

**BEFORE A HEARING PANEL: WHAKATANE DISTRICT COUNCIL AND BAY
OF PLENTY REGIONAL COUNCIL**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of submissions and further submissions
on Plan Change 1 (Awatarariki
Fanhead, Matatā) to the Operative
Whakatane District Plan and Plan
Change 17 (Natural Hazards) to the
Bay of Plenty Regional Natural
Resources Plan

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

PLANNING

15 January 2020

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1. INTRODUCTION

1.1 My full name is Craig Barry Batchelar.

1.2 My evidence is given on behalf of the Whakatane District Council (the District Council) in relation to:

(a) Proposed Plan Change 1 (Awatarariki Fanhead, Matatā) to the Operative Whakatane 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**).

1.3 My evidence relates to the planning issues raised in submissions on the Proposed Plan Changes.

2. QUALIFICATIONS AND EXPERTISE

2.1 I hold the position of Planner at Boffa Miskell Limited. I am a Partner in the firm. I am currently the national Technical Leader for the company's planning discipline.

2.2 My planning qualification is Bachelor of Regional Planning (1st Class Hons) obtained from Massey University in 1984. I have been a full member of the New Zealand Planning Institute since 1988.

2.3 I have worked in the planning profession for 35 years in central and local government and the private sector.

2.4 From 1989 to 2000, I was employed by Tauranga City Council as a planner in a variety of roles including management of the Council's Environmental Services Group from 1995 to 2000. This included development of the Council's policy and practice for natural hazard risk management.

2.5 I managed the Council's "Dunewatch" initiative. This was a unified planning strategy which involved coastal hazard susceptibility mapping and risk assessments, a City Plan Change (coastal hazard zones), and

the implementation of a coast care programme to restore dunes and increase natural resilience to erosion events. The City Plan Change element was successfully defended in the Environment Court where I provided a statement of planning evidence.

- 2.6 I was also engaged in Civil Defence while employed by Tauranga City Council. This included a term as Local Controller for the joint Western Bay of Plenty Tauranga Civil defence organisation.
- 2.7 From 2000 to 2004 I was self-employed as a planning consultant. My projects included an engagement as Technical Director for the western Bay of Plenty subregional “SmartGrowth” initiative during 2000-2003. Part of this assignment included natural hazard susceptibility mapping as an input to the development of a subregional settlement pattern (Spatial Plan).
- 2.8 Since joining Boffa Miskell Ltd in 2004, I have assisted both local government and private sector clients with a wide range of regional and district policy and plan development, structure planning, private plan changes, and resource consents.
- 2.9 I have provided planning consultancy services to the District Council in several capacities over the last 10 years including the preparation of applications for resource consent for several Council projects; processing applications for resource consent; and providing a range of policy advice including being engaged as planning expert to report on District Plan structure plan and rules provisions for a major marina/residential development site at Piripai. Boffa Miskell Ltd has also provided other planning landscape architecture, urban design, ecology and cultural consultancy services to WDC during this time.

3. INVOLVEMENT IN THE PROCEEDINGS

- 3.1 I have been advising the Council on planning issues at Matatā since 2005, shortly after the debris flow events in May 2005.
- 3.2 Boffa Miskell was engaged to prepare applications for regional and district resource consents for several post event “regeneration” projects including the Ohinekoao Stream works, Waimea Stream

works, Matatā Lagoon restoration, Awatarariki Stream flood mitigation works, and Waitepuru Stream debris flow diversion works.

- 3.3 The Council decisions on the lagoon restoration, Awatarariki Stream flood mitigation works, and Waitepuru Stream debris flow diversion works were appealed to the Environment Court where I provided statements of planning evidence. The Council resource consent decisions were substantially upheld.
- 3.4 I worked closely with the Council/consultant project team on developing proposals for engineering-based debris flow risk mitigation for properties on the Awatarariki Fanhead to the point where this 'structural' approach was found to be unviable, and the Council's preference changed to a planning-based approach.
- 3.5 I have assisted the Council with the development of the planning-based approach relating to the debris flow natural hazard risk mitigation for the Awatarariki stream. This has included:
 - (a) Engaging with the experts during the preparation of the landslide hazard risk assessment for the Whakatāne/Ōhope/Matatā landslide and Awatarariki debris flow and providing planning-related feedback on draft reports (2013);
 - (b) Managing a joint Bay of Plenty Regional Council (**BOPRC**)/District Council landslide risk management project team (2013-2014);
 - (c) Preparing an issues and options paper to promote awareness and understanding of landslide and debris flow hazards affecting land at Whakatane Township, Ohope Beach and Matatā, and involvement with associated community engagement (2013);
 - (d) Preparing an issues and options paper on strategies for the Awatarariki Fanhead, and involvement with associated community engagement (2013/2014);

- (e) Preparing and presenting a Section 42A report to Council for the hearing of submissions on the Proposed Whakatane District Plan Natural Hazards Section (2014) which included reference to the management of debris flows and landslides at Matata;
- (f) Assisting Whakatane District Council, Opotiki District Council and Kawerau District Council with joint submissions on the Regional Policy Statement (**RPS**) Natural Hazard Plan Change. I participated in the Plan Change process including attending a community risk workshop. I took part in pre-hearing discussions including presenting planning evidence at the hearing of submissions. and contributed to the testing of the RPS risk assessment methodology led by AECOM for BOPRC (2014-2016).
- (g) Participating as a planning expert in a Consensus Development Group, identifying and evaluating a range of risk management options for the Awatarariki Fanhead (Awatarariki Debris Flow Risk Management Programme) (2015);
- (h) Assisting the Council with the 'strategic case' elements of the business case for the voluntary managed retreat programme (2016).
- (i) Leading the preparation of the district and regional plan changes and the associated Section 32 Report that are the subject of this hearing (2017/2018).

3.6 The Proposed Plan Changes and the associated Section 32 report dated 8 June 2018 (**Section 32 Report**) were developed with input from a multi-disciplinary, multi-agency team comprising several consultants, legal advisers, officers from the Council and BOPRC, and officers from the Ministry for the Environment.

3.7 I have visited the Awatarariki Stream catchment and fanhead area on several occasions and took a helicopter flight over the area in August 2019.

4. CODE OF CONDUCT

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

5. SCOPE OF EVIDENCE

- 5.1 In this statement of evidence, I:
- (a) Outline background to Plan Change 1 and Plan Change 17, with reference to the Section 32 Report;
 - (b) Describe the scope of the proposed District Plan provisions (Plan Change 1) and Regional Plan provisions (Plan Change 17);
 - (c) Provide an update on the non-regulatory options for addressing the hazard risk at Matatā, namely:
 - i. Managed Retreat; and
 - ii. Warning and Evacuation Systems;
 - (d) Discuss the regulatory options under the District and Regional Plans and the reasons that I support the adopted approach;
 - (e) Assess matters raised in submissions on Plan Change 1 and Plan Change 17.
- 5.2 The commissioners have directed that expert witnesses need not repeat material in their evidence that is contained in technical reports that they authored and that it is sufficient for the evidence to cross-refer to that material. I have adopted that approach in my evidence.

6. BACKGROUND

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

6.2 The term “Natural hazard” is defined in section 2 RMA which states:

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

6.3 Several of the expert statements provide descriptions of debris flow as a natural hazard including, for example, Professor Tim Davies¹:

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

6.4 The Bay of Plenty Regional Policy Statement identifies a “*debris flow/flood*” as a natural hazard resulting from “*Extreme (prolonged or intense) rainfall*”².

7. PLAN CHANGE 1

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

¹ Para 7.3

² 2.8 Natural hazards; Policy NH 3A: Identifying areas susceptible to natural hazards; Method 73: Provide information and guidance on natural hazards

8. PLAN CHANGE 17

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

9. NON-REGULATORY OPTIONS

- 9.1 Several non-regulatory options (risk acceptance, engineering or structural interventions, catchment management, warning and evacuation systems, and managed voluntary retreat) are identified in Section 8 of the Section 32 report as having potential to achieve the objectives of the proposal but were excluded because they are not “reasonably practicable” as required under Section 32(1)(b)(i) of the RMA.
- 9.2 The following sections provide an update on two of those options: warning and evacuation systems, and managed voluntary retreat.

Early Warning and Evacuation Systems

- 9.3 Section 8.4 of the Section 32 report evaluates the practicability of warning and evacuation systems and concludes that they cannot be relied upon as a sound basis for allowing new development in areas of significant hazard, or for allowing existing development to remain where the risk is identified as being high.
- 9.4 Since the Proposed Plan Changes were publicly notified, further assessment has been undertaken of early warning and evacuation systems. This is a developing area of natural hazard management, so it is appropriate to ensure that the most current best practice approaches are taken into account.
- 9.5 The Statement of Evidence of Dr Chris Massey assesses current best practice approaches to the design and effectiveness of early warning systems (EWS).
- 9.6 Dr Massey's evidence concludes that a multi-staged EWS is unlikely to allow all people present in the hazard zone at the time that a debris flow event is initiated to evacuate to safe areas, irrespective of where they are on the fan. He also concludes that a debris flow EWS is not

aligned with taking a 'precautionary approach'. The relevance of the precautionary approach is discussed further in my evidence below (see paragraph 14.6-14.8).

- 9.7 This evidence complements the earlier work of Professor Tim Davies in this regard as reported in his Statement of Evidence (see for example paragraph 6.11) and confirms the conclusion in the Section 32 Report that a warning and evacuation system is not a reasonably practicable option in this case.

Managed Voluntary Retreat

- 9.8 Managed voluntary retreat is assessed as a non-regulatory option in Section 8 of the Section 32 report. At the time the Proposed Plan Changes were publicly notified, this option had not been proven as "reasonably practicable" as it remained subject to approval by local and central government.
- 9.9 This situation has now changed with the Minister of Local Government confirming Central Government support to a three-party agreement to a managed retreat programme for properties exposed to "intolerable risk to life" on the Awatarariki Fanhead. There is now a jointly funded managed retreat programme in place between the Council, BOPRC and central government. The evidence of Jeff Farrell will provide an up to date account of the programme's content and implementation.
- 9.10 In this context, managed voluntary retreat has now been proven to be a reasonably practicable option for risk management.
- 9.11 Whether or not the voluntary managed retreat proposal is implemented, debris flow risk associated with existing and future development still needs to be managed through regulatory measures because:
- (a) There may be incomplete take up of voluntary managed retreat, or other unanticipated problems in implementing the voluntary managed retreat strategy in the "high risk area" may arise (Plan Change 17);

- (b) Risk will remain in areas affected by debris flows in the “medium risk area” (Plan Change 1).

