

**Marie Radford**

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**From:** Bev Hughes <bev@ngatiawa.iwi.nz>  
**Sent:** Monday, 18 June 2018 5:40 p.m.  
**To:** Marie Radford  
**Cc:** Martin Butler; Jeff Farrell; Leonie Simpson  
**Subject:** RE: Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan and Proposed Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

**Attachments:** 29 November 2017 Letter providing Ngati Awa Comment on Proposed Planning Provisions to the Whakatane District Plan and Regional Natural Resoruces Plan.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Kia ora koutou

Thank you for providing a copy of the proposed plan change.

Te Runanga o Ngati Awa provided the attached letter in November 2017.

It appears the proposed plan change will achieve the outcomes we sought in our attached letter.

Please therefore receive this letter again – as a submission in support of the proposed plan changes – for reasons outlined in the letter.

TRONA also promotes with Councils their awareness and provisions for the reserve area in which koiwi recovered from the Matata area have been reinterred.



The reserve area is within the frame above. Ongoing management and monitoring of that reserve area will be required of Council. Council established the reserve for the purposes of re-interment of koiwi discovered in the area.

You will recall that the Pan-Tribal CIA we prepared for the Matata Lagoon Recovery Consents recommended that if there was a likelihood of more events like that which occurred on 18 May 2005, a sarcophagus or robust structure should be built at that reserve or the koiwi might be moved to Otaramuturangi Urupa east of the current Tarawera River mouth. A decision on this should be informed by advice from all the pukenga from iwi with relationships with the area and also with the Trustees for Otaramuturangi and the cultural advisors that supported WDC's establishment of that reserve below Awatarariki.

We promote with Councils their taking this matter of national importance into account – by providing appropriate wording into the proposed plan change.

TRONA does not wish to be heard, but will contribute advice if information about the reserve is required.

Due to a lack of capacity here, and in recognition of Local Government agencies responsibility to foster our capacity to contribute to its decision-making – we request a collegial conversation about the wording for the reserve area mentioned above – rather than being required to prepare and attend a hearing on that matter– please and encourage Councils to convene those people it needs to convene – to discuss the alternative identified above

Thank you so much

Beverley Hughes  
Manager Policy & Strategy  
Environment, Economic, Social

Te Rūnanga o Ngāti Awa  
PO Box 76  
Whakatane 3165

Phone 07 30 70 760 extension 237  
Cell 0274 711 806 (text preferred)

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**From:** Marie Radford <[Marie.Radford@boprc.govt.nz](mailto:Marie.Radford@boprc.govt.nz)>

**Sent:** Monday, 18 June 2018 4:59 PM

**Subject:** Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan and Proposed Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan

Good afternoon

Please find attached letters from both the Bay of Plenty Regional Council and the Whakatāne District Council regarding the public notification of Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan and Proposed Plan Change 1 (Awatarariki Fanhead, Matatā) to the Whakatāne District Plan on Tuesday 19 June 2018

Regards  
Marie

Marie Radford  
Planning Coordinator  
Bay of Plenty Regional Council Toi Moana

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P: 0800 884 880 DD: 0800 884 881 x8328  
E: [Marie.Radford@boprc.govt.nz](mailto:Marie.Radford@boprc.govt.nz)  
W: [www.boprc.govt.nz](http://www.boprc.govt.nz)  
A: PO Box 364, Whakatāne 3158, New Zealand

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***Thriving together – mō te taiao, mō ngā tāngata***

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29 November 2017

Attention: Shane McGhie

Principal Planner  
Whakatane District Council  
Private Bag 1002  
Whakatane 3165

Tena koe Shane

**PROPOSED PLANNING PROVISIONS FOR DEBRIS FLOW RISK MANAGEMENT ON THE AWATARARIKI FANHEAD MATATA**

Thank you for seeking comment from Te Runanga o Ngati Awa on proposed new planning provisions in the district plan for debris flow risk management on the Awatarariki Fan-head at Matata.

Council has invited Ngati Awa comment on the proposed plan change to the Operative Whakatane District Plan and the proposed plan change 14 to regional councils Regional Natural Resources Management Plan (Natural Hazards).

**Retreat Option**

Te Runanga o Ngati Awa acknowledges that while the option of retreat has been identified by Council since 2005, Council invested significantly in exploring several engineered design options in genuine attempts to find an enduring solution that would allow people to continue living in safety in their homes on the Awatarariki fan-head which remains vulnerable to future debris and flood flows.

Twelve years have passed and residents who have endured significant challenges that uncertainty of uncertainty now face a most serious and difficult challenge, the prospect of needing to retreat their homes from a location that remains in harm's way in the lowest extent of Te Awatarariki stream catchment.

While people may not know when a similar event to that of 18 May 2005 will occur, the geography of the catchment and the difficulty experienced in managing soil stability in the catchment indicates that similar events are likely to occur in future.

In its 2009 assessment of the proposed Awatarariki Flexi-Net Debris Detention Structure option, Te Runanga o Ngati Awa commented:

A 'potential alternative solution is to require homes in the lower Awatarariki catchment to retreat from the flow path of future debris and flood flows they (the homes) are vulnerable to'.

Today it is clear that every option that aimed to allow people to remain in their homes at this location has now been exhausted.

Te Runanga o Ngati Awa considers the proposed retreat option will:

- remove homes and families from a location that is in harm's way
- bring certainty to these families and the community
- ensure central government agencies contribute financially to the relocation of families into new homes in a safe location
- protect people from making future investments in residential subdivision at this location by inserting a prohibited activity rule for residential development at this location which would place people in harms way, at night, when they and their families and any guests are sleeping.
- the prohibited activity status will protect people from making future investments in building their homes in this high-risk location
- the permitted activities status will allow for people to continue to enjoy appropriate activities at the location

When the proposed planning provisions are notified for public submissions Te Runanga o Ngati Awa will make submission to each of the proposed plan changes.

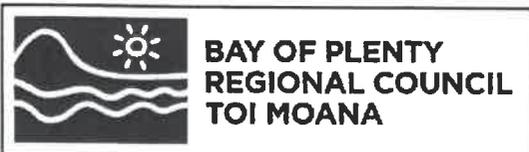
Enquiries regarding these comments should be directed to Beverley Hughes at [bev@ngatiawa.iwi.nz](mailto:bev@ngatiawa.iwi.nz) in the first instance.

