently, Dr. McSaveney of GNS Science and Prof. Davies of the University of Canterbury were engaged to undertake the work.
- 5.47. As recorded in the evidence of Dr. McSaveney and Prof. Davies, the reviewers accepted a life risk from future debris flows existed on the Awatarariki Fanhead and recommended increasing the area of the Fanhead with a High Risk as well as recommending a retreat policy be applied to this area.

- 5.48. Dr. McSaveney and Prof. Davies' report¹⁰ was provided to all Fanhead property owners on 19 February 2016. The report was considered by the District Council's Policy Committee on 23 February 2016 which resolved:

“THAT in regard to Workstream 1 (Review Hazard and Risk Line Definition) the geographical area of the fanhead for retreat from debris flow risk be the area bounded by the black hatched lines in Figure 1 Quantitative Debris Flow Risk Assessment on page 39 of the agenda;”.

Figure 1 referred to in the resolution is the Figure 1 of the McSaveney/Davies report.

- 5.49. The Policy Committee resolution was adopted by the District Council on 3 March 2016.
- 5.50. The geographic area referred to in the Policy Committee resolution adopted by the District Council is the Awatarariki High Risk Debris Flow Policy Area in Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan. It contains 45 properties in total of which 34 were in private ownership and 11 owned by public entities. Of the 34 privately-owned properties, 16 contained dwellings, and 18 are vacant sites or sites with unconsented structures.

Workstream 3 – Investigate Escape Routes

- 5.51. At the CDG workshops property owner representatives raised concerns that due to the extent of debris, deposited during the 2005 debris flow, remaining on the Fanhead, the only egress from the Clem Elliott Drive area was Kaokaoroa Drive which led directly towards the area of the escarpment where the Awatarariki Stream exited the upper catchment.
- 5.52. An investigation into alternative escape routes resulted in a project to remove debris from the designated roads of Clem Elliott Drive (western end) and Tohi Street (southern end) to link up to McPherson Street which provided access to an elevated area outside of the Awatarariki Fanhead. The alternate escape route is highlighted red in Figure 1.

¹⁰ McSaveney, M.J. and Davies, T.R.H., 2015. Peer Review: Awatarariki debris-flow-fan risk to life and retreat zone extent. Letter report to Whakatāne District Council dated 17 November 2015

Figure 1 – Alternative escape route



- 5.53. This route was subsequently used by Prof. Davies in his calculations of route travel for Clem Elliott Drive residents in his 2017 investigation into the viability of an early warning system.

Workstream 4 – Investigate Early Warning Systems

- 5.54. Early warning systems can provide an opportunity to reduce life safety risk from natural hazards. Following the CDG workshops, I prepared a draft brief to investigate the viability of an early warning system and consulted with Drs. Litchfield, Massey and McSaveney from GNS Science for advice. In late 2015 Dr Litchfield provided a letter¹¹ outlining preliminary information relating to the development of a debris flow early warning system for residents of the Awatarariki Fanhead. The letter was considered by the District Council's Policy Committee on 23 February 2016 which resolved:

***“THAT** in regard to Workstream 4 (Early Warning Systems) the development of a debris flow early warning system not be pursued at this point in time due to the uncertainties around the effectiveness of the system;’*

The Policy Committee resolution was adopted by the District Council on 3 March 2016.

¹¹ Litchfield, N (2015), Debris Flow Risk, Awatarariki Catchment – Early Warning System Work stream, GNS Science.

