

# Regional Council

## **NOTICE IS GIVEN**

that an **Extraordinary Regional Council Meeting** will be held in **Mauao Rooms, Bay of Plenty Regional Council Building, 87 First Avenue, Tauranga** on:

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**Thursday, 18 May 2017 commencing at 2.00 pm; or  
at the conclusion of the Regional Direction and Delivery  
Committee meeting immediately prior.**

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Mary-Anne Macleod  
Chief Executive  
15 May 2017





# Regional Council

## Terms of Reference

### Purpose

- Enable democratic local decision-making and action by, and on behalf of, Bay of Plenty communities.
- Meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- Set the overarching strategic direction for Bay of Plenty Regional Council as an organisation.
- Hold ultimate responsibility for allocating financial resources across the Council.

### Membership

All councillors are members of the Regional Council.

### Quorum

In accordance with Council standing order 10.1(a), the quorum at a meeting of the Regional Council is seven members, consisting of half the number of members.

### Meeting frequency

Six-weekly.

### Role of Council

- Address Local Electoral Act matters and Local Government Rating Act matters.
- Oversee all matters relating to identifying and contributing to community outcomes.
- Consider and agree on matters relating to significant new activities or areas of involvement such as infrastructure which are not the responsibility of a specific committee.
- Provide regional leadership on key issues that require a collaborative approach between a number of parties.
- Develop, adopt and review Council's Policy on Significance and decision-making policy and processes.
- Develop, adopt and implement the Triennial Agreement and the Code of Conduct.
- Consider and agree on matters relating to elected members' remuneration matters.
- Appoint the Chief Executive Officer, and review their contract, performance and remuneration at least annually.
- Approve all delegations to the Chief Executive, including the authority for further delegation to staff.
- Establish committees, subcommittees, and working parties and appoint members.
- Receive and consider recommendations and matters referred to it by its committees, joint committees, subcommittees and working parties.

- Approve membership to external bodies and organisations, including Council Controlled Organisations.
- Develop, adopt and review policies for, and monitor the performance of, Council Controlled Organisations.
- Review and approve strategic matters relating to the sale, acquisition and development of property for the purposes of meeting Council's organisational requirements and implement approved Regional Council policy.
- Address strategic corporate matters including property and accommodation.
- Institute any proceedings in the High Court that are not injunctive proceedings.
- Exercise the powers and duties conferred or imposed on Council by the Public Works Act 1981.
- Consider and agree on the process to develop the Long Term Plan, Annual Plan and Annual Report.
- Adopt Council policies as required by statute (for example Regional Policy Statement and Regional Land Transport Strategy) to be decided by Council or outside of Committee delegations (for example infrastructure policy).
- Delegate to commissioners to exercise the powers, functions and duties of the Council as a consent authority under the Resource Management Act 1991 including to hear and decide a consent application.
- Monitor Council's financial and non-financial performance in-year.
- Develop, review and approve Council's Financial Strategy and funding and financial policies and frameworks.

## Delegations from Council to Committees

- Full Council has a role to monitor the functioning of all committees.
- Full Council will consider matters not within the delegation of any one Council committee.
- Full Council may at any time, revoke or modify a delegation to a Council committee, either permanently, for a specified time or to address a specific matter, if it considers there is good reason to do so.
- The delegations provided to committees may be further delegated to subcommittees unless the power of further delegation is restricted by Council or by statute.

It is accepted in making these delegations that:

- The committees, in performing their delegated functions, powers or duties, may, without confirmation by the Council, exercise or perform them in a like manner and with the same effect as the Council itself could have exercised or performed them.
- The delegated powers given shall at all times be subject to their current policies and principles or directions, as given by the Council from time to time.
- The chairperson of each committee shall have the authority to exercise their discretion, as to whether or not the delegated authority of the committee be used where, in the opinion of the chairperson, circumstances warrant it.

## Powers that cannot be delegated

Under Clause 32 Schedule 7 of the Local Government Act 2002, Full Council must make the following decisions:

- Make a rate.
- Make a bylaw.
- Borrow money or purchase or dispose of assets, other than in accordance with the long-term plan.
- Adopt the long-term plan, annual plan, or annual report.
- Appoint a chief executive.
- Adopt policies required to be adopted and consulted on under the Local Government Act 2002 in association with the long-term plan or developed for the purpose of the local governance statement.
- Adopt a remuneration and employment policy.



## Public Forum

1. A period of up to 15 minutes may be set aside near the beginning of the meeting to enable members of the public to make statements about any matter on the agenda of that meeting which is open to the public, but excluding any matter on which comment could prejudice any specified statutory process the council is required to follow.
2. The time allowed for each speaker will normally be up to 5 minutes but will be up to the discretion of the chair. A maximum of 3 public participants will be allowed per meeting.
3. No statements by public participants to the Council shall be allowed unless a written, electronic or oral application has been received by the Chief Executive (Governance Team) by 12.00 noon of the working day prior to the meeting and the Chair's approval has subsequently been obtained. The application shall include the following:
  - name of participant;
  - organisation represented (if any);
  - meeting at which they wish to participate; and matter on the agenda to be addressed.
4. Members of the meeting may put questions to any public participants, relevant to the matter being raised through the chair. Any questions must be asked and answered within the time period given to a public participant. The chair shall determine the number of questions.





# Membership

<b>Chairman:</b>	D Leeder
<b>Deputy Chairman:</b>	J Nees
<b>Councillors:</b>	N Bruning, W Clark, J Cronin, S Crosby, D Love, T Marr, M McDonald, A Tahana, P Thompson, L Thurston, A von Dadelszen, K Winters
<b>Committee Advisor:</b>	S Kameta

Recommendations in reports are not to be construed as Council policy until adopted by Council.

## Agenda

*E te Atua nui tonu, ko mātau ēnei e inoi atu nei ki a koe, kia tau mai te māramatanga ki a mātau whakarite mō tēnei rā, arahina hoki mātau, e eke ai te ōranga tonu ki ngā āhuetanga katoa a ngā tangata ki tō mātau rohe whānui tonu. Āmine.*

*“Almighty God we ask that you give us wisdom in the decisions we make here today and give us guidance in working with our regional communities to promote their social, economic, environmental and cultural well-being. Amen”.*

### 1 Apologies

### 2 General Business and Tabled Items

Items not on the agenda for the meeting require a resolution under section 46A of the Local Government Official Information and Meetings Act 1987 stating the reasons why the item was not on the agenda and why it cannot be delayed until a subsequent meeting.

### 3 Public Forum

### 4 Declarations of Conflicts of Interests

### 5 Reports

<b>5.1 Weather Report for ex-Cyclone Debbie and Cyclone Cook</b>	<b>15</b>
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## 6 Public Excluded Section

45

Resolution to exclude the public

THAT the public be excluded from the following parts of the proceedings of this meeting.

The general subject of each matter to be considered while the public is excluded, the reason for passing this resolution in relation to each matter, and the specific grounds under section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution are as follows:

<b>General Subject of Matter to be Considered</b>	<b>Reason for passing this resolution in relation to this matter</b>	<b>Grounds under Section 48(1) LGOIMA 1987 for passing this resolution</b>
<b>4.1 Rangitāiki River Scheme Review - April 2017 Flood Event</b>	<b>To protect the privacy of natural persons, including that of deceased natural persons.</b>	<b>That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</b>
<b>4.2 Rangitāiki River Stopbank Replacement at Edgecumbe</b>	<b>To enable any local authority holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).</b>	<b>That the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.</b>

**6.1 Rangitāiki River Scheme Review - April 2017 Flood Event 47**

**6.2 Rangitāiki River Stopbank Replacement at Edgecumbe 101**

**7 Confidential business to be transferred into the open**

**8 Readmit the public**

**9 Consideration of General Business**

**10 Closing karakia**





# Reports





Receives Only – No Decisions

**Report To:** Extraordinary Council

**Meeting Date:** 18 May 2017

**Report From:** Chris Ingle, General Manager, Integrated Catchments

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## Weather Report for ex-Cyclone Debbie and Cyclone Cook

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### Executive Summary

During April 2017 the Bay of Plenty Region was subject to some extreme weather events.

