

## **DECISION REPORT**

### **PLAN CHANGE 93 – TE PUNA SPRINGS**

#### **FILE REFERENCE A4524920**

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### **INTRODUCTION**

Pursuant to Section 10(1) of Schedule 1 of the Resource Management Act 1991, the Hearing Panel (Panel) makes the following decision on the provisions of the District Plan First Review and matters raised in submissions and further submissions to Plan Change 93 – Te Puna Springs (PC93).

The decision is set out as follows:

1. The Proposal
  2. The Hearing
  3. Decisions on submissions and further submissions
- 

### **1. THE PROPOSAL**

The subject site comprises approximately 5.93 hectares of land located on the northern side of State Highway 2 (SH 2) at Te Puna, bound in part by SH 2, Te Puna Road and the existing BP Service Station, Four Square and offices located off the sliplane adjacent to SH 2. The immediate surroundings of the subject site to the east and south are split up by each of the 'four corners' which are separated by the intersection of SH 2 and Te Puna Road / Minden Road and zoned and used for commercial purposes. Part of the Eastern boundary is also the DMS post harvest facility. To the north and west are orchards.

- a) The site is currently utilised by the SuperMac Group who design and build prefabricated buildings. This section of the site is currently used for the storage of 'Modcom Portable Buildings'. As part of this plan change all portable buildings will be removed from the site.
- b) Access to the site is from the western side of Te Puna Road and an existing vehicle crossing from the new slip lane off the State Highway.



Figure 1: Structure Plan Location

- d) The purpose of the plan change is to rezone the subject site from the present Rural to Commercial Zone to allow a new “Te Puna Springs” Structure Plan site under the Commercial Zone. The rezoning will provide for further business activities to service the Te Puna community and to create local business opportunities.
- e) The proposed Structure Plan proposes a new definition and new assessment criteria as well as rules and performance standards that relate to the site.

### **SECTION 32 AND 32AA EVALUATIONS**

The applicant carried out an evaluation of the Proposal under s32 of the Act, and further evaluations of amendments to the Proposal were undertaken by the Reporting Officer (RO).

These evaluations were contained in the report presented to the Hearing by the RO Anna Price. Where appropriate those evaluations are included below. Where the Panel has changed those proposals, reasons are given below.

## 2. THE HEARING

The Hearing was held in Council Chambers on Wednesday 6 July. The Panel comprised Deputy Mayor John Scrimgeour (chair), Councillor Murray Grainger, Councillor James Denyer and Independent Commissioner Alan Withy.

The Panel is unanimous in this Report and the decisions contained herein. It relies upon legal advice from Ms Vanessa Hamm regarding several issues raised during the Hearing, which is attached to this Report.

The Panel carefully heard and considered the voices and passion of the community as expressed by several Submitters. It also is very cognisant of the “*Te Puna Community Plan 2017*”, which although not a statutory plan, is considered consistent with this Report and decisions herein.

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## 3. DECISIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS

The purpose of this part of the report is to show the decisions made on submissions and further submissions on a topic-by-topic basis, with reasons and Section 32AA Analysis.

The Plan Change is approved subject to the various amendments outlined in this Report shown as follows:

- existing District Plan text in black; and
- proposed changes as included in the Section 32 Report in red; and
- further changes as the result of decisions in blue.

### TOPIC 1: REZONING

#### **Background**

The Plan Change seeks to rezone the site from Rural to Commercial. Currently the majority of the site is zoned Rural, with two areas around the Hall site and the neighbouring commercial area zoned Commercial. The proposal seeks to remove the split zoning from the site, to make the full site Commercial Zone.

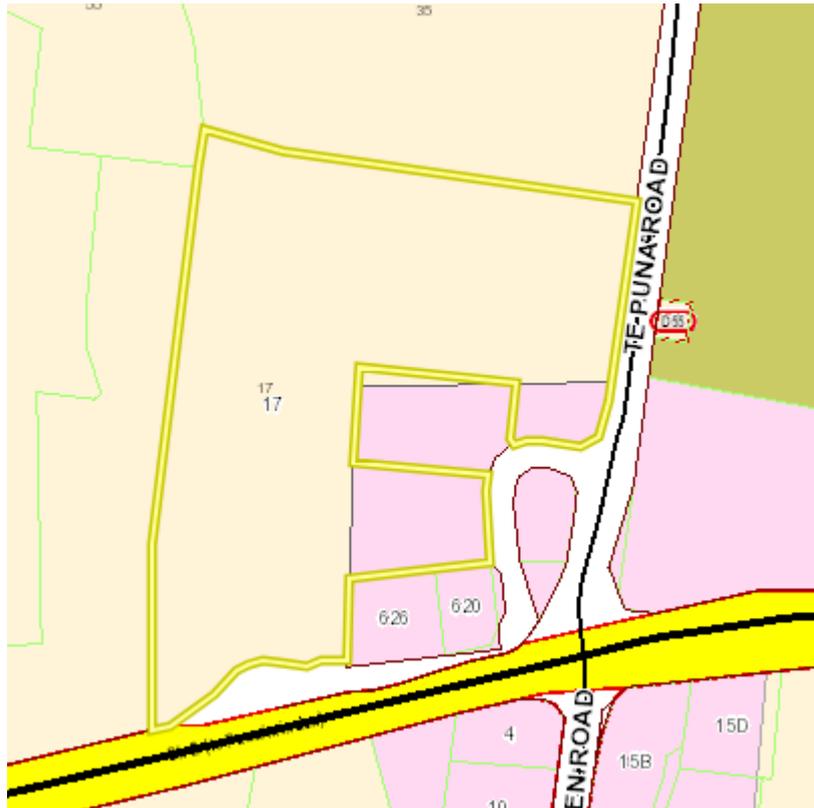


Figure 2: Current Rural/Commercial Zone split across the site

### **Submission Points**

Five submission points were received. Six further submission points were received. The submission points on this topic were summarised by the RO as follows:

Submission 1.1 – Supported the expansion of the Commercial Zone on the site.

Submission 8.8 – Did not object to the Commercial Zone, however requested evidence that the area could be a ‘bumping place’ where people engaged in a variety of business and social activities.

Submission 7.1 and 7.2 – Request the zoning to remain as the status quo

Submission 8.9 – Support the rezone to Commercial, however request further regard to the Te Puna Community Development Plan.

Further Submissions 16.15, 15.19, 16.18, 17.7 & 16.16 supported the zoning to remain as status quo, while 14.11 supported original submission 8.8 which supported the rezone to Commercial with evidence the area could be a ‘bumping place’.

### **The RO Identified two options:**

**Option 1 – As Proposed – Rezone from Rural to Commercial**

**Option 2 – Status quo – Retain existing split Rural/Commercial zone**

## Discussion

The Te Puna Community Development Plan allows for economic activity within the Te Puna Springs area. The Economic Assessment contained in the application information also confirms the importance of commercial activities located around the Te Puna SH2 roundabout. Option 1 is in line with the proposed changes to the Structure Plan area outlined further below, and it is considered that the rezoned site will provide for a 'vibrant commercial environment' which will encourage the new commercial area to naturally be a 'bumping place' for the local community.

The potential for rural use of the existing site is largely compromised by: partial commercial zoning, existing land use, the pattern of roading at the southern and eastern boundaries of the site (established by Waka Kotahi - NZTA), the establishment of a place of assembly, and proximity to existing commercial-zones/packhouse/coolstore/RSE facilities. The context of the site location is peri-urban rather than rural which also changes the character of the site.

Rural production is compromised by soil profiles having been altered by large-scale earthworks across large parts of the site which in turn, compromises the fertility and productive use of the site. The small nature of the site, its configuration and gully systems also severely limit potential for productive rural use.

Option 2 will continue to otherwise restrict development across the site and may result in a piecemeal approach with multiple resource consents in an ad hoc manner. Option 1, along with the proposed Structure Plan, will ensure the site is adequately developed and managed to avoid ad hoc development on the site.

## Decision

**Option 1 is therefore adopted. That the site be rezoned to Commercial Zone.**

The following submissions are therefore:

### Accepted

Submission	Point Number	Name
1	1	Douglas Kaye
8	8	Te Puna Heartlands
14	11	DC Kirk Family Trust

### Accepted in part

Submission	Point Number	Name
8	9	Te Puna Heartlands

### Rejected

Submission	Point Number	Name
7	1	T & M Cooney
7	2	T & M Cooney
16	16	Te Puna Heartlands
17	7	BOPRC
16	18	Te Puna Heartlands
15	19	Te Puna Memorial Hall Committee
16	15	Te Puna Heartlands

### Reasons:

The Panel accepts the rationale of the RO quoted above and makes the following additional comments.

Rezoning of the site will provide for additional commercial zoned land in a growing community and provide for a vibrant commercial area.

This consolidates and confines the commercial activity in Te Puna Village within the four corners of the State Highway intersection and assists with protecting the rural character of the greater Te Puna area. This is consistent with the Community Development Plan

As the Plan Change is adding to the existing Te Puna Village commercial zoned area, it is not seen as an ad hoc development but provides for consolidation of commercial activities in the greater Te Puna area.

## TOPIC 2: STRUCTURE PLAN LIST

### Background

The Proposed Structure Plan list will need to be updated in Appendix 7 of the District Plan.

### Submission Points

One submission point was received. No further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.2 – the Applicant has requested that the Structure Plan List in Appendix 7 be reordered to insert Te Puna Structure Plan in geographical order.

**The RO identified 2 options:**

**Option 1 – Status Quo – add Structure Plan to bottom of list**

**Option 2 – Reorder the list of Structure Plans by Geographical area.**

**Discussion**

Option 2 is appropriate as the list is currently in geographical order. Option 1 would add the new Structure Plan to the bottom of the list and could be missed if looking for a geographical location. To avoid a substantial editing of cross-referencing throughout the District Plan, the new structure plan will be labelled as 7A.