- 5.55. During public consultation for Proposed Plan Change 1 in 2017, community feedback included requests for the viability of an early warning system for debris flows from the Awatarariki catchment to be revisited. Prof. Davies was engaged to investigate and report on the viability of an early warning system to reduce life safety risk to occupants of properties on the Awatarariki Fanhead. Prof. Davies report¹² concluded that it was feasible to develop a reliable early warning system for road and rail users crossing the Fanhead but not for residents due to the lack of adequate warning time for residents to evacuate when an alarm was triggered. Prof. Davies discusses this report in more detail in his evidence.
- 5.56. Notwithstanding the advice from Dr. Litchfield and Prof. Davies, in recognition of the significance of the proposed Plan Changes upon residents, and that the field of early warning research is evolving, GNS Science were commissioned late in 2019 to scope out a potential design and effectiveness-evaluation framework of an early warning system for debris flows from the Awatarariki Fanhead and to advise whether it would be suitable as an option to manage the debris flow risk. The report¹³ was finalised in March 2020 and concluded that a debris flow early warning system was not an appropriate risk reduction measure for the Awatarariki Fanhead. Dr Massey discusses this report in more detail in his evidence.

Catchment Management

- 5.57. Other feedback from the community consultation included a request for the District Council to investigate whether or not proactive management of the catchment would significantly reduce the level of debris flow risk to the Awatarariki Fanhead. Prof. Davies was tasked to consider this. His subsequent report on catchment management¹⁴ identified that the amount of material contained in log-jam dams preceding the 2005 debris

¹² Davies, T (2017), Awatarariki Fan, Matatā: Debris flow early warning systems feasibility study. 19 December 2017

¹³ Massey CI, Potter SH, Leonard GS, Strawbridge G. (2020). Awatarariki catchment debris flow early warning system design framework. Lower Hutt (NZ): GNS Science. 53 p. (GNS Science report; 2019/77).

¹⁴ The Significance of Sediment Stored Behind Log Dams to the 2005 Awatarariki Debris Flow; Implications for Risk Management

flow in the Awatarariki catchment was between 8-14% (40,000-50,000 m³) of the estimated total volume of debris (300,000 m³). The report concluded there was no evidence that active catchment management would reduce debris flow risk on the Awatarariki Fanhead. Prof. Davies discusses this report in more detail in his evidence.

- 5.58. Prof. Davies' research was peer-reviewed by Dr. Phillips of Manaaki Whenua – Landcare Research who concurred with Prof. Davies conclusion. Dr. Phillips peer review is discussed in his evidence.

Workstream 7 – Develop voluntary retreat option

- 5.59. Receipt by the Council of the T&T Supplementary Debris Flow Risk Assessment report was formal notification to the District Council that the debris flow hazard that existed for a small community within the Whakatāne District had been assessed as being of high risk.
- 5.60. The CDG, whilst not agreeing on a common solution, did recognise that the status quo was not desirable for any of the affected parties.
- 5.61. Adoption of Change 2 (Natural Hazards) to the Bay of Plenty Regional Policy Statement on 5 July 2016 provided direction that councils within the Bay of Plenty region were required to manage natural hazard risk using a risk-based approach¹⁵ that included reducing the level of risk to any areas identified as having a High natural hazard risk to Medium levels and lower if reasonably practical.¹⁶
- 5.62. The District Council recognised that the time which had elapsed since the 18 May 2005 debris flow had been a very difficult time for the property owners of the Awatarariki Fanhead and wished to see a solution that would provide certainty for them and enable them to move on with their lives.
- 5.63. For the reasons outlined above, the resolutions of the Policy Committee on 2 July 2015 and adopted by the District Council on 30 July 2015 included:

¹⁵ RPS Policy NH 1B

¹⁶ RPS Policy NH 3B

***“THAT** staff progress the development of a voluntary managed retreat option as part of the process of developing a settlement framework to mitigate debris flow risks on the Awatarariki Fanhead, Matatā; and*

***THAT** the Committee notes that a voluntary managed retreat option for the Awatarariki Fanhead in Matatā is contingent upon securing funding support across all three levels of government (including Whakatāne District Council, Bay of Plenty Regional Council, and Central Government);”*

- 5.64. A separate resolution approved commissioning of a number of workstreams that included:

“Initiate informal approaches to Bay of Plenty Regional Council and central government for the funding of a managed voluntary retreat at Awatarariki”