Kia ora,

Leonie Simpson  
**CHIEF EXECUTIVE**

Email copy to:

Stan Ratahi, Ngati Hikakino Hapu Representative, Te Runanga o Ngati Awa  
Amohaere Tangitu, Te Tawera Hapu Representative, Te Runanga o Ngati Awa  
Manu Glen, Ngai Te Rangihouhiri Hapu Representative, Te Runanga o Ngati Awa  
Enid Ratahi-Pryor, Ngai Taiwhakaea Hapu Representative, Te Runanga o Ngati Awa  
Miro Araroa, Rangitaiki Hapu Coalition, Te Runanga o Ngati Awa  
Keri Topperwien, Consent Coordinator Te Runanga o Ngati Awa  
Christopher Clarke, Kaitiaki, Te Mana o Ngati Rangitihī  
Elaine August, Kaitiaki, Tuwharetoa BOP Settlement Trust  
Martin Butler, Senior Planner, Bay of Plenty Regional Council



## Submission on notified plan change

Clause 6 of Schedule 1, Resource Management Act 1991

Submission Number

Office use only

02

Send your submission to reach us by **4pm on 17 September 2018**

To:

<b>Post:</b> The Chief Executive Bay of Plenty Regional Council PO Box 364 Whakatāne 3158	<b>or Fax:</b> 0800 884 882	<b>or email:</b> fanhead@boprc.govt.nz
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**Name of submitter: [full name]**

Katherine Margaret Stevens

This is a submission on **Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan**

- I **could/could not** gain an advantage in trade competition through this submission. *[Delete as required.]*  
*[If you answered "could", go to statement 2. If you answered "could not", go to statement "4".]*
- I **am/am not** directly affected by an effect of the proposed change that adversely affects the environment *[Delete as required.]*  
*[If you answered "am", go to statement 3. If you answered "am not", go to statement "4".]*
- The effect on the environment that I am directly affected by **does/does not** relate to trade competition or the effects of trade competition *[Delete as required.]*  
*[If you answered "does", you may not make a submission. If you answered "does not", go to statement "4".]*
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- I **wish/do not wish** to be heard in support of my submission. *[Delete as required]*
- If others make a similar submission, I will consider presenting a joint case with them at a hearing. *[Delete if you would not consider presenting a joint case.]*

*[Handwritten signature]*

*[Signature of person making submission or person authorised to sign on behalf of person making submission.]*

*[NOTE: A signature is not required if you make your submission by electronic means.]*

22/6/18  
Date

<b>Electronic address for service of submitter:</b>	<b>Email:</b> auntys.matata@xta.co.nz		
<b>Telephone:</b> 027 6334131	<b>Daytime:</b> 3222071	<b>After Hours:</b> 3222972	<b>Fax:</b> _____
<b>Postal address (or alternative method of service under section 352 of the Act):</b>	14 Smith Rd RD 4 Whakatane		
<b>Contact Person:</b> <i>[name and designation, if applicable]</i>			

**Note to person making submission**

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 to the Resource Management Act 1991.

Please note that your submission (or part of your submission) may be struck out if the authority is satisfied that at least 1 of the following applies to the submission (or part of the submission):

- it is frivolous or vexatious:
- it discloses no reasonable or relevant case:
- it would be an abuse of the hearing process to allow the submission (or the part) to be taken further:
- it contains offensive language:
- it is supported only by material that purports to be independent expert evidence, but has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert advice on the matter.

**SUBMISSION POINTS:**

Specific provisions		Details of submission: whether you support or oppose the specific provisions or wish to have them amended		
Page No	Reference (e.g. Objective, Policy or Rule number)	Support/Oppose	Decision Sought Say what changes to the plan change you would like Give precise details	Include reasons for your views
2	NH 04 NH P6	oppose	If farming / forestry was managed better further up the stream debris flow hazard <del>would</del> would be significantly decreased.	
		oppose	using an Australian study is not relevant to New Zealand.	
			This flood was in May 2005. It is now June 2018 - 13 years later. Too bad if there was another flood inbetween 2005 + 2018. why does this take so long to sort out. Leave the people alone they know the risk of living there.	



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03

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To:

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**Name of submitter: [full name]** Margaret Annie Grace

This is a submission on **Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan**

- 1 I ~~could~~/**could not** gain an advantage in trade competition through this submission. [Delete as required.]  
[If you answered "could", go to statement 2. If you answered "could not", go to statement "4".]
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M. Grace

[Signature of person making submission or person authorised to sign on behalf of person making submission.]

[NOTE: A signature is **not** required if you make your submission by electronic means.]

30.08.18

Date

<b>Electronic address for service of submitter:</b>	<b>Email:</b> <u>debbie.m@reproducts.co.nz</u>		
<b>Telephone:</b> <u>027 2969294</u>	<b>Daytime:</b> <u>078885460</u>	<b>After Hours:</b>	<b>Fax:</b>
<b>Postal address (or alternative method of service under section 352 of the Act):</b>	<u>P.O. Box 57 Matamata 3440</u>		
<b>Contact Person:</b> [name and designation, if applicable]	<u>Debbie Outridge</u>		

**Note to person making submission**

If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 to the Resource Management Act 1991.

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**SUBMISSION POINTS:**

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Page No	Reference (e.g. Objective, Policy or Rule number)	Support/Oppose	Decision Sought Say what changes to the plan change you would like Give precise details	Include reasons for your views
	The entire plan change.	Support.	To adopt the plan change.	Safety Plus closure so we can move forward.

#04

Our Ref: A2900426

13 September 2018

Dear Sir/Madam

**Proposed Plan Change 1 to the Whakatāne District Plan – Awatarariki Fanhead, Matatā  
Proposed plan change 17 (Natural Hazards) to the Regional Natural Resources Plan**

The Bay of Plenty Civil Defence Emergency Management Group (Bay of Plenty CDEM Group) is established under The Civil Defence Emergency Management Act 2002 (The CDEM Act 2002). The CDEM Act 2002 requires every regional council and every territorial authority within that region to unite to establish a Civil Defence Emergency Management Group.

Members of the Bay of Plenty CDEM Group are:

- Bay of Plenty Regional Council
- Kawerau District Council
- Ōpōtiki District Council
- Rotorua Lakes Council
- Tauranga City Council
- Western Bay of Plenty District Council
- Whakatāne District Council

This submission has been prepared on behalf of the Bay of Plenty CDEM Group. It has been approved by the Bay of Plenty Civil Defence Emergency Management Coordinating Executive Group.

Recognising the joint approach required to address the natural hazard risks at Matatā, a single submission has been prepared in support of both Proposed Plan Change 1 to the Whakatāne District Plan – Awatarariki Fanhead, Matatā and Proposed Plan Change 17 (Natural Hazards) to the Regional Natural Resources Plan.

The Bay of Plenty CDEM Group recognises the long and complex process that has lead all parties to reach this point. Considerable work has been undertaken to assess the hazard and risk associated with debris flow in the Awatarariki Fanhead at Matatā. This process and the assessment of risk management options are well detailed in the Section 32 Evaluation Report prepared for Whakatāne District Council.

The Bay of Plenty CDEM Group appreciates the impact and stress that the proposed approach will have on property owners and sympathises with the position that they have found themselves in. The Bay of Plenty CDEM Group considers that these impacts are outweighed by the potential adverse effects of a future event and supports the proposed action taken to manage this risk. The Bay of Plenty CDEM Group also supports the managed voluntary retreat strategy running in parallel with this process.

S17 of the CDEM Act 2002 requires CDEM Groups and each member to identify assess and manage hazards and risks; consult and communicate about risks and identify and implement cost effective risk reduction.



The Bay of Plenty CDEM Group Plan 2018-2023 sets out the reduction objectives for the Bay of Plenty CDEM Group to:

- Build the community's knowledge and understanding of their hazards and risks so they can make informed decisions.
- Manage natural hazards through a risk-based approach.
- Increase the region's environmental and infrastructure resilience.

Support is given to change the Operative Whakatāne District Plan to:

- Include an Awatarariki Debris Flow Policy Area and show high, medium, and low risk areas in this policy area on the District Plan Planning Maps.
- Rezone the high risk area to Coastal Protection.
- Introduce a new policy framework and rules to manage the identified natural hazard risk.

Support is given to change the Operative Regional Natural Resources Plan to:

- Add a new objective and new policies that set the intention to reduce the natural hazard risk on the Awatarariki Fanhead.
- Add a rule prohibiting residential activities within high risk areas with effect after 31 March 2021.