**Decision**

**Option 2 is accepted: That the Structure Plan list is amended as follows:**

**Appendix 7**

**Structure Plans**

1. Waihi Beach
2. Katikati
3. Katikati Lifestyle Zone
4. Ōmokoroa Structure Plan
5. Tides Reach Rural-Residential
6. Minden Lifestyle Zone
7. Te Puna Business Park
- 7A. Te Puna Springs
8. Te Puke Structure Plan
9. Te Puke Lifestyle Zone
10. Te Puke West Industrial
11. Rangiora Business Park
12. Comvita Campus

The following submissions are therefore:

**Accepted**

Submission	Point Number	Name
4	2	Te Puna Springs Estate Ltd

**Reasons:**



## **Submission Points**

Six submission points were received. 11 further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.8 – The applicant has requested minor changes to the labels and demarcation on the map to enhance readability.

Submission 5.3 – Supports the structure plan map to avoid ad hoc development.

Submission 6.2 – Supports the Map but requests the imagery on the map is consistent and not out of date.

Submission 10.4 – Supports the maps but requests clarification of the A & B areas shown on the map.

Submission 11.4 – supports the map and requests it be updated to include fencing and landscaping to their boundary.

Submission 12.1 – Supports the map and requests that the A & B areas, 12m height area, and buffer areas to the hall carparking be shown on the map.

Further submission 13.3, 14.10, 14.11, 14.12, 15.12, 15.4, 16.10, 16.11, 16.23, 16.25 & 16.30 all support the amendments requested in the original submissions above.

### **The RO identified 3 options:**

**Option 1 – As proposed – Retain the Structure Plan**

**Option 2 – As proposed – Retain the Structure Plan but with minor amendments to correct details.**

**Option 3 – Amend the Structure Plan map in response to submissions and make minor amendments to correct details.**

### **Discussion:**

In response to all submissions received the applicant has undertaken further work in relation to an Ecological Assessment and transportation matters, as well as considered all submissions received. This has resulted in an overall change to the Structure Plan map shown below.

In response to the recommendations contained within the Wildlands Ecological Assessment, the Structure Plan has been revised and contains the following amendments:

1. Move the village green area (previously thought to contain an underground spring/puna) to the actual location of the puna. This is in area 3 (to the south of the Hall site) on the revised structure plan.
2. The identification of three branches of streams which are present on the site. The applicant is proposing to include buffer areas around these streams. These are shown in areas 3 and 4 on the revised Structure Plan.
3. Removal of the through connection to State Highway 2 and the internal rationalisation of roading necessary to service the site. This will avoid interference with stream corridors.
4. The establishment of further landscape strips and riparian restoration strips (areas 5, 6, and 7 on the revised Structure Plan).
5. The identification of the open channels/streams and stormwater management areas.

These amendments to the Structure Plan and plan change were in response to concerns raised by submitters relating to:

- Flood conveyance and stormwater management
- Restoration of natural systems/ecology
- Through access from SH2 and traffic conflict
- Provision for a sustainable stormwater solution (including provision for the Hall site and land surrounding the plan change area).
- Landscaping and open space
- Protection of the streams and puna from future development
- Providing for a sustainable wastewater solution to service the site. In relation to this matter, there will be an accompanying permitted activity rule status added to the structure plan rules for activities that connect to the Council reticulated wastewater system. Although it will obviously be much cheaper and more efficient to connect to the reticulated system, and all activities within the Te Puna Springs Structure Plan area will realistically connect, the applicant will include a new rule to avoid the use of onsite wastewater systems.

Option 1 would not include any of the necessary changes sought by the submitters nor take into account the recommendations of the Ecology Report.

Option 2 would not make the necessary changes to improve the readability of the maps and with the proposed overall change to the Structure Plan map Option 2 is not acceptable.

Given that Option 3 includes all the recommendations from the Ecology report and takes into account requests made in submissions, this is the preferred option.

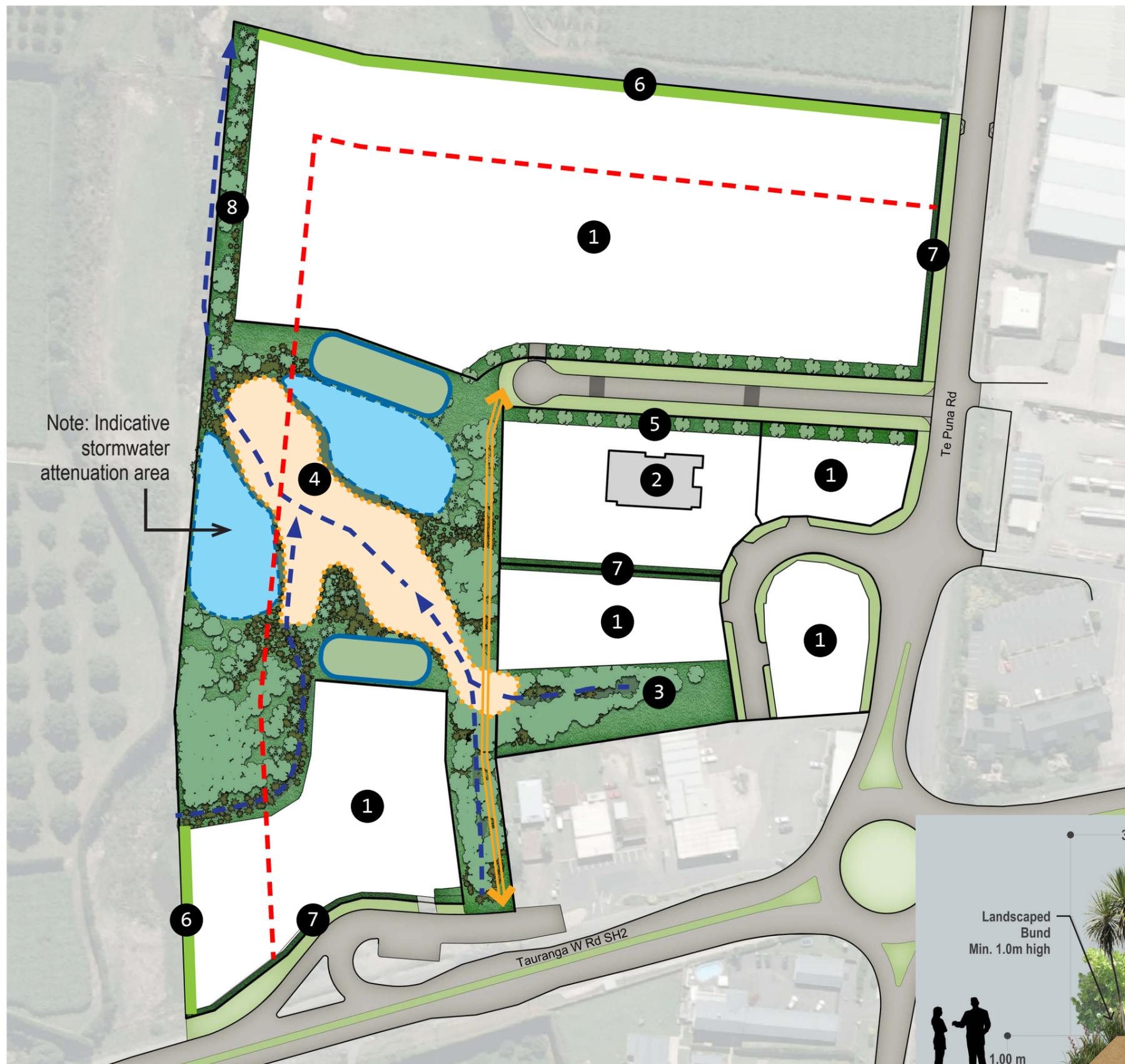
**Decision**

**Option 3 is adopted. That the following Structure Plan be adopted.** It was presented at the Hearing by the Applicant and modified by other decisions below.

LEGEND

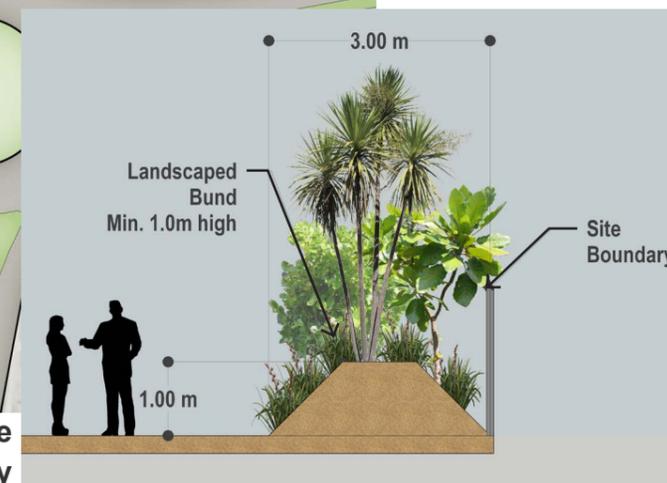
- 1 Commercial area
- 2 Hall
- 3 Spring/Puna
- 4 Stormwater management area
- 5 4m wide landscape buffer strip
- 6 3m wide landscape buffer strip with bund a minimum 1m in height
- 7 2m wide landscape buffer strip
- 8 10m wide riparian restoration

-  Boundary landscaping
-  Riparian buffer strips
-  Indicative treatment wetlands
-  Proposed excavated attenuation
-  Existing stormwater area
-  30m Setback for sensitive
-  Existing channels/streams
-  3m wide Shared Walkway/Cycleway



Note: Indicative stormwater attenuation area

Inset: Cross section through proposed landscape bund on northern & western site boundary



