BEFORE HEARING COMMISSIONERS
IN THE WESTERN BAY OF PLENTY DISTRICT

UNDER THE	Resource Management Act 1991 ("**Act**")
IN THE MATTER OF	RC13924L an application for resource consent to authorise four existing industrial activities within part of the Te Puna Business Park structure plan area, for a term of two years
BETWEEN	**TINEX GROUP LIMITED**
	Applicant
AND	**WESTERN BAY OF BAY OF PLENTY DISTRICT COUNCIL**
	Consent authority

REPLY EVIDENCE OF HEATHER PERRING

Before a Hearing Panel: Rob van Voorthuysen (Chair), James Whetu (Commissioner)

Introduction

1. My name is Heather Louise Perring, reporting planner for Council. I re-confirm my experience, that I have read and will comply with the Environment Court Code of Conduct for Expert Witnesses 2023, and that I prepared the Council's 42A report on this application. The fuller version of this statement is laid out at paras 6 – 9 of the 42A report.

2. I understand that the Commissioners will take the 42A report as read and there is no need to extensively go through it here. I would like to spend some time to summarise the key points as a way to introduce Council's hearing presentation and will make any necessary clarifications or corrections to my report. I will then come to my main presentation and reply to the applicant and submitters, following the appearances of Council experts.

Corrections / clarifications to 42A:

3. Para 1: add to line 4 after "have already been established" in closed brackets (but unauthorised).

4. Para 57 and Map on page 11 – I wish to clarify that this map does not show all submissions. It only shows those that could be assigned to a local property parcel. I also note that several submissions in support came from Mr Daniel's existing tenants (staff and managers), so multiple submissions are represented by the black property (the site) on the submissions map.

5. Para 65, third to last bullet point – cut and past into para 62 – this has been inserted into the wrong section of the summary of submissions.

6. Para 81 – Consents trigger table. Page 17 last item – this rule number should be 12.4.10.6 (not 10.4.10.6). I also think it is useful to clarify that in that table, the first 14 rules are Structure Plan related and Non-Complying activities, as is Rule 12.4.6.2.b (intersection upgrade). I omitted to provide the activity status for the final 3 rules of the table, which I can confirm are Restricted Discretionary activities. However, as a bundled activity, the whole application shall be assessed as Non-Complying.

7. At para 139 I stated: *On the issue of the Te Puna Road / Te Puna Station Road intersection, I have previously noted the that a right turn bay from Te Puna Road has not, as a matter of fact, been provided, and this is what requires assessment as part of the actual environment*. So there is no doubt, what I meant by "this is what requires assessment" is the intersection in its existing physical form.

8. Para 147 – 2nd to last line, delete "the" from the start of this line.

9. Para 158 – delete. This should have been omitted following the meeting with Mr Crossan on the 14th September where he confirmed that the applicant was now seeking a waiver of the payment of the water financial contribution.

10. Para 212 (3) – This wording was that originally proposed by Pirirakau Tribal Authority and offered by the applicant. However, the version of this condition that made its way into the full set of draft consent conditions that Council provided on the 19th September had been amended by Natasha Ryburn (Consents Manager) to address the potential that it would be ultra vires. I endorse those amendments.

11. Section 11 – Objectives and Policies Assessment. I wish to clarify that where I have used the term "in-consistent" this could be most directly translated to, or alternated, with "*at odds with*", or "*contrary to*". A dictionary and thesaurus

check of the word "inconsistent" provides a meaning of "*not in keeping with*"[1], or "*of an argument or opinion, containing elements that are opposed and do not match, so that it is difficult to imagine how both can be true*"[2]. Oxford Dictionary synonyms for "*inconsistent" are "incompatible, conflicting, contrary, opposing*".

12. Similarly at Para 252, in relation to my overall assessment of the proposal regarding the National Policy Statement for Freshwater Management, inconsistent could interchangeably mean contrary, or "does not give effect to".

13. Para 289, first line, replace 'opinion' with 'I" and delete the 2nd "that" in the same line.

42A Key Points Summary

14. I now turn to some key points of the 42A assessment at as a way to set the scene for Council's reply statements on Transportation and Landscape which we will hear next. I will provide my reply statement at the end, to wrap up Council's presentation.