10. REGULATORY OPTIONS – DISTRICT PLAN

- 10.1 Reasonably practicable options for achieving the objectives of the proposal through changes to the District Plan are described and evaluated in Section 9 of the Section 32 report.
- 10.2 The option on which Plan Change 1 is based (Option 4 - Coastal Protection Zone with “Awatarariki Debris Flow Policy Area”) was selected because it provides a clear statement on the nature and implications of the debris flow natural hazard risk and differentiates between the three levels of risk: high risk, medium risk and low risk.
- 10.3 In the High Risk Debris Flow Area, permanent occupation by susceptible activities would be a Prohibited Activity. The existing residentially zoned land would be zoned Coastal Protection Zone reflective of its limited development potential, and future use and relationship to the adjacent coastal reserve.
- 10.4 In the Medium Risk Debris Flow Area, land would retain a Residential Zone and would be subject to controls through the Resource Consent process restricting future development unless a reduced level of risk can be proven.
- 10.5 In the Low Risk Debris Flow Area, land would retain a residential zoning. The level of risk would be identified in the District Plan and Land Information Memoranda and taken into account in any resource consent application proposing to intensify activities.
- 10.6 This option sets a clear direction on land use management and is consistent with the Operative District Plan structure.
- 10.7 At the time the plan change was publicly notified, the option was also assessed as being consistent with the format of pending National Planning Standards as indicated through Ministry for the Environment consultation. Those standards have now been formally promulgated. I have assessed the selected option as being consistent with the National Planning Standards, albeit that the District Plan will require

substantial redrafting to be fully in line with the standards. The debris flow “Risk Areas” are likely to equate to an “Overlay”³ under the National Planning Standards.

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

11. REGULATORY OPTIONS – REGIONAL PLAN

- 11.1 Reasonably practicable options for achieving the objectives of the proposal relating to reduction of high risk to existing uses through changes to the Regional Natural Resources Plan (**RNRP**) are described and evaluated in Section 10 of the Section 32 Report.
- 11.2 The option on which Plan Change 17 is based (Option 2 - Residential Use of High Risk Sites on Awatarariki Fanhead a Prohibited Activity) was selected because it most effectively and efficiently reduces the risk to life in the identified High Risk Area, making it consistent with the objective of reducing high natural hazard risk⁴ to medium risk or lower as required by the Bay of Plenty Regional Policy Statement.
- 11.3 The Section 32 evaluation recognised that there will be an inevitable impact of loss of homes and property rights for affected owners/occupiers and indirect social and economic impacts from displacement of part of the community. The Section 32 Report records that these effects are outweighed by the economic and social benefits from reducing the risk to life.
- 11.4 When combined with the District Plan change, Plan Change 17 provides an integrated response from both the District Council and the BOPRC, within the current planning framework, that achieves a

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

⁴ RPS Policy NH 2B: Classifying risk: “*High natural hazard risk being a level of risk beyond what should be tolerated*”.

reduction in the risk that the landowners and other residents are currently exposed to in the High Risk Debris Flow Area of the Awatarariki Fanhead.

12. MATTERS RAISED IN SUBMISSIONS ON PLAN CHANGE 1

- 12.1 I have reviewed and assessed the submissions made on Plan Change 1.

Submissions in Support

- 12.2 A submission in support by Te Runanga o Ngati Awa seeks further engagement with Iwi over the recognition of the cultural significance of the reserve area.
- 12.3 Kiwirail Holdings Ltd (Kiwirail) made a technical submission in support of Plan Change 1 seeking to address rail corridor operations, upgrading and maintenance that are inadvertently “caught” by proposed rules.
- 12.4 The New Zealand Defence Force made a technical further submission in support of Kiwirail and another seeking amendments to provisions which might affect military operations.
- 12.5 The submissions referred to above support the purpose of Plan Change 1 and, if allowed, the relief in the submissions sought will not detract from the risk management objectives of the Plan Changes. Amendments have been included in an “amendments ” version of the Plan Change included in Annexure 1.

Submissions in Opposition

- 12.6 Other submissions oppose the Plan Change 1 on the basis that:
- (a) The provisions are unlawful;
 - (b) The risk assessment overstates the level of risk;
 - (c) The proposed provisions do not give proper effect to the Regional Policy Statement;

- (d) Insufficient consideration has been given to alternative, non-regulatory measures to mitigate the risk.

12.7 The submissions variously seek the following forms of relief:

- (a) Withdrawing the plan change;
- (b) Reducing the assessed degree of risk and revisiting the related rules;
- (c) Regularly peer-reviewing the risk assumptions and revisiting the rules regime and prohibited status based on the findings of the peer review;
- (d) Withdrawing the plan change until such time as the voluntary retreat package has been fully implemented;
- (e) Providing environmental compensation (under Public Works Act principles) if prohibited status is deemed appropriate;
- (f) Providing a “grandparenting regime” for high and medium risk properties giving permitted status to existing residential activities and controlled status to any increase or change in character intensity and scale where an early warning system is in place;
- (g) Withdrawing the plan change to allow for full investigation of a combination of bunding on the Awatarariki Stream coupled with an early warning system, including rainfall gauges instruments and ground moisture content monitors.

12.8 I respond to the submissions in opposition in the following paragraphs.

Risk Assessment

12.9 The hazard risk assessment follows best practice and has been undertaken and reviewed by appropriately qualified and experienced experts. There is currently no additional information provided to revise the assessed risk levels downwards.

Review

- 12.10 The principle of regularly reviewing the information on which the hazard risk assessment is based is a valid consideration. District Plans are subject to regular review. Under s35(2A) councils are required to prepare a report at least every five years on the results of their monitoring of the efficiency and effectiveness of their policies and plans (as required under s35(2)(b)).

Consistency with Regional Policy Statement

- 12.11 The Plan Change has been prepared carefully and specifically to give effect to the RPS Natural Hazard provisions. This analysis is set out in Appendix 6 of the Section 32 Report. This assessment is confirmed in the statement of planning evidence from Gerard Willis.
- 12.12 The main divergence in interpretation of the RPS is in relation to Objective 31 and what is described as a “dual focus”: avoidance or mitigation of natural hazards:

“Avoidance or mitigation of natural hazards by managing risk for people’s safety and the protection of property and lifeline utilities”

- 12.13 While mitigation would be consistent with this objective for the Awatarariki Fanhead, it is not achievable in practice. The risk to life from a debris flow has been assessed as high for residential activity at this location. In areas subject to high natural hazard risk the requirement is to reduce the level of risk to medium levels (and lower if reasonably practicable). The assessment of risk management options has identified that the only feasible way to do this is to move residential development that is subject to high risk out of harm’s way.
- 12.14 The RPS identifies⁵ that there may be occasions when the need to reduce natural hazard risk is immediate but that, in most cases, reducing risk from high levels will need to occur over time. The RPS notes that timeframes may span “*years or even decades*” in order to manage disruption and cost, particularly when risk reduction relies on land development and redevelopment processes that relate to design

⁵ Explanation to RPS Policy NH 3B: Natural hazard risk outcomes

life of buildings and infrastructure. The kinds of cases the RPS refers to would include redevelopment to reduce property risk in a flood hazard risk area where floors can be raised, or a coastal hazard area where buildings can be made relocatable.

- 12.15 This case is an occasion when the need to reduce natural hazard risk is immediate due to the high loss-of-life risk. It is also a case where risk reduction cannot rely on redevelopment processes. This is because there is no viable mitigation that can occur through re-design when buildings and infrastructure are replaced at the end of their design life.

Home Owner Perspectives on Risk Tolerance

- 12.16 Submissions also contend that the tolerability of natural hazard risk is a matter that requires consideration of the perspectives of homeowners. I disagree with this view.
- 12.17 One of the purposes of the RPS was to establish a regionally consistent framework on risk acceptability to avoid ad hoc or inconsistent outcomes in the development of lower level hazard management policy and the assessment of risk for development proposals. The risk-management approach to natural hazards management requires a framework of risk levels that provides a basis for consistent land use management decisions⁶. The RPS framework of risk levels was developed following technical advice and community input.

Deferral

- 12.18 The option of deferring the plan change until such time as the voluntary retreat package has been fully implemented was carefully considered for Regional Plan Change 17. The conclusion was that, whilst deferral would be an efficient option, there is unknown potential for reduced effectiveness and greater risk to life from a debris flow event with delayed implementation. The issue of a staged approach to managed retreat is set out in my evidence below.

⁶ Explanation to Policy NH 2B: Classifying risk

- 12.19 This conclusion is only partially relevant to District Plan Change 1. Whilst Plan Change 1 would prohibit residential activity, these activities could continue with the same “scale, character and intensity” of effects as it would not extinguish existing use rights. In this context, the greater risk to life from a debris flow event with delayed implementation is a less relevant consideration. It is also to be noted that the properties in the Medium Risk Area under Plan Change 1 are not affected by the voluntary retreat package.
- 12.20 The circumstances where plan provisions may make land incapable of reasonable use and place an unfair and unreasonable burden on any person who has an interest in the land are assessed in Section 2.9 of the Section 32 report.
- 12.21 I understand from Council’s legal advisors that there is authority that “reasonable use” of land as provided for in section 85 of the RMA does not extend to developing or living on land that is subject to high natural hazard risk. I therefore consider that, given the high loss-of-life risk from future debris flow events, the proposed plan provisions would not place an unfair and unreasonable burden on those with interests in these properties. The issues of environmental compensation and potential coverage under the Public Works Act are legal issues and outside the scope of this evidence.

Grandparenting Regime

- 12.22 The suggested “grandparenting regime”⁷ as summarised above was not assessed as an option in the Section 32 report. However, the grandparenting regime is broadly like Option 2 - Residential Zoning with “NHaz4” Policy Overlay as described in Section 9.2 of the Section 32 report. Residential uses would continue, but any change in scale or intensity would be subject to the exercise of a discretion via resource consent. The suggested standard for controlled activities is understood to be limited to the “presence” of a warning system. It is assumed that this would need to be an early warning system that supported a viable evacuation protocol.

⁷ Awatarariki Residents Incorporated Society

- 12.23 In my opinion, the suggested grandparenting regime is not an appropriate option as it would allow the currently high loss-of-life risk to continue and to potentially increase over time. This would be inconsistent with the objective of reducing high loss-of-life risk as required by the Bay of Plenty Regional Policy Statement.
- 12.24 The controlled activity status would also create a quandary. Council as consent authority would be required to grant consent to a controlled activity that met the standard of having an early warning system⁸. However, the expert evidence of Professor Davies and Dr Massey is that a debris flow early warning is not a practicable option for this catchment. Therefore, like Option 2, the grandparenting regime would be misleading in setting a planning direction that residential activity (i.e. increased or intensified residential development) is enabled when this is not actually the case given the very low likelihood of gaining resource consent.

Bunding/Early Warning System

- 12.25 All potential non-regulatory measures, including bunding on the Awatarariki Stream coupled with an early warning system, have been explored previously and found not to be practicable. This is confirmed in the statements from Professor Davies and Dr Massey (See paragraph 8.4).

