

**BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE WESTERN BAY
OF PLENTY DISTRICT COUNCIL**

IN THE MATTER of the Resource
Management Act
1991 (RMA)

AND

IN THE MATTER of the Notice of
Requirement to
designate land for an
Active Reserve in
Ōmokoroa

**STATEMENT OF EVIDENCE IN REPLY OF JAMES DANBY ON BEHALF OF WESTERN
BAY OF PLENTY DISTRICT COUNCIL**

6 SEPTEMBER 2023

Introduction

1. My name is James Danby. I prepared the section 42A report on behalf of Western Bay of Plenty District Council (the Council). I have the qualifications and experience set out in my section 42A report.
2. As recorded in the section 42A report, I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023 and I agree to comply with it. This rebuttal evidence has been prepared in accordance with the Code of Conduct for expert witnesses.
3. My evidence in reply addresses matters raised in the written evidence circulated in response to the s42A from Mr Hextall (for the applicant); Heritage New Zealand Pouhere Toanga (HNZPT), and Mr Taylor (TDD Ltd). I do not have any comments on Ms Badenhorst's or Mr Canham's evidence.
4. My rebuttal addresses several matters under the following headings:
 - (a) Proposed conditions
 - (b) 474 Ōmokoroa Road

Proposed Conditions

Mr Hextall's Proposed Condition

5. Mr Hextall proposes to include a condition relating to the outline plan process. Given the requirements for submission or waiver of an outline plan are managed under section 176A of the RMA I do not consider the first sentence of the proposed condition is necessary. However, given the designated land may be developed in stages it is appropriate to recognise that as part of the designation. On that basis I propose a new condition (2) be included as follows:

Any separate outline plan application submitted to Western Bay of Plenty District Council for the purpose of giving effect to the designation is appropriate and subject to all other designation conditions.

HNZPT Amendment to Condition 4

6. The wording of proposed condition (4)¹ reflects what is included in the Operative District Plan (and Plan Change 92) under the Ōmokoroa Structure Plan Earthworks Procedures. My understanding of this plan provision is that it provides bespoke recognition of Pirirākau's relationship with Ōmokoroa peninsula and was adopted to ensure cultural heritage values are not lost or overlooked through the land development process. I note that there is no

¹ S42A Report Attachment 4

specific reference under the operative (or proposed) Earthworks Procedures to HNZPHT archaeological authorities.

7. Whilst the RMA and the HNZPT Act 2014 clearly have different regulatory functions I acknowledge there is overlap between the two. However, in my opinion, where there is potential for unrecorded archaeology to be discovered through the land development process it is more appropriate for that to be managed under the HNZPT Act 2014.
8. In that context I consider it is more appropriate for the outline plan process to confirm the details of any archaeological authority obtained for the designated land. A new condition (6) is proposed on that basis as follows:

The outline plan application shall include a copy of any Archaeological Authority applied for under the Heritage New Zealand Pouhere Taonga Act 2014 within the designation.

474 Ōmokoroa Road

9. Mr Taylor's evidence principally outlines his experience in dealing with the Western Bay of Plenty District Council since being advised of the potential purchase of his property for the designation. I was not involved in that process.
10. In terms of the planning issues relating to the proposed designation Mr Taylor raises several concerns about the potential future use of his property – in particular the continued operation of the existing storage business.
11. In response to these concerns, I note the following:
 - The storage business is already subject to a sunset clause under condition (2) of resource consent no.854 which identifies the consent expires on 18 May 2026. As stated in the decision the reasons for this condition were:

“...that a ceiling be placed on the activity such that...the applicant would need to reapply and the assessment at that time could have regard to the operative and/or proposed Plan requirements in place at that time and that of other strategic and policy documentation.”
 - Under the RMA a consent subject to a expiry condition requires the consent holder to apply for a new consent if they wish to continue with that activity. That consent application, including any decision to approve or decline the application, would still be subject to RMA processes regardless of the notice of requirement application.
 - Where a designation is included in a district plan then that land is subject to section 176 of the RMA. One of the implications of this is that the written

approval of the requiring authority is required for any use of the land that would prevent or hinder the designation.

12. Therefore, assuming the designation is confirmed, the RMA does not prevent the possibility of the storage business being able to remain on site for a temporary extended period of time if the Council considered that to be appropriate. Alternatively, if the designation is not confirmed then the consent holder must apply to the Council for a new consent for that activity.

Conclusion

13. Having read the evidence from the applicant and the submitters, and noting my proposed amendments to the conditions, I have no reason to alter the recommendation in my s42A report to confirm the Notice of Requirement.

James Danby

6 September 2023

Attachment 1 – Proposed Amended Conditions

EVIDENCE IN REPLY ATTACHMENT 1

Ōmokoroa NOR for Active Reserve **Amended Draft Designation Conditions**

Purpose

1. The purpose of the designation is to provide an Active Reserve for the following activities:
 - a. Playing fields and associated lighting structures.
 - b. Clubrooms and changing facilities.
 - c. Playgrounds.
 - d. Indoor sports centre.
 - e. Aquatic centre.
 - f. Access and parking facilities
 - g. Associated service connections.
2. Any separate outline plan application submitted to Western Bay of Plenty District Council for the purpose of giving effect to the designation is appropriate and subject to all other designation conditions.

Building height and location

3. Any new building (excluding light poles, goal posts or similar structures) shall be designed to comply with height and height in relation to boundary performance standards for the underlying zone at the external boundaries.
 - a. Where a building exceeds the height standard the outline plan of works will assess:
 - i. The extent and scale of the additional height
 - ii. The visual dominance of the building.
 - iii. Whether the height of the building supports a positive relationship with the surrounding environment.
 - iv. Architectural design and built form
 - v. Amenity effects on surrounding properties, including shading and loss of daylight.
 - b. Where a building exceeds a height in relation to boundary performance standard the outline plan of works will assess:
 - i. The extent and scale of the building beyond the HIRB envelope and the associated shading, loss of daylight and building bulk effects on the surrounding environment.

Vehicle Access and Parking

4. The design and location of vehicle access and exit points and parking areas associated with supporting the purpose of the designation shall be subject to a

transportation assessment which shall be submitted with the outline plan application. The purpose of the transportation assessment is to assess the effects of the proposed work on the continued safe, effective and efficient operation of the surrounding transport network.

Cultural Values

5. The outline plan shall demonstrate how earthworks within site will be undertaken in accordance with the 'good earthworks practice' Ōmokoroa Earthworks Procedures within the District Plan. This includes, but is not limited to:
 - a. Undertaking meaningful consultation with Pirirākau prior to the outline plan application.
 - b. Procedures for informing Pirirākau of earthwork start dates and opportunities for site blessings and monitoring of earthworks activities.
 - c. Discovery protocols for archaeology, koiwi; other artefacts; habitation sites or middens.
 - d. Any discussions or agreement for input into place names and signage.
6. The outline plan application shall include a copy of any archaeological authority applied for under the Heritage New Zealand Pouhere Taonga Act 2014.

Lapse Date

7. The designation shall lapse on the expiry of a period 15 years after the date it is incorporated in the District Plan.