15. Para 40 - Barry and Beth Daniels were two of the applicants for the plan change.

16. Para 44 - During the plan change process the applicants (including Barry Daniel and Beth Daniel) assured the Environment Court and the Council:

- that the fragmented nature of the ownership of the Te Puna Business Park would not be an impediment to a cohesive development of the site,[3]
- that the properties in Te Puna Business Park would be developed and managed in accordance with an integrated structure plan[4], and
- that the granting of the plan change would avoid ad hoc development in this area.[5]

17. Para 45 - As noted above, there was significant opposition to the proposed zoning change. Local tangata whenua (Pirirakau) were opposed, however their concerns were determined by the Environment Court to be adequately addressed via creation of a wetland within the business park.

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[1] Oxford Language Dictionary
[2] Cambridge Dictionary
[3] Ibid at [27]
[4] Ibid at [27]
[5] Ibid at [122]-[123]

18. Para 76 – on out of scope submissions, those which opposed the Business Park in its entirety are not relevant to the consideration of this application. This is not an opportunity to re-visit the Courts decision to approve the Business Park or to challenge the merits of the rules.

19. Para 79 – Regarding the possibility that the operation of industrial activity prior to the pre-requisite Structure Plan works and payments being satisfied is not an activity provided for in the rule framework, I note that this was raised by the honorary Judge Semple in the recent abatement hearing in Environment Court. We can provide that part of the transcript if that would be useful to the decision making.

20. Para 81 – Reasons for Consent. Looking at the extensive table of rules for which the activity requires consent, I wish to now emphasise that of the 18 reasons for consent 15 of those are Non-Complying activities associated with the Te Puna Business Park Structure Plan.

21. Para 81 – Rule 12.4.10.6 – Mr Crossan was to confirm whether consent is required under all or some parts of this rule, following receipt of the flood modelling and water quality testing information. In my view, it at least triggers consent under part c) because the proposal does not demonstrate how it will address on or adjacent to the site improvement of stormwater quality.

22. Para 94 – Existing Environment: I would add to this description of the existing environment existing traffic using the local road network which is either associated with permitted activities or those with approved relevant consents. It does not include existing (unauthorised) traffic from Te Puna Business Park at this stage.

23. Section 9 of the 42A provided my Assessment of Effects. On Landscape effects I concluded that with the imposition of the proposed consent conditions (as per the Council draft set issued on 19th September), the effects are no more than minor.

24. On Transportation effects, at para 123 Mr McLean assessed the safety risk at the Te Puna Road/ Te Puna Station Road intersection (the intersection) to be Serious with a crash probability of likely.

25. At para 124, Ms Wilton agreed with Mr McLean on the above assessment and considered that the proposed paint marking mitigation is unsatisfactory.

26. Similarly, at para 126, Mr McLean assessed the safety risk at the site accessway to be unlikely but with a Serious consequence, potentially with a fatal outcome.

27. At para 130, Ms Wilton agreed and summarised that "*the applicant is requesting Council to support an access design that does not meet even the normal minimum requirements of the District Plan, does not meet the requirements of the Structure Plan, does not have good alignment with Safe System principles, does not meet best practise, and has obvious crash risks with potential for high* trauma outcomes."

28. At para 149 the safety risks to pedestrians and cyclists were traversed, and I invited the applicant to provide an assessment of risk to pedestrians and cyclists. As far as I'm aware this has not been provided.

29. Overall, I concluded that transportation safety effects are more than minor.

30. I concluded that effects related to noise, water supply, wastewater supply, power/telecommunications/internet supply, and archaeology, would all be no more than minor with the imposition of the recommended consent conditions.

31. I could not draw conclusions on the potential effects from stormwater, construction of the site accessway upgrade, hydraulic effects from the culvert upgrade, cultural effects, or financial contribution waivers (as recorded through remaining sections of the Assessment of Effects section 9).

32. At paras 228-229 I considered positive effects, as being economic benefits, use of industrial land, and employment opportunities. I may as well confirm at this point, that I concur with Commissioner Van Voorthuysen's opinion offered at Day 1 of the hearing that mitigations should not be considered as positive effects.

33. Overall, I did not draw an overall conclusion on effects, due to the missing information at the time of preparing my report. As such I could not determine if the application would pass the first s104D(1)(a) gateway test.

