

## DIRECTIONS OF THE COMMISSIONERS

### MINUTE 2

#### INTRODUCTION

- [1] The Whakatāne District Council has provided 18 briefs of expert evidence in support of Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan and Plan Change 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan.
- [2] The commissioners have read that evidence and have identified a number of questions for the experts. To facilitate the provision of considered answers to those questions the commissioners would appreciate it if the relevant experts could answer those questions in writing prior to the commencement of the hearing.

#### REQUEST AND HEARING ATTENDANCE

- [3] In the spirit of section 41C(3) of the RMA, the Whakatāne District Council as proposer and requester respectively of the Plan Changes is requested to have its experts provide written answers to the questions set out in Appendix 1 to the Hearings Administrator no later than 4.00pm on **Wednesday 26 February 2020**.
- [4] Experts for whom there are no questions in Appendix 1 to this Minute need not attend the hearing on our account. If questions arise for those experts during the course of hearing then they can be answered in writing at a later date. Those experts are:
  - Chris Phillips
  - Greg Ball
  - Tom Basset

#### WDC PLAN CHANGE MAPS

- [5] We understand that PC 1 (WDC) is set out in Appendix 7 of the Section 32 report and that there are two A3 maps which follow the text showing the intended changes to the operative District Plan maps (labelled Matatā 101A and Matatā 101B).
- [6] It is not clear to us if maps Matatā 101A and Matatā 101B were formally notified as part of PC1 and we would appreciate this matter being addressed in the WDC's opening legal submissions.



Rob van Voorthuysen

Independent Commissioner – Chair - on Behalf of the Commissioners

Dated: 12 February 2020

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**Appendix 1: Questions for the WDC experts**

### Written Questions for WDC Witnesses

#### Authors:

**Trevor Robinson**

**Rauru Kirikiri**

**Fraser Campbell**

**Rob van Voorthuysen**

Witness	Paragraph	Question
Alastair Pratt	6.1	<p>Are you aware of any peculiarly tangata whenua issues regarding valuation of properties that might perhaps have been overlooked? For example, can we be confident that there are no Ngāti Rangitihi claims settlement matters that could impact on the sort of valuation methodology used by Messrs Gibson and Donovan-Grammer?</p> <p>For that matter, do we know how many Māori owned properties there are in the affected area of Matatā and how they might have been consulted throughout this process, including any disputes over market values?</p> <p>You advise that the methodology used is robust and follows generally accepted principles. Was the methodology applied correctly and what view do you have on the valuations presented by Telfer Young?</p>
Amelia Linzey	6.4 (d)	Please elaborate on your statement that the Regional Plan Change is only required if the managed retreat programme is not taken up by any landowner.
	6.13	How do you balance the impacts of the status quo (existing risk remains) with its uncertainty on the timing and impact of a future debris slide against the certainty of impact of the Plan Changes?
	7.11	How do you balance the certainty of a current effect against the possibility of a much worse future effect, to arrive at an overall view?
	8.2	Would you have the same view of temporary use for defence purposes. If not, why not?

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

Witness	Paragraph	Question
		<p>There is no assessment of the social impact to local Māori in your statement. We might have expected there to be some mention of the possible effect that the plan changes might have on a significant sector of the local community, particularly given the whakapapa and tangata whenua traditions that attach to Matatā. Was there consideration given to the preparation of a cultural impact assessment - that you are aware of?</p> <p>Is it common practice to make a distinction between social impacts and cultural impacts in instances like these plan changes? We appreciate that you might not be the appropriate person to put such questions to, but it does concern us that there does not seem to have been more attention given to the particular circumstances of tangata whenua in this process. We'd welcome your views on this.</p>
Chris Massey	7.9	<p>You refer to the AIFR as being the annual risk (probability) of loss of life (death) of a person from landslides as being the annual individual fatality risk as the product of the probability of the rainfall initiating event x the probability the person is present at the location when the debris reaches/passes x the probability that the person is in the path of the debris x probability that the person is killed. How does this AIFR formula compare with that used by BOPRC in the RPS Appendix L.? Are the methods comparable?</p> <p>How would you assess the risk of the debris flow that occurred on 2005 looking at the return period of the rainfall event and the fact that no lives were lost or injuries?</p>
Craig Batchelar		<p>Mr Farrell's programme update letter of 16 December 2019 states that there are 34 properties in the High Debris Flow Risk Policy area. PC 17 identifies 18 properties in Table NH3 that are subject to High Risk Debris Flow.</p> <p>Is the extent of the High Risk Debris Flow area in PC17 the same as the High Debris Flow Risk Policy area referred to in Mr Farrell's letter?</p> <p>Does NH3 only refer to those properties with dwellings on them.?</p> <p>Could a vacant section be built on within the High Risk area under the District Plan Change 1?</p> <p>You refer to Council's legal advisors stating that there is authority that reasonable use of land as provided for in Section 85 (RMA) does not extend to developing or living on land that is subject to high</p>