- 5.65. Thus began a process of engagement with Central Government and BOPRC that was to span 4 years before a solution was finalised.
- 5.66. In order to engage with Central Government and BOPRC around a possible funding arrangement, it was imperative to have an understanding of the funding envelope likely to be required. The first step in the process was the development of an Acquisition framework that identified the various components of a formula for use in calculating the financial quantum of any future acquisition offer to property owners. On 28 July 2016, the District Council adopted the Awatarariki Fanhead, Matatā, Acquisition Strategy (the Acquisition Strategy) - refer to the evidence of Greg Ball for detail of the Strategy.
- 5.67. The underpinning philosophy of the Acquisition Strategy was to incentivise property owners to participate in the Managed Retreat Programme and voluntarily relocate away from the high debris flow risk environment of the Awatarariki Fanhead. This meant that any acquisition offer made should be sufficiently attractive for affected property owners to accept an offer, whilst also recognising that the wider community (local, regional and national) would be the source of the funds.

- 5.68. In recognition that an incentive was required for the Managed Retreat programme to be successful in achieving its objective of having residents voluntarily move out of harm's way, the District Council approved the primary component of the acquisition formula (the market value of a property) as being the market value current at the time an offer is made with no discount applied in recognition of the debris flow risk that existed. Additional incentives included: separate contributions towards legal expenses for the sale of the property and purchase of any replacement property; relocation costs where the property was used as the primary residence; mortgage break fees; and the absence of any real estate agency fees associated with the sale.
- 5.69. Through the latter half of 2016, property valuations were undertaken of the 34 residential properties within the High Risk area. This identified that the financial envelope to complete the managed retreat programme was estimated to be around \$13.2M.
- 5.70. Property owners were provided with copies of their valuations at face-to-face meetings and were asked to complete a Registration of Interest Form if they would like the District Council to continue to explore a voluntary managed retreat proposal with the Crown and BOPRC. There was large support for the District Council to continue with the engagement. Notwithstanding the high level of support, some owners considered the quantum of the indicative voluntary retreat proposal offers did not accurately reflect current market values. In such cases, their registration of interest recorded this concern.

Workstream 11 Regional Plan Change

- 5.71. At the face-to-face meetings, a small number of property owners queried whether or not BOPRC would exercise its powers under section 10(4)(a) of the RMA to extinguish existing use rights through introduction of a rule to a Regional Plan. In order to clarify these concerns, the Mayor, Chief Executive and myself made a presentation to BOPRC councillors on 21 April 2017 that included seeking an answer to this question. The matter was subsequently referred to the BOPRC Audit and Risk Committee meeting on 13 June 2017 for discussion. The deliberations of the Audit and Risk Committee were held in confidence but BOPRC, at its meeting of 29 June 2017, subsequently resolved:

“That the Regional Council:

- 1 *Receives the report, Awatarariki Fanhead Risk Reduction;*
- 2 *Notes the direction provided by the Audit & Risk Committee at its meeting on 13 June 2017 in confidence and that the position of Council is as follows:*
 - *Whakatane District Council is leading a process to manage the Awatarariki fanhead debris-flow risk.*
 - *The state of the Awatarariki fanhead as a high risk debris-flow and the solutions to reduce risk need to be identified by Whakatane District Council.*
 - *Planning decisions need to be expedited as soon as possible to give certainty to the Matata community and residents.*
 - *Any request to Bay of Plenty Regional Council for a private plan change to introduce a regional rule to extinguish existing use rights will require a public process and independent hearings panel.*
3. *Advises Whakatāne District Council that if they wish to seek a regional rule extinguishing existing use rights in the Awatarariki Fanhead area, a request for a private change to the relevant regional plan can be made which the Regional Council will consider under Schedule 1 of the Resource Management Act 1991.”*

5.72. The resolution did not include any direction on the enforcement of a rule once it was in place. The BOPRC position was reported back to property owners in a letter from myself dated 26 June 2017.

