

DECISION REPORT

PLAN CHANGE 94 – Washer Road Business Park

FILE REFERENCE: A4524970

INTRODUCTION

Pursuant to Section 10(1) of Schedule 1 of the Resource Management Act 1991, the Hearing Panel (Panel) makes the following decision on the provisions of the District Plan First Review and matters raised in submissions and further submissions to Plan Change 94 – Washer Road Business Park (PC94).

The decision is set out as follows:

1. The Proposal
2. The Hearing
3. Decisions on submissions and further submissions

SUMMARY

This Report discusses the proposal and submissions, and the conclusions of the Panel. The Decision recognises many of the points made by Submitters and concludes that the Change should be incorporated into the District Plan with various amendments.

1. THE PROPOSAL

Plan Change 94 proposes to rezone approximately 7.012ha of land at 66 Washer Road, Te Puke, from Rural Zone to Industrial Zone, and establish the Washer Road Business Park Structure Plan area. A survey undertaken in 2012 to assess industrial land availability showed 25ha of vacant available industrial land in Te Puke, and a large area (79ha) of zoned but not yet available Industrial land. This means there is a need for other Industrial land to be developed to meet the needs of the Te Puke community.

The site comprises a wedge shape piece of pastoral land, which is bordered by Washer Road and Industrial Zoned land to the west; and Ohineangaanga Stream along the eastern boundary. To the north is more Rural zoned pastoral land; and to

the south-east is existing Residential Zoned land separated from the site by the Ohineangaanga Stream.



Figure 1: Map showing the extent of the proposed Washer Road Business Park Structure Plan area.

SECTION 32 and SECTION 32AA ANALYSES:

The applicant carried out an evaluation of the Proposal under s32 of the Act, and further evaluations of amendments to the Proposal were undertaken by the Reporting Officer (RO). These evaluations were contained in the report presented to the Panel by the RO Anna Price. Where appropriate those evaluations are included below. Where the Panel has changed those proposals, reasons are given below.

2. THE HEARING

The Hearing was held in Council Chambers on Thursday 7 July. The Panel comprised Deputy Mayor John Scrimgeour (chair), Councillor Murray Grainger, Councillor James Denyer and Independent Commissioner Alan Withy.

The Hearing was adjourned late on Thursday 7 July. The Panel sought legal opinions regarding various matters raised during the Hearing and allowed for the applicant and Regional Council to caucus on the proposed provisions presented by the Regional Council. A joint witness statement was received from the Applicant and Regional Council on 25th July 2022, and the Applicants Right-of-Reply was received on Thursday 28 July 2022.

The Panel is unanimous in this Report and the decisions contained herein. It relies upon legal advice (attached) from Ms Vanessa Hamm regarding several issues raised during the Hearing.

3. DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

The purpose of this part of the report is to show the decisions made on submissions and further submissions on a topic-by-topic basis with reasons and Section 32AA Analysis. Decisions are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report and as notified in red, and further changes as the result of Panel decisions in blue.

TOPIC 1: REZONING

Background

The proposal is to re-zone the current Rural Zoned land to Industrial, and to provide for a mix of industrial activities that will have a range of property and building sizes. For reference this could result in a built form similar to the industrial buildings on the western side of Washer Road which is currently zoned Industrial.

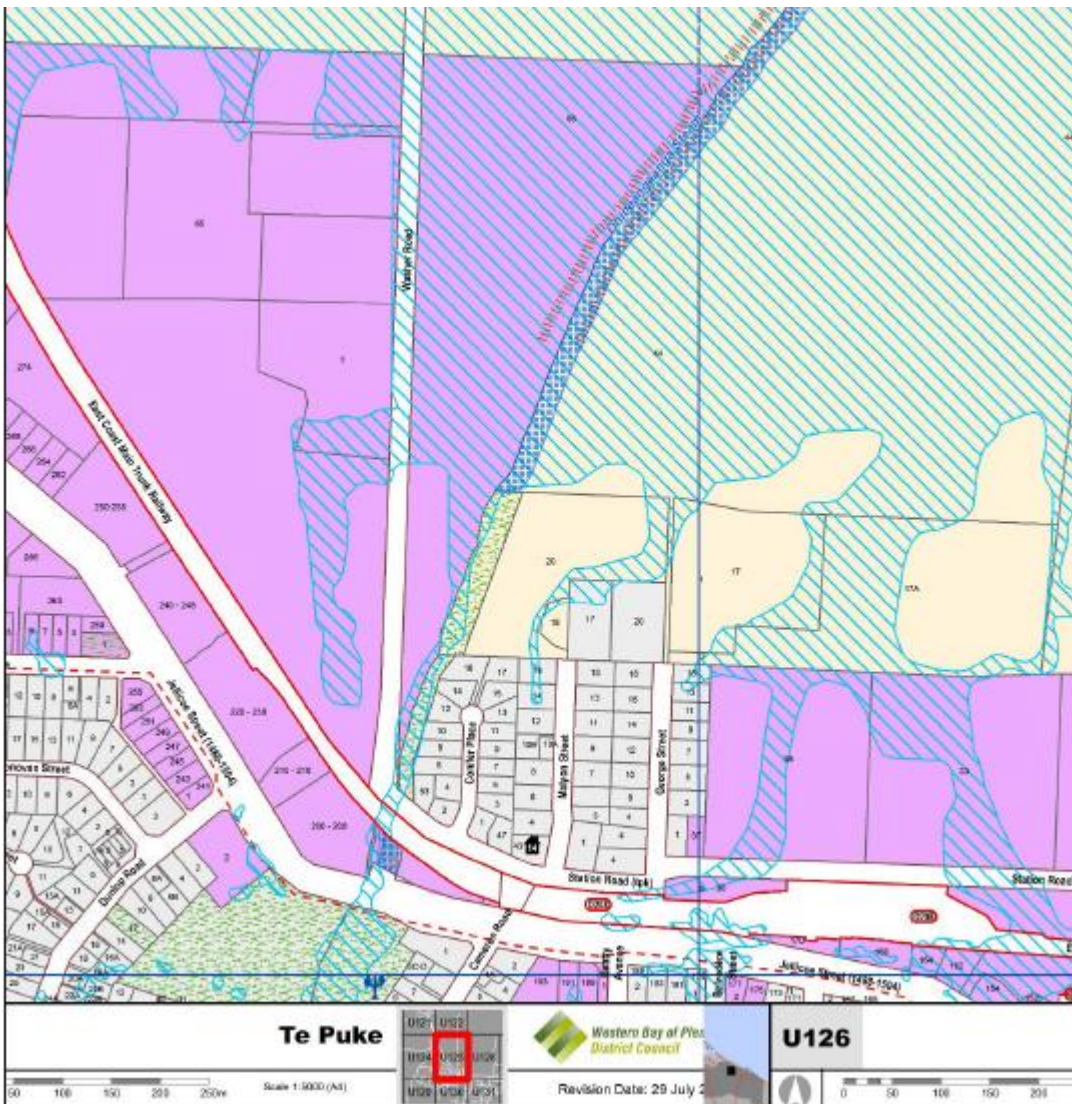


Figure 2: Proposed changes to Planning Map U125 to include land within the Industrial Zone (shown purple).

Submission Points

One submission point was received. No further submission points were received. The submission points on this topic are summarised as follows:

Submission 1.2 – Supports the proposed rezoning of the site to Industrial Zone as it will provide much needed industrial land in Te Puke.

