

Combined Decision Report

Te Puna Industrial Limited

Applications
RM22-0010 to Bay of Plenty Regional Council
RC13360L to Western Bay of Plenty District Council

7 July 2025

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Appendix 1: WBOPDC Conditions

Appendix 2: BOPRC Conditions

1 Introduction

[001] Te Puna Industrial Limited (TPIL or applicant) has sought consents for its site at 297 Te Puna Station Road, Te Puna, as follows:

- from the Bay of Plenty Regional Council (BOPRC) consent to disturb land as a result of earthworks, temporarily discharge sediment-contaminated stormwater to land associated with earthworks, and for the permanent discharge of stormwater from the site to land where it will enter water; and
- from the Western Bay of Plenty District Council (WBOPDC) landuse consent for departures from the 'pre-development' requirements of the Te Puna Business Park Structure Plan

[002] This 'joint' Decision Report contains decisions on the applications lodged with both the BOPRC and the WBOPDC. In section 5 of this Decision, we address the landuse consent required from the WBOPDC. In section 6 we address the consents required from the BOPRC.

2 Appointments

[003] The BOPRC and WBOPDC, acting under s34A of the Resource Management Act 1991, appointed Independent Hearing Commissioners Fraser Campbell¹, James Whetu² and Rob van Voorthuysen³ to hear and decide the applications.

3 Description of the TPIL Proposal

[004] The proposal is described in TPIL's AEE⁴; the Section 42A Reports and Section 42A Addendum authored by Marcia Christian for BOPRC and Heather Perring for WBOPDC; and the evidence of the witnesses for TPIL, particularly that of Vincent Murphy⁵ and Tom Watts⁶. We adopt those descriptions, noting that the proposal now before us has altered from that originally set out in the AEE. Consequently, for the benefit of readers, in this part of our Decision we outline our understanding of the TPIL proposal as it currently stands.

[005] The Site is located within the rohe of the hapū Pirirākau and Ngāti Taka, being constituent hapū of the iwi Ngāti Ranginui. We understand that the Pirirākau Tribal Authority are identified as the representative for Pirirākau in resource management processes.

[006] It comprises 12.16ha⁷ of land on the southern side of Te Puna Station Road (TPSR) before it rises to meet Te Puna Road (TPR). Around three-quarters of the Site is currently grassed and used for grazing cattle. The south-west corner of the Site contains a dwelling and to the east of that dwelling is a large three-bay implement shed and associated hard stand areas.

[007] The Site is low-lying as it sits within a valley floor that extends westwards from the Hakao Stream and Wairoa River⁸. As a result of historical filling⁹ of the Site undertaken by a previous owner, the paddocks adjacent to TPSR are higher than paddocks in the south of the Site.

¹ Commissioner Campbell is an accredited Commissioner with a range of experience with both district and regional consent applications.

² Commissioner Whetu is an accredited Commissioner, a Full Member of the New Zealand Planning Institute with professional experience in consents and policy planning, and integration of te ao Māori and tikanga Māori.

³ Commissioner van Voorthuysen is an experienced and accredited independent Commissioner, having sat on over 450 Hearings throughout New Zealand since 1998. He has qualifications in natural resources engineering and public policy. In 2020 he was appointed as a Freshwater Commissioner by the Minister for the Environment.

⁴ Application for Land-Use Consent, Assessment of Environmental Effects, Industrial Activities – 297 Te Puna Station Road, Te Puna Business Park, For Te Puna Industrial Ltd, Momentum Planning and Design, September 2023. Section 2 titled "The Site and Surrounds" and Section 3.0 titled "Proposed Development".

⁵ Section 5 "Proposed Development".

⁶ Section titled "Site and Surrounds".

⁷ Consisting of 9.5ha of pastureland and 2.66ha of a paper road on the southern boundary of the Site.

⁸ The Hakao Stream abuts the eastern end of the former paper road that now forms part of the Site. The Wairoa River is around 1.3km east of the Site.

⁹ These earthworks were subject to a consent from BOPRC which was exercised between 2005 and 2013.

- [008] TPIL intends to develop a 'business park' on 11.96 ha of the Site. Initially a 5.24 ha area adjacent to TPSR will be developed. A 2.21 ha 'Future Development Area' situated in the south eastern corner of the Site is intended to be developed at a later stage.
- [009] The Site is zoned Industrial under the WBOPDC District Plan (District Plan) and is subject to the provisions of the Te Puna Business Park Structure Plan (Structure Plan). Mr Murphy outlined how the Structure Plan (comprising Section 7 of Appendix 7 and section 12.4.16 of the District Plan) creates a planning framework that directs development of the Te Puna Business Park. We summarise the 'Structure Plan' requirements below because the Section 42A authors and many of the submitters focused on them:
- developing Stages 1 and 2 before Stages 3 and 4;
 - relocating roadside drains on the southern side of TPSR into the Site and the Tinex site¹⁰ to enable road-widening by WBOPDC;
 - a third 1600mm diameter culvert under Teihana Road;
 - perimeter boundary planting meeting specific requirements¹¹;
 - establishment and planting of a bund¹² for landscape and visual mitigation purposes along the northern boundary (west of the current access to the Site);
 - establishment and planting of a bund¹³ for acoustic mitigation purposes along the Site's southern boundary (east of the current access to the Site);
 - inter-lot (or, in the absence of subdivision, inter- lease or inter-activity) and internal roadside planting comprising two staggered rows of trees;
 - a large linear stormwater pond on the eastern boundary of the Site, parallel to a planted wetland set within an overland flow path (OLFP) traversing land at the Site and the adjacent Tinex Site;
 - a series of roading infrastructure improvements, namely upgrades to the intersections of SH2 and TPR, SH2 and TPSR, TPR and TPSR and traffic calming measures on Clarke Road;
 - an intersection accessway into the Site at a particular location and meeting particular design standards; and
 - a looped through-road through the Site and the adjacent Tinex site.
- [010] Mr Murphy advised that landuse consent from WBOPDC is now required as a result of departures from the Structure Plan requirements regarding:
- the sequencing of development as the Structure Plan dictates that Stages 1 and 2 must precede Stages 3 and 4 whereas the TPIL Site includes Stages 1, 2 and 3;
 - the location of the accessway into the Site;
 - the proposed internal roading being a cul-de-sac as opposed to a looped through road; and
 - the absence of a left turn lane out of TPSR onto SH2, which is now redundant and no longer sought by NZTA or WBOPDC.
- [011] We also note TPIL no longer propose to construct a landscape bund on the Site's northern boundary, because doing so would exacerbate flooding on properties on the northern side of TPSR. Large trees on the road frontage are now proposed instead.
- [012] The figure overleaf if TPIL's 'Landscape Concept Plan'¹⁴ and it suitably illustrates the TPIL proposal.

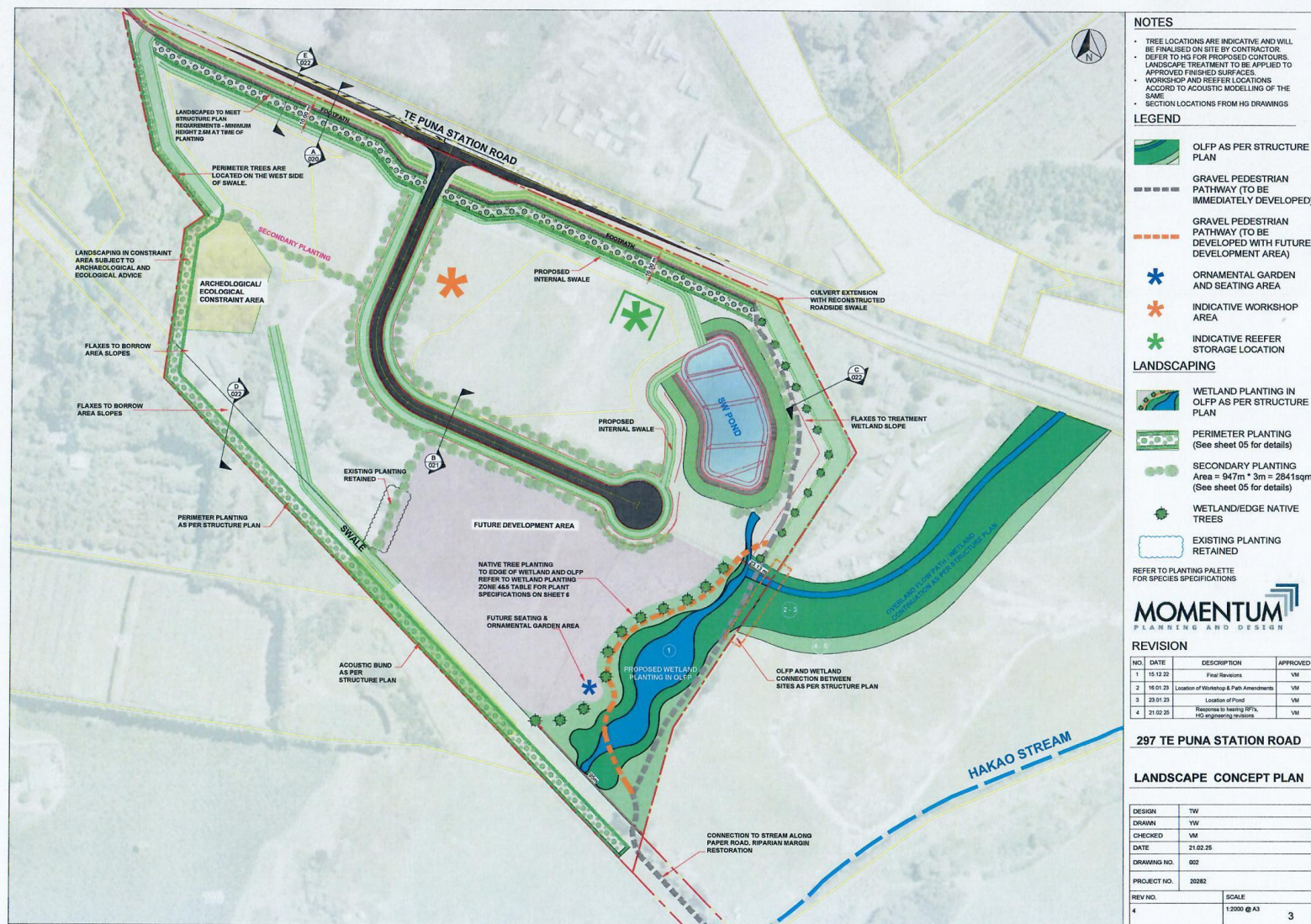
¹⁰ The Tinex site is located at 245 TPSR and is situated to immediate east of the TPIL Site.

¹¹ The planting to comprise of five rows: native shrubs in two outer rows, a mix of fast-growing native and exotic trees in the middle rows and a native evergreen tree species in a single middle row.

¹² 1.5m above finished internal ground levels and 10m wide at its base with five rows of plants.

¹³ 2.0m above finished internal ground levels with five rows of plants (unless inclusive of an acoustic fence, in which case the bund could be 1.5m high) and 10m wide at its base.

¹⁴ Version from 24 February 2025 Attachment E to TPIL response to Minute 5.



[013] The TPIL proposal for which consent is sought entails development within the Site as follows:

- undertaking boundary planting and acoustic bund construction on the Site's southern boundary. This will be subject to earthworks as necessary to ensure compatibility with the finished ground levels inside the Site so as to be above the 100-year flood level;
- forming the main Stormwater Pond at the eastern end of the Site, along with other necessary erosion and sediment controls;
- undertaking earthworks to construct the OLFP through the TPIL site and Tinex sites to provide space for floodwater alleviation prior to commencing backfilling and pre-loading of the future industrial yard spaces. The excavated material from the OLFP will either be used as structural backfill or pre-load material on top of structural backfill;
- demolishing the existing dwelling and excavating the land below it to use as a source of fill material. The cut face of this borrow pit will be planted once earthworks associated with it are completed. The borrow pit will enable a reduction in earthworks and construction traffic movements;
- importing up to 187,661m³ of clean, loose, structural fill to achieve the compacted design level proposed for the Site of RL 3.62m (Moturiki Vertical Datum or MVD). This reduces to 149,733m³ when allowing for re-use of pre-load material in three stages. The 187,661m³ figure conservatively excludes any fill that may be obtained from the borrow pit. The imported fill will be stabilized with grass as soon as practicable;
- the 187,661m³ of fill requires 18,717 single unit truckloads or 37,434 in and out truck movements to and from the Site along TPR and TPSR¹⁵. The filling works are anticipated to be completed inside two earthworks' seasons¹⁶, leading to 125 truck movements each working day with an average of 16 truck movements (8 trucks going in and 8 trucks going out) per hour over that period;
- that equates to one truck every 7.5 minutes, on average outside of peak times; and one truck on average every 3.75 minutes during peak hour(s);
- utilising a temporary traffic management plan and specific 'on road' mitigations at the TPSR/TPR intersection to cater for truck movements during the earthworks phase of the proposal;
- undertaking the above earthworks in stages to ensure no more than 4ha is exposed at any one time and ensuring that adequate water is available for dust suppression purposes;
- following the pre-load settlement period, the inter-lease and roadside planting will be undertaken at the finished interior ground level. The sealed internal road will be constructed; yard spaces will be surfaced with compacted metal; roadside and internal stormwater swales will be constructed and planted; and roadside, stormwater treatment pond and wetland planting will be undertaken;

[014] As mentioned above, TPIL also seeks earthworks consent for the 'Future Development Area'. However rather than a specific landform being proposed for that Area, TPIL proposes that consent conditions instead specify avoiding any exceedance of off-site baseline flooding effects when developing that part of the Site.

[015] TPIL also propose to undertake works outside the Site itself as follows:

- construction of a permanent upgrade to the TPSR/TPR intersection to include a right-turn bay prior to the commencement of industrial operations at the Site. We note that this work may now be undertaken by WBOPDC and we discuss the implication of that in section 5.3.5 of this Decision;
- construction of a third 1600mm Teihana Road culvert prior to commencing backfilling of proposed lease areas; and
- implementing one of two collective floodwater/stormwater drainage schemes across the Business Park. These 'drainage schemes' are either the primary option expressly proposed as mitigation (the OLFP across the TPIL and Tinex Sites and a third culvert at Teihana Road), or those same measures with improvements to the existing drain north of TPSR and de-commissioning of the 900mm culvert which currently conveys water from the OLP Logistics Site under TPSR and into the TPIL site.

¹⁵ TPIL Response to Minute 5. Attachment H, page 2.

¹⁶ The earthworks season runs from 16 September to 31 April (seven months excluding holiday periods), with the month of May permitted for stabilisation works.

- [016] In subsequent sections of this Decision where we assess the potential adverse effects of the TPIL proposal, we describe some of the proposed works in more detail.
- [017] Once all of the above listed works inside and outside the Site are completed, TPIL intend to commence use of around 4.8ha of the north eastern corner of the Site for the storage, distribution, repair and maintenance of containers for hire, sale and lease by ContainerCo. This will include construction of a workshop building.
- [018] The full development of the Site will generate¹⁷ traffic of 774 vpd (comprising 288 vpd¹⁸ for the Container Co activity and 486 vpd¹⁹ for the other industrial activities), with a peak hour traffic generation of 125 veh/hour. The daily traffic generation represents 387 arrivals and 387 departures.

4 Process Issues

4.1 Written approvals, notification, submissions and pre-hearing meetings

- [019] No written approvals were obtained.
- [020] The applicant requested public notification. In total 273 submissions were received²⁰. The submissions were summarised in the Section 42A Reports and the location of the submitters was helpfully shown in Figure 3 of the WBOPDC Section 42A Report. We observe that many submitters reside in areas relatively remote from the Site. We adopt the Section 42A Report authors' summary of the submissions, but do not repeat them here for the sake of brevity. We were provided with copies of all of the original submissions.
- [021] As far as we are aware, no pre-hearing meetings were held.

4.2 Officers recommendations

- [022] Ms Christian²¹ provisionally recommended granting the consent applications lodged with the BOPRC, subject to further details clarifying questions regarding permanent stormwater management being resolved, and effects on cultural values being adequately avoided, remedied or mitigated by consent conditions.
- [023] Ms Perring ²²initially recommended that the application be declined due to her opinion on:
- more than minor effects on transport safety, stormwater management, cultural effects; and
 - the proposal being contrary overall to the relevant objectives and policies of the District Plan.
- [024] In her Supplementary 42A Addendum dated 17 June 2025 she advised:
- Having considered the effects of the proposal on a holistic basis, I consider that overall, the effects are no more than minor. Accordingly, the application now passes the first 'gateway test' under s104D (i.e. effects that are no more than minor).*
- [025] However, in terms of a section 104 assessment, in that same Supplementary 42A Addendum Ms Perring advised that her original assessment under section 104 remained largely unchanged, particularly because the application will not achieve the minimum fill height that she considered to be appropriate, and consequently a significant natural hazards risk (namely flooding) would not be adequately mitigated and an acceptable stormwater design had not been achieved. She also considered there were precedent issues that needed to be considered in relation to the fill height.
- [026] Ms Perring maintained her recommendation that the application to WBOPD be declined.

¹⁷ TPIL Response to Minute 5. Attachment H, page 2.

¹⁸ 37% or 107 heavy vehicles

¹⁹ 17% or 82 heavy vehicles

²⁰ 271 in opposition and one neutral. No submissions in support.

²¹ BOPRC Section 42A Addendum Report, section 7 "Recommendation".

²² WBOPDC Section 42A Addendum Report, section 16 "Conclusion".

4.3 Hearing, appearances and site visit

- [027] We held a Hearing in the Stadium Lounge in Mercury BayPark in Mount Maunganui from Tuesday 9 July to Friday 12 July 2024.
- [028] Legal submissions²³ and evidence²⁴ from the applicant was pre-circulated in general conformance with a procedural Minute that we issued. Written legal submissions²⁵ evidence from some submitters²⁶ was pre-circulated and other submitter evidence was tabled²⁷ at the Hearing. Other submitters provided verbal presentations²⁸ and we received speaking notes from some of them. Copies of the written evidence are held by the councils.
- [029] At the conclusion of the Hearing in July, we issued Minute 5 requesting information from TPIL on a wide range of matters including flooding and stormwater, visual amenity mitigation, traffic safety and roading, geotechnical and earthworks, noise, lighting, wastewater and stormwater treatment, ecology and archaeology.
- [030] Minute 5 also recommended that TPIL undertake further consultation directly with the Pirirākau Tribal Authority (PTA) regarding the effects of the proposal on the cultural values and interests of Pirirākau and specifically consult with the PTA regarding any conditions that TPIL intended to offer to avoid, remedy or mitigate any adverse effects. We asked that the results of any such consultation be documented and provided to us, including areas of agreement and disagreement.
- [031] We requested that the information detailed in Minute 5 be collated by TPIL into one comprehensive 'package', along with any additional narrative they considered appropriate. We received that 'package of information' on 24 February 2025. We allowed submitters who attended the Hearing an opportunity to provide written comments²⁹ on the 'package of information'. The main points raised in those comments were concisely summarised by Ms Perring³⁰.
- [032] We requested BOPRC and WBOPDC to prepare and circulate Section 42A Report addendums addressing their updated advice to us on the scale of adverse effects arising from the proposal and whether or not the proposal (inclusive of proposed mitigations) was contrary to the operative provisions of the District Plan and whether or not it was consistent with any relevant regional plans. We received the Section 42A Addendums on 11 April 2025.
- [033] In Minute 5 we requested TPIL to provide their written Reply submissions within 10 working days of the Section 42A Report addendums being circulated, inclusive of suites of consent conditions developed in consultation with the Section 42A Report authors and with any areas of disagreement clearly outlined. TPIL requested extensions of time to provide their Reply which we agreed to. We received the Reply submissions on 5 May 2025³¹. The Reply submissions were accompanied by technical memoranda addressing transport and stormwater, and planning matters.

²³ Opening Legal Submissions on Behalf of Te Puna Industrial Limited, 5 July 2024, Russell McVeagh (S H Pilkinton and S A Kilgour).

²⁴ Ken Harris and Margaret Harris (TPIL representatives), Bruce Harrison and Brett Harries (transport), Daniel Curtis (stormwater), Steven Joynes (flooding), Tom Watts (landscape and visual effects), Robert Taylor (geotechnical), Alex Jacob (noise), Henry Whyte (ecology), Kenneth Phillips (archaeology), and Vincent Murphy (planning).

²⁵ Legal Submissions of Counsel on behalf of S2T Trust, 4 July 2024 (part of OLP Logistics or OLP case).

²⁶ Alison Cowley (Priority Te Puna); Grant Overton and Ros Kernott (OLP Logistics or OLP).

²⁷ Julie Shepherd (Pirirākau Tribal Authority) and Alison Cowley.

²⁸ Rose Chalmers, Brian Jackson, Dr Chanteal Pagel (Forest and Bird), Trish Rae, Marty Stevenson, Drew Cowley, Sarah Rice, Chris Zingel, Russel Williams, and Neville Bidois (Pirirākau kaumatua representative).

²⁹ We received comments from Chris Zingel, Drew Cowley, Mark Keller, Marty Stevenson, Neville Bidois, Peter Lochhead, Rose Chalmers, Russell Williams, Sarah Rice and Alison Cowley on behalf of Priority Te Puna, Bev Monk and Bev Cain for the Waikaraka Trust and Brian Jackson.

³⁰ WBOPDC Section 42A Addendum Report, section 4, paragraph 21.

³¹ Reply Legal Submissions On Behalf Of Te Puna Industrial Limited, 5 May 2025

- [034] We do not separately summarise the matters covered in the legal submissions and evidence here, but we refer to or quote from that material as appropriate in the remainder of this Decision. We took our own notes of any answers given to verbal questions that we posed to Hearing participants.
- [035] We reserved the right to reconvene the Hearing to either prior to (to pose questions to the submitters or Section 42A Report authors) or after the receipt of TPIL's Reply submissions (to pose questions to TPIL). We did not reconvene the Hearing.
- [036] We closed the Hearing on 27 June 2025, having concluded that we required no further information from any of the parties.
- [037] We conducted a site visit on the afternoon of Monday 8 July 2024 accompanied by BOPRC Land Management Officer Daniel Kenna.