5.73. Also in 2017, the Minister of Local Government advised the Mayor and Chief Executive that the Government would want to see the District Council commit to the RMA Schedule 1 plan change process before it would commit to any funding. This meant that initiating Plan Changes was a pre-requisite from both potential funding partners for funding a Managed Retreat programme.

- 5.74. The Policy Committee received a report from the Principal Planner on 29 June 2017 recommending the District Council proceed with a Regional Plan Change at the same time as the District Plan Change. The Policy Committee accepted that the carrying out of both plan changes in parallel would streamline the process for any interested parties by providing greater efficiency and certainty through avoiding two separate Plan Change processes carried out in sequence. The resolutions of the Policy Committee were adopted by the District Council on 3 August 2017, and included:

“That the Whakatāne District Council agree to a private Plan Change to the Regional Land and Water Plan to address the high loss of life risk to people and property on the Awatarariki Fanhead;”

- 5.75. Plan Change 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan is the Plan Change referred to in the preceding paragraph.

The Awatarariki Indicative Business Case

- 5.76. In early-2016, the District Council was advised by the Minister of Local Government that any application for Crown funding would require preparation of a business case using the Better Business Case methodology developed in the United Kingdom and adopted by the New Zealand Treasury Department.
- 5.77. I was a co-author of the Indicative Business Case *‘Debris Flow Risk: A way forward for the Awatarariki Fanhead’* (the IBC) which was completed on 16 August 2017. The document was peer reviewed by Tom Lucas and Edward Guy of Rationale Ltd who regarded it as providing “... a thorough and comprehensive investigation of the issues and alternatives.” and concluded that it “... presents a compelling case for investment and a clear pathway to move forward with.”¹⁷
- 5.78. Following separate due diligence processes by the Crown and BOPRC, the IBC was accepted as the basis for advancing funding discussions with the District Council. The funding discussions culminated in a

¹⁷

Letter Tom Lucas and Edward Guy to Jeff Farrell, dated 19 October 2017.

Memorandum of Understanding (MoU) recording agreement between these three parties to fund the cost of the Awatarariki Managed Retreat programme at an estimated cost of \$15.058M. The agreed delivery methodology was the District Council's Acquisition Strategy.

Implementation of the Awatarariki Fanhead Acquisition Strategy

- 5.79. Four years after initial engagement, and 15 years after the 18 May 2005 debris flow, the Memorandum of Understanding enabled the District Council to provide property owners within the High Risk area of the Awatarariki Fanhead, an opportunity to relocate away from the risk and move on with their lives.
- 5.80. Following the MoU being agreed, property owners have been invited to participate in an acquisition process that involves:
- (a) New property valuations by a valuer appointed by the District Council;
 - (b) A property valuation by a valuer selected by the property owner and paid for by the District Council;
 - (c) Peer review of all valuations by an independent valuation expert engaged by the District Council to ensure the methodology used by the valuers complied with NZ Valuation Standards;
 - (d) An opportunity for valuations to be contested through mediation;
 - (e) A second opportunity to contest valuations through arbitration by an arbitrator nominated by the President of the NZ Institute of Valuers;
 - (f) Acceptance of an acquisition offer at any stage during the process; and
 - (g) The ability of the property owner to withdraw from the process at any time up to signing an Agreement for Sale and Purchase.
- 5.81. From an implementation auditing perspective, an independent Acquisition Panel appointed by the District Council reviews each

Agreement of Sale and Purchase prior to an Agreement being made unconditional.

The current status of acquisitions of properties in the High Debris Flow Risk Area.

- 5.82. A The status of the Awatarariki Managed Retreat Programme, at the time of preparing this evidence, is summarised in Table 1.

Table 1 Awatarariki Voluntary Managed Retreat Programme Status - 10 August 2020

Description	Number	%
Properties settled or with unconditional Agreements for Sale and Purchase	25	74%
Properties considering offers	4	12%
Properties declined final offer	1	3%
Properties not entered process	3	9%
Properties with other arrangements	1	3%
Total	34	100%

Of the 25 property purchases that have settled or have unconditional Agreements for Sale and Purchase, 13 contained dwellings. Of those 13 dwellings, one was demolished, 10 have been removed in full or in part, and two have delayed settlements.