The RO Identified two options:

Option 1 – As Proposed – Rezone from Rural to Industrial Zone.

Option 2 – Status Quo – Retain Rural Zone

Discussion

The industrial land supply in Te Puke is constrained by the fact that much of the existing vacant Industrial Zoned land remains part of an operational farm and depends on roading and infrastructure upgrades before it can be developed. This

relates predominantly to the Te Puke West Industrial Area (TPW). The TPW is identified as not available due to significant flood constraints, plus the need for key infrastructure to be provided in advance of the industrial land being developed. Due to these obstacles, it is unclear as to when this industrial land will be available.

The loss of approximately 7ha of rural land will have minimal effects on rural land supply around Te Puke. For context, the greater farm area that the structure Plan Area is cut from is 200ha. The land can also connect to proposed and existing services including roading.

Option 1 will help meet the immediate demand for greenfield industrial sites and provide additional industrial land that mirrors the EastPack site. It will also provide growth opportunities to meet the employment and business needs of the community.

Decision

Option 1 is adopted – That the land be re-zoned from Rural to Industrial as notified.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
1	2	EastPack

Reasons

Rezoning the land from rural to industrial will help meet the immediate demand for industrial sites and complements the adjoining Industrial Zone. It will also provide growth opportunities to meet the employment and business needs of the community.

TOPIC 2: STRUCTURE PLAN

Background

Due to the proposed rezoning to Industrial land the applicant has prepared a Structure Plan to show how the land can be developed and serviced and to identify particular requirements specific to this site. Any future development within the site would then need to be in accordance with the Structure Plan along with the existing industrial zone rules.

A Schedule of Works within the Structure Plan also identifies the work which needs to be completed prior to each stage of the Structure Plan area being available for development. This includes utilities upgrades, roading upgrades, landscape and earthworks.

The proposed Structure Plan Map identifies the development stages, future road access, landscape buffer area, height limits, gas transmission line and existing and proposed utilities/services.



Figure 3: Proposed Structure Plan Map

Submission Points

Two submission points were received. No further submission points were received. The submission points on this topic are summarised as follows:

The concept of the landscape buffer is supported by the submitters; however access is required to both sides of the Ohineangaanga Stream in order to maintain the canal banks and the adjacent stopbanks. Consequently, any landscape buffer should be from the landward toe of the stopbank only to ensure:

- (i) access is provided to the stop bank to the satisfaction of the Bay of Plenty Regional Council Rivers and Drainage Department; and
- (ii) the stability of the stop bank and bridge can be maintained to the satisfaction of the Bay of Plenty Regional Council Rivers and Drainage Department.

BOPRC noted that the stopbanks in this vicinity are likely to be raised in the near future. This will mean that the existing toe of the left bank stopbank will be pushed further to the west.

Submission 4.1 – Requests that the gas transmission pipeline and 20m buffer be shown on the Structure Plan map, and that the landscape strip is removed from over the gas transmission pipeline.

The RO identified three options:

Option 1 – As Proposed – Retain the Structure Plan

Option 2 – Amend the Structure Plan Map to relocate vegetation buffer to west of the stop bank.

Option 3 – Amend the Structure Plan Map to relocate the vegetation buffer to the west of the stop bank and show a 20m wide buffer from the gas transmission pipeline.

Discussion

Landscape Strip

The existing stop bank is located along the true left bank of the Ohineangaanga Stream and the Structure Plan proposes a minimum 10m wide landscape buffer area between the bank of the stream and the stopbank. The application states a detailed landscape plan and planting schedule should be provided for approval at time of Development Works Approval.

Given the submission received from the Regional Council and the need to maintain access to the Stream and stop bank it is necessary to require the landscape strip to be located west from the toe of the stop bank. This ensures that access to the stream bank is maintained to protect the function, efficiency and safety of the flood protection assets.

It is also necessary that further details around the landscape strip are clear within the Structure Plan Staging details to ensure flood assets are protected and access maintained.

Gas Transmission Line

Firstgas are requesting that a 20m wide buffer be shown on the Structure Plan map. The Firstgas easement is currently shown on the Structure Plan Map. This identifies the pipeline to any future developers looking to develop within the area. Firstgas are also requesting an addition to Rule 21.4(b) to provide for buildings/ structures and earthworks to be setback 20m from the gas transmission pipeline. As the gas transmission easement is already shown on the Structure Plan maps it would be more appropriate to provide for the 20m exclusion/buffer zone within the rules of the District Plan to give effect to the easement as already shown on the map rather than trying to show both the easement and the buffer on the map as per Option 3.

Decision

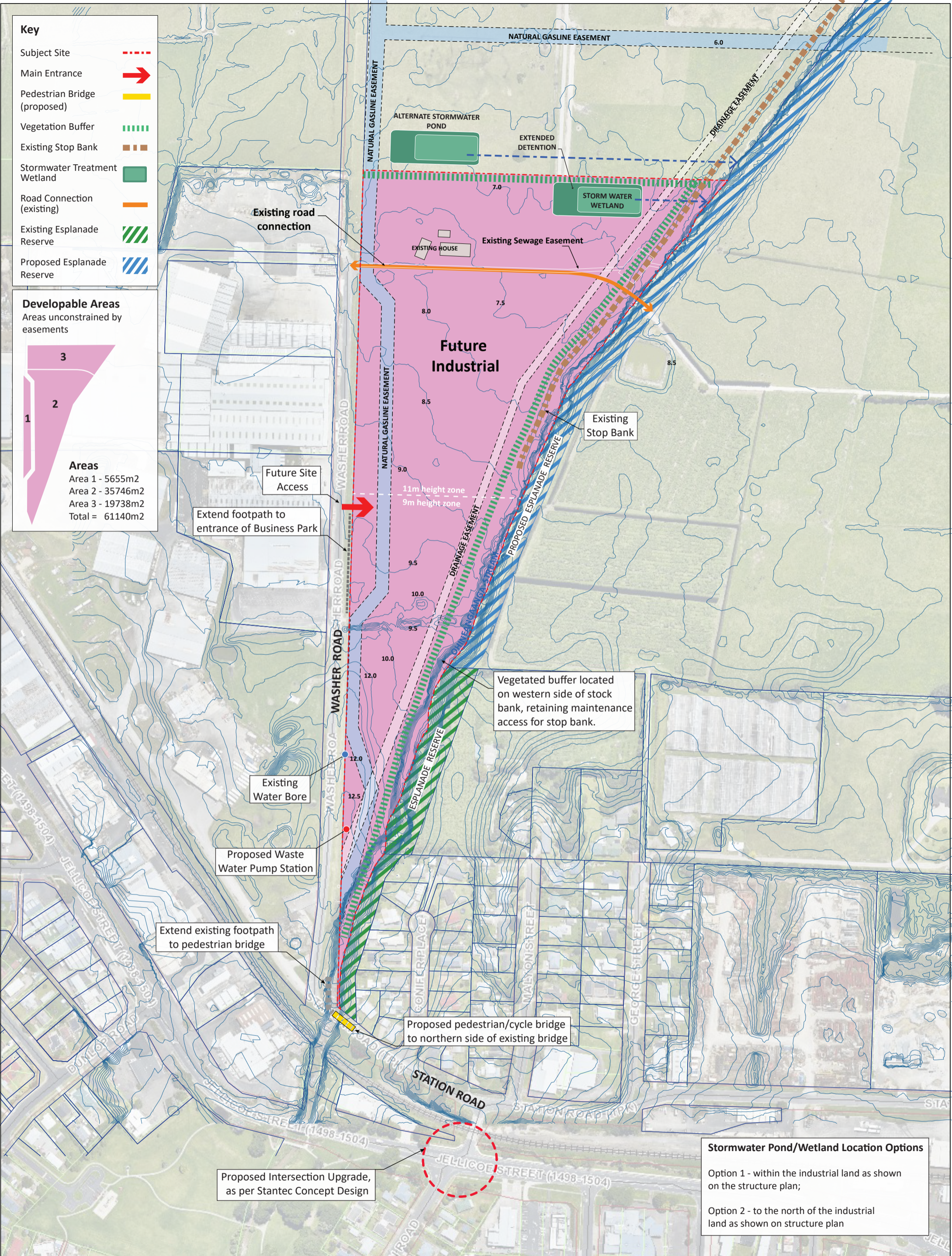
Option 2 is adopted. That the following Structure Plan, Staging Plan and associated Schedule of Works - Staging Details which were presented at the Hearing by the Applicant and modified by other decisions below be adopted.