Both proposed plan changes outlined above are consistent with The CDEM Act 2002 and the objectives of the Bay of Plenty CDEM Group Plan 2018-2023.

The Bay of Plenty CDEM Group considers the Section 32 Evaluation Report prepared for Whakatāne District Council provides a thorough assessment of the options available to both Whakatāne District Council and Bay of Plenty Regional Council to manage the risk associated with debris flow on the Awatarariki Fanhead. Specifically the Bay of Plenty CDEM Group supports the assessment of warning and evacuation as a tool to reduce the risk on page 39 of the report. The Bay of Plenty CDEM Group agrees with the assessment that a warning system cannot be relied upon to provide dependable warnings, with adequate time, to sufficiently reduce the risk to life for residents.

The Bay of Plenty CDEM Group wishes to be heard in support of this submission and has nominated Russell George to speak on behalf of the Bay of Plenty CDEM Group with regard to this submission.

Sincerely



Russell George  
**Chair**  
**Bay of Plenty Civil Defence Emergency Management Coordinating Executive Group**



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Clause 6 of Schedule 1, Resource Management Act 1991

Submission Number

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04

Send your submission to reach us by 4pm on 17 September 2018

To:

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**Name of submitter: Russell George – Chair Bay of Plenty Civil Defence Emergency Management Coordinating Executive Group**

This is a submission on **Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan**

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*[Signature of person making submission or person authorised to sign on behalf of person making submission.]*

*[NOTE: A signature is **not** required if you make your submission by electronic means.]*

13September2018

Date

<b>Electronic address for service of submitter:</b>	<b>Email: <a href="mailto:Matthew.harrex@embop.govt.nz">Matthew.harrex@embop.govt.nz</a> <a href="mailto:Russell.George@kaweraudc.govt.nz">Russell.George@kaweraudc.govt.nz</a></b>		
<b>Telephone:</b>	<b>Daytime: 0277427349</b>	<b>After Hours:</b>	<b>Fax:</b>
<b>Postal address (or alternative method of service under section 352 of the Act):</b>	<b>PO Box 364, Whakatāne 3158</b>		
<b>Contact Person:</b> <i>[name and designation, if applicable]</i>	<b>Matthew Harrex, Manager Planning and Development, Emergency Management Bay of Plenty</b>		

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**SUBMISSION POINTS:**

Support is given to change the Operative Regional Natural Resources Plan to:

- Add a new objective and new policies that set the intention to reduce the natural hazard risk on the Awatarariki Fanhead.
- Add a rule prohibiting residential activities within high risk areas with effect after 31 March 2021.

Please see full submission attached.



## Submission on notified plan change

Clause 6 of Schedule 1, Resource Management Act 1991

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05

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**Name of submitter: [full name] Matata Residents Association**

This is a submission on **Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan**

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- 5 I **wish** to be heard in support of my submission. *[Delete as required]*

Gavin Dennis

Date 12/09/2018

*[Signature of person making submission or person authorised to sign on behalf of person making submission.]*

*[NOTE: A signature is **not** required if you make your submission by electronic means.]*

<b>Electronic address for service of submitter:</b>	<b>Email:</b> <a href="mailto:gavinann@xtra.co.nz">gavinann@xtra.co.nz</a>		
<b>Telephone:</b> 0273270597	<b>Daytime:</b> 0273270597	<b>After Hours:</b> 0273270597	<b>Fax:</b>
<b>Postal address (or alternative method of service under section 352 of the Act):</b>	P.O. Box 122 Matata 3168 Whakatane District		
<b>Contact Person:</b> <i>[name and designation, if applicable]</i>	Gavin Dennis , Chairman, Matata Residents Association		

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2	Reference NH P7 , NHP8, NH R71	oppose	Decision Sought. – We, the Matata Residents Assc. want plan change 17 to be put aside until alternative engineering solutions are fully investigated.	<p>We request that the Regional Council fully investigate a combination of bunding on the Awatarariki Stream coupled with an early warning system including rainfall gauges instruments and ground moisture content monitors.</p> <p>The bunding would be on the properties of those who have indicated that they wish to be paid out and leave. This would only require a buyout of 3 houses (#5 and #8 Clem Elliot, #96 Arawa St and 1 section ( #4 Clem Elliot St} and the swapping of houses of those living in # 3 Clem Elliot St To #8 Clem Elliot St thus taking ownership of #3.</p> <p>This will allow room to create the bunding required, using the material at no cost, that is</p>

				<p>still sitting in heaps that were never cleaned up after the debris flow.</p> <p>The early warning system could be connected to alarms in the individual houses to notify residents of impending danger and the need to self-evacuate, Thus making the area safe to live in for the majority of those now living in the Awatarariki area.</p>



**Submission on notified plan change**  
*Clause 6 of Schedule 1, Resource Management Act 1991*

Submission Number  
*Office use only*

06

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To:

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**Name of submitter:** Awatarariki Residents Incorporated (**Society**)

This is a submission on the whole of **Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan**

- 1 I **could not** gain an advantage in trade competition through this submission.
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Signed:

Date 17 September 2018

**Rick Whalley**  
Chairperson of Awatarariki Residents Incorporated  
10 Clem Elliot Drive

**Rob Enright/ Ruby Haazen**  
Counsel for the Society

**Matatā**

<b>Electronic address for service of submitter:</b>	<b>Email:</b>  rob@publiclaw9.com  rghaazen@gmail.com  rache65@gmail.com		
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<b>Contact Person:</b> <i>[name and designation, if applicable]</i>	<b>Rick Whalley</b> <b>Chairperson of Awatarariki Residents Incorporated</b>  <b>Counsel Acting:</b> Rob Enright / Ruby Haazen Barristers Magdalene Chambers Level 1, 28 Customs St East Britomart Auckland e: <a href="mailto:rob@publiclaw9.com">rob@publiclaw9.com</a> e: <a href="mailto:rghaazen@gmail.com">rghaazen@gmail.com</a>		

**The specific provisions of the proposal that my submission relates to are:**

The Society's submission relates to the entire Plan Change 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resource Plan (**PC17**).

**My submission is:**

Identified below.

**My reasons:**

Identified below.

**I seek the following decision from the local authority:**

- (1) As first preference, withdraw PC17; or delete PC17 under s85 RMA.
- (2) As second preference, amend the Plan Change to address the matters identified in this submission, including the general and specific submission points, and general and specific relief, outlined below.
- (3) In addition to (1) and (2), if PC17 is confirmed so that existing or future residential activities have prohibited status (or require resource consent) from 31 March 2021 (or any other relevant date) then a direction under s85 RMA that the Regional Council (or District Council as proponent) acquire each of the properties listed in NH3 under the Public Works Act 1981, subject to the written consent of each individual property owner or person with an estate or interest in the relevant land.