4.4 Consent categories

- [038] Consents required from the BOPRC as follows:
- under section 9(2)(a) of the RMA and Rule LM R4 of the RNRP to undertake a discretionary activity being the disturbance of land and soil as a result of earthworks;
 - under section 15(1)(b) of the RMA and Rule DW R8 of the RNRP to undertake a discretionary activity being to temporarily discharge sediment-contaminated stormwater to land where it may enter water; and
 - under section 15(1)(b) of the RMA and Rule DW R8 of the RNRP to undertake a discretionary activity being to permanently discharge stormwater and treated washdown water from the site
- [039] For completeness we record Ms Christian's advice that no consent is required for the disturbance of contaminated land. The discharge of dust into the air from ongoing operations on the site can comply with permitted activity Rule AIR-R1, the activities of spraying painting and abrasive blasting of containers can comply with permitted activity rules AIR-R5 (spray painting) and AIR-R6 (abrasive blasting). Accordingly, consent is not required for those activities under the BOPRC Regional Natural Resource Plan (RNRP).
- [040] We note that ablutions and amenity facilities are proposed to be provided in self-contained systems, which are serviced by a private waste contractor. There will be no discharge of effluent to land from such systems and so consent is not required under the BOPRC Onsite Effluent Treatment Regional Plan (OSET Plan)³².
- [041] Under the commonly accepted 'bundling principle' the applications to the BOPRC are collectively categorised as a discretionary activity.
- [042] Under the District Plan an application for land use consent for development that is not in general accordance with a Structure Plan is a Non-Complying Activity under Rule 21.3.12(d) of the District Plan.
- [043] The proposal also triggers the need for landuse consent under a number of other District Plan rules, as set out in paragraph 80 of the WBOPDC Section 42A Report. We note that Mr Murphy disagreed³³ that consent was required under some of those rules³⁴. However, we do not dwell on that because it was common ground that under the commonly accepted 'bundling principle', the TPIL application to the WBOPDC was to be assessed as a non-complying activity landuse consent application. In that regard we note Mr Murphy stated³⁵ that his "*differences of opinion in interpretation of the District Plan consent triggers do not detract from the overall non-complying activity status for the Application.*"

³² Paragraphs 4.4 to 4.22 of the BOPRC Section 42A Report.

³³ Murphy Evidence, paragraph 6.6.

³⁴ Rules 4A.1.4, 12.4.16.1, 12.4.16.3.b, 12.3.4.1, 12.4.9.1 and 12.4.9.1.g.

³⁵ Murphy Evidence, paragraph 6.7.

4.5 Compliance matters

- [044] At the Hearing a number of submitters raised issues relating to alleged unauthorised activities on the land within the Te Puna Business Park. Consequently, as part of our Minute 5 we requested that both WBOPDC and BOPRC “provide documentation (narrative text, plans or aerial photographs) to ourselves and the applicant outlining any unauthorised activities (earthworks and industrial activities) currently occurring within the Structure Plan area.”
- [045] We received a response from BOPRC on 5 August 2024 that included:
- a Memorandum from Marcia Christian outlining earthworks activities undertaken across 245, 260 and 297 Te Puna Station Road (the three properties within the Te Puna Business Park) between 2011 and 2020; and
 - a Memorandum³⁶ prepared by Michele Hosking (Senior GIS Analyst, BOPRC) detailing the process undertaken by BOPRC to estimate the volume of fill deposited on the three Te Puna Business Park properties.
- [046] The BOPRC assessment concluded:
- at 250-264 Te Puna Station Road (the Overton site) earthworks were legitimately undertaken under resource consent 62539. That resource consent was issued to Orange Lane Packhouse for earthworks and the temporary discharge of sediment contaminated stormwater associated with the works between 4 June 2004 and 30 June 2018;
 - at 297 Te Puna Station Road (the TPIL site) earthworks were legitimately undertaken under either resource consent 62951³⁷ issued to Bax Contractors (the previous owners of the site) or Bay of Plenty Regional Natural Resources Plan (RNRP) permitted activity rule LM R1; and
 - at 245 Te Puna Station Road (the Tinex site) resource consent 61858³⁸ was surrendered on 22 June 2011. Subsequent to that between ~77,900 cubic metres (m³) and ~86,800 m³ of fill and ~800 and ~2,100 m³ of cut has occurred on the Tinex site. That far exceeds the permitted activity limits of LM-R1 and so those earthworks are unauthorised.
- [047] Ms Christian advised that the unauthorised earthworks on the Tinex site involved fill that appeared to have been placed within the roadside drain running along the boundary of the TPIL site and restricted flows within the overland flow path from the TPIL site through the Tinex site.
- [048] In her Section 42 Addendum Report Ms Christian advised that the landowners of the Tinex site, in response to an abatement notice from BOPRC, lodged a resource consent applications RM24-0671 with BOPRC and RC14592L with WBOPDC³⁹. Those applications are for works to remedy adverse effects of stormwater displacement caused from unauthorised filling of land on the Tinex site. Those works are consistent with the proposed 45 m wide OLFP proposed by TPIL.
- [049] We received a response from WBOPDC⁴⁰ on 9 August 2024⁴¹. Ms Ryburn advised that 16 abatement notices remained in force over the Structure Plan area. She helpfully included a table⁴² detailing the nature

³⁶ Dated 29 November 2023. The process involved using two digital elevation models (DEMs) to compare the ground surface between 2011 and 2020. Both DEMs were created from LiDAR surveys.

³⁷ Consent 62951 was granted on 21 March 2005 and it authorised the deposition of up to 150,000 m³ of material on the site. It was surrendered in 2013 as the consent holder considered any further earthworks were able to meet RNRP permitted activity Rule LM R1.

³⁸ Consent 61858 authorised earthworks (a maximum volume of 126,000 m³ of fill material on the property over an area of 7 ha) and the associated temporary discharge of sediment contaminated stormwater to land.

³⁹ Ms Christian advised that processing of the Tinex applications was suspended under section 91D of the RMA pending the outcome of the TPIL consents.

⁴⁰ Memorandum from Natasha Ryburn, WBOPDC Environmental Consents Manager.

⁴¹ We granted leave for that response to be provided later than the deadline set in our Minute 5 request.

⁴² The table included compliance information relating to 288B Te Puna Station Road. Although that site is not within the Structure Plan area, Jason Mather Construction Limited (JMC) (occupier of 288B Te Puna Station Road) has been occupying and operating industrial activity within 250-264 Te Puna Station Road.

of each abatement notice. We note that of relevance here, the only ongoing unauthorised activities involve industrial land use at 250 – 264 Te Puna Station Road (the “Overton” site).

- [050] The unauthorised earthworks on the Tinex site and the unauthorised industrial activities on the Overton site are relevant to our assessments of stormwater and flooding matters. We discuss that further in sections 5.3.7 and 6.1.7 of this Decision.
- [051] Some submitters were concerned about TPIL’s future compliance with any conditions of consent should the proposal be approved. However, we agree with Ms Christian⁴³ that there is an expectation that a consent holder will comply with any granted consent given that a resource consent is a legally binding document. We find that submitters’ concerns that the consents might not be complied with are not relevant to our assessment of the proposal.

5.0 WBOPDC Land Use Consent

5.1 Section 104D matters

- [052] Before we can proceed to assess the application to WBOPDC under s104 of the RMA, we must first consider the s104D matters. That section provides:
- (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.
 - (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

5.2 Effects assessment approach

- [053] Prior to assessing the effects of the application under s104D(1)(a), we firstly set out our assessment approach.
- [054] We are required to assess the adverse effects of TPIL’s proposed activities on the Site, inclusive of any mitigation measures offered by TPIL or recommended by Ms Christian or Ms Perring. However, we do not consider that it is necessary for the TPIL proposal and its associated mitigation measures to fully implement the requirements of the Structure Plan. TPIL have deliberately sought consent to depart from those requirements.
- [055] Instead, we must decide if the adverse effects of the TPIL proposal (subject to the realistically achievable mitigation measures) are minor or less.

5.3 Adverse effects of the activity on the environment

- [056] We firstly note that s104D(1)(a) does not enable the consideration of any positive effects that might otherwise offset adverse effects. In saying that we acknowledge that while there are some substantial positive effects associated with the proposal⁴⁴, they are simply not relevant to our s104D(1)(a) assessment.
- [057] Regarding what is a ‘minor’ adverse effect we note that:
- ‘Minor’ is not defined in the RMA;

⁴³ BOPRC Section 42A Addendum Report, paragraph 5.10.

⁴⁴ See section 5.7.1 of this Decision.

- In the context of s104D it can be understood that 'minor' is very much at the lower end of adverse effects, but it must be something more than de minimis; and
- Our assessment under s104D(1)(a) requires a positive satisfaction on our part that the adverse effects of the activity on the environment in the future will be 'minor'.

[058] We agree with Mr Pilkington that the adverse effects of the proposal must be considered as a whole, rather than focussing solely on individual adverse effects. We also agree that the mitigating impact of consent conditions must also be taken into account in our s104D(1)(a) assessment.

[059] We now address the potential adverse effects of the TPIL proposal under a number of headings.

5.3.1 Existing Environment

[060] From a purely legal perspective, we accept that it is relevant to consider the existing 'legal' environment against which we should assess the effects of the TPIL proposal. As submitted by Rachael Zame, counsel for WBOPDC, that environment only relates to lawfully existing activities which necessitates assuming that the unauthorised earthworks on the adjoining Tinex site do not exist.

[061] We agree with Mr Pilkington⁴⁵ that existing environment is deficient insofar as there are flooding issues upstream of the Site and that the intersection of TPR and TPSR is currently unsafe. Those deficiencies are existing and are not the result of TPIL's proposal.

5.3.2 Permitted baseline

[062] RMA Section 104(2) states:

When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.

[063] Section 104(2) refers to what is commonly called the 'permitted baseline'. This means that an application can be assessed by comparing it to the development that could take place on the Site as of right, without a resource consent, but excluding any development that is fanciful. In this case we have elected not to apply the permitted baseline, because as noted by Ms Perring, due to the rule framework of the Structure Plan industrial activities cannot operate prior to the pre-requisite development requirements being fulfilled⁴⁶.

[064] We note that disregarding a 'permitted baseline' is a more conservative approach as it necessitates us assessing the effects of the TPIL proposal in its entirety.

5.3.3 Landscape Character and Visual Amenity

[065] We are not overly concerned about changes to the 'landscape character' of the Site as it is zoned Industrial and is anticipated (and indeed District Plan enabled) to contain industrial activities. Whether or not that change in landscape character is appropriate is not for us to determine. That decision was made some 20 years ago by the Environment Court and was effectively ratified in subsequent District Plan reviews. Instead, our focus is on visual amenity effects arising from the Site's proposed permitted industrial activities.

[066] Visual amenity effects were assessed for TPIL by Tom Watts and reviewed for WBOPDC by Dave Mansergh. Mr Watts' assessment identified effects on the visual landscape, physical landscape, and cultural/associative landscape.

[067] Mr Mansergh's peer review largely focused on whether or not the requirements of the Structure Plan had been met. However, as we outlined earlier, we do not consider that to be the appropriate test for a non-

⁴⁵ Reply Submissions.

⁴⁶ Paragraph 95.

complying activity landuse consent application where the very reason for the non-complying status results from the application seeking to depart from the Structure Plan requirements. Consequently, we generally preferred the visual effects assessment evidence of Mr Watts.

- [068] Relevantly, in terms of the concerns of some submitters that their views over the Site will be adversely affected, while we must have particular regard to the maintenance and enhancement of amenity values, that is not the same thing as saying there is a right to a view.⁴⁷ That is particularly the case given the Industrial zoning of the Site.
- [069] Mr Watts produced a 'Landscape Concept Plan' (LCP), the latest version of which was dated 24 February 2025. We included that LCP in section 3 of this Decision.
- [070] The 2025 LCP omits the landscape bund along TPSR in order to reduce flooding effects. To compensate for the omission of the bund, TPIL proposes to plant trees⁴⁸ along the TPSR boundary with a minimum height of 2.5m at a spacing of 2-3m dependent on species and the time of planting. Mr Watts advised that this proposed 10m wide perimeter planting along TPSR (and on the Site's southern boundary) was the primary means by which potential adverse visual effects would be mitigated⁴⁹.
- [071] Mr Mansergh considered⁵⁰ that the perimeter planting would be an appropriate solution to screen the site from TPSR once the trees reached a height of 6m after five to eight years. Thereafter effects of the Site activities on visual amenity would be minor. However, he was concerned about the survival of the trees as they would be subject to periodic flooding of up to 0.5m deep in events exceeding a 10% AEP (or Q₁₀ or 10-year annual recurrence interval)⁵¹. Should that occur then TPIL's proposed consent conditions⁵² require the LMP to include a maintenance plan that in turn requires replacement planting should that be necessary.
- [072] As can be seen from the LCP, TPIL also propose to undertake secondary roadside landscape planting within the Site. The main intent of that planting is to soften views of the Site from elevated locations to the east and west of the Site. In that regard several submitters⁵³ were concerned that current views over the Site would be adversely affected by the TPIL proposal.
- [073] In his Planning Memorandum that formed part of the initial Reply submissions, Mr Murphy advised that consent conditions had been proposed requiring further internal 'secondary' planting once the precise use of the Site between ContainerCo and other uses was determined at detailed design stage when there will be far greater certainty available to ContainerCo and other prospective tenants. That internal planting regime will be secured through approvals of detailed Landscape Mitigation Plans (either once or in stages). Mr Murphy considered that would ensure that the landscape and visual amenity effects on neighbouring properties will genuinely reflect the provisions of the Structure Plan. We are satisfied that will be the case.
- [074] Mr Mansergh accepted that the internal planting needed to be located in way that would not preclude the workable operation of the Site with its proposed yard configurations. However, he considered that the visual impact of ContainerCo's multi-coloured containers stacked three high within the Site could be significantly reduced by adding rows of tall, fast-growing trees within each lot, oriented perpendicular to TPSR. Mr Watts⁵⁴ considered that further screen planting beyond that shown on the LCP was not necessary, noting that the intent of that planting was to further disrupt views of permitted industrial activities (which the proposed ContainerCo operation is). In light of the Industrial zoning of the Site we prefer Mr Watt's opinion.

⁴⁷ Anderson v East Coast Bays City Council (1981) 8 NZTPA 35, page 37 (HC) and Re Meridian Energy Limited [2013] NZEnvC 59 at [112].
Foot v Wellington City Council W73/98, 2 September 1998, Kenderdine EJ, paragraph [104].

⁴⁸ Titoki, Pōhutukawa, Pūriri, Kohekohe, Stephens Island, and other trees that will close to 2m in height when planted.

⁴⁹ We note and accept Mr Watt's evidence (without repeating it here) that the proposed perimeter planting is in accordance with the Structure Plan (as set out in Section 7 of Appendix 7 of the District Plan).

⁵⁰ Attachment 1 of the WBOPDC Section 42A Addendum Report. This also means permanent container stacks as acoustic mitigation to the periphery of the workshop are no longer required.

⁵¹ TPIL response to Minute 5, Attachment E. HG Section A – Te Puna Station Road, page 10.

⁵² WBOPDC condition 61(e)

⁵³ Including Marty Stevenson and Priority Te Puna.

⁵⁴ TPIL response to Minute 5, Attachment A, page 18.

- [075] The proposed wetland on the eastern boundary will be planted, taking into account the BOPRC Wetland Restoration Guide⁵⁵. The cut faces of the proposed borrow pit will be planted with flaxes. We consider the wetland and borrow pit planting proposals to be appropriate, albeit that will primarily enhance the internal visual amenity of the Site.
- [076] Mr Watts concluded that the TPIL proposal would result in 'low to very low' visual effects for receptors within the surrounding rural visual catchment, as identified in his viewpoint analysis, subject to the mitigation proposed and specified in the LCP. The visual effects of the proposed workshop would be appropriately managed through the perimeter landscape planting, along with adherence to reflectivity standards for the workshop's concrete wall and steel roof finishes, thereby ensuring that it was recessive in the landscape. We note that according to the document *Te Tangi a te Manu Aotearoa New Zealand Landscape Assessment Guidelines* 'low to very low' visual effects equate to adverse effects that are no more than minor.
- [077] For her part, Ms Perring⁵⁶ considered that, subject to the imposition of conditions, landscape and visual effects were no more than minor.
- [078] It is indisputable that a change in visual amenity from the Site's current 'rural' appearance is anticipated and in fact allowed by the Site's Industrial zoning. We note the Environment Court's 2005 decision which stated that "*a number of properties at higher elevations overlook the site and it is accepted that no amount of amenity planting could screen this site completely from view*".
- [079] We are satisfied that the proposed planting (and acoustic bunding) as shown on the LCP provides sufficient screening of the proposed permitted activity industrial use of the Site (including a gantry crane or forklifts used to handle the containers) as a container depot, including when viewed from TPSR and elevated properties to the east and west of the Site.
- [080] Having regard to the expert evidence of Mr Watts, Mr Mansergh, Ms Perring and Mr Murphy, we find that subject to the implementation of the mitigation measures proposed by TPIL (namely acoustic bunding and perimeter, secondary and wetland planting as shown on the LCP together with recessive colours for the workshop), the potential adverse landscape character and visual amenity effects arising from the TPIL proposal will be no more than minor.

5.3.4 Biodiversity and Terrestrial Ecology

- [081] Some submitters appeared to have concerns about the effects of the TPIL proposal on biodiversity and terrestrial ecology. However, our observation is that the Site is predominantly devoid of any biodiversity values of note.
- [082] The Site is not recorded as an SNA and nor does it contain any significant indigenous vegetation or habitat of indigenous fauna that would merit biodiversity or ecosystem protection. Other than for some vegetation surrounding the existing elevated dwelling and the proposed borrow pit, the Site comprises a series of grazed grass paddocks and an existing commercial shed and metal yard.
- [083] Nevertheless, in response to submitter concerns, in Minute 5 we requested an ecological assessment of the proposed borrow pit area. This was undertaken by Henry Whyte⁵⁷ and it revealed a wetland seep that met the definition of a natural inland wetland under the National Policy Statement for Freshwater Management 2020 (NPS-FM). However, the borrow pit earthworks will not come within 10 m of the wetland

⁵⁵ TPIL response to Minute 5, Attachment E, page 6.

⁵⁶ WBOPDC Section 42A Addendum Report, paragraph 66.

⁵⁷ TPIL response to Minute 5, Attachment L – EcoResto Memorandum "*Ecological Memorandum, 297 Te Puna Station Rd – Vegetation Removal, Borrow Pit*". Prepared by Henry Whyte. Dated 5 February 2025.

seep. Nor will the earthworks result in a change in the hydrology of the wetland seep. Consequently, consent is not required under the NPS-FM⁵⁸.

- [084] Developing the borrow pit will result in the removal of approximately 400m² of vegetation. Mr Whyte's ecological assessment revealed that vegetation to consist of 95% exotic plants, primarily of a highly invasive nature, and 5% indigenous plants including some late-juvenile stage rimu, kahikatea and kauri and a range of herbaceous plants such as ferns. All of the indigenous plants were likely to have been manually planted. As we noted in section 5.3.3 of this Decision, the borrow pit faces will be planted with natives species such as flaxes.
- [085] Mr Whyte considered that the ecological values lost as a result of the vegetation clearance in the vicinity of the borrow pit would be adequately offset by the proposed revegetation of the borrow pit faces area with native species, together with the wetland area to be created on the Site's eastern boundary. He considered that wetland area would undoubtedly yield a net ecological benefit, subject to adequate on-going maintenance and pest control. BOPRC peer reviewer Heather McKenzie agreed. Mr Mansergh noted that planting associated with the stormwater pond and wetland would enhance the Site's native biodiversity.
- [086] On the evidence we are satisfied that the potential adverse effects of the TPIL proposal on biodiversity and ecology will be no more than minor.

5.3.5 Traffic Safety

- [087] Traffic safety matters were of concern to many of the submitters, including those we heard from at the Hearing and who provided us with comments on the TPIL response to Minute 5⁵⁹ and the technical memoranda that formed part of the Reply submissions. We received expert evidence on roading and traffic safety matters from Bruce Harrison, Brett Harries and Jan Franta⁶⁰ for TPIL. The WBOPRC peer reviewers were Craig Richards and Alex Jeffcoat (BECA) and Calum McLean (WBOPDC Transportation Director).

5.3.5.1 Te Puna Station Road and Te Puna Road Intersection

- [088] The main issue raised by submitters was the unsafe nature of the intersection of TPSR and TPR. We have observed that the intersection is currently unsafe. As noted by Mr Harrison, numerous submitters were concerned about the inadequacy of the intersection for use by heavy vehicles due to poor sight lines, the steep grade to the stop lines, and a tight left-hand bend.
- [089] TIPL proposed to upgrade the intersection. However, on 5 June 2025 we received a copy of Memorandum from Mr McLean addressed to Ms Perring stating:
- the WBOPDC Transportation team had recently engaged a supplier to undertake site investigation and detailed design of improvements to the Te Puna Road/Te Puna Station Road intersection, primarily being the addition of a right turn bay and lessening of the approach gradient for vehicles travelling west towards the intersection;
 - The provision of a right turn bay will help facilitate the introduction of a heavy vehicle ban on Clarke Road that WBOPDC was considering as part of the Traffic and Parking Enforcement Bylaw review currently underway; and
 - Funding has recently been secured for the project and he anticipated that construction of the intersection will commence early October 2025 and conclude late January 2026.
- [090] Accordingly, we issued Minute 11 requesting a brief Supplementary Section 42A Addendum from Ms Perring setting out any changes she wished to make to her assessment of Traffic and Access Effects, together with a resultant 'track changes' suite of conditions showing any changes she recommended using

⁵⁸ BOPRC Section 42A addendum Report, page 4.

⁵⁹ Including Chris Zingel, Mark Keller, Marty Stevenson, Peter Lochhead, Rose Chalmers, Russell Williams, Brian Jackson, and Priority Te Puna.

⁶⁰ Harrison Grierson

the 5 April 2025 Conditions Conferencing Statement suite of conditions as the base document. We gave the applicant an opportunity to respond to the Supplementary Section 42A Addendum.

- [091] Ms Perring provided her Supplementary Section 42A Addendum⁶¹ as requested. However, she addressed a range of matters that went well beyond the remit of Minute 11 which was solely focused on issues arising from WBOPDC's decision to upgrade the intersection. With regard to the intersection, Ms Perring advised that having reviewed the updated information and after taking advice from relevant subject matter experts, she concluded that the adverse traffic safety effects of the proposal with the intersection upgrade in place as proposed by WBOPDC would be no more than minor.
- [092] The applicant⁶² noted that WBOPDC had now (belatedly and long after TPIL committed to provide the intersection upgrade) committed to upgrading the Intersection itself. TPIL was supportive of upgrades to the Intersection, regardless of who undertook them, provided the upgrades mitigated the current deficiencies of the Intersection. That would have significant benefits for the community at large, as well as ensure that there were no unacceptable adverse traffic safety effects arising from the TPIL application.
- [093] For completeness we have decided to address the intersection in two ways. Firstly, in the absence of the WBOPDC's decision to upgrade the intersection and secondly in the situation where WBOPDC carries out the upgrade.
- [094] We find it prudent for the consent conditions to reflect both two scenarios as it is not unusual for council decisions to change or for construction projects to be delayed.