Key

- Subject Site - - - - -
- Main Entrance ➔
- Pedestrian Bridge (proposed) ▬
- Vegetation Buffer ▨▨▨▨▨
- Existing Stop Bank ▬▬▬▬▬
- Stormwater Treatment Wetland ■
- Road Connection (existing) ▬
- Existing Esplanade Reserve ▨▨▨▨▨
- Proposed Esplanade Reserve ▨▨▨▨▨

Developable Areas
Areas unconstrained by easements

Areas
 Area 1 - 5655m²
 Area 2 - 35746m²
 Area 3 - 19738m²
 Total = 61140m²



Stormwater Pond/Wetland Location Options

Option 1 - within the industrial land as shown on the structure plan;

Option 2 - to the north of the industrial land as shown on structure plan

WASHER ROAD BUSINESS PARK Plan Change Structure Plan

Insert Into Appendix 7 the following text for the Structure Plan

12.4.23 Washer Road Business Park Structure Plan

12.4.23.1 Staging Details

The following Staging is required for Washer Road Business Park to enable the site to be developed progressively. Earthworks and preloading of the site are required to prepare the land for future industrial use. Subdivision and development shall not occur within a stage until all required works are completed for that stage and any previous stages.

Stage 1A – Infrastructure Works

- Sewer pump station and rising main
- Stormwater pond (extended detention)
- Water supply
- Landscape buffer adjacent to Stage 1A

Stage 1B – Infrastructure Works

- Washer Road ~~seal widening~~ foot path extension to the single lane bridge
- Reverse the give-way priority of the single lane bridge
- Form primary road entrance to industrial land
- Pedestrian/cycle bridge over Ohineangaanga Stream
- Landscape buffer adjacent to Stage 1B

Stage 2 – Infrastructure Works

- Roundabout Intersection upgrade at Cameron Road and Jellicoe Street, refer to rule 12.4.14.2(c) and preliminary design in 12.3
- Landscape buffer adjacent to Stage 2

Note: bulk earthworks will be staged subject to large scale Bay of Plenty Regional Council earthworks consent.

Non-Compliance with the above staging works will render development or subdivision within the Washer Road Business Park Structure Plan area a Discretionary Activity.

The following rule shall be inserted into Section 12 of the District Plan.

12.4.23.2 General

- a. Development within the Washer Road Business Park Structure Plan area shall be undertaken in accordance with the structure plan and specifications set out in Appendix 7.
- b. Any new building or structure within the Washer Road Business Park shall be located above the 1% AEP flood event including a RCP 8.5 climate change projection to 2130 except for buildings or structures that have a Gross Floor Area (GFA) of less than 20m² or are required to be within an identified floodable area. (This will be implemented at Building Consent stage.)
- c. The intersection of Cameron Road and Jellicoe Street shall be upgraded generally in accordance with the concept signalled layout in the Structure Plan or alternative design approved by Council. Alternatively, a Travel Management Plan shall be prepared and submitted to Council for approval. The Travel Management Plan shall detail how the activity(s) will manage traffic to avoid adverse effects on the intersection of Cameron Road and Jellicoe Street in peak flow conditions. The intersection shall be upgraded no later than 5 years following commencement of the first industrial activity.
- d. All new buildings shall be constructed with inert roofing materials.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
3	3	BOPRC

Rejected

Submission	Point Number	Name
4	1	Firstgas

Reasons

The Regional Council challenged changing the location of the pond to outside of the Structure Plan. The Panel sought legal advice as to whether such a change by the applicant was within scope of the plan change. The legal advice is attached, and the Panel accepts this advice that the pond can be located outside the Industrial zoned land. This matter is expanded on in Topic 4 below.

The updated Structure Plan also shows the location of the landscape strip to the west of the toe of the stopbank, and the Panel support the updated location.

First Gas requested the easement be shown on the Structure Plan, and it is noted that it currently is. Further Firstgas provisions are considered in Topic 8 below.

TOPIC 3: TRANSPORTATION

Background

Rezoning land from Rural to Industrial will result in a change to the traffic volumes, capacity, safety and other traffic effects on the existing roading network. A report prepared by Stantec highlighted several issues with the existing road network, as well as recommending mitigation measures to ensure effects on the roading network from the Structure Plan area are appropriately managed.

Submission Points

Two submission points were received. No further submission points were received. The submission points on this topic are summarised as follows:

Submission 1.1 – Have concerns over the ability of the existing single lane bridge to accommodate the increase in traffic. The single lane bridge is already under pressure during kiwifruit season resulting in queues. Request that the single lane bridge be upgraded to a double lane bridge and construction of roundabout at Jellicoe Street/Station Road intersection.

Submission 2.1 – Have concerns over the suitability of the single lane bridge and priority of traffic over the bridge and concerns with sightlines. Request that the roundabout at Jellicoe Street be installed prior to development and reverse the priority on the single lane bridge.

The RO identified two options:

Option 1 – Transportation as proposed – intersection upgrades, road widening, pedestrian & cycle links

Option 2 – Upgrade of transportation network to include Washer Road single lane bridge.

Discussion

Option 1 includes:

1. Construction of a cycle/pedestrian bridge adjacent to the single lane bridge and extension of the footpath south along Washer Road prior to stage 1 of the development commencing, and
2. An intersection upgrade at Jellicoe St/Cameron Road prior to stage 2 commencing.

Option 2 includes the intersection upgrades at Jellicoe Street and a new two-lane bridge to replace the single lane bridge at Washer Road prior to any development on site.

The RO advised that Council staff have met and discussed this topic with the applicant/agent on several occasions. Following the close of submissions, a solution was agreed to regarding the nature of work required to be undertaken as part of the Structure Plan.

Option 1 provides for the necessary upgrade works to occur in line with the staged development. The traffic effects will occur in line with development of the site, and the Transportation Assessment outlines that the wider network effects will not be felt until development occurs within Stage 2.

Council's Roading Engineer advised that the current single lane bridge is appropriate for the scale of the development proposed, however he agrees with submitters that the priority of the bridge and the intersection from Station Road should be considered as part of the wider improvements. They also agree that the footpath on Washer Road should be extended to the new foot bridge. This work is to be at the cost of the developer and undertaken prior to development occurring within Stage 1. Council staff confirmed that widening of Washer Road is not required at this time.