TE PUNA SPRINGS ESTATE

Structure Plan

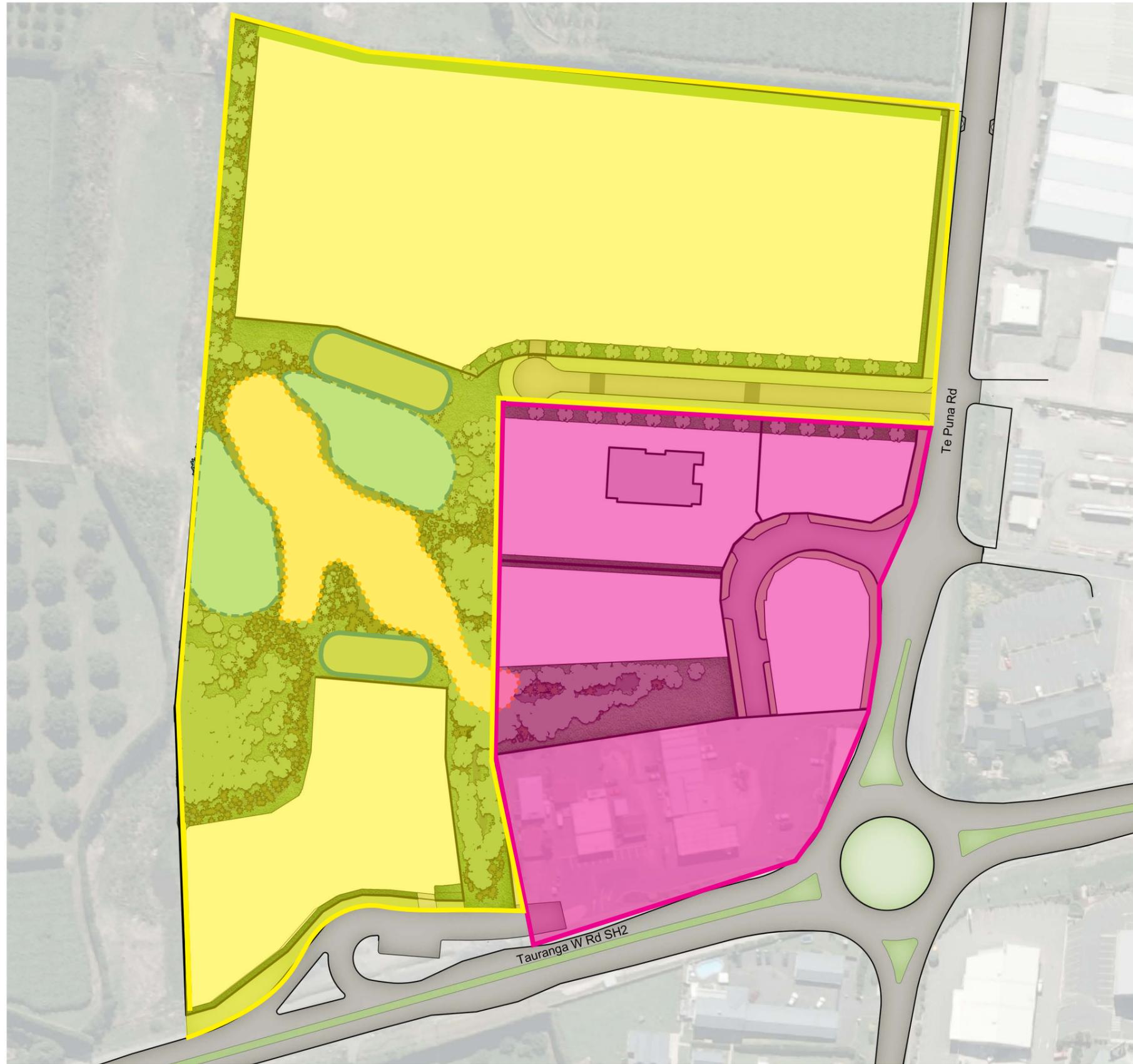
| Date: 24/08/2022 | Revision: N |

Plan prepared for Aurecon by Boffa Miskell Limited

Project Manager: Morne.Hugo@boffamiskell.co.nz | Drawn: ALi | Checked: MHu

LEGEND

-  9m building height area
-  12m building height area



TE PUNA SPRINGS ESTATE

Structure Plan

| Date: 24/08/2022 | Revision: N |

Plan prepared for Aurecon by Boffa Miskell Limited

Project Manager: [Morne.Hugo@boffamiskell.co.nz](mailto:Morne.Hugo@boffamiskell.co.nz) | Drawn: TMI | Checked: MHU

The following submissions are therefore:

### Accepted

Submission	Point Number	Name
4	8	Te Puna Springs
5	3	Zariba Holdings Ltd
6	2	Forest & Bird
10	4	BOPRC
11	4	L Muggeridge
14	10	DC Kirk Family Trust
14	12	DC Kirk Family Trust
15	4	Te Puna Memorial Hall Committee
16	10	Te Puna Heartlands
16	11	Te Puna Heartlands
16	23	Te Puna Heartlands

### Accepted in part

Submission	Point Number	Name
8	8	Te Puna Heartlands
12	1	Te Puna Memorial Hall Committee
13	3	DC Kirk Family Trust
14	11	DC Kirk Family Trust
15	12	Te Puna Memorial Hall Committee
16	30	Te Puna Heartlands

### Reasons

Adopt the presented Structure Plan map modified by decisions above and below.

Changes to the stormwater provisions will better protect the receiving environment and remove the ponds from the existing waterway.

It is considered that the road should remain in the proposed location. Relevant considerations include : the Hall site; daylight/amenity and outlook; access for wetland spring maintenance and the reserve. With regard to protecting the daylighting for the Hall it is noted that there is no daylight rule between commercial zoned property boundaries (noting the underlying zoning of the Hall site is commercial) which could allow full-height walls on the Hall

boundary. There is also the likelihood that backyard/storage for commercial buildings could also occur along the Hall boundary which could diminish the amenity of the Hall site.

#### **TOPIC 4: RURAL AMENITY AND REVERSE SENSITIVITY**

##### **Background**

The District Plan identifies the surrounding Rural Zone as important to the district being a predominantly rural area, with rural production being the primary economic driver of the district. The District Plan identifies Commercial Zones as important as they provide “a sense of identity and belonging to individuals and the community in general”. It is an important place to access services and supplies.

With the new zone boundary, it is important to ensure there is an appropriate interface between the site and neighbouring properties to ensure rural amenity is retained.

##### **Submission Points**

Two submission points were received. Six further submission points were received. The submission points on this topic are summarised as follows:

Submission 11.5 – Requests suitable covenants are imposed on the land to provide for quality commercial development. Specific reverse sensitivity covenant in relation to rural horticultural activities on adjoining land including spraying, noise, and the operation of rural machinery. Raises concerns of reverse sensitivity effects, rural amenity and rural character effects and adverse effects on appellants including from commercial uses on the site such as from noise, traffic, and contaminant discharges.

Submission 13.1 – Requires an appropriate barrier between the Plan Change area and Okaro Orchard to prevent dust incursion into the orchard from construction and operational activities. Further the submissions requests that activities that produce significant quantities of dust are limited, and that all planting on the site utilises plants that are not attractive to Passion Vine Hopper or other potentially invasive or damaging species of organisms.

Further submissions 14.14, 16.24 & 17.3 supported original submission 11.5, and further submissions 15.10, 16.28 & 17.4 supported original submission 13.1.

##### **The RO identified 2 options:**

**Option 1 – As proposed – retain proposed landscape planting and buffer as is.**

**Option 2 – Amend proposal to improve buffer to neighbours**

### **Discussion**

Rule 4C.5.3.2 in the District Plan currently protects the interface between the Rural and Commercial zones, requiring a landscape buffer of 3m and a minimum height of 2m. This requirement sets the minimum standard for protecting rural amenity and character and the Structure Plan landscape buffer builds on this.

The applicant has engaged with the submitters directly and has proposed to provide an additional landscape strip along the northern and western site boundary. This will provide for additional screening and protection between the rural/commercial interface. Option 2 provides for these improved buffers on the site and in conjunction with the new rule 4C.5.3.2.H proposed (see Topic 15 below).

Submission 13.1 also requested that dust creating activities be limited on the site. It is considered that the current activity lists within the Commercial Zone (Rule 19.3.1) currently provides for certain activities which are not high dust creators. Industrial type activities are no longer proposed within the Structure Plan area which could have been dust creating activities and the permitted commercial activities would not generate dust.

The applicant has also entered into private covenants with the adjoining rural properties and discussed directly with some submitters the reverse sensitivity requirements and buffers to protect rural amenity. These sit outside of the Plan Change.

Option 1 would only provide the minimum and not meet the requests of the submitters while Option 2 provides for the additional level of screening and reverse sensitivity protection.

### **Decision**

**Option 2 is adopted. Landscape buffers are included as shown on the updated Structure Plan above, in conjunction with updates to Rule 4C5.3.2.H.** The amendments are considered minor and beneficial. There is only a small increase to the landscape buffer areas, and it does not constitute a new proposal.

The following submissions are therefore:

## Accepted

Submission	Point Number	Name
11	5	Muggeridge
13	1	DC Kirk FT
14	14	DC Kirk FT
15	10	Te Puna Memorial Hall Committee
16	24	Te Puna Heartlands
16	28	Te Puna Heartlands
17	3	BOPRC
17	4	BOPRC

## Reasons

The panel listened to the concerns of submitter DC Kirk Family Trust and noted the Submitter's proposed amendments to the landscaping plan to address those concerns. These included the bund and planting to be provided within the 3m landscape strip in accordance with Zespri guidelines as expressed in the document "Plants with Purpose", J Manhire, 2021. This would be done in consultation with the northern adjoining landowner.

## TOPIC 5: URBAN DESIGN

### Background

Council has a Built Environment Strategy to assist in achieving good urban design outcomes in line with the New Zealand Urban Design Protocol.

Council also uses non-regulatory methods which seek to provide advice and guidance to applicants at the conceptual stage to assist in development projects to achieve positive design outcomes for the community.

The Structure Plan did not propose specific urban design guidelines for development within the site.

### Submission Points

Four submission points were received. Four further submission points were received. The submission points on this topic are summarised as follows:

Submission 5.4 – stated that they have created a high standard of commercial development on their property across the road and request that suitable covenants are imposed to ensure a high-quality development on the Structure Plan site.

Submission 7.3 – requested a well-designed village similar to surrounding commercial area and which meets the aspirations of the community.

Submission 12.6 – requests further consultation on themes for good building design that reflects the rural village character and complementary to the intentionally traditional rural hall appearance. This could be attractive upstairs apartments, 1920's colours with gabled rooflines.

