

Wednesday 11 December 2019

Awatarariki Residents Incorporated
Matatā

Dear Bay of Plenty Regional Councillors

Re: Matatā Managed Retreat & Plan Change Process

It has come to our attention that decisions regarding Awatarariki are on the agenda at your Council meeting tomorrow and we would like to give you our perspective on this. Unfortunately we are unable to attend the public forum, which would have been preferable, but invite any Councillor to contact us directly should you have any questions or want to know more about what is happening here in Matatā and how your decisions are affecting us.

The Awatarariki Residents Incorporated (ARI) represents twelve families who own properties on the Awatarariki fanhead, eight of these families are living here. We last made a submission to you in February of 2018 to ask you not to accept a plan change request from the Whakatane District Council (WDC) or at least to put this on hold while we worked through an MoU with the WDC to achieve better outcomes for our people. I have attached our last letter to you regarding this and the written submission we made on that day. The outcome of that day was that you took your lawyers advice to proceed, and the WDC, successful in their plan change request, then withdrew their MoU to work with us the next day.

We still hold the same views expressed in our submission of February 2018 but are now much further down the track with our community being gutted by the WDC managed retreat now in process. **We believe that the people of Awatarariki are being forced under duress to sign away their homes without being given due process to the RMA as afforded by the plan change process, and without access to information that is being deliberately withheld by BoPRC staff.** This is a coercive measure to force us into a Managed Retreat process or risk everything with the potential extinguishing our land use rights, where we would 'become squatters in our own homes'. Just because Council planners & staff can manipulate us through this process doesn't mean they should. It is unfair and it is wrong to do this.

The information we are requesting is as follows and has been backwards and forwards to the Ombudsman since March of this year. This is what we wrote to the Ombudsman:

'The Leventhal peer review was commissioned by local government (Bay of Plenty Regional Council) in response to a publicly notified plan change process (Bay of Plenty Regional Council and Whakatane District Council). There is no reason why this document should not be provided to the submitters (and public) particularly when it is highly relevant to the plan changes being proposed; commissioned by the council; and written by a leading expert in the field. There is urgency with the request as the residents will have to decide whether they accept possible compensation or continue with the hearing of the plan changes.'

If you can access this report from Council staff please ask to read it and consider for yourself if it has any importance for our situation here.

Our other concern is around initiating the Managed Retreat funding without full access to contributed funds by BoPRC. This is what you will decide on tomorrow as to whether to release these funds:

"5 Agrees to fund a \$5 million contribution to the Awatarariki Fanhead Managed Retreat from the Regional Fund and delegates to the Chief Executive approve payments including early release of funds if required." (BoPRC Agenda 12/12/2019)

It seems as if WDC is forcing your hand by progressing the implementation of Managed Retreat ahead of the BoPRC releasing their funds and before the RMA process has run its course.

In the BoPRC Meeting of 21 March 2019 you passed a resolution that:

- 1 Receives the report, Awatarariki Fanhead Managed Retreat;
- 2 That Council makes an in-principle decision to provide up to \$5 million towards the Awatarariki Fanhead managed retreat, subject to:
 - a) Whakatāne District Council and Government formally approving funding that is at least equal to the Bay of Plenty Regional Council funding allocation.
 - b) **Council completing any legislative requirements in relation to a full funding decision, which may include public consultation.**
 - c) A full funding decision will be subject to standard Council conditions and any conditions deemed appropriate at the time and **subject to the outcome of District Plan Change and Regional Natural Resources Plan Change currently in progress.**

Crosby/Nees CARRIED Cr Cronin abstained from voting

There are two important areas that I have highlighted in the resolution that I would ask you to consider when you are making your decision tomorrow regarding delegating funding authority to your CE to release funds for the Managed Retreat. **At the time you made this resolution you considered it appropriate to fund retreat at Awatarariki after the outcome of the joint Plan Change process was known.** We believe this is appropriate and fair, enabling affected residents to exercise their rights through the RMA process and to provide robust, consistent and transparent measures to address this and other future issues where our case is precedent setting.

Also to note in your resolution of 21st March regards to the fulfilling of legislative requirements, ***which may include public consultation.*** Again we think this is appropriate and fair to the ratepayers of the region and to the Whakatane District who pay for this retreat twice through their rates. \$5 million dollars is a significant amount of public spending to be pulled out of the hat without any public consultation. It is estimated that this will cost regional ratepayers \$50 a year over the next ten years. Early release of these funds does not fulfill a consultative process through setting of the Annual Plan & budget.