5.3.5.2 Te Puna Station Road and Te Puna Road Intersection – No Council Upgrade

- [095] We firstly address the long-term or permanent solution proposed by TPIL for this intersection.
- [096] TPIL have offered to provide a right turn bay at the intersection and for that upgrade to the importation of fill to the TPIL site. The precise nature of the upgrade was described in a Technical Memo prepared by Harrison Grierson⁶³ and was refined in their technical memoranda⁶⁴ attached to the Reply submissions. The design is shown in Harrison Grierson Drawings A2314643.00-200 through A2314643.00-205, Revision C dated 10th December 2024. TPIL have agreed to upgrade the intersection before filling of the Site commences, namely before the heavy vehicles carting fill to the Site commence operation. This does not preclude fill being transferred to the Site from the Tinex property as that does not involve the use of the intersection.
- [097] In his evidence Bruce Harrison considered that with the right turn bay in place, the intersection would operate efficiently with moderate delays, short queues, and an acceptable level of service⁶⁵. Mr Harrison also considered that the available sight distances would be sufficient for the safe operation of the intersection.
- [098] TPIL engaged Brett Harries to review Mr Harrison's Transportation Assessment Report⁶⁶. Mr Harries agreed that the addition of a right turn bay at the intersection was required to accommodate the additional traffic expected to be generated as a result of the TPIL proposal. He considered that upgrade would ensure the intersection was safe for all users and it represented a significant positive effect of the TPIL proposal.

⁶¹ RC3360L – Te Puna Industrial Ltd – 295 Te Puna Station Road, Te Puna – Supplementary 42A Addendum

⁶² Further Reply Legal Submissions on Behalf of Te Puna, Industrial Limited in Response to Supplementary S42A Addendum Report, 25 June 2025.

⁶³ Te Puna Station Road, Te Puna Road Intersection Constructability, Te Puna Industrial Limited, Harrison Grierson, date 17 April 2024.

⁶⁴ Technical Memo, Te Puna Station Rd Intersection Construction Assessment, Transport Response to Beca and WBOPDC Comments, Harrison Grierson, 30 April 2025.

⁶⁵ In the morning AM peak period, with TPSR closed to the east, the Level of Service (LOS) on TPR would be 'A'. The LOS on TPSR would be 'B' for vehicles turning left onto TPR and 'D' for vehicles turning right onto TPR. Harrison Evidence, paragraph 6.23.

⁶⁶ Dated September 2023.

- [099] Mr Harries also assessed the available sight distances in some detail. He concluded⁶⁷ that the topography of TPR to the south of the intersection somewhat constrained the available sight distances. He noted this to be an existing situation that was not further compromised by the proposed intersection upgrade. In his opinion, the Austroads Guides⁶⁸ allowed for such situations by providing Extended Design Domain (EDD) criteria that provided sight distance standards that were relevant to the environmental context and ensured appropriately acceptable and safe operations. Mr Harries considered the Stopping Sight Distance (SSD) standard was of key relevance and it would be comfortably achieved at the upgraded intersection.
- [100] The BECA peer review⁶⁹ stated that the proposed right turn bay on TPR improved the existing situation where drivers approaching from the south might not see a vehicle waiting to turn right in the through lane in time to avoid a collision. The BECA review authors concluded there was adequate sight distance to the north of the intersection from TPSR, noting that the majority of vehicles will turn right into TPSR and left out. The reviewers also agreed that the sight distance to the south of the intersection was likely to be acceptable with TPIL's proposed mitigations of vegetation clearance and roadside berm leveling. They were however concerned about the viewing angle for drivers, noting that would be checked as part of the yet to be undertaken Safe System Audit (SSA) of TPIL's detailed intersection design plan.
- [101] In her 30 April 2025 Technical Memorandum Ms Franta addressed the available sight lines and the viewing angle available to drivers that was of concern to the BECA peer reviewers. She advised that the final intersection design improves the situation by setting the stop line further back from the northbound lane and realigning the entry angle to be closer to perpendicular. That reduced the required head turning angle for drivers, keeping it well within the 120° limit referenced by BECA.
- [102] For his part Craig Richards agreed⁷⁰ that a right turn bay was necessary to accommodate the movement of vehicles turning right from TPR into TPSR. He advised that while he could not comment on the validity of TPIL's proposed solution because insufficient information had been provided to facilitate a design review however, he agreed in principle that was feasible to upgrade the intersection as proposed.
- [103] On the evidence we are satisfied that, subject to suitable SSA audits of the design and construction, TPIL's proposed upgrade of the intersection will ensure that any adverse effects of traffic associated with the proposed industrial activities on the TPIL Site will be no more than minor.
- [104] Initially there would have been a 'temporary' situation prior to the TPR/TPSR intersection upgrade during the likely two-to-three-year period over which earthworks will be undertaken on the Site. It was proposed to use of a 'Construction Traffic Management Plan' (CTMP) to manage the movement of trucks transporting fill to the Site during that period.
- [105] However, the Reply submissions⁷¹ confirmed TPIL's revised proposal which required the TPSR/TPR intersection upgrade works to be completed to WPOBDC's satisfaction prior to any fill being trucked to or from the Site. We find that to be appropriate and so we do not need to address the concerns of submitters and the WBOPDC peer reviewers regarding the adequacy of a CTMP or the adequacy of the existing intersection for heavy vehicles carrying fill to the Site.
- [106] BECA provided further peer review comments as part of the WBOPDC Section 42A Report Addendum. They expressed additional concerns:
- the feasibility of heavy vehicles (including loaded container trucks) negotiating the 15% grade on TPSR as it joins TPR. We note submitter Brian Jackson had observed trucks avoiding stopping on TPSR when able to turn left and taking a long time to complete the turn and reach the top of the hill;

⁶⁷ Harries Evidence, paragraph 5.15.

⁶⁸ Austroads Guides inform the design, construction, maintenance and operation of the road networks in Australia and New Zealand.

⁶⁹ Attachment 8 of the WBOPDC S42A Report.

⁷⁰ Attachment 9 of the WBOPDC S42A Report

⁷¹ Paragraph 5.25.

- whether that part of TPSR would need to be upgraded to accommodate heavy vehicles starting from stop. In that regard submitter Russell Williams provided photographs of potholes in TPSR below the intersection allegedly caused by earthmoving trucks;
- given the steep gradient, a concern that the new intersection layout would increase the risk of truck rollover, which may be elevated by container trucks with inconsistent centres of gravity. As the revised intersection layout proposes to shift the intersection to the south, it is likely that the proposed vehicle tracking will be steeper and longer than currently, elevating this risk. There was a high potential for severe injury outcomes due to the nearby driveway, power pole and drop off down the bank east of TPSR Road if a truck were to roll over; and
- the adequacy of the SISD given vehicle overhang on the stop line on TPSR at the intersection, approaching vehicles on TPR from the south being outside of the 120-degree visibility angle of a vehicle stopped on TPSR, and the 15% gradient significantly increasing the time for larger vehicles to turn out of TPSR.

- [107] Mr McLean also provided additional comments as part of the WBOPDC Section 42A Report Addendum⁷². He noted that Austroads Guide to Road Design Part 3 Geometric Design, Table 8.2 stated that 15% was the maximum negotiable road grade, but that grade was only “*satisfactory on low volume roads (very few or no commercial vehicles)*”. TPR is a primary collector road with an ADT of 2950 vpd of which 4% are heavy vehicles. He considered it was not a ‘low volume road’. For roads exceeding 2500 vpd the WBOPDC Development Code, Section 4, Table 2 specified that a “specific design” was required to determine the maximum permissible grade. On lower volume roads the permissible grade was 12.5%.
- [108] Mr McLean agreed with BECA that the effect of the steep grade on fully laden trucks turning off TPR and travelling downhill towards the Site had not been assessed, but there was likely to be an increased risk of trucks over-turning.
- [109] The gradient of TPSR at the intersection was addressed in the TPIL Reply submissions and Ms Franta’s Technical Memorandum. Harrison Grierson have developed two intersection upgrade designs. The first is a fully-compliant Option 01 featuring a 4% average gradient within the first 10 metres of the TPSR road approach, achieved by introducing a crest curve between the main carriageway crossfall and the side road alignment, followed by an 8% descent to the existing levels. Option 01 requires significant reprofiling over approximately 70 metres, involving level changes of up to 1.3 metres.
- [110] Option 02, referred to by Ms Franta and TPIL as the balanced solution, proposes an average gradient of approximately 7% within the 10m approach, followed by a 10% descent to existing levels. This reduces the extent of works to around 40 metres, with a maximum level difference of under 1.0 metre at the centerline. It has the advantage of maintaining driveway access to 326 TPSR at an acceptable 1:5 gradient and results in approximately 50% less earthworks.
- [111] Messer’s Harrison and Harries advised⁷³ that as heavy vehicles were able to negotiate grades of up to 15%, and that compliant sight distances will be available, any effects of the grades resulting from either Option were expected to be negligible.
- [112] Mr Murphy advised that the delivery of either Option would be secured by consent conditions, however Option 01 may require the use of compulsory land acquisition powers by WBOPDC to be delivered⁷⁴. Nevertheless, we are satisfied that the implementation of either Option 01 or Option 02 will suitably address concerns about the steep gradient of TPSR as it enters the intersection.

⁷² Attachment 3.

⁷³ Reply submissions, Attachment C.

⁷⁴ Mr Pilkington submitted in Reply (paragraph 5.24) that we did not have jurisdiction to grant consent for only Option 1, given we cannot compel works on third party land. We accept that submission.

- [113] We note either Option 01 or Option 02 also resolves the peer reviewers' concerns about the Minimum Gap Sight Distance (MGSD) for drivers turning right into TPR from TPSR and the slow acceleration of their vehicles that might occur on the otherwise steep gradient of TPSR.

5.3.5.3 Te Puna Station Road and Te Puna Road Intersection –Council Upgrade

- [114] We now address the situation should WBOPDC's decision to upgrade the intersection proceed.
- [115] Ms Perring advised that WBOPDC's transport decision had implications for the assessment of the TPIL application in that the designs to upgrade the Intersection submitted by the applicant are no longer required by WBOPDC, and TPIL would not have responsibility for implementing the upgrade. That also meant that the applicant would not have any control over the timing of the upgrade. Ms Perring also noted that District Plan rule 12.4.16.b would no longer be fully applicable.
- [116] Ms Perring advised that Mr McLean had confirmed that the WBOPDC's design would be passed through a Safe Systems Audit undertaken by independent experts. That would ensure that the upgrade would be safe and fit for purpose to accommodate the estimated traffic associated with the entire Te Puna Business Park. Mr McLean also advised that funding had recently been secured for the project and he anticipated that construction of the intersection would commence in early October 2025 and conclude in late January 2026.
- [117] That being the case, any concerns regarding the safety of the intersection will be resolved once the WBOPDC initiated upgrade is completed.

5.3.5.4 Te Puna Station Road and Te Puna Road Intersection –Upgrade Timing

- [118] We agree with counsel for TPIL⁷⁵ that it is important that the intersection upgrade is delivered in a timely manner so as to not frustrate a grant of that consent, given that TPIL has committed to not undertaking certain works on Site in advance of that upgrade. In that regard we consider TPIL's suggestion that the consent conditions should enable TPIL to undertake the Intersection upgrade should WBOPDC not do so is entirely reasonable.
- [119] However, that is problematic when it comes to drafting suitable conditions of consent. Counsel and Mr Murphy suggested that a condition should be inserted that entitles TPIL to undertake the intersection upgrade itself should WBOPDC not complete those works by 31 January 2026. That is problematic insofar as WBOPDC may be undertaking those works at that time but their completion may have been delayed.
- [120] We prefer an approach whereby TPIL is required to undertake the intersection upgrade itself should WBOPDC not have awarded a contract for undertaking those works by 1 November 2025. That is also problematic because WBOPDC is the road controlling authority and their approval is required for third party roading works including any undertaken by TPIL. Nevertheless, we see no clear alternative means of dealing with WBOPDC's recent decision to upgrade the intersection itself. Our condition 3 on the WBOPDC consent is our attempt to make the best of the difficult position that we now find ourselves in.

5.3.5.5 Increased Traffic on Te Puna Road

- [121] TPR and TPSR are both classified as primary collector roads under the NZTA One Network Road Classification system.
- [122] A number of submitters⁷⁶ expressed concern about the effects of increased traffic on TPR, in particular heavy vehicles associated with the TPIL proposal on the safety of cyclists and pedestrians (including the location of the Te Puna School in the vicinity) and on safe access to and from roadside properties.

⁷⁵ Further Reply Submissions, paragraphs 3.8 and 3.9.

⁷⁶ Including Rose Chalmers, Sarah Rice, Chris Zingel and Bev Cain.

- [123] Mr Harrison⁷⁷ considered that while the TPIL proposal would increase traffic on both TPR and TPSR, the increase on TPR was expected to be predominantly south of TPSR. On that basis any increase in traffic on TPR near the school would be low, and any resulting adverse safety effects would be minimal.
- [124] As we noted in section 3 of this Decision, during the construction period there will be 18,717 single unit truck movements or 37,434 in and out truck movements to and from the Site along TPR and TPSR⁷⁸. There will be 125 truck movements each working day with an average of 16 truck movements (8 trucks going in and 8 trucks going out) every hour over that period.
- [125] The full development of the Site will generate 774 vpd (comprising 288 vpd for the Container Co activity and 486 vpd for the other industrial activities) of which 189 will be heavy vehicles. There will be a peak hour traffic generation of 125 vehicles/hour.
- [126] To put that in context, Mr Harrison advised that the Mobile Road website gave an existing ADT on TPR, immediately north of SH2, of 3,000 vpd with 5.2% heavy vehicles, which amounted to around 156 truck movements per day. Mr Harrison considered that the anticipated Site related traffic would not affect the safety of TPR, including pedestrians accessing the Te Puna Village commercial centre.
- [127] TPIL's peer reviewer Brett Harries confirmed that the average addition of around 16 (two-way) truck movements per hour for fill delivery can be readily accommodated by the road network.⁷⁹ We heard no evidence to the contrary.
- [128] The BECA peer review authors observed that for the expected ADT vehicle movements, the shoulders on TPR were in places 0.5m narrower than recommended by the Austroads Guides⁸⁰. The authors considered that was most likely to adversely affect the safety of cyclists, with that in turn being influenced by cyclist volumes, truck volumes and the time of day truck movements occurred, and the geometry of the road. They stated that the risk of collision might be low, but that had not been assessed.
- [129] Submitter Chris Zingel observed that certain sections of TPR were adequate, especially as one approached SH2. However, the section near TPSR completely lacked an adequate shoulder, which was a serious concern. He said that having a single truck pass a cyclist there was one thing, but encountering multiple trucks trying to pass simultaneously created far more dangerous situation.
- [130] In his evidence for the Hearing Mr Harrison agreed the main potential adverse effect of the narrower shoulders on TPR would be on the safety for cyclists. While he did not have any data for the number cycle movements on the TPR, his on-site observations indicated that the number was low. He also noted that the Omokoroa to Tauranga cycle trail used TPR north of Borell Road, not the section of TPR between TPSR and SH2. He concluded that given the low number of cyclists using TPR between TPSR and SH2, any adverse effects on cyclists would be minimal.
- [131] Mr Harrison surveyed cyclist numbers in August 2024⁸¹ to address the uncertainty about their numbers. This revealed a low number of cyclists and led Mr Harrison to conclude that the provision of dedicated cycle lanes on TPR was not required. Mr Harries noted that of the cyclists that were observed, the predominant movement involved right turns from TPSR into TPR (north), and the left turn from TPR (north) into TPSR. Very few movements were seen to occur to or from TPR (south). Mr Harries agreed that a dedicated cycle land was not required.
- [132] Submitters were concerned that a winter survey period was unlikely to reflect cyclist numbers in warmer months such as during the proposed construction period. Some submitters⁸² had observed large groups of

⁷⁷ Harrison Evidence, paragraph 7.13

⁷⁸ TPIL Response to Minute 5. Attachment H, page 2.

⁷⁹ TPIL Response to Minute 5. Attachment I, page 1.

⁸⁰ TPR shoulders were 1.0m whereas Austroads recommended 1.5m.

⁸¹ Thursday 22 August and Saturday 24 August 2024.

⁸² Marty Stevenson and Bev Cain.

cyclists (up to 10 or 20 riders) on TPR. In Reply⁸³ Mr Pilkington submitted that although the surveys were carried out during winter, Messrs Harrison and Harries had both confirmed that given the very low number of observed cyclists, coupled with the fact that the section of TPR did not form part of a recognised cycle route, it was expected that the numbers of cyclists during the summer would also be low. We make no finding on that matter, but note that is not determinative of our assessment of the adequacy of TPIL's proposed mitigation works which will actually improve the existing situation for cyclists, as we discuss next.

- [133] The TPIL response to Minute 5 advised that to mitigate adverse effects on cyclists using TPR, the existing 1.5m wide footpath south of the intersection would be upgraded and be signalled as a shared path. The signage would encourage cyclists to use the footpath.
- [134] WBOPDC's transport peer reviewers BECA considered⁸⁴ that the shared path proposal would create an untenable situation because a shared path cannot be formalised at 1.5m wide. Two path users would not be able to pass each other (especially two cyclists) on a 1.5m path. Cyclists would be unlikely to use the path unless it was an appropriate width, which Mr Harrison identified as being 2.0 to 2.5m wide. However, Mr Harrison also advised that due to the constraints of the bank located on the western side of the path and a fence located on the eastern side, the widening of the footpath was not practical.⁸⁵
- [135] The issue of cyclist safety was addressed by Ms Franta as part of the Reply submissions. She advised that while full-length widening the existing footpath was technically possible, it would require a structurally designed solution including geotechnical investigation, edge beams, and protective railing due to the adjacent topography. She considered that to be an over-engineered response given the usage of TPR by cyclists. We agree.
- [136] Ms Franta also advised that as shown in the Austroads Bicycle Facility Selection figure⁸⁶, the existing combination of road category and speed already placed TPR into a category where cycling was not attractive without a separate cycle path. In other words, cyclists would be well advised not to use TPR and to use the footpath instead.
- [137] Ms Franta summarised what she considered to be TPIL's practicable solution involving widening the footpath to 2.0 m (the minimum Austroads requirement) where feasible without complex structural works, and the addition of appropriate signage. The widened length would be bounded by the access to 189 TPR (north) and 159 TPR (south). The approximately 75m-long section on the embankment that has existing railings would be retained at the current 1.5-1.7 m width.
- [138] However, and rather tellingly, we note that as part of WBOPDC's response to Minute 11, Mr Jeffcoat (BECA) subsequently advised Ms Perring⁸⁷ that, in relation to the proposed footpath widening to address cyclist safety concerns, "*what the applicant has proposed is the best they can be expected to do*". We find this apparent change in opinion somewhat perplexing, but note it accords with our own view of the safety issues for cyclists that we had formed based on evidence previously available.
- [139] Given the current state of TPR we are satisfied that TPIL's proposal (as outlined by Mr Harrison and Ms Franta and belatedly by Mr Jeffcoat) is reasonable in the circumstances. We have no issue with cyclists having to dismount and walk for up to 75m along the shared footpath should they encounter pedestrians.
- [140] With the proposed upgrading of the shared footpath and appropriate "cyclists please dismount" signage, we are satisfied that the effects of the TPIL proposal and its associated heavy vehicle movements on TPR will result in road safety effects on cyclists that are no more than minor.

⁸³ Paragraph 5.31.

⁸⁴ WBOPDC Section 42A Addendum Report, Attachment 2.

⁸⁵ TPIL Response to Minute 5. Attachment H, page 5.

⁸⁶ Austroads 6A Table C1 1: Bicycle Facility Selection Depending on Road Function.

⁸⁷ Supplementary 42A Addendum, paragraph 13.

5.3.5.6 Width of Te Puna Station Road

- [141] Some submitters were concerned about the width of TPSR.
- [142] Mr Harrison advised that with the development of all three sites within the Business Park, the ADT volume on TPSR was expected to increase to between 4,083 and 5,464 vpd, depending on whether TPSR to the east remained closed, or was re-opened. For an ADT volume of over 3,000 vpd the Austroads Guides recommended a sealed carriageway width of 10.0m. Mr Harrison noted that WBOPDC proposed to widen TPSR to 8.5m and provide a 3.0m wide shared pedestrian and cycle path. While the proposed seal width would be less than recommended by the Austroads Guides, given that WBOPDC proposed a separate cycle path, he considered an 8.5m width to be appropriate.
- [143] The BECA review authors considered traffic volumes on TPSR would be relatively low and consistent with its One Network Framework classification as a 'primary collector road'. They concluded that widening TPSR might not be necessary from a traffic volume perspective if the road remained closed to the east, but without a safe route for cyclists a significant conflict would remain. We note that conflict will be resolved by WBOPDC's intentions for the road.
- [144] On the evidence we find that, in light of the WBOPDC's intention to widen TPSR and provide a separate cycle path, the adverse effects of the TPIL proposal in the context of TPSR's width will be no more than minor.

5.3.5.7 Site Entranceway

- [145] Mr Harrison's assessment of the expected peak hour turning movements at the Site's entranceway indicated the need to provide a right turn bay was met with the partial re-opening of TPSR east of the Site, but was not met with the continued full closure of TPSR to traffic in both directions east of the Site. We note that Clarke Road to the east of the Site still provides access to SH2. Nevertheless, TPIL has proposed to provide a right turn bay for the entranceway into the Site.
- [146] Mr Harrison noted⁸⁸ that providing a right turn bay exceeded the right turn requirements of NZTA Diagram E⁸⁹ as specified in the Structure Plan. Diagram E includes a requirement for additional widening for left turn movements into the Site. He considered that because he had recommended all heavy vehicles, and all TPIL staff travelling to the Site from Tauranga, be required to use the SH2 – TPR – TPSR route (meaning that there would no left turn movements of trucks into the Site), the additional left turn widening was not required. This seems sensible to us and we note the SH2 – TPR – TPSR route requirement can be included in consent conditions.
- [147] There was some concern about the need to widen the northern side of TPSR to accommodate the right turn bay. However, the revised preliminary design of the site access on TPSR⁹⁰ shows the widening along the southern side of TPSR, alleviating that concern.
- [148] The BECA peer review authors concluded that "*The applicant has proposed suitable accessway design on Te Puna Station Road.*" For the WBOPDC Mr McLean advised that he had checked the proposed entranceway layout and was satisfied that it was fit for purpose.
- [149] Submitters representing the existing industrial activities⁹¹ to the north of TPSR raised concerns about the proposed Site entranceway being too close to their site entrances. We received evidence from Andrew Overton who is one of the trustees of the S2T Trust which owns 250-264 TPSR⁹². Mr Overton did not raise the Site entranceway issue in his evidence to us.