Council staff also agree that the intersection to Jellicoe Street should be upgraded but have confirmed that this should be a signaled upgrade, rather than a roundabout, as other intersections along Jellicoe Street will in time be upgraded to signals. The applicant has agreed that this is appropriate and has agreed to provide an updated intersection concept to include in the Structure Plan.

Option two would require the installation of the proposed Jellicoe intersection upgrades and an upgrade of the current single lane bridge to a two-lane bridge. Council staff have considered the current traffic concerns and wait times, however, believe that at this time the upgrade is not required. The Transportation Assessment confirms that the single-lane bridge is acceptable for the proposed development, and an upgrade to this bridge may result in the development no

longer being financially viable as the upgrade would likely include the need to raise the level bridge in line with flood hazard requirements.

Decision

Option 1 is adopted with the following rule inserted Section 12 of the District Plan. (The footpath extension and pedestrian/cycle bridge requirements are included in Topic 2 decision above and are not repeated here.)

12.4.14.2 Washer Road Business Park Structure Plan

c. The intersection of Cameron Road and Jellicoe Street shall be upgraded generally in accordance with the concept signalled layout in the Structure Plan or alternative design approved by Council. Alternatively, a Construction Travel Management Plan and a Travel Management Plan (for activities) shall be prepared and submitted to Council for approval. The Travel Management Plans shall detail how the activity(s) including site construction will manage traffic to avoid adverse effects on the intersection of Cameron Road and Jellicoe Street in peak flow conditions. The intersection shall then be upgraded no later than 5 years following commencement of the first industrial activity.

The following submissions are therefore:

Accepted in part

Submission	Point Number	Name
1	1	Eastpack
2	1	MC & HF Salt

Reasons

The traffic engineer's evidence and recommendations for the Applicant are accepted:

The cycleway/pedestrian bridge adjacent to the single-lane bridge

Reverse the priority flow of the single-lane bridge

The transportation upgrades will provide a safe and efficient transportation network and will ensure that the development can progress in a staged manner to provide much needed industrial land to Te Puke.

The applicant provided a concept intersection design and that is accepted as appropriate. It is now shown in the revised Structure Plan.

TOPIC 4: STORMWATER

Background

The industrial nature of any future development will significantly increase site impervious areas, resulting in an increase in runoff and potentially generating contaminants such as sediments, metals and hydrocarbons. The applicant proposes to manage runoff treatment by utilising stormwater wetlands, swales, rain gardens and other approved treatment devices. Treated stormwater can then be discharged into the Ohineangaanga Stream via attenuation to minimise downstream scour.

Submission Points

One submission point was received. No further submission points were received. The submission point on this topic is summarised as follows:

BOPRC highlight that the application proposes no mitigation of increased runoff from the site and is proposed for water treatment purposes only. Mitigation of increased stormwater runoff should also be provided by detaining the increased runoff flow. They also consider the proposed location of the stormwater management devices, including the wetland, is proposed to be located within the 100-year ARI floodplain. Stormwater management devices should be located outside of the 100-year ARI to avoid resuspension of sediments and contaminants during larger storm events.

Submission 3.1 – Requests changes to the Plan Change as follows:

- additional feasibility reporting is undertaken to demonstrate the requirements for stormwater detention measures based on updated modelling and, in accordance with BOPRC's Hydrological and Hydraulic Guidelines 2012/02.
- Requests limits on Impermeable surface coverage.
- on-site methods to manage run-off within the plan change area such as water sensitive urban design.

The RO Identified two options:

Option 1 – As proposed – Retain proposed stormwater controls

Option 2 – Introduce new stormwater controls including stormwater detention, limits on impervious surfaces, water sensitive urban design.

Discussion

The applicant was asked to provide further assessment of stormwater controls and mitigation through submissions. That additional information was circulated prior to the hearing and Council staff supported the recommendations made.

Decision

Option 1 is therefore adopted with modifications and that the following rule shall be inserted into the District Plan:

Rule 12.4.14.2 Washer Road Business Park – Structure Plan

- d. All new buildings shall be constructed with inert roofing materials.

The following submissions are therefore:

Accepted in part

Submission	Point Number	Name
3	1	BOPRC

Reasons

The Regional Council provided in its evidence additional requirements for stormwater management through the use of new objectives and policies and rules. The Panel sought legal advice around these matters. We accept that legal advice, and a copy is attached to this decision. The provisions sought by the Regional Council are quite detailed, and a number of them veer off the plan change and are therefore considered to be more appropriately dealt with at resource consent stage or the wider District Plan review, rather than under this plan change. A number of the provisions proposed by the Regional Council are already addressed by the current District Plan provisions. It is also noted that the Regional Council has its own additional controls to manage the issues raised by them.

During the Hearing the Applicant's experts tabled an updated Structure Plan in response to some of the submitter's evidence. The tabled Structure Plan moved the stormwater pond just north of the area proposed to be rezoned Industrial, but retained on the applicant's land to provide additional land for stormwater treatment. The Regional Council questioned whether the pond could be relocated

outside of the Structure Plan area. The Panel sought legal advice on this matter and accept the advice provided, attached.

For clarity the Applicant has provided an updated Structure Plan Map which is included In the Topic 2 Decision above. This shows the two options for the location of the stormwater pond to provide flexibility in the future.

TOPIC 5: HAZARDOUS SUBSTANCES

Background

Industrial sites have the potential to use and store 'hazardous substances' as defined in the District Plan. The Application for the Plan Change does not specifically address the storage of hazardous substances within the Structure Plan Area nor the floodable area.

Submission Points

One submission point was received. No further submission points were received.

The submission points on this topic are summarised as follows:

Submission 3.2 (BOPRC) – requested the proposal be amended to require hazardous substances to be stored outside of the 1% AEP flood level. Statutory provisions should be included which recommend 'good site practices' to reduce contamination on industrial sites in the event of accidents and large flood events.

The RO Identified two options:

Option 1 – Status quo – existing District Plan rules – Industrial Zone and Hazardous Substances Sections

Option 2 – Require hazardous substances to be stored above the 1% AEP flood level.

Discussion

The current District Plan controls the use of land to manage any effect of the use, storage and transportation of *hazardous substances* on specific environments and communities within the *District* and will manage location, design and operational aspects of activities using *hazardous substances* to ensure the effects are within acceptable limits and the potential risks of significant adverse effects are low. Some activities are specifically excluded from the controls of the District Plan as they have minor potential effects or are controlled through different legislation. Provisions for control of certain hazardous substances are included within Section 9 (Hazardous Substances) and Section 21 (Industrial) of the District Plan.

The District Plan defines “hazardous substances” in Chapter 3 as:

Hazardous Substances: means substances with one or more of the following intrinsic properties:

- An explosive nature;
- An oxidising nature;
- A corrosive nature;
- Flammability;
- Acute and chronic toxicity;
- Ecotoxicity with or without bioaccumulation.

Has one or more of the above properties on contact with air or water.

District Plan Section 9 is specifically for controlling hazardous facilities and hazardous substances. This is based on threshold quantities and the potential risk to environmental human health and safety.