Ex-Cyclone Debbie dropped a large amount of rain over the entire region. This event produced record river levels and flows in the Rangitaiki and Whakatane/Tauranga catchments. The recorded flood flows in the Whakatāne River at the Valley Rd gauging site were 34% higher than ever recorded before. The Rangitāiki River flows reaching the Matahina Dam were 20% higher than ever recorded before.

Cyclone Cook was expected to combine with a complex low pressure system travelling west across the Tasman Sea. Fortunately the low pressure system stalled west of New Zealand. Cyclone Cook still made landfall in the BOP and subjected the region to high winds and high seas resulting in considerable damage.

### Recommendations

**That the Extraordinary Council:**

- 1 Receives the report, Weather Report for ex-Cyclone Debbie and Cyclone Cook;**

### 1 Introduction

This report summarises the hydro-meteorological aspects of the ex-Cyclone Debbie flood event occurring over the period 3-7 April 2017 and the following passing of Cyclone Cook across the Bay of Plenty region on 13 April 2017. It provides an overview of weather patterns leading up to the events and quantifies the effects of the events through collected environmental data.

Data collected during the events was analysed against previously recorded data and recognised models to give estimates of exceedance return probabilities for locations of interest within the Bay Of Plenty region.

The Data Services group operates a network of approximately 130 automated monitoring stations throughout the regions collecting a wide range of environmental

data; this data is collected in accordance with relevant National Environmental Monitoring Standards (NEMS) or where NEMS do not exist, best practice. The Council network is supplemented by a further 12 sites operated by the National Institute of Water and Atmosphere.

At the beginning of April 2017 the Bay of Plenty region had just experienced a very wet month of March where rainfalls of 1.5 - 5 times historical recorded monthly normal had occurred. Soil moisture levels during March were higher than long term averages and had approached or exceeded soil saturation levels.

## 2 Ex-Cyclone Debbie, 3-7 April 2017

During Sunday 2 April a frontal system moved up the South Island, onto central New Zealand, and then stalled over the North Island on Monday 3 April. While this frontal system remained over the North Island on Tuesday 4 April, a northerly flow to the north brought a progressively warmer and more humid sub-tropical airmass (containing the remnants of Cyclone Debbie that earlier devastated parts of Queensland) down onto northern New Zealand during Tuesday 4 and Wednesday 5 April. A sub-tropical airmass such as this is significant, due to higher than normal moisture levels resulting in the potential for very heavy rain. Heavy rain associated with this airmass spread onto the upper North Island during Tuesday and Wednesday, while a shallow low developed and then deepened on the frontal zone just west of the North Island. By the afternoon of Wednesday 5, the frontal zone and main rain-band (containing embedded convection/thunderstorms and localised downpours) began to move eastwards over the upper North Island. However, the main front and rain-band subsequently lingered in the Bay of Plenty region for several hours as the associated low deepened and moved onto central New Zealand Wednesday night. Very heavy rain in the region eventually eased overnight Wednesday 5 as the low moved southeast, with a westerly flow spreading onto the North Island clearing the main front and sub-tropical airmass off to the east. A drier west to southwest flow then persisted over the upper North Island during Thursday 6 and Friday 7.

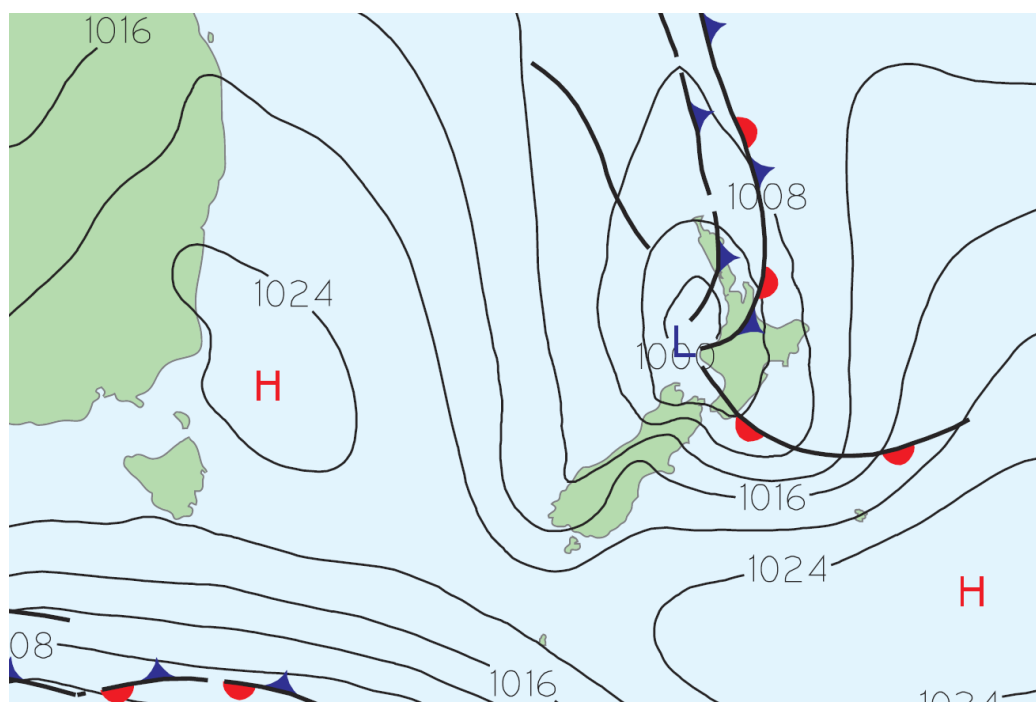


Figure 1 – Met Service Synoptic Map 5 April 2017 1800 NZST



### **3 Cyclone Cook**

Cyclone Cook was named at midnight on Saturday 8 April by RSMC Nadi, as the system crossed northern Vanuatu. During the next two days, the Cook strengthened to a Severe Category 3 cyclone and crossed New Caledonia during the evening of Monday 10. After this, the cyclone curved to the southeast and tracked towards waters north of New Zealand during Tuesday 11 and Wednesday 12, refer Figure 2. As Cook exited the tropics, the cyclone encountered vertical wind shear and transformed into an extra-tropical system, being re-classified at midday on Wednesday by MetService.

At the same time as Cook was exiting the Tropics, a complex low pressure system and associated fronts moved across the Tasman Sea, spreading heavy rain into the west and north of the country late Tuesday and during Wednesday (reaching Bay of Plenty Wednesday afternoon). The Tasman low and its main frontal band extending to the north, both stalled just west of the country during Wednesday, dragging humid north easterlies and periods of rain onto the North Island that persisted into Thursday 13 as Cook approached from the north.

During Thursday, Cook tracked towards central Bay of Plenty, eventually passing west of White Island to make landfall between Te Puke and Whakatane. Cook continued southwards across the North Island overnight Thursday, with strong winds and heavy rain easing quickly following its passage. During Friday 14, a showery northwest flow spread onto the North Island as Cook continued to track southwards just offshore from the east of the South Island.