⁸⁸ Harrison Evidence, paragraph 6.38.

⁸⁹ District Plan rule 12.4.16.2(d)(ii) refers to Diagram D, however since the Structure Plan was prepared, the naming of the NZTA diagrams has changed and that the relevant requirement is now Diagram E.

⁹⁰ Shown on Harrison Grierson Drawing A2313995-HG-ZZ-DR-C-100 dated 15 January 2025.

⁹¹ Sometimes referred to as the Overton (or OLP) and JMC properties.

⁹² Referred to as the OLP site.

- [150] Mr Harrison advised that while the Site entranceway would be located approximately 77m to the east of the location specified in the Structure Plan, the proposed location provided a greater sight distance to the west than the location specified in the Structure Plan. He also advised that using an operating speed of 95km/h, the available sight distance to the east complied with Austroads Guides requirements. The sight distances to the west did not comply with the Austroads Guides requirements, however the available sight distance to the west was suitable for an operating speed of 92km/h, which he considered to be sufficient for the safe use of the entranceway given that TPSR had an 80km/h speed limit.
- [151] Mr Mclean also addressed this matter. He advised that both the Overton (or OLP) and JMC entranceways were offset greater than 25m from TPIL's proposed entranceway and on that basis, he was satisfied that the location of the TPIL entranceway complied with the requirements of WBOPDC's Development Code for Industrial zones⁹³.
- [152] On the evidence we find that the potential adverse effects of TPIL's proposed Site entranceway are no more than minor.

5.3.5.8 Traffic Safety Effects Conclusion

- [153] On the evidence we are satisfied that the effects of the TPIL proposal with regard to the width of TPSR and the proposed new entranceway to the Site will be no more than minor. We reach the same conclusion with regard to the safe and efficient operation of the intersection of TPR and TPSR. We note that either the WBOPDC's proposed upgrade of the intersection of TPR and TPSR or TPIL's proposal for that intersection will significantly improve that intersection and reduce existing traffic safety hazards, provided of course that any upgrade undertaken by WBOPDC is to the same or better standard than the upgrade proposed by TPIL.
- [154] We are also satisfied that the increase in traffic on TPR, particularly heavy vehicles associated with both the importation of fill to the Site and the operation of the industrial activities at the Site once it is developed, will result in minor or less road safety effects for cyclists on TPR. We note that road is already unsafe and TPIL's proposed widening of the shared footpath and associated signage will reduce that safety hazard.
- [155] In overall terms we are satisfied that the effects of the TPIL proposal on traffic safety are no more than minor. We observe that in her 17 June 42A Addendum Ms Perring concluded that, based on the expert advice and risk assessment, traffic safety effects on pedestrians and cyclists are no more than minor.

5.3.6 Servicing

- [156] Ms Perring⁹⁴ advised that the existing main water connection to the Site was inadequate for firefighting purposes and that TPIL was seeking to upgrade the existing main water servicing the area and install a 150mm connection to the Site. She⁹⁵ advised that, based on advice from WBOPDC's Infrastructure Water Engineer, the proposal complied with Council's Water Supplies Code of Practice.
- [157] We are satisfied that the proposed consent conditions regarding water supply will meet this requirement for an upgraded water connection.
- [158] Ms. Perring⁹⁶ advised that there is no capacity in the existing Council wastewater pipeline within TPSR. As a consequence, TPIL are proposing to provide wastewater services by way of Portaloo's. She did not *"consider that the use of Portaloo's on a long-term basis will assist with establishing a professionally developed business park capable of hosting a range of industrial activities envisaged by the zoning."* Ms Perring⁹⁷ goes on to state that *"I consider the effects of wastewater servicing to be no more than minor"*.

⁹³ Development Code standard drawing W414.

⁹⁴ WBOPDC Section 42A Report paragraph 166.

⁹⁵ Ibid paragraph 167

⁹⁶ Ibid paragraphs 168-169

⁹⁷ Ibid paragraph 175

- [159] However, in response to Minute 5, Mr Murphy⁹⁸ advised that more sophisticated prefab or containerised ablution and amenity facilities would be provided on-site to service staff demands. We understand that this will require pumping out of the wastewater and its disposal off-site. Mr Murphy also advised that *‘further wastewater infrastructure requirements to service growth or diversification in use of the Business Park site in the future will be subject to any consenting required for necessary wastewater infrastructure’*.
- [160] We are satisfied that the proposed consent conditions regarding wastewater facilities will address any associated potential effects.
- [161] In overall terms we are satisfied that the effects of the TPIL proposal with regard to servicing are no more than minor.

5.3.7 Flood Hazard

- [162] We address Site stormwater management in section 6.1.7 of this Decision.
- [163] TPIL’s flood assessment is reliant on modelling primarily undertaken by Dr Steven Joynes. Ms Christian advised⁹⁹ that TPIL had undertaken a flood model validation exercise, as detailed in Attachments B¹⁰⁰ and C¹⁰¹, prepared by Dr Joynes. That validation included incorporating appropriate model build parameters and comparing flood model outputs against photographs of the Tinex site and 260 Te Puna Station Road, together with information provided by the landowners of maximum flood levels reached during a storm event in January 2023, and nearby rainfall data. The validation exercise was to provide confidence in the model’s ability to replicate real-world examples and provide confidence in the model outputs.
- [164] Ms Christian also advised that BOPRC’s peer review expert Ms Rhynd had technically reviewed Dr Joynes’ information and agreed that the flood model was fit for purpose. That included appropriate parameters to account for issues raised by the submitters regarding water sources from a nearby spring (raised by submitter Peter Lochhead), and compromised capacity of the Hakao Stream due to silting (raised by submitters Priority Te Puna and Drew Cowley).
- [165] We heard no qualified evidence to the contrary and find TPIL’s flood modelling to be fit for purpose.
- [166] A key matter that we sought further advice on was the joint probability flood level for the Site. We posed a number of the questions in Minute 5 and sought advice on this matter including “how the permanent stormwater pond works in consideration of joint probability events in accordance with the BOPRC Hydrological and Hydraulic Guidelines 2012 Table 4.4.”
- [167] The applicant undertook the analysis as requested and as advised in Mr. Murphy’s response to Minute 5¹⁰²:

Dr Joynes, in making further climate-change adjustments based on the most up-to-date information held by BOPRC (which differs from climate-change adjustment directions in the BOPRC guidelines), has established the joint-probability analysis generates the following flood levels in the instance of the combinations occurring:

Case 1 – Rain depth 340mm (100-year return period, 24 hour duration storm, climate change adjusted to RCP 8.5 2130 projection), tide surge level RL 3.39m (20-year return period tide surge level, as forecast in 2130 assuming 1.6m sea level rise. Resulting combined flood level: RL 3.82m Moturiki datum.

⁹⁸ Attachment A – Overarching Response dated 24 February 2025 (Vincent Murphy, Momentum Planning and Design)

⁹⁹ April 2025 Section 42A Addendum, paragraphs 5.35 and 5.36.

¹⁰⁰ Attachment B - Memorandum “Flood Modelling Response Memorandum”. Prepared by Dr Steven Joynes. Dated 21 February 2025.

¹⁰¹ Attachment C – Golovin “Floodplain Assessment, 297 Te Puna Station Road, RD6, Tauranga”. Prepared by Dr Steven Joynes. Dated February 2025.

¹⁰² Ibid, page 11 question 1

Case 2, the inverse: rain depth 250mm (20-year return period, 24-hour duration storm, climate change adjusted to RCP 8.5 2130 projection), tide level RL 3.9m (100-year return period tide surge level, as forecast in 2130 assuming 1.6m sea level rise. Resulting combined flood level: RL 3.73m Moturiki datum.

The joint probability analysis therefore reveals rainfall as a source of flooding is most critical to the site and proposed infrastructure

[168] Mr Murphy¹⁰³ summarised the evidence of Harrison Grierson and Dr Joynes as follows:

National HIRDS data, as referred to in the BOPRC Guidelines, extends to a 2100 horizon, at which point there is 320mm of rain depth in a 24-hour, 100-year return period rainfall storm.

0.49m of sea level rise is built into tide adjustments, and Dr Joynes has added 0.17m for further wave run up/surge variation reasons (0.66m total)

Based on the above, the strict levels created by the Table 4.4 analysis have not been elected to be pursued in delivering fill platforms. Rather, priority has been given to the importance of rainfall flooding as the more critical source of flooding. Platform levels have been set using climate-adjusted data in accordance with HIRDS out to 2100, and with the specified tide climate-change adjustments as built into the written BOPRC Hydrological and Hydrological Guidelines

the strict levels created by the Table 4.4 analysis have not been elected to be pursued in delivering fill platforms. Rather, priority has been given to the importance of rainfall flooding as the more critical source of flooding. Platform levels have been set using climate-adjusted data in accordance with HIRDS out to 2100, and with the specified tide climate-change adjustments as built into the written BOPRC Hydrological and Hydrological Guidelines. This generates a combined flood level of RL 3.37m, with the (platform) elevation to RL 3.62m to ensure feasibility of operation of proposed stormwater infrastructure and delivery of freeboard.

[169] Mr Murphy went on to say:

“Noting the climate-change risks of sea level rise and flooding events to the site using the most extreme information held by BOPRC, a condition of BOPRC earthworks consent is offered (conditions 6.1-6.3) addressing this matter. This requires the surveying and monitoring of sea level rise, and in the event of sea level rise occurring in the manner predicted, further adaptive management works to be implemented at the site in the future to respond to sea level rise taking into consideration the most extreme

[170] Ms Perring referred to advice from Mr Pennington¹⁰⁴ that proposed a higher combined flood level:

Information that arose during expert caucusing revealed that wider area flood effects were assessed without strictly following BOPRC’s H&H guideline approach to joint probability. BoPRC supplied a memorandum indicating that a 2130 1% AEP harbour inundation level is 4.17mRL (MVD53). With the proposed development level set at 3.62mRL, the development would not be maintained in a “flood free” state for a 1%AEP extreme sea level event (even without rainfall), with a flood depth of 0.55m.

[171] Ms Perring¹⁰⁵ referred to guidance from an Australian publication called Australian Rainfall and Runoff: A Guide to Flood Estimation. She concluded that the flood depth of 0.55m referred to by Mr Pennington would be unsafe for vehicles, children and the elderly. She went on to say that she accepted the expert opinion of Mr Pennington and used that information to assess the proposal under Rule 8.3.3 of the District Plan regarding floodable areas and coastal inundation areas. Ms Perring also stated that:

¹⁰³ Pages 10-11 Attachment A – Overarching Response dated 24 February 2025 (Vincent Murphy, Momentum Planning and Design).

¹⁰⁴ WBOPDC Planning Officer s42A Addendum Report Recommendation 11 April 2025. Paragraph 114.

¹⁰⁵ Ibid paragraph 114.

As the applicant's flooding assessment and Mr. Joynes response to Minute 5 have not provided updated flooding and filling depths adjusted for the required climate change and joint probability standard I also consider that the applicant has not demonstrated compliance with Rule 12.4.1.a, being the requirement for "every existing or proposed site within the development shall have a building site suitable for any approved activity free from inundation, erosion, subsidence and slippage" (confirmed for this site as being the 100-year modelled flood level).

- [172] Ms Perring then turned to TPIL's proposal to include an adaptive management approach in the consent conditions, together with their lower flood level, associated building platform and floor level. She concluded¹⁰⁶:

Based on the information presented it is challenging to draw an overall conclusion on the degree of on-site flooding effects and the suitability of the site for development. Accordingly, it is also challenging to recommend potential consent conditions.

- [173] Ms Christiansen¹⁰⁷ provided further advice on the background to the BOPRC memorandum referred to by Ms Perring.

Policy 24 of the New Zealand Coastal Policy Statement 2010, states that a minimum of the 1% Annual Exceedance Probability (AEP) coastal inundation level should be utilised to identify areas at risk from coastal hazards, such as this site.

For this property, according to harbour inundation modelling by NIWA (for the Tauranga Harbour undertaken in 2019), the 1% AEP coastal inundation level for this property is RL4.17 m MVD. This level is the combined storm tide and wave set-up elevation during a 1% AEP storm event in the year 2130, with a sea level rise (SLR) allowance of 1.59 m. This sea level rise prediction is based on the global warming emissions scenario RCP 8.5H+, in accordance with BOPRC Coastal Hazards and Climate Change Guideline¹⁰⁸, and was prepared and provided to the Applicant by BOPRC Engineering Team on 12 February 2025, as an outcome from the stormwater/flooding caucusing discussions

The BOPRC Coastal Hazards and Climate Change Guideline is consistent with RPS Policy NH 11B, which directs to incorporate the effects of climate change in natural hazard risk assessment and to utilise "authoritative up-to-date projections to changes in sea level, rainfall, temperature, and storm frequency and severity as updated scientific data becomes available", as it incorporates the more recent (2017) MfE guidance for local government related to coastal hazards and climate change.

- [174] In considering the different conclusions reached by the applicant's experts and Mr Pennington on behalf of WBOPDC, we have considered the basis of the flood predictions, namely Tables 4.3 and 4.4 Design Standards for floods and sea level¹⁰⁹.

Table 4.3 Sea levels at various locations for design purposes (See References for Sources of Data).

Location	Design Sea Level (L) for Stated Return Period (Moturiki Datum)* ¹			
	L ₂	L ₂₀	L ₅₀	L ₁₀₀
Tauranga Harbour	1.9	2.2	2.4	2.5

¹⁰⁶ Ibid paragraph 131.

¹⁰⁷ Section 42A Addendum Report BoPRC 11 April 2025. Paragraphs 5.40 – 5.42.

¹⁰⁸ (Bay of Plenty Regional Council "MfE Coastal Hazards and Climate Change Guidance Report". Date 21 September 2021)

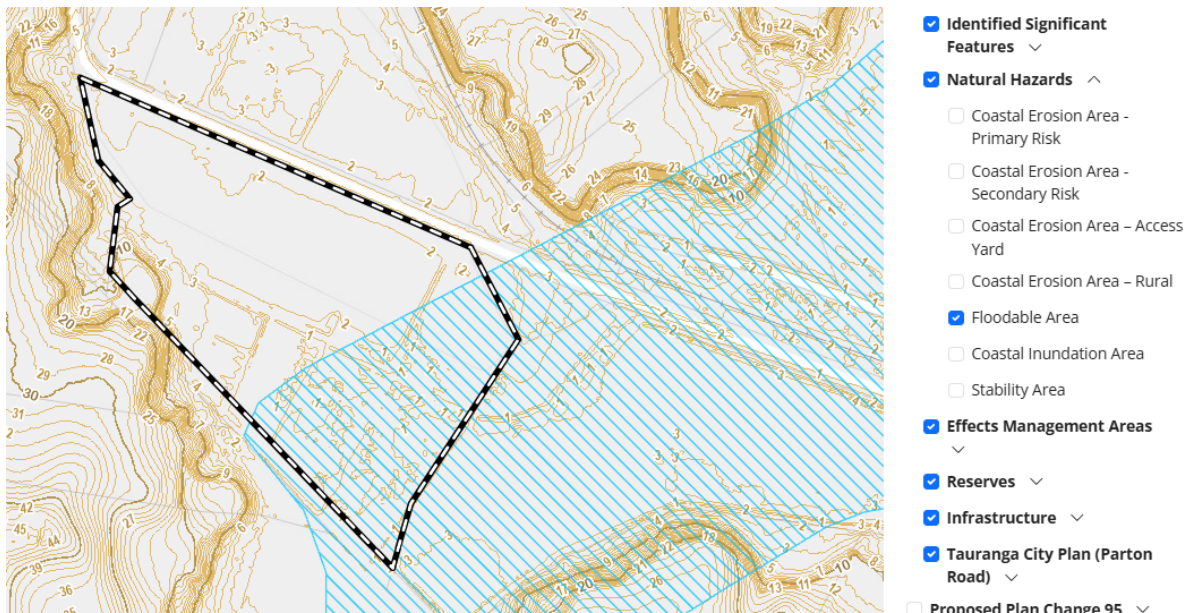
¹⁰⁹ Guideline 2012/02 - Hydrological and Hydraulic Guidelines. Bay of Plenty Regional Council .dated August 2012.

Table 4.4 *Design standard combinations for floods and sea level.*

Design Return Period	Case 1	Case 2
100-year	$Q_{100} : L_{20}$	$Q_{20} : L_{100}$
50	$Q_{50} : L_{20}$	$Q_{20} : L_{50}$
20	$Q_{20} : L_2$	$Q_2 : L_{20}$
10	$Q_{10} : L_2$	$Q_2 : L_{10}$

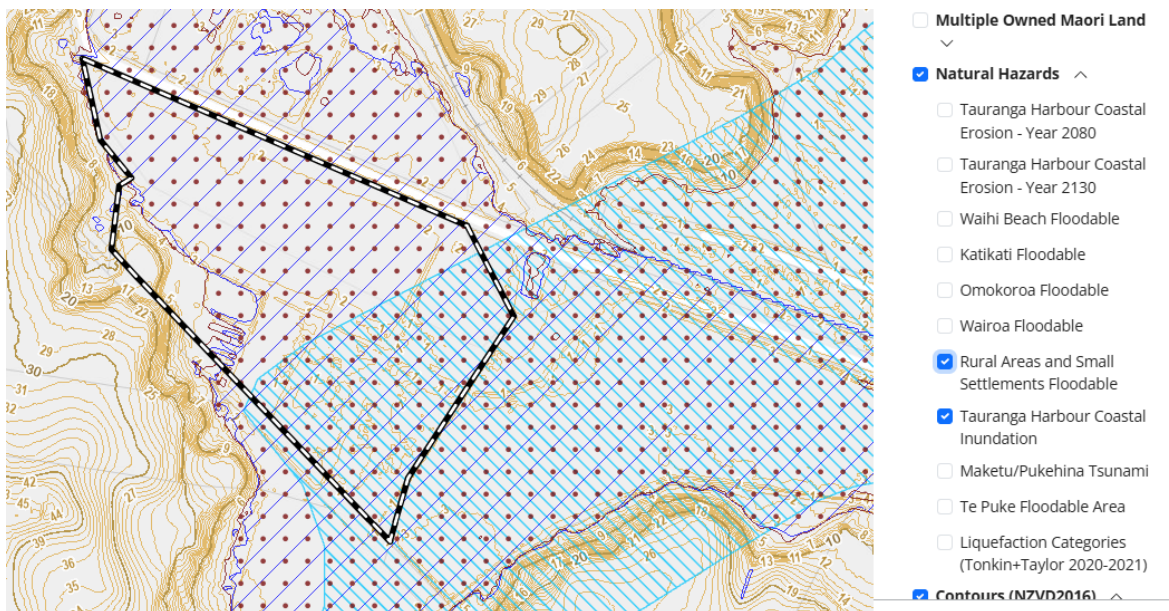
- [175] Dr Joynes used the 2012/02 Hydrologic and Hydraulic Guidelines 2012 prepared by the BOPRC to assist his analysis. However, he gave preference to rainfall being the critical source of flooding rather than coastal inundation.
- [176] Mr Pennington as referenced above stated:
BoPRC confirmed that the design sea level to be applied has been updated and is substantially higher than what was stated in the (2012) H&H Guidelines.
- [177] The Memorandum from Mr Pennington does not provide any detail regarding the status of the revised design sea level other than to say it has been updated by BOPRC. However, the Addendum Section 42A Report authored by Ms Christiansen provides some further details where she states that “for this property, according to harbour inundation modelling by NIWA (for the Tauranga Harbour undertaken in 2019), the 1% AEP coastal inundation level for this property is RL4.17 m MVD.”
- [178] The Design Sea Level in Table 4.3 above, for a return period of 100 years is 2.5m compared with the 4.17m level as estimated in the 2021 Guidance Report by NIWA.
- [179] We were not provided with any information on the relative status of the H & H Guidelines 2012 and the more recent Coastal Hazards and Climate Change Guidance Report, other than a statement that RPS policy directs the use of authoritative up-to-date projections.
- [180] In terms of our assessment the provisions of the District Plan are relevant. That Plan provides for earthworks within floodable areas and coastal inundation areas as either a discretionary or restricted discretionary activity. The Natural Hazards section of the Plan states¹¹⁰
Council is in the process of completing susceptibility mapping and risk assessment for all natural hazards across the whole of the District to meet the requirements of the Regional Policy Statement. This work is taking into account at least a 100-year timeframe including the effects of climate change such as sea level rise and more extreme rainfall and will be used to update the District Plan in due course. In the meantime, all completed maps (including coastal erosion, coastal inundation, flooding, liquefaction and tsunami maps that do not form part of the District Plan) are publicly available on the Non-District Plan Layers of this e-Plan. This information should be used to fully understand what natural hazards are identified within an area.
- [181] The Operative District Plan maps, show part of the Site being within a floodable or coastal inundation area as set out below.

¹¹⁰ Section 8 Natural Hazards - Explanatory Statement Western Bay of Plenty District Plan



[182] The flood levels are not shown but the contours at which the floodable area intersect are between 1 and 2m MVD.

[183] The District Plan maps also show the Site as being within both the “Rural Areas and Small Settlement Floodable Area” and the “Tauranga Harbour Coastal Inundation area”. Both of these areas are shown as being Non-District Plan Layers and should be used, as noted above “to fully understand what natural hazards are identified within an area”. The maps do not provide the actual flood levels for the Site, but by inspection they would be between 3m and 4m MVD.



[184] We note that the design requirement being sought by Ms Perring and Mr Pennington is for an extreme event in over 105 years' time with some degree of uncertainty associated with it. Strictly relying on the floodable areas in the Operative District Plan would indicate a lower design flood level than what either what the applicant is proposing or what Ms Perring is recommending.

[185] TPIL is seeking a lower flood level standard than that being proposed by Mr Pennington and Ms Perring and uses a different standard to that in Table 4.3 and 4.2 of the 2012 H & H Guidelines. They are however

proposing an adaptive management approach to take account of the uncertainty of future flood levels. That approach will be codified in consent conditions.