**GENERAL SUBMISSION POINTS**

- 1 This submission is separated into general and specific submission points. Relief sought relies on both general and specific submission points.
- 2 The Society has 25 members. All members are families that live permanently, have baches or vacant land within the properties identified as "High Risk" and listed in schedule NH3 (**Society properties or NH3 properties**) as follows:

	<b>Name and Address</b>
1	Leslie Hema, 11 Blue Ridge Drive, Taupo (12 Clem Elliott Drive)
2	Laurie Hema, 11 Blue Ridge Drive, Taupo (12 Clem Elliott Drive)
3	Ian Lockett, 5 Clem Elliott Drive, Matata
4	Tawai Lockett, 5 Clem Elliott Drive, Matata
5	Gerard Stuckey, 7 Pioneer Place, Matata
6	Joanne Stuckey, 7 Pioneer Place, Matata
7	Grant Wilkin, 16 Clem Elliott Drive, Matata
8	Maria Wilkin, 16 Clem Elliott Drive, Matata
9	Marilyn Pearce, 12B Clem Elliott Drive, Matata
10	Rob Pearce, 12B Clem Elliott Drive, Matata
11	Lyall Magee 14A and 14B Clem Elliott Drive, Matata
12	Puti Rowe, 5 Pioneer Place, Matata
13	Steven Rowe, 5 Pioneer Place, Matata
14	Wayne Irwin, 94 Arawa Street, Matata
15	Victoria Humphries-Irwin, 94 Arawa Street, Matata
16	Rick Whalley, 10 Clem Elliott Drive, Matata
17	Rachel Whalley, 10 Clem Elliott Drive, Matata
18	Pam Whalley, 10 Clem Elliott Drive, Matata
19	Rob Martin 6 Clem Elliott Drive, Matata
20	Mel Martin 6 Clem Elliott Drive, Matata
21	Greg Fahey 100 Arawa Street, Matata
22	P Fahey, 100 Arawa Street, Matata

23	Anne Smith, 7 Clem Elliott Drive, Matata
24	Michelle Beach 18B Clem Elliott Drive , Matata
25	Kerry Magee 18A Clem Elliott Drive

### Community (social, economic, cultural) wellbeing

- 3 All Society properties are zoned residential. Most were purchased prior to 2005; and all properties were purchased prior to first notification of PC17. Most families have intergenerational history of grandparents, parents and grandchildren living on site or spending holidays at Matatā.
- 4 Society members were affected by the 2005 event in different ways. Some lost all or part of their homes; some homes were not affected. They stayed on their land and-rebuilt their homes, sheds, garages, gardens and lives relying on the 2006 Building Act decision<sup>1</sup> and express or implied assurances from the District Council that mitigation measures such as engineering options would be pursued to address hazard risk. Some Society members were refused Building Act consents to build new permanent structures in 2016 however they still use their land for holidays, temporary accommodation, gardens and other residential uses.<sup>2</sup>
- 5 Residential homes in a residential zone lose existing use rights from 2021, and no reasonable future use is identified, with prohibited status for residential activities on "high risk" properties.<sup>3</sup> No compensation is offered meaning that PC17 involves "managed retreat" not "voluntary managed retreat".
- 6 PC17 is an eviction notice from March 2021; it also has an immediate sterilising effect. Society members cannot build, borrow money, insure or sell their homes; they are environmental refugees on their own land. Compensation has not been offered by the Regional or District Council for removal of existing use rights and prohibiting residential activities.
- 7 PC17 does not assess what will happen to people's homes located in high risk areas from 2021; it does not identify whether people will be evicted and homes bulldozed. If Council opts for "managed retreat" without compensation then Society members will own homes they cannot occupy and land they cannot use. This aspect of PC17 is not identified in cost-benefit analysis but is the logical consequence of prohibited status for residential activities.

<sup>1</sup> <https://www.boprc.govt.nz/media/752322/determination-2006-119-1.pdf>

<sup>2</sup> <https://www.boprc.govt.nz/media/752323/determination-2016-034-1.pdf>

<sup>3</sup> Whether properties identified in NH3 are "high risk" is contested by the Society but the terminology is used, for consistency with PC17. Jurisdiction to eliminate existing use rights of residential homes in a residential zone without compensation is contested by the Society.

- 8 Relevant to assessment of community wellbeing under s5 RMA and the statutory tests are:
- (a) delay by the District Council in requesting notification of PC17, relevant to assessment of whether there is tolerable risk, and, to the extent that risk exists, whether it can be managed in less intrusive ways than prohibiting residential activity;
  - (b) a shifting position by Council on the extent of tolerable risk and degree of urgency for intervention. The Society says that there has been no change in risk profile between the 2005 event and notification of PC17 in 2018. Instead the District Council has changed its view of what is acceptable risk and now claims urgency due to fatality risk<sup>4</sup>, but was content to delay PC17 and related PC1 to the district plan for a number of years pending changes to the regional plan framework;
  - (c) failure by the District Council to competently manage hazard risk over the 13 years taken to notify PC17. Residents have been given inconsistent assurances about whether risk is tolerable or credible; inconsistent or incomplete explanations for rejecting engineered alternatives to manage risk, entitlement to fair compensation, lack of certainty about what will happen from 2021 when evicted;
  - (d) Flawed engagement with the community resulting in inadequate assessment of effects;
  - (e) These factors are relevant to assessment of credible risk because societal and community views of risk influence what is considered “tolerable”.
- 9 The PC17 regime is contrary to sustainable management and social, economic and cultural community wellbeing. It adopts a risk avoidance by eviction regime, inconsistent with (or not giving effect to) Pt 2 RMA. It is a taking of property rights without compensation, an abuse of public power and contrary to sustainable management.

### **Statutory provisions**

- 10 PC17 is inconsistent with the relevant statutory provisions and Council's statutory functions. It is not appropriate in terms of Pt 2, statutory functions and tests under sections 30, 31, 32, s32AA, ss63-68, s85 and 1<sup>st</sup> Schedule RMA. NH3 identifies the relevant properties directly affected by PC17. While there is a wider community interest in managing risk, affected property owners in the high risk zone merit greatest weight when evaluating appropriate outcomes under the statutory framework and the relevant “community” affected.

### **Validity and jurisdiction**

- 11 PC17 is unlawful and ultra vires Council's statutory functions and powers:

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<sup>4</sup> Alleged fatality risk

- a. The relevant Regional Council statutory function is s30(1)(c)(iv) RMA. Council may control use of land for “avoidance or mitigation of natural hazards”. PC17 does not reflect this dual function. It is an avoidance regime, not a mitigation regime.
- b. PC17 overrides existing use rights under s10 RMA. This is unlawful and ultra vires Council’s powers absent payment of reasonable compensation for removal of those rights.
- c. Section 85 RMA imposes a direct or indirect fetter on abuse of public power by the Regional and District Councils. Removing people from their homes, revoking lawful occupation and residential activities under s10 RMA, without reasonable compensation, is an abuse of public power. It is contrary to public policy and relevant wellbeings and values in s5 and Pt 2 RMA. Lesser alternatives exist that manage or mitigate the hypothetical risks, without removing existing use rights.
- d. The Society says there is no jurisdiction to remove existing use rights for residential activities in a residential zone; alternatively, there is no jurisdiction, absent a requirement for reasonable compensation.

### **Planning instruments**

- 12 To the extent relevant, PC17 does not give effect to the NZCPS.
- 13 PC17 does not give effect to, or reflect, the relevant provisions of the Regional Policy Statement including (but not limited to):
  - (a) Objective 31 RPS and Policy NH1B require “avoidance or mitigation of natural hazards”. PC17 is an avoidance, not mitigation, regime. Other policies should be read in light of the objective which contemplates mitigation.
  - (b) As to policies NH2B & NH3B, identification of NH3 properties as high natural hazard risk is incorrect; alternatively, mitigation measures are available to reduce risk to tolerable levels. “Tolerable levels” is a qualitative; or qualitative and quantitative standard; and perspectives of homeowners as to what is acceptable risk are relevant to assessment of tolerable risk.
  - (c) Policy NH4 (urban development) has limited relevance; alternatively “managing” natural hazard risk does not require an avoidance (prohibited status) regime.
  - (d) Policy NH5B (“avoid increasing risk”) does not apply to existing use rights; and “encouraging” reduction of natural hazard risk does not require an avoidance (prohibited status) regime.

