

RC13924L – TINEX GROUP LTD – 205 – 245 TE PUNA STATION ROAD, TE PUNA - LAND USE CONSENT TO OPERATE INDUSTRIAL ACTIVITIES

File Number: P/1247/1785
Author: Heather Perring, Senior Consultant Consents Planner
Authoriser: Natasha Ryburn, Environmental Consents Manager
Applicant: TINEX Group Ltd
Owner: Barry and Beth Daniel

1. EXECUTIVE SUMMARY

1. This report provides an assessment of the resource management issues with respect to a resource consent application to operate industrial activities within part of the Te Puna Business Park structure plan area, for a term of two years. The activities include four business depots and associated outdoor storage yards which have already been established on the site. The use of the site for industrial activities prior to specified Structure Plan development works being completed is a non-complying activity.
2. The application was received by Council on 10 February 2023 and has been processed on a publicly notified basis at the request of the applicant. In total 194 submissions were received within the statutory time period (20 working days), 39 submissions in support, 154 in opposition, and 1 conditional.
3. Further information was requested prior to public notification, some of which the applicant has refused to provide. The majority of information has been provided.
4. In having regard to the proposal and submissions lodged, the key issues considered relate to traffic, stormwater, cultural, economic, landscape character, amenity, and positive effects, and plan integrity / precedent.
5. Having considered the proposal this report makes the recommendation to decline consent to the application.

RECOMMENDATION

1. That the Senior Consents Planner's report dated 18 September 2023, titled 'RC13924L – Tinex Group Ltd – 205-245 Te Puna Station Road, Te Puna – Land use consent to operate industrial activities', be received.
2. That pursuant to Sections 34A, 104, 104B, 104D of the Resource Management Act 1991, the Independent Hearings Commissioners, on behalf of the Western Bay of Plenty District Council, decline consent to the application by TINEX Group Limited to operate the industrial activities for a period of two years, being a non-complying activity, located at 205-245 Te Puna Station Road, Te Puna, legally described as Lot 2 DP 22158, SA22c/188.
3. However, should the Independent Commissioners decide to grant, a set of draft conditions has been provided.

2. INTRODUCTION

6. Although I am the Reporting Officer contracted by the Council I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have complied with that practice note in preparation of this report. I agree to comply with it in presenting this report at the hearing. The opinions and assessment within this report are within my area of expertise, except where I have stated my reliance on other identified information. I

have considered all material facts that are known to me that might alter or detract from the opinions that I express in this evidence.

7. This report has been prepared by Heather Perring. I am a Consultant Consents Planner contracted to Western Bay of Plenty District Council (WBDC), a position I have held since March 2021. I am the Planning Director/Principal Planner of Kaitiaki Property Services Ltd, a multi-disciplinary consultancy. I have held this position since May 2019. I have Bachelor of Arts-Geography, and Masters of Planning Practice Degrees from the University of Auckland (2001, 2003), and I am a full member of New Zealand Planning Institute (NZPI). I have 13 years of professional experience in the resource management field, both in Local Government (as a contractor) and private consultancy.
8. This report is a section 42A Report prepared under the Resource Management Act 1991 (RMA) which provides my advice and recommendations as an independent planner to the Council. The report has been prepared on the basis of the application and s92 response information available on 23 June 2023. It does not represent any decision on the applications and the conclusions and recommendations reached in the report are not binding on the Hearing Commissioners. The report will be considered by the Commissioners in conjunction with all other technical evidence and submissions to the applications to form and make a decision under delegated authority on behalf of Western Bay District Council as the consenting authority.
9. In this report, I will outline the statutory planning framework insofar as it relates to the proposal. I will provide my assessment under section 104 of the RMA, and in doing so I will identify the issues raised through the notification process and will assess the effects of the proposal (both adverse and positive) and the effectiveness of mitigation measures proposed by the applicant. The report draws on specialist advice concerning traffic, landscape character and visual amenity, stormwater, and noise which the consent authority has sought to assist the reporting officer and the Hearing Commissioners. Throughout this report I have relied on these technical experts' reviews and assessments. The specialists' technical assessments are attached as numbered appendices as follows:

Processing Team	Personnel	Technical Expertise	Reference
WBOPDC Senior Consultant Planner	Heather Perring	Resource Management Act	This Report
Westlink/WSP	Justine Wilton	Transportation	Attachment 9
WBOPDC	Calum McLean	Transportation	This Report
Mansergh Graham	Dave Mansergh	Landscape	Attachment 9
WBOPDC	Sam Olatunbosun	Development Engineering	Within this report
SLR Ltd	Peter Runcie	Noise	Attachment 9

3. PROCESS

10. An application was received by the Western Bay of Plenty District Council ('Council') on 10 February 2023 seeking to authorise industrial activities for four tenancies on land owned by Barry and Beth Daniel at 245 Te Puna Station Road. A copy of the application is included as **Attachment 1**.
11. Further information was requested 29 March 2023, and this request is included as **Attachment 2**.
12. On 6th April 2023 the applicant requested Public Notification. At that point in time no responses to the s92 request had been received. On 18th April 2023 the applicant agreed to provide some information.
13. The further information that the applicant agreed to provide, was provided to Council on May 12th, and further adequate information on 9 June 2023.

14. The application was publicly notified on 23 June 2023.
15. Submissions were open for 20 working days and closed on 24 July 2023.
16. On 24th August 2023 the applicant's planning Agent provided an email and updated accessway upgrade plan confirming another reason for consent, being earthworks within a floodable area.

4. PROPOSAL

17. The site is included in the Te Puna Business Park Structure Plan and is zoned Industrial. The plan includes extensive structure plan requirements, a number of which are 'pre-development'. The background and history to the privately requested plan change which resulted in the Business Park zoning is set out in Section 5 of this Report.
18. By way of background, the applicant initially lodged two other resource consent applications relating to the long-term development of the Site (RC13474 and RC12979). These are to authorise departures from development, staging and infrastructure requirements of the Structure Plan (first application), and a retrospective application for approximately 40,000m³ of illegal fill on site (second application). Both of these applications are currently on s92 hold awaiting further information.
19. The applicant subsequently lodged this (third) resource consent application, which seeks to authorise the operation of a 1.56 ha/10,560 m² portion of the business park for a 2-year period, or until such time that resource consent applications RC13474 (departures from Structure Plan development requirements) and RC12979 (earthworks) are granted. These applications are being processed concurrently and also have non-complying activity status. A site plan showing the portion of the wider site which is the subject of this particular resource consent application is shown in Figure 1 below.



Figure 1: Site plan showing area proposed for industrial activity

20. Section 3.0 of the applicant's Assessment of Effects report records that "The intention is for the resource consent to be granted on a temporary basis until such time as resource consent is granted for the structure plan waivers and all remaining relevant structure plan requirements have been fulfilled. At that time, the current activities would become permitted activities and the consent would no longer be necessary. The applicant considers a two year consent term appropriate in the circumstances to allow the other consents and structure plan requirements to be completed'.

21. The application is for a bundled Non-Complying activity, chiefly under Rule 21.3.12 for an activity that is not in general accordance with the Te Puna Business Park Structure Plan, and Rule 4A.1.4 for activity that is not otherwise provided for by the District Plan. A full list of reasons for consent is provided at Section 7 below.
22. The activity proposed can be summarised as follows:
- Retrospective authorisation of the operation of four industrial activities/tenancies being:
 - An outdoor pool storage yard occupying an area of 0.3ha / 3000m²;
 - A relocatable homes storage yard / depot, occupying an area of 0.21 ha / 2100m²;
 - An outdoor tyre storage yard occupying an area of 0.26ha / 2600m²;
 - A relocatable homes and goods storage yard / depot, occupying an area of 0.8ha / 8000m².
 - The proposed consent conditions specifically list the business names, and the applicant understands that any change in tenant would trigger the need for a s127 application to vary the consent conditions.
 - All these tenancies are accessed via the existing site accessway at #205 Te Puna Station Road.
 - Water is to be supplied via an existing low pressure connection within Te Puna Station Road. Tanks are proposed as an optional requirement of tenants.
 - Following a meeting with Mr Crossan (the applicant's Planner) on 14 September 2023, it is my understanding that the applicant now seeks a departure from payment of water financial contribution.
 - No power or telecommunications services are proposed.
 - There is no reticulated wastewater connection to the site. It is proposed to manage wastewater with portable toilets.
 - Stormwater is proposed to be diffusely discharged to land, whereby it would either soak to ground or runoff to the roadside drain. No attenuation or treatment is proposed.
 - The proposal includes an upgrade of the accessway to widen the splays to a Diagram D standard (Waka Kotahi Planning Policy Manual Appendix 5E). The entranceway will be sealed in accordance with Diagram D. The required opposite widening is omitted.
 - The accessway widening requires the existing 2 x 500mm diameter culverts at the entrance to be replaced with a proposed single 1800mm diameter culvert pipe incorporating concrete head walls at the inlet and outlet.
 - The development includes approximately 114 m³ of cut and 106 m³ of fill within the roadside drain area, to upgrade the accessway.
 - Noise from the operation of the storage yards / depots is to be restricted to the District Plan noise limits and managed via a Noise Management Plan.
 - Operating hours are proposed to be restricted to 6AM-6PM, Monday-Friday and 7AM – 1PM Saturday, provided that house relocation to and from the Total Relocation and A & J Demolition yards may occur outside these hours
 - Some additional supplementary or infilling planting is proposed to fill in any existing gaps in existing landscaping.
 - The applicant has proposed a condition that heavy vehicles going to / from the business park shall not use Clarke Road.
 - The applicant has proposed a condition that limits traffic generation to 25 vehicles per day.
 - The applicant has proposed a condition THAT within 40 working days of this consent commencing screening of the swimming pool shells located within the Compass Pools yard

shall be undertaken by either:

- (a) the establishment of a 4.5m high vertical screen (artificial orchard shelter or similar) along the western extent of the yard; or
- (b) ensuring that the swimming pool shells are covered via tarpaulins or similar covers.

provided THAT if the swimming pool shell colour to be utilized on pools to be stored on the site is certified by a reflectivity specialist as complying with the reflectivity standards of the District Plan, then the screening or covers as required as per the above condition shall not be required.

23. The proposal is outlined in the application details (**Attachment 1**) submitted as part of the application details including:
 - i) Resource Consent for Industrial Activities within the Te Puna Business Park Structure Plan Area, Tinex Group Limited, 245 Te Puna Station Road, Te Puna”, dated 8 February 2023.
 - ii) Appendix 1 – Record of Title
 - iii) Appendix 2 – Site Plan
 - iv) Appendix 3 – Transportation Assessment
 - v) Appendix 4 – Waka Kotahi Written Approval
 - vi) Appendix 5 – WBOPDC Memorandum of Agreement
 - vii) Appendix 6 – Landscape & Visual Assessment & Landscape Management Plan
 - viii) Appendix 7 – Acoustic Assessment
 - ix) Appendix 8 – Stormwater Assessment
24. Council requested further information on 29 March 2023, refer **Attachment 2**. Peer Reviews of the Transportation Assessment, Stormwater Assessment, Landscape Assessment and the Acoustic Report were also undertaken following the return of further information.
25. In response to the further information requests from Council, the Applicant provided two responses included as **Attachment 3** made up of the following:

“Response to WBODC s92 Request – TINEX Group Limited – 245 Te Puna Station Road, Te Puna (RC13924L)” dated 12 May 2023.

 - Further Information Attachment 1 – Assessment of NPS-FM and NES-F
 - Further Information Attachment 2 – Further Assessment of Objectives and Policies
 - Further Information Attachment 3 – Boffa Miskell Landscape Effects Assessment (Revised)
 - Further Information Attachment 4 - Boffa Miskell Landscape Management Plan (Revised)
 - Further Information Attachment 5 – Boffa Miskell Landscape Management Plan Graphic Supplement
 - Further Information Attachment 6 – Styles Group Acoustic Assessment (Revised)
 - Further Information Attachment 7 – Styles Group Noise Management Plan (Revised)
 - Further Information Attachment 8 – Stratum Consultants Stormwater Response
 - Further Information Attachment 9 – Harrison Transportation Response
 - Further Information Attachment 10 – Vehicle Tracking Plan

“Response to WBODC s92 Request 2 – TINEX Group Limited – 245 Te Puna Station Road, Te Puna (RC13924L)” dated 9 June 2023

- Further Information Attachment 11 – Boffa Miskell Memorandum – Light Reflectance Values Assessment
 - Further Information Attachment 12 – Stratum Consultants Revised Stormwater Responses
 - Further Information Attachment 13 – Harrison Transportation Further Traffic Responses
 - Further Information Attachment 14 – Stratum Revised Access Layout and Vehicle Tracking Plan
 - Further Information Attachment 15 – Stratum Consultants Intersection Pavement Inspection
26. The full application details are available on Council’s website along with the further information request from Council and the information received to support the application. During the submission period a full hard copy of the application was available at the Council’s The Centre – Patuki Manawa Katikati and the Ōmokoroa Library and Office.
27. One hundred and ninety four (194) submissions were received during the submission period. 39 submissions in support, 154 in opposition, and 1 conditional. A summary and full list of submissions can be found at **Attachment 5**.
28. Subsequent to the close of submissions, the applicant’s agent planner (Mr S Crossan) confirmed that a further resource consent would be required for a earthworks within a floodable area, associated with the proposed upgrade of the site accessway. An updated civil works plan was provided with earthworks area/quantities. This can be found at **Attachment 8**.
29. At the time of preparing this 42A report, no Assessment of Effects information has been received for this proposed earthworks activity or for the proposed culvert upgrade involved with widening the site accessway. The Commissioner issued a directive on 12 September 2023 to provide the necessary information and assessment of environmental effects prior to the hearing so the matter can be heard and decided by the Independent Commissioners at the same time as the application to authorise the industrial activity. This information shall include:
- hydrological (flood modelling) assessment of the potential effects of the culvert upgrade;
 - Soil sampling (and interpretation of results) of the proposed earthworks area in accordance with NESCS guidelines;
 - confirmation on whether any associated regional consents will be triggered.
30. It was noted that Council is of the view that potential erosion and sedimentation effects of the proposed earthworks associated with the culvert can be managed with consent conditions requiring the submission of a Construction Methodology incorporating an Erosion and Sediment Control Plan for Council’s certification, prior to commencement of any physical works. I have recommended a consent condition as such.
31. It was also noted that should any regional consents be required, both Councils are of a view that this is a discreet matter that could be managed by way of a separate application, and appropriate consent conditions / advice notes on RC13924L. Notwithstanding, the Commissioner’s reserve their right to issue an alternative direction during or prior to the hearing after receiving the applicant’s evidence on this matter.

5. SITE AND LOCALITY

32. The application site is 12.2043ha and is owned by Barry and Beth Daniel and GI Finlay Trustees Limited. The area of the site to which this application relates to is 1.56 ha/10,560 m², made up of four tenancy yards plus a shared accessway and private way, as shown

above in Figure 1.

33. The applicant is Tinex Group Limited (**Tinex**) which I understand is a registered company associated with Mr and Mrs Daniel – the two directors are Barry and Beth Daniel and the shareholders are Barry and Beth Daniel and GI Finlay Trustees Limited.
34. The land is relatively flat and sits in a basin, with the surrounding land rising some 35-40m above. The site sits at approximately 2-3m above sea level, and is approximately 450m upgradient of the Wairoa River, and the Coastal Marine Area. Around these low hills are scattered rural and rural lifestyle properties including kiwifruit orchards and other horticultural landuses.