- [186] We understand the adaptive management approach will mean that if the sea level was seen to be approaching the 2130 1% AEP harbour inundation level of 4.17m, then the building platform could be raised as could any building constructed on it. The recommended design for sea level is 0.55m above TPIL's proposed fill level of 3.62m.
- [187] When dealing with consequence of flood risk, we note that Mr Pennington has referenced an Australian Rainfall and Runoff graph. He has used this graph to assess the risk during the extreme tide event that generates a 4.17m water level based on a 1.6m Sea Level Rise, a 1% AEP storm tide and a median wave setup. He notes that a flood depth of above 0.55m (difference between RL 3.62m and RL 4.17m) with zero velocity is an H3 risk and unsafe for vehicles, children and the elderly. Assuming the proposed land use is still in place in 100 years' time, we have considered the likelihood of children and the elderly needing to access to and from an industrial site during the time when the tide is at the peak of its cycle the flood water over TPSR would be over 1m in depth.
- [188] During such an event it is likely there would be extensive flooding in the District and that Civil Defence warnings would have been issued regarding coastal flooding. In our view it is unlikely that vehicles would be able to access the Site due the flood level over TPSR. It would also seem very unlikely that children or the elderly would need to access the Site at that time due to the very inclement weather.
- [189] We conclude that Ms Perring has taken an unduly conservative approach by using an extreme event based on mapping that is not part of the Operative District Plan. We prefer the TPIL's analysis which seeks to establish a building platform of 3.62m. Their modelled flood levels are above the flood area mapping shown in the Operative District Plan.
- [190] We agree with Ms Perring's Addendum Report¹¹¹ statement where she says with respect to the triggers of Rule 8.3.3.c regarding Floodable Areas and Coastal Inundation Areas:
- Should the Commissioners decide that it is appropriate to accept the lesser 2100 climate change standard promoted by the applicant, then I can confirm that the above consent triggers would fall away as the workshop building and filled platform would be free from inundation.*
- [191] We also note that TPIL is proposing a freeboard of 300mm for commercial buildings in accordance with the WBOPDC Development Code which provides for a freeboard above the 50-year flood level of 300mm for commercial and industrial floors. We have assumed that means the workshop floor should be at 3.92m RL and we find that to be appropriate.
- [192] Regarding off-site effects, we note that the modelling undertaken by Dr Joynes clearly demonstrates that there will be a significant improvement in flood hazards at all downstream locations, achieved through the delivery of multiple flood alleviation measures including overland flow paths and a third Teihana Road culvert.
- [193] We note Dr Joynes' flood modelling included the immediate upstream neighbour. Ms Christian¹¹² advised that BOPRC peer review expert Ms Rhynd observed that the top water level on neighbouring properties was unlikely to be affected by the Site's development during a 1% AEP event, due to BOPRC's preferred Harbour inundation level of RL4.17 m being above the proposed development area's ground contours.
- [194] It is evident that BOPRC's preferred Harbour inundation level is above all TPIL's development proposals and all the surrounding area is also well below that inundation level. Consequently, we agree with Ms Christian that top water levels and flooding on neighbouring properties will be not materially affected by

¹¹¹ WBOPDC Section 42A Addendum, 11 April 2025. Paragraph 122

¹¹² BOPRC April 2025 Section 42A Addendum, paragraph 5.43.

TPIL's proposed filling of the Site. This is important, as it means the TPIL proposal is not exacerbating existing flooding issues in the area in the design extreme event and so there are no resultant adverse effects on areas situated outside the TPIL Site.

- [195] In saying that we note that there is a difference of 550mm between the RL 3.62m platform level proposed by TPIL and the RL 4.17m fill level that would result from the adoption of BOPRC's determined variations for climate change. We agree with Counsel¹¹³ for TPIL that any resultant onsite flooding effects, including impacts on access to and from the Site in flooding events and whether this would impact the operations of TPIL, are primarily a commercial risk for TPIL that the applicant appears to accept.
- [196] To put that risk into context with the surrounding environment, we note Mr Murphy's observation¹¹⁴ that TPSR parallel to the site is below RL 3m and the railway line parallel to TPSR only just exceeds RL 4m (at Teihana Road close to the mouth of the Hakao Stream with the Wairoa River). The low parts of the Site (outside of drains) near the eastern boundary have an elevation of RL 1.5m. The surrounding environment will be at a much greater risk of flooding than the post-development TPIL Site.
- [197] Turning to the future development area (which we also discuss in section 5.3.10 of this Decision), we agree with Ms Christian that provided the flood modelling for that area is undertaken appropriately in the future, then that area can be provided for in any consents granted at this point in time. We note that robust conditions requiring that modelling to be certified by BOPRC will provide an appropriate safeguard.
- [198] In overall terms we are satisfied that the effects of the TPIL proposal with regard to flooding are no more than minor.

5.3.8 Ground Settlement

- [199] Submitters and the WBOPDC expressed concerns raised regarding ground settlement and the effect of filling of the Site, the entrance way onto TPSR, Council services and the power poles in the vicinity of the proposed Site entrance. We queried those matters in our Minute 5.
- [200] Regarding the effects of settlement of the fill on the site, TPIL commissioned CMW Geosciences to undertake an assessment¹¹⁵ of that matter. Their report stated:

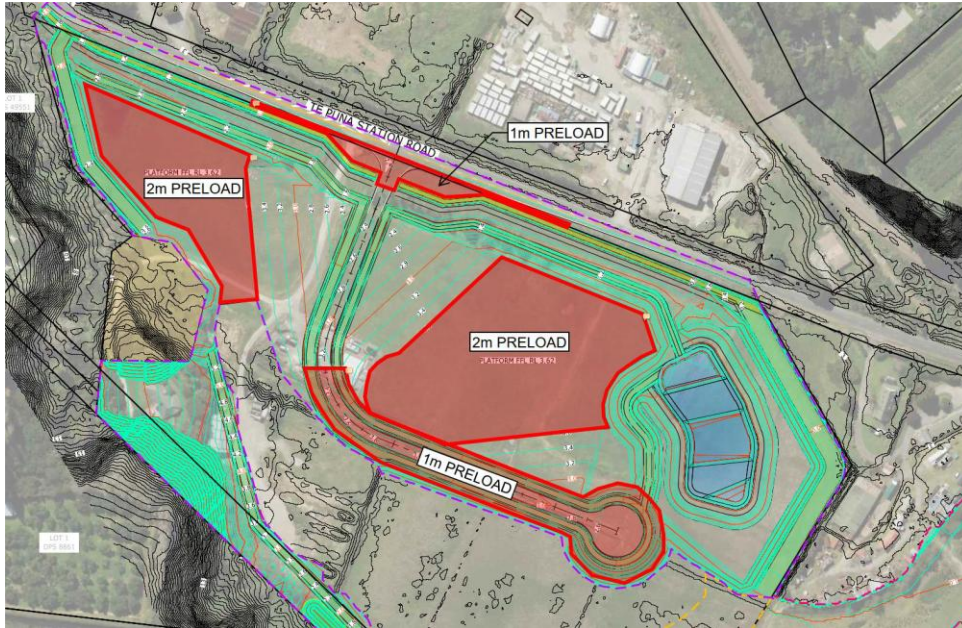
Areas to be preloaded (refer Figure 1 below) shall be over-filled with engineered fill to account for the expected magnitude of settlement to occur during preloading. Any shortfall in fill from onsite sources will need to be accommodated from imported materials

Depending on the amount of preload material available, the preload across the development may be phased to reduce the amount of preload material required. For example, the access road can be preloaded first. When an appropriate level of settlement has been achieved, that preload can then be cut and moved to the leasable area east of the access road, followed by the leasable area to the west.

¹¹³ Initial Reply Legal Submissions, paragraph 5.14.

¹¹⁴ Further Reply Legal Submissions. Momentum Memorandum, page 4.

¹¹⁵ Response to Minute 5 Commissioners Request for Further Information 24 February 2025 CMW Geosciences



- [201] Regarding the proposed entrance way to the Site, the CMW Geosciences assessment¹¹⁶ considered what effect the preloading of fill on the entrance way would have on adjacent infrastructure. They looked at the impact it would have over time and calculated the expected ground settlement. It was estimated that 170mm of settlement would occur at the toe of the preload adjacent to the road corridor, 20mm of settlement on the west bound lane and 5mm on the east bound lane of TPSR, some 15mm of settlement of the wastewater main and less than 5mm of the water main. CMW Geosciences noted:

“The predicted settlements beneath the Te Puna Station Road corridor are relatively minimal (i.e. less than 20mm) however may still lead to some cracking of the pavement, particularly immediately adjacent to the preload where expected settlements are greatest These settlements are not expected to be unsafe for road users and the pavement cracks will be remediated during reconstruction of the pavement as part of the site entrance construction works. Monitoring of the existing pavement during preloading will be undertaken during which time any cracking can be identified and filled/sealed before they become problematic.”

“It is expected the wastewater pipeline and watermain can tolerate these predicted magnitudes of settlement, especially as they are occurring over a considerably long length (i.e. >100m) therefore angular distortions are minimal.”

- [202] Mr Murphy referred to the CMW Geosciences assessment and noted:

“Settlement monitoring is recommended and this is reflected in Earthworks and Construction Traffic Management Plan conditions proposed to the WBOPDC consent”.

- [203] Ms Perring noted¹¹⁷ that Mr Telford (Senior Land Development Specialist from WBOPDC) advised:

“Settlements beyond the site’s boundary and within the road reserve will be relatively minor. This is partly due to the revised access design. He also supports the applicant’s suggestion for settlement monitoring in TPSR in relation to potential impacts on Council wastewater and water mains. On the relocation of the power line along the southern side of TPSR, he advises that “the Applicant should

¹¹⁶ Ibid.

¹¹⁷ Para 142-145 WBOPDC Planning Officer s42A Addendum Report Recommendation 11 April 2025.

ensure that any effects to this line due to ground settlement and the proposed works are managed to the satisfaction of the utility provider”.

[204] We are satisfied that the matter of settlement of fill on the Site and on WBOPDC's and other party's infrastructure has been appropriately addressed by TPIL and can be addressed by consent conditions.

[205] In overall terms we are satisfied that the effects of the TPIL proposal with regard to ground settlement are no more than minor.

5.3.9 Land Stability

[206] This issue primarily relates to the stability of the slope for the proposed borrow pit in the south-western part of the Site. Ms Perring¹¹⁸ referred to a Geotechnical Assessment Report prepared by TPIL that noted the western slope did not achieve the required Factor of Safety (FOS) in its current state and would need some remedial measures. As the geotechnical report was not able to be reviewed by WBOPDC in time for the Section 42A Report, a conclusion was not able to be drawn at that time.

[207] However, in response to Minute 5, Ms Perring produced an Addendum Report¹¹⁹ in which she made the following statement:

As noted in my previous evidence, the geological model within the south-western slope and around the borrow area is based on limited investigation evidence. In my opinion it would be prudent to undertake additional investigations to confirm ground and groundwater conditions before the final design of these areas is confirmed. In general, I consider that the proposed batter and information provided is sufficient for resource consent purposes. I believe that the batter would benefit from more detailed design and will need to be observed and certified by the geotechnical engineer during earthworks.”

[208] Ms Christian¹²⁰ also considered this matter and we note and accept her advice that the proposed temporary cut and batter slopes and final slope of the borrow pit were amended from 1 Vertical (V): 1.75 Horizontal (H) to 1V:2H, which is more conservative to allow for a greater factor of safety to mitigate for additional elevated porewater pressure following extreme rainfall. She observed that that replanting of the final cut slope was required for erosion and sediment mitigation, rather than slope stability, and she recommended conditions accordingly. BOPRC's peer review expert Ms Everett agreed with TPIL's assessment of the slope stability at the borrow pit. We received no qualified evidence to the contrary.

[209] We are satisfied that the matter of slope stability of the proposed borrow pit cut can be fully addressed at the detailed design phase as was suggested by Ms Perring. A consent condition detailing the design of finished batters and debris protection measures will address any associated potential effects.

[210] In overall terms we are satisfied that the effects of the TPIL proposal with regard to slope stability are no more than minor

5.3.10 Future Development Area

[211] There was disagreement regarding whether or not the Future Development Area should be enabled as part of this consent. TPIL and the BOPRC reporting officer (Ms Christian) considered that it should be, whereas Ms Perring considered that it should not be.

[212] We are satisfied that should consents be granted, the Future Development Area should be enabled by the consents. The reasons for that finding include:

¹¹⁸ Ibid para 225

¹¹⁹ Ibid Para 140

¹²⁰ BOPRC April 2025 Section 42A Addendum, paragraph 5.17.

- The intersection upgrade of TPR and TPSR will be upgraded to accommodate all traffic from the site, either by WBOPDC or by TPIL;
- Noise controls apply across the whole site;
- Conditions require internal screen planting associated with tenants and leased areas across the whole site; and
- Most importantly, the BOPRC consent conditions dealing with stormwater and earthworks comprehensively address those matters insofar as they relate to the Future Development Area.

5.3.11 Noise

- [213] Noise emanating from the TPIL Site during both the initial site earthworks (construction noise) and the eventual use of the Site for industrial activities (operational noise) was of concern to a number of submitters. For TPIL we received evidence on noise matters from Alex Jacob from Earcon Acoustics Limited. That evidence was reviewed for WBOPDC by Peter Runcie from SLR consultants.
- [214] Mr Jacob¹²¹ noted that the Site is located in an Industrial zone. The surrounding environment includes TPSR and railway tracks to the north, and TPR to the west around 100m from the Site. The neighbouring areas adjacent the Site to the east, and to the north across TPSR are predominantly industrial activities. Sites further to the east, and to the south and west of the Site are zoned Rural and most of the rural properties include residential dwellings. The closest dwellings are located around 70-90m from the Site's western boundary.
- [215] Mr Jacob advised that his noise assessments were based on a "design" approach whereby the operational procedures, plans, equipment and activity locations are designed and selected to control noise and vibration to the lowest practicably achievable effects. We find that to be acceptable.

5.3.10.1 Construction Noise and Vibration

- [216] Noise and vibration were of concern to several submitters¹²². All construction works inevitably result in undesirable noise effects in the surrounding environment. Mr Jacob observed¹²³ that the proposed development of the wider Site was not currently known at this stage. He therefore took a conservative approach by assuming the highest noise and vibration generating construction activities for construction of industrial buildings and facilities may be required¹²⁴.
- [217] The construction noise standards (or limits)¹²⁵ are:
- Monday to Saturday 7:30am to 6pm: LAeq¹²⁶ 70dB and LAmax¹²⁷ 85dB
 - Monday to Friday 6pm to 8pm: LAeq 65dB and LAmax 80dB
- [218] The District Plan does not include any standards to manage construction vibration. However, Mr Jacob recommended construction vibration limits for the protection of both amenity and structures in accordance with international standards¹²⁸ commonly used in New Zealand. Mr Jacobs advised that noise and vibration levels could readily be managed to comply with all applicable limits (including vibration limits) at all receivers

¹²¹ Jacob Evidence, paragraph 1.3.

¹²² Including Rose Chalmers, Marty Stevenson and Alison Cowley.

¹²³ Paragraph 6.3.

¹²⁴ Auguring for bored cast in situ concrete piles; impact driven piling of both timber and steel piles; vibratory compacting of roading, fill and foundations; earthworks with small, mid-sized, and large sized excavators; carting, including loading and unloading of trucks with both soft and solid materials; levelling ground with padfoot rollers and graders; and concrete operations, including pumping concrete to elevation

¹²⁵ NZS6803:1999 Acoustics - Construction Noise, as referenced in the District Plan in rule 4C.1.3.1.

¹²⁶ The equivalent noise level, time-averaged over a 15-minute period, A-Weighted. A-weighting is an adjustment applied to sound levels at different frequencies across the audible spectrum, resulting in a single number reflecting how sound is generally perceived by human hearing.

¹²⁷ The maximum noise level during a measurement period, A-Weighted.

¹²⁸ German DIN 4150-3:2016 Vibrations in buildings – Effects on Structures; and BSI British Standard BS5228-2:2009 Code of practice for noise and vibration control on construction and open sites – Part 2: Vibration.

during all works provided the requirements of a Construction Noise and Vibration Management Plan (CNVMP) were adhered to and all best practice measures were followed¹²⁹.

- [219] Mr Runcie, the SLR peer review author, advised that based on the distance from the Site to neighbouring properties, well-managed construction works would not be expected to exceed the relevant NZS 6803: 1999 *Acoustics – Construction noise* limits. He also concluded that well-managed works would not be expected to generate significant levels of vibration at those receivers. Mr Runcie noted that mitigation options to control noise and vibration were set out in Section 11 of the draft CNVMP including time restrictions, equipment size restrictions and monitoring. He considered the implementation of those measures, along with others which may be identified when a contractor has been appointed and specific equipment for use on the Site is known, can be considered the best practicable option to control noise and vibration.
- [220] Regarding vibration from trucks on TPR, we agree with Mr Pilkington¹³⁰ that is driven by the state of the road itself rather than the trucks or why they are travelling. If the road is well maintained then vibration should not be an issue irrespective of the volume of the trucks.
- [221] We understand that Ms Perring¹³¹ concluded that, subject to the mitigation proposed by TPIL, the effects of construction noise were likely to be no more than minor
- [222] On the evidence we are satisfied the adverse effects of construction noise and vibration arising from the TPIL proposal will be no more than minor.

5.3.10.2 Operational Noise

- [223] Operational noise limits for the Rural and Industrial zones are set out in section 4C.1.3.2 of the District Plan:
- Industrial:**
Daytime 7am to 10pm: LAeq 65dB; and
Nighttime 10pm to 7am: LAeq 65dB and LAmx 85dB
- Rural:**
Monday to Saturday 6am to 10pm: LAeq 55dB;
Sunday and Public Holidays 9pm to 6pm: LAeq 55dB; and
All other times: LAeq 45dB and LAmx 75dB
- [224] TPIL's intended hours of operation are 7:00am – 6:00pm Monday to Saturday. No operations (i.e. refurbishment, handling, transporting of containers) will occur on Sundays or public holidays. Refrigerated containers (reefers) will run continuously.
- [225] Mr Jacob advised that the main noise sources from the proposed ContainerCo activities during the daytime were the loading, unloading, stacking, and refurbishment of containers, in addition to heavy vehicle movements within the Site.
- [226] The only operational noise at night would be from refrigerated reefer containers. Mr Jacob advised it was his understanding that up to 100 reefer containers might be stored overnight with 70% of them being empty containers that would not run at night, with the remaining 30% running at either low settings or for only 2-3 hours every 24-hour period. However, he assumed a conservative approach with all 100 reefers running at night¹³². A permanent two high stack of containers would shield the reefer storage area to mitigate noise propagating to the north, east and west.
- [227] Many submitters were concerned about the difference between the noise limits in the District Plan and the limits set by the Environment Court decision in 2005. We have no issue with that as the current District Plan noise limits were properly established by way of a Schedule One plan review process. In that regard

¹²⁹ A draft CNVMP was provided as part of the application documents.

¹³⁰ Reply Submissions, paragraph 5.6(a)

¹³¹ Section 42A Addendum Report, paragraph 162.

¹³² Paragraph 5.8.

Mr Jacob advised that the District Plan noise limits are typical of those used in other regions in New Zealand for the interface between industrial and rural zones. Mr Runcie considered that the District Plan noise limits provided a level of protection to the daytime amenity of the surrounding areas commensurate with what was considered reasonable.

- [228] We take no issue with the use of the District Plan noise limits to assess the potential adverse effects of noise associated with the TPIL proposal.
- [229] We note noise generated by traffic on public roads is exempt from the District Plan rules. Nevertheless, Mr Jacob advised¹³³ that noise levels to the west of the Site along TPSR may increase by 3-4dBA compared to noise levels prior to the closure of TPSR east (or around 4-5dBA if the percentage of heavy vehicles increases materially), or by 5-6 dBA (or around 6-7dBA if the percentage of heavy vehicles increases materially) compared to noise levels as they currently exist. In Mr Jacob's opinion those increased noise levels would be described as "just louder" to "noticeably louder", but would not be unusual for a road in proximity to industrial zones.
- [230] As part of the WBOPDC Section 42A Addendum Report, Mr Runcie advised that the TPIL proposal would appear to potentially double truck movements during peak construction earthworks. That broadly equated to a temporary 3dB increase in noise levels at receivers along TPR. In his opinion a 3dB change was on the border of perceptibility.
- [231] TPIL proposes mitigation measures specific to the proposed ContainerCo operation including specifying the location and construction of a workshop where all refurbishment work would be undertaken, shielding and limits on the number and location of refrigerated reefer containers, limits on equipment sizes and operations, and sealing internal roads with no speed humps to avoid rattling noises commonly associated with truck movements.
- [232] Mr Jacob¹³⁴ advised that noise prediction modeling he had undertaken using representative activities associated with the proposed development for both daytime and nighttime activities, with the above mitigation measures (location, orientation, and shielding of the reefers) taken into account, demonstrated that the TPIL proposal could be managed without exceeding the District Plan noise limits at all residential dwellings (or receivers). We note the noise modeling conservatively assumed all noise generating activities within the Site were active simultaneously and the predicted noise levels were cumulative to existing noise from the environment.
- [233] In response to concerns from submitters, Mr Jacobs advised that it is a matter of convention that noise levels from specific sources are expressed as the noise level received from each source at a distance of 10m. He noted noise decreases over distance and the farther a receiver is from a source, the lower the received noise level. His noise modelling and mitigation measures took that into account¹³⁵. The noise modeling also took into account the topography and ground contours of the surrounding area and excluded any shielding effects from bunds or mounds¹³⁶.
- [234] Mr Runcie observed those assumptions were commonly used in acoustic assessments to enable comparison across different noise sources irrespective of the site location. The prediction of noise levels was then based on the location and number of the sources within the Site, how long the noise occurred over the assessment period and the intervening acoustic screening between noise sources and receivers. Mr Runcie considered that the source noise levels and calculations used to predict noise levels from the TPIL proposal were reasonable, based on SLR's experience with similar projects.

¹³³ Paragraph 7.25.

¹³⁴ Paragraph 1.10.

¹³⁵ Paragraph 7.12.

¹³⁶ Paragraphs 7.13 and 7.14.

- [235] The noise modelling results were set out in Mr Jacob's evidence¹³⁷ and we are satisfied they demonstrate compliance with the District Plan limits.
- [236] Mr Jacob also considered what he called 'amenity effects'. In that regard his noise modelling showed that noise levels in the vicinity of the Site would increase by around 4 to 7dBA above current ambient levels at receiver locations outside the Site. He helpfully advised that the general threshold of human differentiation of noise levels is around 3dBA and a 1-2dBA difference would not be generally noticeable. A 5dBA difference is considered louder, albeit "just louder"; and an 8dBA difference would be considered "noticeably louder".
- [237] The highest relative increases from current ambient noise levels would occur to the west of the Site at residential dwellings on TPR (namely at 66A, 56D, 56E TPR). The increase in noise at those dwellings of 6-7dBA there would be noticeable and would generally be described as "just louder to noticeably louder" compared to current ambient levels. However, the noise levels would still be at worst around 5dBA below the District Plan daytime noise limits.
- [238] Mr Runcie concluded that the TPIL proposal, with mitigation in place and managed by way of a noise management plan, could comply with the District Plan noise limits. He considered that noise effects arising from the TPIL proposal would therefore be reasonable.
- [239] Ms Perring¹³⁸ concluded that, subject to the mitigation proposed by TPIL, the effects of operational noise were likely to be no more than minor.
- [240] On the evidence we are satisfied the potential adverse effects arising from operational noise associated with TPIL proposal will be no more than minor.