We ask you to consider the implications of the decisions you make in this forced retreat of the affected residents of Matatā. This raupatu will have intergenerational effects with the loss of our mana whenua and mana orite. We ask for you to pay regard to democratic and due process that should be afforded to all people of Aotearoa New Zealand, yet is being denied to us.

We ask you to vote no to delegating authority to your CE to release funds and remain true to your original resolution of March 21st. We ask that you coordinate with the WDC and the affected residents at Matatā to make these funds available should they be needed after the plan change process outcomes are known.

Ngā mihi

Rick Whalley



Chairperson

Awatarariki Residents Incorporated

021 304622

Regional Councilor

**Awatarariki Residents Incorporated
Society**

Chair Person Rick Whalley

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19 February 2018

**AWATARARIKI DEBRIS FLOW HAZARD-WHAKATĀNE DISTRICT COUNCIL RESPONSE TO
RISK**

Dear Councilor,

1. I write as the chairperson of the Awatarariki Residents Incorporated Society (ARI Society). The ARI represents 16 properties in the Awatarariki fanhead area which was subject to the Matata Debris flow in 1995.
2. I am attending the Regional Direction and Delivery Committee Meeting scheduled for tomorrow on behalf of ARI Society. This letter is sent in advance to update you on the progress of negotiations between AR Inc and Whakatane District Council.
3. AR Inc have been in negotiations with Whakatane District Council around the proposed plan change processes. AR Inc believe that a combination of risk reduction measures could reduce risk to an adequate level and some or all houses could remain at the Awatarariki Fanhead. This would change the outcome of the proposed plan change significantly.
4. As a result of negotiations a Memorandum of Understanding has been put together which sets out terms for Whakatane District Council (WDC) to fund a number of independent reports looking at the issues that remain outstanding for AR Inc. The MOU will most likely be signed by both parties later this week.

5. AR Inc have asked WDC to delay the public notification of the plan changes while these reports are being put together. However, WDC have refused to delay the plan change and will only agree to an extension of the submission period by 30 days to allow for the reports to be made available and considered by submitters.
6. AR Inc are concerned that despite WDC accepting that there are matters outstanding and being willing to fund reports to look into these matters, if council is not willing to give adequate consideration to their findings, than WDC are simply paying lip-service to the concerns of AR Inc and not keeping an open mind to all solutions.
7. This letter is provided to give you notice of the parallel processes that are ongoing and asks that you turn your mind to how these processes are going to work together. AR Inc ask that the regional plan change be delayed while the reports are being drafted to allow for adequate consideration of the report findings by Councilors and Council staff before the plan change is notified.

Dated 19 February 2018

Kind Regards

Rick Whalley
AR Inc Chairperson

Statement to BoPRC Meeting - Tuesday 20 Feb 2018



Agenda Items:

Awatarariki Debris Flow - Regional Plan Changes

Speakers:

Rick Whalley

Chairperson Awatarariki Residents Incorporated

Rachel Whalley

10 Clem Elliott Drive

Matatā

Ok 10 minutes to try to save our community, doesn't seem fair does it!

Thank you for the opportunity to put our case forward in this matter. I am speaking on behalf of the Awatarariki Residents Incorporated (ARI) Society. The ARI represents the owners of 16 properties in the Awatarariki area.

Firstly I would like to state that we are totally opposed to the proposal set forward by the Whakatane District Council to initiate plan changes that would result in the removal of our existing land use rights. Reports prepared by Council staff say that our view is a minority view, but we would like to point out that this is in fact the opposite. The majority of property owners are opposed to these proposals by Council, and we have wider support as well. As you will be aware you have received a letter dated 18th Feb 2018 sent to all councillors from the Matata Residents Association supporting the ARI. This letter also has the full backing and support of the Rangitaiki Community Board.

We want to work with the WDC to achieve fair and equitable outcomes for the residents of Awatarariki which is the purpose of the incorporated society. At present we don't feel that the WDC are working **with** us, but doing things **to** us, which we have no control over. If the WDC proposal is accepted and our existing land use rights are taken away, it will leave us without any agency, or the power to act on our own behalf. **We** are the **significantly affected parties** in this situation and **they** have all the power over decision making that affects our lives, our whānau and our property rights.