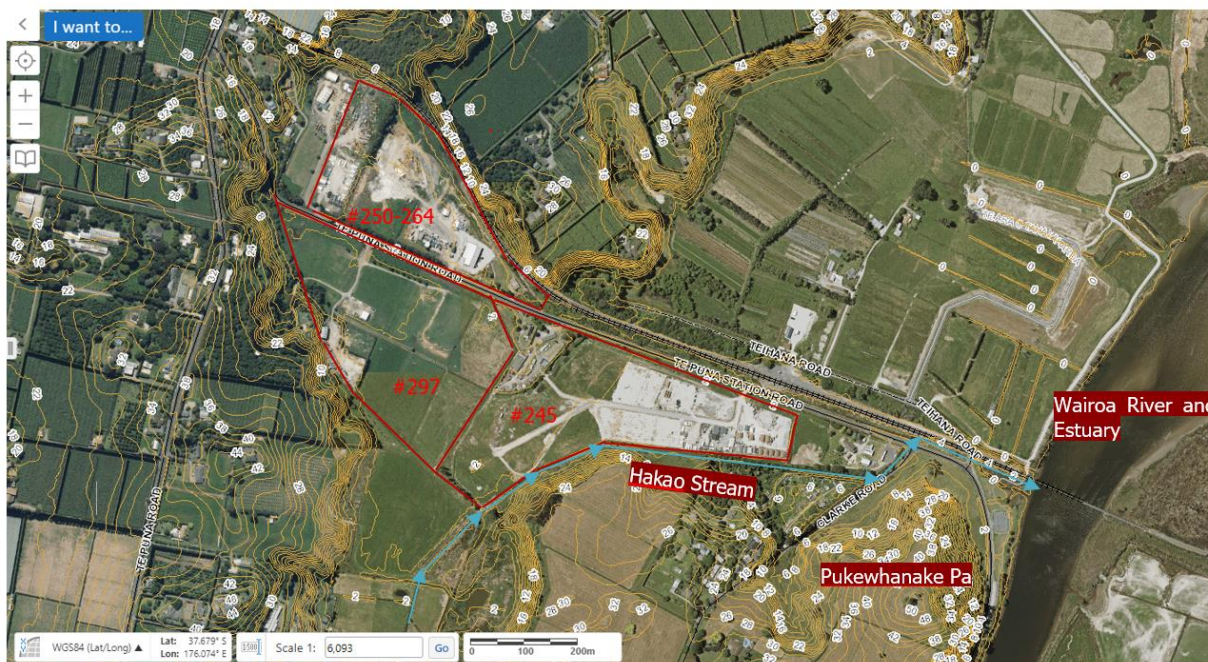


Figure 2: Aerial Image of the site and surrounding environment

35. Due to the Business Park sitting within a natural basin, and being at the downstream end of a stormwater catchment of some 7km², as well as being interspersed with a drainage network that is tidally influenced from the Wairoa River, the land is prone to flooding. This is denoted in the Operative District Plan with a 'floodable area' layer. Upgradient flooding has been worsened by approximately 40,000m² of illegal filling on the Tinex site, as well as by placement of culverts/earth banks across the neck and within the centre of the designated overland flowpath through the west of the site. One of these culverts has since been removed.
36. The site is bordered to the south by the Hakao Stream, and 200m to the east is Pukewhanake Pa, both of which are culturally significant to mana whenua, Pirirakau. The site does not contain any registered archaeological sites.
37. The Main Trunk Railway runs parallel to Te Puna Station Road opposite 245 Te Puna Station Road, and then runs around the rear of 250-264 Te Puna Station Road. There is a rail maintenance accessway almost directly opposite to the established accessway to the Tinex site.
38. The site is located on Te Puna Station Road. Te Puna Station Road was previously accessed from both State Highway 2 (**SH2**) to the south (near Waipuna Hospice) and from Te Puna Road to the north. However, during extreme weather event earlier this year, there was a slip of Pukewhanake Pa site onto Te Puna Station Road to the east of the Tinex site. The south-eastern end of Te Puna Station Road has been closed as a consequence. Council is currently analysing options for the long-term future of the southern portion of Te Puna Station Road, which at this stage looks most likely to return to a single lane function for south-bound traffic. In an event, it is almost certain that the road will not be returned to its

previous two-lane function. This has implications for traffic flows to/from Te Puna Business Park.

39. Further description of the site and surrounding area can be found in the application documents and I adopt those descriptions.

Site History and Timeline

40. In 2002, the owners of three adjoining properties on Te Puna Station Road applied to the Council for a private plan change to have the three properties collectively rezoned from "Rural" to "Industrial". This included the site. Barry and Beth Daniels were two of the applicants for the plan change. The plan change application stated:
The intent of the Plan Change is to provide for a comprehensively developed Industrial Business Zone, with a strong focus on landscaping to enhance, rather than compromise, the existing rural landscape. Depending on submissions to the proposed Plan Change from Council and interested parties, formulation of a Structure Plan is recommended to further reinforce this comprehensive approach ...
41. The private plan change was opposed by local residents and iwi, and eventually declined by Council, largely on infrastructure concerns.
42. The applicants appealed the decision and the Environment Court approved the Plan Change in 2005¹, subject to a number of requirements being inserted into the District Plan. Many of these requirements related to the provision of infrastructure prior to any industrial or business activity commencing at the Te Puna Business Park properties (which included the site). It also included a Statement of Agreed Facts (SoF) provided as part of the decision (Annexure B) which recorded the agreement between the appellants and Council relating to infrastructural requirements. Many of these agreed infrastructure works have not yet been completed.
43. The Daniels were a party to the original plan change application and the proceedings before the Environment Court in 2004 and 2005. The Daniels were intimately involved in the Environment Court proceedings and in my opinion, the pre-commencement requirements they agreed to in the course of the proceeding were a fundamental factor in the Environment Court's decision to grant the plan change. Those requirements have been enshrined in the Plan since 2005 and the Daniels have been aware of them since, having earlier agreed to implement them.
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,²
 - that the properties in Te Puna Business Park would be developed and managed in accordance with an integrated structure plan³, and
 - that the granting of the plan change would avoid ad hoc development in this area.⁴
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, and that applicants would prepare the plan for the wetland in consultation with Pirirakau. The wetland has not yet been fully implemented.
46. New Zealand Transport Agency (NZTA) (now Waka Kotahi) were initially opposed but withdrew their opposition on the basis that the applicants offered provisions requiring

¹ *Thompson & Flavell v Western Bay of Plenty District Council* A016/2005, Environment Court, 3 February 2005.

² *Ibid* at [27]

³ *Ibid* at [27]

⁴ *Ibid* at [122]-[123]

upgrade to the intersection of Te Puna Station Road / State Highway 2, and a cap on vehicle generation in the interim. This upgrade has not been completed.

47. Residents opposed any rezoning of the site, however their concerns were determined by the Court to have been mitigated by proposed landscaping, bunding, infrastructure upgrades and other rules to manage the Business Park. A number of properties at higher elevations overlook the site and it was accepted by the Environment Court that no amount of amenity planting could screen this site completely from view. Some of the bunding and planting has been completed.
48. The site was initially zoned Te Puna Rural Business Park Zone when it was first inserted into the District Plan following the Environment Court's decision in 2005. In 2008 Council notified a District Plan review, which included a proposal to remove sub-zones from the Plan and included rezoning of Te Puna Business Park to the Industrial Zone (rather than remaining as Rural Business Park Zone). No submissions were received on the proposed change in zoning, rather 41 submissions were received that opposed the Business Park altogether, mainly on the basis of traffic effects. The proposal was retained, and the District Plan became operative on 16th June 2012.
49. The landowner (Mr Daniel) had sought and received a resource consent (61858) from Bay of Plenty Regional Council in 2002 for cleanfill disposal on the southern and central portions of his site. A variation to this consent was approved in 2008 to increase the volume and depth of fill. Mr Daniel exercised this consent to raise the land level by an average depth of 1.8m (final RL of 2.8m Moturiki datum). However, the consent was surrendered in 2011.
50. Beginning in 2019, Council began to receive complaints from the public regarding development and operation of industrial activities at the site, and this led to an investigation and the issuance of Abatement notices to Barry and Beth Daniel to cease development and industrial use of the property.
51. Mr Daniel then engaged Stratum Consultants in late 2020 to commence the preparation of resource consent for development works.
52. I was engaged by Council in March 2021 to provide pre-application guidance and to process the pending resource consent application(s).
53. Thereafter there is a long sequence of statutory events that has ensued since the first abatement notice was issued, associated with resource consent applications and compliance. This is provided as information for the Commissioners at **Attachment 7** in order to understand the background associated with this proposal and the context of some of the submissions that have been received, but I note my understanding is that past conduct of an applicant is a matter for enforcement and shall not be used in a punitive manner for retrospective resource consents.

6. NOTIFICATIONS AND SUBMISSIONS

Notification

54. The applicant, TINEX Group Limited, lodged a combined land use resource on 10 February 2023 and requested public notification under Section 95A RMA on 6th April 2023.
55. A copy of the public notice is included as **Attachment 4**. Notice was served on identified affected persons including those on Council's statutory list on 23 June 2023 via email and Council's website. The public notice was included in the Bay of Plenty Times, and The Sun.

Submissions received

56. The period for making submissions on the application closed on 24 July 2023. In total 194 submissions were received within the statutory time period (20 working days), 39 submissions in support, 154 in opposition, and 1 conditional support.
57. Maps showing the submitters in relation to the application site is included in **Attachment 6**,

and Figure 7 below. It should be noted that a number of submissions were received from submitters residing outside of Te Puna, in the surrounding rural areas. 3 of the 194 submissions were received from larger groups including Forest and Bird, Priority Te Puna, and local iwi Pirirākau Tribal Authority Incorporated (Pirirākau). Many of the supporting submissions were from existing tenants (staff and business owners) at the application site – area shown in black.

Matters raised

58. A summary of all submissions received is included as **Attachment 5**. Further, summaries of the key issues and themes raised by submissions are outlined below under topic headings. The below summary should not be taken as an exhaustive list, rather it is intended to provide a summary of key topics and effects. Note that the presentation of the submission topics is provided in no particular order of importance.

Regional Development / Economic

59. Of the 194 submissions received there were approximately 45 with comments surrounding regional development and economic factors, 39 of which were in support and 5 opposed.
60. Overall there is a similar theme in supporting submission comments on regional and economic development, the provision of affordable industrial land, and the provision of job opportunities.
- Support the application due to there being a lack of space currently available for the activity in the district.
 - Concerns from tenants on the impact on businesses, job loss, effects of mental health should they have to vacate the site.
 - Activities align with the industrial zoning of the site, and the activities proposed are contemplated by the zoning.
 - The existing activities are locally owned businesses.
 - The site provides a source of permanent employment for locals.
 - There is a shortage of industrial land and most other sites are expensive.
 - Logistically the site works perfectly for business, its affordable, safe and secure.
61. Of those opposed on economic reasons, the common themes were:
- The financial costs of fighting the application for Priority Te Puna members - not fair.
 - Farmers / Orchards being affected through damage to land, pollution, and water backlog/flooding.
 - Local drains have not been maintained, impacting good pasture productivity.
 - Economically the continued non-compliance / activity is not fair on other compliant developers and ratepayers who have paid their dues to meet the Council requirements.
 - The local 'eyesore' and traffic issues impact on property values and ability to sell.

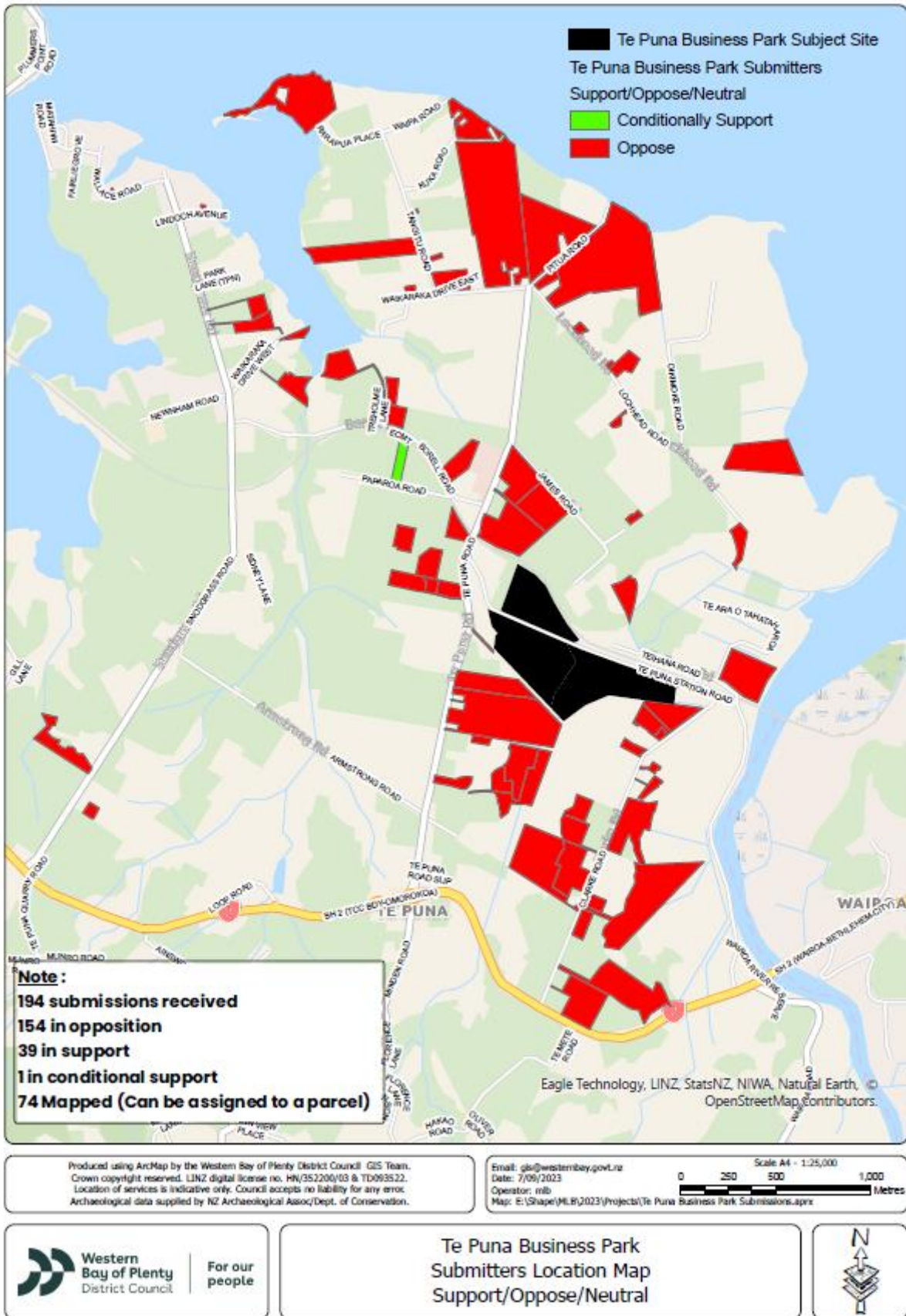


Figure 3: Submissions received (in immediate vicinity of application site)

Traffic and Road Safety

62. Of the 194 submissions received, approximately 92 submissions raised concerns with the effect that the trucks carting in and out of the business park and having on local Te Puna Roads. 60 submissions made comments around road safety.

Common themes included;

- Te Puna station road is already under pressure from not having the right infrastructure. Traffic to the site is often oversized. This is also contributing to the congestion on SH2.
 - Concerns due to the level of heavy vehicles on the road - this is dangerous for other motorists on the road. Camber, gradient and tight turning circle of Te Puna Road as well as Clarke Road are unsuitable for this development.
 - The roads are not suitable for the nature of the traffic.
 - I have experienced near misses with trucks transporting from the Te Puna business park.
 - Require both lanes of trucks to turn into Te Puna Station Road from Te Puna Road. This requires traffic to reverse.
 - Traffic calming measures have not been effective, and the traffic is dangerous.
 - Lack of roading infrastructure is overwhelming, corner of Te Puna station and Te Puna Road has camber issues.
 - Te Puna Road / Te Puna Station Road intersection is tricky to negotiate and large vehicles have to cross the centre line to turn.
 - The applicant has not complied, roads in the area are not designed for heavy vehicles, trucks on the roads have increased from 9 - 157 a day. The road is deteriorating and is a huge safety issue.
 - Roding, safety, environment, impacts on ability to sell home in Te Puna.
 - Safety concerns for other road users including pedestrians and cyclists.
 - Safety concerns as she trains around Te Puna roads for triathlon.
 - Too many heavy vehicles on the roads making it dangerous for pedestrians and other road users.
 - Access to/ from the site causes major traffic disruption – she will be right attitude on this point is disrespectful.
 - There is no turning lane into the site and AJ Demolition vehicles are regularly seen crossing the centre line to enter and exit the entranceway. Trucks use both lanes to enter the site.
 - Constant damage to edge of seal on the roads from the big trucks.
63. Te Puna Primary school is also located 300m from Te Puna Station Road, children use these roads to get to and from school. 10 of the submissions raised concerns about the safety of students with the increased truck movements associated with the business park.
64. Some submissions in support considered that the local traffic issues arise mainly due to Te Puna Station Road being used as a local 'rat-run', and not be traffic generated from Mr Daniel's site.