Concluding Comment

- 12.26 Having regard to the submissions, proposed Plan Change 1, with the amendments shown in Annexure 1, is the most appropriate District Plan provision to address the high natural hazard risk affecting properties on the Awatarariki Fanhead.

13. MATTERS RAISED IN SUBMISSIONS ON PLAN CHANGE 17

- 13.1 I have reviewed and assessed the submissions made on Plan Change 17.

⁸ s104A(a) Determination of applications for controlled activities

Submissions in Support

- 13.2 A submission in support of Plan Change 17 by Te Runanga o Ngati Awa parallels the Runanga submission on Plan Change 1. It seeks further engagement with Iwi over the recognition of the cultural significance of the reserve area.
- 13.3 One submission supports the Plan Change 17 because it would bring certainty to property owners and would reinforce the preferred option timing.
- 13.4 A submission by the CDEM group identifies that the risk reduction outcomes are consistent with CDEM Act and Regional CDEM Plan.

Submissions in Opposition

- 13.5 Submissions oppose Plan Change 17 on the basis that:
 - (a) The provisions are unlawful and an abuse of public powers;
 - (b) The risk assessment is imprecise and overstates the level of risk;
 - (c) The proposals do not address what measures will be taken after the prohibition of residential activity and extinguishing of existing use rights takes effect;
 - (d) Insufficient consideration has been given to alternative, non-regulatory measures to mitigate the risk.
- 13.6 The submissions variously seek the following forms of relief:
 - (a) Withdrawing the plan change;
 - (b) Withdrawing the plan change until such time as the voluntary retreat package has been fully implemented;
 - (c) Providing environmental compensation (under PWA principles) if prohibited status is deemed appropriate;
 - (d) Providing a “grandparenting regime” for high and medium risk properties giving permitted status to existing residential

activities and controlled status to any increase or change in character intensity and scale where an early warning system is in place;

- (e) Withdrawing the plan change to allow for full investigation of a combination of bunding on the Awatarariki Stream coupled with an early warning system, including rainfall gauges instruments and ground moisture content monitors;
- (f) Consider improved catchment management (farming/forestry).

- 13.7 Several of these matters overlap with submissions on Plan Change 1 and the same assessment applies. I comment below by exception.

Measures taken after the prohibition of residential activity and extinguishing of existing use rights takes effect

- 13.8 This is a legal matter and will be addressed in submissions by the District Council's legal advisors.

Grandparenting Regime

- 13.9 The alternative "grandparenting regime" provisions (as discussed above in Para 12.22) would not be appropriate in the RNRP. Plan Change 17, as has been proposed, seeks to extinguish existing use rights for high loss-of-life risk at residential properties to meet an overall managed retreat objective. District Plan provisions would be the most appropriate option to manage residential uses and redevelopment if the regional plan method were not available.

Improved catchment management

- 13.10 Improved catchment management is a non-regulatory option that is assessed in Section 8.3 of the Section 32 Report. The conclusion is that effectiveness of measures of this type is uncertain and they are likely to have only a minor influence on the size and impact of a debris flow event.

- 13.11 Professor. Davies and Chris Philip's evidence confirm that management of log dams and pest management would have negligible effect on debris flow volume when looking at the intensity of the rainfall event.

Concluding Comment

- 13.12 Having regard to the submissions, proposed Plan Change 17 as notified is the most appropriate Regional Plan provision to address the high natural hazard risk affecting properties on the Awatarariki Fanhead.

14. SECTION 42A REPORT

- 14.1 I have read the Section 42A Report Proposed Plan Change 1 to the Whakatāne District Plan & Proposed Plan Change 17 to the Bay of Plenty Regional Natural Resources Plan (**s42A Report**).
- 14.2 I generally agree with the assessment and findings set out in the s42A Report. The following comments address specific matters by exception.
- 14.3 At Paragraphs 4.58-4.59, an assessment of the Proposed Plan Changes against the New Zealand Coastal Policy Statement (**NZCPS**) is made. The assessment includes that the definition of "coastal hazard" is open ended under the NZCPS and does not preclude debris flows from being a coastal hazard if they occur in the coastal environment.
- 14.4 The Section 32 Report⁹ states that the debris flow hazard from the Awatarariki Stream Catchment is not a coastal hazard but recognises that the subject area is also susceptible to coastal hazards (coastal erosion, tsunami). On that basis, the Proposed Plan Changes were assessed as consistent with NZCPS policies that encourage change in land use where that would reduce the risk of adverse effects from coastal hazards.

⁹ 2.10 New Zealand Coastal Policy Statement 2010 (NZCPS)

- 14.5 I accept that the debris flow in this case causes “*inundation of the coastal environment*”¹⁰ and that the at-risk residential development is in the coastal environment, even though the physical drivers and processes that cause a debris flow are not within the coastal environment.
- 14.6 The alternative interpretation in the s42A Report further supports, rather than detracts from, the assessment that the plan changes are consistent with relevant NZCPS policies.
- 14.7 Paragraph 4.68 of the s42A Report refers to the ‘precautionary approach’ in Section 1.7 of the RPS and the circumstances where this approach should be taken. The relevant provision is included in the Introduction to the BOP RPS as follows:
- “The ability to manage activities can be hindered by a lack of understanding about environmental processes and the effects of activities. Therefore, an approach which is precautionary but responsive to increased knowledge is required. It is expected that a precautionary approach would be applied to the management of natural and physical resources wherever there is uncertainty, including scientific, and a threat of serious or irreversible adverse effects on the resource and the built environment. It is important that any activity which exhibits these constraints is identified and managed appropriately.”
- 14.8 This general RPS policy is not addressed directly in the Section 32 Report, but nevertheless the precautionary approach underpins the risk assessments that support the plan changes: The statements of Professor Tim Davies and Chris Massey address the ‘precautionary approach’ and how this applies to organisations that are responsible for managing risk-to-life. Professor Tim Davies evidence concludes that such organisations must “*err on the side of caution (precautionary approach) when assessing risk to life*”.
- 14.9 On this basis, I agree that the debris flow risk addressed by the Proposed Plan Changes is an example of a situation where there is

¹⁰ Policy 24 Identification of coastal hazards 1d.

uncertainty, including scientific uncertainty, and a threat of irreversible adverse effects, and therefore the RPS requires a precautionary approach to be taken.

- 14.10 At Paragraphs 4.110-4.114 is a discussion on a review by GHD Limited of the hazards and risk assessments that had been prepared to support the Plan Changes (**GHD Review**). The GHD Review was commissioned by BOPRC in June 2018 and finalised on 31 October 2019, after the Proposed Plan Changes had been publicly notified. For this reason, it is not referred to in the Section 32 Report.
- 14.11 The GHD Review confirms that the quantitative assessments of Loss of Life risk have been prepared in accordance with industry best practice through using the 'AGS 2007' document.
- 14.12 The GHD Review also identifies the potential for application of a property-by-property loss of life risk assessment, leading to the possibility of different risks being assessed for different properties based on location, occupation, and vulnerability of the individual. This is suggested as the basis for a planning approach that could differentiate the requirement for managed retreat for individual properties. Notwithstanding, it is understood that the GHD Review does not challenge the long term need to retreat residential development at high risk from a debris flow.
- 14.13 The planning assessment by Gerard Willis of Enfocus Ltd and the Section 42A Report at paragraph 4.114 both conclude that the idea of a property-scale risk assessment and subsequent planning provisions are likely to be an inefficient and ineffective planning approach. This conclusion is supported in the evidence of Dr. Saunders (Paragraph 8.3). I also agree with this assessment.
- 14.14 It is significant that the RPS (Policy NH3B) requires a hazard risk assessment to be carried out at the 'natural hazard zone' scale, not at a 'property by property' scale, to ensure that community wide potential consequences are considered . The Council must give effect to the RPS. On this basis, a property by property loss of life risk assessment is not available to the Council as a policy response.

- 14.15 I note that this approach, if adopted, would need to apply as rules under the Regional Plan rather than the District Plan. In effect, under this option the resource consent process would allow moderation or staging of the extinguishing of existing use rights under the Regional Plan. This approach is similar to “Regional Plan Option 3 - Residential Use of High Risk Sites on Awatarariki Fanhead Subject to Land Use Consent” as assessed in the Section 32 Report¹¹ which allowed for landowners to be involved in the decisions about the timing of retreat at an individual property scale.
- 14.16 The option was not assessed as the most appropriate option due to the potential delay in retreat being achieved, the potential for inconsistent outcomes, the onus being placed on land owners to seek resource consent to give effect to it, and potential for ongoing litigation on consent outcomes.
- 14.17 Further to this, robust resource consent decisions for a staged retreat based on individual property risk would be technically very difficult to achieve. As set out in the evidence of Professor Tim Davies, and Kevin Hind the parameters of future debris-flows on the Awatarariki fan cannot be predicted accurately enough to make the task of property specific risk assessment practicable. Coupled with the application of the ‘precautionary approach’ when assessing risk to life, it is questionable whether a competent consent authority would be able to grant such a resource consent.
- 14.18 Section 5 of the Section 42A report sets out a “Consideration of submissions and further submissions”. I generally agree with the assessment and responses to submissions.
- 14.19 On page 35, the Section 42A Report addresses submissions by the Awatarariki Residents Incorporated Society seeking the mitigation of hazard risk whilst enabling members to remain in their homes and states:

¹¹ Section 32 Report -10.3 Option 3 - Residential Use of High Risk Sites on Awatarariki Fanhead Subject to Land Use Consent

“Although residents have indicated varying degrees of acceptance of the risk, WDC and BOPRC have statutory obligations to act on behalf of communities to reduce or mitigate risk to life from natural hazards. A repeat of the May 2005 scenario would not only put remaining residents at risk, but also the lives of emergency services who would inevitably be involved in landowner rescue. Therefore, the risks associated with the continued occupation of homes are not confined to the residents alone.”

- 14.20 This is an important point and highlights the need to consider the societal or community consequences in determining the most appropriate hazard management response for the Awatarariki fanhead.
- 14.21 In addition to the involvement of emergency services in landowner rescue, a repeat debris event will require clean up and reconstruction of infrastructure and buildings for reoccupation if that were the adopted hazard management strategy. However, given the determinations by MBIE against the granting of building consents in the high risk area, reconstruction of infrastructure and buildings for reoccupation is likely to be fraught with uncertainty, with significant potential for future community disruption, social impact and economic loss.
- 14.22 The evidence of Amelia Linzey sets out the social consequences of the “do nothing option” and the social impact arising from a repeat of the debris flow event (See paragraphs 41 and 42. This is in the context of individuals seeking the option to accept the personal risk and remain living on the fanhead. Her assessment is that a future event has “*the potential for significant adverse social costs, both direct and indirect (e.g. to family and friends in the wider community)*”.
- 14.23 In my opinion, there is a clear strategic case to address long term outcomes for the Awatarariki fanhead for the benefit of the whole community in a clear and decisive manner. The Proposed Plan Changes, alongside other management measures including Voluntary Managed Retreat, create the opportunity for this and are the most efficient and effective approach.