34. Turning to the Objectives and Policies assessment in section 11 of my report, after an examination of the relevant provisions, I concluded at para 244 that, in the round, the application is contrary or repugnant to the Objectives and Policies of the District Plan and would therefore fail the 2nd gateway test.

35. Section 13 of my report then assessed the relevant higher order statutes. Regarding the NPS- freshwater, at para 247, I emphasised that the purpose of the legislation is to 'restore Te Mana o Te Wai – health and well-being (or mana) of water and provided an outline of the effects hierarchy. At para 250 I stated that "In my view, in order to restore Te Mana o Te Wai – health and well-being (or mana) of water, the application would need to comply with rule 12.4.10.6.c. that all developments shall demonstrate how they will provide for the improvement of stormwater. However, the applicant does not provide any stormwater management, hence there will be no improvement". Accordingly, I concluded that the proposal is inconsistent with the NPS-FM.

36. At paras 253-256: Regarding the NESCS, I could not draw any conclusions at the time of preparing the 42A report.

37. On the Regional Policy Statement and Regional Plan, at paras 257-267, I could not draw an overall conclusion due to missing information but did note that I hold concerns regarding cultural effects related to stormwater quality, and on that basis and at that stage, the application is inconsistent with the cultural policies.

38. Covered in section 16, I have provided an extensive examination of why in my view, the proposed departures from the Structure Plan generate a plan integrity issue, and a precedent issue.

39. As recorded at para 269, *The Structure Plan rule framework is very clear and directive that the pre-requisite development works (roading upgrades, water main upgrade, OLFP/wetland, landscaping, bunding, payment of financial contributions, vesting etc) shall all be completed prior to the commencement of any industrial or business activity.*

40. And at para 271: *Having reviewed the original Environment Court decisions (interim and final) issued in 2005, I consider that one of the key reasons the Court granted consent for the Te Puna Business Park was on the basis that the development (and then use) would be carried out in a sequenced, integrated and comprehensive manner, and would avoid 'ad-hoc' development and use.*

41. At para 284, I stated: I consider that the 'ad hoc' nature of this application to

authorise development at the site without complying with the structure plan requirements is in fact generating the type of the development that the structure plan requirements (and the Court's decision) was explicitly trying to avoid. In doing so, it significantly undermines the integrity of the district plan, as well as the Environment Court process which led to those requirements.

42. I then went on at para 285 to provide an extensive list of development requirements that are not proposed by the applicant, and which demonstrate the ad-hoc nature of what would result, compared to what should be the overall outcome of development in accordance with the structure plan. In that I also noted that the number of rule breaches are significant.

43. On the matter of precedent covered in paras 290-295: Overall I consider that the granting of this consent would generate issues of precedent, that is, it would make it extremely difficult for Council to decline similar (or copycat) applications, both within this Business Park and other Structure Plan locations with similar staged requirements. I consider the chances that similar applications could be lodged in the near future to be realistically possible, given that the other two landowners are observing these proceedings (as well as the abatement notice proceeding), and that Mr Daniel himself could also lodge another similar consent for another part of his site.

44. Repeat applications of this nature (if granted) would see an erosion of comprehensive development and mitigation of cumulative effects across the Business Park. It would also equate to 'environmental creep' or 'death by a thousand cuts', and the 'ad-hoc' development the Court was eager to avoid.

45. At section 17: On Part II of the RMA, following the Court of Appeal's decision in RJ Davidson Trust, I concluded that Part II matters are covered by the District Plan and other relevant planning documents, and there is no need to separately assess Part II. In any case I confirmed that I have considered the proposal against the relevant Part 2 matters, and it does not change my assessment under s104 in relation to the planning documents.

46. Within section 18, I then discussed the proposed two-year consent term. At para 301 I stressed that the correct assessment is to consider what non-compliances are present during the two-year term and what effects might be generated during that time by those non-compliances. No reliance on what is sought in the first and second applications should be made.

47. After some examples, at para 305 I concluded that the two-year consent term does little to alleviate adverse effects.

48. Section 19 then provided the overall conclusion, that after testing the application against all of the relevant RMA sections, I recommend the application be declined.