Stormwater, Infrastructure and Pollution

65. Of the 194 submissions received there were 46 submissions that raised issues with stormwater runoff from the site, 19 that mentioned flooding, 28 mentions of stormwater infrastructure and 29 submissions that raised concerns with Pollution. Common themes that were raised in the submissions were as follows.
- Community expects high professional standard stormwater infrastructure.
 - They have not found a solution to the stormwater issues.
 - The stormwater system is already under pressure.
 - Flooding on my property makes it unusable resulting in loss of income.
 - Flooding is now a very common occurrence, and the drains are always full, suggesting a high-water table.
 - Stormwater infrastructure hasn't been put in place as required. Flooding has also been a common occurrence due to this. Stormwater affects the entire catchment, and this site affects the flow of water on the floodplain and when it exits the valley.
 - No stormwater infrastructure and severe flooding because of it.
 - Concerned about runoff with contaminated materials, oils, rubber, concrete, silica, asbestos and other leachate from old building timber on site.
 - Hakao Stream, the Wairoa River and the harbour are close by. DNA evidence of threatened species including long fin eels, giant kokopu and freshwater mussels in the Hakao Stream.
 - Damage to the environment, ecological and wetland areas.
 - Effect of pollution from the site on local indigenous wildlife.
 - Lack of sealing causes dust issues for adjacent orchards.
 - Clarke Rd is too narrow for trucks and this causes safety risks to our community.
 - Lack of sewage infrastructure and potential effects on receiving water bodies.
 - Toxic pollution causing serious health and mental issues.

Compliance and Structure Plan

66. Of the 194 submissions received there were 36 submissions who made comments surrounding compliance, common themes in opposition of the application where.
- 18 years of non-compliance
 - Compliance has not been upheld by Council.
 - Developers should be prosecuted for non-compliance.
 - Disregard for rules and requirements, long history of noncompliance on the site.
 - Uncounted fill used to raise land and other ongoing compliance issues.
 - Anger and frustration at the applicant, and both District and Regional Council for the current state of affairs.

Landscape and Visual Amenity

67. Of the 194 submissions received, 57 mentions were made of adverse effects on the local (Rural) amenity of Te Puna, general themes of the comments were as follows.
- This site degrades Te Puna amenity and everything about it is rough and unfinished. It is a total eyesore and detracts from Te Puna.

- Strong family ties to the area and distress over the loss of the rural environment.
- The site is an absolute mess – it should have been developed to enhance and reflect our rural community.
- How can it be called a Business Park when it looks like a dump site.
- Clarke Road berm is damaged by large trucks and regular size vehicles that are having to move off the road to avoid large trucks.
- Pool shells have a large footprint similar to buildings and they do not blend in with the environment.
- Bunds and landscape screening not to Structure Plan specifications.

Noise and other Nuisance Effects

68. Of the 194 submissions received, several mentions were made of noise or other nuisance effects, general themes of the comments were as follows.
- Loud behaviour occurring in the relocatable homes at night.
 - Moving relocatable houses in and out at night – impacts sleep.
 - Fire risk from tyre storage – risk to adjacent export crops. Proposal to pump water from the River for firefighting is unacceptable.
 - Sediment/ mud tracking onto the road.

Cultural

69. Local Iwi Pirirākau have sites of significance around Te Puna. Of the 194 submissions, 12 submitters raised concerns that the activity is having negative effects on local iwi and Wahi tapu sites. Some of the concerns are listed below.
- Cultural issues for the local iwi Pirirākau
 - Mana and physical issues to iwi and hapu, destroying whakapapa links.
 - Proposal and existing site are culturally insensitive to local iwi and hapu and impacts on their mana.
 - Old marae site in area and is significant to iwi.
 - Impacts on traditional food sources (mahinga kai) from Hakao Stream
 - Insult to the mana of the whenua, tupuna and whanau – trespassing.
 - Land, whanau and whakapapa being affected.
 - Desecrating and trampling on the mauri and wairua and mana of Pukewhanake Pa and the surrounding area including Wairoa river, Tahataharoa and Te Hakao Valley.
 - Damage to wetland areas – business park completely blocks off filtration of water through wetlands area into the Wairoa River/ Tauranga Harbour.
70. The key points from the supporting submission from Pirirākau Tribal Authority (PTA) are:
- The submission is made in support on the basis of the agreed contents of the Pirirākau Assessment of Cultural Effects (PACE). The PACE is a private document between the applicant and PTA, but has been made available to myself as the reporting planner, Natasha Ryburn as Consents Manager, and to the Commissioners as the decision makers.
 - PTA acknowledges and accepts that the business park in this location was imposed by the Environment Court, and that PTA have an established regulatory process as Te Tiriti o Waitangi partners to the Crown and its agencies.

- PTA seeks the following outcomes:
 - i. The PACE be acknowledged as a direct contribution and record of sought mitigation outcomes associated with this application and consent conditions to inform our cultural position; and
 - ii. Pirirākau seek a name change to clearly identify the site as the 'Hakao Industrial Precinct' which will thrive under a commitment to the ethos of the Hakao restoration.
 - iii. All cultural association to this site that is relevant and required of this application and structure plan to centralise a necessary shared focus being the Hakao restoration seeking additional private property land retirement where available to provide additional wetlands within the Hakao valley which the business park resides within.

71. The specific outcomes sought in the PACE (but which have not been made publicly available) have been offered up by the applicant as augier conditions, other than the re-naming of the business park. I will discuss this more fully at Section 9 below.

General matters

72. Finally, there were a large number of the 194 submissions with points that could not be grouped under the preceding topics.

73. Submitters in opposition:

- considered the application to be contrary to many objectives and policies of the District Plan, sustainable development, and the intent of the Structure Plan,
- raised issues of fairness to other compliant developers and ratepayers,
- raised issues of trust that the landowner / applicant will honour any conditions of consent (based on past behaviour),
- the 'ad-hoc' nature of the way the site has been / is proposed to be used, and lack of integrated development.
- submitter fatigue concerns - it is not fair to the community to expect them to respond to every resource consent application, every abatement notice and every appeal for years to come.

74. Of the opposing submissions, the majority of these expressed overall or general opposition to the activity and sought to have the resource consent application declined.

75. Of the supporting submissions, the majority considered that the activity should be approved mainly due to the activities aligning with the industrial zoning.

Out of Scope Submissions

76. A number of submissions points in opposition opposed the Business Park in its entirety and sought to have the land re-zoned back to rural. However, these submission points are out of scope, given that the Structure Plan and Industrial zoning was indoctrinated in the District Plan via publicly notified plan changes. The time to submit on the zoning was at the time of the private plan change (circa 2004/2005), and in 2012 with the District Plan review.

7. PLANNING FRAMEWORK AND ACTIVITY STATUS

77. The notification date of the Operative District Plan 2012 was 18 June 2012 and all appeals have been resolved. Council has notified a number of plan changes since this time, and some of which are still awaiting decisions. However, none of these are relevant to this application.

Activity Status - Operative District Plan 2012

78. The Applicant’s view is that the activity triggers consent largely pursuant to Rule 21.3.12 (d) “*Development and subdivision that is not in general accordance with the relevant structure plans and their stated servicing requirements, including any staged infrastructure requirements*”. I accept that “development” works have occurred (and will occur via the proposed access way upgrade), so this rule is triggered.
79. I also note that the proposed activity, being the operation of industrial land use within Te Puna Business Park prior to the pre-requisite development works being completed, could also be an activity not considered by the Plan, which defaults to non-complying activity Rule 4A.1.4 of the District Plan.
80. There is some disagreement between myself and the applicant’s planner (Mr Crossan) on the rules triggered by this resource consent application.
81. We have reached agreement that in addition to the rules noted above, the following are required:

Rule reference	Rule and Reason for Consent
The proposal triggers consent under the following rules that relate to out of sequence use of the site:	
12.4.16	<p>Industrial or Business use of the site before staged development has been completed. The proposed activity is within Stage 1 and 2.</p> <p>This rule requires staged development and subdivision of the Business Park, including that all screening is complete prior to development or subdivision of stages 3 and 4. In combination with Rules 12.4.16.1 through 12.4.16.5, the rule framework for the Business Park requires that all staged development works are completed prior to the commencement of any industrial or business activity.</p>
12.4.16.2.a	Commencement of industrial activity prior to the required upgrade of the Te Puna Station Road / SH2 intersection – this upgrade has not been implemented.
12.4.16.2.d	Commencement of industrial activity prior to upgrade of the site accessway to a full Diagram D standard (applicant is proposing an interim upgrade to a modified Diagram D standard).
12.4.16.3.a	<p>Commencement of industrial activity prior to:</p> <ul style="list-style-type: none"> - Completion of the overland flowpath / wetland planting; and - Completion of all of the required planting and bunding around the Business Park Boundary (there is a planting gap on the western boundary adjacent to Mr Daniel’s residential yard, and there is no bund in front of the dwelling), and the other two sites in the Business Park have not completed their planting and bunding. - Planting that has been undertaken, but falls short of the Structure Plan requirements of Appendix 7, specifically: <ul style="list-style-type: none"> i. Planting that is not a mixture of exotic and native species. ii. Perimeter boundary planting that is not 10m in width or contains 5 rows of plants. <p>NB: the exact degree of landscaping non-compliances have not been confirmed due to the applicant’s refusal to provide dimensioned existing planting plans.</p>

12.4.16.5.a	<p>Commencement of industrial activity prior to provision of an adequate water supply to meet Council's Development code for Class C fire risk and a peak hour flow of 1.0 l/s/ha.</p> <p>The existing reticulated water supply would be required to be upgraded to achieve the above standard. The applicant does not propose this upgrade.</p>
12.4.16.5.a	Departure from the water financial contribution payment.
12.4.10.1	Commencement of industrial activity prior to provision of a stormwater disposal system including treatment. The applicant does not propose any stormwater infrastructure as part of this application.
4C.5.3.2.f	Commencement of industrial activity prior to fulfillment of the landscape requirements (note this rule doubles up on Rule 12.4.16.3.a above.
The proposal triggers consent under the following other rules:	
12.4.9.1.a.	<p>Non-compliance with the requirement to provide stormwater management reserves and access (in the case of Te Puna Business Park this is the OLFP / Wetland corridor that was to be established and then vested.</p> <p>Tinex Group does not propose to create a stormwater reserve or provide access as part of this application.</p>
12.4.9.1.c.	<p>Non-compliance with the requirement that new roads shown on the [structure] plans shall be designed and constructed to provide for the future roading access and needs of adjoining undeveloped land.</p> <p>Tinex Group does not propose an internal road as shown in Appendix 7 (Te Puna Business Park), rather they propose a graveled private way.</p>
12.4.9.1.g.	Non-compliance with the requirement to provide stormwater, and wastewater mains. Tinex Group does not propose any such infrastructure.
12.4.10.1	<p>Non-compliance with the requirement for stormwater disposal systems being a combination of reticulated pipework, swales or appropriate open channels in the subdivision areas and open channels within the stormwater management reserves and ecological and stormwater reserves identified on the structure plans.</p> <p>Tinex Group does not propose any stormwater infrastructure to service the industrial use area.</p>
10.4.10.6	<p>Non-compliance or possible non-compliance with the requirement for all developments to demonstrate how they will address on or adjacent to the site:</p> <ul style="list-style-type: none"> a) Passage of surface flows from upstream and from the site itself to avoid risk of erosion; b) Protection of houses from flooding in the defined storm AEP event; c) Improvement of stormwater quality; d) Management of runoff peaks to downstream so they are no greater than prior to development, or are fully managed through to the receiving environment (e.g.the Tauranga Harbour) e) All site developments (both subdivision earthworks and subsequent building excavations and earthworks) shall comply with the provisions of the Regional Council publication, "Erosion and Sediment Control Guidelines No 2001/3" and subsequent revisions. f) Mitigate any detrimental effects of flow concentration at outlets.

	<p>The proposed culvert replacement and associated earthworks to enable the accessway upgrade will need to be assessed against this rule – the applicant shall confirm in their evidence.</p> <p>Nevertheless, the application does not comply with part c) above.</p>
12.4.10.8	Non-compliance with the requirement that Stormwater management reserves shall be vested with Council.
21.4.1.d	Non-compliance with the reflectivity of all buildings/structures (excluding glazing). Specifically, the stored pool shells do not comply.
4B.4.9	Non-compliance with the requirement to seal all parking and loading areas. No sealing is proposed.
8.3.3.c. ii.	Earthworks in a floodable area over 5m ³ in volume. Tinex Group seek consent for approximately 114 m ³ of cut and 106 m ³ of fill within the roadside drain area, to upgrade the accessway.

82. We disagree on the relevance of the following rule but for the purpose of my assessment I have provided assessment of effects against this (refer Section 9 below):

Rule reference	Rule and Possible Reason for Consent
12.4.16.2.b	<p>Commencement of industrial activities prior to completion of upgrade to Te Puna Station Road / Te Puna Road intersection, specifically the provision of a right turn bay from Te Puna Road.</p> <p>The applicant disputes that this upgrade is still required, due to the Memorandum of Agreement (MoA) dated 21st July 2020 (See Attachment 13), which was signed by Council’s Infrastructure Manager. This MoA largely relates to traffic calming measures on Clarke Road (which have now been installed); but incorrectly stated in the recitals at E. that “<i>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</i>”.</p> <p>Council’s legally supported position on this matter is that this statement was factually incorrect, because the actual environment is that the right turn bay from Te Puna Road has not, as a matter of fact, been installed.</p> <p>In my view, and with the above scene setting, the correct administration of this rule is to assess the proposed activity against the actual environment. Section 84 RMA does not allow Council any discretion to waive compliance with plan provisions, and as a matter of fact, the right hand turn bay from Te Puna Road has not been undertaken. I consider that the rule still either needs to be complied with, or consent sought to depart from compliance with the rule.</p>

83. The applicant’s assessment against the relevant District Plan provisions is outlined within the application details (**Attachment 1 and Attachment 3**).
84. RMA case law has established that where a proposal involves a number of activities with varying activity status, the activities should be “bundled”, with the most onerous activity status applying to the whole proposal. Adopting this practice, the application therefore falls to be assessed as a **non-complying activity**.
85. Overall, the proposed activity requires resource consent as a **non-complying activity** under the Operative District Plan 2012.

8. STATUTORY CONSIDERATIONS

Section 104 of the RMA – Consideration of Applications

86. Section 104(1) of the Act states:

Consideration of Applications

- 1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
 - (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard;*
 - (ii) *other regulations;*
 - (iii) *a national policy statement;*
 - (iv) *a New Zealand coastal policy statement;*
 - (v) *a regional policy statement or proposed regional policy statement;*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

87. The requirements of Sections 104(1)(a) to 104(1)(c) are considered within Sections 93- 254 below.

Section 104B of the Resource Management Act 1991 – Determination of Discretionary and Non-complying activities

88. Section 104B of the Act states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) *may grant or refuse the application; and*
- (b) *if it grants the application, may impose conditions under section 108.*

Section 104D of the RMA – Particular Restrictions for Non-Complying Activities

89. As a Non-Complying activity, the application is subject to section 104D of the Act – commonly referred to as the ‘gateway test’. Section 104D requires an application to pass at least one of the two gateways before it can be fully assessed under section 104 of the Act, and determined under section 104B. If the application passes through either of the gateways then the applicant still needs to satisfy the consent authority that the application should be granted, bearing in mind the matters referred to in s104(1) and in terms of the overall discretion inherent in s104B. The assessment under s104D is contained in sections 9 - 19 below.

90. In relation to the effects assessment below, I understand that ‘minor’ is not defined in the RMA. Caselaw suggests that ‘minor’ means adverse effects that are ‘less than major’ and can include effects that are more than simply minute or slight. Whether effects are minor is to be determined after having regard to any mitigation of effects that might be achieved by imposing conditions.

91. Section 104D of the Act states:

Particular restrictions for non-complying activities

- 1) *Despite any decision made for the purpose of notification in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—*
 - (a) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (b) *the application is for an activity that will not be contrary to the objectives and policies of—*
 - (i) *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - (ii) *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - (iii) *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*

9. ASSESSMENT OF THE EFFECTS ON THE ENVIRONMENT

Matters to be considered

92. In having regard to the Sections above, the application (including further information) and the submissions received, the matters to be considered relate to the following general topics which are further discussed in this report:

- Existing Environment
- Permitted baseline
- Landscape Character and Visual Effects
- Traffic and Access Effects
- Infrastructure & Servicing Effects
- Earthworks and Construction Effects
- Natural Hazard Effects
- Noise Effects
- Cultural and Archaeological
- Financial Contributions
- Positive Effects

Existing Environment

93. Section 104(1)(a) provides that when considering a resource consent application, the consent authority must, subject to Part 2, have regard to the actual and potential effects on the environment of allowing the activity. Case law has determined that the "environment" must be read as the environment which exists at the time of the assessment and as the environment may be in the future as modified by the utilisation of permitted activities under the plan and by the exercise of resource consents which are being exercised, or which are likely to be exercised in the future. It also includes existing use rights but does not include the effects of resource consents which might be sought in the future, or damage or degradation from the exercise of unauthorised activities.