- 5.83. At the time of preparing this evidence, nine properties have not been acquired by the Council. Of these 9 properties, 3 contain houses; the balance are vacant sections. One section is owned by 109 Maori owners who, with the assistance of the Maori Land Court, are putting together a governance structure to enable sale of the land to the Council. One other section is owned by a Maori Trust. The trustees of this section wish to apply to the Maori Land Court for Maori Reservation status for their land. The Trust will retain ownership of the land. A member of the Trust has agreed to participate on the community liaison group for the open space project which is described in more detail in paragraphs 5.93-5.96 of my evidence.
- 5.84. The locations of the properties acquired by the District Council to date through the VMR Programme are highlighted in Figure 2.

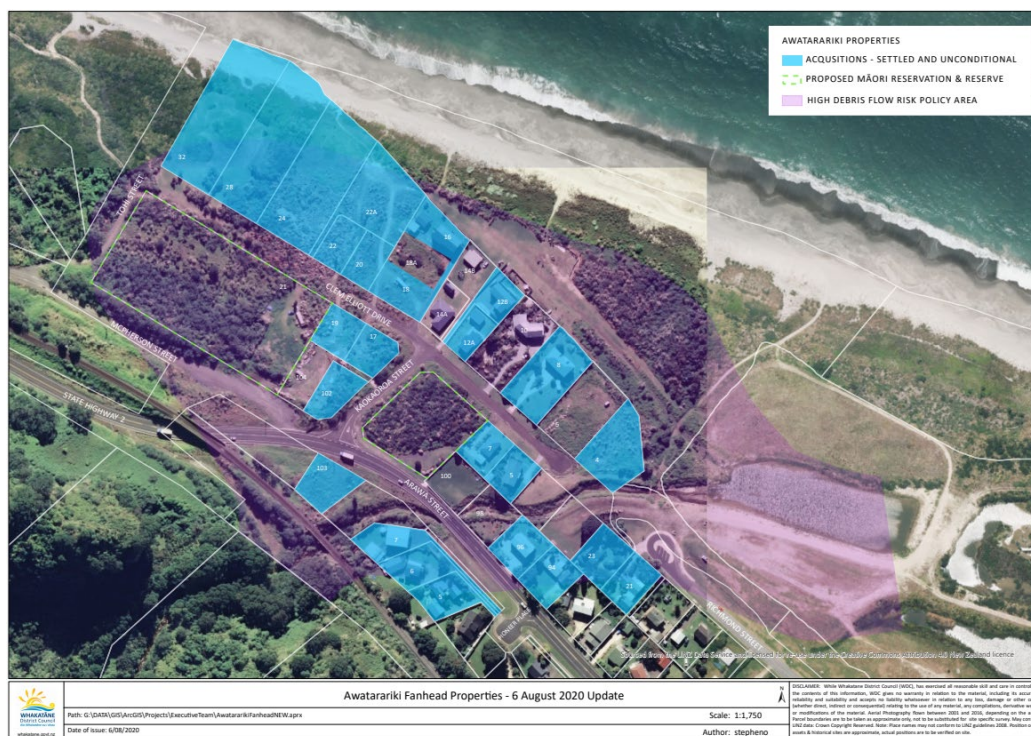


Figure 2 VMR Property Acquisitions as at 6 August 2020

Timelines for the VMR

- 5.85. The deadline for property owners to participate in the VMR programme has been extended several times to provide every opportunity for property owners to take advantage of the buy-out programme. It was initially proposed that a period from July 2019 through to 31 October 2019 would be the period for property owners to enter the VMR programme. Notwithstanding the 31 October deadline, provisions existed for lodgement of a compassionate grounds application from 31 October to 31 January 2020. The initial timelines are illustrated in Figure 3

