
Appendix E
WBOPDC Memorandum of Agreement



MEMORANDUM OF AGREEMENT

Te Puna Station Road Industrial Development

DATED this 21st day of July 2020

BETWEEN:

1. WESTERN BAY OF PLENTY DISTRICT COUNCIL (the "Council")

AND

2. LACCOCA HOLDINGS LIMITED ("Landowner 1")

AND

3. Grant Andrew OVERTON and PINGAO TRUSTEE 305 LIMITED
("Landowner 2")

AND

4. Barry Care DANIEL, Beth Mary DANIEL and GI FINLAY TRUSTEES LIMITED ("Landowner 3") together (the "Owners")

BACKGROUND

- A. The Te Puna Industrial Zone (the "Industrial Area") became operative on 29 August 2005 through a private plan change initiated by the owners.
- B. The District Plan (the "Plan") requires that certain roading Works are undertaken prior to the Industrial Area being able to proceed.
- C. Landowner 1 is the registered owner of that parcel of land located at 297 Te Puna Station Road, Te Puna containing 12.1606 hectares more or less being Part Lot 3 DP 22158, Section 2-3 SO 61751 and being all the land in Record of Title 33275.
- A. Landowner 2 is the registered owner of that parcel of land located at 250-264 Te Puna Station Road, Te Puna containing 7.2270 hectares more or less being Lot 2 DP 317426 and being all the land in Record of Title 68336.
- B. Landowner 3 is the registered owner of that parcel of land located at 245 Te Puna Station Road, Te Puna containing 12.2043 hectares more or less being Lot 2 DP 22158 and being all the land in Record of Title SA22C/188.

- C. Council has undertaken the traffic assessment of Te Puna Station Road/SH2 intersection. The current performance of the intersection meets the requirements of the District Plan clause 12.4.16.2(f)(ii)(b) as described in Attachment 1.
- D. The Te Puna roundabout meets the requirements for that intersection upgrade. Accordingly District Plan clause 12.4.16.2(a) is satisfied.
- E. The Te Puna Road/Te Puna Station Road intersection has been upgraded by Council which satisfies the requirements of District Plan clause 12.4.16.2(b).
- F. The roading improvements remaining that are required to enable the Industrial Area to develop is the traffic calming on Clarke Rd.
- G. The intention of this agreement is to address the Clarke Road traffic calming requirements. The Owners are still required to meet all other District Plan requirements, notably landscaping, and entranceways to Te Puna Station Road, before any development is allowed to commence.
- H. There will be individual agreements with each of the Owners.
- I. The owners have voluntarily entered this legally binding agreement.

1.0 AGREEMENT/JOINTLY

- 1.1 The Parties acknowledge that they require certainty on timing and cost to fulfil the Clarke Road traffic calming requirements.
- 1.2 The Parties agree that the District Plan requires at 12.4.16.2(c) that specific traffic calming is required on Clarke Road prior to the development of the Industrial Area ("the Works").
- 1.3 The Owners agree that they will pay the full costs for the specific work referred to in 1.2 above, subject to the conditions below, however the Works shall continue to be owned by Council.
- 1.4 Council is undertaking the Clarke Road traffic calming on behalf of the Owners.
- 1.5 Should any of the Owners sell or dispose of their property they will remain liable for the costs under this agreement.

Conditions

- 1.6 The proposed Works to meet 12.4.16.2(c) are shown in Attachment 2.
- 1.7 The estimated cost required to fulfil the Plan conditions of 1.2 above includes traffic calming design, consultation, construction, supervision and consenting if any, council legal costs, and direct council costs as described in Attachment 3 ("the Estimated Project Costs").
- 1.8 The Estimated Project Costs is \$280,450.00 is divided between the landowners pro rata based on the net industrial land yield as set out in Attachment 3.
- 1.9 The final cost to each land owner will be based on the final actual cost of the project.