94. In this case the existing (legal) environment includes:

- The area of the site filled legally under the regional clean-filling consent previously held by Mr Daniel.
- The existing bunding and planting (in so far as they comply with Structure Plan requirements).

But does not include any of the illegal activities including 40,000m³ of filling at the western edge of the site, or the existing industrial activities operating from the site.

Permitted baseline

95. Pursuant to RMA section 104(2), the assessment of the environmental effects of a proposed activity may disregard any adverse effects created by permitted activities on the subject land. Application of the permitted baseline is discretionary. Rule 21.3.1 of the Operative District Plan 2012 sets out the permitted activities in other Industrial zones throughout the district. However, as previously noted, due to the rule framework of the Structure Plan for Te Puna Business Park, industrial activities cannot operate prior to the pre-requisite development requirements being fulfilled (or departures from them being consented).
96. As such, I conclude that there is no applicable permitted baseline for this application.

Actual and Potential Effects on the Environment - s.104(1)(a)

Landscape Character and Visual Effects

97. The subject site and surrounding landscape character and values is described in the application, most thoroughly in the Assessment of Landscape Effects prepared by Boffa Miskell. I generally agree with and adopt the descriptions, unless otherwise stated below.
98. The applicant has provided three landscape related documents, the most recent versions being:
- Further Information Attachment 3 – Boffa Miskell Landscape Effects Assessment (Revised)
 - Further Information Attachment 4 - Boffa Miskell Landscape Management Plan (Revised)
 - Further Information Attachment 5 - Boffa Miskell Landscape Management Plan Graphic Supplement
99. All three documents have been peer reviewed on behalf of Council by Mr Mansergh, a qualified and independent landscape expert. Mr Mansergh's review of the landscape proposal and effects is provided as **Attachment 7**.
100. Further, on 12 September 2023 selected site visits were undertaken at overlooking properties (selected from submissions that raised concerns about landscape effects) by Mr May, Mr Mansergh, myself, and Consents Officer, Nanci Butler. Mr Mansergh's peer review incorporates findings from this site visit, and I anticipate Mr May will also provide his own comments within his evidence.

Landscape Peer Review:

101. Mr Mansergh provides a review of Mr May's Landscape Effects Assessment (LEA) on pages 9-13 of his memorandum and concludes that the assessment is in accordance with best practice and meets the requirements of Schedule 4(2)(3)(c) of the RMA.
102. Key findings of Mr Mansergh's review are:

- i. While the proposed landscape mitigation plan is generally consistent with the Te Puna [Business Park] Structure Plan (TPSP) in terms of the general location of mitigation planting, differences exist in the configuration of the planting identified in the Landscape Management Plan (LMP) and that shown in the TPSP.
- ii. The key difference, which is most likely to influence the effectiveness of the proposed mitigation (when compared to that required by the TPSP) is the configuration and depth of planting identified in the cross sections contained in Section 7 – Structure Plans of the ODP (Figure 2 below). The cross-section contained in the TPSP shows a planted depth of 10m is required around the perimeter boundary of the TPSP area. The LMP only shows planting to this depth along the northern (Te Puna Station Road) and eastern boundaries of the site. The depth of planting along the southern boundary is inconsistent with the requirements of the cross-section, where the LMP identifies a 50%/50% mix of *Pittosporum crassifolium* and *Pittosporum eugenioides* at 2.5m spacing along the boundary.
- iii. The TPSP requires a 10m wide band of planting comprising of 5 x rows of plants (1 x row of native evergreens such as kahikatea, rimu and/or pukatea; 2 x rows of exotic shelter such as poplar (*Populus* sp.), sheoak (*Casuarina* sp.), alder (*Alnus* sp.) and/or gum (*Eucalyptus* sp.); and 2 x rows of native shrubs such as manuka (*Leptospermum scoparium*), flax (*Phormium* sp.), hoherea (*Hoheria populnea*) and/or mapou (*Myrsine australis*).
- iv. Other differences, such as the use of alternative species, are less likely to impact the effectiveness of the proposed planting from an external mitigation perspective; if they are similar in size and form.
- v. The applicant (Mr May's) conclusion that the Landscape Management Plan (LMP) addresses landscape effects such that "*upon completion and establishment of the proposed LMP planting visual effects experienced by viewing audiences of the site when fully occupied by industrial activities are expected to be broadly in line with the level of effects expected by the provisions of the TPSP*" resulting in a landscape effect ratings of 'low adverse' and a visual effect rating of 'neutral to very low' is critiqued by Mr Mansergh as follows:

"In my opinion, while the above effect ratings are supported by the analysis contained in the LEA, they appear to rely on the proposed mitigation being fully established within the site. There is no analysis of the temporary effects, which are likely to be of a magnitude higher until the existing and proposed screen planting reaches sufficient height to substantially screen the activities within the site from the more elevated view locations. The LEA and LMP do not identify how long it will take for this to occur. In my opinion, the screen planting will need to reach a height of around 6m and achieve closure before the above effect ratings will be achieved". In his findings, Mr Mansergh then concludes (and after having undertaken adjacent property site visits), that "*In the interim, the temporary effects are likely to be one rating level higher on the that identified in the LEA (i.e. very low would go to low when rated using the table in Figure 3)*".
- vi. Mr Mansergh also identifies the following gaps in the LEA:
 - a. Analysis of the aesthetic values associated with the appearance of the existing activities within the site (for which consent is being sought) and how these affect the surrounding landscape character and visual amenity values. This includes the comparative analysis of the uses and types of development considered by the Court and TPSP with the activities currently on site.
 - b. The effects of non-compliance with the reflectivity requirements of the District Plan. This includes the colour of the swimming pools stored within the site.
 - c. To meet the apparent intent of the TPSP and the direction of the Environment Court, the existing planting on-site needs to be further supplemented by the planting identified in the LMP, and with additional planting along the southern (external) boundary of the site.

Planners Conclusions on Landscape and Visual Effects

103. In the main I concur with Mr Mansergh's conclusions, including that:
"The landscape immediately surrounding the TPSP area is predominantly rural and, if the site is mitigated to the levels required by the Structure Plan, and if the sites were maintained in a tidier and more ordered manner, the proposed activity will not have a significant effect on the surrounding rural character and associated amenity. The structure plan does not appear to require the total screening of all activities within the site, and it is expected that the development for which consent is sought (and future development within the site) will still be able to be experienced from some surrounding locations. In my opinion, given the underlying zoning for the site, this is not unreasonable and appears to have been recognised by the Environment Court in Paragraph 16 of the interim decision".
104. A common theme of submissions is that the types of industrial activity proposed to continue at the site fall short of what the community anticipates for Te Puna Business Park, and many liken it to a 'dump' or describe it as an 'eyesore'.
105. Conversely, the applicant stresses that outdoor storage and depots are listed as permitted activities within the industrial zone, and many of the supporting submissions also emphasise this point.
106. The applicant also concludes that:
"Provided that the proposed planting outlined within the LMP is implemented as instructed and developed through the three-year maintenance period the proposed mitigation planting will meet the requirements set out in the TPSP and allow for the accommodation of additional industrial activities to occupy the remaining lease areas. It is considered that any adverse landscape character or visual effects will be reduced to be broadly in line with those expected after the implementation of the TPSP and these will not contravene the relevant statutory provisions." (pg. 21, LEA).
107. While I agree with the applicant that depot and outdoor storage activities are permitted in the Industrial zone, they are not permitted as of right in the Business Park until all the Structure Plan requirements are fulfilled. In my opinion, the pertinent consideration with regard to landscape or visual effects, is the overall or cumulative effect on visual character that results from commencing depot/outdoor storage activity ahead of completing the development works, and in particular, before the proposed supplementary (infilling) planting reaches sufficient heights to provide effective screening.
108. For these considerations, 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).
109. I consider based on the advice provided by Mr Mansergh that the effect of the existing non-compliances with landscaping is unlikely to be fully mitigated within the two year consent term. As noted by Mr Mansergh, the effects ratings provided by the Applicant relies on the proposed mitigation being fully established within the site (which is unlikely to occur within the two year term of consent), and the Applicant's assessment does not address the temporary effects in the interim. Mr Mansergh considers that the temporary effects are likely to be 'low'.
110. Should the Commissioners be minded to grant the consent, and based on Mr Mansergh's review and recommendations I have provided possible conditions of consent to be imposed to mitigate visual effects to an acceptable level (**Attachment 10**), summarized as:
- Provision of a detailed landscape implementation plan (LIP);

- Planting to be implemented within six months.
- Shade cloth screen (6m in height) alongside Compass Pools and Earthmover Tyres.
- Maintenance and protection conditions.

111. Overall, I conclude that the landscape and visual effects are **no more than minor**.

Traffic and Access Effects

112. The local transport environment is described in detail within the Transportation Assessment Report prepared by Harrison Transportation, dated February 2023, and with additional commentary in the s92 further information (Transportation Assessment – Added information 12 May 2023, and 30 May 2023 (**Attachment 1**).
113. The key issues raised in submissions that relate to traffic can be summarized as concerns regarding safety, largely at the Te Puna Road / Te Puna Station Road intersection, and along Te Puna Road due to the width being undersized for the volume and type of traffic. Concerns were also raised about the use of Clarke Road.
114. The applicant considers that the effects of traffic from the proposed operation of the site for the four tenancies are less than minor, and this is largely based upon the traffic generation. Mr Harrison provides at Section 8 of his Assessment that the activity generates 25 Average Daily Traffic (ADT) movements, with 60% heavy vehicles.
115. Tracking curve and on-site parking plans have been provided by the applicant (first s92 response at **Attachment 3**) for the internal site movements by trucks (and parking) and this confirmed that this aspect is compliant.
116. The site accessway is proposed to be upgraded to a modified Diagram D (without opposite widening), which does not meet the District Plan requirement. Mr Harrison has provided an updated assessment of whether omitting the widening could result in crashes in his 2nd s92 response dated 30th May 2023. In this he relies on the continued closure of the eastern end of Te Puna Station Road due to the slip at Pukewhanake Pa. Whilst this was a relevant consideration at the time, Council has since recommended (but not yet decided) that the road be opened to one way (east-bound) traffic. As such, Mr Harrison's conclusions will likely require some revision in his evidence.
117. Mr Harrison has provided tracking curves for the site accessway (with modified Diagram D upgrade) in his 2nd s92 response dated 30th May 2023. This demonstrates that a 17.0m long truck/trailer unit turning right in and left out can perform this movement in one continuous forward motion without crossing Te Puna Station Road centerline.
118. Regarding the intersection of Te Puna Road / Te Puna Station Road, and after Council request to provide tracking curves, Mr Harrison has assessed (2nd s92 response) that this intersection (actual environment) does not cater for trailers to perform the right turn manoeuvre into Te Puna Station Road without crossing the centreline. As such, he has recommended a change to the paint markings to accommodate the tracking curve⁵.

Summary of Development Engineer and Westlink Referrals Comments

119. The Transportation Assessment provided by the applicant, and the further information provided in response to the section 92 RMA request from Council has been reviewed by Council's Transportation team, and Westlink (being the entity contracted to maintain Council's roads). The transportation matters have been reviewed by Callum McLean, Senior Transportation Engineer for Council, and Justine Wilton, Senior Traffic and Safety Engineer for Westlink (on behalf of Council). I will cover their review comments as discreet topics below.

⁵ Stratum Consultants Drawing no. 423022-CIV-D001, Rev A, dated 11.05.2023.

Te Puna Road / Te Puna Station Road Intersection

120. Mr McLean re-caps / interprets the District Plan requirements as follows:

- i. Section 12.4.16.2.b of the District Plan requires that Prior to commencement of any industrial or business activity on the Te Puna Business Park land, the Te Puna/Te Puna Station Road intersection must be upgraded to include provision for left turn and right turn movements or similar traffic management alternatives.
- ii. Section 9.3 of the applicant's Transportation Assessment (v1) states:
"While there is no right turn bay on Te Puna Road, Council has confirmed that the intersection has been upgraded in accordance with the requirements of the Structure Plan."
- iii. Right turn bays are primarily safety treatments that operate by removing potentially stationary turning drivers from the through traffic stream in turn reducing the potential for 'rear-end major road' crashes and 'overtaking-intersection' vehicle crashes (where a vehicle turning right is hit by an overtaking vehicle).
- iv. The need for a right turn bay on Te Puna Road was first identified by the applicant's former transportation expert, Ian Carlisle who noted in his Statement of Evidence to the Private Plan change Hearing in 2003:
"I have identified several existing deficiencies with this intersection including poor sight distance to the south; left turn into Te Puna Road is steep and tight for heavy vehicles; and lack of turning space for right turn from Te Puna Road. 32. The following upgrade works are proposed to mitigate the impact of the proposed development on this intersection:
 - *Installation of right turn bay from Te Puna Road. This feature will mitigate the impact of additional right turning traffic at this intersection and less than desirable sight distance to the south.*
 - *Installation of left turn bay from Te Puna Road.*
 - *Widening of intersection to accommodate the turning path of heavy vehicles.*
 - *Re-grading of Te Puna Road profile (for left turn out of Te Puna Station Road)."*
- v. Mr Carlisle also proposed the following plan change provision:
"To mitigate the impact on the Te Puna Road/Te Puna Station Road Intersection: Prior to commencement of any land use activity on the Industrial Business Zone land, Te Puna/ Te Puna Station Road intersection must be upgraded to include provision for left turn and right turn movements or similar traffic management alternatives."
- vi. Mr McLean states *"I do not agree that the Te Puna Road/ Te Puna Road intersection has been upgraded in accordance with the requirements of the Structure Plan because a right turn bay has not been constructed on Te Puna Road as originally recommended by the applicant's former transportation expert."*

121. I concur with this interpretation.

122. As noted, above, the applicant proposes to address intersection deficiency for large trucks/ wide loads with a change to the paint markings.

123. However, Mr McLean considers the safety risk (in accordance with Waka Kotahi's Safe System Audit Guidelines – Road to Zero, July 2022) at this intersection to be Serious, and with the crash probability being 'likely'. This means that a side impact collision at a speed limit of 50 km/hr would have a 10% chance of a fatality. A Serious risk is classified as presenting:

- High or medium speed vehicle/vehicle collision
- High or medium speed collision with a fixed road-side object
- Pedestrian or cyclist struck by a vehicle.

- Injury (fracture, concussion, sever cuts or other injury) requiring medical treatment or removal to and retention in hospital.

124. Ms Wilton agrees with this assessment and considers the proposed paint marking mitigation to be unsatisfactory. Ms Wilton recommends that a right turn bay (or similar treatment) be installed within Te Puna Road to provide safe stacking for right turn vehicles and intersection adjustments made for vehicles waiting to turn right out of Te Puna Station Road.

Site Accessway / Intersection

125. Mr McLean has reviewed the proposed modified Diagram D proposed upgrade (without opposite widening), and makes the following comments:

- i. Section 12.4.16.2.d.ii of the District Plan requires that:
“Prior to the commencement of any industrial or business activity in the Business Park land, access from the land onto Te Puna Station Road must be formed for traffic safety reasons up to and including compliance with Diagram D “Moderate Use Access Standard” from the Transit Planning Policy Manual at the direction and to the satisfaction of Council’s Group Manager Infrastructure Services.”
- ii. Section 10.3 of the applicant’s Transportation Assessment (TA) and the s92 responses suggest that a lesser standard of entranceway is appropriate because:
“...the traffic generation of the existing activities within the site is very low”.
- iii. Section 8 of the TA estimates the traffic generated by the existing activities to be 25 vehicles per day (vpd) and that 60% are heavy vehicles and 40% are light vehicles. When vehicle factors are applied in accordance with section DS4.2.4 of Council’s Development Code, this equates to between 100 and 250 passenger car equivalents.
- iv. Appendix 5B.3 of the Waka Kotahi Planning Policy Manual specifies:
“As for accessway spacing, accessways that are likely to generate 100 or more ecm/day, or have peak hour flows of 20 or more ecm/hr, will normally be treated as intersections for the purposes of accessway safety and will generally be required to comply with the intersection design standards contained within the relevant Austroads guides, which are listed in the draft SHGDM.”
- vii. The joint witness statement of transport experts⁶ records that:
“The experts agree that access design shall be in accordance with Waka Kotahi’s current “Planning Policy Manual for Integrated Planning and Development of State Highways” (or its successor) for the traffic conditions that will exist on TPSR at the time that the vehicle access is formed, or otherwise as agreed with Council. It is anticipated that the form of the intersections will be T intersections.”