Further, Chapter 21 which is specific to the Industrial Zone, identifies and places limits on high-risk facilities, those activities which are high risk in terms of potential stormwater contaminants.

These two sections in the District Plan are considered sufficient for controlling activities and hazardous substances which have the potential for stormwater contamination. Where storage of hazardous substances above the threshold is required a resource consent is necessary, which would then provide protection from overland flow, stormwater and flooding through conditions of consent.

DECISION

Option 1 is adopted.

The following submissions are therefore:

Rejected

Submission	Point Number	Name
3	2	BOPRC

REASONS

The current District Plan requirements are considered appropriate, and no further provisions are necessary.

TOPIC 6: NATURAL HAZARDS

Background

The Ohineangaanga Catchment and the wider Kaituna Catchment Control Scheme are subject to flooding and the flood defences are at capacity. This is a

significant concern for the Regional Council as flooding frequently occurs in the lower part of the catchment.

The Plan Change as notified, does not give effect to the natural hazard provisions of the Bay of Plenty Regional Policy Statement, which require a risk assessment be prepared. The requirement for a risk assessment is used to determine the mitigation measures required to achieve a low natural hazard risk without increasing risk outside of the development site (see Policy NH 4B). The risk assessment should identify which hazards are applicable to the plan change area.

Submission Points

One submission point was received. No further submission points were received. The submission point on this topic is summarised as follows:

Submission 3.5 – requests the applicant prepares a risk assessment for each natural hazard the site is susceptible to, prepared in accordance with Appendix L of the Regional Policy Statement (RPS). Provisions should be included in the structure plan to ensure a low level of risk for the various hazards can be achieved within the plan change area without increasing risk outside of the development site.

The RO identified 2 options:

Option 1 – Status quo – no risk assessment has to be undertaken

Option 2 – Applicant undertakes risk assessment in accordance with the RPS.

Discussion

The applicant presented a risk assessment to the Panel in accordance with the methodology set out in Appendix L of the RPS.

The assessment concludes that overall, the risk from natural hazards which may affect the site is considered low and the land is suitable for use as an industrial park.

The following recommendation is drawn from the CMW Geosciences report

- That the ground be preloaded to reduce static settlement

Earthworks and ground improvements will be subject to future consent applications to the Regional Council and the future development and subdivision in the Structure Plan area will be subject to Engineering Design Approval through District Council.

Decision

Option 2 is adopted.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
3	5	BOPRC

Reasons

The applicant's assessment determined the overall the risk from natural hazards to be low. The site will undergo ground improvements as part of future development which will be subject to Regional Council consent and WBOPDC Council consent and engineering design approval. No changes are required to the Structure Plan as a result of the Risk Assessment. The Assessment was accepted by the Regional Council's expert.

TOPIC 7: FRESHWATER

Background

Changes brought about by the National Policy Statement for Freshwater Management (2020)¹ (NPS-FM) seek to avoid further losses of the extent and values of rivers, streams and wetlands. Such provisions had immediate legal effect when enacted and were subsequently inserted into the Bay of Plenty Regional Natural Resources Plan on 29 March 2021.

Where streams and wetlands are identified, new urban zoning is not supported and applicants are encouraged to consider land use options that align with the general objective to protect the values and extent of streams and wetlands. Further, the Regional Council is urging applicants to consider options including water sensitive urban design to manage water quality in new development areas adjacent to identified streams and wetlands

Submission Points

One submission point was received. No further submission points were received. The submission points on this topic are summarized as follows:

Submission 3 - requested the plan change applicant prepare an Ecological Assessment to identify the values of the Ohineangaanga Stream which is directly adjacent to the Structure Plan area. The ecological report is required by Policy IMPIA in the Regional Natural Resources Plan (RNRP) which seeks to avoid the losses in extent and values of streams.

The RO identified 2 options:

Option 1 – Status Quo – No ecological assessment has been undertaken

Option 2 – Applicant prepares an ecological assessment

Discussion

Option 2 is the preferred option. An Ecological Assessment has been undertaken that has given regard to the NPS-FM and Policy IMP 1A of the RNRP. The assessment has been prepared by a Suitably Experienced and Qualified Persons and has regard to the likely cumulative effects arising from the scale and intensity of the land uses and development anticipated in the industrial zone including high imperviousness for the subject site.

Decision

Option 2 is adopted.

The Ecological Report has been undertaken.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
3	4	BOPRC

Reasons

The applicant has now undertaken the ecological assessment and has given regard to the NPS for Freshwater.

The recommendations from the Ecology Report are appropriately addressed at the Regional Council consenting stage. However, a requirement restricting the use of inert building materials has been included, see Topic 2 Decision.

TOPIC 8: PERFORMANCE STANDARDS – GAS TRANSMISSION NETWORK

Background

Firstgas have two gas transmission pipelines of a combined length of approximately 700m through the subject site which operate at over 8000 kPa. They are both contained within an easement on the Record of Title SA12A/1083. The Application for the Plan Change recognises the easement and only notes that the building sites will need to be established outside of it.

Submission Points

Two submission points were received from Firstgas. No further submission points were received. The submission points on this topic are summarised as follows:

Firstgas highlight that reliance on easements has not delivered consistently good planning outcomes. Historically, it has proved difficult to ensure land use planners, developers, property and service designers, owners and operators, drillers and excavators, blasting companies and borers are made aware of gas transmission pipelines before planning their developments and activities. They say if the gas transmission network is not considered, this can have significant safety considerations and poses potential risks to property.

Submission 4.2 – Opposes earthworks and buildings / structures within 20m of the gas transmission network and requests that these should be avoided. They propose an additional activity performance standard within Rule 21.4(b) to identify the setback to the transmission line as shown below:

21.4 (b). Yards and Setbacks

• Washer Road Business Park Structure Plan Area Provisions:

i. Buildings, structures and earthworks shall be set back 20 m from the centre-line of any gas transmission pipeline.

Advice note: when assessing resource consent applications for these activities Council should take into account the outcomes of consultation with Firstgas.

Submission 4.3 – requests no planting of any vegetation capable of reaching over 1 m in height over top of or within an easement over a Firstgas pipeline. They propose an amendment to activity performance standard 21.4 (c) – visual amenity – streetscene as follows

c. Visual amenity – Streetscene

• Washer Road Business Park Structure Plan Area in respect of any boundary with Washer Road and any future public road, except that there shall be no planting of any vegetation capable of reaching over 1 m in height required over top of or within an easement over a gas transmission pipeline. Advice Note: A permit is required to work within the gas easement. This includes digging/earthworks, driveway construction, laying services, planting, and fencing.

The RO Identified 2 options:

Option 1 – Status quo – no additions to performance standards to protect gas transmission pipelines. Easement currently shown on Structure Plan.

Option 2 – Amend existing performance standards as requested to protect gas transmission pipelines (setbacks for buildings, structures and earthworks and controls on vegetation planting) with minor amendments.

Discussion

To retain the status quo would result in no specific regard being given to the gas transmission line. In the past it has proved difficult to ensure developers and landowners are aware of gas transmission pipelines before planning their developments and activities. To ensure safety is maintained and potential risk to property is reduced the transmission network should be considered.

Option 2 would ensure Firstgas (or any subsequent owners of the asset) is consulted when works are proposed within proximity to the gas transmission network to manage effects on the network and from the network. The provisions sought would ensure that Firstgas are able to provide technical expertise in assessing whether activities proposed within proximity to the network may threaten the safety of the pipeline or result in the activity being exposed to potential risks.