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- 1.10** The payment terms are as follows:
- a) 50% of the total Estimated Project Costs on signing of this agreement by all parties is paid to Council.
 - b) Remaining 50% to be deposited into Council's solicitor trust account upon a fixed price contract from Council's contractor being received by Council and notified to the Owners.
 - c) Payment to be released to Council upon the Works being completed and complying with 2.1 below.
 - d) Should the Works be completed under the Estimated Project Costs then any surplus funds shall be returned to the Owners on a pro rata basis

1.11 This Agreement is conditional on:

- a) This agreement being signed by all parties
- b) Payments under 1.10 a) and b) above being received by Council.

1.12 Should this agreement fail to become unconditional then Council shall have the right to terminate this agreement in full. If the agreement is terminated by Council, any payments made pursuant to 1.10 above shall be refunded less the costs incurred by Council.

1.13 Nothing in this agreement shall affect or prejudice Council's regulatory capacity under the Resource Management Act 1991.

2.0 THE COUNCIL

- 2.1** Shall confirm in writing to the Owners when the agreement becomes unconditional.
- 2.2** Will ensure that the Works will meet District Plan Rule 12.4.16.2(c) once completed.
- 2.3** Will arrange for all necessary consultants and contractors to undertake the agreed Works.

3.0 THE OWNERS

- 3.1** Shall pay the Council in accordance with this agreement.
- 3.2** Shall be responsible for their own legal costs, unless the owners breach this agreement, in which case the breaching owner(s) will be liable for Council's legal costs for dealing with the breach.
- 3.3** Acknowledge the monitoring requirements of the Plan clause 12.4.16.2(f)(v).

4.0 DISPUTE RESOLUTION

- 4.1** Any dispute amongst the Owners shall be resolved by the Owners independently of Council.

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4.2 Any dispute arising out of or relating to this contract may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between the parties. Mediation may be initiated by either party writing to the other party and identifying the dispute which is being suggested for mediation. The other party will either agree to proceed with mediation or agree to attend a preliminary meeting with the mediator to discuss whether mediation would be helpful in the circumstances. The parties will agree on a suitable person to act as mediator or will ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator. The mediation will be in accordance with the "Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc." The mediation shall be terminated by

- (a) The signing of a settlement agreement by the parties; or
- (b) Notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
- (c) Notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or
- (d) The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.

5.0 SUCCESSORS AND ASSIGNS

5.1 The "Council" and the "Owners" shall include their executors, administrators, successors or permitted assigns.

6.0 PDF, TIFF OR FAX EXECUTION

6.1 This Agreement shall be deemed to be signed by a Party if that Party has executed and delivered to the other party any of the following formats of this Agreement:

- (a) an original; or
- (b) a copy in Portable Document Format (PDF) transmitted by email; or
- (c) a copy in Tagged Image File Format (TIFF) transmitted by email; or
- (d) a facsimile copy,

and the delivery by any party to the other of a PDF, TIFF or facsimile copy of this Agreement duly executed shall be deemed delivery of the original Agreement.

7.0 TRUSTEE LIABILITY

- 7.1** The liability of the Trustees is limited to the amount recoverable from the net capital assets of the trust fund of the Trust existing at the date formal written demand is served on the Trustees in relation to any obligation imposed on the Trustees under the terms of this document. Where there is more than one trustee of the Trust at the relevant time their liability shall be joint

DATED this 21st day of July 2020

THE COMMON SEAL of)
WESTERN BAY OF PLENTY)
DISTRICT COUNCIL)
in the presence of :-)



[Signature]
Authorised Officer

EXECUTED by)
IACCOCA HOLDINGS LIMITED)
in the presence of)

[Signature]
Director Signature

Ben Bax
Director Name

[Signature]
Director Signature

Denise Bax
Director Name

SIGNED by)
Grant Andrew OVERTON)
in the presence of)

Witness Signature

Witness Name

Witness Occupation

Witness Address

EXECUTED by)
PINGAO TRUSTEE 305 LIMITED)
in the presence of)

Director Signature

Director Name

Director Signature

Director Name

SIGNED by)
Barry Care DANIEL)
in the presence of)

Witness Signature

Witness Name

Witness Occupation

Witness Address

SIGNED by)
Beth Mary DANIEL)
in the presence of)

Witness Signature

Witness Name

Witness Occupation

Witness Address

EXECUTED by)
GI FINLAY TRUSTEES LIMITED)
in the presence of)

Director Signature

Director Name

Director Signature

Director Name

ATTACHMENT 1
Traffic Assessment of District Plan Criteria

Email from A Fosberry dated 26 October 2018

In the DP excerpt below I have briefly outlined the results to provide a "heads up". If my interpretation of the DP is correct, then it seems there is nothing stopping development of the business estate.