Submission 13.4 – request standards for building scale, design, setback and landscape planting. This should include façade modulation, colour and reflectivity.

Further submissions 15.13 & 16.31 supported original submission 13.4 and further submissions 15.5 & 16.17 supports original submission 7.3.

### **The RO identified 2 options:**

**Option 1 – Status Quo – current commercial zone rules**

**Option 2 – Provide new urban design requirements for the Structure Plan area.**

### **Discussion**

Under option 1 the Commercial Zone contains activity performance standards in relation to height, bulk & setback, yards and dwellings to ensure that commercial developments result in high quality outcomes meeting the Built Environment Strategy.

The site is surrounded to the south and east by existing commercial development and a large packhouse. This has resulted in an existing commercial environment where character and amenity has been established. The proposed Structure Plan area does not present unique or special characteristics, such as an identified landscape feature or heritage area, which might trigger specific urban design requirements under option 2.

It is also noted that significant landscaping is proposed throughout the site, as well as the inclusion of open green space. This provides for a high level of amenity on the site.

### **Decision**

**That Option 1 is adopted.** No additional specific requirements are necessary other than those proposed throughout other areas of the Plan Change, i.e, landscaping.

The following submissions are therefore:

**Accepted in part**

Submission	Point Number	Name
5	4	Zariba
7	3	Cooney
13	4	DC Kirk FT
15	13	Te Puna Memorial Hall Committee

**Rejected**

Submission	Point Number	Name
12	6	Te Puna Memorial Hall Committee

**Reasons**

The existing Commercial Zone provisions are considered adequate to control development within the new structure plan.

There are no existing urban design characteristics of the Te Puna area which would warrant specific urban design attention, other than those which have been considered in decisions below in relation to height, yards and landscaping.

**TOPIC 6: CULTURAL ISSUES**

**Background**

The Plan Change acknowledges matters of cultural and traditional interest to Pirirakau and the location of the puna (spring) on the site. The applicant undertook consultation with Pirirakau prior to lodging the Plan Change to identify sites of cultural and historic significance on or near the site. Consultation has been ongoing throughout the Plan Change process.

**Submission Points**

Five submission points were received. Four further submission points were received. The submission points on this topic are summarised as follows:

Submission 3.1 – Requested that the use of the name Te Puna Springs in association with the commercial zone not be allowed and the applicant consider an unrelated name for the area. Given that the zone will be

commercialised, and activities may not reflect the best environmental representation of the name.

Submission 3.2 – Requested the naturalisation of the puna on the site and retention of the gully system which has been modified. That a public reserve be provided for access to the gully from the Hall site and the gully be planted in native species.

Submission 3.3 – Requests information panels to share historic korero of Te Puna be provided by the applicant.

Submission 5.6 – Supports the cultural relationship of Pirirakau with the area and provision for the natural spring on the site.

Submission 8.3 – supports the naturalisation of the spring and requests the location of the spring be located and naturalised in the correct location on the site.

Submission 12.7 – Notes that the village green, cultural signage and a spring feature were considered adequate cultural acknowledgement and contribution to community heritage and sense of wellbeing. The natural spring and waterway should become an ecological and environmental public amenity.

Further submissions 15.1, 15.6, 16.5 & 17.10 all support original submissions 3.1, 3.2 & 3.3.

### **The RO identified 3 options:**

**Option 1 – As proposed – limited cultural input including location of puna**

**Option 2 – Amend the proposal – location and naturalisation of the puna, inclusion of historic/cultural information panels.**

### **Discussion**

The applicant has undertaken an Ecological Assessment which has confirmed the location of the puna, natural overland flow and waterways within the site. This has led to a change in the layout of the Structure Plan. The confirmation of the location of the puna on the site has ensured the protection and naturalisation of the spring and waterway where it flows.

The extent of the stream features has been identified and excluded from development which ensures future protection of the waterways. Rehabilitation of the waterways will be undertaken as suggested in the Ecological

Assessment and the applicant will undertake this work with the wider stream care group, Manaaki Taiao.

The applicant has made a commitment to work with Pirirakau in terms of naming and cultural recognition (outside of the plan change but also as part of future consenting for development (i.e. earthworks and stream works)).

With regards to the naming of the site the applicant has now discussed this with the submitter and has resolved this matter.

**Option 1 would not provide for the naturalisation of the puna and the waterways.**

**Option 2 includes the necessary changes under the new Structure Plan which provides for the naturalisation of the waterways.**

### **Decision**

**Option 2 is adopted.**

The following submissions are therefore:

#### **Accepted**

Submission	Point Number	Name
3	2	Julie Shepherd
3	3	Julie Shepherd
5	6	Zariba
8	3	Te Puna Heartlands
12	7	Te Puna Memorial Hall Committee
15	1	Te Puna Memorial Hall Committee
15	6	Te Puna Memorial Hall Committee
16	5	Te Puna Heartlands
17	10	BOPRC

#### **Rejected**

Submission	Point Number	Name
3	1	Julie Shepherd

### **Reasons**

It is acknowledged that the puna is important to Pirirakau, and the revised Structure Plan better reflects the protection of the puna and waterways. The Applicant and Pirirakau have indicated that they will work together on the planting and enhancement of the puna and waterways.

The Structure Plan layout gives effect to the naturalisation of the puna and the waterways on the site. This is in conjunction with the change to the Structure Plan in Topic 3 above.

## **TOPIC 7: TRANSPORTATION**

### **Background**

The site is located on the north-western corner of the Te Puna/Minden Road and SH 2 intersection. The site has access from Te Puna Road on the east and to the SH 2 slip lane to the south.

The notified Structure Plan showed a new internal "L shaped" private road to provide access to the site to both SH 2 and Te Puna Road. An Integrated Traffic Assessment was undertaken which assessed traffic generation, parking, loading and manoeuvring on the site and within the local network.

### **Submission Points**

Three submission points were received. Six further submission points were received. The submission points on this topic are summarised as follows:

Submission 8.7 – requests improvement to multi-modal transport links and that the private road be built to public road standards.

Submission 9.2 – Does not agree with the use of the slip lane from SH 2 to access the site and the lack of analysis of the traffic effects from the use of the slip lane including the current use by BP vehicles including tanker deliveries and heavy vehicle movements.

Submission 12.3 – Requests a solid 2m high fence or similar along the northern boundary to mitigate impacts from traffic, plus a landscape strip along the western boundary. Requests the private road is built to public road standards and in smooth asphalt to reduce traffic noise.

Further submissions 14.18 & 15.25 support original submission 8.7, further submission 14.19, 15.26 & 16.19 support original submission 9.2 and further submission 16.26 supports original submission 12.3.

### **The RO identified 3 options:**

**Option 1 – As proposed – Structure Plan roading as notified;**

**Option 2 – Status quo – Decline Plan Change due to effects on transportation network;**

### **Option 3 – Amend proposal – to include new Structure Plan roading layout and mitigation measures.**

#### **Discussion**

In response to all submissions received the applicant has undertaken further work in relation to transportation matters. This has resulted in an overall change to the Structure Plan map shown in Figure 4 above.

Based on the recommendations from the Ecological Assessment the updated Structure Plan removes the through connection to SH 2 and has rationalised the internal roading necessary to service the site. This will avoid interference with stream corridors. The walking and cycling connection will remain through the site and the road width is sufficient to provide for pedestrian/cycle access, although it is noted this is a private road and not a Council vested road.

The slip lane will have limited use under the new roading layout as access to the site is predominantly from Te Puna Road. This reduces the traffic related effects on the BP site located within the slip lane. BP Oil NZ have reviewed the updated Structure Plan and raised concerns around the lots which would gain access directly from the slip lane. It is noted that these lots within the structure plan area are currently zoned Commercial, and the design of the slip lane should have accounted for the traffic effects from these existing commercial lots at the time. As such the impact of development on these lots can be disregarded as the zoning will not change.

The road surface formation is controlled under the engineering design process and the requirements within the Development Code 2009. The development will be required to meet these controls at the time of Engineering Design Approval.

Option 1 would not give effect to any changes which are sought by the submissions and would not result in the protection of the natural waterways which would otherwise be affected by the original roading layout.

Option 2 is rejected as no evidence was provided that would compel declining the Plan Change due to effects on the transportation network.

Option 3 would give effect to the updated Structure Plan map and roading layout. The updated Structure Plan also provides an additional 4m wide landscape buffer to the Hall site's northern boundary and a 2m landscape buffer to the southern Hall site boundary (commercial zone). The "spur" road

adjacent to the Hall's western boundary has also been removed and the reserve/green space area now extends to the boundary of the Hall site.

## Decision

**Option 3 is adopted with modifications:**

**The new revised Structure Plan provides for a new roading layout and landscape buffer planting to mitigate the roading effects.**

The following submissions are therefore:

### Accepted in part

Submission	Point Number	Name
8	7	Te Puna Heartlands
12	3	Te Puna Memorial Hall Committee
14	18	DC Kirk FT
15	25	Te Puna Memorial Hall Committee
16	26	Te Puna Heartlands

### Rejected

Submission	Point Number	Name
9	2	BP Oil New Zealand
14	19	DC Kirk FT
15	26	Te Puna Memorial Hall Committee
16	19	Te Puna Heartlands

## Reasons

Deleting the north-south link road through to the State Highway slip-lane avoids interference with the stream and maintains ecological values and avoids "rat-running" through the site. It improves integration between the stormwater and ecological reserve and restricts the development area accessing the slip-lane from SH2 which will ensure there is no conflict with traffic until the TNL is constructed.

The Panel heard from the submitter on behalf of the Hall Committee who proposed moving the road from the northern hall boundary in order to mitigate potential noise and loss of amenity from passing trucks etc. However, the Panel considers that, on balance, the road provides an improved outlook for users of the Hall compared to the alternative, being the backend of commercial buildings up to 12m in height closely abutting the Hall property

and/or the associated servicing areas for such buildings. It is anticipated that the road will function as a buffer between the hall and neighbouring commercial buildings, whilst vehicle noise from trucks is likely to be occasional. Improvements for the Hall site will also result from removing the intersection with the spur road.