Option 2 would also mean that no landscape planting over 1m in height could occur within the easement to ensure the easement and pipeline adjacent to the road is protected from development.

These performance standard requests, while not preventing development, provide for protection of the gas transmission network within the structure plan area.

Decision

Option 2 is adopted as it results in suitable protection without limiting future industrial activities.

Performance standards should be amended as requested to protect gas transmission pipelines (setbacks for buildings, structures and earthworks and controls on vegetation planting) with minor amendments, as follows:

Section 21 – Industrial

Activity Performance Standards

21.4 (b). Yards and [Setbacks](#)

• [Washer Road Business Park Structure Plan Area Provisions:](#)

[i. Buildings, structures and earthworks shall be set back a minimum of 20 m from the centreline of any gas transmission pipeline.](#)

[Provided that:](#)

[A building/structure and earthworks may be located less than 20m from the centerline of any gas transmission pipeline where the written approval of the asset owner\(s\) of the gas transmission pipeline has been provided](#)

21.4 (c). Visual amenity – Streetscene

- Washer Road Business Park Structure Plan Area in respect of any boundary with Washer Road and any future public road, except that there shall be no planting of any vegetation capable of reaching over 1 m in height within an easement over a gas transmission pipeline.

Provided that:

Planting and vegetation may be located within the gas transmission pipeline easement where the written approval of the asset owner(s) of the gas transmission pipeline has been provided.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
4	2	First Gas
4	3	First Gas

Reasons

Including the additional performance standards will ensure the gas transmission pipeline is identified within the site and will be protected to avoid risk from future damage or disruption.

The gas transmission pipeline is a nationally significant infrastructure and requires appropriate protection.



Chairman John Scrimgeour

On behalf of the District Plan Committee

30 August 2022

21 July 2022

Chief Executive Officer
Western Bay of Plenty District Council
Private Bag 12 803
Tauranga Mail Centre
TAURANGA 3143

Attention Phillip Martelli

Dear Phillip

Plan Changes 93 and 94 - stormwater provisions sought by Bay of Plenty Regional Council (BOPRC)

1. Further to the hearings regarding private Plan Changes 93 and 94 to the Western Bay of Plenty District Plan (**District Plan**) on 6 and 7 July 2022, you have asked us to provide advice on the following matter:

With respect to the Plan Changes 93 and 94 provisions tabled by the Bay of Plenty Regional Council on 6 July 2022, could you please advise whether:

- (a) *The provisions are within the scope of Plan Changes 93 and 94, and/or the submission and further submission of the Regional Council?*
 - (b) *The provisions are appropriate for inclusion in a site specific plan change?*
2. We attach the provisions as an appendix to this letter and refer to them as the **Stormwater Provisions**.
3. You have also asked us to confirm whether the structure plan tabled by the applicant for Plan Change 94 (which is dated 7 July 2022 and shows the stormwater pond to the north of the land proposed to be re-zoned to Industrial) is within scope, and we deal with that issue in this letter as well.

Summary of advice

4. We think that the Stormwater Provisions are generally within the scope of BOPRC's submission and further submission (in terms of topics covered).
5. We do not think the following would be within the scope of the plan changes:
 - (a) Amendments to sections of the District Plan which are of general application, and were not identified for amendment through the plan changes;
 - (b) Reference to guideline documents or modelling reports which are of general application (also relevant to 'appropriateness' of the amendments).
6. The Council will need to form its own view on the appropriateness of the provisions but as a key comment we note that the provisions are new, and contain policies and reference to guideline

documents or modelling reports which are of general application. A s 32AA assessment would need to consider the appropriateness of incorporating these provisions in the District Plan through these plan changes. We have otherwise highlighted matters that we consider would be reasonable for the Council to consider in making its decision.

- 7. We consider that the structure plan tabled by the applicant for Plan Change 94 (which is dated 7 July 2022 and shows the stormwater pond to the north of the land proposed to be re-zoned to Industrial) is within scope as it still shows the stormwater pond on the structure plan, and the land is owned by the applicant.

Relevant background

District Plan

- 8. In relation to the architecture of the District Plan and the way in which it utilises structure plans, we note that:
 - (a) Appendix 7 is said to contain additional structure plan information such as infrastructure schedules, cross sections, and any particular requirements for that area;¹
 - (b) Sections of the District Plan contain provisions relating to specific structure plans. These largely appear within Sections 11 (Financial Contributions) and 12 (Subdivision and Development), with additional specific provisions appearing as follows:
 - (i) Sections 4C (Amenity);²
 - (ii) Section 8.6 (Natural Hazards);³ and
 - (iii) Provisions within the relevant zone sections 13-21.

Plan Changes 93 and 94

- 9. Both Plan Changes 93 and 94 are private plan changes which are site specific. Both propose the re-zoning of land, and the inclusion of structure plans within the District Plan.
- 10. In relation to the proposed changes to the District Plan, we note that:
 - (a) Plan Change 93 proposes changes to Sections 3, 4C, 19 and Appendix 7.
 - (b) Plan Change 94 proposed changes to Section 21 and Appendix 7.

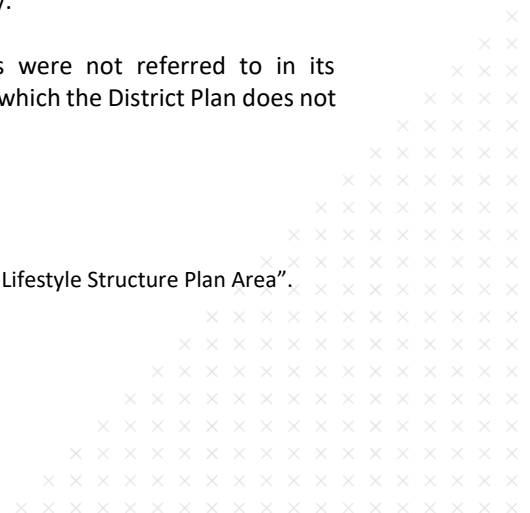
BOPRC submission and the Stormwater Provisions

- 11. BOPRC made a submission and further submission on Plan Changes 93 and 94, which we have reviewed but not attached to this letter in the interests of brevity.
- 12. The Stormwater Provisions tabled by BOPRC at the hearings were not referred to in its submission. They include reference to the following documents (which the District Plan does not incorporate by reference):

¹ District Plan, Section 1.3.2.

² See for example section 4C.1.3.2.d acoustic standards.

³ This contains a specific section relating to "Stability Requirements – The Minden Lifestyle Structure Plan Area".



- (a) BOPRC Stormwater Management Guidelines (Guideline Document 2012/01, updated as at December 2015).
- (b) In the stormwater modelling report titled “Western Bay of Plenty Flood Mapping; Model Build Report: dated February 2021” (**Stormwater Modelling Report**).

Stormwater Modelling Report

- 13. We understand that the Stormwater Modelling Report was commissioned by the Council for “Rural Areas and Small Settlements” to update (in terms of accuracy) the District Plan flood maps for rural areas and small settlements which do not take into account climate change. However, we also understand that the District Plan maps have not actually been changed, but are held outside of the District Plan on MAPI. We understand that the Council released these maps to the public in October 2021 and sent letters to all affected landowners.
- 14. You have advised that the Council uses these new maps when processing building consents to set minimum floor levels and impose s 72 (Building Act) notices on titles. It also uses the new maps when processing resource consents, in some situations, to set minimum floor levels and to consider the effects of building/earthworks on capacity/function of ponds/flowpaths. This is in situations where a resource consent is already triggered by the existing District Plan flood maps and/or where there is a discretionary or non-complying resource consent application which allows the Council to consider all effects including those relating to new flood information.