126. Mr McLean considers the safety risk (in accordance with Waka Kotahi’s Safe System Audit Guidelines – Road to Zero, July 2022) at the site accessway / intersection to be Serious, with the crash probability being ‘unlikely’. This means that a side impact collision at a speed limit of 80 km/hr would have a 100% chance of a fatality. Therefore, Mr McLean does not consider that the modified Diagram D to be appropriate for the volume and type and traffic accessing/egressing the site.

127. Ms Wilton agrees with this assessment, and while she notes that *“whether a crash is ‘unlikely’ or ‘likely’ is somewhat subjective (and this is indeed a judgement call that Safe System Auditors have to make for the purposes of calculating scores when comparing options in an audit), due to the speed and presence of HCVs on the route and at the site, a high trauma outcome would be reasonably expected”.*

⁶ Joint Witness Statement on Transportation, ENV-2022-AKL-000189, 9 February 2023.

128. In Ms Wilton's expert opinion, Mr Harrison's assessment on the opposite widening does not adequately address the question of whether omitting the widening could result in crashes, and underestimates through traffic as it assumes the eastern end of Te Puna Station Road will remain closed.
129. Ms Wilton's concerns around the omission of opposite widening are that *"if any following drivers are distracted and don't notice the slowing/stopped traffic ahead, there is no safe evasive manoeuvre space. It also means that anyone wanting to turn right has no option but to stop in the traffic lane irrespective of the line of traffic behind them and/or the speed of vehicles approaching from behind. This is why all standard access layouts for sites with heavy vehicles, or with high site volumes (ie more than 100 ecm/day) have localised widening to varying degrees"*.
130. Further, Ms Wilton considers 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."*

Safety effects from Lack of Sealing

131. Mr McLean has raised road safety concerns regarding the non-sealing of the internal private way, parking and loading areas. The applicant's position on this matter is:
132. *"Given the activities have been operating for some time and there have been no known dust complaints made it is not considered that dust is or has been an issue. This is due to the low number of vehicles required for the activity and the low-speed environment of operation within each of the lease areas and the internal access road. Dust control can be managed via water application if required to mitigate dust."*(s92 response).
133. Mr McLean, however, considers that *"The applicant has not considered that the metal pavement contains fine material that binds to vehicle tyres when wet, and that this material is deposited on Te Puna Station Road when the vehicles leave the site (see example in attached picture [Figure 5 below]). This can have the effect of reducing the macrotexture of the road surface causing vehicles to lose traction, reducing their braking ability. If water is to be used for dust suppression the applicant must clarify what measures will be implemented to remove deleterious material from vehicle tyres before they exit the site."*



Figure 5: Image of loose gravel and sediment tracked onto Te Puna Station Road at the site entrance.

134. Mr McLean has then assessed the safety risk (safe system audit guidelines) on this point as unlikely but potentially fatal, and overall a serious risk. This is partly because research indicates that crash risk exponentially reduces with increase in skid resistance. Further, if a vehicle does get into a skid or slide on Te Puna Station it is likely that it would crash into one of the roadside drains.

Other transport effects

135. Ms Wilton has also provided expert comments on the matters raised in submissions regarding use by trucks of Clarke Road, and whether the applicant proposes a Travel Management Plan.
136. Regarding Clarke Road, she does not consider this to be a suitable route for heavy vehicles (and this is evident already by the Structure Plan requirement for traffic calming which has been completed); however notes that “it is difficult to prevent the applicant’s traffic from using Clarke Road since it is open to the public and the monitoring required to enforce any route choice could be quite onerous (although it is worth including as a condition...). She notes that additional measures may be required of Council for example, closing Clarke Road at the Te Puna Station Road end, or introducing a Bylaw banning heavy vehicles. Ultimately, she recommends that the applicant should provide a Travel Management Plan that describes travel routes for the heavy vehicles and for the staff light vehicles, and excludes Clarke Road as a permitted route.
137. On the matter of the required intersection upgrades at State Highway 2 / Te Puna Road intersection, Ms Wilton has provided expert commentary on the unsuitability of any proposal for light vehicles travelling to the site, to use the Wairoa Bridge underpass. However, as the most likely scenario is that only outbound movements will be available (with the recommended re-opening of Te Puna Station Road to one lane south-bound), it looks unlikely that this will become an issue.
138. In any case, I do concur with Ms Wilton that use of the underpass would generate unacceptable effects, and as such, I recommend a consent condition that requires all in-bound traffic going to the Business Park to go via Te Puna Road.

Planners Conclusions on Traffic Effects

139. 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.
140. Overall I accept the expert advice from Council’s traffic experts, and conclude that the serious safety risk at this intersection is not adequately mitigated within the application, and therefore the effect of not upgrading this intersection is unacceptable.
141. This opinion is further solidified by the fact that this intersection was identified as being deficient in 2003 when traffic volumes were lower and based on an assumption of 25% heavy vehicle use⁷. However, today’s traffic environment has substantially more traffic, and the applicant’s heavy vehicle generation is 60%. Moreover, due to the Te Puna Station Road slip, it seems likely that all in-bound vehicles will now need to travel via this intersection.
142. Therefore, this intersection is under substantially more pressure than it was at the time of the original decision, when it was already identified as deficient and the rule introduced requiring the right turn bay. I consider, based on the assessment provided by Mr McLean and Ms Wilton that the requirement to upgrade this intersection prior to commencement of any industrial activity is warranted for this consent application.
143. However, the difficulty with requiring this upgrade as part of a consent with a two-year duration, is that practically, the upgrade would take some time to implement (survey, Geotech testing, design, consents, and then construction). Based on my experience as a

⁷ Evidence of Ian Carlise, 27 May 2003, see Attachment 11.

consultant planner having worked on roading upgrade consenting projects, a realistic timeframe for implementation is one to two years.

144. This then presents a conundrum in that imposition of a consent condition requiring this upgrade (or payment towards) will not mitigate the effect for or within the duration of the consent. Although the applicant's intent is that the industrial use of the site would become permitted once the first (Development) and second (Bulk Earthworks) applications are granted, there is no guarantee that the non-complying resource consent applications would be granted, and even if they are granted, that they would not be appealed.
145. This then begs the question, on whether the generation of the traffic safety effect at this intersection (with proposed adjustment to paint markings) for a two-year (short-term) duration could be accepted as a practicable short-term alternative. That is a decision for the Commissioners after hearing all the evidence. However, based on the assessments provided by Mr McLean and Ms Wilton, I would not consider such measures to be adequate to address the transportation and safety risks.
146. On the issue of the site accessway, and omission of the opposite widening, again I have fully considered the applicant's technical assessments but prefer the assessments provided by Council's traffic experts, and conclude that the serious safety risk at this site accessway is not adequately mitigated within the application, and the effect is one of low probability but high consequence.
147. On the matter of potential loss of control or skidding due to loose gravel and sediment tracking onto Te Puna Station Road, I do acknowledge that the applicant does propose to seal just the entranceway, hence the effects concluded by Mr McLean may be over-estimated. However, there will still be potential for tracking of materials from further within the site due to the internal roadway / privateway not being sealed, nor parking and loading areas. I consider this effect could easily be mitigated by imposition of a condition requiring sealing of the a length of privateway. However, I do not have any expert opinion on how long this sealing should be to adequately mitigate the effect and invite such opinion in the hearing.
148. On the matters of Clarke Road and the Wairoa Bridge underpass, I recommend a consent condition requiring a Travel Management Plan which stipulates that all vehicles must travel to the site via Te Puna Road, and shall not go to or from the site via Clarke Road
149. Although the concerns raised in submissions about cyclist and pedestrian safety are valid, I consider it impractical at this time to address this within this application. That is because an integrated and combined cycle-path and walkway would only be possible after drain relocation and road widening plans have been developed and approved by Council. This is an effect that will be considered and will need to be addressed by the first application from Tinex Group, and by the other two landowners in the Business Park. For now, the risk to pedestrians and cyclists is unmitigated. I am unable to draw any conclusion on the degree of this effect as I have not received any expert traffic opinions on this topic. The applicant may wish to present a response on this point in their evidence.
150. In summary, I consider that the effects of debris tracking, and travel routes/Clarke Road can be mitigated with imposed consent conditions.
151. However, the applicant has not addressed the significant issues of the site accessway, nor Te Puna Road / Te Puna Station Road intersection, and pedestrian/ cyclist safety. Without concept plans for more acceptable solutions, it is difficult to reach a conclusion on the possible acceptable alternatives that could be conditioned. These effects were already canvassed and decided upon for the original private plan change, and rules created to address the deficiencies in these roads that existed back in 2005, yet the roading environment is now under more pressure.
152. Without the effects at Te Puna Road/ Te Puna Station Road intersection and at the site accessway being adequately mitigated, my conclusion is that traffic safety effects are **more than minor**.

153. The applicant has not proposed any reticulated infrastructure over and above what already exists (i.e. a single low flow water connection). I have assessed the effects of this below.
154. It is worth highlighting that the limited availability of services at these tenancies likely limits the type of activities or tenants that the site can be leased to. All of the existing uses are outdoor storage and/or depots, used for storage, renovation or recycling, and distribution of goods. These have low office and staff needs and can operate without permanent buildings.

Water

155. There is an existing 100mm diameter water main located within Te Puna Station Road reserve. The site already has a 20mm connection to this pipe, which provides a low flow rate. WBDC asset engineering previously confirmed that this does not provide the capacity to deliver the required volumes and flow rates for fire fighting. An upgrade of the pipeline to 150mm diameter minimum would be required.
156. The application originally proposed that instead of an upgrade, water is stored in tanks on site. Council's Infrastructure Water Engineer Paul van de Berg provided referral advice on RC13474L (the applicant's first application) as follows:

"The application states that from previous discussions with Western Bay, we had advised the existing water infrastructure (water mains in Te Puna Road, in particular) do not have the capacity to deliver the required volumes and flow rates for fire fighting. Therefore for this level of service, the network would need to be upgraded. The alternative the applicant has identified in the application is to construct 'on-site water storage' sufficient to meet the fire fighting requirements. Therefore the water supply network would not require upgrading for this reason alone. I have no problem with that solution."
157. I consider this advice to be directly applicable to this application also and did not seek further comment from Mr van de Berg.
158. The applicant has committed in its AEE to comply with the requirement of rule 12.4.16.5.b for water financial contributions (based on net developable area).
159. At Question 37 of the further information request, I requested confirmation of the size and quantity of tanks and how this will meet the NZFS requirements for firefighting supply. The first s92 response (**Attachment 3**) responded that "*one tank can be installed for each activity area, if they require a significant volume for potable water supply, however based on the level of activity and staff numbers this is not required. The applicant has previously discussed fire fighting requirements with FENZ, and it was advised that water could be taken from the roadside drain or the nearby Wairoa River in a fire appliance should it be required*". However, no written evidence of this response from FENZ was provided.
160. The application includes one tenancy that stores large earthmoving tyres up to a maximum proposed volume of 100m³. It is commonly known that tyre storage presents a fire risk, and Mr Crossan points out that FENZ guidelines recommend that no more than 360m³ of tyres be stored in a single area (1st s92 response, q. 10). I am uncertain what guideline Mr Crossan refers to.
161. However, the Firefighting Water Supplies Code of Practice (SNZ PAS 4509:2008) classifies tyre stockpiles as a special or isolated fire hazard⁸.
162. While I accept that due to the low staff numbers a stored water supply is not necessary for potable water needs, the potential effects from non-compliance with rule 12.4.16.5.a with regards to firefighting supply are not well established, and I have no evidence that they will be avoided, remedied or mitigated.
163. I don't consider this fatal to the proposal, as any residual risk or effect can be adequately managed with an imposed consent condition requiring written confirmation from FENZ that the activity meets the requirements of the latest version of the Firefighting Water Supplies Code of Practice. With this condition imposed it is my opinion that effects from non-

⁸ <https://fireandemergency.nz/assets/Documents/Files/N5a-SNZPAS-4509-2008-NZFS-Firefighting-water-supplies-Code-of-practice.pdf>

compliance with the ODP water supply requirement will be **no more than minor**.

Wastewater

164. The site does not have a wastewater connection, and Council has previously advised the applicant that there is no capacity remaining in the pipeline within Te Puna Station Road.
165. As such, the applicant proposes to provide wastewater servicing with portaloos at the tenancies who have staff regularly on site. The applicant suggests that the alternative of installing on-site effluent systems is not practical due to a high groundwater table.
166. I accept that for short-term (two year) duration, and due to the nature of the activities generally being low occupancy (compared to other industrial landuses), as well as the distance from these tenancies to the nearest residential dwelling meaning that risk of odour nuisance is very low; that provision of wastewater by portaloos at each tenants choosing is practicable.
167. I find the effects of wastewater servicing to be **no more than minor**.

Stormwater

168. The applicant does not propose any stormwater infrastructure. The reasoning provided is that the industrial activity generates minimal additional runoff from impervious surfaces compared to the runoff that is generated from the existing environment.
169. The existing environment in this context includes the legally established filled land (that was carried out under the applicant's former regional earthworks consent) inclusive of 3.8ha of metalled yard; and the earth bunds and roadside drains. I concur with this existing environment assessment.
170. The applicant's stormwater engineer Mr Bos has confirmed (by further information) that "*all internal site flows generally pass to the north and either discharge through pipes installed through the main northern site bund, or around the main vehicle entrance where the water tables are formed to drop into the existing main road drain*" (s92 response 31 May 2023).
171. The overland flows are shown in Figure 6 below.
172. Mr Bos has calculated the average impervious area of the relocatable homes and stored pools on site as 1275m². He concludes that the effective increase in runoff is approximately 0.04%.
173. Mr Bos summarises that runoff will disperse to ground, and may eventually make its way via overland flow to the road side drain. However, he considers that compared to the exiting environment, the effects from additional flows will be less than minor.
174. Mr Bos has not provided any assessment regarding potential effects on water quality, and I understand that this was not part of his brief.
175. The applicant's planner, Mr Crossan, has provided further information regarding potential for contaminants from the proposed activities (2nd s92 response). This can be summarised as follows:
 - i. Tyre Storage – due to the compliance with the NES -Tyre Storage, and the short duration each tyre is on site, the risks of contaminants from runoff from this tenancy would meet the NES and therefore meet environmental guidelines.
 - ii. Relocatable Dwellings and Building Renovations – there is no sanding, painting or any activity that would disturb roof paint or lead based paint at Total House Relocations. At A&J Demolition, they do undertake renovation of buildings periodically. No sanding or paint stripping is undertaken, and cladding / wall sheets are removed whole in accordance with asbestos guidelines. A & J Demo are licensed asbestos contractors. Rooves and washes and then painted on site.
 - iii. There are no known contaminant leachate risk from the stored pools and no maintenance to these structures occurs on site.

- iv. Overall Mr Crossan considers that the immediate receiving environment being the roadside drain, is likely to already be polluted by hydrocarbon residues from road runoff, the effects of the site activities are no greater than road runoff. Mr Crossan suggests that if effects on water quality are a concern, Council may require monitoring at the two pipe outlets to the roadside drain.

Referrals Comments on Stormwater

176. The stormwater aspects have been reviewed by Samuel Olatunbosun, Senior Development Engineer for Council.
177. Mr Olatunbosun concludes that:
 - i. The current report prepared by Stephen Bos is acceptable. The assessment solely focuses on stormwater (**SW**) volumes generated (runoff) and concludes that the increase in SW runoff (generated by the current industrial activities) is effectively 0.04% and therefore any effects on the surrounding environment is “less than minor”. The assessment aligns with industry best practice standards and relevant guidelines.
 - ii. The current letter prepared by Shae Crossan to assess SW quality effects is not acceptable. We expect that an assessment be provided by a chartered professional stormwater engineer or water quality scientist.
178. I have also received referral comments from Bay of Plenty Regional Council, in regard to stormwater as follows:

“BOPRC still has concerns in relation to tyre storage and stormwater discharge. The storage of tyres and other material outdoors has the potential to discharge contaminants that can be mobilised during storm events. In this regard the applicant has stated that all stormwater discharges to ground storage. However, the property is prone to flooding, so stormwater has the potential to discharge off site.”