- (e) Policy NH6B arguably supports retention of existing homes that have functional need for their location and provide significant benefits to the relevant community of interest (owners and occupants of NH3 properties).
- (f) Policies NH7A, NH8A, NH13C involve identification and assessment of hazard, not prohibition of residential activities.
- (g) Policy NH12A (“promote”) is not directive for existing residential activities (“take into account..where practicable..” risk reduction measures).
- (h) PC17 is inconsistent with Policy NH14C (District Councils are to manage land uses outside the coastal marine area). The footnote is irrelevant to interpretation of the Policy because it is declarative of s30 RMA or has no statutory status.
- (i) Allowance should be made for residential activities specifically provided for by the Regional Policy Statement that inherently add to risk. Integrated management (30(1)(a) RMA) recognises that the establishment or continuance of residential activities in the coastal environment is provided for (albeit natural hazard risk needs to be managed).
- (j) The policy and rules framework, requiring that people and their communities avoid living in the subject properties at Matatā from 2021, is inappropriate and does not represent a reasonable response to the existing environment.
- (k) Subject to proof that the assessment of high risk is correct (not accepted or conceded by the Society) a regime that involves an alternative means of risk avoidance or risk mitigation is required. PC17 does not reflect that dual focus in the relevant RPS Natural Hazards provisions. To the extent that properties in NH3 fall within a “high risk” area, then RPS Appendix M identifies a number of options for management of natural hazards including high risk areas.

### **S85 RMA**

14 PC17 breaches s85 RMA because it makes the subject land owned by members of the Society:

- (a) incapable of reasonable use; and
- (b) places an unfair and unreasonable burden on the owners of that land;
- (c) residentially zoned and developed land will be unable to be used for residential purposes;
- (d) grounds for directions under s85(3A) are made out (deletion, modification, compensation) in the event that PC17 is confirmed in its notified form.

## **Alternatives**

- 15 PC17 does not allow for lesser interventions and alternatives such as:
- a. mitigation of hazard risk while enabling Society members to remain living in their homes;
  - b. adopting an information based approach to managing hazard risk;
  - c. adopting an event based approach (such as early warning systems) to managing hazard risk;
  - d. PC17 does not provide appropriate cost-benefit analysis of engineering options for management of landslide and debris flow risk;
  - e. PC17 does not appropriately address a combination of management systems to address hazard risk, to reduce high risk (to the extent that it exists) to medium or low risk. A combination of methods might include (but is not limited to) catchment management, monitoring and early warning systems;
  - f. PC17 does not evaluate the extent to which historic land uses (such as the adjacent Council operated quarry, farming and logging) contributed to or caused the 2005 event, but may not continue to present objective hazard risk; the extent to which responsible statutory bodies have failed to undertake catchment maintenance (including Department of Conservation as landowner, Regional Council and District Council); and whether these are relevant to assessment of alternatives to avoid or mitigate risk.

## **Hazard and Risk Assessment**

- 16 PC17 relies on imprecise modelling of risk of landslide and debris flow; imprecise modelling of probability of fatality or injury; and uncertain science as to assessment of risk to NH3 properties identified as "high risk". PC17 relies on inadequate analysis of probability and consequence. Risk assessments are based on inadequate data sets and involve speculative or unfounded assertions of risk of fatality to Society members and their families. The risk assessment is uncertain but the consequences to Society members and their families are both certain and unfounded. Prohibited status is a disproportionate response given difficulties with the risk assessments.
- 17 Risk involves probability plus consequence. A different approach to acceptability of risk is required in relation to existing residential activity, as distinct from land use planning for future residential use. This is not reflected in the prohibited status regime for existing residential activities in the NH3 properties beyond 2021. As noted, "tolerable levels" is a qualitative; or qualitative and quantitative standard; and perspectives of homeowners as to what is acceptable risk are relevant to assessment of tolerable risk.

- 18 PC17 adopts Australian Geomechanics Standards<sup>5</sup>, that include significant qualifiers as to relevance and application for existing use scenarios where sensitive users already occupy land identified as subject to potential hazard, and reasonably available alternative methods exist for hazard mitigation. It is uncertain whether the Australian Guidelines are the most appropriate standard to apply. The Guidelines relevantly state:

***“9 Reliability of landslide zoning for land use planning***

***9.1 Potential sources of error***

***9.1.1 Description***

*There are a number of potential sources of error in the zoning process. These include:*

- Limitations in the landslide inventory upon which the susceptibility and hazard zones maps are based.
- Limitations in the stability of temporal series. For example the relationship between the triggering factor (e.g. rainfall) and the frequency of landslides may change if the area is deforested.
- Limitations in the level of detail available of topography, geology, geomorphology, rainfall and other input data.
- Model uncertainty, meaning the limitations of the methods used to relate the inventory, topography, geology, geomorphology and triggering events such as rainfall to predicting landslide susceptibility, hazard and risk.
- Limitations in the skill of the persons carrying out the zoning.

*It must be recognised that landslide zoning is not a precise science and the results are only a prediction of performance of the slopes based on the available data. In general, intermediate or advanced level zoning will be less subject to error than preliminary level zoning with each done at a suitable zoning map scale.”*

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<sup>5</sup> Journal and News of the Australian Geomechanics Society Volume 42 No 1 March 2007

## GENERAL RELIEF

19 Based on the matters outlined in this submission, the Society seeks the following relief:

- (1) As first preference, withdraw PC17; or delete PC17 under s85 RMA.
- (2) As second preference, amend the Plan Change to address the matters identified in this submission, including the general and specific submission points, and general and specific relief, outlined below.
- (3) In addition to (1) and (2), if PC17 is confirmed so that existing or future residential activities have prohibited status (or require resource consent) from 31 March 2021 (or any other relevant date) then a direction under s85 RMA that the Regional Council (or District Council as proponent) acquire each of the properties listed in NH3 under the Public Works Act 1981, subject to the written consent of each individual property owner or person with an estate or interest in the relevant land.

## SPECIFIC SUBMISSION POINTS & SPECIFIC RELIEF:

Specific provisions		Details of submission: whether you support or oppose the specific provisions or wish to have them amended		
Page No	Reference (e.g. Objective, Policy or Rule number)	Support / Oppose	Decision Sought  Say what changes to the plan change you would like  Give precise details	Include reasons for your views
2	Objective NHO4	Oppose	Withdraw PC17; or  Amend NH04 by adding: (a) "while providing for the economic, social and cultural wellbeing of owners and occupants of properties listed in NH3"	PC17 does not promote sustainable management, is unlawful or breaches the statutory framework. Refer General Reasons above.