The concerns around the safety of Te Puna Road are acknowledged but it is understood Council will be reviewing traffic and pedestrian movement and road design once the TNL has been completed.

Traffic evidence presented by the Applicant supported the proposed location of the entrance into the site, primarily because it avoids potential conflicts with other entrances along Te Puna Road. The expert traffic evidence of Ann Fosberry for the Applicant is relied upon in reaching this conclusion.

## **TOPIC 8: STORMWATER**

### **Background**

The Te Puna Springs Estate site is located at the upstream end of a large catchment. A few natural open channels exist on the Te Puna Springs Estate site that discharge into an existing attenuation pond behind an embankment located within the site boundary.

The Plan Change application and Infrastructure Servicing Assessment acknowledge that the development sits within a catchment which may already have downstream issues with flooding and erosion. A conservative approach to stormwater management has therefore been incorporated into the Plan Change and Structure Plan and an attenuation pond has been sized to meet the Bay of Plenty Regional Council stormwater management guidelines.

The stormwater management philosophy for the proposed Te Puna Springs Estate Development is to collect and treat the stormwater using combined inline extended detention and attenuation ponds which will replace the existing pond and discharging into the water course at the existing point.

### **Submission Points**

Five submission points were received. Two further submission points were received. The submission points on this topic are summarised as follows:

Submission 3.6 – Supported the application and requested that stormwater be treated on site prior to discharge.

Submission 5.2 – Supported the application and requested the stormwater approach be approved.

Submission 7.4– raised concerns with the proposed stormwater management. Increased hardstand resulting in additional run off into the Oturu Creek and downstream flooding problems. Raised concerns around water quality.

Submission 11.3 – Supported the applicants stormwater approach

Submission 12.2 – Requested clarification of the pond capacity and total wetland. Requested confirmation that the Hall site is not at risk of flooding. That opportunities are provided for in the resource consent for shared environment enhancement projects in the Applicant's area of the Oturu catchment.

Further submissions 16.6 and 17.11 supported original submission 3.6.

#### **The RO identified 2 options:**

**Option 1 – As proposed – Applicant’s stormwater approach;**

**Option 2 – Amend proposal – Proposed stormwater approach and incorporate new pond and natural waterway design and opportunities for shared enhancement projects.**

#### **Discussion**

In response to the submissions received the applicant undertook further work in relation to stormwater and natural waters, and an Ecological Assessment has also been undertaken. This has resulted in an overall change to the Structure Plan map shown in Figure 3 above. The changes improve the identification of the open channels/streams and stormwater management areas.

Furthermore, refinements to the Structure Plan were made because of evidence presented at the hearing and an updated Structure Plan map was tabled with the Applicant's Right of Reply.

These amendments to the Structure Plan and plan change were in response to concerns raised by submitters relating to:

- Flood conveyance and stormwater management
- Restoration of natural systems/ecology
- Provision for a sustainable stormwater solution (including provision for the Hall site and land surrounding the plan change area).
- Protection of the streams and Puna from future development

Option 2 allows for the improved site layout and takes into account the submission points raised in relation to stormwater treatment and discharge to the stream.

Technical reporting included accounts for all stormwater inputs from the Hall, Zariba (across Te Puna Road), SH 2, as well as DMS (across Te Puna Road). The Hall site has been confirmed as not subject to flood risk having been granted a building consent based on the existing RL (same as land to be rezoned). Flooding downstream is mitigated through onsite attenuation as recommended in the Infrastructure Report.

The proposal also provides significant opportunities for a shared enhancement project which will largely be addressed through future Regional Council consent processes i.e. construction of stormwater management, earthworks, and stream rehabilitation.

Option 1 would not provide for sufficient protection nor incorporate the new design to reflect changes to improve other functions within the site.

## Decision

**Option 2 is adopted – Proposed approach incorporating a new pond and natural waterway design with opportunities for shared enhancement projects.**

The following submissions are therefore:

### Accepted

Submission	Point Number	Name
3	1	J. Shepherd
5	2	Zariba
11	2	L. Muggerridge
12	2	Te Puna Memorial Hall Committee
16	7	Te Puna Heartlands
17	11	BOPRC

### Rejected

Submission	Point Number	Name
7	4	T & M Cooney

## **Reasons**

The Panel acknowledges the need to adequately manage stormwater on this site and considers that the amended proposal will cater for this. The refinements to the pond layout and Structure Plan enhance the stormwater management and biodiversity of the site. The Regional Council tabled at the Hearing additional requirements for stormwater management through new objectives, policies and rules. Legal counsel for the applicant addressed these provisions in the Applicant's Right-of-Reply and rebutted them. The Panel sought legal advice which is relied upon. (A copy is attached to this decision.)

The provisions sought by the Regional Council are quite detailed, and several of them "veer off" the plan change. They are therefore considered to be more appropriately dealt with at resource consent stage or the wider District Plan review, rather than under this plan change. A number of the matters proposed by the Regional Council are already addressed by the current District Plan provisions. It is also noted that the Regional Council has its own additional controls to manage the issues raised by them.

## **TOPIC 9: WASTEWATER**

### **Background**

At the time of lodging the Private Plan Change the applicant had not sought permission to use the newly constructed wastewater pipeline that conveys wastewater from Te Puna Village to the Ōmokoroa/Tauranga pipeline. Therefore, the wastewater would have needed to be treated and disposed of using onsite effluent treatment systems (OSETs). The option to connect to the public system is now available and should be utilised.

### **Submission Points**

Seven submission points were received. Thirteen further submission points were received. The submission points on this topic are summarised as follows:

Submission 2.1 – requests further information on how wastewater for the new commercial area and new activities within the existing area will be provided in order to adequately assess the risk to public health.

Submission 2.2 – requests a professionally designed, maintained and operated centralised sewerage system be in place before developments commence.

Submission 2.3 – Requests the Te Puna Commercial zones be connected to reticulated wastewater management.

Submission 2.4 – That consideration be given to the local authority responsibilities to abate and remove potential nuisance situations under the Health Act 1956 before they arise.

Submission 5.5 – Supports the application and requests the site be connected to the reticulated system.

Submission 10.1 – No definitive wastewater solution has been secured for the plan change area. If OSET is to be relied on, BOPRC oppose the plan change.

Further submissions 14.22, 15.16 and 16.1 support original submission 2.1, further submissions 14.23, 15.21, 16.20 and 18.3 support original submission 10.1, further submissions 15.17, 16.2 supports original submission 2.2 and further submissions 17.12 & 18.2 support original submission 2.3.

#### **The RO identified 2 options:**

**Option 1 – As proposed – option to dispose to OSET or to connect to Council’s reticulated system;**

**Option 2 – Require connection to Council’s wastewater reticulation**

#### **Decision**

**Option 2 is adopted – connection to Council Wastewater reticulation is available and should be utilised.**

For residential activities requiring resource consent in the Commercial Zone an additional requirement to Rule 12.4.22.2 (Te Puna Structure Plan specific requirements) shall be added to ensure that there is sufficient capacity for residential dwellings within the existing wastewater reticulation.

The following text shall be added to Appendix 7, section 8.

#### **12.4.22 Te Puna Springs Structure Plan**

##### 12.4.22.2 – Wastewater

- i) All development shall be connected to a Council reticulated system and a volumetric capital connection fee will be charged for each new connection to Council’s reticulation at the time of building consent.

ii) Any new dwellings within the Te Puna Springs Structure Plan area shall have a wastewater capacity assessment undertaken to confirm the existing reticulation has capacity.

The following submissions are therefore:

**Accepted**

Submission	Point Number	Name
2	1	Toi Te Ora Public Health
2	2	Toi Te Ora Public Health
2	3	Toi Te Ora Public Health
2	4	Toi Te Ora Public Health
5	5	Zariba Holdings Ltd
10	1	BOPRC
14	22	DC Kirk FT
14	23	DC Kirk FT
15	16	Te Puna Memorial Hall Committee
15	17	Te Puna Memorial Hall Committee
15	21	Te Puna Memorial Hall Committee
16	1	Te Puna Heartlands
16	2	Te Puna Heartlands
16	20	Te Puna Heartlands
16	3	Te Puna Heartlands
16	4	Te Puna Heartlands
17	12	BOPRC
18	2	BP Oil NZ Ltd
18	3	BP Oil NZ Ltd

**Reasons**

Following the close of submissions, the applicant applied to Council for the Structure Plan site to connect to the Ōmokoroa Wastewater Transfer Pipeline. The application was considered by the Performance and Monitoring Committee on 5 May 2022 which approved the connection of the Te Puna Springs Structure Plan to the transfer pipeline, subject to approval of the Plan Change, and be charged a volumetric capital connection of \$3658 + gst. This will be charged at the time of building consent and connection to Council's wastewater reticulation.

Buildings are required to connect to the reticulation as OSET is not acceptable when connection to a public system is available. If dwellings are added in addition to the commercial activities this could overload the existing reticulation.

To ensure all development within the Structure Plan area is required to connect to the reticulation a requirement rule within Structure Plan of Appendix 7 is included. This is considered to satisfy submissions from Toi Te Ora and ensure there is no disposal to an OSET system within the area.

## TOPIC 10: NATURAL HAZARDS

### **Background**

The District Plan currently identifies actual or potential natural hazards which will or may adversely affect human life, property or other aspects of the environment in the District. Low-lying areas, especially those in proximity to watercourses are at risk from inundation, scour and sedimentation. Such land has been identified on the Planning Maps.

### **Submission Points**

One submission point was received. Three further submission points were received. The submission points on this topic are summarised as follows:

Submission 10.2 – Clause (a) of Policy NH9B of the Regional Policy Statement requires a Natural Hazard Risk Assessment be undertaken for changes in land on urban sites of more than 5ha. Requests a risk assessment for each natural hazard the site is susceptible to, prepared in accordance with Appendix L of the Bay of Plenty RPS. Full details of the background flood model and associated maps used to inform flood risk including clarification as to climate change scenarios. A feasibility assessment or similar reporting from a Suitably Qualified or Experienced Person to confirm that the proposal would be safe to evacuate people in 1% AEP flood event. Provisions to ensure a low level of risk can be achieved within the plan change area without increasing risk outside of the plan change area. Further provisions maybe required to achieve a low level of risk for other hazards to give effect to the natural hazard provisions, in particular Policy NH 4B (i.e. land instability building setbacks for landslide hazard).