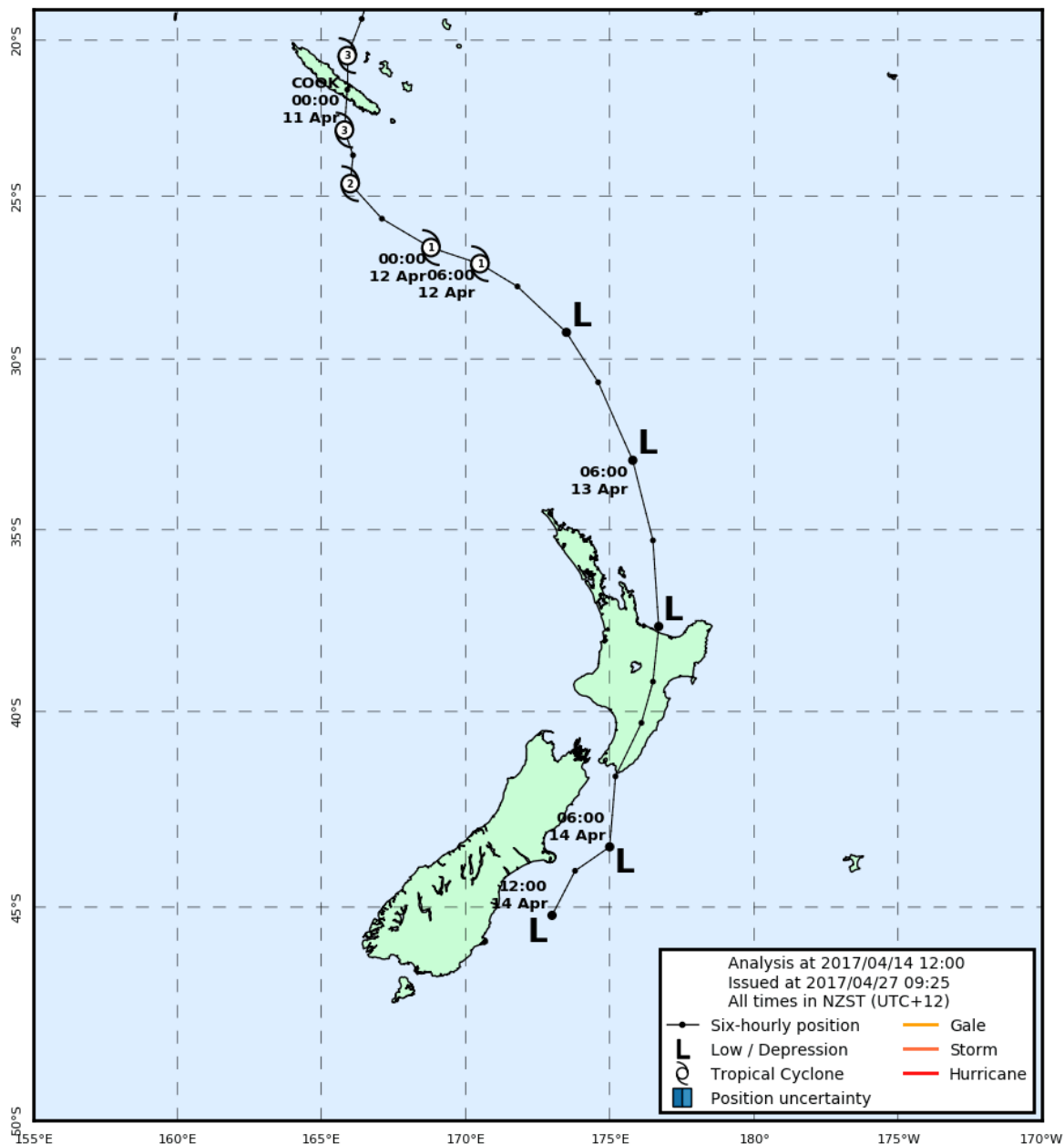


Figure 1 - Cyclone Cook's track over the North Island and east of the South Island.

## 4 Recorded and analysed data

The recorded data used for presentation and analysis within this report was the best data available at the time of production and may change into the future as it undergoes validation checks and passes through quality control processes.

### 4.1 Ex-Cyclone Debbie 3-7 April 2017

#### 4.1.1 Rainfall

Wide spread rainfall was experienced throughout the Bay of Plenty generally starting late on the 3 April and finishing early on the 6 April. Rainfall data was collected from

the 42 Bay of Plenty Regional Council sites and supplemented by 3 rainfall sites sourced from NIWA and Trustpower.

Maximum recorded 48 hour rainfalls recorded by Bay of Plenty Regional Council rain gauges are provided in Figure 3.

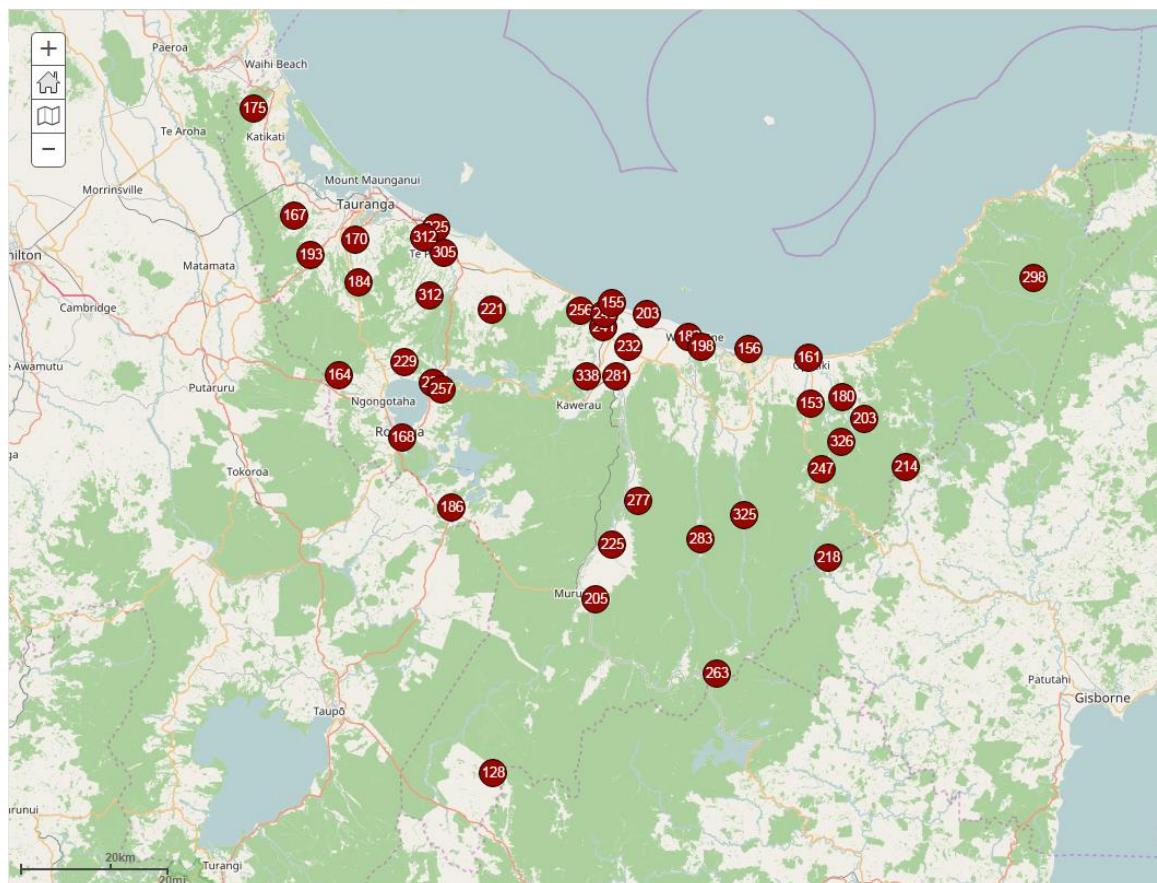


Figure 3 - Maximum 48 hour rainfall totals in the period 3-7 April 2017

Plots of the rainfall for the Whakatāne, Rangitāiki and Kaituna catchments indicate multiple distinct bands of rain occurring, with the last band starting in the afternoon of 5 April having some particularly high intensity rainfall.

Selected plots of rainfall are contained within Appendix #1.

#### 4.1.2 River Levels

During the event significant river levels and flows occurred due to the saturated antecedent catchment conditions and high rainfall experienced. Primarily the most significant high flows were evident in the Whakatāne and Rangitāiki catchments with a number of sites experiencing highest ever levels and flows.