5.3.10.3 Noise Management Plans

- [160] Mr Jacob noted that in addition to the proposed container storage and refurbishment facility at the eastern end of the Site, the Site may also include other industrial facilities at its western end. To control noise and vibration from the Site, while accounting for the future need to accommodate changing or new operations across the wider Site, he proposed two layers of management plan controls:
- a Master Noise Management Plan (NMP) to be reviewed and certified by the WBOPDC; and
 - individual NMPs specific to each facility undertaking activities within the Site.
- [161] The nature of the NMPs was described by Mr Jacob¹³⁹. We observe that in our experience the use of a NMP is a routine and widely accepted mitigation measure for industrial sites.
- [162] The Master NMP is to be certified by WBOPDC and it would cover the requirements for the whole Site, demonstrating how the District Plan noise limits at all receivers would translate to noise limits at the boundaries of the Site, and for each of the operations, and at the monitoring locations to be used for compliance monitoring. The noise limits for each operation would be reflected in individual NMPs, which would include mitigation measures, procedures and restrictions specific to the operation. The individual NMPs would not require WBOPDC certification, but they would be made available to the Council. It would be the responsibility of each operation to comply with their allocated noise limits as set out in their individual NMP¹⁴⁰.
- [163] We are satisfied that TPIL's proposed 'two tier' NMP approach is both reasonable and capable of practical implementation.

¹³⁷ Paragraph 5.22

¹³⁸ Section 42A Addendum Report, paragraph 167.

¹³⁹ Paragraphs 5.12 and 5.13.

¹⁴⁰ Earcon Acoustics, Operational Noise and Vibration s92 Queries, 29 March 2023.

5.3.12 Dust

- [241] We address dust in section 6.1.5 of this Decision. Suffice to say that on the evidence we are satisfied that the adverse effects relating to earthworks generated dust will be no more than minor.

5.3.13 Biosecurity Risks

- [164] Some submitters expressed concerns about biosecurity risks associated with the storing of containers at the Site, including in terms of risks to nearby kiwifruit orchards.
- [165] In her evidence Margaret Harris advised that ContainerCo's operations will house ContainerCo's own fleet of hire and sales containers. These containers are already in the country and the TPIL Site will not receive containers from overseas. Containers held on-site for delivery to the Port of Tauranga or exporters conform to a strict import health standard, which includes port side port inspections. Empty refrigerated containers are unloaded at the Port and checked there, before being tested (sometimes at a third-party location) before being sent to packhouses to be loaded (where they are also checked). Ms Harris noted that full kiwifruit containers that may be stored on the Site from time to time are consequently containers that have already been cleared to be in New Zealand and would have been inspected at least twice and commonly three times.
- [166] On the evidence we are satisfied that any biosecurity risks associated with the TPIL proposal are no more than minor.

5.3.14 Archaeological, Historical Heritage

- [167] The consent application informed that the Site did not contain mapped archaeological sites, with commentary in the application stating that both Heritage New Zealand Pouhere Taonga (HNZPT) and Mr Kenneth Phillips, an archaeological consultant, confirming there were no recorded sites, however it was recommended that a General Authority be obtained. The consent application stated that any such authority would be considered at the time of detailed design.
- [168] On this advice from HNZPT and Mr Phillips, no technical archaeological assessment was commissioned and included within the consent application, with the assessment of adverse effects on archaeological sites, features, and values, being deemed less than minor by the applicant.
- [169] The Section 42A Report prepared by Ms Christian for BOPRC confirmed that there were no recorded archaeological sites on the Site, but advised that there were a number¹⁴¹ of recorded archaeological sites in proximity to the Site. The absence of recorded archaeological sites on the Site was also confirmed in the WBOPDC s42A Report¹⁴² prepared by Ms Perring, however she pointed out that the traditional and historical cultural associations with the area led her to express caution about whether adverse effects were less than minor.
- [170] It is not lost on the Panel of the relationship between archaeological values and Māori cultural values. This is pertinent with this proposal.
- [171] Distinguishing each matter recognises the distinct nature of both values and the directions of the RMA (s6(e) and s6(f)). Accordingly, our assessment focuses on how the applicant proposes to address the archaeological/historic heritage values associated with their proposal. The subsequent assessment section will separately assess (whilst inclusive of) the Māori cultural values and relationship/associations with these archaeological values, as well as relationships across the property, the Hakao Stream and wider the Te Puna area.

¹⁴¹ BOPRC s42A Report, Figure 5, Page 7

¹⁴² WBOPDC s42A Report, paragraph 38, Page 10

- [172] It is the accepted practice that the primary means to protect historic heritage is through the identification and scheduling of archaeological and heritage items in District Plans. In the absence of historic heritage items not being scheduled on the property in the District Plan, we are reliant on the expert evidence from Mr Phillips.
- [173] Presented within the Evidence in Chief (EiC) of Mr Phillips was his archaeological assessment providing his expert opinion on the adverse effects on the archaeological sites, features, and values resulting from the proposed development by TPIL. His report outlined the historical context and archaeological landscape of the property and Te Puna area. The report advised that there are over 200 recorded archaeological sites of pre-European occupation¹⁴³.
- [174] Mr Phillips advised that there are 21 recorded archaeological sites within a 500m radius of the property¹⁴⁴, and when undertaking his investigations for TPIL, he identified an archaeological site in proximity to the existing dwelling on the property¹⁴⁵. Mr Phillips identified the archaeological site to comprise possible terrace features and shell midden and advised that it had been extensively modified¹⁴⁶.
- [175] No other archaeological sites were identified on the property, however Mr Phillips considered that while the chance of encountering intact archaeology in the flood plain was low, there was a possibility that archaeological sites and/or artefacts may be encountered¹⁴⁷.
- [176] The new archaeological site was located in a proposed earthworks borrow pit, and in his EiC, Mr Phillips advised that the proposed earthworks may potentially disturb intact archaeological features¹⁴⁸. On that likelihood, Mr Phillips recommended that an archaeological authority be obtained before earthworks commence¹⁴⁹. However, in response to Minute 5, the applicant re-designed the proposed earthworks borrow pit and an exclusion/constraint area (referred to as the Archaeological/Ecological Constraint Area¹⁵⁰) has been created to avoid adverse effects arising from earthworks, and stormwater discharge, on this newly identified archaeological site, as well as the established ecological values/features within this area.
- [177] A setback of 10m from this area is proposed by the applicant.
- [178] Upon review of the applicant's re-design with the proposed earthworks borrow pit, and acknowledging the further comments from the Councils' reporting officers, we consider the applicant has undertaken the appropriate steps to avoid adverse effects on the new archaeological site.
- [179] Therefore, on the evidence before us, we are satisfied that the proposed set of consent conditions will give certainty that effects are avoided and managed regarding this new archaeological site. Additionally the proposed conditions ensure appropriate measures are undertaken to respond to the low likelihood that any archaeological sites and/or artefacts are discovered within the flood plain area of the property during construction.
- [180] Overall, the adverse effects on archaeological and historic heritage values are no more than minor.

5.3.15 Māori Cultural Values and Interests

- [181] The Panel notes that attached¹⁵¹ with the consent application were the consultation records of the applicant in their pursuit to consult and engage with iwi/hapū on the proposal. The iwi/hapū identified were:

¹⁴³ Phillips, K. (2024) Archaeological Assessment, Page 7

¹⁴⁴ Ibid, Page 11

¹⁴⁵ Ibid, Page 19

¹⁴⁶ Ibid, Page 19

¹⁴⁷ Phillips, K. Evidence in Chief, paragraph 6.2, Page 7

¹⁴⁸ Ibid, paragraph 6.3, Page 7

¹⁴⁹ Ibid, paragraph 6.3, Page 7

¹⁵⁰ CMW Geoscience, Response to Minute 5, Drawing No. A2313995-HG-ZZ-DR-C, Page 12

¹⁵¹ Momentum Planning and Design, Appendix 8 Hapū and Iwi Engagement Records.

- Ngāti Ranginui,
- Te Rūnanga o Ngāi Te Rangi,
- Ngāti Pukenga,
- Ngāti Hinerangi,
- Ngāti Taka, and
- Pirirākau Tribal Authority - Incorporated (PTA)

[182] There is no evidence before the Panel to inform and advise that there are other iwi/hapū in the Te Puna area that should also be engaged.

[183] Resulting from their engagement, the records show email responses from Ngāti Pukenga and Te Rūnanga o Ngāi Te Rangi which clarifies their interests with the Site and Te Puna area. Ngāi Te Rangi deferred to Pirirākau, and Ngāti Pukenga advised that there are no specific interests/associations with the Site but they do have interests where there may be any sediment loss into the waterways making its way into the Wairoa River and Tauranga Harbour.

[184] Conversely, the consent application advised that no correspondence (therefore any known concerns and comments) from Ngāti Ranginui and Ngāti Hinerangi were obtained for the proposal.

[185] For closure on iwi/hapū representation, the Panel are satisfied that the Site is located within the rohe of Pirirākau and Ngāti Taka, with the PTA identified as the representative for Pirirākau in resource management processes. The consent application identifies Mr Bob Leef as the representative for Ngāti Taka.

[186] The consent application provides an outline of their engagement and on-site meeting with Ngāti Taka and the PTA.

[187] The views of Ngāti Taka on the proposal are not outlined in the consent application, however the initial views of the PTA are outlined¹⁵² which are that Pirirākau are in opposition to the proposal. Although this was the position of the PTA, the consent application advised that consultation did continue with the PTA.

[188] During notification, the PTA lodged a submission in opposition to the proposal. Included with their submission was their Cultural Impact Assessment (CIA report)¹⁵³. No submissions were received from Ngāti Taka.

[189] Additionally, there were a large number of submitters who identified themselves as mana whenua/Pirirākau. Of note, but not limited to, were the submissions from:

- Cale Kupara Borell,
- The PTA Kauae Runga (Pirirākau kaumātua group),
- Separate submissions from Alana, Louie, Amanda, Amy, Barry, and Hinemaurea Borell,
- Kaea Mae Roia,
- Porina Puru,
- Babara Rawson, and
- Jasmine Apaapa.

[190] The Panel also acknowledges the submission from Mr Carlton Bidois that was lodged with the BOPRC.

¹⁵² Momentum Planning and Design, Section 5 Consultation, Page 31.

¹⁵³ It is important to outline that a subsequent/updated Pirirākau CIA Report was received by the Panel via email dated 9 July 2024. We were advised that the updated report was in response to the appointment of a new PTA Chairperson and statement of clarification by that new Chairperson.

- [191] These submissions oppose the TPIL proposal and outline their values as mana whenua and as kaitiaki of their environment, specifically the health and wellbeing of the Te Puna environment, and also shared their interests in protecting their waahi tapu (e.g. Pukewhānake Pā) and the Hakao Stream.
- [192] Additionally, a number of these submissions commented on the importance of upholding the 2005 Environment Court decision, and for the proposal to be in accordance with the planning provisions in the WBOPDC District Plan for the Te Puna Business Park.
- [193] The Pirirākau CIA report (referred to as PACE in the CIA report and in the Section 42A Reports) outlines the rangatiratanga and kaitiakitanga of Pirirākau in the Te Puna area, and also outlined their engagement with TPIL, and provided an assessment against a number of planning instruments. The PACE states that Pirirākau are opposed to the proposal and seeks an amendment to avoid the further adverse effects on Hakao Stream¹⁵⁴.
- [194] Key matters from the Pirirākau CIA report are:
- PTA has the authority¹⁵⁵ to represent the environmental matters within the Pirirākau rohe/area on behalf of four marae (Paparoa, Tutereinga, Poutūterangi, ad Tāwhitinui);
 - The values of Pirirākau (rangatiratanga, kaitiakitanga, mauri, kotahitanga, wairuatanga, manaakitanga, and tūrangawaewae);
 - The role of tikanga in upholding cultural safety (tapu, noa and rāhui);
 - Pirirākau view and perspectives for Te Puna, the Site and for Hakao Stream and waahi tapu; and
 - Assessment of effects and proposed (potential) recommendations
- [195] The Panel acknowledges that in having a mana whenua and kaitiaki interest in the health and wellbeing of the environment and the Te Puna community, the perspectives of the PTA, the PTA Kauae Runga, and submitters that identify as mana whenua/Pirirākau, are that they do not view the area as suitable for industrial development, and therefore contest the various expert evidence before the Panel.
- [196] In response to their ecology cultural concerns, the expert evidence has advised the Panel that the onsite terrestrial ecological values are considered low, with a remnant of ecology (including natural inland wetland) on the property near the existing dwelling being of value and subject to protection from earthworks via the imposition of an exclusion/constraint area.
- [197] Additionally, adjoining the Site is the Hakao Stream, and further afield downstream is the Wairoa River. The aquatic ecology matters are primarily considered as part of the BOPRC assessment, but it is noted that only the internal drains/artificial watercourses with the Site will be altered, and the Hakao Stream will not be altered. Furthermore, there is planting proposed within the development which will increase and enhance the ecological value and biodiversity of the Site and the Te Puna area.
- [198] We find that cultural concerns associated with the effects on onsite terrestrial ecology and biodiversity have been responded to by TPIL.
- [199] Traffic safety concerns have been thoroughly assessed and discussed in this Decision, with the Panel determining that the effects on traffic safety are no more than minor. Undertaking upgrade works of the Te Puna Station Road and Te Puna Road intersection prior to any works and activities on the Site commence, is consistent and in accordance with planning provisions in the WBOP District Plan for the Te Puna Business Park.
- [200] On matters regarding stormwater management, it is considered that the primary concerns from the PTA and mana whenua/Pirirākau submitters are the:

¹⁵⁴ Shepherd, J. (2024) Pirirākau Assessment of Cultural Effects (PACE) Cultural Impact Assessment, Page 46.

¹⁵⁵ Ibid, page 13.

- discharge effects, temporary and permanent, to Hakao Stream and Wairoa River, and
- exacerbation of increased stormwater in an existing floodplain on the property, and flood prone area that impacts on Te Puna Station Road, and downstream (Wairoa River).

- [201] The concerns regarding stormwater management are discussed in section 6.1.7 of this Decision. Flooding issues have been thoroughly assessed by the Panel in section 5.3.7 where we found that potential adverse flooding effects were either minor or, in terms of the disagreement between TPIL and the reporting officers regarding the appropriate Harbour inundation level to use, a matter of commercial risk to be borne by TPIL.
- [202] With earthworks, the potential for the disturbance of waahi tapu (includes Hakao Stream/Hakao Basin) is viewed by the Panel as the overarching cultural concern expressed in the Pirirākau CIA report and Pirirākau/mana whenua submissions. The ancillary earthworks related concerns are the proposed earthworks in a flood plain, earthworks to establish bunds (and landscape screening), earthworks in the OLFP, and earthworks to construct internal roads and to prepare building platforms.
- [203] These ancillary earthworks related cultural concerns, as assessed in section 6.1.8 of this Decision, are viewed by the Panel as an anticipated activity and effect as an Industrial Zone site in the WBOP District Plan, therefore we have focused on the overarching cultural concern with TIPL's proposed earthworks.
- [204] The Pirirākau CIA report provides a substantial account (content and assessment) regarding the relationship Pirirākau have with the Te Puna area and Site and immediate area. Although the report informs that the Site contains burial sites of Pirirākau ancestors, it does not identify any cultural sites or waahi tapu on the Site, and primarily refers to Pukewhānake Pā (which is not on the Site) and customary/traditional activities along and within Hakao Stream.
- [205] The evidence from Mr Phillips informs us that there is a pre-European archaeological site on the Site but no archaeological sites or features in the flood plain area within the Site. Furthermore, we were informed by TPIL that the Hakao Stream will not be altered.
- [206] The Panel are satisfied that the re-design of the proposed earthworks borrow pit where an exclusion/constraint area is proposed, alongside the proposed conditions of consents, will ensure adverse effects can be avoided on a known pre-European archaeological site, and respond to the low likelihood that any waahi tapu and/or taonga are discovered within the flood plain area of the Site during construction.
- [207] A set of proposed consent conditions to manage (mitigate) the adverse effects on Pirirākau values and interests were recommended in the evidence of Mr Murphy. At the Hearing, it was articulated to the Panel by Ms Shepherd for the PTA that those proposed cultural mitigation conditions were the first time she had seen them, therefore no consultation with the PTA on the conditions had occurred. On this basis, we were advised that the PTA could not agree to the proposed conditions.
- [208] In response to the comments of Ms Shepherd at the Hearing, the Panel in its Minute 5 strongly requested TPIL to further consult with the PTA regarding their proposed conditions.
- [209] It is important to note here that the deliberate reference to the PTA in Minute 5 was in acknowledgement of the mandate advised¹⁵⁶ to the Panel in the Pirirākau CIA report, and its representation at the Hearing by both Ms Julie Shepherd (PTA Senior Environmental Planner) and Mr Graham Bidois Cameron (PTA Trustee), with Mr Cameron advising the Panel that Ms Jacqui Rolleston-Steed is the PTA's contact person.
- [210] The records¹⁵⁷ of TPIL's consultation with the PTA since the Hearing outlines the progression of the proposed conditions, and discussion around a potential partnership agreement (which has not been sighted

¹⁵⁶ Shepherd, J. (2024) Pirirākau Assessment of Cultural Effects (PACE) Cultural Impact Assessment, Page 13

¹⁵⁷ Attachment Q Summary of engagement with Pirirākau Tribal Authority in Response to Minute 5 dated 24 February 2025, and in Reply Legal Submission dated 5 May 2025

by the Panel). An updated set of consent conditions, 'Cultural Effects Mitigation: Environmental and Cultural Management Committee', were presented to the Panel in the Reply Legal Submissions¹⁵⁸.

- [211] In response to TPIL's reply to Minute 5, the Panel received statements from Ms Shepherd and Mr Neville Bidois (both a submitter and representative for the PTA Kauae Runga).
- [212] Firstly, with Mr Bidois, his statement said that there is an internal process (or tikanga) that the PTA must follow whereby it must include the PTA Kauae Runga in discussions between the PTA and TPIL, and any decision of the PTA. The Panel has understood Mr Bidois's statement to advise that any decision of the PTA on the TPIL proposal has minimal, to no, authority because they have not included the PTA Kauae Runga.
- [213] Regarding Mr Bidois' evidence on that matter, the Panel must respect the rangatiratanga of, and kaitiakitanga exercised by, the PTA as the authority representing the values and interests of Pirirākau on this proposal, even where there may be discontent by a tribal member, or in this case the PTA Kauae Runga, about participation in the internal processes of the PTA, over which the Panel has no influence, nor authority, to enforce.
- [214] For this reason, the Panel recognises¹⁵⁹ the PTA as the mandated authority to represent the marae and tribal members of Pirirākau in RMA consenting processes and decision making.
- [215] With Ms Shepherd's statement, the Panel are comprehensively reminded by Ms Shepherd of the effects of the proposal (and other activities in the area) on Pirirākau, and it is evident that these effects have not been adequately/appropriately addressed by TPIL to the satisfaction of the PTA. Ms Shepherd recommends that we decline the proposal.
- [216] The Panel acknowledges the expertise of Ms Shepherd as PTA's Senior Environmental Planner, and that her assessment of cultural effects has helped position the Panel to understand the extent of the historic, recent and current activities and Council decisions that have impacted Pirirākau. Unfortunately, her assessment ultimately contests the Industrial Zone and Te Puna Business Park provisions in the WBOP District Plan. We agree with the legal submissions from TPIL and WBOPDC that "it is not appropriate, nor fair, to now seek to relitigate the zoning of the Site through this consent process"¹⁶⁰, with Ms Zame concluding that:

*"Legally, the Panel must consider the District Plan provisions, as those provisions went through a full District Plan review process, which parties could submit on. Those provisions are well beyond appeal."*¹⁶¹

- [217] On the consultation between TPIL and the PTA, Ms Shepherd's statement advises the following:

*"Insufficient Consultation: While the applicant has documented ongoing consultation with PTAI, it is unclear whether the proposed conditions adequately address cultural values and interests. As stated in the hearing process if a decision is rendered to approve the resource consent applications additional time will be required to negotiate conditions of consent. At no stage through the application process has PTAI entertained approval when there is notable opposition of the hapū shared by community. This would be poor performance and this has not occurred. The latest meeting with the PTAI Chair was a polite encounter where support was not proffered."*¹⁶²

¹⁵⁸ Attachment E Updated Proposed Conditions of Consent in Reply Legal Submission dated 5 May 2025.

¹⁵⁹ This recognition of the PTA by the Panel does not diminish the weighting of, nor views and concerns expressed in the submissions from, the PTA Kauae Runga and Pirirākau/mana whenua submitters. These submissions have been reviewed and considered by the Panel.

¹⁶⁰ Pilkington, S, and Kilgour, S, Opening Legal Submissions on Behalf of Te Puna Industrial Limited dated 5 July 2024, paragraph 1.6.

¹⁶¹ Zame, R, Submission of Counsel for the Western Bay of Plenty District Council dated 11 July 2024, paragraph 16.

¹⁶² Pirirākau Tribal Authority – Incorporated Submitter Response dated 14 March 2025, Page 13.

- [218] On the face of it, Ms Shepherd's statement contradicts the records of consultation presented to the Panel by TPIL.
- [219] The direction from the Panel in Minute 5 was for TPIL to further consult with the PTA, with specific reference to Ms Jacqui Rolleston-Steed as PTA's contact person. The Panel (and TPIL) has no control on who PTA invites to participate in those discussions. On reviewing the two records of consultation, the Panel notes that Ms Shepherd is not recorded as being present in those discussions.
- [220] Also, where the second record of consultation refers to discussions about the proposed consent conditions (and potential partnership agreement), these occurred ¹⁶³ after 14 March 2025, which is the date Ms Shepherd's statement was submitted to the Panel and her comment above was made.
- [221] We have taken the record of consultation presented by TPIL on its merits, and as a true reflection of consultation between TPIL and PTA, and that the proposed set of consent conditions are a reflection of those discussions, although the Panel did not receive an acknowledgement (nor agreement, support, nor opposition) from the PTA Trustees¹⁶⁴ who were party to those latter discussions and email correspondence on 20 March 2025 and 22 April 2025.
- [222] The Panel views the measures proposed by TPIL as a comprehensive response to the values and interests of Pirirākau, with a set of proposed consent conditions that enable the PTA to actively participate in the implementation of the WBOPDC resource consent.
- [223] In saying that, the Panel does not take the position that the proposed measures of TPIL will enhance and improve the wairua and mauri of Hakao Stream, Wairoa River, or widely the Te Puna environment. We acknowledge that only Pirirākau can determine, in accordance with their tikanga, whether such enhancement and improvements occur. However, the establishment of the Environmental and Cultural Management Committee as a quasi co-management forum has potential to advance such pursuits for enhancement and improvement in a manner that accommodates the values and aspirations of Pirirākau.
- [224] In conclusion, on the evidence, we are satisfied that the potential adverse cultural effects arising from the TPIL proposal will be appropriately managed through the proposed set of consent conditions, whereby adverse effects are no more than minor.