49. We will now hear from Council's Transportation and Landscape experts. I understand that our Noise and Stormwater experts are not required to appear, however they are available if needed.

Reply Statement to Matters Raised in the Hearing

50. I confirm the content of my 42A report with corrections and clarifications as tabled, and now reply to the applicant's evidence in chief, and to submitters evidence presented.

51. In the main it will address Mr Crossan's planning evidence, but with reply on notable points from other experts and submitters, as well as from questions made by the Commissioners in the hearing so far. I will also draw conclusions on effects that I could not make at the time of preparing the 42A report.

Private Plan Change and Compliance Background:

52. Mr Crossan at para 20 has provided rhetoric that Council shouldn't assume that Mr Daniel had an 'intimate" knowledge or awareness of matters agreed in the private plan change, and Mr Daniel at para 6 of his evidence states "*it is wrong to say that we must therefore have known about all the rules and requirements…Much like the current process, I do not understand all the technical matters, but rely on the advice of professionals. Back then, and until quire recently, I didn't really know how to turn on a computer, let alone work through all the details of a plan change, a plan update or the like. I talk to people, and have spoken to the Council about requirements whenever possible to understand how everything fits together*".

53. With respect, Mr Daniel has had over 18 years now to understand the rules and what is required to implement the structure plan. Whilst I do not wish to diminish the works that he has undertaken such as the existing planting, bunding, as well as his efforts to discuss requirements with Council, nor his

health issues which have caused delays to implementation, I must highlight that as one of the original plan change proponents, the landowner, the landlord, the developer and the potential consent holder, it is Mr Daniel's responsibility to understand and correctly follow the rules and or consent conditions. If Mr Daniel no longer supports or is unable to meet the rules that were proposed on his behalf, then he could have explored the option of pursuing a plan change.

54. Regarding suggestions in Mr Daniel's and Mr Crossan's evidence that Council was somehow complicit or unhelpful by not identifying compliance issues, again, as the landowner and landlord, it is Mr Daniel's responsibility to check the District Plan and ensure that any activities he commences at the site are permitted, or to seek resource consents if not.

55. I also note that these matters were canvassed extensively at the recent Environment Court abatement hearing for Mr Daniels site. If the Commissioners are minded to place any weight on those statements by Mr Daniel, then I would be happy to provide a copy of the legal submissions from the hearing, which addressed some of these matters.

Other Te Puna Business Park applications:

56. Mr Crossan at para 32 has outlined progress made on the first (Structure Plan development works) and second (retrospective earthworks) resource consent applications, and with finding combined solutions to mitigating flooding and transportation with the other two Business Park landowners. He has suggested that "solutions are emerging" and he is "confident that technical matters will be agreed".

57. I would caution against placing any reliance on potential future solutions or proposals in making a decision on this application. As stated at paras 299 – 301 of the 42A, no reliance on what is sought in the first and second application should be made. Moreover, I have recently received an updated application from the applicant at 297 Te Puna Station Road which does not propose any contribution to an upgrade of the intersection. I also have been informed that there may be disagreement on costs between some of the parties. As such, I do not hold the same confidence as Mr Crossan on this process to result in flooding and transportation effects to be equitably agreed and remedied between the three landowners and across each of their applications.

Additional consents:

58. At Para 55 Mr Crossan has outlined the results of soil sampling and analysis against the NESCS, concluding that no resource consent is required under that legislation. After reading the NESCS memorandum provided, I accept this conclusion.

59. At para 54, Mr Crossan has also confirmed that no other consents are required from Regional Council associated with the accessway/culvert upgrade. I do note that this is based on a phone call with Ms Marelene Bosch, but I have not received this opinion in writing from Ms Bosch.

60. As noted previously, I had asked Mr Crossan to provide an assessment against Rule 12.4.10.6 once he had the flood modelling results from Mr Joynes. However I have not received this. Mr Crossan will need to respond in his final reply.

Statutory Considerations Required by the Act

61. At para 59, Mr Crossan stated that he disagrees "*with Ms Perring's position at paragraph 297 of her s42A report that it is not necessary to consider the application against Part 2. This is because there is debate as to whether the District Plan anticipates activities being consented ahead of the Structure Plan requirements being met, and, the fact that this is a retrospective consent, on a temporary basis*".