Location	Catchment	Apr-2017			Prior Highest Peak	
		River level (m)	ARI	Date	River level (m)	Date
Waioeka at Cableway	Waioeka	8.371	20	5-Apr-17	10.668	11-Mar-64
Otara at Browns Bridge	Otara	3.811	2	6-Apr-17	5.112	4-Oct-2017
Whakatāne at Huitieke	Whakatāne	4.258		5-Apr-17	3.379	29-Jan-11
Tauranga (Waimana) River at Gorge	Whakatāne	7.85		6-Apr-17	7.163	11-Mar-64
Whakatāne at Rūātoki	Whakatāne	5.236		6-Apr-17	4.595	29-Jan-11
Whakatāne at Valley Road	Whakatāne	8.354	> 100#	6-Apr-17	7.715	18-Jul-04
Whakatāne at Town Wharf	Whakatāne	3.773		6-Apr-17	4.046	17-Jul-04
Rangitāiki at Aniwhenua	Rangitaiki	<i>TrustPower</i>				
Waihua at Gorge	Rangitaiki	<i>TrustPower</i>				
Rangitāiki at Murupara	Rangitaiki	<i>TrustPower</i>				
Rangitāiki at Te Teko	Rangitaiki	6.598		6-Apr-17	6.397	18-Jul-04
Tarawera at Awakaponga	Tarawera	2.829	40	6-Apr-17	3.25	Jun 62
Kaituna at Te Matai	Kaituna	4.189	7	5-Apr-17	4.721	1-May-99

#### 4.1.3 River Flows

Location	Catchment	Apr-2017			Prior Highest Peak		Records start
		River flow (m <sup>3</sup> /s)	ARI	Date	River flow (m <sup>3</sup> /s)	Date	Date
Waioeka at Cableway	Waioeka	1288	20	5-Apr-17	1520	5-Jul-98	1959
Otara at Browns Bridge	Otara	281	2	6-Apr-17	727	4-Oct-03	1980
Whakatāne at Valley Road	Whakatāne	3874 <sup>#</sup>	> 100#	6-Apr-17	2898	18-Jul-04	1957
Whirinaki at Galatea	Rangitāiki	470 <sup>#</sup>		6 Apr 17	387	18-Jul-04	1953
Rangitāiki at Aniwhenua	Rangitaiki	<i>TrustPower</i>					
Waihua at Gorge	Rangitaiki	<i>TrustPower</i>					
Rangitāiki @ Matahina	Rangitaiki	930 <sup>#</sup>	>100#	6 Apr 17			
Rangitāiki at Te Teko	Rangitaiki	747 <sup>#</sup>		6-Apr-17	770	18-Jul-04	1949
Tarawera at Awakaponga	Tarawera	85	40	6-Apr-17	92	2-Jun-62	1949
Kaituna at Te Matai	Kaituna	164	7	5-Apr-17	377	1-Jun-	1956

Location	Catchment	Apr-2017			Prior Highest Peak		Records start
		River flow (m <sup>3</sup> /s)	ARI	Date	River flow (m <sup>3</sup> /s)	Date	Date
						1962	

TrustPower – awaiting suitable contract to be able to utilise their data.

# - Provisional numbers subject to further analysis.

## 5 Cyclone Cook 13 April 2017

Cyclone Cook was accompanied with large swells and damaging severe gales. The rainfall accompanying this cyclone was not large and while rivers responded briefly they did not reach any warning levels.

### 5.1 Wind Speed

Maximum wind speeds recorded by Bay of Plenty Regional Council.

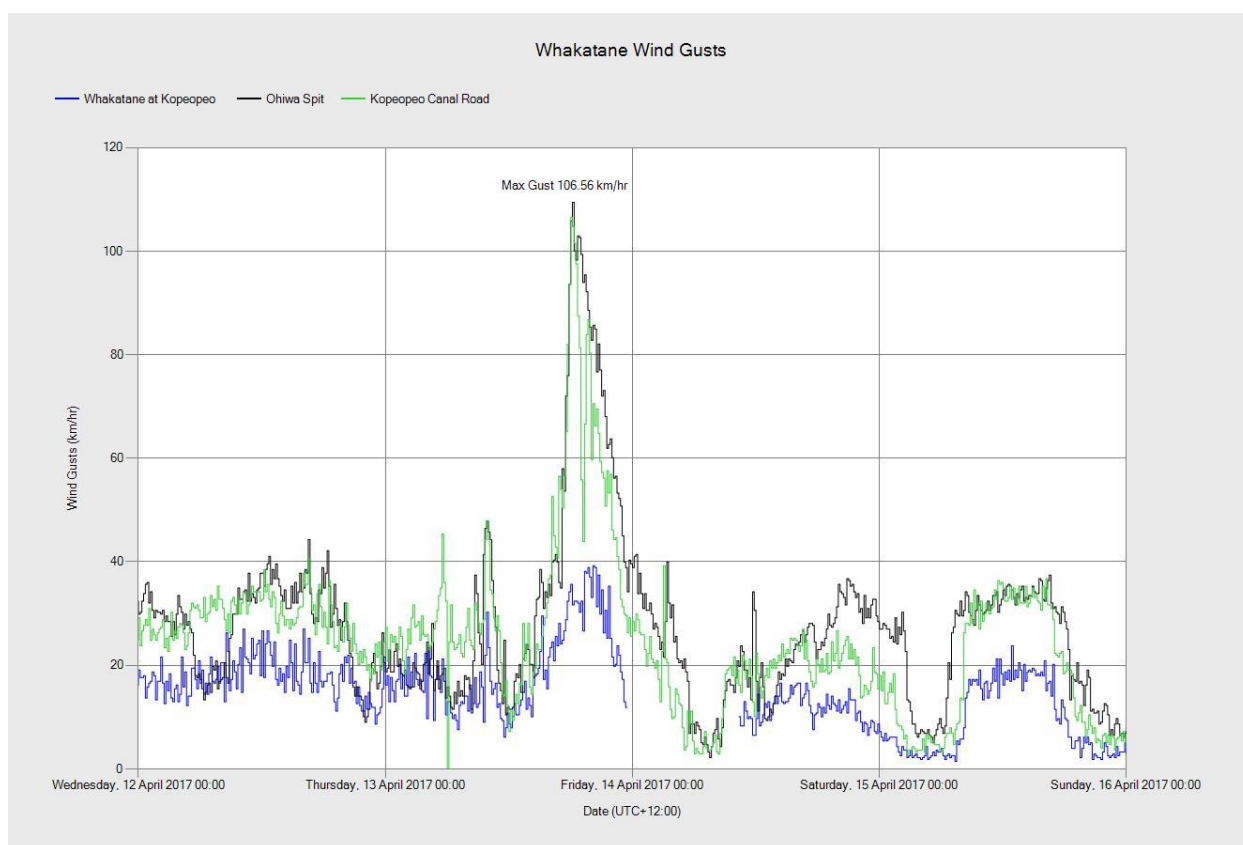


Figure 4 – Wind gusts for selected sites in the Whakatane area.

### 5.2 Wave Heights

Council has a wave buoy located 13 km off shore from Pukehina in 62m of water, in a central position within the curve of the Bay of Plenty.

Significant increase in wave heights were experienced by the wave buoy as cyclone Cook passed across the region. An hourly peak wave height of 12.43m was recorded on the 13 April at 18:00. This is the highest recorded wave height at the wave buoy with the previous highest being 10.2m recorded in Cyclone Ivy on 29 February 2004.

Recorded data from the wave buoy was reviewed by the Ocean Data Systems Ltd. who are the supplier of the buoy. Associated recorded data indicated that everything on the buoy was operational and that there are no reason for not believing the recorded wave heights.