- 14.24 I have considered the recommended Plan Change amendments in Appendix 2 of the Section 42A report. I agree with the recommendations, most of which align with the amendments suggested in Section 12.5 of my evidence.

15. PLAN CHANGE 1 AMENDMENTS

- 15.1 I have included an annotated version of relevant District Plan Sections as amended by Plan Change 1 in Annexure 1. The annotations include:

- (a) Changes as publicly notified in red text (with one exception – see below);
- (b) The amendments suggested in the Section 42A report in red text highlighted in yellow;
- (c) Other amendments suggested in my evidence in green text.

- 15.2 The one exception as noted above: Plan Change 1 proposed an amendment to the Activity Status table 3.4.1.1 to add an activity status abbreviation with a superscript number to all of the activities in the High and Medium Risk Debris Flow Policy Area along with a footnote. This proposed change is duplicated by a proposed change to the “Site Specific” Section of the same table and creates unnecessary complexity. To simplify drafting, the annotated version only shows the amendment to the “Site Specific” section.

16. CONCLUSION

- 16.1 For the reasons described in my evidence statement, I support the Proposed Plan Changes, subject to minor amendments as set out in my Annexures 1 and 2. In summary:

- (a) Under the RPS, the District Council is required to take steps to reduce natural hazard risk from high to a lower level;
- (b) The evidence establishes that properties within the proposed Awatarariki Debris Flow Policy Area are subject to natural

hazard risk of high, medium and low levels in different parts of the policy area;

- (c) The District Council and its consultants have investigated engineering and other options for avoiding and mitigating this risk. The evidence establishes that the only viable risk reduction measure to avoid high risk to life in the High Risk Area from future debris flows in the Awatarariki catchment is to retreat from the hazard. This is an appropriate precautionary approach given the risk to life;
- (d) The District Council, in conjunction with the BOPRC and central government, is pursuing a voluntary managed retreat process to ease the process for affected property owners who will be affected by the Plan Changes. At the time of writing this statement, most property owners have opted into this process and progress is being made on acquisition of properties.;
- (e) Regardless of the parallel voluntary managed retreat process that is occurring, the Plan Changes are required to avoid and mitigate natural hazard risk in the Awatarariki Debris Flow Policy Area due to the uncertainty in the ultimate number of residents opting into the process and because risk will remain in the 'medium' risk area.

Craig Batchelar

15 January 2020

ANNEXURE 1 - PLAN CHANGE 1 – AMENDMENTS

PROPOSED

Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatane District Plan

A proposed plan change seeking the identification of the Awatarariki Debris Flow Policy Area, including a "high risk", "medium risk" and a "low risk" area, and rezoning the high risk area from Residential Zone to Coastal Protection Zone.

June 2018

Whakatane District Council

Private Bag 1002

Whakatāne 3158

New Zealand

Chapter 3 Zone Descriptions, Activity Status, Information Requirements and Criteria for Resource Consents

Add the following new Policy Area in Section 3.2

3.2.5 Awatarariki Debris Flow Policy Area

The Awatarariki Debris Flow Policy Area means the land susceptible to debris flow hazards and identified on the Planning Maps as either high, medium, or low risk.

The risk areas are:

- a. **Awatarariki High Risk Debris Flow Policy Area:** The High Risk area includes land that is subject to a high risk to life and property from debris flows due to the likelihood of future debris flows and the potential for such flows to contain high impact boulders and woody debris, combined with the volume, density, and velocity of any future flow. Existing residential uses should retreat from the High Risk area because other forms of risk mitigation cannot practicably reduce the high likelihood of loss of life. There is also a risk to life for visitors to the area. Urban activities are prohibited in the High Risk area, with other activities only allowed where they relate to transitory recreational use of open space or other specifically identified low risk activities:
- b. **Awatarariki Medium Risk Debris Flow Policy Area:** The Medium Risk area includes land that is subject to risk to life and property from debris flows, but is beyond the area where previous debris flows have contained high impact boulders and woody debris. Development is allowed only where a risk assessment establishes that the level of risk is reduced to a level that is as low as reasonably practicable.
- c. **Awatarariki Low Risk Debris Flow Policy Area:** The Low Risk area includes land that is subject to risk to property from debris flows, but is beyond the areas where previous debris flows have contained high impact boulders and woody debris. There is potential for flows, predominantly containing sand, silt and gravel, with variable boulder and timber content.

Amend Section 3.7.25 Natural Hazard Effects as follows:

- d. In relation to erosion, falling debris or slippage, and debris flows, the need for ongoing conditions aimed at avoiding, remedying or mitigating future potential adverse effects, and any need for registration of covenants on the lot's Certificate of Title. The **Council** will have regard to the siting of buildings or building platforms, and the specific design of buildings or other structures to avoid, remedy or mitigate the effect of the hazard;

Chapter 18 Natural Hazards

Section 18.1 Objectives and Policies

Add the following new Policies under Objective Haz1:

Policy 18

To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matatā by undertaking a risk analysis using the methodology set out in the Australian Geomechanical Society – Landslide Risk Management 2007.

Policy 19

- a. To reduce the level of natural hazard risk in the Awatarariki High Risk Debris Flow Policy Area from high to medium levels (and lower if reasonably practicable);
- b. To reduce the level of natural hazard risk in the Awatarariki Medium Risk Debris Flow Policy Area from medium to as low as reasonably practicable.
- c. To maintain the level of natural hazard risk in the Awatarariki Low Risk Debris Flow Policy Area to within the low natural hazard risk range.

Section 18.2 Rules

Add the following new Rules under 18.2.6 Falling Debris and Debris Flows

18.2.6.3 Within the area shown as **Awatarariki High Risk Debris Flow Policy Area** on Planning Map 101A Matatā the following activities are Permitted Activities:

- a) The construction of structures and the use of land for passive recreation, including the construction and maintenance of public pedestrian and cycle tracks, interpretative and directional signs, fencing, pedestrian stiles, gates, bollards and associated barriers, seating, landscaping, gardens and grassed areas and rubbish and/or recycling bins;
- b) Activities operating in accordance with, or that are provided for in, an approved Reserve Management Plan under the Reserves Act 1977.
- c) The erection of new, and the minor upgrading (including ancillary earthworks) and maintenance of existing, network utilities and related structures **in a public place**;
- d) Demolition and/or removal of a building or structure;
- e) The removal of network utilities;
- f) Vegetation clearance;
- g) The erection of fencing, signage, a viewing platform and other minor structures, associated with the development of a commemorative reserve on Lot 20 DP 306286;
- h) Activities operating in accordance with section 18(2) of the Reserves Act 1977 on the Te Kaokaoroa Historic Reserve (Allotment 373 Town of Richmond);
- i) **Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Noise Limits**

<u>18.2.6.4</u>	<u>Within the area shown as Awatarariki High Risk Debris Flow Policy Area on Planning Map 101A Matatā the following activity is a Restricted Discretionary Activity:</u>
	a) <u>Earthworks</u>
	b) <u>Temporary Military Training Activities that do not comply with the relevant noise standards in Table 11.2 Specific Noise Limits</u>
	<u>In assessing an application for a Restricted Discretionary Activity for earthworks in the Awatarariki High Risk Debris Flow Policy Area the Council shall restrict its discretion to:</u>
	a) <u>Whether the activity will avoid causing any increased risk to other activities, and any buildings and their occupants on any other site, from a debris flow;</u>
	b) <u>Whether the activity will appropriately address the accidental discovery of koiwi or other taonga, including giving effect to any protocols agreed with tangata whenua.</u>
<u>18.2.6.5</u>	<u>Within the area shown as Awatarariki High Risk Debris Flow Policy Area on Planning Map 101A Matatā any activity, other than those that are a Permitted Activity under Rule 18.2.6.3 or a Restricted Discretionary Activity under Rule 18.2.6.4, is a Prohibited Activity.</u>
<u>18.2.6.6</u>	<u>Within the area shown as Awatarariki Medium Risk Debris Flow Policy Area on Planning Map 101A Matatā the following activities are Permitted Activities:</u>
	a) <u>Residential activities and associated buildings and structures within the existing building or structure envelope, including the footprint, as lawfully established before 31 December 2017;</u>
	b) <u>Demolition and/or removal of a building or structure;</u>
	c) <u>The erection of new, and the minor upgrading (including ancillary earthworks) and maintenance of existing, network utilities and related structures <u>in a public place</u>.</u>
	d) <u>Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Noise Limits</u>
<u>18.2.6.7</u>	<u>Within the area shown as Awatarariki Medium Risk Debris Flow Policy Area on Planning Map 101A Matatā all activities are a Restricted Discretionary Activity unless the activity is listed as a Permitted Activity by Rule 18.2.6.6, or a discretionary, non-complying or prohibited activity in Section 3.4.1 Activity Status Table.</u>

Section 18.4 Assessment Criteria for Restricted Discretionary Activities

Add the following new Rules

18.4.2 **Awatarariki Medium Risk Debris Flow Policy Area**

18.4.2.1 **Council shall restrict its discretion to**

- a) Whether the design and layout of the activity will reduce the risk to the activity, and any building and its occupants from a debris flow, to a level that is as low as reasonably practicable;
- b) Whether the activity will avoid causing any increased risk to other activities, and any buildings and their occupants on any other site, from a debris flow.

An application for Restricted Discretionary Activity in the Awatarariki Medium Risk Debris Flow Policy Area shall not be notified, or served on affected persons.

Add a new line to the activity status table 3.4.1.1 to be:

61	Activities in the Awatarariki Medium, High and Low Risk Debris Flow Policy Areas	See Rules 18.2.6.3 – 18.2.6.7
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In the Activity Status table 3.4.1.1 add a “Pr” with a superscript number to all of the activities in the Coastal Protection column with the following footnote

In the Awatarariki High Risk Debris Flow Policy Area this activity is a Prohibited Activity

In the Activity Status table 3.4.1.1 add an “RD” with a superscript number to activities 1, 2, 4, 5, 6, 7, 9, 10, 11, 12, 16, 17, and 30 in Residential column with the following footnote

In the Awatarariki Medium Risk Debris Flow Policy Area this activity is a Restricted Discretionary Activity

Add definitions to Chapter 21 Definitions

Awatarariki High Risk Debris Flow Policy Area means land on the Awatarariki fanhead that is subject to a high risk to life and property from debris flows.