Relevant legal considerations

Clause 6, Schedule 1

- 15. Clause 6 says that once a proposed policy statement or plan change is notified, then certain persons may make a submission on it to the relevant local authority. If the submission is not on the plan change, the Council has no jurisdiction to consider it.⁴
- 16. In *Clearwater v Christchurch City Council*⁵ the High Court adopted a two part approach to determine whether a submission was on a variation:
 - (a) A submission is “on” a variation if it addresses the extent to which the variation changes the status quo.
 - (b) But, if the effect of determining that the submission is “on” a variation would remove the opportunity for participation by those potentially affected, then this is a powerful consideration against an argument that the submission is truly on the variation.⁶
- 17. The approach in *Clearwater* was adopted in *Palmerston North City Council v Motor Machinists Limited*⁷, where the High Court said that in regards to the first part of the approach, there were two aspects. First, the breadth of alteration to the status quo entailed in the proposed plan change and second, whether the submission addresses that alteration.⁸

⁴ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [19].

⁵ *Clearwater Resort Limited v Christchurch City Council* (HC), AP34/02, 14 March 2003.

⁶ At [66].

⁷ *Palmerston North City Council v Motor Machinists Limited*, above n 4.

⁸ At [80].

18. Further, the High Court said one way of analysing whether the submission is within the ambit of the plan change is:⁹

... to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change

19. The High Court then went on to say that the above analysis is then subject to the second part of the test in *Clearwater*:¹⁰

... whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process.

Clause 10, Schedule 1

20. Clause 10 prescribes what a local authority must make decisions on in relation to a proposed plan. It is “the provisions and matters raised in submissions” and may include consequential amendments as follows:

may include—

- (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
- (ii) any other matter relevant to the proposed statement or plan arising from the submissions.

21. The Environment Court in *Re Vivid Holdings* said that any decision of the Council must be:¹¹

- (1) fairly and reasonably within the general scope of:
 - (i) an original submission; or
 - (ii) the proposed plan as notified; or
 - (iii) somewhere in between

provided that:

- (2) the summary of the relevant submissions was fair and accurate and not misleading.

22. The question of whether an amendment is reasonably and fairly raised in submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety.¹² In relation to consequential alterations, the Environment Court in *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* stated:¹³

“While I accept that consequential relief may be granted as a matter of law, subject to considerations of fairness (for which section 293 may be a remedy) and the application of *Motor Machinists*, I consider that Albany North did not introduce a principle that submissions on lower order provisions in a plan (change) can drive 'consequential'

⁹ At [81].

¹⁰ At [82].

¹¹ *Re an Application by Vivid Holdings*, EnvC, C86/99, 17 May 1999 at [19].

¹² *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 at p 10.

¹³ *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 at [69] and [70].

changes further up the hierarchy of provisions in the same document, precisely because they are not usually (in my view) 'reasonably foreseeable'.

It is also worth noting that reasonableness and fairness may work against each other in this context. There is a tension between a reasonable interpretation of a submission - which tends to widen the express words - and fairness, which tends to read them closely so that members of the public are not surprised."

Clause 14, Schedule 1

23. Clause 14 sets out the grounds on which a person may appeal:

- (1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—
 - (a) a provision included in the proposed policy statement or plan; or
 - (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
 - (c) a matter excluded from the proposed policy statement or plan; or
 - (d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
- (2) However, a person may appeal under subclause (1) only if—
 - (a) the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan; and
 - (b) the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole.
- (2A) For the purposes of subclause (2)(b), proposed plan does not include a variation or a change.

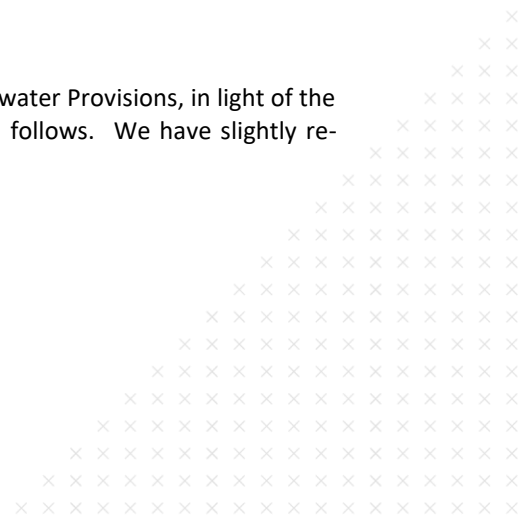
24. To establish whether an appeal is in accordance with cl 14(1), a three limb test was adopted by the Environment Court in *Re Vivid Holdings*. The Court asked:¹⁴

- (1) Did the appellant make a submission?
- (2) Does the reference relate to either:
 - (i) a provision included in the proposed plan; or
 - (ii) a provision the local authority's decision proposes to include; or
 - (iii) a matter excluded from the proposed plan; or
 - (iv) a provision which the local authority's decision proposes to exclude?
- (3) If the answer to any of (2) is 'yes', then did the appellant refer to that provision or matter in their submission (bearing in mind this can be a primary submission" or a cross-submission)?

Our advice

25. Having reviewed the submission from the BOPRC, and the Stormwater Provisions, in light of the relevant legal considerations discussed above, our views are as follows. We have slightly reframed the questions.

¹⁴ *Re an Application by Vivid Holdings*, EnvC, C86/99, 17 May 1999 at [18].



Are the Stormwater Provisions within the scope of the BOPRC submission and/or further submission?

26. We have condensed the provisions sought in accordance with their headings and respond as follows. We note that the provisions sought by BOPRC are very detailed (much more so than the submission and further submission on the plan changes). We regard the topics as being generally ‘within scope’:

New objective – Water quality	Water quality issues are raised in the BOPRC submission, and it lodged a further submission relating to Oturu Creek. However it did not seek objectives. We would say that the topics would be within the scope of the submission but as per our discussion below consider this risks addressing BOPRC functions, and being a matter not on the plan change (new objectives and policies).
New policy – Water quality	Water quality issues are raised in the BOPRC submission. We are not clear that the Stormwater Guidelines were referred to. ¹⁵ We think this is marginally within scope if the same guidelines are being referred to. However we consider this risks being a matter not on the plan change (new objectives and policies) – discussed below. It appears that this policy is to apply to the structure plan area only. However, we note that if it was to apply to areas outside the structure plan then we think this risks not being fairly and reasonably raised within the submission on the basis that members of the public would not have expected the BOPRC submission to lead to general policies.
New rule – inert roof materials	Inert roof materials were not raised directly, but we agree it is consistent with the BOPRC submission. We are not clear that the Stormwater Guidelines were referred to. ¹⁶ We think this is marginally within scope if the same guidelines are being referred to. For the same reasons as above, if this rule was to apply to areas outside the structure plan then we think this risks not being fairly and reasonably raised within the submission.
New Objective: Stormwater Management – Te Puna Springs Structure Plan	Stormwater management issues are raised in the BOPRC submission, however not objectives. The topics are generally within the scope of the submission but as per our discussion below we consider this is a matter not on the plan change (new objectives).
New policy: Stormwater Management Plan	The topics are generally within the scope of the submission, however the provision appears to encapsulate much more detail.
New provisions – (Stormwater Management Plan (SMP) Compliance: NEW	The topics are generally within the scope of the submission, however the provision appears to encapsulate much more detail.