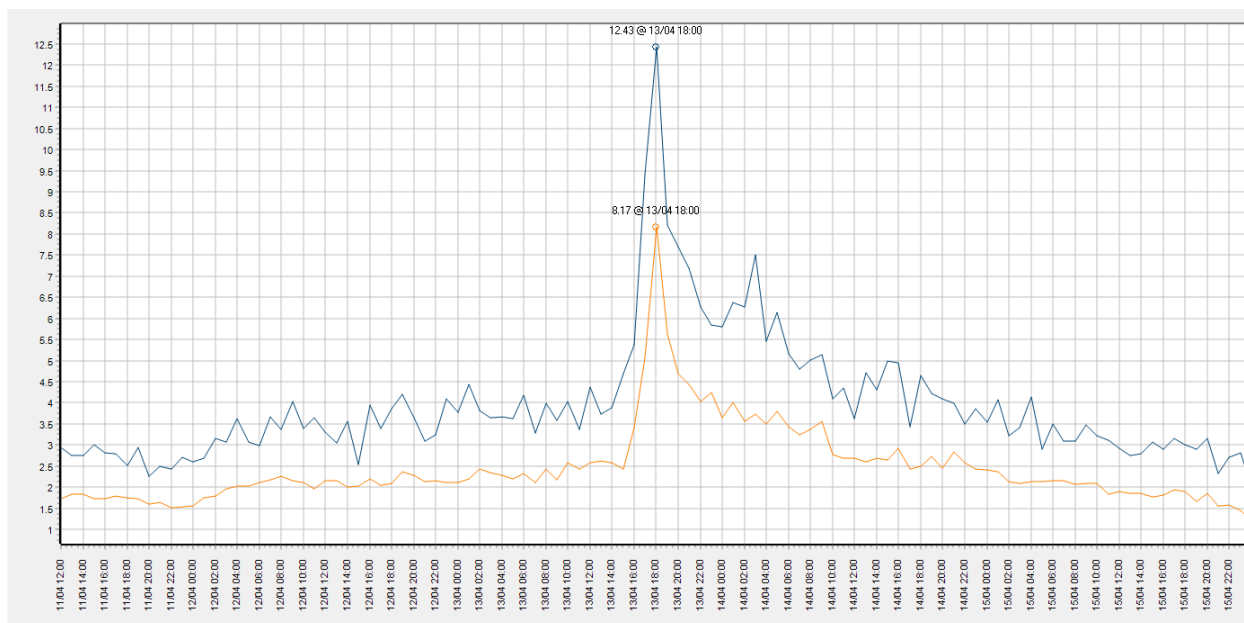


Figure 5 - Maximum (blue) and significant (orange) wave heights from wave buoy

### 5.3 Coastal Effects

While the cyclone was sized by the Met Service as being similar to Cyclone Gisele, that caused considerable damage in 1968, this cyclone travelled over New Zealand a lot faster and did not generate damaging waves nor very large storm surges. Consequently damage sustained along the coastline was relatively minor.

Mark Townsend  
Engineering Manager

for General Manager, Integrated Catchments

15 May 2017

# **APPENDIX 1**

## **Rainfall Plots for Cyclone Debbie Apr 17**

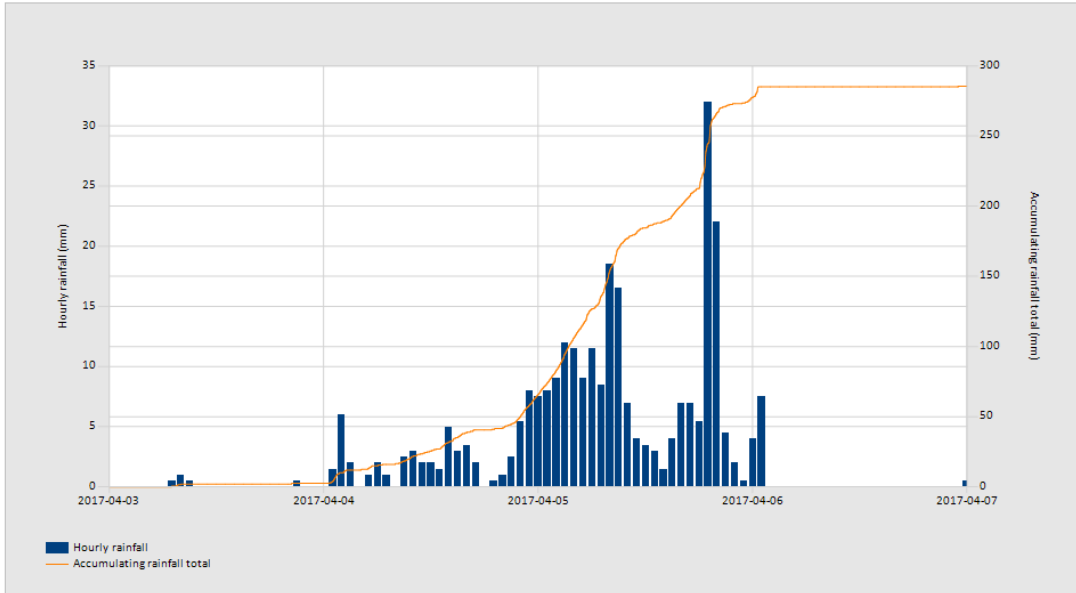




### Whakatane at Huitieke Upper

Apr 27, 2017 | 1 of 1

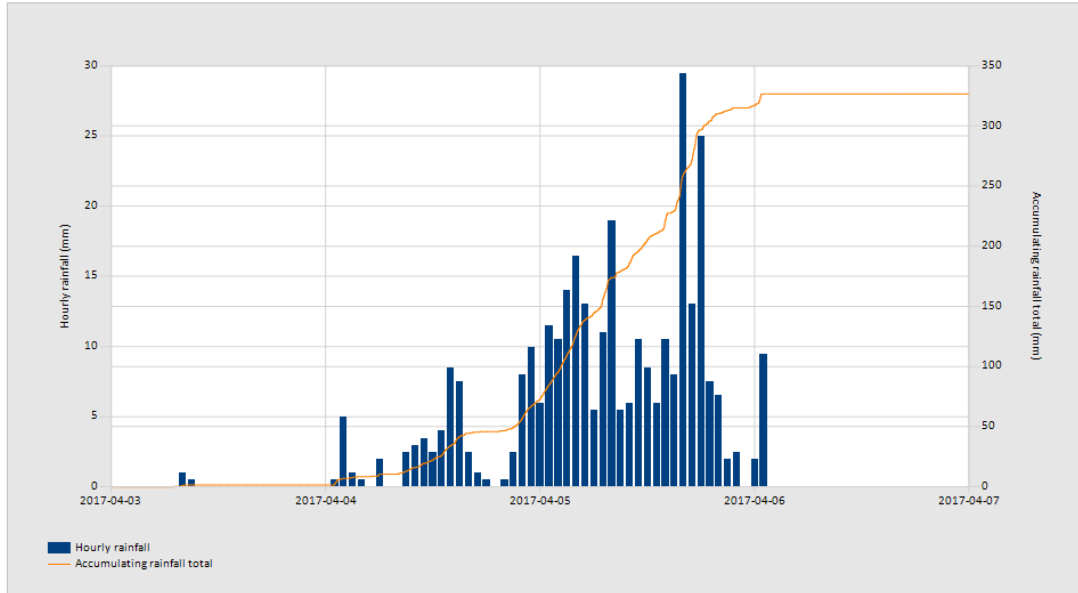
Period Selected: 2017-04-03 00:00:00 - 2017-04-07 00:00:00



**Tauranga at Ogilvie Bridge**

Apr 27, 2017 | 1 of 1

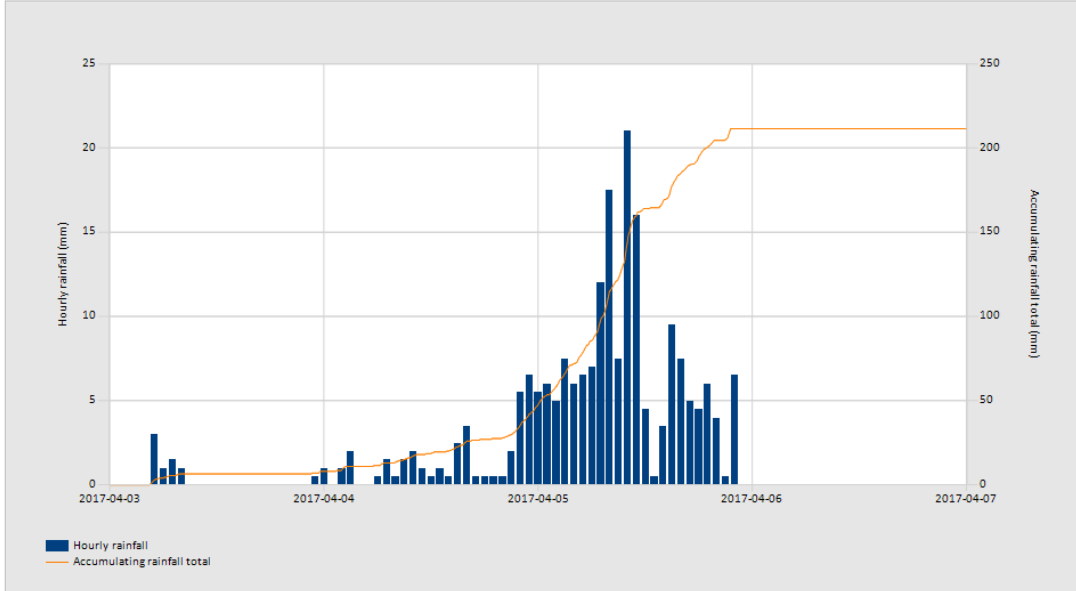
Period Selected: 2017-04-03 00:00:00 - 2017-04-07 00:00:00