2	Policies NH P6, P7, P8	Oppose P6, P7, P8	<p>Withdraw PC17; or</p> <p>Amend NH P6 by deleting the words:</p> <p>“..using the methodology set out in Australian Geomechanics Society – Landslide Risk Management 2007.</p> <p>Amend NH P7 by deleting the words:</p> <p>“..by ensuring existing residential land uses retreat from the high risk hazard area as soon as reasonably practicable.”</p> <p>Delete NH P8</p>	<p>PC17 does not promote sustainable management, is unlawful or breaches the statutory framework. Alternative methodologies may be appropriate. Refer General Reasons above.</p>
2	Rule NH R71	Oppose	<p>Delete NH R71; or</p> <p>Delete NH R71 and replace with a rules regime that enables continued occupation of the properties identified in NH3, without requirement for resource consent.</p> <p>Methods and rules regime may include the following. These are listed as alternatives, but a rules regime may include a combination of these. Amending PC17 to include the rules and other methods listed below may require additional issues, objectives and policies to be included in PC17 to ensure vertical and horizontal integration within the Regional Plan:</p> <p>(a) No restrictions on existing use rights for properties identified in NH3. Mitigation options limited to non-regulatory or non rule-based methods to avoid and manage</p>	<p>PC17 does not promote sustainable management, is unlawful or breaches the statutory framework. Refer General Reasons above.</p>

			<p>hazard risk such as educative or early warning systems; and/or</p> <p>(b) A grandparenting regime for properties listed in NH3:</p> <ul style="list-style-type: none"> <li>(i) permitted status for existing use rights for residential activities for properties in NH3 from 2021;</li> <li>(ii) controlled status for any increase or change in character, intensity and scale of existing residential activities in properties listed in NH3 from 2021;</li> <li>(iii) As alternative to (i), delete prohibited status and substitute controlled status for residential activities for properties identified in NH3 from 2021. Limit controlled status criteria to presence of early warning detection system or equivalent for credible landslide or debris flow events; and/or</li> </ul> <p>(c) Methods (which may include rules) that require the District Council to establish a hazard identification and monitoring regime to provide an early warning system for owners and occupants of the properties in Table NH 3 in the event of a credible landslide or debris flow event; and/or</p> <p>(d) Without prejudice to grounds stated and above relief, if the decision-maker decides that prohibited status is appropriate having regard to the statutory criteria, then introduce an environmental compensation and offsetting regime that involves payment to owners of properties</p>	
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			<p>identified in NH3 of reasonable compensation for loss of existing use rights and inability for continued occupation of residentially zoned land. This will require</p> <p>(e) Introducing rules and other methods that require payment of reasonable mitigation, environmental offsetting and/or environmental compensation by the Regional and/or District Councils to the owners of the properties identified in Table NH3 as a consequence of the intended prohibited status rule for existing use rights for residential activities. Such a rules regime may require <i>Augier</i> undertakings by the Regional or District Council to be enforceable; or may involve condition precedents for the rules framework (and change in activity status of residential activities) to be triggered.</p> <p>(i) Methods for calculation of mitigation, offsetting and/or environmental compensation are to reflect recognised valuation principles that apply under the equivalent Public Works Act processes;</p> <p>(ii) Absent any financial compensation or offsetting regime, the prohibited status rule does not have effect by 2021 (or any other relevant date);</p> <p>(iii) A new Method that requires annual competent peer review by qualified persons in relation to PC17 assumptions about management of acceptable risk</p>	
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3	Table NH3	Oppose	<p>from landslide or debris flow, with ability to revisit the rules regime and prohibited status based on the findings of the peer review.</p> <p>(f) Delete or amend Table NH3 to reflect that the alleged areas of High Risk are not accurate or appropriate.</p>	<p>PC17 does not promote sustainable management, is unlawful or breaches the statutory framework. Refer General Reasons above.</p>
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## Submission on notified plan change

Clause 6 of Schedule 1, Resource Management Act 1991

Submission Number

Office use only

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Send your submission to reach us by **4pm** on **17 September 2018**

To:

<b>Post:</b> The Chief Executive Bay of Plenty Regional Council PO Box 364 Whakatāne 3158	<b>or Fax:</b> 0800 884 882	<b>or email:</b> <a href="mailto:fanhead@boprc.govt.nz">fanhead@boprc.govt.nz</a>
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**Name of submitter: Robert John Welsh on behalf of Matata Action Group (MAGNZ)**

This is a submission on **Proposed Plan Change 17 (Awatarariki Fanhead) to the Bay of Plenty Regional Natural Resources Plan**

- 1 I **could not** gain an advantage in trade competition through this submission.
- 2 I **am** directly affected by an effect of the proposed change that adversely affects the environment
- 3 The effect on the environment that I am directly affected by **does not** relate to trade competition or the effects of trade competition
- 4 The specific provisions of the proposed change that my submission relates to and the details of my submission are in the attached table.
- 5 I **wish** to be heard in support of my submission.
- 6 If others make a similar submission, I **will not** present a joint case with them at a hearing.

~RWelsh~ pp Matata Action Group 16 September 2018

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<b>Contact Person:</b> [name and designation, if applicable]	Rob Welsh (Advocate)		

**My submission both generally and specifically relates to:**

The entirety (its Objective, Policies and Rules) of Plan Change 17 (Natural Hazards) to the Bay of Plenty Regional Natural Resource Plan (PC17).

and what is identified below.

**I seek the following decisions from the local authority:**

- 1 That such authority at all times **only** adopts and/or endorses a process in which all associated foundation and any future decisions are accurately based on **all** relevant and factual historical evidence, information and data known and available. That as such, all decisions made are of a lawful, ethical, fair and reasonable nature under the circumstances.
- 2 That no part of the PC17 application, its design, reviews, process, supporting documentation, information and data are of an anomalous nature or do, or have, relied upon omission or the withholding of relevant historic or current information, or do, or have relied upon an interference with the privacy of Awatarariki property owners, their families or representatives as defined within the Privacy Act 1993. **AND** That no part of the PC17 application its design, reviews, process, supporting documentation, information and data, can potentially be deemed to support discrimination, or can be deemed to breach, or can be deemed to have breached Sections 8, 19 or 28 of the New Zealand Bill of Rights 1990 or Section 20I of the Human Rights Act 1993.
- 3 That such authority has at all time prior to advancing the PC17 regime to progress to this stage of process, genuinely ensured that it has addressed, reviewed, corrected and/or fully mitigated any and all non compliance factors/issues pertaining to the Awatarariki Stream and Fanhead per its pre May 2005 Statutory Obligations under Sections 31, 35 and 21 of the Resource Management Act 1991 and Sections 153 and 157 of the Building Act 2004.
- 4 It is my primary preference that PC17 is Withdrawn or alternatively Deleted.
- 5 My secondary preference is that PC17 be held over indefinitely and not proceed further until such time as the local authority has fully complied with its historical statutory obligations and/or had all potential Human Rights breaches judicially reviewed and ruled upon.

**General Submission Points:**

- 6 Section 5 of the New Zealand Bill of Rights 1990 categorically states: *Subject to section 4, the rights and freedoms contained in this Bill of Rights may be subject **only** to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.* For an unjustifiable period of 13 years, Whakatane District Council has widely ignored to various degrees the spirit of that Act and placed severe limitations on the lives and freedoms of the residents and property owners bordering the Awatarariki Stream at Matata.
  - (a) The validity of some of those limitations applied under the Building Act 2004, were previously deemed to be unlawful. To counter that determination and thus 'justify' continuation of the same limitations on the same affected parties, the authority then successfully sought a Natural Hazard classification and rezoned the area in question 'A High Risk' zone.
  - (b) PC17 is an endorsement of what may well be deemed to represent a retaliatory action given the fact that, at no stage after their imposed limitations had been found to be unlawful, did the authority pay attention to Section 5 or relax the affects of those limitations, but rather instead, it raised the stakes and openly increased the effect of them.