Further submissions 14.20, 15.22 & 16.21 support original submission 10.2.

### **The RO identified 2 options:**

**Option 1 – Retain proposal – no specific natural hazard assessment;**

**Option 2 – Require Natural Hazard Assessment**

### **Discussion**

Policy NH 9B of the RPS relates to assessment of natural hazard risk at the time of the subdivision or change or intensification of land use before Policies NH 7A and NH 8A have been given effect to. It states before a district or, where applicable, regional plan gives effect to Policies NH 7A and NH 8A, assess natural hazard risk associated with a development proposal to subdivide land or change or intensify land use using the methodology set out in Appendix L where:

- (a) The subdivision of land or the change or intensification of land use is proposed to occur on an urban site of 5 ha or more; or
- (b) The relevant consent authority considers risk assessment appropriate having regard to:
  - (i) the nature, scale and/or intensity of the activity,
  - (ii) the location of the development site relative to known hazards,
  - (iii) the cumulative effect on risk of developments on sites less than 5 ha,
  - (iv) the nature and extent of any risk assessment that may be required under, or incorporated within, the operative district or regional plan, except that the obligation to assess the risk of the natural hazard under this policy shall not arise where the risk derives from a geothermal hazard which is managed under this Statement's section 2.4 and the Geothermal Resources Policies and Methods.

The Structure Plan site is shown over three titles, one of which is already developed as the Te Puna Hall site and owned by WBOPDC. The total Structure Plan site area is 5.9264ha, with 1.1698ha of the site already zoned commercial. As such 4.7566 ha of the site is proposed to have a change in land use, by being rezoned to Commercial.

Policy NH 9B sets out where a Risk Assessment is required. As the area to undergo change is less than 5ha, under part (b) WBOPDC can consider if a risk assessment is appropriate having regard to clauses (b)i-iv.

Council holds flood maps and levels (taking into account 100 years of climate change as required by the RPS) for the whole of the District. The District Council's flood models include Waihi Beach, Katikati, Omokoroa, Te Puke, Wairoa River and Rural Areas and Small Settlements. As such Council no longer needs to rely on the Regional Council for flood levels. The flood level for the site is confirmed to vary across the site from 17.85m R.L. to 11.47m R.L. The stormwater mitigation proposed by the applicant has been reviewed by Councils Utilities Team who have confirmed that, with the proposed stormwater mitigation and site development, the flood levels will be irrelevant to the site as stormwater is proposed to be adequately managed.

As stormwater and flood hazard is the main natural hazard across the site, the confirmation from Council's Utilities Team that the hazard, as mitigated by the applicant's proposal, is accepted that the flood hazard will no longer be an influence on the site.



Figure 5: Flood modelling shown on the subject site

**Decision**

**Option 1 is adopted.**

The following submissions are therefore:

**Rejected**

Submission	Point Number	Name
10	2	BOPRC
14	20	DC Kirk Family Trust
15	22	Te Puna Memorial Hall Committee
16	21	Te Puna Heartlands

**Reasons**

The area is under the 5ha minimum required for a Natural Hazard Risk Assessment, and there was nothing in evidence that would justify a special requirement. Council liquefaction maps do not identify a liquefaction risk. No

particular nor potential hazards were brought to the attention of the Panel at the Hearing, other than possible flooding which has been considered through the stormwater decision above.

## **TOPIC 11: FRESHWATER AND ECOLOGY**

### **Background**

The site currently contains an existing stormwater pond, and the proposed development would require removal of this pond, infilling of the southern stream reaches on the property, and creation of an off-line pond/wetland area. The new pond/wetland would include extended detention ponds and a larger, main pond from which the settled stormwater would discharge back into the lower (northern) stream reach. PC93 provides an opportunity to enhance the ecological values of the existing stream. Development of options for appropriate ecological enhancement measures requires an understanding of the current values of watercourses on the subject property.

### **Submission Points**

Six submission points were received. Ten further submission points were received. The submission points on this topic are summarised as follows:

Submission 6.1 & 6.3 – Give consideration to the NPS FM and the NES for Freshwater given the catchment flow paths and apparent adjacent stream and possible onsite stream. There appears to have been no consideration of retaining natural features and values of the natural contoured land and it is not clear whether the pond and waterways support fish, or provide habitat to birds.

Submission 13.2 – The stream and its riparian margins should be properly identified and assessed by a suitably qualified ecologist. Assessment against the NPS for Freshwater should be undertaken. Development of the site provides an opportunity to improve the health of the waterway.

Submission 10.3 – There is an identified a water course within the Plan Change area in addition to the other waterbodies (streams/wetlands) including a spring on the site. Request that an ecological assessment is prepared to identify the values of this stream and waterbodies. Oppose the commercial zone on parts of the plan change area that include rivers/streams and or wetlands, appropriate buffers should also be provided.

Submission 8.2 – give regard to the Oturu Stream and tributaries ecology and water quality. Has the impact that this new element of wetland ecology will have in terms of the Comprehensive Stormwater Discharge Consent (RM17-0121) been considered by the applicant.

Submission 7.4 – Raises concern for water quality and contamination from commercial activities as a result the proposed change impacting on fish life in the Oturu Creek and Waikaraka Estuary.

Further submissions 14.16, 14.17, 15.11, 15.20, 15.23, 16.22, 16.29, 17.5, 17.8 & 17.9 all support of an ecological report being prepared and protection of the water quality, waterways and riparian margins be considered as raised in the original submissions.

### **The RO identified 2 options:**

**Option 1 – As Proposed – no consideration of NPSFM/ NES for Freshwater;**

**Option 2 – Undertake Ecological Assessment and give consideration to NPSFM and NES for Freshwater which include provisions to manage water quality and ecology.**

### **Discussion**

In response to all submissions received the applicant has undertaken further work in relation to an Ecological Assessment. This has resulted in an overall change to the Structure Plan map shown in the Figure above.

As assessed further above, the Wildlands Ecological Assessment contained recommendations which resulted in changes to the Structure Plan. Based on the recommendations from the Ecological Assessment the updated Structure Plan contains the following amendments:

1. Moving the village green area (previously thought to contain an underground Spring/Puna) to the actual location of the puna. This is in area 3 (to the south of the Hall site) on the revised structure plan.
2. The identification of three branches of streams which are present on the site. The applicant is proposing to include buffer areas around these streams. These are shown in areas 3 and 4 on the revised Structure Plan.
3. Amendments to the internal road layout to avoid interference with stream corridors.
4. The identification of the open channels/streams and stormwater management areas.

These amendments to the Structure Plan and plan change in relation to ecology and natural waterways were in response to concerns raised by submitters relating to:

- Flood conveyance and stormwater management
- Restoration of natural systems/ecology
- Provision for a sustainable stormwater solution (including provision for the Hall site and land surrounding the plan change area).
- Protection of the streams and puna from future development

Due to the changes necessary to the Structure Plan, Option 2 provides for an improved layout on site to identify and protect the waterways within the Plan Change area.

The Wildlands assessment concluded that the existing stream corridors have “medium” ecological significance but have potential for ecological enhancement. The assessment has confirmed there are also no naturally occurring wetlands. The assessment provided recommendations for the restoration and enhancement of the waterways and Option 2 is relevant as this allows for the inclusion within the Structure Plan for the restoration and enhancement of the riparian margins on site.

The Wildlands Ecological Assessment recommends a buffer zone along the northern tributaries with restoration steps and a fish management plan. Under Option 2 these recommendations should be included as part of the plan change and undertaken as part of the stormwater pond upgrades and site development. It is noted that the 10m buffer requirements is shown as area 12 on the updated Structure Plan map.

## **Decision**

**Option 2 is adopted - to allow for the updated structure plan map to show the riparian margins and to include the riparian margin restoration recommendations into Appendix 7 section 8 of the District Plan.**

### **12.4.22 Te Puna Springs**

#### **12.4.22.1- Riparian Margins**

i. Restoration and enhancement of the riparian margins shall be undertaken as part of the stormwater management improvements in accordance with the Wildlands Ecological report dated May 2022 (or other similar report prepared by a Suitably Qualified Expert) This restoration and enhancement shall be based on a plan developed in consultation with Pirirakau and approved by Council and shall include the following:

- Buffer planting

- Fish passage
- Stream enhancement plan

The following submissions are therefore:

### Accepted

Submission	Point Number	Name
6	1 & 3	Fish and Bird
13	2	DC Kirk Family Trust
15	11	Te Puna Memorial Hall Committee

### Accepted in part

Submission	Point Number	Name
10	3	BOPRC
8	2	Te Puna Heartlands
15	20 & 23	Te Puna Memorial Hall Committee
16	22	Te Puna Heartlands

### Rejected

Submission	Point Number	Name
7	4	T & M Cooney

### Reasons

The amendments to the proposals reflect the applicant's Ecological Report and expert evidence. The Panel considers the ecological values will be protected and enhanced, reflecting the aspirations of tangata whenua and the wider community. The Panel also notes that the proposed restoration work is a significant improvement to the existing situation/ecology on the property.

## TOPIC 12: DEFINITION - SENSITIVE ACTIVITIES

### Background

PC93 introduces a new definition for sensitive activities specific to the Te Puna Springs Structure Plan Area due to the reference to other sensitive activities within the District Plan. The intent of this new definition is to make it clear what specific activities are provided for within Area A of the Structure Plan.

### Submission Points

Two submission points were received. Three further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.3 was received in support of the definition with minor amendments as shown below:

“Sensitive Activity(ies) – ***“Te Puna Springs” is specific to Area A Te Puna Springs Structure Plan and*** means activities which are sensitive to noise, spray, and odour and which ***have the potential to*** generate reverse sensitivity effects from nearby activities. This is limited to residential dwellings, minor dwellings, accommodation facilities, places of assembly, education facilities and medical/scientific facilities.”