5.3.16 Financial Contributions

- [225] TPIL are required to pay financial contributions relating to transportation and water. There appears to be no difference of opinion between the applicant and Ms Perring regarding the level of financial contributions that are to be levied on a net developable area basis. We observe that the net developable area can be defined at the time of development.
- [226] In her 17 June 2025 Section 42A Addendum Ms Perring advised that with the inclusion of a transportation FINCO, she maintained her earlier opinion that potential adverse effects in relation to financial contributions were less than minor. We understand that TPIL accepted that proposition.

5.3.17 Conclusion on effects

- [227] We are satisfied that the potential adverse effects of the TPIL proposal are minor or less:
- [228] The application therefore passes the section 104D(1)(a) gateway.

¹⁶³ Recorded on 20 March 2025 and 22 April 2025.

¹⁶⁴ Ngawha Hall, Graham Bidois-Cameron and Gabrielle Rolleston.

5.4 Objectives and Policies of the Operative District Plan

- [229] Section 104D(1)(b) refers to the objectives and policies of “the Plan” or “the proposed Plan”. That limits our assessment to the Operative Western Bay of Plenty District Plan 2012. It does not involve an assessment of any national policy statement, the Bay of Plenty RPS or even directly Part 2 of the RMA.
- [230] Ms Zame outlined¹⁶⁵ some principles relating to the meaning of “not contrary to”. We note from her submissions that it contemplates be opposed in nature, different or opposite to. It is not necessary for a proposal to contradict provisions before it can be said to be contrary to them. Our assessment needs to be ‘real and sensible’.
- [231] At the outset we agree with Mr Pilkington¹⁶⁶ that intuitively it would appear to be nonsensical for an industrial activity in an industrially zoned site to be opposed in nature or opposite to the relevant objectives and policies of the District Plan. While the TPIL proposal is categorised as a non-complying activity, that arises because of non-compliances with specific technical requirements of the Structure Plan rather than the proposal being ‘out of Zone’.
- [232] It is notable and somewhat unfortunate that there are no objectives and policies for the Te Puna Business Park itself or Structure Plans generally within the District Plan. Consequently, we must consider the relevant objectives and policies in the remainder of the District Plan.
- [233] We find that the relevant sections of the District Plan are:
- Section 4B (Transportation, Access, Parking and Loading)
 - Section 4C (Amenity)
 - Section 5 (Natural Environment)
 - Section 7 (Historic Heritage)
 - Section 8 (Natural Hazards)
 - Section 12 (Subdivision & Development)
 - Section 21 (Industrial Zone)
- [234] Regarding Section 12 (Subdivision & Development), we acknowledge that there is no subdivision proposed by TPIL and so the development of the Site is not contingent on subdivision occurring. However, the entire proposal is a form of development and so we have taken Section 12 to be relevant.
- [235] Ms Perring and Mr Murphy both addressed the objectives and policies within the above sections of the District Plan. Rather than set out their respective opinions, having carefully read their material we instead state our findings below. We do not repeat the actual wording of the objectives and policies as that can be found in section 9 of the Section 42A Addendum Report.
- [236] Having undertaken a ‘real and sensible’ assessment based on the vast amount of evidence before us, we find that:

Section 4B Transportation, Access, Parking and Loading

The proposal is not contrary to Objectives¹⁶⁷ 4B.2.1.2 and 4B.2.1.3 and Policies¹⁶⁸ 4B.2.2.6, 4B.2.2.7, 4B.2.2.10 and 4B.2.2.11 as it is zoned Industrial, provides adequate access from TPSR, provides on-site parking, manoeuvring and loading, integrates with TPSR and TPR and it encourages walking through the Site.

¹⁶⁵ Submissions of Counsel for the Western Bay of Plenty District Council, 11 July 2024, paragraph 24.

¹⁶⁶ Reply submissions, paragraph 5.59

¹⁶⁷ Objectives 4B.2.1.3 and 4B.2.1.4 are not relevant.

¹⁶⁸ Policies 4B.2.2.1, 4B.2.2.4, 4B.2.2.5 (the TPIL proposal is not land use change as the Site is zoned Industrial), 4B.2.2.8, 4B.2.2.9, 4B.2.2.13 and 4B.2.2.14 are not relevant.

The proposal is not contrary to Objective 4B.2.1.2 insofar as the TPIL proposal is an efficient land use of an existing Industrial zoned area that integrates with the defined transportation network. Traffic safety issues are more relevant to Objective 4B.2.1.1. We differ from Ms Perring regarding Objective 4B.2.1.3 insofar as TPIL have proposed a footpath along TPSR and an off-road gravel pedestrian pathway through the Site.

Nor is the proposal contrary to Objective 4B.2.1.1 because the existing vehicular traffic on TPR does not support the social wellbeing of cyclists using TPR and TPSR (prior to it being widened by WBOPDC). Either the WBOPDC intersection upgrade or the TPIL proposal will mitigate that existing risk. The intersection of TPR and TPSR once it is upgraded will be made safer for road users. The proposal is not contrary to Policies 4B.2.2.2, 4B.2.2.3 and 4B.2.2.12 for the same reasons that it is not contrary to Objective 4B.2.2.1.

Section 4C Amenity¹⁶⁹

The proposal is not contrary to noise and vibration Objective 4C.1.2.1 and Policies¹⁷⁰ 4C.1.2.2.1 and 4C.1.2.2.3 as District Plan standards will be adhered to.

The proposal is not contrary to Objective 4C.3.2.1 and Policy 4C.3.2.2 as no operation lighting structures are proposed¹⁷¹ and no lighting is proposed within the Site¹⁷². The proposal is not contrary to Objective 4C.4.2.1 and Policy 4C.4.2.2 as it will not generate odours, effluent aerosols or spray drift. The proposal is not contrary to Objective 4C.5.2.1 and Policy 4C.5.2.2 as the Site is not in a prominent location and the proposed landscaping and screening is appropriate.

Section 5 Natural Environment

The proposal is not contrary to Objectives¹⁷³ 5.2.1.3 and 5.2.1.4 and wetland Policies¹⁷⁴ 5.2.2.3 and 5.2.2.11 because the proposal will enhance a former wetland within the OLFP and protect the wetland seep near the proposed borrow pit.

Section 7 Historic Heritage

We differ from Ms Perring insofar as we find the proposal is not contrary to Objective¹⁷⁵ 7.2.1.3 or Policy 7.2.2.7 because TPIL have respected the kaitiakitanga of Pirirākau, as evidenced through the ongoing consultation with them, including the commissioning of the Pirirākau CIA Report / PACE from the PTA. In our view respecting kaitiakitanga does not necessitate having to reach agreement with Pirirākau regarding their aspirations for the Industrial zoned Site.

The proposal is not contrary to Policy¹⁷⁶ 7.2.2.6 as the Site contains no identified sites or objects of cultural values.

Section 8 Natural Hazards

The proposal is not contrary to Objective¹⁷⁷ 8.2.1.1 and Policies¹⁷⁸ 8.2.2.1, 8.2.2.2, 8.2.2.3 and 8.2.2.4 notwithstanding the fact that some of the Site will at some stage be inundated by floodwaters that will overwhelm the proposed stormwater management system in events that may be less frequent than 2% AEP event.

¹⁶⁹ Sections 4C.2 Storage and Disposal of Solid Waste is not relevant.

¹⁷⁰ Policy 4C.1.2.2.2 is not relevant.

¹⁷¹ AEE, section 3.2.

¹⁷² AEE, section 3.6.

¹⁷³ Objectives 5.2.11.1, 5.2.1.3 and 5.2.1.5 are not relevant.

¹⁷⁴ Policies 5.2.2.1, 5.2.2.2, 5.2.2.4, 5.2.2.5, 5.2.2.6, 5.2.2.7, 5.2.2.8, 5.2.2.9, 5.2.2.10, 5.2.2.12, 5.2.2.13 and 5.2.2.14 are not relevant.

¹⁷⁵ Objectives 7.2.1.1, 7.2.1.2 and 7.2.1.4 are not relevant.

¹⁷⁶ Policies 7.2.2.1, 7.2.2.2, 7.2.2.3, 7.2.2.4, 7.2.2.5, 7.2.2.8, 7.2.2.9 and 7.2.2.10 are not relevant.

¹⁷⁷ Objective 8.2.1.2 is not relevant.

¹⁷⁸ Policies 8.2.2.5, 8.2.2.6, 8.2.2.7 and 8.2.2.8 are not relevant.

Importantly in our view, the Site is located in an area well known to be subject to existing flooding. The Environment Court approved the industrial zoning of the area in full knowledge of that risk. That cannot be undone other than through a future rezoning plan change. The TPIL proposal will actually reduce flood levels on neighbouring properties and avoid flooding on the parts of the Site to be developed for industrial activity in all but very large and low frequency flood events.

In making that finding we note the BOPRC and WBOPDC landuse consent if granted has no fixed duration, and so a long-term assessment time horizon is required that includes likely climate change induced sea level rise, together with the occurrence of storm tide and wave set-up, and heavy rainfall induced catchment flooding.

In that regard we note Ms Christian's advice¹⁷⁹ that TPIL's assessment does not utilise the most recently provided harbour inundation level because according to harbour inundation modelling by NIWA (for the Tauranga Harbour undertaken in 2019), the predicted year 2130 1% AEP coastal inundation level for this property is RL4.17m MVD. That will obviously exceed the proposed RL of the developed areas of RL 3.62m. Consequently, we note Ms Christian's view that in the future the Site itself could experience between 0.5 – 1.77m of onsite flooding during a 1% AEP storm event with harbour inundation, which poses a risk to persons onsite and their ability to safely enter or leave the Site.

However, TPIL has acknowledged that the Site would be inundated during a 1% AEP storm event. TPIL considered that to be unlikely as it was predicated on 1.6m of sea level rise, but they propose an adaptive management approach that could include further raising the Site. That might of course require additional consents and there can be no certainty that those consents would be granted. However, that situation, should it ever arise, is a commercial risk that TPIL is willing to take.

For completeness, we note that the WBOPDC Development Code (2009) requires a 300mm freeboard above the 50-year flood event (the 2% AEP event). The TPIL response to Minute 5 advised¹⁸⁰ that with finished ground levels now lifted to RL 3.62m MVD, a freeboard of 470mm above the 50-year flood level is achieved. We find that to be satisfactory.

Section 12 Subdivision and Development

We differ from Ms Perring insofar as we find the proposal is not contrary to Objectives¹⁸¹ 12.2.1.1, 12.2.1.2, 12.2.1.3 and Policies¹⁸² 12.2.2.4, as the Site is zoned Industrial and TPIL will provide the infrastructure that will enable the land to be used for industrial activities. The proposal is not contrary to Objective 12.2.1.5 and Policy 12.2.2.6 as it has been comprehensively assessed. The proposal is not contrary to Objective 12.2.1.6 and Policy 12.2.2.7 as the proposed stormwater management system will minimise the effects of stormwater runoff prior to the system becoming inundated by catchment wide flooding.

Nor is the proposal contrary to Policy 12.2.2.5 because the intersection upgrade addresses the issue of steep road gradients on TPSR below the intersection with TPR. The proposal is not contrary to Policy 12.2.2.9 insofar as the adverse traffic safety effects of heavy vehicles on cyclists using TPR and TPSR (prior to it being widened by WBOPDC) exist now (so those effects cannot be avoided) and the TPIL proposal will mitigate those effects.

¹⁷⁹ BOPRC Section 42A Addendum Report, page 17.

¹⁸⁰ Page 8.

¹⁸¹ Objectives 12.2.1.4, 12.2.1.7 and 12.2.1.8 are not relevant.

¹⁸² Policies 12.2.2.1, 12.2.2.2, 12.2.2.3, 12.2.2.8 and 12.2.2.10 are not relevant.

Section 21 Industrial Zone

The proposal is not contrary to Objectives¹⁸³ 21.2.1.1, 21.2.1.2, 21.2.1.3, 21.2.1.5 and 21.2.1.6 and Policies¹⁸⁴ 21.2.2.3, 21.2.2.3 and 21.2.2.4 as the proposal is an efficient use of an Industrial zoned Site and adequate landscape and screen planting will maintain visual amenity values when viewed from TPSR. Regarding infrastructure funding, either WBOPDC or TPIL will upgrade the intersection of TPSR and TPR. TPIL will still pay relevant financial contributions should the proposal proceed.

We differ from Ms Perring regarding Objective 21.2.1.6 insofar as we are satisfied that the proposed stormwater management system will appropriately treat stormwater runoff from the Site until such time as the Site and the wider area is inundated with flood waters.

The proposal is not contrary to Policy 21.2.2.2 insofar as the vehicular traffic on TPR does not currently protect cyclists and the TPIL proposal will mitigate that adverse effect. The proposal is not contrary to Policy 21.2.2.5 because intersection of TPR and TPSR will be upgraded such that it is adequate to service the TPIL development.

- [237] Our assessment is that the TPIL proposal is not contrary to particularly relevant provisions that were of concern to Ms Perring in sections of the District Plan dealing with traffic safety, natural hazards and subdivision and development. Nor is it contrary to District Plan sections dealing with amenity, the natural environment and historic heritage.
- [238] In saying that we have some sympathy for TPIL's observation¹⁸⁵ that Ms Perring's June 2025 Addendum Report assessment that the application is contrary to only four of the objectives and policies out of the entire District Plan, without a broader assessment including of the provisions which the application directly (and positively) achieves, does not provide a sound basis for a finding that the application does not pass the second gateway test.
- [239] In conclusion, when considering the relevant District Plan objectives and policies 'as a whole' we find that the TPIL proposal is for an activity that will not be contrary to the objectives and policies of the District Plan.
- [240] Consequently, we are satisfied that the application can pass through the s104D(1)(b) 'gateway'.

5.5 Precedent

- [241] We note that matters of precedent are to be considered under s104 of the RMA and not section 104D. We agree with Ms Perring¹⁸⁶ that the outcome of our assessment of the TPIL proposal will provide a precedent for applications already lodged within the Te Puna Business Park, and also future applications that may follow from other Business Park landowners. It could arguably also set a precedent for other proposals for activities within floodable areas in other parts of the District and Region.
- [242] In our view such precedents would not be undesirable if other applicants were required to go to the same effort and expense as TPIL has had to go to in identifying and mitigating potential adverse effects relating to an industrial use in an industrial zoned Site that is subject to an existing flood hazard. We fail to see how that could potentially undermine the integrity of the District Plan.
- [243] Having said that, we agree with Counsel for TPIL¹⁸⁷ that any future proposal will be examined and will stand or fall on its own merits, and there will rarely be cases where separate non-complying consent applications will be materially indistinguishable.

¹⁸³ Objective 21.2.1.4 is not relevant.

¹⁸⁴ Policies 21.2.2.1, 21.2.2.6 and 21.2.2.7 are not relevant.

¹⁸⁵ Further Legal Reply Submissions, paragraph 4.10.

¹⁸⁶ WBOPDC Section 42A Addendum Report, section 14 "Other Matters".

¹⁸⁷ Further Reply Legal Submissions, paragraph 5.18.

5.6 Section 104D Conclusion

- [244] As we are satisfied that the TPIL application can pass through either of the section 104D(1)(a) or 104D(1)(b) 'gateways' and so we may grant the consents that have been sought.

5.7 Section 104 Matters

- [245] As we are not precluded from granting the consents sought, we now proceed to consider s104 matters.

5.7.1 Effects

- [246] At the outset we agree with Mr Pilkington¹⁸⁸ that TPIL is entitled to develop its Site provided the effects of the proposal are appropriately managed. As we have referred to earlier in this Decision, we also agree there is no legal requirement to comply strictly with the Te Puna Business Park Structure Plan ("Structure Plan") as suggested by some parties. TPIL have sought consent to depart from some Structure Plan requirements and it is the actual and potential effects on the environment of allowing the proposal that we must assess under s104(1)(a) of the RMA.
- [247] We discussed the potential adverse effects of the TPIL proposal in section 5.3 of this Decision and section 5.3.17 we concluded that those effects were no more than minor.
- [248] However, as part of our s104 assessment we are obliged to have regard to the positive effects of the TPIL proposal. The positive effects were summarised in TPIL's initial Reply submissions as including the upgrading of the currently deficient and unsafe TPSR/TPR Intersection; improvements to the surrounding roading network (including the widening of the shared footpath along Te Puna Road); improved stormwater management onsite which will improve the quality of discharge leaving the Site; significant improvements in flood hazards at all downstream locations; and the establishment of a wetland on the Site which will be a net ecological benefit and will enable native wetland flora and fauna to reestablish.
- [249] While noting that the TPSR/TPR Intersection may now be upgraded by WBOPDC, we nevertheless find these positive effects to be significant and they weigh in favour of granting the applications.

5.7.2 National Policy Statements and National Environment Standards

- [250] We do not consider that there are national policy statements that are overly relevant to the WBOPDC consent, noting that the site is already zoned Industrial. We discuss the National Policy Statement for Freshwater Management 2020 (amended January 2024) in section 6.2 of this Decision.
- [251] It is arguable that the National Policy Statement for Indigenous Biodiversity (NPS-IB) is relevant. However, as we have already noted in section 5.3.4 of this Decision the Site is devoid of any biodiversity values of note. It is not recorded as an SNA and not does it contain any significant indigenous vegetation or habitat of indigenous fauna that would merit biodiversity or ecosystem protection. The approximately 400m² of vegetation that will be removed to form the borrow pit consists of 95% exotic plants, primarily of a highly invasive nature. We also note that the intended wetland planting will restore and enhance biodiversity values.
- [252] We find that having regard to the NPS-IB does not weigh against a grant of consent.

5.7.3 Regional Instruments

- [253] The Regional Policy Statement is primarily of a high level or strategic nature. The relevant provisions of the RPS insofar as they relate to the applications lodged with the WBOPDC were summarised in section 15 of the initial Section 42A Report. Those provisions relate to iwi resource management, urban growth management, water quality, water quantity and natural hazards. We consider that our detailed assessment of the potential effects of the TPIL proposal (sections 5.3 and 5.7.1 of this Decision) and the provisions of

¹⁸⁸ Reply submissions.

the District Plan (section 5.4 of this Decision) have adequately canvassed the outcomes sought by the RPS provisions.

- [254] The Regional Natural Resources Plan is more relevant for the earthworks and stormwater discharges consents required from the BOPRC and so we discuss that in section 6 of this Decision.

5.7.4 Operative District Plan

- [255] We discussed the Operative District Plan in section 5.4 of this Decision. Suffice to say here that we find that having regard to the Operative District Plan does not weigh against a grant of consent.

5.8 Determination

- [256] As we are satisfied that the TPIL application can pass either of the section 104D (1)(a) or (b) 'gateways'. Having regard to the relevant matters set out in section 104 of the RMA we determine that the applications lodged with the WBOPDC should be granted subject to conditions.

5.9 Conditions

- [257] As part of the Reply submissions, we received a suite of conditions that had been largely agreed between Mr Murray and Ms Perring. There were three areas of disagreement:

- Whether or not the Future Development Area should be included in the land use consent at this stage;
- The number of permissible earthworks seasons;
- Maximum yard areas, with Ms Perring recommending that the ContainerCo yard be limited to an area of 4.8ha in while other industrial yards occupying a combined area of no more than 3.95ha.

- [258] We discussed the Future Development Area in section 5.3.10 of this Decision.

- [259] We see no harm in enabling the site earthworks to occur over up to three earthworks seasons (Mr Murray's recommendation) as opposed to two earthworks seasons (Ms Perring's recommendation). If the earthworks take three seasons to complete then it is axiomatic that the volume of heavy vehicle movements will be reduced on a day-to-day basis compared to a situation where the earthworks are completed over two seasons. That will reduce the day-to-day traffic on TPR which could not be considered an adverse effect.

- [260] We also see no need for restrictions on yard areas in an Industrial zoned site. The conditions include yard setbacks, height restrictions, noise limits, lighting restrictions and landscape planting conditions along with other conditions that will collectively manage the effects of the industrial activities.

- [261] We also note Mr Murray's advice that the original analysis of (conservative/worst-case) traffic volumes using the area yard areas recommended by Ms Perring generated the maximum permitted number of 774 movements (with an in and out vehicle trip counting as two movements). That maximum number of vehicle movements is already reflected in Condition 29.

- [262] We have made numerous changes to the conditions recommended by Mr Murray and Ms Perring, including:

- replacing the word "shall" with "must" to reflect contemporary language;
- revising the grammar in response to omitting the word "shall";
- referring to "written certification" instead of "certification";
- replacing the word "collaboration" with the word "consultation" in conditions related to the consent holder's interactions with Pirirākau;
- referring to "tenants" instead of "leases" regarding industrial activities other than ContainerCo;
- recasting some conditions as advice notes if the conditions purported to apply to third parties or did not impose an obligation on the consent holder;

- amending conditions that purported to retain a subsequent approval role for WBOPDC officers (apart from Engineering Approval); and
- numerous grammatical improvements.

- [263] We have attempted to avoid duplicating conditions between the WBOPDC and the BOPRC. On that basis we have omitted WBOPDC conditions dealing with dust, the composition of cleanfill, tracking sediment off-site, and planting of the constructed wetland.
- [264] We have also omitted conditions that did not actually impose an enforceable obligation on the consent holder, or that duplicated other conditions.
- [265] The conditions imposed are set out in Appendix 1.
- [266] We direct the WBOPDC to attach to those conditions all of the relevant Consent Plans that are referenced in the conditions.
- [267] Given the extent of amendments that we have made to the conditions initially recommended by Ms Perring and Mr Murphy it is conceivable that the conditions may contain minor mistakes or defects. Accordingly, should the WBOPDC or TPIL identify any minor mistakes or defects in the attached conditions, then we are prepared to issue a revised schedule of conditions under s133A of the RMA correcting any such matters. Consequently, any minor mistakes or defects in the amended conditions should be brought to our attention prior to the end of the 20-working day period specified in section 133A of the RMA.

6.0 BOPRC Consents

6.1 Assessment approach

- [268] Prior to assessing the effects of the application under s104C(1)(a), we firstly set out our assessment approach.
- [269] We are required to assess the adverse effects of the existing activities on the Site, inclusive of any mitigation measures offered by TPIL or recommended by Ms Christian. The caveat to that is that we consider the mitigation measures must be capable of being fully implemented. However, we do not consider that it is necessary for those mitigation measures to fully implement the requirements of the Structure Plan. Instead, we must decide if the adverse effects (subject to the realistically achievable mitigation measures) are mitigated to an extent that they do not weigh against a grant of consent.