3

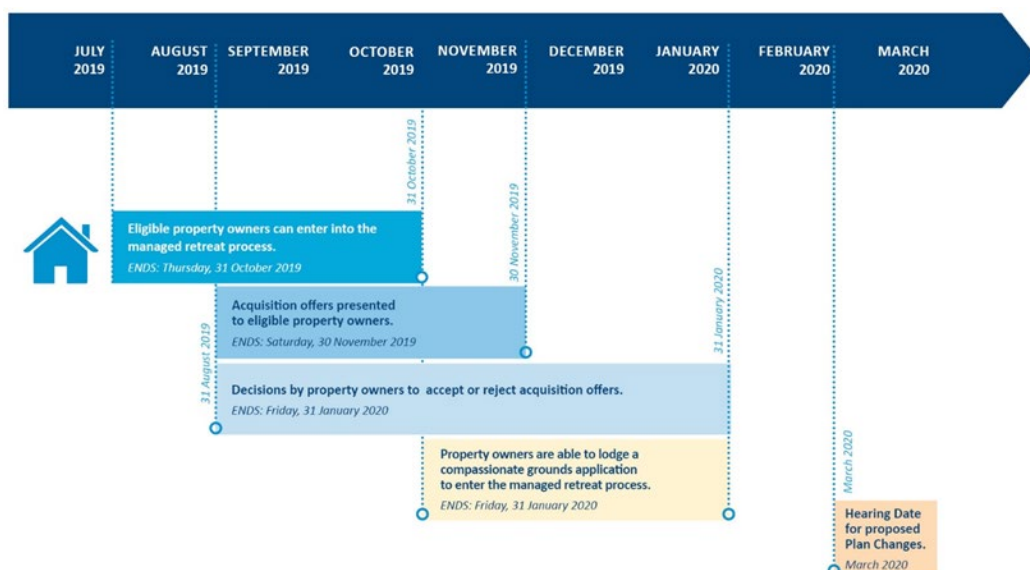


Figure 3 Proposed timelines for VMR – July 2019

- 5.86. Members of the Awatarariki Residents Incorporated Society (**ARIS**) did not enter into the VMR programme until after the 31 October 2019 cut-off date. As the Council wished to provide as many landowners as possible with the opportunity to take up the managed retreat opportunity, late entrants were not rejected. However, this had a flow-on effect and the scheduled deadline for acquisition offers to be presented to landowners was not able to be met. In response, the Council extended the deadline for property owners to accept or reject an acquisition offer from 31 January 2020 to 28 February 2020.
- 5.87. Due to the delays by some owners in entering the VMR process, subsequent valuation and dispute resolution processes were not able to be completed by the 28 February 2020 revised deadline. Consistent with its earlier position, the Council remained desirous of offering the opportunity for as many property owners as possible to complete the managed retreat process and therefore extended the owner acceptance of offer date to 31 March 2020.
- 5.88. The first instance Awatarariki Plan Change combined hearing was held from 2-4 March 2020. The decisions were released by the independent panel of commissioners on 26 March 2020 and notified to submitters and the general public on 1 April 2020.
- 5.89. In late March 2020, the Covid-19 pandemic interrupted normal life in NZ and elsewhere in the world. The Council and BOPRC requested

guidance from the Environment Court around extending the appeal period to the Awatarariki Plan Change decisions. The Court issued an order which retained the statutory 30 working days appeal period but suspended its commencement until the Covid-19 Alert Level 4 restrictions were lifted in the Bay of Plenty.

