

Craig Batchelar

1.0 EVIDENCE SUMMARY

- 1.1 Under the Bay of Plenty Regional Policy Statement, the District Council is required to take steps to reduce natural hazard risk from high to a lower level.
- 1.2 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 hazard area. Non-regulatory measures have been investigated and none are proven to be practicable for reducing risk to life.
- 1.3 District Plan Change 1 and Plan Change 17 provide an integrated response from both the District Council and the BOPRC, within the current planning framework, that achieves a 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.
- 1.4 At the time the Plan Changes were publicly notified, managed voluntary retreat had not been proven as "reasonably practicable" as it remained subject to approval by local and central government.
- 1.5 With approval now in place, the District Council, in conjunction with the BOPRC and central government, is now pursuing a parallel voluntary managed retreat process to ease the process for affected property owners who will be affected by the Plan Changes.
- 1.6 Regardless of the 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.

- 1.7 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 Plan Changes, alongside other management measures including Voluntary Managed Retreat, create the opportunity for this and are the most efficient and effective approach.
- 1.8 I generally agree with the assessment and findings set out in the s42A Report and the recommended amendments to the Plan Changes.

2.0 ADDITIONAL MATTERS

Removal of Medium Risk Policy Area

- 2.1 The panel have identified an issue with the planning merits of the Awatarariki Medium Risk Debris Flow Policy Area (Medium Risk Area). Two witnesses have suggested it be folded onto the High Risk Area.
- 2.2 The Medium Risk Area is based on the AGS 2007 assessment and peer review. Much of the mapped area applies to undevelopable land. The High Risk Area extent already applies a precautionary approach.
- 2.3 The acquisition strategy relates to the High Risk Area only.
- 2.4 No submissions have sought this change. A variation would be needed. This impacts on both plan changes.
- 2.5 The extinguishing of Existing Use Rights would apply to at least two additional sites.
- 2.6 If an amendment were to be made, this should follow property boundaries given the difference in planning controls across the boundary.

Regional Policy Statement – Policy NH3B and NH12A Relationship

2.7 The BOPRC RPS has four policy types¹

- Broad Directive
- Specific Directive
- Allocation of Responsibilities
- Guidance

2.8 Broad and specific directive policies are distinguished as follows²:

“The broad directive policies must be given effect to by regional, city and district plans. These policies direct the broad matters that shall be included in the policies, rules and/or other methods of regional and district plans. These policies are necessary to achieve the objectives. Their broad nature means each council will need to work with their communities, iwi authorities, and other affected stakeholders, to find the most appropriate way to give effect to the Statement. The broad policies are identified by the letter A after the main policy number e.g. CE 3A.

The specific directive policies are identified by the letter B after the main policy number e.g. CE 7B. Specific directive policies are policies that:

- 1. Provide direction for the assessment and consideration of resource consent applications;*
- 2. Must be included in the policies, rules and/or other methods of regional and district plans; and*

¹ Part five Principal reasons for objectives, policies and methods

² Part 5 Principal Reasons for objectives, policies and methods 5.2.1 Directive Policies

3. *Must have particular regard to, where relevant, when considering notices of requirement (for designations or heritage orders) and any submissions received."*

2.9 Policy NH3B is a specific directive policy that must be included in the policies, rules and/or other methods of regional and district plans.

2.10 Policy NH12A is prefaced by the term "promoting". However, this is a "broad directive policy". In that context, I conclude that "promoting" in this instance has planning authorities being 'active' or 'advancing' rather than being 'reactive' when "taking into account" necessary risk reduction.

2.11 Policy NH12A is not a "guiding policy" which, under this RPS, do not involve regulation or statutory processes under the RMA.

2.12 Putting this together I conclude that the RPS requires that:

"The outcome of reduction of high natural hazard risk to medium levels (and lower if reasonably practicable) for existing land use activities on the Awatarariki Fanhead must be achieved by promoting the inclusion of policies, rules, and/or other methods in regional and district plans."

Inclusion of AGS 2007 in Operative District Plan and Regional Plan

2.13 Appendix L is referred to as a "default methodology" used to analyse and evaluate risk. It is a general method that can be applied to all hazards.

2.14 The Appendix is open to the use of alternative methods where proven to be appropriate. Expert opinion is that AGS 2007 is the most appropriate method for landslides/debris flows.

2.15 There are two pathways identified for formalising an alternative method:

- District/Regional Plan (i.e. via change or review);
- Resource consent.

The User Guide includes the following³:

The preceding part explains how to apply the default risk assessment methodology of Appendix L when there is an absence of information.

Another option available to councils and resource consent applicants is to use an alternative recognised risk assessment methodology (RRAM).

Appendix L states that a RRAM must be either:

included in a regional, city or district plan, or

recognised in the consideration of a resource consent application (note that this reference should be read to include a private plan change process or notice of requirement).

In determining whether a risk assessment methodology can qualify as an RRAM for the purpose of the RPS, regard should be had to the criteria set out below.

2.16 AGS 2007 is referenced in the user guide “4.3 Risk methodologies deemed to comply” with the RRAM.\

2.17

4.3 Risk methodologies deemed to comply

For the avoidance of doubt and to provide certainty for potentially affected stakeholders, the Regional Council invites stakeholders to identify risk methodologies that they believe comply with the criteria set out above.

The Regional Council will consider any methodology submitted to it and maintain a list of methodologies on its website that it considers comply with the criteria set out above.

At this point, the Regional Council can confirm that it regards the following guideline as a RRAM. As noted above, further methodologies may be added to this list from time to time.

Name	Date	Author	Hazard type
Landslide Risk Management	2007	Australian Geomechanics Society	Landslide

In addition, the Regional Council notes the general approach to hazard risk assessment promoted in the following publications and considers that the concepts and approaches

proposed in those guidelines provide useful context for applying the RPS's natural hazards policies.

2.18 AGS 2007 has been proposed to be included by reference under clause 34, Schedule 1 in both Regional and District Plans. See Section 32 Report Sections 5.6.⁴

³ Part 4: Recognised risk assessment methodology

⁴ <https://www.boprc.govt.nz/your-council/news/public-notice/public-notice/2018/april/proposed-plan-change-17-awatarariki-fanhead/>

- 2.19 The Plan Changes put AGS 2007 forward for further evaluation of its appropriateness in the context of the risk assessment that underpins them.

PC 17 Explanation/Reasons - are they part of RPS

- 2.20 Yes, although I am advised that what was to be the “user guide” is now an Appendix in the consolidated NRRP.

Residential Activity Definitions

- 2.21 District Plan (As applicable to PC 1)

Residential activity means the use of land or buildings by people for living accommodation where those people voluntarily live at the site alone or in family and/or non-family groups, whether the person is subject to care, supervision or not, and who will generally refer to the site as their home and permanent address.

2.22 PC 17

“residential activity” shall mean the use of land or buildings by people for living accommodation whether permanent or temporary and includes, but is not limited to, any dwellings, apartments, boarding houses, hotels, hostels, motels, camping grounds, mobile homes, caravans, tents, and accommodation for seasonal workers.

2.23 PC 17 is broader in coverage than the District Plan to ensure that the prohibited activity captures all likely forms and scales of permanent or semi-permanent residential use or occupation whether formal (e.g. needing Council consent) or informal.

2.24 Under the District Plan the various forms of residential activity are captured in other plan definitions. These are all subject to the forward looking default prohibited activity rule for the High Risk Area.

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