Whirinaki at Galatea (provided by NIWA)

Apr 28, 2017 | 1 of 1

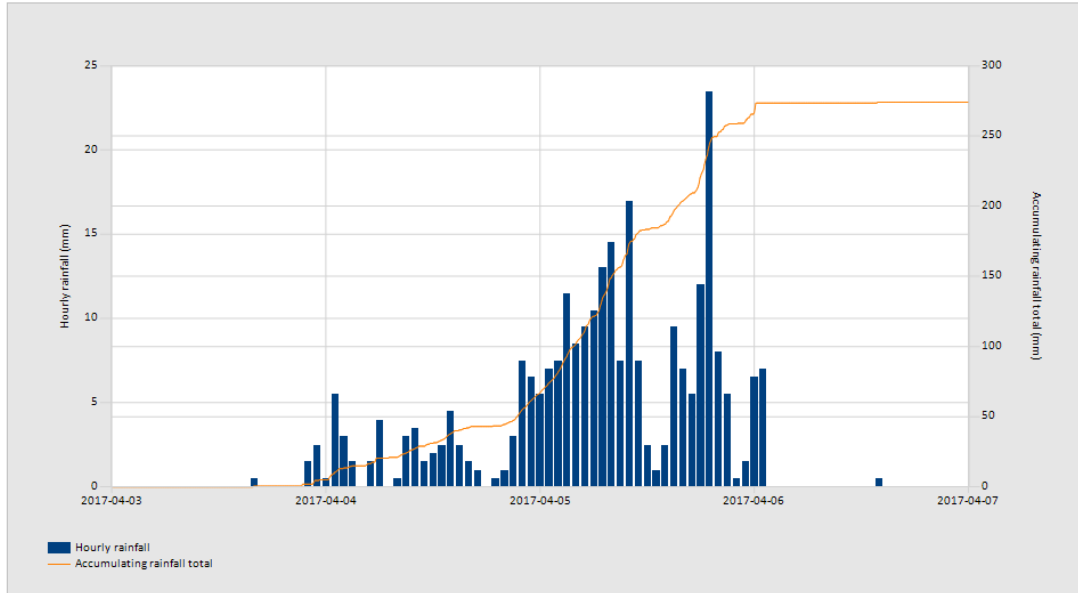
Period Selected: 2017-04-03 00:00:00 - 2017-04-07 00:00:00



**Rangitaiki at Aniwhenua (provided by Trustpower)**

May 4, 2017 | 1 of 1

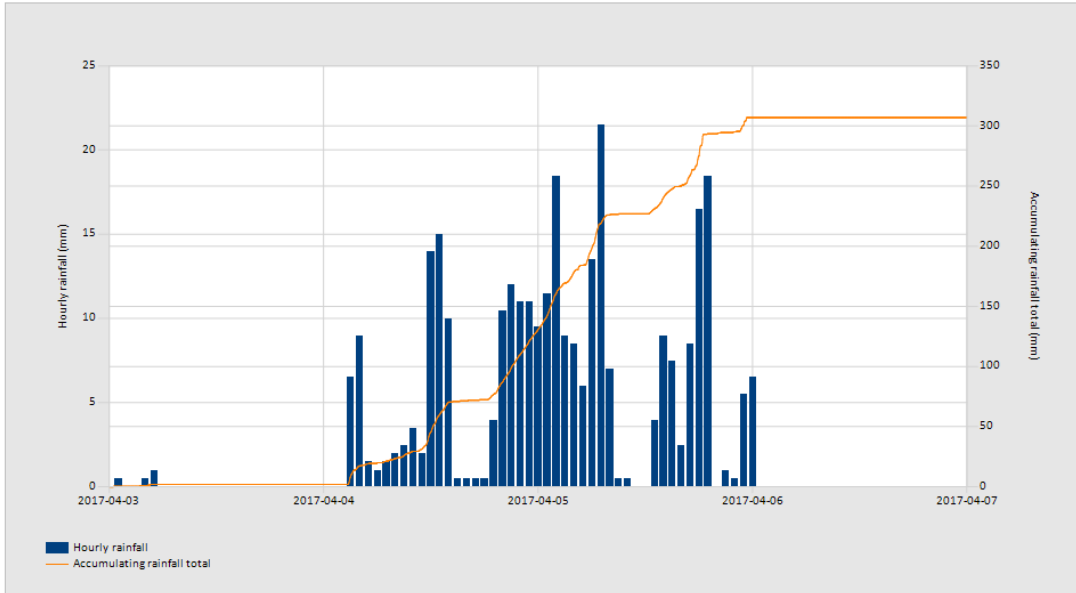
Period Selected: 2017-04-03 00:00:00 - 2017-04-07 00:00:00



### Kaituna at Te Matai

Apr 28, 2017 | 1 of 1

Period Selected: 2017-04-03 00:00:00 - 2017-04-07 00:00:00







**Report To:** Extraordinary Council

**Meeting Date:** 18 May 2017

**Report From:** Mat Taylor, General Manager, Corporate Performance

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## **Rates Postponement and Remission in Relation to April 2017 Eastern Bay of Plenty Flood Event**

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### **Executive Summary**

Bay of Plenty Regional Council (Council) aligns its policy on the remission and postponement of rates with the existing policies and objectives of each of the regions city and district councils.

However, where city and district councils provide temporary remission for some properties to accommodate a one-off or a short-term specific purpose, a remission of Regional Council rates does not apply automatically.

On 4 May 2017 Whakatāne District Council (WDC) considered its *Rates Remission and Postponement for a Rating Unit Affected by a Natural Hazard Policy* in light of the damage sustained by the Eastern Bay of Plenty flood event in April 2017.

WDC approved an “inconsistent decision” to policy, as provided for under section 80 of the Local Government Act 2002 (the Act), to provide remissions and postponements beyond the current eligibility criteria to include all uninhabitable properties. The existing policy is limited to owner-occupied residential properties.

WDC have a total of 269 properties registered on their database that have flooded to the extent that the property is deemed to be uninhabitable until remedial repairs have been undertaken.

Currently it is estimated that 15 of these properties have been deemed condemned as a result of the damage caused by the flood event. Three of the 15 condemned properties do not qualify for rates remission under WDC’s existing policy.

The purpose of this report is to recommend that Council also consider making an “inconsistent decision” to align with WDC’s decision to remit rates on all uninhabitable properties.

The financial impact of approving the recommendation is an additional \$22,144 of unbudgeted remissions.

## **Recommendations**

**That the Extraordinary Council:**

- 1 Receives the report, Rates Postponement and Remission in Relation to April 2017 Eastern Bay of Plenty Flood Event;**
- 2 Notes the action taken by Whakatāne District Council to approve the application of an amended rates postponement and remissions policy to all properties deemed uninhabitable as a result of the April 2017 Eastern Bay of Plenty flood event;**
- 3 Approves that the Whakatāne District Council ‘Rates Remission and Postponement for a Rating Unit Affected by a Natural Hazard Policy’ be applied to all Bay of Plenty Regional Council rates on properties that are uninhabitable as a result of the April 2017 Eastern Bay of Plenty flood event;**
- 4 Notes that the proposed recommendation of applying Whakatāne District Council’s additional rates remissions and postponements exceeds the eligibility criteria of the Policy by making these available to non-resident ratepayers and commercial ratepayers;**
- 5 Notes that the recommendations of this report propose an inconsistent decision as provided for under section 80 of the Local Government Act 2002, and that this report and appendix documents the related considerations.**

## **1 Introduction and Information**

The purpose of this report is to recommend that the Regional Council consider applying rates postponements and remissions for Regional Council rates to align with WDC’s rates. A recent WDC decision applied an amendment to their *Rates Remission and Postponement for a Rating Unit Affected by a Natural Hazard Policy* (WDC Remission Policy) in light of the damage sustained in April 2017 flood event. The WDC Remission Policy provides clear parameters for application of rates relief to those facing financial hardship while recognising the cost of providing rates relief to other ratepayers.