Awatarariki Medium Risk Debris Flow Policy Area means land on the Awatarariki fanhead that is subject to a medium risk to life and property from debris flows.

Awatarariki Low Risk Debris Flow Policy Area means land on the Awatarariki fanhead that is subject to low risk of life and property from debris flows.

Amend Advice Note: to 18.2.6.2 as below.

Council is undertaking an assessment of landslide and debris flow risks in the vicinity of the escarpments at Whakatāne, Ōhope, and Matatā. This work is intended to provide the community with a better understanding of the nature and extent of these hazards and the risks they may present. **Council has completed the debris flow risk assessment for the Awatarariki fanhead at Matatā and has included a Natural Hazard Policy Area on the Awatarariki fanhead.** It is likely that the District Plan maps and rules that control land use and subdivision in areas affected by landslide and debris flow hazards, in areas apart from the Awatarariki fanhead at Matatā, will need to be changed once the risk assessment has been completed. Any changes to the District Plan will be subject to a public submission process under the Resource Management Act.

If you own land in close proximity to the escarpments at Whakatāne, Ōhope, and Matatā and are potentially affected by landslide and debris flow hazards, the **Council** will

provide information to you on the risk assessment when this becomes available. If you are planning to purchase land or to undertake any development in the vicinity of the escarpments at Whakatāne, Ōhope, and Matatā you are advised to contact the **Council** at an early stage to obtain the latest information.

Add the following to Other Methods 18.7.1

Anyone planning to purchase land or undertake development in the **Awatarariki High Risk Debris Flow Policy Area** is advised to contact the Bay of Plenty Regional Council to determine if there are any regional rules that would affect their development.

The area shown as Awatarariki Low Risk Debris Flow Policy Area on Planning Map 101A Matatā has been assessed as having a low risk to life and property from debris flows from the Awatarariki catchment. While this is an acceptable level of risk, anyone planning to purchase land or undertake development in this area is advised to contact **Council** to obtain the latest information, and to then evaluate the risk. The debris flood in this area, resulting from a debris flow from the Awatarariki catchment, will be further assessed as part of future district wide susceptibility modelling of flooding. It is possible that the outcome of that assessment will result in controls being placed on land use and/or subdivision.

Add a requirement, as o. in Rule 3.5.1.1 as follows:

o within the Awatarariki Medium Risk Debris Flow Policy Area (AMRDFPA):

- i. Unless the **Council** otherwise determines that some other assessment is appropriate, an application for resource consent for an extension to a building, a new building, or any other new structure within the AMRDFPA, shall include a report on its suitability, prepared by a **Suitably Qualified and Experienced Practitioner**, certifying that the extension, building or other new structure will reduce the risk to the activity, and any building and its occupants from a debris flow, to a level that is as low as reasonably practicable, and will avoid causing any increased risk to other activities, and any buildings and their occupants on any other site, from a debris flow.

Add a new definition of **Chartered Professional Engineer experienced in natural hazard management** as follows:

Suitably Qualified and Experienced Practitioner means a person who is an independent expert who applies good professional practice, and assesses consequences with reference to accepted benchmarks and industry guidelines.

Planning Maps

Amend Planning Map 101A Matatā to show:

- Awatarariki High Risk Debris Flow Policy Area
- Awatarariki Medium Risk Debris Flow Policy Area
- Awatarariki Low Risk Debris Flow Policy Area

Amend Planning Map 101B Matatā to show:

- Coastal Protection Zone underlying the Awatarariki High Risk Debris Flow Policy Area

**ANNEXURE 2 - ANNOTATED VERSION OF RELEVANT DISTRICT
PLAN SECTIONS**

- 3.2.2.3 The Whakatāne River and the escarpment also provide a natural backdrop and contain the area. Design guidelines (The Strand Character Area Design Guidelines) in Appendix 22.6 have been developed to ensure that new development harmonises with the design, scale, massing and appearance of adjacent development and reinforces the character of the town centre.

3.2.3 **Coastal Hazard Erosion Policy Area (CHEPA)**

- 3.2.3.1 The **CHEPA** means the land that comprises the Current Erosion Risk Zone (CERZ), the 2060 Erosion Risk Zone (2060 ERZ) and the 2100 Erosion Risk Zone (2100 ERZ), being that area of land located between the Mean High Water Springs and the landward extent of the 2100 ERZ boundary along the **District's** coastline as shown on the Whakatāne District Planning Maps. The coastal erosion risk zones are:

- a. **Current Erosion Risk Zone (CERZ):** The CERZ includes that area of land between the Mean High Water Springs and the CERZ line as shown on the Planning Maps. This area is subject to storm erosion, short-term fluctuations and dune instability. It includes all land currently at risk from erosion plus sufficient safety factors.
- b. **2060 Erosion Risk Zone (2060 ERZ):** The 2060 ERZ includes that area of land between the CERZ and 2060 ERZ lines as shown on the Planning Maps. This zone begins at the CERZ and includes additional areas predicted to be subject to shoreline movements caused by the predicted sea level rise up to the year 2060.
- c. **2100 Erosion Risk Zone (2100 ERZ):** The 2100 ERZ includes that area of land between the 2060 ERZ and 2100 ERZ lines as shown on the Planning Maps. This zone begins at the 2060 ERZ and includes additional areas predicted to be subject to shoreline movements caused by sea level rise up to the year 2100.

3.2.4 **Coastal Hazard Flood Policy Area (CHFPA)**

- 3.2.4.1 The **CHFPA** means the land potentially affected by coastal inundation and wave run-up and identified on the Planning Maps as either the Moderate Inundation Risk Zone or the Extreme Inundation Risk Zone.

The coastal inundation risk zones are:

- a. **Extreme Inundation Risk Zone:** The Extreme Inundation Risk Zone includes that area of land generally between the Mean High Water Springs and the 2060 ERZ line. In some cases the Extreme Inundation Risk Zone extends higher than the 2060 ERZ as shown on the Planning Maps. This area includes land that is generally below the calculated 2% **Annual Exceedance Probability** combined tide and storm surge level, including 2% **Annual Exceedance Probability** wave run-up and sea level rise to 2100.
- b. **Moderate Inundation Risk Zone:** The MIRZ includes that area of land between the Extreme Inundation Risk Zone and the contour line for that land at the inundation level identified for that zone, as shown on the Planning Maps. It includes areas where land elevation is generally below the calculated 2% **Annual Exceedance Probability** combined tide and storm surge level including sea level rise to 2100, but excluding wave run-up.

3.2.5 **Awatarariki Debris Flow Policy Area**

- 3.2.5.1.1 The Awatarariki Debris Flow Policy Area means the land susceptible to debris flow hazards and identified on the Planning Maps 101A as either high, medium, or low risk.

The risk areas are:

- a. **Awatarariki High Risk Debris Flow Policy Area:** The High Risk area includes land that is

subject to a high risk to life and property from debris flows due to the likelihood of future debris flows and the potential for such flows to contain high impact boulders and woody debris, combined with the volume, density, and velocity of any future flow. Existing residential uses should retreat from the High Risk area because other forms of risk mitigation cannot practicably reduce the high likelihood of loss of life. There is also a risk to life for visitors to the area. Urban activities are prohibited in the High Risk area, with other activities only allowed where they relate to transitory recreational use of open space or other specifically identified low risk activities.

- b. **Awatarariki Medium Risk Debris Flow Policy Area:** The Medium Risk area includes land that is subject to risk to life and property from debris flows, but is beyond the area where previous debris flows have contained high impact boulders and woody debris. Development is allowed only where a risk assessment establishes that the level of risk is reduced to a level that is as low as reasonably practicable.
- c. **Awatarariki Low Risk Debris Flow Policy Area:** The Low Risk area includes land that is subject to risk to property from debris flows, but is beyond the areas where previous debris flows have contained high impact boulders and woody debris. There is potential for flows, predominantly containing sand, silt and gravel, with variable boulder and timber content.

3.3 ACTIVITY STATUS

3.3.1 Introduction

3.3.1.1 The Activity Status Table (see 4.4 below) lists the activities anticipated in the **District**. Activities may be in one of six categories, depending on the zone in which they are located and their potential effects on the environment. These six categories and codes used in the Plan, as determined by the RMA are:

- a. P = Permitted
- b. C = Controlled
- c. RD = Restricted Discretionary
- d. D = Discretionary
- e. NC = Non-Complying
- f. Pr = Prohibited

In addition, if the activity status is not applicable for a particular activity or zone, then the code used is "NA".

3.3.2 Activity Status Hierarchy

3.3.2.1 The provisions of chapters 2-20 apply to any proposal.

3.3.2.2 Where there are different activity statuses between chapters, the more restrictive provision will apply.

3.3.2.3 All activities not specifically provided for in the activity status tables are Discretionary Activities, except in the **CPZ** where such activities shall be Non-Complying.

3.3.2.4 Non-compliance with any rule will make an activity Discretionary unless otherwise stated in the rule.

3.3.2.5 If more than one activity status applies to an activity, the activity will be assessed overall under the more restrictive status. For example, if a second **dwelling** is a Controlled Activity in the Residential Zone but it is also a Discretionary Activity because it is located within an identified natural hazard, then the activity status for the proposal will be Discretionary.

3.3.3 Permitted Activities

3.3.3.1 Permitted activities must comply with the general and specific standards in the relevant zone and all of the relevant sections of the District Plan. Resource consent is not required.

Item	Activity	Example	Deferred Residential	Residential	Urban Living	Mixed Use Zone	Business Centre	Commercial	Large Format Retail	Light Industrial	Industrial	Coastal Protection	Active Reserve	Rural Plains	Rural Foothills	Rural Coastal	Rural Ōhiwa	Community & Cultural
50.a	Helicopter Landing Areas used for more than 10 and fewer than 30 movements in any 30 day period, with a maximum of six movements per day.	Helicopter landing areas associated with tourism, recreational activities and emergency operations	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	RD D ¹³	NA	NA	NA	NA	NA
50.b	Helicopter Landing Areas for primary productive use	Frost protection, spraying	P	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	P	P	P	P	NA
51.	All other activities not specifically provided for in other sections.		D	D	D	D	D	D	D	D	D	NC	D	D	D	D	D	D
52.	Buildings and activities in the Urupa Buffer in the Ōpihi Structure Plan not provided for in the Management Plan under 2.3.1.1(f) and 2.4.1.1(f)		NA	NC	NA	NA	NA	NA	NA	NA	NA	NC	NA	NA	NA	NA	NA	NA
Site Specific																		
53.	Activities on Allots 28B3C2A and 28B3C2B	See Rules in 6.2.6																
54.	Education Development Plans	See Chapter 9																
55.	Signs	See Rules in 11.2.20																
56.	Subdivision	See Chapter 12																
57.	Activities on sites identified as a scheduled feature: Significant Indigenous Biodiversity Site Cultural Heritage Features, Outstanding Natural Features and Landscape	See Chapter 15 See Chapter 16 See Chapter 17																
58.	Activities on the site of an identified natural hazard	See Chapter 18																
59.	Activities involving hazardous substances or on contaminated land	See Chapter 19																
60.	Activities involving Works and Network utilities, including any building, structures and earthworks in a National Gird Yard	See Chapter 20																
61.	Earthworks	See Chapters 11, 16, 17, 18																
62.	Activities at the Edgecumbe Dairy Manufacturing Site. See rules in 6.2.12	See Chapter 6																
63.	<u>Activities in the Awatarariki, High, Medium and Low Risk Debris Flow Policy Areas</u>	<u>See Rules 18.2.6.3 – 18.2.6.7</u>																

¹³ D activity status applies where any structure is required (excluding that required for public safety) specifically for helicopter landing area.