62. There is quite a lot to unpack in that statement, but I understand from Mr Crossan's response to questions at Day 1 of the hearing, that he could not recall what he meant, other than to say that commencing industrial activities prior to the Structure Plan requirements being met is not a prohibited activity.

63. In my opinion, the District Plan is very clear, and includes in multiple Structure Plan rules, that activity shall not commence until the specified development works and payments have been completed. As far as I am aware, there has been no debate on this point. To clarify in relation to Part 2 assessment, I consider that these matters have already been largely covered through my consideration of the relevant plan provisions, and do not require a separate assessment. In any event, I do not consider the fact that this is a retrospective consent, or for a limited duration, would alter that assessment.

64. At para 64 Mr Crossan discusses submissions that request re-zoning, and states that revisiting the zoning of the site is not something that is a matter of consideration for this application, and it would need to be subject to a plan change. I agree with this.

65. However, in my view, the strictness of, or totality of the relevant rules, including the Non-complying activity status for breaches, and also considering that industrial use ahead of works being completed is not provided for within the rule set, sends a strong signal that breaches of the nature proposed in the subject application would generally not be anticipated by the Plan. Or put another way, resource consent should only be granted by exception, where the applicant can demonstrate how departures from the requirements will still result in similar outcomes and mitigations.

Applicants Effects Assessment

66. At Para 86 Mr Crossan has commented on potential financial loss to the applicant and delay to the first and second resource consent process if this application is not granted. To my knowledge, an applicant's financial status is not a relevant RMA consideration for landuse consent applications.

Transportation Effects:

67. I understand that the debate over what Rule 12.4.16.2b) required in terms of a right turn upgrade at 'the intersection' is not considered by Commissioner Van Voorthuysen to be relevant to the effects consideration. I will not comment further on this point other than to note that in my opinion when a rule is not clear on what exactly is required, it is entirely appropriate to refer back to plan change evidence for guidance as to what was intended, and this is common in planning practice.

68. We have heard from Council's transport experts that the safety risks at 'the intersection' and the site access are not adequately avoided, remedied or mitigated by the applicant; and that there are differences of opinion on methodology used to reach those conclusions. I accept the Council experts reply statements, and consider it further reinforces my opinion that the applicant's proposed mitigation falls short of mitigating the safety risk associated with the right turn movement from Te Puna Road. The lay evidence heard from submitters further reinforces this conclusion (though I note I had already reached my conclusion based on the expert evidence).

69. On the distance into the site that sealing should be conditioned, both Mr McLean and Mr Harrison agree on 30m being suitable. However, Mr McLean has also recommended that all trafficable areas within 30m of the accessway are sealed. I support this recommendation.

70. Regarding the question arising in Day 1 from the Chair on the paint markings and potential ultra vires nature of the proposed consent condition – Mr McLean can best speak to the process that would be necessary, but I understand that the works could be undertaken by the applicant.

Landscape and Visual Effects

71. After hearing Mr Mansergh's reply statement, and submitters evidence, I re-confirm my opinion that landscape effects are no more than minor, with the recommended consent conditions in place. I endorse the positions Mr Mansergh has landed on regarding the suggested changes to conditions.

Construction and potential flooding effects

72. I generally accept the evidence of Mr Bos at Para 145 of his evidence regarding construction effects and accept the suggested amendment to condition 9 to remove the need for a Construction Methodology.

73. Regarding Mr Joynes evidence on the flooding impact of upgrading the accessway culvert and Mr Phillips supporting statement, I accept that the flooding effects from the proposed upgrade are less than minor.

Stormwater Quality

74. Regarding stormwater quality, and the single sample that was undertaken on 23rd September 2023, I make the following comments:
    a) In my opinion, the sampling should be treated with caution. One sample does not equal a robust and representative sampling programme and does not provide the weight of evidence recommended by the ANZECC freshwater assessment guidelines.
    b) It is not clear if the two samples were separated sufficiently or reasonably mixed.
    c) Localised changes to local waterways were present in the period leading up to the sampling (Hakao stream diversion) and were only remedied a few days prior to the sampling event. As such, I consider the drain hydrology and water quality could have been out of the ordinary after

this event.