- (c) The relationship between the affected parties within the alleged 'hazard zone' and the local authority borders on untenable. The primary reasons for this are based on how the authority has acted (and not acted) since 2005, as opposed to property owners merely being upset by current proceedings.
- 7 Whakatane District Council management admit that major mistakes have been made historically, yet publicly only support that admission with the statement "That was THEN, this is Now!" Factually as people, irrespective of excuses offered: We are as we are today, solely as a result of who we have been in the past and the total sum of all historical lessons learnt from past actions and decisions made! The same applies to Awatarariki.
- i. Such an unacceptable culture, the inflammatory media releases which have marginalized a community and other questionable associated Council activity form the foundation of PC17. It falls completely outside reasonable public expectation of functional operation and clearly defined statutory obligations of that authority, including those relating to Sections 3, 5, 8 and 19 of the Zealand Bill of Rights.
  - ii. To get to this stage of proceedings, a mere 13 years after the event, WDC have applied a siege mentality to keep property owners in a 'holding pattern' and always ensured lack of transparency throughout, has allowed crucial strategic planning decisions of that authority to advance. The ability to make an informed decision from considering all relevant facts, is a fundamental right of every NZ citizen.
  - iii. If any authority knowingly retards or removes that ability, thus rendering another party incapable of making potentially life changing informed decisions free of such duress, then that agency has knowingly placed the other party in an unjustifiable disadvantage. That position when used to promote uncertainty, restrict or undermine a party's quality of life while intentionally removing that party's ability to utilise personal assets and property unlike other New Zealanders, is, irrespective of belief otherwise, discrimination.
  - iv. Unwarranted and unethical acts of WDC management include (secretly and without consent), personally calling upon property owner's personal bankers and insurers with the intention of advising them to restrict their dealings with those owners. These actions are not only deplorable, but also represent an intentional breach of the Privacy Act 1993 and breach of Part 1A of the Human Rights Act 1993.
  - v. WDC have little or no reasonable defence on those issues pertaining to the unlawful abuse of the aforementioned Acts and sections, yet such abuse of process represents a significant part of the mortar used to build the foundation of PC17.
- 8 If indeed PC17 was factually the only viable option available to that authority to resolve the numerous issues associated with Matata as promoted, then its foundation rather than any act of progressing of it, should be proven lawful, robust and non anomalous, within NZ Human Rights regulations and be advanced solely for the purpose of openly resolving only those issues promoted and acceptable.
- (a) PC17 rides roughshod over such fundamental expectations and clearly supports the secondary strategic objective of providing that authority with as yet undisclosed commercial and cultural opportunities, a shortcut for circumventing the Public Works Act and existing law relating to property acquisition for the resolution of other known future infrastructure issues, including sewage treatment, road and rail.
  - (b) In short, PC17 has effectively been designed to be a 'One Hat Fits All' planning approach. As yet judicially untested, PC17, its objectives, policies and rules rely on a somewhat untested (or legally challenged) foundation which has a genuine potential of failing its 'stress test.'
  - (c) Other than the above, of major concern is the fact that the authority in its building of that foundation has embraced, and relies upon the power of assumption in preference to well researched and documented reality, depending on inexact science and formulae for the purpose and ease of managing peoples' personal safety from a hypothetical or perceived risk perspective.
  - (d) Perceived and genuine risks are vastly different animals. What is perceived to be a risk to one person may likely not be a risk to another.
  - (e) A perceived or hypothetical risk to life and property should not be assumed to be a genuine risk at Awatarariki. An historical denial existed leading up to the granting of Natural Hazard classification of the stream and surrounds, that the stream had been allowed dam and pond dangerously for years prior to May 2005.

- (f) The presence and significance of >30 unmitigated dangerous dams and log-jams severely impeding the natural flow of Awatarariki stream existed prior to May 2005 and thus given the associated genuine risk present throughout that period, gross performance inconsistencies in relation to risk avoidance and then current obligations as defined in 1991 (RMA) and 2004 (BA) are evident. Those structures impacted on and contributed to damage at Matata, irrespective of the volume of Councils denial. After being formally challenged in 2016, along with the securing of stream inspection reports compiled by John Douglas for EBOP, that authority had no further ability to pursue a fallacy. That denial and protracted non resolution of the issue breached Section 21 RMA
- 9 Historically, that authority conducted the commercial operation of quarrying the Awatarariki stream bed and surrounds. Throughout the entire period of quarrying (prior to May 2005) that authority dynamited and totally dismantled the natural environment. Several quarrymen were killed and injured, the stream was allowed to block and predictably after substantial rainfall then (circa 1950s), a (minor) debris flow occurred closing the main road for three days. Cleared debris from that occurrence has been reported and used by Council as evidence that the stream has always been debris-flow prone.
- (a) That authority was bound by the RMA 1991 to ensure the natural environment was to the best of its ability, healthy, non hazardous and that the stream was able to flow naturally and unimpeded. That did not occur, thus the authority effectively breached its statutory obligations. Denied.
- (b) For years the authority allowed the Awatarariki Stream to dam and entered into no realistic or reasonable mitigation of the debris deposits. By 2004, those debris deposits impeded the stream so much that numerous dangerous 'lakes' had formed. The Building Act 2004 established the process relating to Dangerous Dams. That process and clearly defined statutory obligations under both the Building Act 2004 and RMA 1991 was not practiced or adhered to by the authority and as a consequence (either directly or indirectly) now, with questionable repackaging of the facts the assumed future risk potential of a major debris flow has been allowed to develop in PC17 without judicial scrutiny.
- (c) Irrespective of historical facts and defined statutory obligations, that authority proceeded to gain Natural Hazard classification status without any consideration to, or documented evidence of previous commercial operations and in total denial that any damming had occurred within the stream. All briefs relating to the gaining of that classification omitted any presence of and/or potential catastrophic consequences of same.
- (d) The implementation of the PC17 regime would endorse the very practices that both the RMA and BA sought to avoid. The potential impact on a community from impeded streams and rivers is reflected in the plight of Matata residents, yet has been spun to represent a need to implement an acquisition regime of national significance that will grant new enforceable laws to local authorities under the guise of natural hazard mitigation, albeit irrespective of human rights, justice and the truth.
- 10 While there may be genuine need in some situations throughout New Zealand because the nature of nature is such that a natural hazard event often serves as an indicator that nature is always present, prudence and not assumption must dictate the application of such a planning tool. More so, if evidence exists that as a result of the avoidance of statutory obligations, or negligent actions, or non actions by mankind, nature has merely responded. Factually, evidence does exist that mankind has for too many years, severely interfered with the natural environment of Awatarariki stream. Denial and avoidance of that fact has been of such significant value, that those same responsible parties have to date spent millions of tax payer funds on the formulation of something that is assumed to be of critical importance to the health and safety of New Zealanders, puts the blame squarely on nature, removes all liability for previous commercial mismanagement of the environment, and provides a third power opportunity that allows the pirating of private property at the stroke of a pen.
- 11 One must not simply assume the process of arrival at this point has been genuinely lawful and therefore, is worthy of implementation. As a hat that is designed to fit all, it should not be applied until genuinely scrutinised, or be embraced by an industry seeking greater powers, or worn by any planning professional who understands the genuine value of integrity.
- 12 Advancing PC17, its promoted objective, policies and rules creates unprecedented legislation allowing authorities to acquire private property without compensation, by removing the property owner's existing usage rights on the basis that some yet to be accurately calculated element of risk to life exists within or in close proximity of that property, as a result of the presence or perceived potential presence of a genuine Natural Hazard.