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

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	12.21	natural hazard. Can you provide that advice to the Panel?
	14.17	With regard to the problems with staged retreat based on individual property risk being technically difficult to achieve, can you please explain that given that the Debris Risk maps have been developed down to an individual property level?
	12.5	Please explain how providing for temporary occupation of identified High Risk areas by Defence Force personnel is consistent with the case advanced by Council and/or the RPS? Do, for instance, Defence Force personnel have a functional need to occupy those areas?
	12.11	Is that correct that the risk assessment evidence of e.g. Mr Hind and Professor Davies is not presented in terms indicating application of the risk assessment methodology in Appendix L of the RPS? If they can be reconciled, please explain how this can be done. If not, what if any significance should we give to that fact?
	12.12	In the context of Objective 31, is the objective correctly read with the word “managing” applying to “the protection of property and lifeline utilities”?
		Should the first sentence of this paragraph be reframed to say that mitigation is possible, but not to an acceptable standard?
		Is the issue not so much with achievement of the objective (which does not specify what that standard is) but rather with Policy NH3B?
		If so, what are we to make of the fact that Policy NH3B says that it is to be achieved (relevantly) by Policy NH12A, which in turn is framed in less directive language- “take into account”, “where practicable”, where necessary”?
		Does the quandary you describe arise, if it is a Controlled Activity, which by definition, must be

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

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	12.24	granted?  Does RPS Policy NH3B prescribe how large (or small) the “natural hazard zone” must(may) be?
	14.14	Is a situation where it is “questionable” whether consent may properly be able to be granted sufficient to justify prohibited activity status?
	14.47	How real is the identified risk given Professor Davies’ evidence that advance warning of a large debris flow is likely to be in the order of minutes at best, and Dr McSaveney’s evidence that the 2005 debris flow took place over a relatively short time (more than an hour)? On the face of the matter there would be no time for a rescue to be mounted.
	14.49	Would rebuilding require a Building consent? If so, wouldn’t the MBIE determination resolve any uncertainty?
	14.21	Please elaborate on how iwi management plans were incorporated into the proposed plan changes?  How are Ngāti Awa concerns over recognition of the cultural significance of the reserve area being addressed going forward?
David Stimpson		Unless I am missing something there seems to be a crucial gap in the makeup of the CDG - there are no tangata whenua representatives. Why was this?  In para 15 of your evidence you refer to “... continuing to seek engagement with landowners who whakapapa to Ngāti Awa” and that it was agreed that Council officers would do so. Are you able to tell us what transpired?  In any event was the CDG aware of any significant issues of concern to Ngāti Awa - and Ngāti Rangitihi in particular - at the time that might perhaps have impacted on CDG deliberations?