### Rangitāiki-Tarawera River Scheme Targeted Rate

The Rangitāiki-Tarawera river scheme expenditure is financed through a targeted rate, and from General Funds. The ratio of targeted to general funds is: 80% targeted and 20% general.

Any rates postponement and remission that meets the criteria applies to the total rates payable.

### Remissions Policy

The WDC Remission Policy also encourages rebuilding or re-inhabitation as soon as possible through specified limited timeframes. The previous WDC Remission Policy was limited to providing relief for residential properties that are owner occupied. Properties used for business, farming or as rental properties did not qualify for a rate remission or postponement.

On 4 May 2017 WDC held an Extraordinary Council meeting to make a decision inconsistent with its previous Policy and approved remissions and postponements for



previously excluded matters. Appendix 1 sets out WDC's Extraordinary Council meeting report.

Under the 2002 Local Government Act, Section 80, Council may make inconsistent decisions provided certain considerations are met. Those considerations are set out below and are addressed further in section 4 of this paper:

When making an inconsistent decision the Council must clearly identify:

- (a) the inconsistency;
- (b) the reasons for the inconsistency;
- (c) any intention of the local authority to amend the policy or plan to accommodate the decision.

The recommendations of this report seek to also apply the Council's Remission Policy beyond its own eligibility criteria. Council would then consider making an "inconsistent decision" as provided for under section 80 of the Local Government Act 2002 (the LGA) to also provide the additional remissions and postponements in alignment with WDC.

## 2 Legal Advice

WDC received legal advice advising of a minor risk associated with making a decision that is inconsistent with the existing Remissions Policy as follows:

*"The disadvantage of this option is that it carries some risk in that it is not clear that the Council can use section 80 of the LGA to "override" the fact that section 85 of the Local Government (Rating) Act 2002 empowers the Council to remit rates where the conditions and criteria of a policy are met.*

*On one possible reading, where conditions and criteria are not met, the Council is not empowered to remit. Of course, in the present circumstances, the likelihood of a party challenging a Council decision to remit rates may be considered unlikely".*

## 3 Significant Plan or Policy Inconsistency

### 3.1 Policy Inconsistency

In conjunction with the Long Term Plan 2015-2025 Council adopted the "Policy on Remission and Postponement of Rates" which is reviewed and open to public comment on a three-yearly basis. The Regional Council Policy that is currently active states the following;

*"The seven city and district councils in the Bay of Plenty collect rates on behalf of the Regional Council. Each of these city and district councils operates predictable and certain remission and postponement policies. There are insufficient differences between the city and district council policies to warrant separate treatment for the usually lesser level of Regional Council rates.*

*The Council aligns its policy on the remission and postponement of rates with the policies and objectives of each of the seven city and district councils.*

*Where city and district councils may provide temporary remission for some properties to accommodate a one-off or a short-term specific purpose, such as a transitional change in its own rating system from land-value-based rating to capital-value-based rating, a remission of Regional Council rates **will not apply.***”

It is recommended that Council also apply the WDC Policy beyond the Regional Council’s eligibility criteria, as provided for under section 80 of the Act, by adopting WDC’s temporary remissions. This would then provide remissions to all affected properties rather than just residential owner-occupied.

### 3.2 Reason for Inconsistency

The WDC Remission Policy is limited to providing relief for residential properties that are owner occupied. Properties used for business, farming or as rental properties do not qualify.

Given the widespread damage caused by the flooding events in April 2017, WDC has taken a broader approach to the application of the WDC Remission Policy for rating units affected by a natural hazard so that all identified properties receive rates postponement immediately which will provide some relief for the ratepayers of these properties.

On 4 May 2017, the WDC made an “inconsistent decision” to policy so that it could take immediate effect, rather than amend the WDC Remission Policy before application.

### 3.3 Intention of the local authority to amend the policy or plan to accommodate the decision

It is WDC’s intention to review their policies during the development of the Long Term Plan 2018-2028. This inconsistent decision will be further considered / addressed during that review.

The Regional Council’s three-yearly cycle for reviewing the “Policy on Remission and Postponement on Rates” will align with the development of the Long Term Plan 2018-2028 and be subject to public consultation.

### 3.4 Significance Assessment

The impact of approving the recommendations of this report is not considered significant in accordance with the criteria thresholds set out in Council’s Significance and Engagement Policy.

The decision was assessed against the thresholds as follows;

- does not exceed unbudgeted financial thresholds of 10% of Council’s total expenditure;
- does not have a potentially adverse effect on Council’s ability to fulfil its statutory functions or roles; and
- does not have a major potential impact on the environmental, social, economic or cultural interest of most of the Bay of Plenty community.

In accordance with Council’s Significance and Engagement Policy consultation is not required to inform this decision. The review of the Council’s Remission Policies

scheduled for the coming year may be significant. An assessment of Significance will be undertaken at the time of review to inform any consultation and decision making requirements accordingly.

## 4 Impact of the Recommendation

Given the widespread damage caused by the flooding events in April 2017 WDC staff have investigated the options of providing a broader approach to the application of the rates remission policy for rating units affected by a natural hazard.

The options and financial implications of providing rates remission for the fourth quarter of the 2016/17 year in accordance with the current policy and a proposed broader application are shown in the table below.

	<b>Number of Properties</b>	<b>BOPRC Rates</b>
<b>Existing Policy</b>		
Rates remission (for resident ratepayers, 100% rates remission)	185	<b>\$15,088</b>
<b>Additional Remissions</b>		
Rates remission for non-resident (residential properties) ratepayers	69	\$5,402
Rates remission for large rural properties (identified as being rural properties larger than 2.5 hectares)	11	\$14,450
Rates remission for commercial properties	4	\$2,292
<b>Total additional remissions</b>	<b>84</b>	<b>\$22,144</b>
<b>Total quarter four rates remission to all properties</b>	<b>269</b>	<b>\$37,232</b>

\*Excluding GST

## 5 Council's Accountability Framework

### 5.1 Community Outcomes

This proposal directly contributes to the Regional Collaboration & Leadership Community Outcome in the Council's Long Term Plan 2015-2025.

### 5.2 Long Term Plan Alignment

This work is planned under the Finance Activity in the Long Term Plan 2015-2025.

#### Current Budget Implications

This work is outside the current budget for the Finance Activity in the Annual Plan 2016/17

#### Future Budget Implications

Future work on the Policy review is provided for in Council's Long Term Plan 2015-2025.

Andy Dixon

**Management Accountant Team Leader**

**for General Manager, Corporate Performance**

**15 May 2017**

# **APPENDIX 1**

## **WDC Rates Postponement and Remission in Relation to April 2017 Flood Event**



## Rates Postponement and Remission in Relation to April 2017 Flood Event



Subject: **RATES POSTPONEMENT AND REMISSION IN RELATION TO APRIL 2017 FLOOD EVENT**  
To: **EXTRAORDINARY COUNCIL MEETING**  
Meeting Date: **THURSDAY, 4 MAY 2017**  
Written by: **RATES AND REVENUE TEAM LEADER**  
File Reference: **A1156436**

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### 1 REASON FOR THE REPORT

The purpose of this report is to consider Whakatāne District Council's Rates Remission and Postponement for a Rating Unit Affected by a Natural Hazard Policy (the Remission Policy) in light of the flood damage sustained in April's extreme storm events.

The recommendations of this report would seek to apply the Council's Remission Policy beyond its own eligibility criteria and Council may wish to consider making an "inconsistent decision" as provided for under section 80 of the Local Government Act 2002 (the LGA).