d) When on-site on Day 2 of the hearing, I observed that whilst most of the site would sheet flow into shallow cut out drains alongside the western side of the site's privateway and pass via the sampled culvert outlet, there still appeared to be a direct overland flow pathway to the roadside drain that would bypass this culvert, from the A&J Demolition tenancy area.

e) Copper was detected at concerning levels in the drain. As Mr Crossan noted on Day 1 of the hearing, the source of the copper is unknown.

f) The relevance or suitability of the Katikati Comprehensive Stormwater Consent water quality limits is not made clear within Mr Woodger's memorandum. The date of this consent is not provided, and I note that the industry standard on suitable water quality is the ANZECC guidelines.

g) The sampling did not test all relevant analytes. I would have recommended lead and pH also be included.

h) The potential pathway to ground and then into the drains (which generally represent the shallow groundwater table) has not been explored or eliminated.

i) No sediment sampling was included. I understand that heavy metals generally bind to sediment, and we heard evidence yesterday from tangata whenua of species in the Hakao which are sediment burrowing/filtering.

75. Accordingly, and based on my experience of reviewing and assessing stormwater discharge applications, I am not convinced that there is suitable information to reach a well-informed conclusion on the effects of stormwater quality associated with the application.

76. I recommend that the Commissioners adopt a precautionary approach in this regard, particularly as the relevant statutes require an improvement in stormwater, and we have heard from submitters that this is of great importance for mana whenua.

77. There is one other point on stormwater I would like to clarify. Mr Cowley mentioned a 20m waterway setback from the 2005 Environment Court decision. I can confirm that although the interim decision report did discuss a 20m setback, that does not appear to have made its way into the final rule set. In any case, the Operative District Plan at 21.4.1.b. third bullet point requires

setbacks of 10m adjoining the Rural Zone, and 20m from Te Puna Station Road, and 5m from any other boundary.

Noise

78. After hearing submissions my conclusion on noise is unchanged. In response to a point made by Mr Cowley, I understand from experience assessing noise effects that vegetation is not an effective noise buffer. Mitigation would generally only be provided by the perimeter earth bunds.

79. Regarding Mr Cowley's evidence that noise levels increased with the 2012 District Plan review, I do not dispute that fact. I can provide prior to the close of the hearing, an email from our Noise Expert, Mr Runcie that confirms the effect of this change is the equivalent of approximately 6-7 decibels. However, I note that that change was approved following a publicly notified plan change process, and this application is not a chance to re-visit or challenge that decision. We must assess noise against the Operative District Plan rules.

Servicing

80. On Mr Cowley's evidence that my recommendation at para 63 of the 42A report to accept that reticulated water supply is not upgraded is unacceptable in relation to fire hazards; I respond that condition (18) I have recommended to be imposed will require written confirmation from the Fire Service that there is adequate supply for firefighting. I am comfortable with leaving the judgement on whether that would mean tanks or other means, to FENZ as they are the experts on this matter.

81. On Mr Cowley's concerns regarding portaloos and high winds causing them to spill wastewater, this may be a valid concern, and I wonder if there is a way to secure them. I also note that I had raised similar concerns previously on similar risks during flood events. I will let the applicant respond on a practicable method to address the risk.

Cultural Effects

82. As the status of the PACE provided by Ms Shephard is now uncertain due to the change from conditional support to neutral, I note that Mr Crossan's reliance on the PACE (at para 157 of his evidence) may need to be reconsidered. However, I understand from Ms Sheppard's hearing evidence,

that the cultural mitigation conditions of consent are still desirable to Pirirakau. As such, I support the retention of conditions 25-27.

83. Due to the reservation I hold regarding the stormwater quality assessment provided by the applicant, and after hearing cultural evidence, I struggle to see how the proposed activity being absent of any stormwater collection and treatment system aligns with the cultural importance of protection and restoration of Te Hakao Stream (and downstream receiving environments). There is potential harm to aquatic life, mahinga kai, and to the mauri of water that has not been avoided.

84. This opinion is reinforced by the importance that the Court placed on the establishment of 3ha of wetland within Te Puna Business Park for cultural mitigation in the 2005 decision. And, as Mr Bidois noted the promise of the wetland influenced Pirirakau's decision then to 'reluctantly' agree to the Business Park approval by the Court. Whilst I consider that the wetland at the western / upstream end of the site would not directly treat runoff from the four tenancy areas and accessway, it would have assisted with offsetting cultural and water quality effects.