There are several points that we really want to make clear:

We don't want to be moved from our homes, properties and community

Since the event of 2005, we had settled back into normal life in our little community. We understand the risks if there is a significant weather event such as we had in 2005 and we feel confident in monitoring and mitigating that risk. This event did not only affect the Awatarariki residents, it was a BOP wide event and had significant effects across the region.

We were **lured back** by the WDC under the belief that they would uphold their end of the conditions to mitigate, but this did not happen. This proposal will take us back to the day after the flood, thirteen years after the event. This in effect makes us lose our home twice. We have been threatened with having our existing rights removed if we don't agree with their process, we have been threatened with having our water and electricity turned off if we don't move. The WDC have been in discussions with the banks and now we can not even get loans from the bank. One of our elderly residents went to the bank to get a \$3000 loan to pay her rates. She owns her house outright but was refused the loan where previously banks were loaning Awatarariki residents money. We feel we are being held hostage in our own homes that we can not sell, get loans to make repairs or have any agency in what happens to us.

You can not right one wrong with another wrong

Do you fully understand the stress and emotional trauma we are going through because of this process that the WDC is putting us through and not because of the event? It has taken away our hope, our motivation and our mana. And yet we are willing to work with the WDC to come to fair and equitable resolutions for all Awatarariki residents. However it will be difficult to do this with this request for a private plan change request happening at the same time.

Therefore we are asking you to put on hold for six months or to reject the plan change for the following reasons.

1. As a result of negotiations, a Memorandum of Understanding has been put together which sets out terms for Whakatane District Council (WDC) to fund a number of independent reports looking at the issues that remain outstanding for ARI. The MOU will most likely be signed by both parties later this week.

2. ARI have asked WDC to delay the public notification of the plan changes while these reports are being put together. However, WDC have refused to delay the plan change and will only agree to an extension of the submission period by 30 days to allow for the reports to be made available and considered by submitters.
3. ARI are concerned that despite WDC accepting that there are matters outstanding and being willing to fund reports to look into these matters, if council is not willing to give adequate consideration to their findings, than WDC are simply paying lip-service to the concerns of ARI and not keeping an open mind to all solutions.

There are mitigation options that can reduce the risk

Awatarariki area is not a high risk area every day. It is only a high risk when there are several factors in play at once. These are: an extreme and significantly high rainfall event **within** the Awatarariki catchment area, very high soil saturation levels, and significant build up of material in the catchment area. The weather event of 2005 broke previous weather records for the amount of rain within 24 hour period and the amount of rain within an hour.

All of the modelling that has been done in reports to Council are based on the worst case scenario where all factors just mentioned are in play, such as during the 2005 event. At any other time, the risk would be 0 to low. which we feel that having extreme case scenario imposed on us is not acceptable.

There are a number of options that could be implemented to reduce the risk to residents in this area. The council had a number of work streams in place to mitigate the risks at Awatarariki but chooses to progress the option of retreat that is least favourable to the people who live there.

BoPRC's own consultant John Douglas, who is an expert in this catchment area believes that the original 2005 event was the result of considerable build up of debris over a very long period of time and not attributable to sudden failure as some reports suggest. Although maintenance would be difficult in higher areas of the catchment that are more difficult to access, regular monitoring of the catchment would assist with mitigation measures.

These events are predictable and we can be prepared for them.

A small sample of mitigation options that could be implemented are:

- Collaborate with the WDC/BoPRC to monitor and maintain the Awatarariki catchment area to prevent the buildup of debris material;
- Collaborate with Civil Defence to implement an early warning system for periods of excessive rainfall by installing rain monitors and high levels of soil moisture, that can be monitored by soil moisture readers.;
- Maintain downstream catchment areas and lagoon entry points

These are just a few of the options that are available to significantly reduce the risk that have not been fully explored by Council. In a nutshell we need to follow the 3Ms: mitigate, monitor, and maintain.

There is a significant event happening as we speak with Cyclone Gita, there has been a lengthy period of warning and evacuation preparation time for this event. The question you should ask yourself is, if it work everywhere else why does the WDC think that Matata residents are not intelligent enough for it to work there? The events that trigger debris flows do not just come out of the blue as would an earthquake close to the coast. that could trigger a tsunami, or in some cases a volcanic eruption, Whakaari/White Island for example.

