

**BEFORE THE INDEPENDENT HEARINGS PANEL APPOINTED BY THE
WESTERN BAY OF PLENTY DISTRICT COUNCIL**

IN THE MATTER of the Resource Management Act
1991 (**RMA**)

AND

IN THE MATTER of a Notice of Requirement by
Western Bay of Plenty District
Council for Active Reserve,
Ōmokoroa

**LEGAL SUBMISSIONS IN REPLY ON BEHALF OF
WESTERN BAY OF PLENTY DISTRICT COUNCIL
(AS REQUIRING AUTHORITY)**

Dated: 29 September 2023

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MAY IT PLEASE THE COMMISSIONERS

1. These legal submissions record the oral submissions in reply presented at the hearing on Friday 15 September 2023 and respond to matters raised by the Panel during the hearing, including in response to the presentations by submitters.
2. These submissions address the following matters:
 - (a) respond to the legal submissions on behalf of TDD Limited and the matters raised by the submitter in terms of seeking certainty that the storage shed business could continue after its current resource consent expires; and
 - (b) respond to concerns raised during the hearing in relation to the uncertainty created by the Notice of Requirement (**NOR**) and Public Works Act 1981 (**PWA**) acquisition matters.
3. The following documents are attached to these reply submissions:
 - (a) Updated version of the draft conditions which respond to matters raised during the hearing, with further amendments shown as agreed with the Council's reporting officer (Mr James Danby) (**Attachment A**);
 - (b) Email correspondence from Mr Peter Watson (Reserves and Facilities Manager) on behalf of the requiring authority in relation to concerns raised by TDD Limited (see **Attachment B**); and
 - (c) Memoranda from Mr Geoff Canham and Mr Jeff Hextall in response to questions from the Panel in relation to the childcare business at 7A Prole Road (see **Attachments C and D**).

Response to TDD Limited

4. It is noted that in the Panel's Hearing Direction 3 (dated 20 September 2023) there was an invitation to Ms Barry Piceno to record matters in writing raised before the hearing during the presentation of her legal

submissions. At the time of finalising these submissions no further legal submissions have been received.

5. As addressed in the oral reply, the matters raised during the legal submissions of Ms Barry Piceno appeared to challenge the size of the land area proposed by the NOR and therefore whether the extent of the designation is reasonably necessary. Ms Barry Piceno sought to challenge the evidence on behalf of the requiring authority on the basis that there was “*a lack of credible evidence*”.
6. In response, in our submission, the Panel heard robust evidence from Mr Canham of the need for the active reserve to support the growth from the urbanisation of Ōmokoroa and wider area, the level of service requirements, and clear evidence on the current shortfall for active reserve land. The reports relied on by Mr Canham relate to the Kaimai Ward,¹ and do not include the wider Western Bay of Plenty shortfall issues that were described further in the evidence given by Mr Canham at the hearing. Mr Canham confirmed that he has a high level of confidence in the data that he relied on in his evidence.
7. The evidence presented by Mr Canham at the hearing also addressed matters raised in the written legal submissions of TDD Limited (dated 7 September 2023) including on the nature of active reserve land compared to, for example, open space provided by schools and the network of walkways proposed as part of the wider Ōmokoroa urbanisation. No expert evidence was presented in response from the submitter on these matters.
8. During the hearing it was clear to the requiring authority that the Panel was seeking some certainty or a clear path to allow the storage shed business to continue (after the current resource consent expires on 26 May 2026), in the circumstances where the land was not yet required for the reserve. In response to this matter Mr Watson has provided email confirmation on behalf of the requiring authority in relation to this matter (see **Attachment B**).

¹ Statement of evidence of Geoff Canham dated 28 August 2023 at paragraphs 15-21.

Concerns raised at hearing

9. It was acknowledged during the opening legal submissions that the NOR process causes uncertainty for affected landowners and businesses. These matters were expressed clearly during the presentations from the submitters at the hearing. Unfortunately these matters are not unique to this NOR.
10. As addressed in the oral reply and in the evidence of Annelie Badenhorst, the requiring authority team heard those concerns from the submitters and the Council (requiring authority) remains open to different solutions and timing for the affected properties. In response to the matters raised, and further to the evidence on behalf of the requiring authority in relation to the likely timing and funding of the land acquisition process and development of the reserve, the proposed lapse condition has been reduced from 15 to 10 years (discussed further below).
11. The written submission of Ms Barry Piceno acknowledged that the PWA process provides for matters such as land acquisition and compensation.²
12. The PWA requires “full” compensation. Concerns relating to the loss of property, businesses and the land acquisition process are outside the scope of this NOR process.
13. However, during the hearing there were a number questions from the Panel in relation to the childcare business at 7A Prole Road. Further information has been provided to address these questions. In summary:
 - (a) The memorandum from Mr Hextall (see **Attachment C**) responds in part by describing the Prole Road Urbanisation Project and the direct impact of the proposed road widening and closure of existing accesses for Prole Road, including information on annual daily traffic flow projections along Prole Road. Further information is provided on the proposed underpass (beneath Prole Road) which is proposed to be constructed in 2024 as part of the wider Prole Road urbanisation project (but not opened until such time as it is required to be utilised). The current design of the Prole Road underpass does not directly affect the location of the existing

² Legal submissions on behalf of TDD Limited dated 7 September 2023 at paragraph 22.

childcare facility (it has been relocated 20m west from the draft plan presented to the Panel). Mr Hextall also confirms that road access to the proposed Active Recreation Reserve from the new roundabout from Prole Road will also serve the proposed residential development to the west, but no roads will cross the gully system in that area.

- (b) The memorandum from Mr Canham (see **Attachment D**) summarises his evidence presented in the oral reply about the compatibility of a childcare centre within a council reserve.

Conditions

- 14. As indicated at the hearing and in response to matters raised by submitters and questions from the Panel, the requiring authority proposed changes to the draft conditions. These changes have been incorporated into the proposed conditions, and are agreed by Mr Danby on behalf of the Council reporting team. The final proposed conditions are included as **Attachment A** to these reply legal submissions.
- 15. In summary, the changes include:
 - (a) Specific reference in condition 2 to the Outline Plan process (required under section 176A of the RMA) and reference to “on a staged basis” which was the implicit intention of the previous drafting;
 - (b) Addition of a new condition 5 relating to engagement with Pirirakau and other key stakeholders;
 - (c) Separation of the previous earthworks – cultural values engagement requirements from the new condition 5; and
 - (d) Change to the lapse period from 15 to 10 years.

Conclusion

- 16. The NOR is reasonably necessary to enable the development of the Active Recreation Reserve to support urbanisation of Ōmokoroa and to address the reserve shortfall for community needs. The requiring authority has

satisfied the requirements in section 168A(3) of the RMA such that the designation can be confirmed, subject to the proposed conditions.

17. The requiring authority seeks confirmation by the Panel of the NOR subject to the proposed conditions.

Dated: 29 September 2023

A handwritten signature in blue ink, appearing to be 'KJ' followed by a large, stylized flourish.

Kate Stubbing / Jemma Hollis
Counsel for the Requiring Authority