- clearance is not likely to accelerate, worsen or result in material damage to that land, other land or any structure through erosion;
 - ii. applications for new buildings and structures, or extensions to these shall include confirmation from a suitably qualified **Chartered Professional Engineer** and from a house removal company that the building or structure is able to be relocated out of the **CHEPA** and to the Alternative Building Site (where applicable);
 - iii. if the applicant considers the location of the 2060 and 2100 ERZ boundaries to be different from those boundaries defined on the Planning Maps, then the **Assessment of Environmental Effects** submitted with the application shall include such additional information as is considered necessary to determine the appropriate location of these boundaries at that site; and
 - iv. the information submitted in support of the application shall include the most recent data available from the **Council's** GIS as to the precise location of the ERZ boundaries.
- k. **within the CHFPA** an application for consent for a **building**, structure, site works or site vegetation clearance (or extension to these) within the **CHFPA** may require a report on its suitability prepared by a suitably qualified **Chartered Professional Engineer**, confirming that the proposed **building**, structure, site works or vegetation clearance is not likely to accelerate, worsen or result in material damage to that land, other land or any structure through inundation;
- l. **planting management plans** for applications within the Rural Ōhiwa and Rural Coastal Zones. The management plan for planting shall state the methodology for the establishment and **maintenance** of mitigation planting through to full establishment and the design and location of fencing of planted areas to be formally protected. The management plan should identify the person or organisation that will be responsible for the establishment and **maintenance** of the planting and fences; and
- m. an assessment against the National Environmental Standard (NES) for Assessing and Managing Contaminants in Soil to Protect Human Health to determine whether the land proposed to be developed, and the activity is covered by the NES. The assessment must include an investigation into the likelihood of the development site having ever been used for an activity listed in the Hazardous Activity and Industries List (HAIL); and
- n. if the applicant considers the location of a **Significant Indigenous Biodiversity Sites** to be different from those boundaries defined in the Planning Maps, then the Assessment of Environment Effects submitted with the application shall include such additional information as considered necessary to determine the appropriate location of the boundaries of the **Significant Indigenous Biodiversity Sites**.
- o. within the Awatarariki Medium Risk Debris Flow Policy Area (AMRDFPA):
- i. Unless the **Council** otherwise determines that some other assessment is appropriate, an application for resource consent for an extension to a building, a new building, or any other new structure within the AMRDFPA, shall include a report on its suitability, prepared by a **Suitably Qualified and Experienced Practitioner**, certifying that the extension, building or other new structure will reduce the risk to the activity, and any building and its occupants from a debris flow, to a level that is as low as reasonably practicable, and will avoid causing any increased risk to other activities, and any buildings and their occupants on any other site, from a debris flow

3.5.2 **Hazardous Substances**

3.5.2.1 Applications involving **hazardous substance** use, storage and management that are subject to the provisions in this Plan require;

- a. information about the nature and quantity of the hazardous and environmentally damaging substances used, stored and transported, including United Nations classifications of those substances and material safety data sheets;

- a. the type, volume, extent and levels of contaminants;
- b. the remediation plan including methodology, level of remediation proposed, remediation techniques, disposal of material and validation sampling;
- c. on-going monitoring and **maintenance** of the site;
- d. established standards and guidelines for the remediation of a contaminated site;
- e. the future activity proposed (if known), the types of activities anticipated by the zone provisions and nearby land uses;
- f. any limitations on subsequent land use where justified based on the level of remediation;
- g. any adverse effects on the environment during remediation, including increased risk of contamination dust, noise, lighting, glare, vibration and traffic effects; and
- h. the effects of remediation on resources of significance to Tangata Whenua.

3.7.25 **Natural Hazard Effects**

3.7.25.1 **Council** shall have regard to;

- a. Risks (as a measure of likelihood and consequence) associated with natural hazards;
- b. whether the land is appropriate for the development proposed and/or the conditions under which development will be appropriate;;
- c. whether the land, and any building site is not likely to be subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source. In relation to inundation from any source, the **Council** shall have regard to;
 - i. the effects of any proposed filling being undertaken to avoid inundation and the consequential effects on the natural drainage pattern and adjoining land;
 - ii. flood plain management measures proposed and consistency with the Bay of Plenty Regional Council Floodplain Management Strategies where applicable;
 - iii. the erection of sea walls and their environmental effects;
 - iv. any proposed boundary drainage to protect surrounding properties;
 - v. the adequacy of existing outfalls and any need for upgrading;
 - vi. any need for retention basins to regulate the rate and volume of surface run-off;
 - vii. the effects on any **māhinga kai** or other sites of significance to tangata whenua;
 - viii. the potential impact of climate change; and
- d. In relation to erosion, falling debris or slippage, **and debris flows**, the need for ongoing conditions aimed at avoiding, remedying or mitigating future potential adverse effects, and any need for registration of covenants on the lot's Certificate of Title. The **Council** will have regard to the siting of buildings or building platforms, and the specific design of buildings or other structures to avoid, remedy or mitigate the effect of the hazard;
- e. in relation to subsidence, the provision of suitability certificates, such as NZS:4431:1989 Code of practice for earth fill for residential development or if not appropriate, the setting of on-going conditions, with covenants registered on the Certificates of Title;
- f. the activity or any subsequent use that is likely to be made of the land which is likely to accelerate, worsen, or result in material damage to that land, other land, or structure, by erosion, falling debris, subsidence, slippage or inundation from any source;
- g. slope stability, foundations of structures and retaining walls, earthworks, removal of vegetation, including access tracks, roads, cuts and fills;
- h. ground water table levels and the permeability of the land;
- i. the ability of natural features such as beaches, sand dunes, mangroves, wetlands and barrier islands to protect subdivision, use or development;
- j. in the case of coastal hazards;
 - i. erosion impacts of sea level rise;
 - ii. shoreline response to storm erosion and flooding;
 - iii. planning horizon;
 - iv. long-term trends;
 - v. short-term fluctuations;

18 Natural Hazards

18.1 OBJECTIVES AND POLICIES

Objective Haz1	<i>Manage the subdivision, use, development and protection of land so as to avoid or mitigate the adverse effects of natural hazards on the life and wellbeing of people, and significant environmental values.</i>
Policy 1	To avoid modification of natural features and processes for the purposes of natural hazard management unless research and community consultation justifies the need for modification by being the best practicable option.
Policy 2	To avoid or mitigate the adverse effects of building within high fire risk areas.
Policy 3	To avoid or mitigate the adverse effects of the subdivision, use or development of land which is, or is likely to be, subject to material damage by erosion, falling debris, subsidence, slippage or inundation from any source.
Policy 4	To avoid or mitigate the adverse effects of the subdivision, use or development of land that is likely to accelerate, worsen or result in material damage to that land, or other land, or structures, by erosion, falling debris, subsidence, slippage or inundation from any source.
Policy 5	To take into account the extent and nature of seismic hazards to avoid, remedy or mitigate adverse effects on activities in suspected earthquake risk areas.
Policy 6	To encourage the retention and enhancement of natural areas and landforms such as dunes and wetlands which play an important role in hazard mitigation.
Policy 7	To ensure that new structures (including associated stormwater disposal systems, septic tanks, sewer lines and water mains) shall not be sited, designed or constructed to have an adverse effect on the stability of the escarpment in Whakatāne or Ōhope.
Policy 8	To manage vegetation and earthworks on the escarpment in Whakatāne and Ōhope to assist in stabilising the slope.
Policy 9	To manage the margins of streams to reduce the risk of damage from flooding and debris flow hazards affecting townships.
Policy 10	To provide for the continued operation, maintenance and upgrading of existing lawfully established activities and of infrastructure that provides an essential service for people and communities.
Policy 11	To manage the avoidance or mitigation of natural hazards according to their level of risk.
Policy 12	To take into account the effects of climate change when identifying hazards and the locations where those hazards could adversely affect people and property.
<u>Policy 13</u>	<u>To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matatā by undertaking a risk analysis using the methodology set out in Australian Geomechanics Society, <i>Landslide Risk Management</i>, Australian Geomechanics, Vol 42, March 2007. Geomechanical Society – Landslide Risk Management 2007</u>

<u>Policy 14</u>	<ul style="list-style-type: none"> a. <u>To reduce the level of natural hazard risk in the Awatarariki High Risk Debris Flow Policy Area from to high to medium levels (and lower if reasonably practicable);</u> b. <u>To reduce the level of natural hazard risk in the Awatarariki Medium Risk Debris Flow Policy Area from medium to low as reasonably practicable.</u> c. <u>To maintain the level of natural hazard risk in the Awatarariki Low Risk Debris Flow Policy Area to within the low natural hazard risk range.</u>
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Objective Haz2	<p><i>To protect natural and physical resources and provide for the economic wellbeing and safety of people and communities by:</i></p> <ul style="list-style-type: none"> <i>a. avoiding the effects of coastal erosion on the use, subdivision and development of land in the Coastal Hazard Erosion Policy Area (CHEPA);</i> <i>b. avoiding or mitigating the effects of coastal flooding on the use, subdivision and development of land in the Coastal Hazard Flood Policy Area (CHFPA); and</i> <i>c. avoiding, remedying or mitigating the effects of land use, subdivision and development on the coastal environment.</i>
Policy 1	<p>To avoid or mitigate subdivision, use or development in the CHEPA where it may aggravate instability or erosion of the coastal dune system, or fails to consider the effects of rising sea levels and inundation by the application of the following management regimes:</p> <ul style="list-style-type: none"> a. avoidance of further buildings and structures within the CHEPA. b. relocation of existing buildings and structures landward of the CHEPA. c. avoidance of new subdivision and use in the Current Erosion Risk Zone (CERZ). d. mitigation of the effects of new subdivision or use on coastal erosion in the 2060 and 2100 Erosion Risk Zones (ERZs).
Policy 2	<p>To retain and actively provide for the preservation, and where possible the enhancement, of natural areas and landforms, such as dunes and wetlands, which play an important role in hazard mitigation.</p>
Policy 3	<p>To ensure dwellings and habitable buildings located in the CHFPA are erected at or above the minimum building floor level identified for the site.</p>
Policy 4	<p>To avoid, remedy or mitigate the effects of development on overland flowpaths and natural ponding areas in accordance with their identified purpose.</p>
Policy 5	<p>To ensure that access to property within the CHFPA is established and maintained in a manner that avoids remedies or mitigates adverse effects on the environment while providing for the safety of the residents within the area.</p>
Policy 6	<p>To ensure new buildings and other structures (including the foundation structures of buildings) within the CHEPA are able to be practicably moved to a location landward of the CHEPA when threatened with exposure to coastal erosion.</p>