- (i) Subject to Section 85 of the Resource Management Act, PC17 must be considered unlawful as it serves to render the financial interests of the land and property within the alleged 'high risk' zone' per table NH1, incapable of reasonable use.
- (j) As such, PC17 therefore places an unfair and unreasonable burden on those parties with an interest in the land and property.
- (k) One must also consider the lawfulness of the current regime of risk management (in the absence of PC17) from this perspective.

#### Specific Submission Points (PC17 above and below):

- 13 **Re NH 04.** Further to the above, the authority has in law numerous functions and obligations. Many have been developed to align with the regulations contained within the New Zealand Bill of Rights and Human Rights Act, other than those within the Resource Management Act. How applicable the authorities concerns are in regard to the welfare of property owners and ratepayers in Matata, must always be measured by past performance and the lawfulness of currency within that relationship. The authority has always shown little concern for residents and landowner's welfare. NH 04 does not reflect the 13 years of neglect associated with a risk that has genuinely been quantified beyond the piles of debris that remains on private properties.
- 14 **Re NH P6.** The authority was required to use appropriate natural hazard risk assessment measures to support their Plan Change for Natural Hazard zoning classification. To aid the success of that application the authority did not openly promote the methodology set out in Australasian Geomechanics Society – Landslide Risk Management 2007 as being the primary model for the assessment of the Awatarariki stream, other than help support the claim that the debris flow was a natural occurrence and not contributed to by mankind. Other reliable risk matrixes exist including those offered by New Zealand experts, some of whom had extensively mapped the stream and previously described the Awatarariki and Waitepuru Streams as having anomalous characteristics that did not support either being debris flow prone or likely sources of debris flows. That professional assessment was withheld as it did not support the authority planning objectives, including that of maintaining a denial of previous unmitigated damming. The emphasis on landslides as opposed to other factors is one that erodes the fact dams had also been created from felled Wilding Pines after DOC had embarked on a 'pruning' regime. There are a number of aspects including acceptable assumptive error allowances in the AGS document that should not be relied upon to accurately calculate or assess a Perceived Risk with perceived tolerance levels, and perceived margins of error. In New Zealand GIS mapping along with the use of Melton ratio formulae has been a very dependable process for assessing a streams susceptibility to real debris flow risk, rather than perceived risk, as is promoted within the methodologies of the AGS-LRM document. The R factor for the Waitepuru Stream is 0.25. The R factor for Awatarariki Stream is a mere 0.17. Debris flow prone streams in New Zealand identified using the Melton ratio are almost entirely those streams that have an R factor assessment of above 0.50. Indeed an anomaly exists with Awatarariki Stream being 0.37 points below what is known to represent a stream prone to the natural hazard of debris flows. The AGS methodology does not explain why.
- 15 **Re NH P7.** One must consider the fact that a greater level of risk was present at the time the Awatarariki Fanhead was developed, as a result of extensive quarrying and later by reason of non mitigated debris dams being present. Those risks were all within the scope of Councils management and statutory obligations to **always** ensure that any level of medium - high impact risk was negated and yet that did not occur (for whatever reason). After the 2005 debris flow, all those years of accumulated debris had been dispersed across private property, including all residual matter generated by commercial quarrying and the stream flowed more naturally than it had ever been allowed to under the management of that authority. That represented a Genuine Risk. Today the same authority would have us believe that as a result of the presence of formulae for assessing Perceived Risk, as opposed to the presence of dangerous dams, the Real Risk is such that even after 13 years of that 'real risk' remaining exactly the same as it was after the stream began flowing unimpeded, property owners must vacate the Fanhead as soon as possible.
- 16 **Re NH P8.** Further to the above, NHP8 is an extreme example of avoiding potential liability for previous wrongdoing. It is inconsistent with Section 5 of the New Zealand Bill of Rights and with the Resource Management Act, in that it does not promote sustainable resource management. It demonstrates

the mindset of an authority management team determined to abuse the rights and freedoms of New Zealand citizens and gain free land and free space with which to pursue the laying of storm-water and sewage pipelines, circumventing existing available lawful process and need to follow those laws.

17 **Re NH R71.** Further to the above, Table NH 3 referred to within NHR71 does not reflect the full extent of what was previously shown to be the entire area affected by the 2005 debris flow and is therefore inconsistent with the process promoted to gain natural hazard zoning classification. NHR71 sets a date at which time the as yet untested acquisition process is expected to have been lawfully applied. It is, like the bulk of PC17 based on an assumption that the authority will be successful in its application and in law. There are far too many vagaries, omissions and inconsistencies within the entire process used by the authority to date to assume that PC17 and all 13 years of potential human rights abuse will survive a judicial review. NHR71 has its origins within the ruled unlawful third power property acquisition regime used in Canterbury by the National party who are now in opposition and had agreed in principle to jointly fund a 'Voluntary Retreat' Buyout of Awatarariki properties. On that basis, the authority sought support from property owners, but received only a small percentage of positive response. The authority claims it has approached the Labour Led Government but are not forthcoming as to whether or not Central Government is prepared to contribute funds on a rising market, albeit one that the affected property owners have been able to capitalise on due to the imposed limitations of the authority. A great deal of doubt surrounds that issue and perhaps it should established whether or not as a result of a Government refusal, the authority has advanced PC17 in the hope that enforced rules like NHR71 will provide the authority with the opportunity to 'freely acquire' the property interests via NHP8. As with other aspects of PC17, NHR71 breaches the New Zealand Bill of Rights and must be challenged for the right of certainty and freedom from oppression of all NZ citizens. Also as with all other aspects in dealings of PC17 - Reality and Prudence truly dictate: "That when it comes to the Assessment of Genuine Risk over Perceived Risk, Always Look Before You Leap."

Specific provisions		Details of submission: whether you support or oppose the specific provisions or wish to have them amended		
Page No	Reference (e.g. Objective, Policy or Rule number)	Support/Oppose	Decision Sought Say what changes to the plan change you would like Give precise details	Include reasons for your views
	<b>PC17</b>	<b>Oppose</b>	<b>Withdraw PC17 or Delete</b>  <b>Or</b> <b>Withhold the process until the proceedings to date have reviewed judicially.</b>	<b>The implementation of PC17 is unlawful, no legal precedence exists for it and it does not address the anomalies contained within the process used. It imposes a repressive regime that is unlawful under NZ Bill of Rights, Part 1A of Human Rights Act and/or Part 2 of the Resource Management Act.</b>  <b>And (as above).</b>

	<b>Objective NH 04</b>	<b>Oppose</b>	<b>Withdraw PC17</b>	<b>Is Unlawful and/or Breaches the Statutory Framework of Local Authority Functions.</b>
	<b>Policies NHP6, NHP7, NHP8</b>	<b>Oppose NHP6, NHP7, NHP8</b>	<b>Withdraw PC17 Or</b> <b>Withhold the process until it has been established by the Human Rights Commission whether or not the authority has breached the rights of affected parties</b>	<b>Is Unlawful and/or Breaches the Statutory Framework of Local Authority Functions. Along with other reasons are listed above they potentially breach NZ Bill of Rights.</b>
	<b>Rule NHR71</b>	<b>Oppose</b>	<b>Withdraw</b>	<b>Imposes a repressive regime that potentially is unlawful under NZ Bill of Rights, Part 1A of Human Rights Act and/or Part 2 of the Resource Management Act.</b>