Planners Conclusions on Stormwater Effects

179. I accept the conclusions drawn above regarding stormwater quantity, and that those effects are less than minor.
180. Regarding potential effects on stormwater quality, I conclude that the applicant’s proposal to have no collection or treatment is unlikely to avoid, remedy or mitigate potential adverse effects. This is due to the following reasons:
 - i. The District Plan rules require improvement [my emphasis] of stormwater quality from developments;
 - ii. The Structure Plan clearly required a stormwater treatment system to be in place prior to the commencement of industrial activities;
 - iii. The applicant does not propose to seal the private way, parking or loading areas. This in combination with the lack of any kerb/channel, catch pits, swales or other collection and treatment devices means the risk of sediment laden runoff to the road-side drain and the Hakao Stream beyond, is unmitigated;
 - iv. I am familiar with normal industrial site standards for managing risks of contaminants entering waterways, due to my 8 year’s experience processing and undertaking compliance work for industrial sites (including transport and storage depots). In my professional opinion, the proposed industrial use of the site falls well short of good practice for stormwater quality management at industrial sites, including for managing risk of hydrocarbons from heavy vehicles, and management of spill risks (from stored paints, tyres, and activities involving asbestos etc). At minimum I would expect to see tyres stored on a concrete pad with concrete edge nib, and runoff would not be allowed to directly enter a water body without an interceptor of some kind.
 - v. I have no certainty that the runoff will comply with the Regional Plan stormwater

discharge rules, particularly with regard to sediment. I have also received referral comments from BoPRC expressing the same.

- vi. The receiving water body, being the Hako Stream and then the Wairoa River, provides habitat to longfin eel, giant kokopu and freshwater mussels. It is also a tupuna of Pirirakau.
 - vii. The lack of a stormwater quality management system is contrary to the effects hierarchy of the National Policy Statement for Freshwater Management (refer to Policy assessment in section 14 below).
181. Overall, I am unable to determine with robust quantification the degree of effects on freshwater because the applicant has not provided assessment by a qualified stormwater quality expert.
182. Based on the above, I find the effects on stormwater quantity to be **no more than minor**.
183. However, on stormwater quality, and at the time of completing this report **I am unable to draw any conclusions** on degree of effects due to insufficient information. I will update my conclusions at the hearing if further information is provided by the Applicant.

Power, Telecommunications and Internet

184. The site does not have existing power or telecommunications connections, and none are proposed. I understand from evidence presented by existing tenants in the Environment Court (ENV-2022-AKL-000189) that some power is obtained by small solar panels, telephone and internet by the mobile network.
185. I note that because the ODP does not envisage commencement of industrial landuse ahead of subdivision and development being undertaken, and the Te Puna Business Park Structure Plan is silent on the provision of reticulated power / telephone / internet utilities, there is no rule for this proposal that strictly requires connection to such utility services.
186. Nevertheless, I accept that for short-term (two year) duration, and due to the nature of the activities meaning there is a low number of staff on site, and the activities generally being low power users (compared to other industrial landuses), that provision of electricity by solar panels at each tenants choosing is practicable.
187. Similarly, for telephone and internet, I accept that with today's mobile technology, which is reasonably reliable, there is no practical need for reticulated services, particularly given the two-year consent duration proposed.
188. I also note that the substantive development application (RC13474, or the 'first application') can address this matter as necessary with respect to longer-term or permanent industrial landuse.
189. I find that the effects of alternative means of utility services are **no more than minor**.

Earthworks, Construction and Natural Hazards Effects

190. As previously outlined, the applicant has recently identified that the proposed accessway culvert upgrade will require over 100m³ of cut/fill within the floodable area, triggering earthworks consent. No geotechnical information has been submitted for this area of works.
191. The culvert upgrade has potential to generate changes to existing flood levels at down-catchment property, in a catchment that is hydrologically sensitive.
192. Further information in relation to earthworks and the culvert upgrade has been requested and will be provided at the hearing. I reserve my opinion on the effects from these earthworks and culvert upgrade, but do recommend that submission of a Construction Methodology inclusive of Erosion and Sediment Control Plan is imposed as a condition of consent.
193. The accessway upgrade has potential to generate effects during construction. The applicant

has provided no details or assessment of the period of the earthworks and construction works will likely extend over, how alternative site access will be provided during this stage, or how disruption to road users would be managed. The applicant has not undertaken an assessment of effects in relation to potential amenity effects such as noise, traffic and access on adjacent properties and as such I cannot be satisfied as to the actual and potential amenity of construction effects.

194. Further, the proposed earthworks may yet trigger the need for other resource consents (NES-CS and/or regional consents). If that is the case, at this stage I consider such consent could be dealt with as a discreet matter separate to this application (subject to relevant conditions and/ or advice notes).
195. Overall, at the time of completing this report **I am unable to draw any conclusions** on earthworks, construction and natural hazards effects due to insufficient information. I will update my conclusions at the hearing if further information is provided by the Applicant.

Noise Effects

196. The operation of the industrial activities on site has potential to generate noise (and cumulative noise) that may exceed the ODP noise limits, if not carefully managed.
197. The applicant has provided expert acoustic assessment and a Noise Management Plan (NMP), as well as further information responses, all prepared by Styles Group (**Attachments 1 and 3**).
198. In summary, this assessment concludes that the activity can be operated to comply with the Industrial zone noise limits, subject to adherence to the NMP.

Peer Review comments on noise

199. The noise assessment has been peer reviewed by independent acoustic expert, Peter Runcie of SLR Consulting, on behalf of Council (included at Attachment 9).
200. I rely on Mr Runcie's assessment of the actual and potential noise effects in relation to the development including a review of the Acoustic Report and NMP provided as part of the s92 response.
201. Mr Runcie draws the following conclusions on methodology:
- SLR considers that the modelling approach, inputs and software are appropriate for this application. It is noted that the assessment does not include a 5 dB adjustment for special audible characteristics (SACs) as the proposal is for the Noise Management Plan to prevent the use of tonal alarms and manage noise from tailgate slams or loads being dropped from height.
 - The predicted noise levels are provided as noise contour graphics, as well as a table identifying specific noise levels for surrounding sensitive receptors.
 - The predicted noise levels comply with the Plan daytime and night-time noise limits at surrounding *Industrial* and *Rural/Residential* zoned land.
 - These results appear reasonable based on the inputs and methodology.
 - There is a risk that noise generated on the site could result in non-compliance if operation of the site is not managed effectively as new tenants arrive and/or new activities take place on the site. A noise management plan is proposed to manage such effects; SLR supports this recommendation.
202. Mr Runcie summarises that Section 5 of the Acoustic Assessment identifies and recommends the following key mitigation and noise controls:
- Existing 2 – 3 m high earth bunds along the southern and eastern boundaries (shared with 161 Clarke Road and 177 Te Puna Station Road respectively) and the northern road front boundary.
 - Tailgates on trucks must be operated with care not to create excessive noise

(slamming).

- Any mobile plant must be fitted with a broadband reversing alarm. The use of tonal reversing alarms (beepers) for these plant items will be prohibited.
- Implementation of a Noise Management Plan (NMP) to enable appropriate management of the operational noise levels associated with existing and future activities on the Site. A draft version of the NMP is appended to the Acoustic Assessment.

He considers the above to be appropriate mitigation measures to control noise effects to comply with the Plan noise limits, with the key component being a well prepared and followed NMP. The NMP would be required to be updated each time there is a change in activity on the site (this could be new activity associated with an existing tenant or new tenants).

203. Overall Mr Runcie concludes that through the adoption of controls as discussed above and in the recommended conditions below noise and vibration effects can be controlled to be reasonable and therefore satisfy the overarching requirements of Section 16 of the RMA.

204. He recommends three consent conditions if the consent should be granted, to cover maintenance of the earth bunds, required noise limits, and a condition related to the NMP.

Planners Conclusions on Noise:

205. In giving regard to the assessment above, and the recommendations from Mr Runcie, I am of the opinion that the noise effects can be adequately managed through appropriate conditions of consent to an acceptable level.

206. However, I recommend that the NMP be updated to remove all references to the ability to swap activities/tenants in and out as this could lead to confusion and compliance issues. The scope of the activity sought is to operate four tenancies (two relocatable home storage and renovation depots, one pool storage depot, and one tyre storage depot). The consent would not allow a change in activities or tenant types and this would trigger the need for a s127 variation under the RMA.

207. Overall, I am satisfied that the effects from noise are likely to be **no more than minor**.

Cultural Effects

208. There are no historic buildings or structures, significant trees or heritage features identified by the District Plan on this site. However the site is nearby Pukawhanake Pa site, and the area has cultural significance to Pirirakau hapu.

209. The applicant had previously consulted with Pirirakau Tribal Authority prior to lodging the application with Council. This is outlined in Mr Crossan's planning information (**Attachments 1 and 3**).

210. As part of Council's resource consent referral process, the application was referred to Pirirakau, Ngati Taka and Ngati Ranginui. Pirirakau and Ngati Taka both responded. No further referral comments were received.

211. During the submission period, Council received a supporting submission from Pirirakau Incorporated Society but which is conditional and included a confidential Assessment of Cultural Effects (PACE). This sets out the cultural context of the site, Pirirakau's role and structure as tribal authority with mana whenua, the relevant legislation and statutory cultural obligations, sets out how the Hakao Stream environment and former wetland have been modified over time, and a strong theme or message throughout the PACE is the desire for cultural and environmental restoration of the watershed (and its mauri).

212. The applicant has proposed the following conditions that reflect the conditions requested by Pirirakau within the PACE:

- (1) No less than five working days prior to undertaking any physical works the consent holder shall invite a representative of Pirirakau hapu on site to undertake cultural monitoring and karakia/blessing. Evidence of this invitation shall be kept and provided to the Western Bay of Plenty District Council within 48 hours of a request.
- (2) On discovery of any unrecorded sites of archaeological importance on site, work shall cease immediately, and the consent holder shall notify a Pirirākau hapū representative and the Western Bay of Plenty District Council as soon as possible.
- (3) If tuna (eels) are discovered on site during earthworks or within stormwater devices or treatment ponds, work in that area is to cease and a Pirirākau representative is to be contacted. The Pirirākau cultural monitor will arrange the removal and transfer of the tuna off the site into a safer habitat.

Advice Notes

- (i) *The applicant has undertaken to work with Pirirākau, WBOPDC and other agencies to facilitate cultural interpretation mediums in relation to the Hakao restoration cultural offset mitigation.*
- (ii) *The applicant has also undertaken to record Pirirākau recommended names of any newly created roads in accordance with the WBOPDC road naming policy.*

213. I support these conditions and, in my opinion, they reflect and honour the conditions requested within the PACE.
214. The only condition that is not captured is a request to rename the Business Park to Hakao Industrial Precinct. However, both Mr Crossan and myself consider that would be more appropriately addressed in combination with the other business park owners and Council, outside of this resource consent application. Ms Shephard may wish to comment on this at the hearing.
215. There are a number of submissions in opposition from individual members of Pirirakau hapu and from Ngati Taka hapu. These raise cultural issues related to environmental degradation, the lack of stormwater management, impacts on mahinga kai and taonga species, previous desecration of Pukewhanake Pa site and other areas of cultural importance, and reduction in mana.
216. While I support the Augier conditions proffered by the application in relation to the conditional support from Pirirakau Tribal Authority, I note that the suggested conditions do not appear to address all cultural effects raised through the submissions.
217. As determined above, we are yet to receive assessment of effects related to the construction at the accessway, and in my opinion effects from stormwater runoff on water quality are not adequately assessed or addressed in the application. I have concluded that the proposal is inconsistent with the NPS-FM effects hierarchy and the purpose of *Te mana o te Wai* (at section 9 below). In my opinion, the proposal falls short of adherence to the NPS-FW cultural principles of kaitiakitanga (stewardship), and maanakitanga (care and respect).
218. As such, and in spite of the conditional support from Pirirakau Tribal Authority, I find that the lack of stormwater treatment is likely to be inconsistent with mitigating cultural effects.
219. A number of other cultural submissions were received that raised other issues related to the wetland / OLFP, and the inconsistency of the application with what was envisaged. I assume we will hear evidence on these matters from tangata whenua in the hearing.
220. Overall, and at the time of completing this report **I am unable to draw any conclusions** on degree of cultural effects due to insufficient information. I will update my conclusions at the hearing if further information is provided by the Applicant, particularly on stormwater quality.

Archaeological Effects

221. An archaeological assessment has not been prepared for this application, as originally no earthworks were proposed. With the late addition of earthworks in and around the site accessway and roadside drain, this introduces potential archaeological effects as a relevant consideration.
222. I am aware from the referral comments provided from Gabrielle Rolleston (Pirirakau) in relation to the first application, there is reasonable cause to suspect that unrecorded archaeological sites could be encountered during earthworks in and around Te Puna Station Road. This is due to the Crown previously taking earth from an Urupa site at Pukewhanake Pa for building the road.
223. The applicant has proposed the following condition of consent to manage this:
- No less than five working days prior to undertaking any physical works the consent holder shall invite a representative of Pirirakau hapu on site to undertake cultural monitoring and karakia/blessing. Evidence of this invitation shall be kept and provided to the Western Bay of Plenty District Council within 48 hours of a request.
 - On discovery of any unrecorded sites of archaeological importance on site, work shall cease immediately, and the consent holder shall notify a Pirirākau hapū representative and the Western Bay of Plenty District Council as soon as possible.
224. I support these conditions, but alongside an advice note that in the case of any accidental discovery, the applicant shall also notify Heritage New Zealand. I find archaeological effects to be **no more than minor**.

Financial contributions

225. Financial contributions are payable under rules 12.4.16.2.e (Transportation – mid block) and 12.416.5.b. (water), if consent is granted.
226. The applicant has estimated the amount for transportation as follows: Transportation – 1.56ha x \$50,043.47 = \$78,067.80 + GST. The intent of this contribution is that it goes towards Te Puna Station Road widening.
227. The applicant has sought a departure from the payment of the required water contribution (this was conveyed to me by Mr Crossan in a meeting to discuss consent conditions held on 14th September 2023). Mr Crossan will elaborate on this within his evidence I presume, and until then I reserve my opinion on this matter.

Positive Effects

228. Almost all the submissions in support of the application were in relation to the economic benefits of the proposed continuation of the site for these activities.
229. Positive effects do not pertain to the specific assessment criteria, however these are still considered relevant with respect to how the proposal aligns with the vision for the Business Park. I consider the following to be positive effects:
- Employment opportunities and growth
 - The ability to use industrial land, that is in short supply

10. SUMMARY OF EFFECTS

230. In considering the above assessment on the actual and potential effects I consider the proposal will or is likely to have adverse effects on the environment that are no more than minor, and more than minor.
231. Those effects which are more than minor are transportation safety effects as outlined above.

232. I consider that the following effects are no more than minor, some of which can be mitigated to an acceptable level subject to appropriate conditions of consent.
- Landscape and visual effects
 - Noise effects
 - Servicing effects (other than stormwater)
 - Archaeological effects
233. I have reserved my judgement on the following effects due to lack of information at this stage.
- Effects from stormwater quality
 - Cultural effects
 - Effects from earthworks and construction, and on natural hazards (hydrological).
 - Financial contributions
234. On balance I find that I am unable to draw an overall conclusion on the actual and potential effects of the proposal. As such, I am also unable to determine whether the proposal passes the first gateway test of s104D(1)(a) of the RMA, i.e. effects that are no more than minor overall.

11. OBJECTIVES AND POLICIES OF THE OPERATIVE DISTRICT PLAN

235. As a non-complying activity, consideration must be given under s104D as to whether the proposal is 'contrary to' the relevant objectives and policies in the Operative District Plan. It is notable that there are no Objectives and Policies for the Business Park itself or Structure Plans within the ODP. Objectives and Policies of the Plan must also be 'had regard to' under s104(1)(b) RMA.
236. Under each clause I have indicated beside an arrow whether I have concluded consistency or not, and provided reasoning where relevant. My understanding of the case law relating to 'contrary to' in the context of s104D RMA is that it is not to be given a restrictive definition; it contemplates being opposed to in nature; different or opposite to. It is not necessary for the proposal to actually cut across or contradict objectives or policies before it can be said to be contrary to. However, whether the proposal is overall 'contrary to' the objectives and policies requires more than just isolating out one or two policies; the question is whether the activity is, as a whole, and in principle, opposed or repugnant to the objectives and policies (see *Kuku Mara Partnership v Marlborough District Council* W025/02; *Clearwater Mussels Ltd v Marlborough District Council* [2016] NZEnvC21).

