Minutes of the Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan & Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan Hearing

**Present:**

**Chairman:** CommissionerRob van Voorthuysen (Independent)

**Commissioners:** Trevor Robinson (Independent), Rauru Kirikiri (Independent), Fraser Campbell (Independent)

**In Attendance:** Bay of Plenty Regional Council: Donna Llewell – In-house Legal Counsel, Julie Bevan – Policy and Planning Manager, Amanda Namana – Hearing Administrator

Whakatāne District Council: David Bewley – General Manager, Planning and Infrastructure

External: Mary Hill – Cooney Lees Morgan, Matthew Harrex – Bay of Plenty Civil Defence Emergency Management

**Submitters:** Rick Whalley, Rachel Whalley, Pam Whalley - Awatarariki Residents Society Incorporated, Ruby Haazen and Rob Enright on behalf of Awatarariki Residents Society Incorporated, Rob Welsh – Matatā Action Group, Glenn Baker, John Olliver – s42A Report Author.

Whakatāne District Council Experts: Andrew Green – Partner/ Chairman, Brookfields Lawyers, Rowan Ashton – Brookfields Lawyers, Craig Batchelar, Jeff Farrell, Mauri McSaveney, Tim Davies, Tom Bassett, Peter Blackwood, Kevin Hind, Chris Massey, Ganesh Nana, David Stimpson, Shayne Donovan-Grammer, Alistair Pratt, John Reid, Greg Ball, Gerard Willis, Wendy Saunders, Craig Batchelar, Amelia Linzey.

The hearing commenced at 9:00 am Monday, 2 March 2020 at Eastbay REAP, 21 Pyne Street, Whakatāne

1. Tabled Items

The Hearing Panel for Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan & Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan, considered the following tabled items at the hearing:

| **Document Number** | **Submitter** | **Description** |
| --- | --- | --- |
| **Expert Evidence** | | |
| Ex.01.01.ev | Andrew Green, Brookfields Lawyers | Responses to legal questions from the Hearing Panel |
| Ex.02.01.ev | Mauri McSaveney | Summary of evidence |
| Ex.03.01.ev | Peter Blackwood | Summary of evidence |
| Ex.04.01.ev | Chris Massey | Individual fatality risk graph |
| Ex.05.01.ev | Ganesh Nana | Options and criteria graph |
| Ex.06.01.ev | Shayne Donovan-Grammer | Executive summary |
| Ex.07.01.ev | Alistair Pratt | Summary of evidence |
| Ex.08.01.ev | Greg Ball | Summary of evidence |
| Ex.09.01.ev | Gerard Willis | Summary of evidence |
| Ex.10.01.ev | Wendy Saunders | Executive summary |
| Ex.11.01.ev | Craig Batchelar | Summary of evidence |
| Ex.12.01.ev | Mary Hill, Cooney Lees Morgan | Clarification of issue relating to incorporation by reference |
| Ex.13.01.ev | Amelia Linzey | Summary of evidence |
| Ex.14.01.ev | John Olliver, Bloxham, Burnett and Olliver Ltd | Supplementary s42A Planning Report |
| **Submitter Evidence** | | |
| Sub.01.01.ev | Awatarariki Residents Society Incorporation | Statement of evidence |
| Sub.01.02.ev | Awatarariki Residents Society Incorporation | Awatarariki Residents Society Incorporated members and map |
| Sub.01.03.ev | Awatarariki Residents Society Incorporation | Formal letter of complaint to Whakatāne District Council |
| Sub.01.04.ev | Awatarariki Residents Society Incorporation | Letters and statement to Bay of Plenty Regional Council and Whakatāne District Council |
| Sub.01.05.ev | Awatarariki Residents Society Incorporation | Application for declarations by Awatarariki Residents Inc |
| Sub.01.06.ev | Awatarariki Residents Society Incorporation | Affidavit of Ricky Whalley in support of Awatarariki Residents Inc. |
| Sub.01.07.ev | Awatarariki Residents Society Incorporation | Affidavit of Richard Allen on behalf of Awatarariki Residents Society Inc.  Note: Not publicly available due to privacy reasons |
| Sub.01.08.ev | Awatarariki Residents Society Incorporation | Final undertaking letter |