Under the Act Council may make decisions inconsistent with its own Policy provided certain considerations are met. Those considerations are set out below and are addressed in this paper:

When making an inconsistent decision the Council must clearly identify:

- (a) the inconsistency;
- (b) the reasons for the inconsistency;
- (c) any intention of the local authority to amend the policy or plan to accommodate the decision.

### 2 BACKGROUND

At the time of writing this report, through building inspections and notification from owners, Council have a total of 269 properties registered on their database that have flooded to the extent that the property is deemed to be uninhabitable until remedial repairs have been undertaken. 15 of these properties have been declared condemned as a result of the damage caused by the flood.

The Remission Policy is attached to this report as Appendix 1. The Remission Policy provides clear parameters for application of rates relief to those facing financial hardship while recognising the cost of providing rates relief to other ratepayers. It also encourages rebuilding or re-inhabitation as soon as possible through specified limited timeframes.

### 3 DISCUSSION

#### 3.1 Rates Postponement and Remission

It is recommended that all of the identified properties receive rates postponement immediately which will provide some relief for the ratepayers of these properties. The total amount of rates remission will be calculated once a property is able to be occupied again. This is the approach that

was taken in April/May 2014 after the smaller flooding event that occurred in Whakatane and Ohope.

The existing policy provides that rates remitted may exclude the following service charges: water, sewerage disposal and mobile rubbish bins. The properties affected by the 2014 event were located in Whakatāne and Ōhope and all rates with the exception of water rates were remitted. This was a consistent application as the property owners were able to utilise the water service and one which was easily administered as all properties involved were on water meters and received water rates separately from their land rates. The majority of properties affected by the floods of 2017 are not rated separately for water.

The existing policy is limited to providing relief for residential properties that are owner occupied. Properties used for business or farming or as rental properties do not qualify.

Given the widespread devastation caused by the flooding events in April 2017 Whakatane District Council staff have investigated the options of providing a broader approach to the application of the rates remission policy for rating units affected by a natural hazard. The options and financial implications of providing rates remission for the fourth quarter of the 2016-17 year in accordance with the current policy as opposed to a broader application are shown in the table below.

	<b>Number of Properties</b>	<b>WDC Rates \$ Excluding GST</b>
Rates remission in accordance with the existing Policy (for resident ratepayers, 100% rates remission including all service charges)	185	107,263
Rates remission for non-resident (residential properties) ratepayers	69	40,400
Rates remission for large rural properties (identified as being rural properties larger than 2.5 hectares)	11	14,964
Rates remission for commercial properties	4	4,978
<b>Full rates remission to all properties</b>	<b>269</b>	<b>167,605</b>

Staff note that of the 15 condemned buildings, three are non-resident properties and therefore do not currently qualify for rates remission.

The option for providing full rates remission to all properties considers providing rates remission to large rural properties where the residence has been damaged to an extent where it can not be occupied until remedial work has been undertaken. Neighbouring rural properties may not have received damage to their dwelling, or council may not be notified of any damage, yet the pasture may be in the same unusable state as those properties that have been identified as uninhabitable. In this instance, Council may wish to consider apportioning the remission and address the matter of the unusable land through other mechanisms. An apportionment would require Councils VSP to provide a valuation on the residence only. Council would also need to consider the treatment of fixed charges in this situation

Rates invoices for the fourth instalment have been held back for the identified 269 properties. This is to enable Council to discuss the preferred method of providing rates remission. The intention is to



dispatch the invoices marking them as postponed, with a corresponding rates remission letter as soon as possible after the extraordinary meeting on 4 May 2017.

Bay of Plenty Regional Council rates can be postponed and remitted in accordance with our existing rates remission policy. Any decisions to provide rates postponement or remission beyond the provisions of the policy will require a resolution from their Council. An Extraordinary Regional Council meeting is scheduled for Thursday 18 May 2017.

Staff acknowledge that some property owners intend to site transportable homes/caravans on their land whilst the remedial property work is being carried out and request guidance as to whether Council would approve rates remissions to continue to be granted under these circumstances.

### **3.2 Policy Considerations**

The underlying principles of the Remission Policy are considered to be applicable to the current situation faced by many ratepayers and it would seem appropriate to provide remission in line with the discussion above.

However, as noted above, the conditions and criteria as currently drafted in the Remission Policy limit its application thereby excluding a number of properties from being eligible.

Should the Council wish to apply the Remission Policy beyond the current parameters, two options can be considered. These include 1: amending the Remission Policy before application or 2: making a decision that is inconsistent with the Remission Policy.

#### **Option 1 - amending the Remission Policy before application**

Option 1 is not preferred. This option requires a formal policy review process (including consultation) which takes some time to work through. That review process is already scheduled to take place over the coming year as part of the development of the 2018-28 LTP alongside the review of Council's other rating and financial policies.

#### **Option 2 – making an inconsistent decision (preferred approach)**

Option 2 has greater flexibility in that a decision can be made immediately. However, this means that the decision made by Council will be inconsistent with the existing Remission Policy. Specifically the inconsistency relates to the following clauses:

- Section 2.1 applies the policy only to "resident ratepayers".
- Section 2.3 (g) applies the policy only to residential property (thereby excluding rural and business properties).

As noted in the above section, the review cycle for the Remission Policy is approaching and the outcome of this policy application will be considered/addressed through that review.

### **3.3 Risk assessment**

Legal advice from Simpson Grierson advises a minor risk associated with option 2 (making a decision that is inconsistent with our Remission policy) as follows:

*"The disadvantage of this option is that it carries some risk in that it is not clear that the Council can use section 80 of the LGA to "override" the fact that section 85 of the Local Government (Rating) Act 2002 empowers the Council to remit rates where the conditions and criteria of a policy are met. On one possible reading, where conditions and criteria are not met, the Council is not empowered to remit. Of course, in the present circumstances, the likelihood of a party challenging a Council decision to remit rates may be considered unlikely"*

## 4 ASSESSMENT OF SIGNIFICANCE

The decisions or matters of this report are not considered significant in accordance with the criteria and thresholds set out in Council's Significance and Engagement Policy. In summary, the decision does not exceed unbudgeted financial thresholds, and does not have a substantial adverse impact on affected persons or the Council. As such, and in accordance with section 4.2 (a) and (d) of the Significance and Engagement Policy, consultation is not required to inform this decision.

The review of the Council's Remission Policies scheduled for the coming year may be significant. An assessment of Significance will be undertaken at the time of review to inform any consultation and decision making requirements accordingly.

## 5 CONCLUSION:

As a result of the floods on 6 April 2017, 269 properties in the Whakatāne District sustained damage rendering the dwellings uninhabitable. 15 of these properties were damaged to such an extent that they have been condemned. Three of the 15 condemned properties do not qualify for rates remission under the existing policy.

This report discusses the existing policy for rates remission and postponement for a rating unit affected by a natural hazard, and identifies inconsistencies in the provision of rates postponement and remission.

### RECOMMENDATIONS:

1. **THAT** the Rates Postponement and Remission in Relation to April 2017 Flood Event report be received; and
2. **THAT** the 'Rates Remission and Postponement for a Rating Unit Affected by a Natural Hazard Policy' be applied to all properties that are uninhabitable as a result of the April 2017 floods; and
3. **THAT** Council notes that the proposed application of rates postponements and remissions exceed the eligibility criteria of the Policy by making these available to non-resident ratepayers and commercial ratepayers; and
4. **THAT** Council notes that the proposed application of rates postponements and remissions exceed the eligibility criteria of the Policy by making these available to large rural properties and apportions the rates remission on large rural properties after receiving a valuation from Council's valuation service provider; and
5. **THAT** Council notes that recommendations of this report propose an inconsistent decision as provided for under section 80 of the Local Government Act 2002 and that this report documents the related considerations.

Attached to this report:

- Appendix 1 – Rates Remission and Postponement for a Rating Unit Affected by a Natural Hazard

### Report Authorisation

Report writer:	Christine Toms	Rates and Revenue Team Leader
First Approval	Helen Barnes	General Manager Finance
Final Approval:	Marty Grenfell	Chief Executive