Industrial Zone

237. The relevant objectives and policies within Section 21 (Industrial Zone) are as follows:

21.2.1 Objectives

1. *The efficient and optimum use and development of industrial resources (including land and buildings/structures) in a manner which provides for the economic well being of the people living in the District.*
 - Generally Consistent
2. *Industrial areas which maintain amenity values from key roads within the zones, from surrounding road networks, and at the interface with other areas.*
 - Partly Consistent – views from the road are mitigated by the bunding and planting. However, at the interface with other boundaries I consider that the activity somewhat detracts from visual amenity. Whilst the recommended conditions will reduce the landscape/visual effects to minor, the visual outlook for overlooking properties will be of a less orderly and comprehensively presented/developed business park.
3. *Industrial areas in which industrial activities can operate effectively and efficiently, without undue restraint from non-industrial uses which may require higher amenity values.*
 - Generally Consistent – I consider that with appropriate conditions in place regarding noise, screening, dust management and other potential amenity (or nuisance) effects, the site could operate in a more compatible nature with the adjacent rural zone such as what was intended when the Business Park zone was created.
4. *The equitable provision, extension and/or upgrading of infrastructure with sufficient capacity to cater for future development within the Zone and in accordance with applicable structure plans to be funded by all development within the structure plan area.*
 - Inconsistent – the application seeks departures from equitable infrastructure requirements such as transportation upgrades, stormwater infrastructure, water, power etc.
5. *The protection of sensitive environments downstream of industrial areas from the adverse effects of infrastructure required to service such areas.*
 - Inconsistent – the application does not protect the sensitive freshwater

environment downstream from adverse effects associated with not providing stormwater infrastructure.

21.2.2 Policies

1. *Provide industrial areas within the District close to established urban centres that provide for a wide variety of industrial activities to establish.*
 - Inconsistent – due to the limited infrastructure provided the site only attracts a limited range of industrial activity types, i.e. outdoor storage depots.
2. *Industrial activities should establish and operate so as to protect the environment in other zones from noise, odour, visual impact or traffic generation.*
 - Partly consistent – noise and odour effects are adequately addressed, However as outlined in the AEE above traffic effects are more than minor. As such, the environment in the adjacent rural zone is not protected from the adverse effects of traffic generation.
3. *Require industry locating in close proximity to Residential and Rural Zones and reserves to incorporate buffering, screening and landscaping to minimise the adverse visual impact of the activity.*
 - Generally consistent – the existing and proposed additional infill planting, along with the recommended imposed conditions to further alleviate visual impact of the activity adhere to this policy.
4. *Require the provision of onsite landscaping and screening in industrial areas and to have design controls for buildings/structures fronting identified key roads to enhance street appearance.*
 - Generally consistent – the existing and proposed additional infill planting, along with the recommended imposed conditions for screening will give effect to this policy. As there are no buildings that part is irrelevant.
5. *Industries should be located in areas where they can be adequately serviced by existing infrastructure or provide new infrastructure so as to ensure adverse effects can be mitigated, remedied or avoided including through financial contributions.*
 - Inconsistent – the application seeks departures from infrastructure and servicing requirements such as transportation upgrades, stormwater infrastructure, water upgrade, power, and from payment of the water contribution.

Transportation, Access, Parking and Loading

238. The relevant objectives and policies within Section 4B (Transportation, Access parking and Loading) are as follows:

Section 4B - Transportation, Access, Parking and Loading

4B.2.1 - Objectives

1. *To provide an integrated, efficient, safe and sustainable transportation network that supports the social and economic wellbeing, and land use pattern of the sub-region as defined in this District Plan and that maintains or enhances the regional strategic linkages.*
 - Inconsistent – for the reasons outlined in the AEE above, effects on transport safety are more than minor, and therefore the activity is contrary to this objective.
2. *To provide for more efficient land use, development and subdivision of existing areas in a way that recognises and integrates with the functions of different road types, transport*

modes and the defined transportation network.

- Inconsistent – the activity is not well integrated with the road type, different transport modes and the transportation network. The accessway upgrade is insufficient to address the narrow width of Te Puna Station Road, and generally the local roads are not highly suitable for the wide loads and heavily laden trucks associated with the site.
3. *To encourage the use and development of alternative modes of transport including, but not limited to, public transport, cycling, walking and other non-vehicular forms of transport that provide for an integrated, efficient, safe and sustainable transport network.*
- Inconsistent – as described in the AEE above other modes of transport are not catered for and there are safety risks to pedestrians and cyclists that are not mitigated at all.

4B.2.2 – Policies

239. I have not individually assessed each of the following transportation policies due to the assessed inconsistency with the overarching objectives above. However, overall I conclude that the activity is inconsistent with all parts of the policies that refer to transport safety and provision of multi-modal transport. I accept that due to the relatively low volume of traffic generated that effects on network efficiency are minimal.

2. *To avoid, remedy or mitigate the adverse effects of land use, development and subdivision on the safety, efficiency, sustainability and capacity of the transportation network.*
3. *To manage the land use, development and subdivision of areas to achieve compatibility with the roads they front and the wider transportation network, with particular regard to the potential effects on that network, including, but not limited to, the safe and efficient provision of site access at the local level and intersections within the wider network and the effects of reverse sensitivity experienced between the operation and use of the transportation network and the establishment of adjacent land uses.*
5. *To recognise and provide for network wide effects of land use change on transport networks by assessing the effects of land use change across the networks affected.*
6. *To recognise and provide for the function of each road as described in the road hierarchy, and provide for the efficient use of that road type, by managing the intensity and form of land use, development and subdivision that impact on these roads.*
7. *To encourage the efficient use of land particularly in identified land use zones to reduce the potential impacts on the transportation network.*
8. *To ensure land use, development and subdivision planning provides for the implementation of multi-modal transport activities including public transport, walking and cycling facilities that address the identified need for new facilities/networks or enhance existing facilities/networks.*
9. *To maintain or enhance the sustainable and efficient use of arterial and collector roads through the use of transport optimisation methods and techniques (for example traffic demand management) that encourage adjacent land uses to provide access in keeping with the function of the road in the roading hierarchy and support alternative modes of transport.*
10. *The access, parking and loading effects of activities on the transportation network shall be avoided, remedied or mitigated with particular regard given to the level of service the road provides within the District's roading hierarchy.*
11. *Activities should be established and operate in a manner which ensures safe and effective on-site and off-site vehicle parking, manoeuvring and access and pedestrian access.*

12. *Provide safe, usable and attractive networks and associated linkages for pedestrians, cyclists and motor vehicles.*

Amenity and Noise

240. The relevant objectives and policies within Section 4C (Amenity) are as follows:

4C.1.2.1 - Objective

An environment free of unreasonable noise in accordance with the character and amenity of the zone within which the noise is generated and received.

- Consistent – the AEE section above has concluded that noise effects are less than minor.

4C.1.2.2 - Policies

1. *Ensure activities do not generate noise levels inconsistent with the character and amenity of the zone in which the generated noise is received.*
3. *Have regard to any relevant New Zealand standards, guidelines, or codes of practice in the assessment of applications for resource consents.*

- Consistent – the AEE section above has concluded that noise effects are less than minor.

4C.5.2.1 - Objective

Avoidance or mitigation of the potential adverse visual effects of activities situated in prominent locations or adjacent to residential areas.

4C.5.2.2 - Policy

Ensure appropriate landscaping and screening is established in conjunction with activities so as to minimise potential adverse visual impact.

- Partly Consistent – views from the road are mitigated by the bunding and planting. However, at the interface with other boundaries I consider that the activity somewhat detracts from visual amenity. Whilst the recommended conditions will reduce the landscape/visual effects to minor, the visual effects for overlooking properties will not be buffered by soft landscaping, but rather by a 6m high shade cloth fence.

Natural Hazards

241. The relevant objectives and policies within Section 8 (Natural Hazards) are as set out below. Without the assessment of hydrological effects of the proposed culvert upgrade I cannot yet assess these Objectives and Policies.

8.2.1 Objectives

1. *Minimisation of the risk of natural hazards to human life and the natural and built environment.*

8.2.2 Policies

1. *Adopt the best practicable options (including the 'do nothing' option) in the management of areas actually or potentially at risk from natural hazards and where possible adopt avoidance rather than mitigation or remedial measures.*
3. *Enable the development or redevelopment of land already subdivided or otherwise developed for urban purposes in areas now known to be at risk from natural hazards only where any likely adverse effects can be avoided or appropriately mitigated.*

5. *Ensure that where hazard protection works are necessary their form, location and design are such as to avoid or mitigate potential adverse environmental effects.*

Subdivision and Development

242. The relevant objectives and policies within Section 12 (Subdivision & Development) are set out below. As for transport, I have not provided individual assessment of each policy due to the assessed inconsistency with the overarching objectives.
243. Although the application does not involve subdivision, it seeks a departure from the need to vest stormwater reserves and bunded / landscaped areas (which would normally be carried out by subdivision). There is a component of development (with the accessway upgrade), however the applicant has selected to seek authorisation to operate industrial activity prior to implementation of many development requirements. As such, the assessment against these Objectives and Policies is mostly made with regard to the absence of subdivision and development, before operation of the site.

12.2.1 Objectives

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.*
 - Inconsistent – limited infrastructure and servicing is proposed to support the industrial activity. This means that the land is only able to be used for a limited range of industrial land uses.
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.*
 - Inconsistent – limited infrastructure and servicing is proposed to support the industrial activity. The accessway upgrade does not meet minimum Council standard as opposite widening is not proposed. No stormwater infrastructure is proposed. The applicant proposes to use Te Puna Road / Te Puna Station Road for heavy vehicles without adequately mitigating the existing intersection deficiencies related to safety.
4. *Sufficient infrastructure capacity is provided to ensure the efficient and equitable provision of services to all land in the catchment.*
 - Inconsistent - limited infrastructure and servicing is proposed to support the industrial activity.
6. *Subdivision and development that minimises the effects from stormwater run-off.*
 - Inconsistent - No stormwater management is proposed, thus the effects from runoff are not adequately addressed.

12.2.2 Policies

2. *The design of subdivision is in accordance with structure plans.*
3. *Require subdivision to be undertaken in accordance with any staging requirements to ensure the effective and efficient servicing of land within the catchment.*
4. *Require subdivision and development to provide infrastructure and services to meet the reasonably foreseeable needs of other land in the vicinity of the development.*
5. *Require subdivision and development to comply with the minimum standards in the Development Code for the provision of infrastructure and services, or to an alternative standard which is as effective and efficient in the long term and results in improved environmental outcomes.*

6. *Require all subdivision and development proposals submitted to Council to include a comprehensive assessment prepared in accordance with the information requirements of the Development Code.*
7. *Subdivision and development practices that take existing topography, drainage and soil conditions into consideration with the aim of minimising the effects of stormwater run-off.*
9. *Adverse effects of traffic generation from subdivision and development on the transport network will be avoided, remedied or mitigated.*

➤ I consider the application to be inconsistent with all these policies for the reasons described in the AEE section and Objectives above.

12. OBJECTIVES AND POLICIES SUMMARY

244. In considering the above relevant objectives and policies, I consider that in the round, the application is **contrary or repugnant** to the objectives and policies of the District Plan. This fails the second limb of the gateway test of section 104D(b).

13. ASSESSMENT OF RELEVANT PLANNING INSTRUMENTS

245. The applicants AEE has had regard to or assessed some of the higher order provisions of the relevant statutory documents, I consider these documents to be:

- National Policy Statements
- National Environmental Standards
- Bay of Plenty Regional Policy Statement (RPS)
- Bay of Plenty Natural Resource Plans (NRP)

246. I have undertaken below an appropriate consideration of the relevant statutory documents listed above, and have already assessed the District Plan provisions above.

14. NATIONAL POLICY STATEMENTS AND STANDARDS

National Policy Statement – Freshwater Management

247. The NPS-FW 2022 (NPSFM) contains objectives and policies that direct local government to manage water in an integrated and sustainable way while providing for economic growth within specified water quality and quantity limits. Through the recent amendments to the NPSFW, the environmental bottom lines have been revised seeking a step-change in water quality. The NPSFW requires local authorities to recognise the national significance of freshwater for all New Zealanders and to restore *Te Mana o Te Wai* – health and well-being (or mana) of water.

248. *Te Mana o te Wai* is a concept that refers to the fundamental importance of water and recognises that protecting the health / mauri of freshwater provides for the health and well-being of the wider environment. The NPSFW envisages that through engagement and discussion, regional councils, communities and tangata whenua will determine how *Te Mana o te Wai* is applied locally in freshwater management. The NPSFW sets out how *Te Mana o te Wai* encompasses Maori and western principles of:

- mana whakahaere / governance,
- kaitiakitanga / stewardship,
- maanakitanga / care and respect.

249. The NPS-FM also specifies that there is a hierarchy of obligations in *Te Mana o te Wai* that prioritises:

- first, the health and wellbeing of water bodies and freshwater ecosystems.
- second, the health needs of people (such as drinking water).

- third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.
250. 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.
251. This approach contravenes the effects hierarchy, as it places the ability of people to provide for their economic wellbeing ahead of the health and wellbeing of water bodies and freshwater ecosystems.
252. Accordingly, based on the information currently at hand, I conclude the proposed activity is **inconsistent** to the NPS-FW.

National Environmental Standard for Assessing and Managing Contamination in Soil to Protect Human Health (NESCS)

253. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ensures that land affected by contaminants in soil is appropriately assessed and made safe for human use.
254. The site has historically operated an HAIL activity (concrete crushing) at the A & J Demolition tenancy. Although this has been removed, there is potential that there is contaminated soil remaining on site. In addition, the house renovation activity involving asbestos removal also has potential to contaminate soils in the vicinity. There are also other activities on site such as tyre storage that could involve leachate of hydrocarbons to soil.
255. With the proposed earthworks in the accessway and roadside drains, the Commissioners have requested the applicant to undertake soil sampling in this area and provide interpretation of these results in the hearing.
256. The NES:CS application will therefore be considered separately to this report.

15. REGIONAL POLICY STATEMENTS AND PLANS

Bay of Plenty Regional Policy Statement

257. The Bay of Plenty Regional Policy Statement (RPS) was made operative on 1 October 2014. The RPS provides a framework for sustainably managing the region's natural and physical resources. It highlights regionally significant issues with land, air, fresh and coastal water, infrastructure and biodiversity, including issues of significance to Iwi. It sets out what needs to be achieved (objectives) and how it will be achieved (policies and methods). The Western Bay of Plenty Operative District Plan is required to reflect the provisions of the RPS.
258. A summary of the relevant objectives and policies in the RPS applicable to this application are set out below:

Section	Objective	Policy
Iwi Resource Management	15, 16, 21	IW 4B (Iwi/hapu management plans) IW 5B (adverse effects on matters of significance to Maori)

Urban and Rural Growth Management	23, 24, 25	UG 9B (co-ordinate urban development and infrastructure) UG 11B (Managing the effects of subdivision, use and development on infrastructure) UG 13B (integration of land use and transportation)
Water Quality	29	WL 7B (Minimising effects of land and soil disturbance)
Water Quantity	30	WQ 1A (efficient water use) WQ 7B (reducing water demand)
Natural Hazards	31	NH 9B (land is > 5ha)

Iwi Resource Management

259. The relevant objectives and policies that relate to ensuring Te Tititi o Waitangi are taken into account in achieving the purpose of the act include recognition of te tino rangatiratanga and Kaitiakitanga.
260. A development should ensure iwi and hapū resource management plans are taken into account in resource management decisions. Further, Policy IW 5B requires that when considering proposals that may adversely affect any matter of significance to Māori recognise and provide for avoiding, remedying or mitigating adverse effects on:
- a) The exercise of kaitiakitanga;
 - b) Mauri, particularly in relation to fresh, geothermal and coastal waters, land and air;
 - c) Mahinga kai and areas of natural resources used for customary purposes;
 - d) Places sites and areas with significant spiritual or cultural historic heritage value to tangata whenua.
261. The applicant has undertaken engagement with local hapū, and will continue to work with Pirirakau on cultural and planting opportunities.
262. However, as outlined in the AEE Cultural above, I hold concerns regarding cultural effects related to stormwater quality. On this basis and at this stage, I can only conclude that the application is **inconsistent** with the above cultural policies of the RPS.

Urban and Rural Growth Management

- The relevant policies I have considered under this section are below:
 - UG 9B (co-ordinate urban development and infrastructure)
 - UG 11B (Managing the effects of subdivision, use and development on infrastructure)
 - UG 13B (integration of land use and transportation)
263. I have read the relevant policies listed above and I consider that the application is inconsistent with these policies, due to the lack of integrated development, and that which manages the effects of use and development on infrastructure and the transportation environment.

Water quality and Water quantity

264. WQ 1A (efficient water use) and WQ 7B (reducing water demand) are achieved given that water demand is low to support the type of industrial activities proposed.

Land and Soil Disturbance

265. WL 7B (Minimising effects of land and soil disturbance) is relevant due to the proposed earthworks on the site. Little information has been provided in relation to the effects of earthworks in relation to District Council requirements, but this is anticipated to be provide before or during the hearing.