- 5.90. Covid-19 restrictions also meant that property owners who had sought arbitration late in the process were not able to receive a decision from the arbitrator due to the arbitrator not being able to undertake site inspections. Revised final offers were made in late May and early July as arbitration determinations were received.
- 5.91. For 3 properties belonging to ARIS members, revised final offers were made between 2-6 July 2020. Shortly before making final offers the Council received and accepted a suggestion from counsel acting for ARIS members that the property owners be provided with an additional 2 weeks to accept or reject the final offers. This time period was reflected in the final offers.
- 5.92. Subsequently, the Council received a further request from counsel for ARIS to delay the deadline for acceptance of final offers until after the Environment Court hearing and not earlier than 20 March 2021, and if that is not acceptable, an interim extension to allow property owners to carefully consider the arbitration determination and seek further advice. The Council will formally consider this request in September 2020.

Future Use of the Debris Flow High Risk Policy Area

- 5.93. Properties within the Debris Flow High Risk Policy Area acquired by the Council through the VMR programme will be integrated into one Certificate of Title and zoned as a reserve.
- 5.94. A new workstream has commenced that will investigate the future design of the open space area created through the VMR programme and any subsequent plan change outcomes. The design process recognises some properties within the Debris Flow High Risk Policy Area may be retained in private ownership and focuses on a collaborative approach involving tangata whenua, affected landowners, and the Matatā community.

- 5.95. A community liaison group (Kāhui Awatarariki) will be responsible for developing and monitoring the design process to ensure heritage, cultural values, community values, environmental values, amenity values etc are captured and expressed in the design and carried through into project delivery. The first meeting of the Kāhui Awatarariki is scheduled for late August 2020.
- 5.96. The open space workstream provides opportunities for the Matata community to: develop a new western entrance to the town and gateway to the Eastern Bay of Plenty; commemorate the rich cultural and geological history associated with the Awatarariki Fanhead; and create a natural community asset for future generations.

6. RESPONSE TO APPEAL

- 6.1. Paragraph 8(c) of the Notice of Appeal states the Society has 32 members, all of whom are members of families that either live permanently or own properties in the High Debris Flow Risk Policy Area. Appendices to the Notice of Appeal included a 2017 application to incorporate a society. The application lists 15 members together with their addresses. This information is summarised in Table 1.

Table 1 – ARIS Membership at time of Incorporation

Owner Name	Fanhead Property Address
Wayne Irwin and Victoria Humphries-Irwin	94 Arawa Street
Gregory and Te Raupai Fahey, and Kenneth Maurirere	100 Arawa Street
Greg Thorby	104 Arawa Street
Catherine Smith	7 Clem Elliott Drive
Pamela and Rick Whalley	10 Clem Elliott Drive
Marilyn and Robert Pearce	12B Clem Elliott Drive
Grant Wilkin	16 Clem Elliott Drive
Gerard and Joanne Stuckey	7 Pioneer Place
Ian Lockett and Tawai Thatcher	5 Clem Elliott Drive

- 6.2. The Chairman of ARIS provided an update on the ARIS membership in his evidence at the first instance hearing – refer Table 2

Table 2 - ARIS Membership in early March 2020

Lesley and Laurie Hema	12A Clem Elliott Drive
Ian Lockett and Tawai Thatcher	5 Clem Elliott Drive
Marilyn and Robert Pearce	12B Clem Elliott Drive
Lyall Magee	14A and 14B Clem Elliott Drive
Pamela, Rick and Rachel Whalley	10 Clem Elliott Drive
Annabella, Melanie and Ross Martin	6 Clem Elliott Drive
Gregory and Te Raupai Fahey	100 Arawa Street
Michele Magee/Beach	18A Clem Elliott Drive