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

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		<p>Are you able to comment further on the Kaokaoroa Reserve matter - e.g. consultation with Ngāti Hinerangi?</p> <p>Are you aware of any other urupā in the area that might also be affected in the same way as the Kaokaoroa Reserve?</p>
Ganesh Nana	15.5	<p>Are there any specific Māori-related criteria that apply to your model - generally or specifically in this instance?</p> <p>If so, might they not still be applied - even at this stage in the process - because they don't seem to have been applied so far?</p> <p>Who were the stakeholders who weighted the factors?</p> <p>Given that the loss of life criteria has the most weight how is the likelihood of this occurring compared with other factors such as stress levels and keeping community assessed in the MCA approach?</p> <p>How were the results of the MCA used by the Council in making its decisions?</p>
Gerard Willis	<p>6.6</p> <p>6.7</p> <p>6.12</p>	<p>Are the cross references in the first sentence incorrect so that you are referring to the footnote to Policy NH 14C? If the RPS is correctly characterised, as you suggest, as providing "the ability" to override existing use rights, does it follow that it does not require that outcome?</p> <p>Is BOPRC under the same obligation as you identify WDC as being under? If so, why?</p> <p>Please identify the section of the RPS that creates obligations on the District Council and in particular the requirement to reduce high natural hazard risks?</p> <p>What should we make of the fact that RPS Appendix K appears to be related only to land use change? Dr Saunders gives evidence (paragraph 6.5) that risk thresholds should be determined by decision-makers "in consultation with those at risk".</p> <p>Do you disagree?</p>

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

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		<p>If so why?</p> <p>Has such consultation occurred?</p>
Jeff Farrell	1.1	<p>You state there were no fatalities nor we understand serious injuries.</p> <p>Was this purely good luck?</p> <p>Are you able to provide a reason for that given that you were astonished that there were no fatalities?</p>
	1.8	<p>Why wasn't the risk management framework using both engineering and planning options pursued in the first instance?</p>
	5.25	<p>Please explain what is meant by life-risk profile of <math>10^{-2}a^1</math>.</p>
	5.42	<p>You state that property owners have approached risk perception based on their own personal views whereas the District Council has approached the issue objectively through a structured decision-making process. Given that this information that the Council has used has been discussed with the residents why do you think they have arrived at a different conclusion?</p>
	5.52	<p>Figure 1 of the peer review shows dotted and solid black and red lines defining annual loss of life risk extents.</p> <p>How did you take these lines and convert them into closed overlays in the planning maps?</p> <p>What annual loss of risk lines define the boundaries to the High, Medium and Low Risk overlays.</p>
	5.75	<p>In the second sentence, in terms of the Minister's advice, is it correctly stated as plan changes plural?</p> <p>Is the Government's participation conditional on confirmation of one or both plan changes, or just on initiation of the First Schedule process?</p>
	6.1(d)	<p>Is the land/ dwellings within the identified High Risk area currently insurable? If so, is a risk premium being required by insurers? If so, of what order?</p> <p>Can you please update us on the number of settled properties under the 'voluntary managed retreat'</p>



Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

Witness	Paragraph	Question
		<p>funding package?</p> <p>Of the settled properties, how many are Māori owned, and were there any peculiarly Māori-related issues that you were aware of that contributed to how settlements were reached e.g. Treaty claims?</p> <p>Why were there no tangata whenua representatives on the CDG?</p> <p>Was there direct iwi involvement in the preparation and signing of the 2019 MOU? If so, which iwi (who from each in particular) and if not, why not?</p> <p>In paragraph 1.24 of your evidence you say there will be an update on the number of properties sold. Can you advise on that?</p>
John Reid	<p>4.5</p> <p>6.2</p>	<p>The evidence of Donovan-Grammer refers to 31 affected property market valuations. Can you please explain why you refer to 34 affected private properties?</p> <p>Does the MBIE determination apply to properties in the entire Debris Flow Policy Area or just to those in the High Risk portion?</p> <p>Are you able to elaborate on the “cultural matters” that you refer to in paragraph 4.13 of your evidence - what were they, how significant did you think they were at the time, what was your understanding of the outcome of the sharing of those concerns with Telfer Young and the District Council, etc?</p> <p>Of particular interest are your thoughts on the connections to the Ngāti Hinerangi subdivision and the 1864 Battle of Kaokaoroa.</p> <p>What has been your past experience in working on the sort of cultural matters you uncovered here, and how have they been satisfactorily addressed, if at all?</p>
Kevin Hind	6.31	Can you advise why those landowners declined permission? If it had been possible to proceed without