85. In the first application, a stormwater treatment swale is proposed to be constructed within the eastern end of the site. If the Commissioners are of a mind to grant consent on all other points, but still hold concerns regarding cultural and stormwater effects, a possible solution is to impose the provision of a section of that swale for this application, to treat the application site area. However, I note that would trigger the need for an expanded scope of earthworks and NESCS assessment. The applicant may like to comment in the written reply on the practicality of this suggestion.

86. Regarding Pirirakau concerns about the effect of heavy vehicles and associated vibration damaging the Pa site on Te Puna Station Road; because the applicant has committed (via consent condition 10 c) that all heavy vehicle transport going to and from the site will use Te Puna Road, this potential effect is avoided.

87. It is difficult to draw an overall conclusion on the degree of cultural effects given the gaps in stormwater information. However, If I have to make a judgement, at this stage based on the information available, I would conclude that the effects are certainly not less than minor, possibly more than minor. I

will have to leave that judgement up to the Commissioners.

88. Regarding other cultural evidence heard that suggested the Business Park should be completely overturned or revoked, I submit that is outside the scope of the legal considerations of this application.

89. Regarding financial contributions, the question has been raised by Commissioner van Voorthuysen whether the transportation contribution for Te Puna Station Road (as required by Rule 12.4.16.2.e) is required for this application, presumably because the widening would not be implemented within the two-year consent term. I have reviewed the rule carefully to consider this. The rule specifies that the purpose is to "mitigate the impact of traffic generated by the development on the existing road network (mid-block)", And it requires the payment prior to commencement of any industrial or business activity on the Business Park land or at a later date with the approval of the Council's Group Manager Infrastructure Services.

90. Although it is commonly understood that the contribution would be put towards road widening, I note that it could also be used in other ways to mitigate effects from the traffic generated. We have heard from submitters about the physical damage and erosion to the road and banks of the roadside drains that the heavy vehicles will contribute to. As such, I consider it fair and reasonable that the contribution be retained for road maintenance purposes. I also confirm this opinion, because the Structure Plan contributions are thought to over-ride the general maintenance contributions required by Chapter 11 of the District Plan (or Chapter 11 is only triggered in association with subdivision).

91. I have then considered whether the contribution should be reduced due to the two-year consent term. While that may seem reasonable, the rule is only enforceable upon commencement of industrial or business activity on the land. It would not be payable at a later date (in association with the first application) if activity had already commenced (by approval via this 'third' application).

92. I don't consider the rules were written with a short term consent in mind, and a reduction could undermine the Council's ability to enforce a larger contribution on future development activity. I therefore consider that the transportation contribution in condition 23 should be retained.

93. Regarding the recent change to the application for waiver of the water financial contribution, I do not find the same issue exists. Rule 12.4.16.5.b provides

flexibility, allowing payment when requested by Council on approval of any subdivision, building or resource consent or required as a condition thereof. Given that Council's Water Network Engineer has reportedly confirmed to Mr Crossan that the ability to upgrade the reticulated pipe in Te Puna Station Road is not feasibly in the short-term, I accept that the contribution is unwarranted for this application. However, I do recommend that this advice is verified by Mr van de Berg in writing prior to making a decision on this application.

Overall opinion on effects

94. Considering the updates and assessments made on effects above, I find that the adverse effects overall are more than minor and would therefore fail the first s104D 'gateway test'.

Objectives and Policies Assessment (2nd gateway):

95. At paras 167 – 169 of his evidence Mr Crossan has challenged the methodology I used in the 42A to assess the Objectives and Policies. At 168 he states that "*"inconsistent" doesn't in my opinion or understanding equate to being "contrary to"…I am not sure how finding multiple "inconsistent with*" elevates the assessment to being "repugnant to or "opposed to". It may be that Ms Perring considers that because of the number of objectives and policies that she finds the application to be "inconsistent with" elevate the application to being "contrary to" the objectives and policies as a whole."

96. In response to this, and as confirmed in my earlier presentation, I mean the word inconsistent to mean 'at odds with' or 'contrary to'.