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| **Document Number** | **Submitter** | **Description** |
| Sub.01.09.ev | Awatarariki Residents Society Incorporation | Affidavit Lee and Earl Schlichting |
| Sub.01.10.ev | Awatarariki Residents Society Incorporation | Bay of Plenty Regional Council report on assessment of Awatarariki catchment |
| Sub.01.11.ev | Awatarariki Residents Society Incorporation | Legal submissions for Awatarariki Residents Inc. |
| Sub.02.01.ev | Rob Welsh – Matatā Action Group | Statement of evidence |
| Sub.03.01.ev | Glenn Baker | Letter to the Panel including attachments |
| **Presentations** | | |
| 01.PP | Craig Batchelar | PowerPoint Presentation |
| 02.V | Mauri McSaveney | Video |
| 03.V | Tim Davies | Video |
| 04.V | Tim Davies | Video |
| 05.PP | Glenn Baker | PowerPoint Presentation |
| **Evidence circulated separately** | | |
| Ev.01.01.cs | Chris Massey – 03.03.20 | Waihi Landslide GNS report |
| Ev.01.02.cs | Chris Massey – 03.03.20 | Hegal et al 2001 |
| Ev.01.03.cs | Chris Massey – 03.03.20 | Information on debris flow risk at Little Waihī |
| Ev.02.01.cs | Matatā Residents Association – 03.03.20 | Letter of Censure |
| Ev.03.01.cs | Awatarariki Residents Society Incorporation – 05.03.20 | Correspondence |
| Ev.04.01.cs | Jeff Farrell – 05.03.20 | Memorandum of Understanding |
| Ev.04.02.cs | Jeff Farrell – 05.03.20 | Bay of Plenty Regional Council minutes – 12 December 2019 |
| Ev.05.01.cs | Glenn Baker – 05.03.20 | Correspondence |
| Ev.06.01.cs | Whakatāne District Council – 05.03.20 | Action Sheet – Awatarariki Risk Management |
| Ev.06.02.cs | Whakatāne District Council – 05.03.20 | Annual Plan excerpt regarding Managed Retreat |
| Ev.06.03.cs | Whakatāne District Council – 05.03.20 | Minutes of Council meeting 27 June 2019 |
| **Document Number** | **Submitter** | **Description** |
| **Evidence circulated separately** | | |
| Ev.07.01.cs | Rowan Ashton. Brookfields Lawyers – 17.03.20 | Closing submissions on behalf of Whakatāne District Council |
| Ev.07.02.cs | Mary Hill, Cooney Lees Morgan – 17.03.20 | Final submissions on behalf of Bay of Plenty Regional Council |
| Ev.07.03.cs | Jeff Farrell – 17.03.20 | Final affidavit in relation to the timing of the managed retreat |

*Refer Audio 1*

1. Karakia

The hearing commenced with a karakia provided by Mac Kingi of Ngāti Awa.

1. Evidence
   1. Andrew Green (Legal Submission on behalf of WDC)

*Refer Ex.01.01.ev*

Andrew Green and Rowan Ashton from Brookfields Lawyers clarified responses to questions posed by the panel following written submissions.

* 1. Craig Batchelar

*Refer 01.PP*

* 1. Jeff Farrell

**Adjournment**The hearing adjourned at 10.27 am and reconvened at 10.48 am.

*Refer Audio 2*

* 1. Mauri McSaveney

*Refer Ex.02.01.ev and 02.V*

* 1. Tim Davies

*Refer 03.V and 04.V*

* 1. Tom Basset
  2. Peter Blackwood

*Refer Ex.03.01.ev*

**The hearing adjourned for the day at 11.54 am.**

**The hearing reconvened at 9.00 am, Tuesday, 3 March 2020 at Eastbay REAP, 21 Pyne Street, Whakatāne.**

*Refer Audio 3*

* 1. Kevin Hind
  2. **Chris Massey**

*Refer Ex.04.01.ev*

Adjournment  
The Hearing adjourned at 10.23 am and reconvened at 10.45 am.

*Refer Audio 4*

* 1. **Ganesh Nana**

*Refer: Ex.05.01.ev*

* 1. **David Stimpson**

Adjournment  
The Hearing adjourned at 11.13 am and reconvened at 11.17 am.

* 1. **Shayne Donovan-Grammer**

*Refer Ex.06.01.ev*

* 1. **Alistair Pratt**

*Refer Ex.07.01.ev*

* 1. **John Reid**
  2. **Greg Ball**

*Refer Ex.08.01.ev*

* 1. **Gerard Willis**

*Refer Ex.09.01.ev*

**Adjournment**The Hearing adjourned at 12.13 pm and reconvened at 1.15 pm.

*Refer Audio 5*

* 1. **Wendy Saunders**

*Refer Ex.10.01.ev*

* 1. **Craig Batchelar**

*Refer Ex.11.01.ev*

**The hearing adjourned for the day at 2.19 pm.**

The hearing reconvened at 8.30 am, Wednesday, 4 March 2020 at Eastbay REAP, 21 Pyne Street, Whakatāne

*Refer Audio 6*

* 1. **Amelia Linzey**

*Refer Ex.13.01.ev*

* 1. **Mary Hill – Legal Counsel on behalf of Bay of Plenty Regional Council**

*Refer Ex.12.01.ev*

* 1. **Matthew Harrex – Bay of Plenty Civil Defence Emergency Management**
  2. **Awatarariki Residents Society Incorporation**

*Refer Sub.01.01.ev, Sub.01.02.ev, Sub.01.03.ev, Sub.01.04.ev, Sub.01.05.ev, Sub.01.06.ev, Sub.01.07.ev, Sub.01.08.ev, Sub.01.09.ev, Sub.01.10.ev and Sub.01.11.ev*

Pam Whalley, Rick Whalley and Rachel Whalley of Awatarariki Residents Society Incorporation with barristers Ruby Haazen and Rob Enright presented written and verbal evidence.

**Adjournment**The Hearing adjourned at 10.17 am and reconvened at 10.37 am.

*Refer Audio 7*

* 1. **Awatarariki Residents Society Incorporation (Continued)**

**Adjournment**The Hearing adjourned at 12.24 pm and reconvened at 1.28 pm.

*Refer Audio 8*

* 1. **Rob Welsh – Matatā Action Group**

*Refer Sub.02.01.ev*

* 1. **Glenn Baker**

*Refer Sub.03.01.ev and 05.PP*

* 1. **John Olliver – Section 42A Report Author**

*Refer Ex.14.01.ev*

1. Chair’s Announcement

The Chair advised that the Applicant’s Right of Reply would be submitted in writing, along with closing submissions from Bay of Plenty Regional Council legal counsel. The Panel’s decision would then be conveyed to parties in due course.

**The hearing adjourned for deliberations at 3.02 pm on 4 March 2020.**