Policy 17	<p>To provide for in the CHEPA and CHFPA the maintenance, development, or enhancement of public reserves, urupā or reserves held in perpetuity for the community's benefit, and works associated with any Operative Reserves Management Plan or approved Regional Coast care programmes, subject to compliance with all other requirements of the District Plan.</p> <p>Any works undertaken shall, wherever possible, maintain or enhance;</p> <ol style="list-style-type: none"> the natural buffering abilities of the dune system; the provision of overland flowpaths and natural ponding areas; the natural and existing character of the environment; the purpose for which the reserve is set aside. <p>Any works undertaken should maintain or enhance the purpose of the reserve and some change to the natural and/or existing character of the environment may be allowed.</p>
Policy 18	<p>To assess the natural hazard risk from Debris Flows on the Awatarariki fanhead at Matatā by undertaking a risk analysis using the methodology set out in the Australian Geomechanical Society – Landslide Risk Management 2007.</p>
Policy 19	<p>a. To reduce the level of natural hazard risk in the Awatarariki High Risk Debris Flow Policy Area from high to medium levels (and lower if reasonably practicable);</p> <p>b. To reduce the level of natural hazard risk in the Awatarariki Medium Risk Debris Flow Policy Area from medium to as low as reasonably practicable;</p> <p>c. To maintain the level of natural hazard risk in the Awatarariki Low Risk Debris Flow Policy Area to within the low natural hazard risk range.</p>

Advice Note: Consent may also be required from the Bay of Plenty Regional Council.

18.2 RULES

The following standards and terms apply to permitted, controlled, and restricted discretionary activities and will be used as a guide for discretionary and non-complying activities.

18.2.1 Activity Status Table Coastal Erosion Risk Zones

Key

P = Permitted

C = Controlled

RD = Restricted Discretionary

D = Discretionary

NC = Non-Complying

Pr = Prohibited

Activity		CHEPA		
		CERZ	2060 ERZ	2100 ERZ
1.	Beach replenishment, planting and restoration works associated with approved regional Coastcare programmes.	P		
2.	Beach grooming and cleaning operations on any beach abutting an urbanised settlement area.	P		
3.	The management or removal of vegetation and fauna as required to promote/protect the natural buffering ability of the dune system, tree husbandry, and/or pest control operations.	P		

Advice Note: The New Zealand Fire Service recommends that water storage volumes and delivery systems be installed in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice: 2008. The Fire Service advises that often the best method to achieve compliance with this code of practice is through the installation of a home sprinkler system in accordance with Fire Systems for Houses NZS 4517: 2003, in each new **dwelling**. The qualified staff of the New Zealand Fire Service would be happy to assist.

18.2.6 Falling Debris and Debris Flows

18.2.6.1 On the Whakatāne and Ōhope escarpments, as shown on Planning Maps 107B, 110B, 111B, 117B, 118B, 119B, 505B and 506B, within the area shown as NHaz4, and above or below the NHaz4 line to the point where the predominant slope is less than 35 degrees from horizontal the following activities are Discretionary activities unless specified as Permitted activities in 18.2.6.2:

- a. the placement, construction, alteration or addition of a building or **accessory building** (including swimming pools) for a residential, community or **business activity**;
- b. the removal of vegetation; and.
- c. earthworks.

18.2.6.2 The following activities are Permitted activities in the areas described in 18.2.6.1;

- a. domestic gardening;
- b. management of Vegetation as defined in Chapter 21;
- c. earthworks that constitute the disturbance of the ground for domestic gardening;
- d. earthworks required for the establishment of a building platform after a building consent has been issued; and
- e. operation, maintenance and reinstatement of infrastructure.

Advice Note: Landslide and Debris Flow Risk Assessment at Whakatāne, Ōhope and Matatā (Planning Maps 101B, 107B, 110B, 111B, 114B, 117B, 118B, 119B and 502B, 505B and 506B)

Council is **currently** undertaking an assessment of landslide and debris flow risks in the vicinity of the escarpments at Whakatāne, Ōhope, and Matatā. This work is intended to provide the community with a better understanding of the nature and extent of these hazards and the risks they may present. **Council** has completed the debris flow risk assessment for the Awatarariki fanhead at Matatā and has included a Natural Hazard Policy Area on the Awatarariki fanhead. It is likely that the District Plan maps and rules that control land use and subdivision in areas affected by landslide and debris flow hazards, in areas apart from the Awatarariki fanhead at Matatā, will need to be changed once the risk assessment has been completed. Any changes to the District Plan will be subject to a public submission process under the Resource Management Act.

If you own land in close proximity to the escarpments at Whakatāne, Ōhope, and Matatā and are potentially affected by landslide and debris flow hazards, the **Council** will provide information to you on the risk assessment when this becomes available. If you are planning to purchase land or to undertake any development in the vicinity of the escarpments at Whakatāne, Ōhope, and Matatā you are advised to contact the **Council** at an early stage to obtain the latest information.

18.2.6.3 Within the area shown as **Awatarariki High Risk Debris Flow Policy Area** on Planning Map 101A Matatā the following activities are Permitted Activities:

- a. The construction of structures and the use of land for passive recreation, including the construction and maintenance of public pedestrian and cycle tracks, interpretative and

directional signs, fencing, pedestrian stiles, gates, bollards and associated barriers, seating, landscaping, gardens and grassed areas and rubbish and/or recycling bins;

- b. Activities operating in accordance with, or that are provided for in, an approved Reserve Management Plan under the Reserves Act 1977.
- c. The erection of new, and the minor upgrading (including ancillary earthworks) and maintenance of existing, network utilities and related structures **in a public place**;
- d. Demolition and/or removal of a building or structure;
- e. The removal of network utilities;
- f. Vegetation clearance;
- g. The erection of fencing, signage, a viewing platform and other minor structures, associated with the development of a commemorative reserve on Lot 20 DP 306286;
- h. Activities operating in accordance with section 18(2) of the Reserves Act 1977 on the Te Kaokaoroa Historic Reserve (Allotment 373 Town of Richmond)
- i. **Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Noise Limits.**

18.2.6.4 Within the area shown as **Awatarariki High Risk Debris Flow Policy Area** on Planning Map 101A Matatā the following activity is a Restricted Discretionary Activity:

- a. Earthworks
- b. **Temporary Military Activities that do not comply with the relevant noise standards in Table 11.2 Specific Noise Limits.**

In assessing an application for a Restricted Discretionary Activity for earthworks in the **Awatarariki High Risk Debris Flow Policy Area** the Council shall restrict its discretion to:

- a. Whether the activity will avoid causing any increased risk to other activities, and any buildings and their occupants on any other site, from a debris flow;
- b. Whether the activity will appropriately address the accidental discovery of koiwi or other taonga, including giving effect to any protocols agreed with tangata whenua.

18.2.6.5 Within the area shown as **Awatarariki High Risk Debris Flow Policy Area** on Planning Map 101A Matatā any activity, other than those that are a Permitted Activity under Rule 18.2.6.3 or a Restricted Discretionary Activity under Rule 18.2.6.4, is a Prohibited Activity.

18.2.6.6 Within the area shown as **Awatarariki Medium Risk Debris Flow Policy Area** on Planning Map 101A Matatā the following activities are Permitted Activities:

- a. Residential activities and associated buildings and structures within the existing building or structure envelope, including the footprint, as lawfully established before 31 December 2017;
- b. Demolition and/or removal of a building or structure;
- c. The erection of new, and the minor upgrading (including ancillary earthworks) and maintenance of existing, network utilities and related structures **in a public place**.
- d. **Temporary Military Training Activities that comply with the relevant noise standards in Table 11.2 Specific Noise Limits.**

18.2.6.7 Within the area shown as **Awatarariki Medium Risk Debris Flow Policy Area** on Planning Map 101A Matatā all activities are a Restricted Discretionary Activity unless the activity is listed as a Permitted Activity by Rule 18.2.6.6, or a discretionary, non-complying or prohibited

[activity in Section 3.4.1 Activity Status Table.](#)

18.2.7 Buildings, Structures and Activities in the CHEPA

18.2.7.1 All **dwelling**s, buildings and other structures, other than **minor structures and works**, within the **CHEPA** shall be designed or approved by a suitably qualified **Chartered Professional Engineer**.

18.2.7.2 Activities in the **CHEPA** shall ensure that the site is reinstated, maintained or enhanced so that the natural buffering ability of the dune system is not compromised.

Advice Note: The **Chartered Professional Engineer** shall be experienced in the analysis and design of structures and shall have experience in designing modular-type structures. The role of the **Chartered Professional Engineer** for section 18.2.7.1 includes confirming the suitability of the proposed structure's design, consistent with the requirements of the District Plan relating to easily **relocatable** structures from within the **CHEPA** if erosion occurs.

18.2.7.3 When the crest of the foredune, or top of any dune scarp or the top of the erosion scarp where there is no dune, recedes to within 20m of a building or activity, the location of buildings and activities in the **CHEPA** shall be reviewed by a suitably qualified person. Where required, the review shall assess the risk of erosion to the building or activity; and buildings and activities may be required to be removed, or **relocated**, as a consequence of the review undertaken.

Advice Note: Such a review will be applied as a condition of resource consent and will not apply to existing lawfully established buildings and Permitted activities.

18.2.7.4 The proposed **dwelling**, building, structure, addition or alteration (the works), provided for in the 2016 and 2100 ERZs under item 14 Activity Status Table 18.2.1, shall be able to be **practicably moved** to an **Alternative Building Site** located within the same title. A certificate from a **Chartered Professional Engineer** or house removal company shall be submitted detailing the means by which the proposed works can be practicably **relocated**.

18.2.7.5 The **Alternative Building Site** referred to in 18.2.7.4 shall be maintained in a form that will enable the **relocation** of the works to the **Alternative Building Site** at any time.