12.4.16.2 - Road Upgrading

(f) To control the impact of the traffic generated by the development on the roading network

(ii) (b) That the capacity of the intersection of the State Highway 2 and Te Puna Station Road remains adequate, particularly in so far as the performance of the right turn bay into Te Puna Station Road and the left hand turn from Te Puna Station Road are concerned.

(iii) For the purpose of clause (f)(ii)(b), the adequacy of the intersection performance shall be assessed by reference to the outcome of monitoring in respect of the following matters (at a minimum):

(a) The duration of delays for all traffic movements at the intersection which shall be determined having regard to whether:

- The 95th percentile of the measured queue lengths as a result of right turns from State Highway 2 impedes the flow of through traffic on the State Highway i.e. the 95th percentile queue length must not exceed the storage length of the existing right turn bay;

Maximum number of vehicles queued in the RT bay did not exceed 5. 5 queued occurred once in the evening peak. The length of the queue extended to the diagonal hatching but did not extend further back nor did it impede SH 2 flow. More vehicles could have been waiting and everything still OK. So no problem here

And

- Side road time delays for traffic in Te Puna Station Road during peak periods exceed an average of 50 seconds when measured over a maximum one hour period or increase by more than 50% from the baseline monitoring (whichever is the greater).

Maximum queue length during the morning peak was approximately 600m at 8 14am. At this time vehicles in the queue past Waipuna Hospice were traveling at approximately 5km/hr. Taking a snap shot every 5 minutes from 7 30am to 8 30am (the time frame in which queuing on TPS Road is worst), the overall average delay/vehicle is over 2.5 minutes (210 seconds). The longest delay was over 4 minutes. The 50 second requirement is exceeded.

My interpretation is that both of these need to fail as the wording says "AND" not or. Is that correct? If it is correct then it doesn't matter how long the delay on TPS Road as long as the right turn bay doesn't queue back and affect SH 2.

(b) Crash rates, which shall be determined having regard to whether:

- The crash rates at the intersection (including vehicles queuing or turning) exceed either five in any one year, or an average of three per annum over the previous five years (as at the date of assessment);

Not exceeded

And

- The injury crash rates at the intersection increase from the baseline monitoring by any statistically significant amount.

Injury crash rate has reduced.

Ann Fosberry

Technical Director, Infrastructure, Aurecon

T +64 7 5775125 M +64 2 74988518

Ann.Fosberry@aurecongroup.com

Ground Level, 247 Cameron Rd, Tauranga New Zealand 3110

PO Box 2292, Tauranga 3140

aurecongroup.com

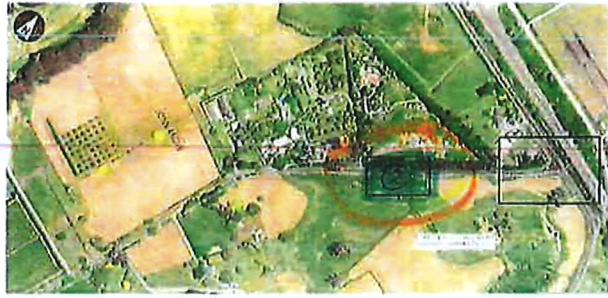


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ATTACHMENT 2
Proposed Traffic Calming locations and Devices