97. Although I didn't spell it out, in making the overall conclusion set out at para 244 of the 42A that the proposal is contrary to the Objectives and Policies, I had considered the framework of the relevant obs and pols with a Te Puna Business Park lens, to identify the overall outcomes that are expected, and considered whether the proposal would achieve those outcomes.

98. Because there are no Te Puna Business Park Objectives and Policies, such assessment must also be informed by the structure plan rule set, as the mechanism by which the overall outcomes are to be achieved.

99. Firstly, the subdivision and development Objectives 12.2.1.2 and 12.2.1.3 set

the tone for integrated development and infrastructure provision as follows:

12.2.1.2 Subdivision and development is planned in an integrated manner and provided with the necessary infrastructure and services to ensure that the land is able to be used for its intended purpose.

12.2.1.3 Infrastructure and services are designed and constructed to minimum standards which will result in improved environmental outcomes without significant additional cost to the community.

100. The Industrial Zone Objectives and Policies run themes of generating economic well being whilst achieving effects mitigation; and providing equitable, extension and or upgrading of infrastructure in accordance with structure plans.

101. Many of the Objectives and Policies require outcomes equating to environmental improvement. For example,12.2.1.3 (see above), 12.2.2.5, 4B.2.2.8 and 8.

102. Notably, policy 12.2.2.3 specifically relates to staging:
Require subdivision to be undertaken in accordance with any staging requirements to ensure the effective and efficient servicing of land within the catchment.

103. I recognise that the granting of this consent application (with conditions imposed) would be supported by provisions that relate to efficient use of industrial land, economic well-being (for the applicant/developer), and also find support in the amenity and noise Objectives and Policies.

104. However, I find that the activity is contrary to substantially more provisions than it is consistent with; and when considered against the context which the rule framework and 2005 Environment Court decision provides (i.e. the purpose of the Te Puna Business Park structure plan and the outcomes it seeks to achieve), the application struggles.

105. In the round, I therefore consider that the proposal is a direct challenge to the policy direction of the Structure Plan and the District Plan more generally, because it does not equate to integrated, well serviced development carried out in the staged manner prior to commencement of industrial activity; and this

in turn generates outcomes that do not avoid, remedy or mitigate all adverse effects to an acceptable level.

106. Overall, in my opinion, the proposal will not result in improved environmental outcomes or use of the Industrial Business Park land for its intended purpose with a wide variety of industrial activities. Rather, I consider that the proposal represents the 'ad-hoc' development and use approach that the Court was intent on avoiding. In other words, it is opposite to, clashing with, or repugnant to the intended outcomes.

Plan Integrity and Precedent:

107. On Plan Integrity and Precedent, I consider that has been thoroughly examined in my 42A and covered by Ms Zame. Nothing in the applicant's or submitters evidence has persuaded me to change my opinion on these 'other matters'.

108. For these considerations and in closing, it is useful to reflect on the following summary of visual effects from the Court decision of 2005:
"*We have concluded that the appellant is taking an industrial park approach to this change, intending to achieve a more certain outcome by the imposition of requirements around the perimeter of the site (as well as the central overland flow area (now wetlands) and ponds and internal planting. This is coupled with performance standards and the requirement for exceptions to be dealt with as discretionary [now Non-complying] activities. The appellant presses on the Court that this is a more certain outcome to the application of the Plan than further ad hoc development*". (para 70, ENVC A016/2005 (RMA 608/03) Interim Decision).

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109. I can conclude that by my now completed assessment, the application would fail both of the 'gateway tests'. As such, Plan Integrity and Precedent considerations would fall away.

110. However, should the Commissioners reach a different conclusion on the effects assessment, then I would still maintain my original assessment that the application be declined based on Plan Integrity and Precedent, as well as being contrary to the NPS-FM and the Regional Policy Statement.

Consent Conditions

111. Regarding draft consent conditions, I do not consider Mr Crossan and myself to be poles apart. I believe I have responded to the most crucial questions on conditions today. Taking into consideration questions or recommendations made by the Chair, and considering relevant evidence, I am comfortable that a revised set can be worked out between the Applicant and Council, and then provided to the Panel.

Heather Perring
Senior Consultant Planner
On behalf of Western Bay of Plenty District Council.
11 October 2023