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

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		that constraint, would that have made a material difference to the technical viability of a debris diversion bund?
	Figure 16	Can you explain this figure please? What are the axes and how have the projected densities been plotted? What difference would the reduction in density resulting from the agreements Council has reached with landowners (as advised by Mr Farrell) make to it?
	6.87	Can you explain your statement that based on the return period of the 2005 event being between 200 and 500 years a similar event is seen as “likely”, within the context of the expected life of the buildings present on the fan?
		Are you able to provide an estimate of the likelihood of a 200 to 500 year return period event occurring in the next 20 and 50 years?
	Table 5	Please explain how you arrived at $P_{(T:S-2)}$ being 0.25 and $V_{(D:T)}$ being 0.75. Was there any loss of life or serious injury to any of the residents of the area?
		Please compare the return period of a landslide with that of an earthquake or flood in terms of whether a planning and/or an engineering intervention should be proposed?
Mauri McSaveney	15.2	You note that it is not the role of the technical expert to conclude that any area is fit or unfit for any particular use. Would you explain this view in line with Dr Massey’s statement in para 7.10 of his evidence where he states that Dr McSaveney and Prof Davies identified an area of the fan that was considered unsuitable for residential use?
		What is your opinion on the accuracy or sensitivity of areal extents of the High, Medium and Low Debris Flow Risk Overlays proposed in PC1 on Map 101A?
Peter Blackwood	Table Four	What is the shape of a line plotting the reduction in AEPs over the period between 2020 and 2080-2100? What for instance would the predicted probabilities be at say 2030 and 2050?
Shayne Donovan-Grammar	General	Putting aside the effect of potential RMA-based constraints on continued/ expanded use of properties

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

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		<p>in the identified High Risk area, what discount would/is the market apply in recognition of the assessed hazard risk? On the same assumption, would/is the market distinguishing between different levels of risk (a) Within the identified High Risk area or (b) across the broader fanhead?</p> <p>In his evidence John Reid said he shared his thoughts on “cultural matters” with TelferYoung (not you specifically) at the time of preparing his report. Can you clarify (and if not you then who in TelferYoung) the nature of Mr Reid’s concerns on cultural matters and how they were dealt with in the TelferYoung report?</p>
Tim Davies	1.6 & 7.46	The evidence of Blackwood indicates that as a result of predicted climate change the ARI of the 2005 event might reduce to within a range of 40 to 80 years. Does that affect your analysis and the delineation of the three hazard risk areas?
	General	Mr Farrell references your 2005 report as concluding that the risk of loss of life was/is $1 \times 10^{-2}$ to $1 \times 10^{-3}$ . Should we read your evidence as indicating a revision of that view, to a lower level of risk than your 2005 assessment?
	7.41	<p>You refer to the paucity of data on debris flows at any given location which would appear to include Matata. Numerical debris flows were computer generated to approximate the magnitude-frequency relationship. You early note in paragraph 7.37 that it is necessary to take a precautionary approach where lives are at risk.</p> <p>How do you apply a precautionary approach when the magnitude-frequency analysis is based on a number of assumptions?</p> <p>What is potential for over estimating the likelihood of such an event occurring and then overlaying the limits of acceptable risk as per Figure 3 or those in Table 3 of Mr Hinds evidence?</p> <p>Please explain the difference in approach and outcome of using your Figure 3 compared with that of Mr Hinds Table 3?</p>
	7.48(a)	Can you clarify why, applying the phrase “As Low as Reasonably Practicable” literally, if there are there are no reasonably practicable measures, ALARP is not the status quo.

Whakatāne District Council and Bay of Plenty Regional Council

PC1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

PC 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resources Plan

Minute 2

Witness	Paragraph	Question
Wendy Saunders		<p>Does your evidence relate to the entire Debris Flow Policy Area or just to in the High Risk portion?</p> <p>What impact on the does your Table 1 comparison have Plan Changes?</p> <p>What is the basis of your interpretation that an event with a 1% change of occurrence in a given year is seen as being likely?</p> <p>Can you explain the logic of moving from the Blackwood and Bassett view that the wisest assessment is that the 2005 event was 12 to 18% greater than the 1% AEP to a conclusion that it is appropriate to use a return period of 1/100 years (i.e. a 1% AEP) or less?</p> <p>The return periods you are proposing for the 2005 Matata event appear to be inconsistent with other expert evidence produced. Can you explain any implications of that?</p>