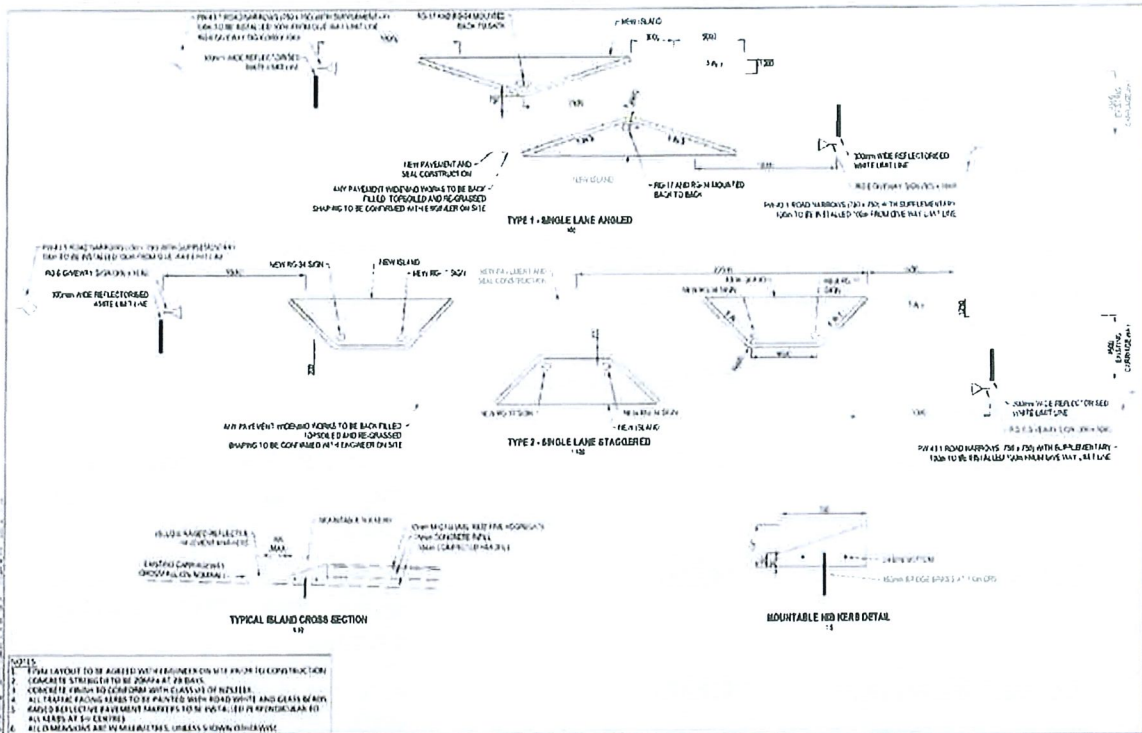
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PROJECT: ...
CLIENT: ...
DATE: ...

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Western Bay of Plenty District Council

PRELIMINARY
NOT FOR CONSTRUCTION

DATE: 10/07/2019

BAY OF PLENTY DISTRICT COUNCIL
CLARE ROAD TRAFFIC CALMING

TYPICAL CALMING ISLANDS DETAILS

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ATTACHMENT 3

Estimated Project Costs

Item	Estimate excl GST	Comments
Contracted investigation and design	\$16,450.00	Draft design
Construction cost estimate incl contingency	\$227,000 (rounded up)	
Tender documents	\$6,500	Using WBOPDC standard front end, includes review with Council
Establish contract	\$4,500	Execution of contract docs, review SMP, TMP, start-up meeting
Contract observations	\$16,000	Assumes 4 week contract, 3 visits per week as it will be quite publicly visible to residents, 2 claims plus final defects liability. Defects liability inspections.
Legal costs and direct Council costs	\$10,000	Drafting/reviewing of the agreement and legal advice.
Total estimate	\$280,450	

Project Cost Apportionment excluding GST

Landowner	Gross Area Ha	Net Area Ha	Net Area % of total	\$ per total Net Area
Landowner 1	12.1606	8.3465	37	\$103,766.50
Landowner 2	7.2270	5.5488	24	\$67,308.00
Landowner 3	12.2043	8.9364	39	\$109,375.50
Total	31.5919	22.8317	100	\$280,450