Submission 6.4 requested the definition be changed to be in line with the Regional Policy Statement (RPS) definition for “sensitive activities”. Stated below for reference

*“Sensitive activities: Activities which suffer should they experience adverse effects typically associated with some lawful activities. For example, smells from a sewage treatment facility or noise from a port facility. Activities considered to be sensitive include but are not necessarily limited to any residential activity, any childhood education centre and any other accommodation facility.”*

Further submissions 14.1, 14.2 & 16.14 support in part submission 4 & 6, and request the definition be updated to include reference to more commercial activities which would be sensitive to spray.

### **The RO identified 3 options:**

**Option 1 – As proposed – New definition of sensitive activities but with minor amendment to improve readability;**

**Option 2 – Status quo – no definition of sensitive activities;**

**Option 3 – Amend proposed definition to the Regional Policy Statement (RPS) definition of sensitive activities.**

### **Discussion**

Option 1 provides certainty within the District Plan regarding what activities are acceptable or not within the Structure Plan 30m sensitive activity setback, with a minor amendment to clarify the wording in the definition it is considered an acceptable approach within the Structure Plan area.

Under Option 2 the use of the wording ‘sensitive activities’ within the District Plan could cause confusion as to what activities are limited within the 30m setback. The term ‘sensitive activities’ is used generally in several other places within the District Plan without definition and to use it again within the Structure Plan area without definition could result in effects being poorly managed within the Structure Plan Area.

If option 3 was to be accepted the definition from the RPS is considered too broad and not specific to the site to be used within the Structure Plan. This could also result in not all site-specific effects being captured under the definition.

### Decision

**Option 1 is adopted.** The proposed definition of sensitive activities is retained as notified with minor amendments as follows:

### Section 3 – Definitions

***“Sensitive Activity(ies) – Te Puna Springs”:*** *means activities within 30m of the boundary adjoining rural zoned land as shown on the Te Puna Springs Structure Plan and which are sensitive to noise, spray, and odour and which have the potential to generate reverse sensitivity effects from nearby activities. This includes is limited to residential dwellings, accommodation facilities, outdoor places of assembly, outdoor cafés/restaurants, outdoor garden centres/nurseries, education facilities and medical/scientific facilities.”*

The following submissions are therefore:

### Accepted

Submission	Point Number	Name
4	3	Te Puna Springs Estate Ltd

### Rejected

Submission	Point Number	Name
6	4	Forest and Bird
14	1	DC Kirk Family Trust
14	2	DC Kirk Family Trust
16	14	Te Puna Heartlands

### Reasons

A category of “outdoor garden centres/nurseries” has been added to the sensitive activities definition as it could be an activity sensitive to spray drift. The sensitive activities have been amended to recognise the possible/specific effects from proximal orchards, particularly resulting from potential spray drift, which include the real or perceived effects on people or plants situated outdoors.

## TOPIC 13: ACTIVITIES LIST – PERMITTED ACTIVITIES

### **Background**

PC93 introduced new permitted activities specific to the Te Puna Springs Structure Plan Area. The intent of the new permitted activities at the time of notification was to provide for activities which were already occurring on the land, zoned rural, as well as the Te Puna Hall site.

The proposed rule as notified was:

19.3.1 Permitted Activities Additional Permitted Activities (Te Puna Springs only)

- a) Rural Contractors Depot
- b) Offices (ancillary to activities occurring on site that are not provided for)
- c) Places of Assembly within Area B Te Puna Springs Structure Plan
- d) Warehousing and Storage

### **Submission Points**

Six submission points were received. Eight further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.1 (Te Puna Springs Estate, the applicant) requested the permitted activity list be deleted from the plan change in full, as the activities no longer need to be provided for as permitted activities. The existing activities related to Supermac/Modcom are now proposed to be moved off site and no longer required as permitted activities within the structure plan area.

Submissions 5.1, 8.1, 9.1, 11.1 & 12.4 also request the removal of the proposed “industrial type” activities and question the need for the proposed additional permitted activity list.

Further submissions 14.4, 14.5, 15.15, 15.2, 15.8, 16.8, 17.1 & 18.1 all supported submission 4.1 in the removal of the ‘industrial’ type activities from the permitted activities list.

**The RO identified 2 options:**

**Option 1 – As proposed – Add new Permitted Activities List**

**Option 2 – Status quo – Delete the new Permitted Activities in its entirety**

**Discussion**

Option 1 is no longer required due to the existing activity as permitted being confirmed to be removed from the site and other activities not needing to be permitted. The proposed permitted activities were to provide only for the applicant’s storage of modcom buildings on site.

The applicant has confirmed that the modcom storage activity is to be removed from the site and as such they have submitted (submission 4.1) that the activity list be deleted in full as per option 2.

Further submissions also support option 2 as it is no longer required on the site.

**Decision**

**Option 2 is adopted.**

That the proposed Permitted Activity List be deleted in full from the Plan Change.

**19.3 Activity List**

**19.3.2—Additional Permitted Activities (Te Puna Springs Only)**

- ~~a) Rural Contractors Depot~~
- ~~b) Offices (ancillary to activities occurring on site that are not provided for)~~
- ~~c) Prefabricated Building Manufacturing within Area B~~
- ~~d) Places of Assembly within Area C Te Puna Springs Structure Plan~~
- ~~e) Warehousing and Storage~~

The following submissions are therefore:

**Accepted**

Submission	Point Number	Name
4	1	Te Puna Springs Estate Ltd
5	1	Zariba Holdings Ltd
9	1	LG Muggeridge
12	4	Te Puna Memorial Hall Committee
14	4	DC Kirk Family Trust
14	5	DC Kirk Family Trust
15	2	Te Puna Memorial Hall Committee
15	8	Te Puna Memorial Hall Committee
16	8	Te Puna Heartlands

17	1	BOPRC
18	1	BP Oil New Zealand Ltd

### Accepted in part

Submission	Point Number	Name
8	1	Te Puna Heartlands
9	1	BP Oil New Zealand Ltd
15	15	Te Puna Memorial Hall Committee

### Reasons

The Panel accepts and agrees that the permitted activity list is no longer required.

## TOPIC 14: ACTIVITIES LIST – NON-COMPLYING ACTIVITIES

### Background

In order to protect existing rural activities and the potential conflict with sensitive activities within the new commercial zone the applicant proposes a new definition for 'sensitive activities' (considered above) and restricts where these sensitive activities can be located within the Structure Plan area.

The Structure Plan map as notified showed areas 'A' & 'B', with area 'A' restricting "sensitive activities". The new Structure Plan map has now changed area 'A' to be a measured distance from the rural zone boundary, a 30m boundary setback.

A new non-complying activity rule is proposed to ensure any "sensitive activities" within the 30m setback would be a non-complying activity.

### Submission Points

Two submission points were received. Three further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.5 (Te Puna Springs Estate Ltd) – The applicant submitted to make minor changes to the wording of the rule to make the link to the proposed new definition clear.

Submission 11.2 (L. Muggeridge) – supported the non-complying activity status for sensitive activities within 30m of their rural property boundary.

Further submission 14.6, 15.9 and 17.2 all supported original submission 11.2 and the non-complying activity status of sensitive activities.

**The RO identified 2 options:**

**Option 1 – Retain rule and matter of discretion as notified with minor changes to into amended definition and structure plan.**

**Option 2 – Status quo – no non-complying activities**

**Discussion**

No submitter opposed the new non-complying rule and supported the inclusion of the rule to restrict “sensitive activities” from within 30m of the rural property boundary. Therefore Option 1 is accepted. The minor wording changes proposed by the applicant and in response to submissions to the Structure Plan (above) also make the Structure Plan clear (previously labelled Area ‘A’) on activities being 30m from the rural boundary.

An additional matter of discretion is also proposed which provides for consideration for “sensitive activities” within the 30m setback should a non-complying consent application be assessed by Council.

**Decision**

**Option 1 is adopted.**

To link to the new Structure Plan map further above accept minor wording change to the proposed rule as follows:

**19.2.5 Non-Complying Activities**

a) Sensitive activity(ies) located ~~within Area A & B in the Te Puna Springs Structure Plan Area~~ within 30m of a Rural Zone boundary.

**19.7 Matters of Discretion**

**19.7.4 Discretionary and Non-complying Activities – Matters of Discretion and Assessment Criteria**

(g) Consideration of the extent to which rural production activities will be adversely affected by the development, including any reverse sensitivity effects.

The following submissions are therefore:

**Accepted**

Submission	Point Number	Name
4	5	Te Puna Springs Estate Ltd
11	2	L. Muggeridge
14	6	DC Kirk Family Trust
15	9	Te Puna Memorial Hall Committee
17	2	Bay of Plenty Regional Council

### **Reasons**

The Panel accepts and agrees that the permitted activity list is no longer required.

## **TOPIC 15: PERFORMANCE STANDARDS – SCREENING**

### **Background**

Currently the District Plan requires screen planting under Rule 4C.5.3.2 in Commercial Zones where an activity/ development has a common boundary with a Rural Zone. The applicant proposed to add a new performance standard to the rule specific to the Te Puna Springs Structure Plan.

### **Submission Points**

Two submission points were received. One further submission point was received. The submission points on this topic are summarised as follows:

Submission 4.4 – requested a minor change to the text to align with current District Plan formatting.

Submission 8.4 – stated its involvement in the 2020 Catchment Management Plan MOU and requested more involvement between parties.

Further submission 14.3 supported original submission 8.4 requesting inclusion of parties involved in the MOU.

### **The RO identified 2 options:**

**Option 1 – As proposed – new performance standard with minor amendments**

**Option 2 – Provide for better representation in landscape plan development**

### **Discussion**

Currently the District Plan provides standards under Rule 4C.5.3.2 for which Commercial Areas must provide screen landscaping where they adjoin a

Rural Zone; and Rule 4C.5.3.1(b) provides for a landscape plan to be submitted to Council showing requirements to be given regard to.

Under option 1 the addition of proposed performance standards for the Structure Plan area ensures that adequate screening is provided to protect the amenity of the area. Involvement of other parties as per option 2 in the screen planting design is not considered necessary in this area as the rules of the plan ensure a high level of amenity is achieved for the screening, and the design needs to be approved by Council.