Risk reduction not risk avoidance

By taking a pathway of risk avoidance, WDC are showing they are more concerned about bureaucracy than the rights and welfare of the people they are elected to represent. We strongly urged the WDC to instead take the pathway of risk reduction. Risk reduction was the preferred approach as described by Mr Batchelar at a WDC meeting in 18 December 2013 when he outlines a range of mitigation measures we have already raised and says: "the risk reduction approach had been preferred over risk avoidance as it was hard to avoid risk in areas that were already developed and property owners had existing use rights."

Councillor's agreed with this approach. Mr Orr is quoted in the Beacon as telling councillors he was "not keen philosophically" on dictating the levels of risk that people could take with their properties.....We're taking the approach of the most cautious person. That's how we are seen to be approaching this and I think it's wrong. A reasonable person does take risks." At the same meeting Mayor Tony Bonne, is quoted when discussing the risk posed to those living on the

Awatarariki Stream fanhead and the option of retreating from it made him concerned for Whakatane residents living in the Wainui Te Whara Stream's path. "We could have a wall of water coming down Mokorua Gorge. Should we get them to move as well?"

Recently Nandor Tancos said, "I do not support evicting people from their homes because we think they are at risk. People make lawful choices every day to do far more dangerous things than living in Matatā. As long as people are fully informed, I do not believe it is the role of the Council to decide their risks for them."

In WDCs submission to the Earthquake commission, Jeff Farrell points out that the Government is over reacting to the risks from earthquakes and outlines the range of risks that the people of the Whakatane District are exposed to: "We are naturally active. The range of natural hazards our communities are exposed to include: earthquakes, coastal processes, flooding, tsunami, tornados, landslides, and debris flows. 2 major fault systems intersect on the eastern margins of the Rangitāiki Plains within a few kilometres of Whakatāne township."

We agree the WDC in the statements above that living in the Eastern Bay of Plenty exposes us to a fair number of events that have significant effects on its residents. We strongly encourage BOPRC to take a perspective that we are all at risk of a range of natural hazards, and that as free citizens we have a right to determine the level of risk we are prepared to take for ourselves. Therefore an approach based on risk reduction would be the reasonable course of action.

Residents have not been fully consulted with, the process has been mismanaged and reports are not accurate.

We feel that this process has been a Clayton's consultation - an appearance of having consultation without really listening or taking on board what people have to say. Although residents were involved initially with discussing and coming up with options for mitigation, they were then never consulted which option/s to proceed with or in the choices after that; nor were they provided with any information or evidence to support why some options were discounted. We ask are WDC really immersing themselves in the issues, or are they just taking at face value what council staff are reporting to them?

There are many inaccuracies in WDC reports - the Consensus Development Group' identified the voluntary retreat option as the best way forward - not true it was only one of 10 workstreams. The number of people who want to stay is a minority - not true. The threshold table that was presented to WDC is at best mathematically wrong at worst a manipulation of the figures. The majority of property owners do want to move on with their lives, that doesn't mean they want to retreat.

The process the Council has followed is flawed. In fact it is just plain wrong. We feel that the process is being manipulated to meet a foregone agenda. The Council is working ahead of themselves in collaboration with the Regional Council to effect a solution that has not been fully engaged with by the affected residents. In effect they are presenting a fait accompli, whereby the decisions are already foretold. This is morally wrong to progress this kind of process without fully resolving issues with the affected parties.

I would also like to point out that a debris flow that would affect the residents has to come down from DoC land move through the WDC quarry, cross the railways land go over the road transit land before it gets to us. And yet we are the only people who are being shafted here!!

ARI have been in negotiations with Whakatane District Council around the proposed plan change processes. ARI believe that a combination of risk reduction measures could reduce risk to an adequate level and some or all houses could remain at the Awatarariki Fanhead. This would change the outcome of the proposed plan change significantly.

Further concerns about the process and the S32 report

Firstly BoPRC this S32 is your work as much as it is the WDC work. Your staff have actively assisted WDC staff to engineer a 'final solution' to the 'Awatarariki problem' which is being presented as 'fait accompli' to you Councillors to stamp your approval to. This type of collaboration may expedite the process but it has not made it a fair process. The WDC is absolving this situation to you to avoid risk to themselves. You should reject this request.