- 6.3. In March 2020 the membership had altered and increased in number to 16.
- 6.4. The Council has subsequently either settled or has unconditional agreements for sale and purchase for: 5, 12A and 12B Clem Elliott Drive.
- 6.5. Agreements for Sale and Purchase of properties under the VMR programme include several further terms that are additional to the standard ADLS/REINZ Agreement for Sale and Purchase of Real Estate. One of these terms reflects a public policy position that beneficiaries of the publicly-funded VMR programme should not be able to use those public funds to contest the public policy programme that supported them. The evidence of Mr Ball confirms the appropriateness and commonplace nature of this practice within New Zealand.
- 6.6. The specific term of the Agreements referred to in the preceding paragraph is:
- “Plan Change(s):** Immediately following execution of this Agreement by both parties and prior to the Settlement Date the Vendor shall withdraw any submission made in opposition to the Plan Change(s) and shall not directly or indirectly support any other person or entity in opposing the Plan Change(s). Indirect support of Plan Change(s) includes being a member of any incorporated society which opposes the Plan Change(s).”*
- 6.7. The owners of 5, 12A and 12B Clem Elliott Drive have signed Agreements for Sale and Purchase that have included the ‘Plan Change’ term and, unless they are in breach of contract, have withdrawn their membership of ARIS.

- 6.8. Taking into account the ARIS membership details provided at the first instance hearing and Paragraph 8(c) of the Notice of Appeal, together with the subsequent withdrawal of membership through property sales, the current membership of ARIS would appear to number 10 as detailed in Table 3.

Table 3 Apparent current membership of ARIS

Lyall Magee	14A and 14B Clem Elliott Drive
Pamela, Rick and Rachel Whalley	10 Clem Elliott Drive
Annabella, Melanie and Ross Martin	6 Clem Elliott Drive
Gregory and Te Raupai Fahey	100 Arawa Street
Michele Magee/Beach	18A Clem Elliott Drive

- 6.9. I also note in paragraph 15 of the Notice of Appeal the statement “*All Society properties were purchased prior to 2005.*” This is incorrect. The property at 5 Clem Elliott Drive, owned by two Society members changed ownership on 24 April 2015.

7. CONCLUSION

- 7.1. The debris flows on 18 May 2005 devastated the Matatā community and impacted upon the wider Whakatāne District.
- 7.2. Since 2005 the District Council has explored multiple options to manage the debris flow risk from the Awatarariki catchment.
- 7.3. The level of risk ranges across the Awatarariki Fanhead from Low to High.
- 7.4. The only viable natural hazard risk reduction option for the High Risk Area is managed retreat.
- 7.5. The District Council, Bay of Plenty Regional Council, and the Crown have combined to fund a VMR programme for the High Risk Area that includes financial incentives to facilitate affected property owners move away from the debris flow risk with an ability to move on with their lives.
- 7.6. The Council has extended the deadlines for entry into the VMR programme and acceptance of final offers several times to enable as many of the affected landowners to benefit from the opportunities provided by the VMR programme.

- 7.7. As at 10 August 2020, owners of 25 of the 34 properties in the Debris Flow High Risk Policy Area have sold their properties to the Council through the VMR programme. This number includes 13 of the 16 properties that contain(ed) dwellings.
- 7.8. Alternative acquisition options using the PWA will result in significant reduced buy-out offers than what is provided for in the VMR programme.
- 7.9. The new workstream involving design of the open space created by the VMR programme provides exciting opportunities for the community of Matata.
- 7.10. The almost 15 years that have passed since the event have been difficult for all parties. The time that has elapsed reflects the complexities associated with finding a viable solution for a debris flow natural hazard with a built environment in close proximity, and the immature state of the policy environment for the management of natural hazards involving managed retreat.
- 7.11. The two proposed Plan Changes combined with the Awatarariki Managed Retreat Programme are the District Council's response to satisfying its statutory duties under the Resource Management Act and the Local Government Act for the sustainable management of debris flow risk from the Awatarariki catchment at Matatā.

Jeff Farrell

10 August 2020

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APPENDIX 2 AWATARARIKI FANHEAD – MAY 2005

Photograph 1 Aerial view of the Fanhead taken from the Northwest



Photograph 2 Eastern end of the Awatarariki Fanhead



Photograph 3 Central area of the Awatarariki Fanhead



Photograph 4



Photograph 5



Photograph 6



Photograph 7



Photograph 8



Photograph 9



Photograph 10 Western End of the Fanhead



Photograph 11 Many of the boulders deposited on the Fanhead exceeded 1.8m diameter