18.2.7.6 **Reinstatement** shall be provided to the extent that the natural shape of the foredune is maintained by reference to the existing natural shape of the dune in the vicinity of the **reinstatement** works and that, as a minimum, the volume of sand, or soil, between the 2100 ERZ boundary and the toe of the foredune per metre of frontage is not reduced to less than that existing before the **reinstatement** works commence. All excavated materials which comprise sand or soil material shall be respread within the **CHEPA** and be re-vegetated with plants suitable for the location. Revegetation planting shall be established within one month of the resspreading of the sand or soil material. Revegetation within the CERZ should be native dune plants. Other excavation material (i.e. ash, topsoil, organic matter) may be removed from site.

18.2.8 Dwellings, Habitable Buildings and Activities in the CHFPA

18.2.8.1 Activities in the **CHFPA**, as shown on the Planning Maps, shall ensure that the site is developed, reinstated and maintained so that stormwater overland flowpaths, wave surge flows and natural ponding areas are not compromised and any change to ground contours does not cause adverse off-site effects.

18.2.8.2 All **dwelling**s and habitable buildings located within a **CHFPA**, as shown on the Planning Maps, shall have a minimum floor level in accordance with the level identified in the Planning Maps.

Advice Note: The **Council** will, with its chosen management approach, establish a means of activity compliance through the compilation of WDC Coastal Hazard Building Guidelines. The guidelines will enable individual property owners to undertake certain aspects of works or development without the need for consultation with a **Chartered professional engineer experienced in coastal processes**. The

- g. the on-going provision of access to the site for the purpose of enabling **relocation** of buildings or structures
- h. the provision of an **Alternative Building Site**, where applicable;
- i. any other matter to which the **Council** has restricted its discretion in the zone in which the activity occurs;
- j. the location of the 2060 and 2100 ERZ boundaries on the subject site/s;
- k. the **reinstatement** of the foredune proposed to be undertaken following completion of the proposed works, development or activity; and
- l. the importance of maintaining Vehicular Lifeline Access, including but not limited to, National and Primary (Regional) arterials/routes.

18.4.2 **Awatarariki Medium Risk Debris Flow Policy Area**

18.4.2.1 **Council shall restrict its discretion to:**

- a. Whether the design and layout of the activity will reduce the risk to the activity, and any building and its occupants from a debris flow, to a level that is as low as reasonably practicable;
- b. Whether the activity will avoid causing any increased risk to other activities, and any buildings and their occupants on any other site, from a debris flow.
- c. An application for Restricted Discretionary Activity in the Awatarariki Medium Risk Debris Flow Policy Area shall not be notified, or served on affected persons.

An application for Restricted Discretionary Activity in the Awatarariki Medium Risk Debris Flow Policy Area shall not be notified, or served on affected persons.

18.5 **ASSESSMENT CRITERIA—DISCRETIONARY ACTIVITIES / NON-COMPLYING ACTIVITIES**

See Section 3.7.

18.6 **SAMPLE RESOURCE CONSENT CONDITIONS FOR ACTIVITIES IN THE CHEPA AND CHFPA**

- | | |
|--|--|
| <ol style="list-style-type: none"> 1. 2. 3. | <p>Subdivision and land use consent shall, where applicable, include conditions that existing and new lots, or development, be provided with Alternative Building Sites. Where required, any Alternative Building Site may be provided outside of the CHEPA or contiguous to the subject site and in either case shall be held in the same certificate of title. The Alternative Building Site shall remain as vacant land until it is needed for the relocation of the building or structure.</p> <p>Consent may include conditions and requirements that need to be satisfied on an on-going basis such as those requiring periodic review. Such conditions and requirements shall be registered on the certificate of title for the lot by way of a consent notice, or for land use consent, shall be registered by way of a covenant on the certificate of title.</p> <p>A review of conditions under section 128 of the RMA. This review would be initiated where defined hazard risk circumstances occur on the site, particularly when the crest of the foredune, or the top of any dune scarp or the top of the erosion scarp where there is no</p> |
|--|--|

The **Council** will place an advice note on every subdivision consent granted and, where the consent pertains to a site that has already been created through the subdivision process, but on which a permitted building has not yet been built, an advice note on every building consent granted. The advice note will read: "The New Zealand Fire Service recommends that water storage volumes and delivery systems be installed in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice: 2008. The Fire Service advises that often the best method to achieve compliance with this code of practice is through the installation of a home sprinkler system in accordance with Fire Systems for houses NZS 4517: 2003, in each new **dwelling**. The qualified staff of the New Zealand Fire Service would be happy to assist and advise".

The Civil Defence Emergency Management Act 2002 and the Building Act 2004 work in conjunction with the Plan's rules to achieve the Plan's objectives and to implement the Plan's policies.

Flood risk will also be addressed by the Floodplain Management Strategies produced by the Bay of Plenty Regional Council.

Anyone planning to purchase land or undertake development in the **Awatarariki High Risk Debris Flow Policy Area** is advised to contact the Bay of Plenty Regional Council to determine if there are any regional rules that would affect their development.

The area shown as Awatarariki Low Risk Debris Flow Policy Area on Planning Map 101A Matatā has been assessed as having a low risk to life and property from debris flows from the Awatarariki catchment. While this is an acceptable level of risk, anyone planning to purchase land or undertake development in this area is advised to contact **Council** to obtain the latest information, and to then evaluate the risk. The debris flood in this area, resulting from a debris flow from the Awatarariki catchment, will be further assessed as part of future district wide susceptibility modelling of flooding. It is possible that the outcome of that assessment will result in controls being placed on land use and/or subdivision.

does not include repair or maintenance.

Alternative building site means an area of land comprising a minimum area of 350m² (or the minimum size for a **lot** in the land use activity zone in which it is located, whichever is the greater) which is held in the same certificate of title as the land in the **CHEPA**. It must be suitable for a **dwelling** and be of a size and shape that will contain a **dwelling** (and associated activities) as a permitted activity complying with all permitted activity conditions in the District Plan. Such land shall remain able to be used as an **alternative building site** for the donor building (the building located in the **CHEPA**), for the duration of the land use consent or, in the case of subdivision, until it is needed for relocation of the consented activity, building or structure.

Note: For the purposes of this definition the phrase “shall remain able to be used” means that the area identified as an **alternative building site** shall not be developed, landscaped or otherwise contoured, or planted in trees in such a way that would prevent the relocation of the subject building and the provision of yards, car-parking, access and manoeuvring areas in accordance with the Performance Standards in the District Plan. For guidance, the erection and placement of fences, garden structures, clotheslines, letterboxes and paving areas may be appropriate on the **alternative building site**.

Amenity values has the same meaning as in Section 2 of the Resource Management Act 1991.

Ancillary means small and minor in scale in relation to, and incidental to, the primary activity and serving a subordinate but supportive function to the primary activity. An activity that is of a scale, character or intensity that is considered independent of the principle activity is not ancillary.

Annual exceedance probability means the chance or probability of a natural hazard event (usually a rainfall or flooding event) occurring annually and is usually expressed as a percentage.

Antenna means an electrical device that converts electric power to radio waves and vice versa. **Antenna** can be in a range of physical configurations including dishes, panels, arrays, rods, loops, coils, spheres and linear wire spans.

Artificial crop protection structure means structures with material used to protect crops and/or enhance growth (excluding **greenhouses**).

Artificial watercourse means a watercourse that is not a natural or modified watercourse, and is a completely human-made channel along which water would not naturally flow. An **artificial watercourse** includes irrigation canals, water supply races, and canals for the supply of water for electricity power generation, farm drains and other drains (e.g. roadside drains).

Assessment of Environmental Effects has the same meaning as in Section 2 of the Resource Management Act 1991.

Audible bird scaring device means a noise emitting device being used for the purpose of disturbing or scaring birds including a gas gun, avian distress alarm and firearm, when being used specifically for bird scaring.

Awatarariki High Risk Debris Flow Policy Area means land on the Awatarariki fanhead that is subject to a high risk to life and property from debris flows as shown on Planning Map 101A.

Awatarariki Medium Risk Debris Flow Policy Area means land on the Awatarariki fanhead that is subject to a medium risk to life and property from debris flows as shown on Planning Map 101A.

Awatarariki Low Risk Debris Flow Policy Area means land on the Awatarariki fanhead that is subject to low risk of life and property from debris flows as shown on Planning Map 101A.

Bed, for the purposes of **esplanade reserve** or esplanade strip requirements, means the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks.

Significant Indigenous Biodiversity Site (SIBS) means an area of indigenous vegetation or habitat of indigenous fauna that has been identified as significant using criteria in set 3 Indigenous Vegetation and Habitats of Indigenous fauna in Appendix criteria F of the Bay of Plenty Regional Policy Statement

Significant Identified Ridgelines means ridgelines that are identified on the Planning Maps and were derived from the Whakatāne District Landscape Review 2011.

Sign means any name, figure, character, outline, display, delineation, announcement, poster, handbill, advertising device, advertising flag, trailer sign or appliance, or any other things of a similar nature to attract attention which is visible from some public place and shall include all parts, portions, units and materials composing same, together with the frame, background, structure and support or anchorage thereof, as the case may be, and shall also include any of the foregoing things when displayed on a billboard or building.

For clarification, a signage installation with two panels placed at less than 90 degrees to each other is considered to be one sign.

Site means the area of land clearly related to a particular development, application, proposal, or use. Included in this definition are all buildings and curtilages which form part of the site;

Small scale rural enterprise activity means processing, assembling, packaging and storage or retailing of primary products from the site on which the activity is located, with the exception of honey processing where honey may be sourced from hives on other sites, and:

- a. employs no more than ten people on the site; and
- b. is located within a building or open space with a maximum **Gross Floor Area** or land area of 50m².

For the avoidance of doubt small scale rural enterprise activities do not include activities provided as part of **farming**.

Soft protection works means any man-made works requiring the establishment of increased beachfront or dune volume, including beach replenishment and restoration and that are designed to, or have the function of, protecting a building, structure or land from erosion by the sea.

Statutory acknowledgement is an acknowledgement by the Crown in an Act of an iwi's special relationship with identifiable areas having cultural, spiritual, historical or traditional association with that area. These areas are called statutory areas. The proposal should include an assessment of effects on any statutory area.

Stopbank means an embankment bordering one or both sides of a river or drainage channel to contain flows. A stopbank is designed and constructed to provide a specific level of flood protection.

Structure means any building, equipment, device or other facility made by people and which is fixed to land and includes any raft, and excludes **maimai stands**.

Structure Plan means a planning technique applied to a defined geographical area so as to ensure coordinated development of an area through the integrated provision of infrastructure and the integrated management of related environmental effects and which may also encompass financial, economic, social and cultural considerations.

Sub-station means those parts of works or electrical installations being a building structure, or enclosure, incorporating fittings that are used for the purposes of the control of the transformation, transmission, or distribution of electricity.

Suitably Qualified and Experienced Practitioner means a person who is an independent expert who applies good professional practice, and assesses consequences with reference to accepted benchmarks and industry guidelines.