Before the WDC decided to pursue this plan change request our rights to free and peaceful enjoyment of our homes was secured under the RMA, and under the Bay of Plenty Regional

RPS. When the RPS underwent Plan Change 2 regarding Natural Hazards in 2015, we still continued to be secure under the RMA & RPS. Matatā along with Mt Maunganui & Papamoa were used as scenarios in Plan Change 2¹. Where risk screening at Matatā was initially identified as medium, with a second iteration slightly over the threshold to high, with consequence of major impact. NIWA's assessment had the same findings and showed that although risk was high, because the consequence of impact is less, then it could be regarded as tolerable. By comparison Mt Maunganui was assessed as high risk level and catastrophic impact for storm surge & Papamoa is high risk & catastrophic impact for tsunami. Are you going to extinguish their land use rights too?

The Whakatane District Council have disregarded your work in this area, also the work of NIWA who did the first risk assessment models for Matatā. The WDC have come up with their own risk methodology framework, that although is one form of accepted methodology, is the methodology that provides a higher risk profile to our area, and so advances their agenda of removing us from our homes. There is a clear agenda at work here that is using the powers of WD Council, and millions of dollars of ratepayers funds spent on more detailed reports based on a methodology that is inconsistent with your own, and BoPRC you are complicit in this process. You should reject this proposal from the WDC.

We strongly object to Section 10.1 page 49 of the S32 report where it says that "A regional plan change that addresses mitigation of high risk sites on a region-wide basis (i.e. at locations other than Awatarariki) has been excluded." Why should this methodology and scrutiny be afforded only to us - this is not fair. If you put any other area of the district (Ohope, Whakatane Heads) or the region (The Mount, Papamoa) then under this process, we would all be out of our homes. We feel we are being singled out and used as a test case - the report "Awatarariki Fanhead Risk Reduction" being tabled in your 'private' discussion says so on p3 "A full public process would allow the merits of a proposed regional rule to be thoroughly tested" No thanks we don't want to be your lab rats. There are implications regionally and nationally from this proposal - you should reject this request.

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<https://www.boprc.govt.nz/media/433831/aecom-proposed-change-2-natural-hazards-scenario-testing-report-14-may-2015.pdf>

More concerns from the S32 Report:

Workstream Eleven & 'Voluntary Retreat' pg12

The S32 makes reference to workstream eleven. There are many in this room who know WDC process inside out & on reading the S32 this is the first time we have ever seen a workstream eleven:

"A further workstream (workstream eleven) arose as a consequence of feedback from affected residents about the uncertainty of whether or not BOPRC would seek to extinguish existing use rights for residential activities in the high risk area through a new regional plan rule"

We contend that this was never a workstream from WDC, but was continually raised by WDC as a possible scenario to 'encourage' affected residents to get with their plan.

The S32 on the same page goes on to discuss the managed retreat: "It is recognised that 'managed voluntary retreat' would change to 'managed retreat' (i.e. its voluntary nature would cease) if the Regional Council exercised its powers to extinguish existing use rights through a new regional plan rule."

Our response to this is that it became 'managed retreat' when the 90% threshold to progress voluntary retreat was not met. However, the WDC subverted its own processes by removing the need for a 90% threshold without Council approval and got Council approval in retrospect passing a resolution to this effect in December 2017. These two points are examples of how the WDC have reverse engineered the whole situation to meet their desired outcomes. It is wrong - you should reject their proposal.

Coastal Hazards p17

2.9 NZ Coastal Policy - this is not the issue and should not be included in this report.

I would also like to point out that a debris flow that would affect the Awatarariki residents has to come down from DoC land move through the WDCs quarry, cross the railways land and go over road transit land before it gets to most of us. And yet we are the only people who are being shafted here!!

The BOPRC would be acting in good faith if they halted or rejected the plan change process to enable us to work through these MoU with the WDC. This would allow us to engage in a trusted and transparent process. Proceeding with the plan change request would continue residents down an already lengthy and stressful path of having to fight for their right to maintain their properties and livelihoods in Matatā. It would also incur more unnecessary costs to the ratepayers. If we could work with WDC we feel we could resolve most matters and allow those who wish to stay, stay and those who wish to go, go and iwi can have their reserve. Thereby eliminating the need for the plan change altogether. This would also significantly reduce the amount that the councils have to spend in purchasing properties.

What we are trying to achieve here as the Awatarariki Residents Incorporated is fair and equitable solutions for all, by working together with the WDC and the BOPRC.

Therefore we respectfully request you halt or reject the plan changes and request Councils undertake to engage with affected residents through the MoU currently being developed between the ARI and the WDC.

Thank you for your time.

Rick Whalley