¹⁵ The BOPRC submission refers to BOPRC’s Hydrological and Hydraulic Guidelines 2012/02.

¹⁶ The BOPRC submission refers to BOPRC’s Hydrological and Hydraulic Guidelines 2012/02.

Are the Stormwater Provisions ‘on’ Plan Changes 93 and 94?

- 27. We think it is under this heading, that some of the provisions start to veer *off* the plan changes. The plan changes are private plan changes to specific sections of the District Plan. Some of the provisions are objectives and policies, which were not proposed by the plan changes. While that is not necessarily definitive,¹⁷ the Council should turn its mind to where the proposed provisions would sit and whether they are truly ‘on’ the plan change.
- 28. The High Court in *Palmerston North City Council v Motor Machinists Limited* said that one way of analysing whether the submission is within the ambit of the plan change is “to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change.”¹⁸
- 29. Against that background we comment as follows:

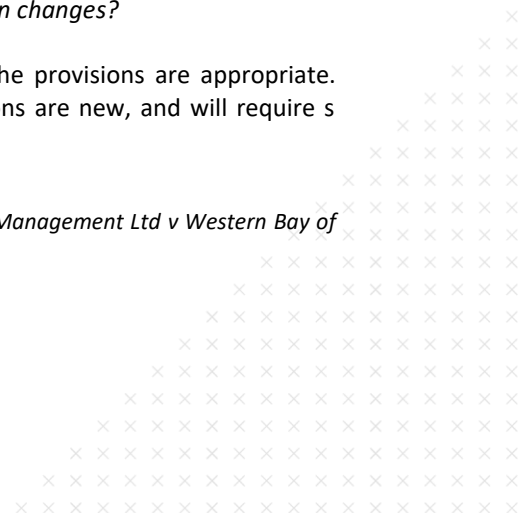
New objective – Water quality	It is not clear where the new objective would sit. Options would be sections 5 or 12 of the District Plan. We consider this veers <i>off</i> the plan changes.
New policy – Water quality	It is not clear where the new policy would sit. Options would be sections 5 or 12 of the District Plan. We consider this veers <i>off</i> the plan changes.
New rule – inert roof materials	Yes to extent that it relates to stormwater management within a structure plan area. We are not clear where the proposed rule would sit. We do not think it is open to the Council to include rules of general application in the District Plan.
New Objective: Stormwater Management – Te Puna Springs Structure Plan	We did not understand there to be any specific objectives proposed for the structure plan area (let alone specific to stormwater management). We think this would be marginally within the plan changes.
New policy: Stormwater Management Plan	We did not understand there to be any specific policies proposed for the structure plan area (let alone specific to stormwater management). We think <i>a policy</i> would be marginally within the plan changes. This policy reads more like a rule. It also looks to introduce reference to the Stormwater Modelling Report. We do not consider that specific reference to the Stormwater Modelling Report is within the scope of the plan changes.
New provisions – (Stormwater Management Plan (SMP) Compliance: NEW	This connects to the proposed Stormwater Management Plan – as above.

Are the Stormwater Provisions appropriate for inclusion in site specific plan changes?

- 30. We think the Council should form its own view on whether the provisions are appropriate. However we make the overriding observation that the provisions are new, and will require s

¹⁷ The Court upheld objectives and policies as being within scope, in *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191.

¹⁸ At [81].



32AA analysis if they are to be adopted. That will include specific consideration of the proposed new objectives and policies, given that the plan changes do not include objectives and policies.

31. Against that background we comment as follows:

<p>New objective – Water quality</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> • The objective is stated in a way that is more akin to Regional Council functions. • Existing objectives (e.g. 5.2.1.4) sets a high threshold with preservation. • BOPRC has further control over water quality through its consent processes.
<p>New policy – Water quality</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> • The Structure Plan provisions of Section 12 also apply – including that all developments shall be required to demonstrate how they will address on or adjacent to the site the improvement of stormwater quality (12.4.10.6.c). • The Stormwater Guidelines are not incorporated by reference in the District Plan. There is a question as to whether it is appropriate to incorporate such guidelines on site specific plan changes (as opposed to a District Plan review). • BOPRC has further control over water quality through its consent processes.
<p>New rule – inert roof materials</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> • The extent to which these matters are already addressed by the District Plan. • The Stormwater Guidelines are not incorporated by reference in the District Plan. There is a question as to whether it is appropriate to incorporate such guidelines on site specific plan changes (as opposed to a District Plan review).
<p>New Objective: Stormwater Management – Te Puna Springs Structure Plan</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> • The extent to which these matters are already addressed by the District Plan (e.g. sections 5 or 12).
<p>New policy: Stormwater Management Plan</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> • The extent to which these matters are already addressed by the District Plan. • Whether, if a Natural Hazards Assessment were required, it is appropriate to require it in this way through a Management Plan. (On this topic, we think that the Council should determine whether it accepts the applicant’s approach (land use change is below 4.8 ha so assessment not required) and if so whether it then exercises its discretion under Policy NH 9B(b) not to require an assessment). • Whether the Stormwater Modelling Report should be specifically referenced for these plan changes as opposed to it being incorporated in a district wide plan review. • Whether the policy goes into too much detail for a policy, and a site specific structure plan.

	<ul style="list-style-type: none"> • BOPRC has further control over water quality through its consent processes.
New provisions – (Stormwater Management Plan (SMP) Compliance: NEW	We think the Council is entitled to consider the following factors immediately above.

Plan Change 94 – structure plan tabled 7 July 2022

32. Plan Change 94 seeks to re-zone approximately 7 ha of land from Rural to Industrial. That has been notified, and there is certainly no scope to increase the land proposed to be re-zoned.
33. The structure plan is clearly part of the plan change, including submissions on the structure plan and responses to those submissions. That would encompass changes to the structure plan.
34. Moving the stormwater pond outside of the area proposed to be rezoned would be of concern if it were moving on to land owned by a third party but we understand that it is owned by the person making the private plan change request.
35. In our view the key requirement is that the plan change / provisions of the District Plan are clear about the expectations for stormwater management. The District Plan provisions in Section 12 primarily deal with infrastructure expectations with reference to structure plans, although not exclusively. For example, for Rangiora Business Park there are both onsite options (as shown on the structure plan) and offsite options (not shown on the structure plan).
36. Against that background, we make the following comments:
 - (a) For clarity, it would be ideal to show the stormwater pond on the structure plan. If the stormwater pond is to be relocated to the north, then some additional words on the structure plan may be appropriate. E.g. “the stormwater pond to service Industrial zoned land”.
 - (b) It appears that the original location of the proposed stormwater pond is no longer ‘live’. If it is, then a further option is to adopt a Rangiora style approach, i.e. provide for two options on the structure plan, with corresponding text:
 - (i) Option 1 – within the Industrial land as shown on the structure plan;
 - (ii) Option 2 – to the north of the Industrial land as shown on the structure plan.

Yours faithfully
HOLLAND BECKETT LAW

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