6.1.1 Existing Environment

- [270] We discussed the existing environment in section 5.3.1 of this Decision and that discussion is also relevant for the consents sought from the BOPRC.

6.1.2 Permitted baseline

- [271] We discussed the permitted baseline in section 5.3.2 of this Decision. Similarly, we have elected not to disregard any adverse effects of the TPIL activities on the environment.

6.1.3 Earthworks

- [272] The TPIL proposal will require significant earthworks to be undertaken on both the TPIL site and the neighbouring TINEX site through which the overland flow path (OLFP) will be constructed.
- [273] In her response to Minute 5 Ms Christian advised that the landowners of the Tinex site, in response to an abatement notice from BOPRC, had lodged a resource consent application to undertake works to remedy adverse effects of stormwater displacement caused from unauthorised filling of land on their property. Ms Christian noted that the proposal for the Tinex site was consistent with the proposed 45 m wide OLFP

presented by TPIL. That advice is relevant because we understand TPIL still seeks to utilise soil material excavated from the Tinex OLFP as pre-load material on the TPIL Site.

- [274] We note that TPIL has sought the ability to undertake earthworks within the 2.1ha 'Future Development Area', provided that flood modelling and stormwater management design for that area has been developed. TPIL proposes that earthworks in this area would not exceed RL3.62 m MVD, and result in flooding effects not exceeding those resulting from the area of the Site to be developed for the ContainerCo activity. We find that to be reasonable, as we noted in section 5.3.10 of this Decision.
- [275] Ms Christian¹⁸⁹ considered that adverse effects on water quality as a result of erosion and sediment due to earthworks would be less than minor and the resultant potential adverse effects could be adequately mitigated through consent conditions. She also considered that effects related to land disturbance as a result of vegetation clearance associated with the borrow pit would be less than minor.
- [276] We agree with Ms Christian¹⁹⁰ that TPIL's proposed erosion and sediment control conditions for the BOPRC earthworks consent, including the provision of an erosion and sediment control plan (ESCP) for certification by BOPRC prior to works commencing, adequately mitigates any adverse effects on water quality as a result of erosion and sedimentation during earthworks, along with limiting earthworks to the summer period, being 15 September to 1 May inclusive. From our experience with similar large scale earthworks activities (including those in the Bay of Plenty) that is a routine and well accepted approach.
- [277] We note TPIL has proposed a condition of consent that specifically states there is to be no tracking of soil or sediments off-site, which again we find to be appropriate and routine.
- [278] Regarding the stability of the stormwater treatment pond, Ms Christian advised that could be adequately mitigated through the inclusion of a consent condition requiring the construction of the pond to be under the supervision suitably qualified Geotechnical Engineer given its location within a floodplain. We find that to be appropriate.
- [279] We find that earthworks associated effects will, subject to conditions of consent, be no more than minor.

6.1.4 Groundwater Flow Effects

- [280] Some submitters were concerned that the earthworks proposed for the Site, including the use of fill material to act as a 'preload', and the associated compaction of the underlying soil would somehow adversely affect the flow of groundwater under the Site.
- [281] This issue was addressed by Robert Taylor¹⁹¹. He advised that the preload is not expected to have an adverse effect on the flow of groundwater beneath the Site. Although preloading would consolidate (or compress) the underlying soft clays to some degree, the level of compression (consolidation) was not at a magnitude that would reduce the permeability of the 15m to 20m thick alluvial soils.
- [282] Mr Taylor noted that preloading was only proposed for the future internal road and lot areas within the Site, such that it does not extend across the entire width of the Site (namely within the overland flow path and proposed stormwater pond and wetland). Furthermore, a 300mm thick drainage layer comprising granular sand will be placed beneath the structural fill, as detailed in Section 9.1 of the WSP Report. Mr Taylor considered that layer would allow groundwater to flow beneath the fill, thereby not creating a dam effect.
- [283] Mr Taylor also observed that the Cone Penetrometer Testing (CPT) undertaken on the Site indicated the presence of sandy layers which would have a much higher hydraulic conductivity (more permeable). Consequently, the flow of groundwater beneath the Site was likely to be heavily concentrated in those layers

¹⁸⁹ Section 42A Addendum 11 April 2025, paragraph 5.5.

¹⁹⁰ Ibid, paragraph 5.7.

¹⁹¹ Evidence Taylor, paragraphs 6.6 to 6.8.

which are typically associated with springs or preferential groundwater flow paths. The granular nature of the sand layers suggests they are not susceptible to consolidation compared to the soft clay soils and, as such the flow of groundwater within those sandy layers was not expected to be adversely affected by the preload ground improvement.

- [284] In her Section 42A Addendum Report Ms Christian advised¹⁹² that she had previously concluded that there would be minimal risk of groundwater related adverse offsite effects as a result of the proposed earthworks, including infilling and pre-loading. Her opinion remained unchanged.
- [285] On the evidence we are satisfied that the potential adverse effects of the TPIL proposal on groundwater flows beneath, and hence also beyond, the Site are no more than minor.

6.1.5 Dust

- [286] Any large-scale earthworks, including those proposed by TPIL at the Site, can produce nuisance dust beyond the site boundary in dry and windy if not properly managed. Ms Christian advised¹⁹³ that provided the discharge of dust (being a contaminant) is not noxious or dangerous, offensive or objectionable beyond the boundary of a subject property or into any water body, the discharge of dust into the air from ongoing operations on the site would comply with permitted activity Rule AIR-R1.
- [287] The commonly used method of controlling dust is through the use of water to wet the exposed area. Ms Christian advised that BOPRC's erosion and sediment control guidelines recommended a minimum amount of water to control dust of 5 mm/day (50 m³/ha/day) on exposed un-trafficked areas and 10 mm/day on exposed trafficked areas such as haul roads used during earthworks operations. In this case TPIL have stated that the area of works will not exceed 4 ha at any one time, which equates to the requirement of 200 m³ of water per day.
- [288] Ms Christian noted that TPIL holds resource consent 20311 that will provide the required volume of water for dust suppression purposes until it expires 1 October 2026. Should Site earthworks proceed after that expiry date then TPIL would be required to apply for a replacement resource consent to take and use groundwater for dust suppression purpose at least six months prior to the expiry date, or source an alternative authorised water source.
- [289] Ms Christian concluded that with the inclusion of consent conditions requiring an effective means of applying water for the purpose of dust suppression, she considered that the actual or potential adverse effects of dust as a result of the proposed earthworks are mitigated. We agree.
- [290] In her Section 42A Addendum Report Ms Christian advised¹⁹⁴ that her earlier conclusion that the adverse effects of dust as a result of earthworks can be mitigated and that dust effects will be less than minor, remained unchanged as a result of TPIL's final proposal. That included the land disturbance related to vegetation clearance at the borrow pit.
- [291] On the evidence we find that the potential adverse effects of dust associated with the TPIL proposal are able to be appropriately mitigated such that they do not weigh against a grant of consent.

6.1.6 Flooding Hazards

- [292] We addressed flooding hazards in section 5.3.7 of this Decision where we referred to the collective evidence before us, including that of Ms Christian and her peer review experts.

¹⁹² Paragraph 5.25.

¹⁹³ BOPRC S42A Report, paragraphs 7.24 to 7.29.

¹⁹⁴ Paragraph 5.33.

6.1.7 Stormwater Management

- [293] TPIL has proposed two onsite stormwater management options. The first option involves managing and treating all onsite stormwater from the Stage 1 development up to and including 100-year ARI flows through a system of swale drains and a stormwater detention pond. The second option involves keeping all stormwater generated from the northern side of TPSR on that side of the road, and constructing a new roadside drain to convey that stormwater to the Teihana Road culvert and out to the Wairoa River.
- [294] TPIL's proposals utilise what Mr Curtis¹⁹⁵ called a 'treatment train'. Stormwater is to be conveyed through a series of swales internal to the Site constructed either side of the proposed internal road and to the edges of the proposed developable land (inclusive of culvert under the internal road) to a large stormwater treatment pond (with passive attenuation) located on the north-eastern corner of the Site, which in turn discharges through a throttled decanting outlet to a 1.63ha constructed wetland and thereafter the OLFP running through 245 Te Puna Station Road. From there, the stormwater discharges to the TPSR roadside drain, and thereafter out to the Hakao Stream and Wairoa River.
- [295] We note that TPIL has confirmed in writing¹⁹⁶ that they are committed to creating the 1.63 ha wetland area, in the southeastern part of the Site and through the OLFP on the neighbouring Tinex site.
- [296] At the Hearing Mr Murray confirmed that the stormwater pond would contain the runoff from a 10% AEP (10-year ARI or Q₁₀) event. In larger events the stormwater flows would be 'throttled' in the stormwater pond so that the discharge would not exceed 80% of pre-development flows. However, the TPIL response to Minute 5 advised¹⁹⁷ that it has been agreed through caucusing that attenuation of flow was not required. The stormwater pond outlet will comprise an 825mm diameter pipe discharging into the eastern drain discharging south to be combined with overland flows tracking east into the Tinex OLFP.
- [297] The TPIL response to Minute 5 advised¹⁹⁸ that the stormwater treatment pond will be placed within raised fill to ensure protection during all but the most extreme flood events. Its crest edges will be at RL 3.62m.
- [298] Container washdown operations will now be undertaken in a proprietary mobile wash unit. This unit will capture all washdown wastewater, which will be pumped into a tanker, taken off site and disposed of as trade waste to an appropriate facility. There will be no discharge from the workshop area to the stormwater system. All solids waste material generated within the workshop, will be collected and disposed of offsite to either a landfill or scrap metal merchant.
- [299] The effect of the TPIL proposal on the ecological integrity of the Hakao Stream and Wairoa River was of concern to a number of submitters.
- [300] Mr Curtis noted that the WSP Engineering report set out the anticipated Total Suspended Solids (TSS) reduction provided by each of the 'treatment train' components which varied from 70% TSS removal for the swales up to 90% for the wetland. He considered that the treatment efficiencies presented in the WSP Engineering report were values for individual components, and not for devices constructed in series (i.e. swale to pond to wetland) as proposed for the Site. Overall, Mr Curtis considered that the efficiencies presented in the WSP report would represent the lowest performance values to be achieved from the proposed stormwater management. On that basis he concluded that the proposed water quality management system provided a good level of protection to the receiving environment and took appropriate steps to reduce the risk of contaminants being released.

¹⁹⁵ Evidence Curtis, paragraphs 5.9 to 5.15.

¹⁹⁶ Email correspondence from Mr Vincent Murphy (Momentum Planning and Design on behalf of the Applicant) to Ms Marcia Christian (Senior Consent Planner, BOPRC), 'RE: TPIL Wetland and OLFP Question', Dated 25 March 2025. BOPRC Objective ID: A4918273.

¹⁹⁷ Page 10.

¹⁹⁸ Pages 9 and 12.

- [301] We note that conclusion is predicated on the stormwater system not being inundated by floodwaters. It is evident¹⁹⁹ that in storm events between a 10% and 50% AEP will inundate at least the roadside and internal swales running parallel to TPSR. However, in that case the stormwater will bypass the treatment system and flow down TPSR. It is not unusual for overland flow paths such as roads to be used in large events and so with regard to stormwater quality that does not cause us any concern.
- [302] Evidence on ecological matters was provided for TPIL by Henry Whyte. He concluded that the quality of stormwater discharged from the Site and entering the wetland would be of a suitable quality that would not adversely affect the ecology of the wetland. He noted that the wetland is a biological water treatment device in and of itself and he considered that the quality of stormwater discharged from the wetland into the Hakao Stream would also be high quality and, in particular, it would not adversely affect the existing ecological function of the Hakao Stream.
- [303] Mr Whyte observed that the reinstatement of the wetland on the Site would create additional habitat for a wide range of plants and animals, including eels. In combination, this will generate a net-ecological benefit. He agreed with Ms Christian that there should be conditions in the BOPRC consent requiring certification of a Wetland Planting Plan that had been prepared by a suitable ecologist. We agree. Mr Whyte also suggested that annual monitoring for pest plant and animals on the Site and the wetland in particular should be undertaken by a suitably qualified ecologist. We also agree.
- [304] Rob Donald reviewed²⁰⁰ the updated TPIL proposal submitted in response to our Minute 5. He was comfortable that the high-risk aspects of the initial proposal on water quality, such as contaminants related to the container washdown and workshop area are no longer an issue. He considered that TPIL's proposed monitoring and water quality limits conditions were appropriate.
- [305] At the Hearing Mr Murray confirmed that the stormwater pond would contain the runoff from a 10% AEP (10-year ARI or Q₁₀) event. However, BOPRC peer reviewer Bronwyn Rhynd was concerned about the efficiency of the proposed stormwater treatment pond to operate effectively during such an event with regard to how tailwater conditions in the downstream constructed wetland or OLFP would affect discharges from the stormwater treatment pond.
- [306] In his Technical Memorandum²⁰¹ that formed part of the Reply submissions Campbell McGregor advised:
- all internal swales have been sized to convey the 10-minute Q₁₀ and Q₁₀₀ events without overtopping;
 - a flap gate valve is proposed to be installed on the stormwater pond outfall pipe to prevent floodwaters beyond the Site back flowing into the stormwater pond;
 - in the 10-year storm event all stormwater generated from the Site, in combination with existing upstream and downstream floodwater, is contained in the access road and internal swales and flows to the stormwater pond, the relocated roadside drain, or overland flow paths such as TPSR; and
 - in 10 and 100 year storm events, as the tailwater level rises (which can also vary subject to sea level rise and point of the tidal cycle), the flood water level within the Site will also rise, meaning floodwaters within and external to the Site are at the same level and the Site will no longer be free draining. As the floodwaters recede, not all floodwater will necessarily flow to the stormwater pond. However, that cannot be avoided.
- [307] We are satisfied that the quality of stormwater generated from the Site will be suitably managed. In large rainfall events when the entire wider area is flooded, including TPSR and upper catchment areas, we cannot conceive that stormwater originating solely from within the Site that does not make its way to the stormwater treatment pond will have a material adverse effect on those inevitably sediment and other contaminant laden floodwaters.

¹⁹⁹ TPIL response to Minute 5. Attachment E, page 10.

²⁰⁰ Email to Marcia Christian dated 11 March 2025.

²⁰¹ Attachment A to the Reply submissions.

- [308] We note that no detailed design has been provided for stormwater management 'Option 2' that would see stormwater from the sites to the north of TPSR being diverted down the roadside channel to the north of the road. However, as that Option would see less stormwater entering TPIL's stormwater management system it can only have a beneficial effect on the stormwater discharged from the TPIL Site.
- [309] On the evidence we are satisfied that the potential adverse effects of the TPIL proposal associated with the permanent discharge of stormwater from the Site are appropriately mitigated such that they do not weigh against a grant of consent.

6.1.8 Archaeological, Historical Heritage

- [310] In section 5.3.14 of this Decision, our assessment of effects on archaeological values associated with this proposal determined that the adverse effects are no more than minor.

6.1.9 Māori Cultural Values and Interests

- [311] In section 5.3.15 of this Decision, our assessment of effects on Māori cultural values associated with this proposal determined that the adverse effects are no more than minor

6.1.10 Conclusion on effects

- [312] We are satisfied that, subject to the imposition of a comprehensive suite of conditions, the potential adverse effects of the stormwater discharges and earthworks activities will be no more than minor.

6.2 National Policy Statements and National Environmental Standards

- [313] The National Policy Statement for Freshwater Management 2020 (amended January 2024) (NPS-FM) is relevant. In her initial Section 42A report Ms Christian noted that TPIL had assessed the proposal against the provisions in the NPS-FM in section 9.1.2 of the application AEE. Overall, TPIL concluded the proposal had given effect to the relevant provisions through the engagement attempts and consultation with iwi and hapū, and proposed mitigation measures to protect and enhance downstream freshwater bodies. Ms Christian concluded that provided the remaining questions in relation to flooding and permanent stormwater management were resolved and effects on cultural values could be mitigated; she agreed that the proposal would be consistent with the provisions of the NPS-FM.
- [314] We are satisfied that those issues have been adequately addressed as outlined in preceding sections of this Decision.
- [315] Ms Christian did not address the NPS-FM in her Section 42A Addendum Report.
- [316] Our own assessment of provisions that are relevant to the earthworks and stormwater discharge consents sought follows. We firstly note that under the Resource Management (Freshwater and Other Matters) Amendment Act 2024 the NPS-FM's sole Objective 2.1 is excluded from our consideration. The Amendment Act also arguably excludes the primary purpose of Policy 1 insofar as it relates to Te Mana o te Wai which is set out in clause 1.3(5). Relevant Policies are 2, 3, 6, 7 and 9. We are satisfied the TPIL proposal does not offend those provisions because engagement has occurred with Pirirākau, the stormwater management system and flooding assessments include flows from the upper catchment, there is no further loss of wetland and a wetland will be restored as part of the stormwater management system, there will be no loss of river extent and the habitat of freshwater species is protected as the stormwater management system will treat the stormwater prior to its eventual merging with the Hakao Stream.
- [317] We find that a consideration of the NPS-FM does not weigh against a grant of consent.

- [318] With regard to terrestrial biodiversity, Ms Christian²⁰² considered that the proposal would not be contrary to the NPS-IB, and adverse effects related to ecology as a result of vegetation removal would be adequately remedied and offset, such that there was no net loss of indigenous ecological values.
- [319] The Site is not upstream of a registered drinking water supply and so the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007 are not relevant.

6.3 Regional Policy Statement

- [320] In her initial Section 42A Report Ms Christian²⁰³ noted that section 9.2.1 of the AEE concluded that the TPIL proposal was consistent with the RPS provisions. We have considered the RPS provisions insofar as they are relevant to the earthworks and stormwater discharge consents sought. We note that many of the provisions are of a high level or strategic nature and are not overly relevant here.
- [321] However, with regard to Objective 29 we find that the treated stormwater discharge from the TPIL land use activity will not exceed the capacity of the Hakao Stream and Wairoa River receiving waters to assimilate those discharges. With regard to Policy WL 7B(b) we find that the proposed erosion and sediment controls associated with the Site earthworks will minimise silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained.
- [322] We are satisfied that the RPS provisions do not weigh against a grant of consent

6.4 Regional Natural Resources Regional Plan

- [323] Ms Christian comprehensively assessed the TPIL proposal against the Regional Natural Resources Regional Plan (RNRP) in section 6 of her Sections 42A Addendum Report. Rather than repeat her assessment, we record that we generally concur with it insofar as it relates to the earthworks and stormwater discharge consents sought
- [324] We note Ms Christian's overall conclusion was that the proposal is consistent with the RNRP with the exception of:
- Her understanding of the effectiveness of the proposed stormwater management system under the most up-to-date coastal inundation levels; and
 - Whether Pirirākau consider the proposal and proposed conditions of consent adequately address adverse effects on their cultural value.
- [325] We discussed TPIL's proposed stormwater management system in section 6.1.7 of this Decision. With regard to Pirirākau's concerns, as outlined in section 5.3.15 of this Decision we consider these have been adequately addressed, while noting their overall opposition to the Industrial zoning of this Site.
- [326] We find that consideration of the RNRP does not weigh against a grant of consent.

6.5 Sections 105 and 107 of the RMA

- [327] With regard to section 105 matters, we agree with Ms Christian²⁰⁴ that the temporary discharge of sediment-laden stormwater to land during earthworks, and permanent discharge of stormwater water to land where it will enter water is the most suitable option available at this Site given there is no reticulated system available for permanent stormwater. We also agree that the sensitivity of the receiving environment has been adequately considered.

²⁰² BOPRC Section 42A Addendum Report, Ecology – Terrestrial, page 22.

²⁰³ She did not address the RPS in the Section 42A Addendum Report.

²⁰⁴ BOPRC Section 42A Report, paragraphs 8.14 to 8.17.

[328] We also agree with Ms Christian²⁰⁵ that provided TPIL complies with the recommended stormwater consent conditions and quality limits endorsed by Mr Donald, then the stormwater discharges (temporary or permanent) from the activity should not result in the production of any of the effects listed in section 107(1).

6.6 Other matters

[329] No other matters were bough to our attention.

6.7 Determination

[242] We grant the consents required from the BOPRC as follows:

- under section 9(2)(a) of the RMA and Rule LM R4 of the RNRP to undertake a discretionary activity being the disturbance of land and soil as a result of earthworks;
- under section 15(1)(b) of the RMA and Rule DW R8 of the RNRP to undertake a discretionary activity being to temporarily discharge sediment-contaminated stormwater to land where it may enter water; and
- under section 15(1)(b) of the RMA and Rule DW R8 of the RNRP to undertake a discretionary activity being to permanently discharge stormwater and treated washdown water from the site.

6.8 Conditions

[330] As part of the Reply submissions, we received a suite of consent conditions that had been agreed by Mr Murray and Ms Christian. We adopted those conditions with few if any changes of any significance.

[331] The only significant change we made was to omit the conditions relating to the Environmental and Cultural Management Committee (ECMC) which the consent holder would be obliged to set up and maintain should Pirirākau wish to participate in it. We note that at the Hearing the Pirirākau representatives advised that they did not wish to be involved in such an arrangement. That may well change in the future; however, we were also cognisant that Ms Perring had recommended the same suite of ECMC conditions for the enduring landuse consent required from WBOPDC.

[332] We see no point in duplicating those conditions and requiring both WBOPDC and BOPRC to seek to establish the ECMC. Instead, we find that those conditions should reside in the WBOPDC landuse consent as it appeared to us that Pirirākau's main concern was with the original establishment of the Industrial zoning and the ongoing use of the land for industrial and business activities. Those are matters that more appropriately pertain to the WBOPDC.

[333] The conditions we have imposed on the consents are set out in Appendix 2.

[334] We direct the BOPRC to attach to those conditions all of the relevant BOPRC Consent Plans that are referenced in the conditions.

[335] Notwithstanding our adoption of the conditions recommended by Ms Christian, it is conceivable that the conditions may nevertheless contain minor mistakes or defects.

[336] Accordingly, should the BOPRC or TPIL identify any minor mistakes or defects in the attached conditions, then we are prepared to issue a revised schedule of conditions under s133A of the RMA correcting any such matters.

²⁰⁵ Ibid, paragraphs 8.18 and 8.19.

[337] Consequently, any minor mistakes or defects in the amended conditions should be brought to our attention prior to the end of the 20-working day period specified in section 133A of the RMA

Signed by the commissioners:

A handwritten signature in blue ink, appearing to read 'Fraser Campbell', on a light blue background.

Fraser Campbell

A handwritten signature in black ink, appearing to read 'James Whetu', on a light blue background.

James Whetu

A handwritten signature in black ink, appearing to read 'Rob van Voorthuysen', on a light blue background.

Rob van Voorthuysen (Chair)
Dated: 7 July 2025