Natural Hazards

266. The applicant is yet to provide information on potential natural hazards effects associated with the proposed culvert upgrade and flooding. I cannot draw any conclusions on this topic at this stage.

Regional Natural Resources Plan

267. I consider the relevant regional plans are the Regional Natural Resources Plan (RNRP) on the basis that the proposal may require consents associated with earthworks and stormwater discharge. These questions are yet to be resolved.

16. OTHER RELEVANT MATTERS

Effects from Structure Plan Sequencing and Staging Departures

268. The proposal seeks to authorise departures from the intended development and use sequence of the Structure Plan. In my view, these departures are contrary to the intent of the Structure Plan, and I consider this raises issues relating to both precedent and plan integrity. I address these matters below.

Plan Integrity

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.

270. As previously noted, the Structure Plan requirements and Te Puna Business Park zoning were created following a private plan change process, which was opposed by residents and iwi, initially refused by Council (largely due to infrastructure concerns) and eventually granted by the Environment Court on appeal.

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 use⁹. Despite the fragmented land ownership, assurances were given by the three landowners that comprehensive development of the entire Te Puna Business Park would occur; and that this would be in preference to 'ad hoc' development. The private plan change proponents agreed on key infrastructure works within the Statement of Facts (which were appended to the Environment Court's decision) on the basis that they were prepared to pay a number of significant costs involved in infrastructure development¹⁰. One of the plan change proponents was Mr Daniel himself.

⁹ See ENVC A016/2005 (RMA 608/03) Interim Decision, para 115 and paras 122-123.

¹⁰ See ENVC A016/2005 (RMA 608/03) Interim Decision, para 80.

272. In the intervening almost 20 years, integrated, comprehensive development of the site has not occurred. Rather, fragmented, ad hoc development has proceeded, without full compliance with the pre-requisite structure plan requirements.
273. The applicant now seeks consent to use the site for industrial activity (and has already been illegally doing so) before most of the pre-requisite works (or the SoF works) have been fulfilled. The only requirements that have been fulfilled entirely are the acoustic bunding, roadside and inter-tenancy planting, and payment of Financial Contributions for the Clarke Road improvements.
274. Although the application is only for a two-year consent term, it is associated with the first and second resource consent applications which also propose substantial departures from the Structure Plan, and one should remember that if those are granted, then in effect the industrial use would then be authorized for the longer term.
275. By continuing to use the site for the outdoor storage depots, ahead of the development work being fulfilled, I consider the integrity of the plan will be undermined.
276. The issue that arises (including in relation to 'precedent' which I will address further below) is that the proposal clearly clashes with important provisions of the plan, including in relation to the staged 'pre-commencement' provisions which formed an integral part of the overall Structure Plan. Other applications have also followed, and Council is now in a situation where it has not only this application to retrospectively authorise development of this site in the Business Park for use without complying with structure plan requirements, but also a consent application from the same applicant for future development of its entire site (without complying fully with structure plan requirements); and separate resource consent applications for two other landowners within the Business Park to also authorise development and use without fully complying with structure plan requirements.
277. As such, this is not a case where there might be a 'theoretical' possibility of significantly undermining the integrity of the District Plan, but an unusual situation of proponents of a Structure Plan seeking consents for non-compliance with requirements they offered to the Council and Court to secure the structure plan and its requirements.
278. I provide some examples of exactly how the integrity of the District Plan would be undermined by this application, despite its limited consent duration. For example, in relation to the proposed accessway upgrade - if development had already occurred as anticipated, then the road-side drain alongside the site would have been relocated to within Mr Daniel's site (as agreed to in the SoF), and a mid-block financial contribution for Te Puna Station Road would have already been paid. This would then have enabled Council to widen Te Puna Station Road as intended. This widening could have also been planned with all three landowners to integrate their accessway upgrades (to Diagram D (today's equivalent of Diagram E) into a comprehensively upgraded road design. This would have then allowed the applicant to operate the industrial activity without adverse effects on the transportation environment, including on pedestrians and cyclists using the road.
279. Instead, none of that has happened yet, and the applicant proposes an interim upgrade that does not adequately address the risk to traffic safety posed by the under-width road – see traffic effects assessment above. Even if they were to provide the required opposite widening, there would be flow on effects for road alignment due to the drain not being relocated, and integration into a fully widened roadway design later.
280. Further, the proposal to upgrade the culvert in the existing roadside drain alignment does not match with the longer-term proposal to relocate the drain to within Mr Daniel's site (as per the SoF and commitments made in RC13474 / the first application). I am uncertain how the applicant proposes to address this inconsistency.
281. Similarly, the structure plan requirements required a number of traffic related requirements to be undertaken prior to industrial development at the Business Park. The purpose was to address concerns around the existing traffic environment (back in 2005). If matters had proceeded in the integrated, sequenced manner contemplated by the Structure Plan requirements, then some of the safety risks highlighted in the Council's traffic assessment and in submissions, should have already been resolved.

282. Another example of the impact of seeking authorisation of industrial activities ahead of the Structure Planned works being completed is the landscape screening, stormwater reserve / overland flow and wetland. For example, Rule 12.4.16.3.a, states:

The area of the planted land around the Business Park boundary, the area of land subject to the Te Puna Station Road roadscape planting, and the stormwater ponds and overland flow path/wetland as shown in the Te Puna Business Park Structure Plan shall all be established and vested in Council prior to commencement of any industrial or business activity within the Business Park.

A plain reading of this rule informs me that all of this landscaping was to be established prior to any industrial or business activity commencing (my emphasis). Had this requirement been followed, then none of the three sites within the Business Park would be able to commence operation until all of the above landscaping was completed and vested with Council. Although this rule seems onerous, I believe this was intentionally included in the private plan change to mitigate cumulative visual / landscape effects across the Business Park as a whole.

283. Mr Daniel has undertaken a substantial amount of planting (and more than the other two landowners) and is proposing further supplementary planting as part of this application. However, he is still seeking to authorise industrial use prior to the above rule being met across the whole Business Park. While I understand that Mr Daniel is not in control of the other two properties, coordinated and integrated development was what was committed to in 2005.

284. 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.

285. For example, the 'ad hoc' nature of the development can be seen in the fact:

- there is no professionally engineered and constructed internal road inclusive of reticulated services/utilities, and which is sealed;
- there is no subdivision meaning that developed assets will not be vested and maintained as required.
- there is no sealing of carparks or loading bays.
- there are no three waters reticulated systems, other than low pressure water.
- there are no permanent buildings.
- The wider area has not been landscaped as contemplated by the structure plan.
- There is no comprehensive storm water collection system., overland flow path or wetlands creation, as contemplated by the structure plan.
- The access arrangements to the site are not sufficient and not consistent with the structure plan requirements.
- The roading upgrades as contemplated by the structure plan have not been fulfilled prior to industrial development commencing at the site.
- The number of rule breaches which require approval are significant.
- As demonstrated in my policy assessment above, the activity is inconsistent with a number of the District Plan Objectives and Policies, and I have reached the conclusion that it is contrary to the objectives and policies of the Plan (and therefore failed that 'limb' of the s104D gateway assessment.

286. In my opinion, the combined effect of not providing the components, is that the development bears little resemblance to the comprehensive, co-ordinated, integrated business park development contemplated by the Structure Plan and its requirements, and instead represents the type of 'ad hoc' development that the Business Park proposal was trying to

avoid. As such, I consider it considerably undermines the integrity of the District Plan and its structure plan requirements.

287. I acknowledge that in *Blueskin Bay vs Dunedin City Council* (NZEVC [2010] 177, at para 48), the Court set the threshold for Plan Integrity effects relatively high as follows:

Only in clear cases, involving an irreconcilable clash with the important provisions, when read overall, of the District Plan and a clear proposition that there will be materially indistinguishable and equally clashing. further applications to follow, will it be that Plan integrity will be imperilled to the point of dictating that the instant application should be declined. In such a case it is unlikely in the extreme that the resource consent would be granted in any event.

288. In consideration of this, it is useful to re-cap the history of the Business Park as follows:

- i. The Business Park was initiated by way of private plan change by the three landowners, which included Mr Daniel.
- ii. They provided a number of commitments to address the effects of the plan change, for example transportation upgrades and significant funding.
- iii. Council originally declined the private plan change due to concerns around infrastructure provision. There was significant opposition from surrounding residents, also iwi and Waka Kotahi.
- iv. The Appellants appealed Council's decision to decline. They agreed a number of provisions with Council prior to the Environment Court hearing – those were recorded in an agreed Statement of Agreed Facts to the decision. They made a number of commitments to the Court around works that were to be done "pre development". They made assurances to the Court that the fragmented ownership would not be an issue, and that this 'comprehensive' development would be better than the 'ad hoc development' that might otherwise occur.
- v. Most of those commitments, assurances and promises made their way into the District Plan.
- vi. Despite the commitments and assurances made by the landowners, there has been no attempt at comprehensive development since then. Instead, ad hoc development has occurred, which has led to Council issuing abatement notices to this site and to other sites in the Business Park.
- vii. The proposal currently before the Commissioners seeks retrospective authorisation for this departure to continue to occur. This is not a theoretical exercise in determining whether plan integrity will be undermined, rather it is a clear and (in my view) extremely unusual situation where the Commissioners can form a view that the proposal provides an irreconcilable clash with important provisions in the structure plan, and the integrity of the Plan will be imperilled.

289. Taking all of the above into account, opinion consider that that granting the application would undermine the whole purpose of the Structure Plan, which is to provide integrated and comprehensive development, prior to commencement of industrial use. The limited consent term does little to address those issues.

Precedent

290. In a similar vein, I consider that the Commissioners must also give consideration to the precedent effect of granting this application, particularly on other applications already lodged within the Business Park, and also future applications that may follow from other Business Park landowners if this consent is granted.

291. The need for like case to be alike is a central imperative of justice, and inconsistency in determining applications can also threaten the integrity of the plan. In some respects, this is an opportunity for the Commissioners to capture the horse 'before it bolts'. The issue of precedent are, in this case, narrow and in others relatively wide. The issue is narrow in that the Te Puna Business Park Structure Plan is a narrowly defined area, with explicit

requirements on the landowners to undertake the structure plan requirements. In that sense, the 'precedent' effect of granting this application contrary to those requirements, and the potential applicants (and future applicants) for the Business Park are clearly defined.

292. It is also 'wide' in the sense, that it arguably calls into question issues of precedent for applications for 'out of sequence' developments in a number of other structure plan locations in the Western Bay. That includes areas like Rangiruru Business Park which also have staged development requirements, where Council has previously also had to take compliance action (including issuing abatement notices) for out of sequence development without complying with structure plan requirements.
293. 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.
294. 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.
295. Accordingly, I find that the proposal presents a high risk of creating a precedent.

17. PART II OF THE RESOURCE MANAGEMENT ACT 1991

296. Part II of the Act provides the Purpose and Principles of the Act, principally under Section 5, which provides the overarching framework under which resource management decisions are made. The purpose is defined as:
- (1) *The purpose of this Act is to promote the sustainable management of natural and physical resources.*
 - (2) *In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while:*
 - *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*
297. Following the Court of Appeal's decision in *RJ Davidson Trust* I have fully considered the application against the relevant provisions of the planning documents. As such, I do not consider it necessary to resort to Part 2. For the avoidance of doubt, 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.

18. TERM OF CONSENT

298. The applicant has sought a two year consent term, under the logic that a decision on the first and second applications should be made within that time period, and if those are granted then the industrial landuse would at that point become permitted.
299. The application (AEE) was framed in a way that certain District Plan departures "will comply" in the longer term, once the other consents are granted (applicant wording), but the interim (or short-term) effects would be mitigated in proportion to their duration and small scale of the activity.
300. However, in my opinion, this way of thinking places too much faith in the first and second

applications being granted, and fails to acknowledge the chance that these longer-term consents may not be approved (or may be appealed).

301. 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.
302. The preceding Assessment of Effects has considered the effects over the two year term only, and concluded that traffic safety effects are more than minor. This is based on an assessment that the required upgrades would be required during the full two year duration, i.e. every day that a truck going to or from the site passes through the intersection is a day that the serious safety risk exists. That risk was present 20 years ago, only now the intersection is under substantially more pressure. The risk of a fatality exists no matter how long the consent term, and has not been addressed.
303. Similarly, for the accessway without opposite widening, the traffic safety risk will exist from the first day of the consent term (or the first day a truck enters or exits the site). However, I have concluded that the proposed accessway falls short of mitigation required to bring the effects to an acceptable level.
304. Landscape effects and proposed infill planting were assessed by Mr Oliver with a longer-term view, however as outlined further above, Mr Mansergh for Council has correctly noted that the planting will do little over the two year consent term, and recommends a 6m high shade cloth fence to bring the effects to an acceptable level.
305. These few examples demonstrate that the two-year term does little to alleviate adverse effects. As such, I wouldn't recommend placing much weighting on this aspect of the proposal.

19. CONCLUSION

306. After considering the actual and potential effects on the environment of allowing the application, it is my conclusion that adverse effects on the environment will be:
 - No more than minor as they relate to landscape and visual effects. I consider that these effects have the potential to be mitigated and suitably controlled through conditions of consent to an acceptable level.
 - More than minor as they relate to traffic safety. I consider that some of these effects are difficult to mitigate within the two year consent term or via suitable conditions.
 - No more than minor as they relate to water, wastewater, power, telephone and internet services. I consider that these effects have the potential to be mitigated and suitably controlled through conditions of consent to an acceptable level.
 - No more than minor as they relate to noise. I consider that these effects have the potential to be mitigated and suitably controlled through conditions of consent to an acceptable level.
 - No more than minor as they relate to stormwater quantity.
 - I am unable to form conclusions on the degree of adverse effects related to stormwater quality, cultural, earthworks, construction and natural hazards, until additional information / evidence is provided.
307. Accordingly, I am unable to determine whether the application passes the first 'gateway' under s104D (i.e. effects that are no more than minor).
308. Regarding the unmitigated serious safety risk at the Te Puna Road / Te Puna Station Road intersection, it is impractical to impose a consent condition requiring the required upgrade as this would take some time to implement, and is unlikely to provide much benefit during the two year consent term. As there are no other practical alternatives proposed which would bring the risks to an acceptable level, I consider that this non-compliance may be a valid reason for decline.

309. Similarly, the lack of opposite widening at the site accessway generates unacceptable effects, where the crash risk presents serious consequences. Perhaps this could be mitigated by imposition of a requirement to provide the opposite widening. However, additional information would be required to ensure that there would be no hydrological impacts on the northern roadside drain, or information of how it would tie into Kiwi-rail's accessway, and how construction would be managed.
310. Turning to the the second 'gateway' test, overall I consider the proposal is contrary to the relevant objectives and policies of the Operative District Plan and accordingly **cannot** satisfy this part of the s104D "gateway" test.
311. I have reviewed the proposal against the relevant National Policy Statements, and the Regional Policy Statement, and concluded that the activity is likely to be inconsistent with this legislation.
312. I have outlined my reasons for why I consider that granting the application would amount to an undermining of District Plan integrity, and could generate a precedent effect. In my view, the applicant's picking and choosing of which Structure Plan provisions they will implement and when, amounts to them treating them as 'guidelines', rather than rules. But even then, the number of non-compliances are significant, and are all Non-complying activities. As Non-complying activities are the highest order activity status (other than prohibited), the onus is on the applicant to demonstrate why an exception should be made, and how granting the application will not be contrary to the purpose of sustainable management.
313. A review of the 2005 Environment Court decision informs me that the Structure Planned approach was utilised for the Business Park to ensure that integrated and comprehensive development would occur which addresses cumulative effects across the Business Park and receiving environment as a whole, honour the cultural aspects of the location, and would achieve compatibility with the adjacent Rural Zone. In my opinion, the application does not achieve all of these outcomes.
314. In light of all of the above, granting the application would not achieve the purpose of the Act, as people's health and safety is not provided for (re traffic), the life supporting capacity of freshwater is not safeguarded, and it is unclear due to lack of information if all relevant effects are suitably avoided, remedied or mitigated.
315. Having considered all of the relevant matters under Sections 104 and 104B it is my opinion that consent should be **declined**.

Note: The Draft Conditions proposed by the applicant are presented as **Attachment 10**, and were provided to Council on Thursday 14th September. Council's full set of draft conditions will be published tomorrow, on the 19th September 2023.

Recommended and assessed by:



Heather Perring
Consultant Senior Planner
Date: 18/09/2023

Delegated Authorisation by:



Natasha Ryburn
Environmental Consents Manager
18/09/2023