The applicant does however propose including consultation with Pirirakau for the internal stormwater pond planting area under the performance standard. The applicant has also suggested a note be added to the performance standard as the intention is to undertake the stormwater pond planting (separate to the screen planting) as a care group with interested parties such as the BOPRC, Pirirakau, surrounding neighbours and Waka Kotahi.

### **Decision**

**Option 1 is adopted. That the performance standard with minor amendments be added** as follows:

## **Section 4C - Amenity**

### **4C.5.3.2 Screening in Industrial and Commercial Zones**

#### **h) Te Puna Springs Structure Plan**

- (i) Any subdivision or development of land within the zone shall be designed, approved and developed in general accordance with the Te Puna Springs Structure Plan and Landscape cross-section in Appendix 7.
- (ii) Landscape plans shall be prepared by a suitably qualified landscape designer/architect and provided to the Council for approval.

#### **12.4.22.3 - Landscaping**

- (i) The landscape plan for the stormwater pond shall be prepared by a Suitably Qualified Expert in consultation with Pirirakau and approved by Council.

Note: this plan may be prepared as part of the first stage of development on site but implemented through a Manaaki Taiao/ care group and in consultation with Pirirakau and surrounding neighbours.

The following submissions are therefore:

### Accepted

Submission	Point Number	Name
4	4	Te Puna Springs Estate Ltd

### Accepted in part

Submission	Point Number	Name
8	4	Te Puna Heartlands
14	3	DC Kirk Family Trust

### Reasons

The decision exceeds the current district plan requirements and picks up the additional landscaping concerns of the adjoining neighbour DC Kirk Family Trust. It is noted that screening to be provided is detailed on the Structure Plan.

The Panel notes that in response to the neighbouring submitter's evidence the applicant offered a bund in addition to the current District Plan screening requirements.

## TOPIC 16: ACTIVITY PERFORMANCE STANDARDS – HEIGHT

### Background

The plan change proposes a new maximum height for the Structure Plan area – being 12m. This differs from the existing commercial zone maximum height of 9m.

### Submission Points

Three submission points were received. Four further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.6 – proposed a minor change to the wording of the new rule to make it clear it is limited to the Structure Plan area.

Submission 8.5 – Request the lower height limit of 9m be retained.

Submission 12.5 – Request the 9m height limit be retained.

Submission 14.7, 14.8 & 15.7 all supported original submissions 8.5 & 12.5 to retain the 9m height. Further submission 15.3 opposed original submission 4.6.

### The RO identified 2 options:

**Option 1 – New activity performance standard for 12m height limit but with minor amendments to improve readability;**

**Option 2 – Status quo – retain existing 9m height limit.**

### **Discussion**

While the applicant did not provide any special landscape assessment, expert evidence was presented at the hearing supporting a 12m height.

It is accepted that the 14m height within the post-harvest site across the road from the subject site changes the visual amenity of the receiving area and introduces larger built form than what is expected under the existing Commercial Zone rules.

### **Decision**

**Option 1 is adopted – the following rule is accepted with minor amendments.**

## **19.4 Activity Performance Standards**

### **19.4.1 General**

- a) Building height, setback, alignment and design
- (iv) Te Puna Springs Structure Plan Area
- The maximum height of buildings/structures shall be 12m except that in the existing commercial area as shown on the Structure Plan map it shall be 9m.
- b) Daylight
- i) All site boundaries adjoining Residential and Rural Zones:  
No part of any *building/structure* shall exceed a *height* equal to 2m *height* above *ground level* at all boundaries and an angle of 45° into the site from that point. Except where the site boundary is with a road in which case this rule shall not apply in respect to that boundary.  
Provided that:  
A *building/structure* may encroach through the above daylighting plane where the written approval of the owner(s) of the immediately adjoining property to the specific encroachment is obtained.
- ii) All site boundaries of the Te Puna Springs Structure Plan Area adjoining a Rural Zone, Te Puna Road and/or State Highway 2 Slip Lane:  
No part of any *buildings/structures* shall exceed a *height* equal to 2m *height* above *ground level* and an angle of 45 degrees into the site from that point.

The following submissions are therefore:

**Accepted in part**

Submission	Point Number	Name
4	6	Te Puna Springs
8	5	Te Puna Heartlands
12	5	Te Puna Memorial Hall Committee
14	7	DC Kirk Family Trust
14	8	DC Kirk Family Trust
15	3	Te Puna Memorial Hall Committee
15	7	Te Puna Memorial Hall Committee

**Reasons**

The Panel notes that the height limits for the commercial areas of Te Puke and Katikati are 12m and the nearby Post Harvest site is 14m. The Panel acknowledges the concerns raised by the submitter from Te Puna Heartlands at the Hearing and the canyoning effect which could be created from a 12m height adjacent to Te Puna Road. The Panel has considered that if the 12m height is to be provided for, it should be supported by the daylight setback applying to the Te Puna Road boundary.

The Panel considers that the daylight plane should also apply to the southern property road boundary (near to SH2).

**TOPIC 17: ACTIVITY PERFORMANCE STANDARDS – CONTINUOUS RETAIL FRONTAGE & CARPARKING**

**Background**

The current Commercial Zone rules do not differentiate between the different types of retail areas within the District, being set up predominantly for the District’s main town centres. It is also noted that the objectives, policies and rules in the Commercial Zone were written primarily for commercial areas which were based around a ‘main street’. As Te Puna Village does not have a main street strip retail offering (with active frontages), the requirement for verandas and active frontages is not relevant to the Structure Plan area and is proposed to be excluded from the rule.

The current performance standards also state no car parking within 10m of any street boundary. It is proposed this performance standard should be

excluded from the Structure Plan area due to the proposed site layout and the fact that there is no active 'main street' frontage being proposed.

### **Submission Points**

Two submission points were received. Two further submission points were received. The submission points on this topic are summarised as follows:

Submission 4.7 – proposed minor wording changes to the proposed rule to align better with current District Plan wording.

Submission 8.6 – requests consideration of carparking around the hall and designed into the development to ensure the interests of all those coming and going from the area are catered for.

Further submissions 14.9 and 15.24 supported original submission 8.6.

### **The RO identified 2 options:**

**Option 1 – Status Quo – current commercial zone performance standards;**

**Option 2 – As proposed – Specific exemptions for Te Puna Springs but with minor amendments to improve readability.**

### **Discussion**

The Structure Plan proposed sites will be individually developed and not as a continuous retail frontage to the street. The current District Plan rules are aligned to a 'main street' in the District's town centres, and do not cater for the smaller commercial areas where no continuous retail frontage can be provided due to the scale and type of development.

The requirement to restrict carparking within 10m of the street boundary is also to protect a 'main street' to avoid carparking within an active frontage. The smaller commercial development ensures the area is still an activity hub, without the requirements of a larger main street and avoids the need for a resource consent for each building which does not comply with the existing provisions.

Carparking around the hall site is already provided for and formed. Carparking within the Structure Plan area will be associated with development on each site and any parking requirements for each proposed activity.

### **Decision**

**Option 2 is adopted. That the performance standard with minor amendments be added** as follows:

## **19.4 Activity Performance Standards**

### **19.4.1 General**

a. Building height, setback, alignment and design

(viii) Continuous retail frontage

Development in the Commercial Zone shall be constructed up to the road boundary except for vehicle access up to 6m wide per site. Each building shall have clear windows on the ground floor that must cover at least 50% of the building's frontage to a main street and at least 25% for all other streets and public areas, such as walkways and public parking areas.

[Except that this requirement shall not apply to the Te Puna Springs Structure Plan area.](#)

(ix) No car parking, other than underground parking, shall be located within 10m of any street boundary.

[Except that this requirement shall not apply to the Te Puna Springs Structure Plan area.](#)

The following submissions are therefore:

### **Accepted**

Submission	Point Number	Name
4	7	Te Puna Springs Estate Ltd

### **Rejected**

Submission	Point Number	Name
8	6	Te Puna Heartlands
14	9	DC Kirk Family Trust
15	24	Te Puna Memorial Hall Committee

### **Reasons**

The Panel accepts and agrees with the proposed amendments and discussion. This is a pragmatic response to the proposed commercial area, acknowledging that the site is a rural service area rather than a typical town centre.

## TOPIC 18: ACTIVITY PERFORMANCE STANDARDS – NOISE AND LIGHTING

### **Background**

The District Plan aims to maintain a reasonable balance between maintaining a high-quality living environment free from unreasonable noise and light while recognising permitted and lawfully established activities may have associated noise and light levels that are acceptable. The loading/unloading of materials at night and lighting spill and glare could be an issue for adjoining landowners, which the District Plan currently controls.

### **Submission Points**

One submission point was received. Two further submission points were received. The submission points on this topic are summarised as follows:

Submission 13.5 - DCK is concerned to ensure that future enjoyment of the property is not adversely affected by commercial operations on the site, including in particular by way of noise or light pollution (particularly from 24-hour security lighting).

Further submissions 15.14 & 16.32 supported the original submission including constraints on hours of operation and control on the use of lighting.

### **The RO identified 2 options:**

**Option 1 – Status quo – existing District Plan provisions;**

**Option 2 – require constraints on hours of operation, lighting and acoustic certification**

### **Discussion**

Currently Rule 4C.1.3.2(b) of the District Plan controls noise limits within Commercial Zones. This ensures that noise from the site shall not exceed the required noise limits within the stated timeframes at any point within the notional boundary of any dwelling in a Rural zone. The rule also requires noise sensitive activities (offices, place of assembly, vet, medical and dwellings) to provide an acoustic design certificate at the time of building consent for internal noise limits. It is considered that these noise standards provide sufficient protection of the surrounding rural area as to unreasonable noise from the commercial zone. No further requirements are considered necessary.

Rule 4C.3 of the District Plan sets out lighting requirements in terms of light spill (day/night) and glare (day/night) as well as requirements for artificial lighting. It is considered that these lighting standards provide sufficient protection of the surrounding rural area so as to avoid light spill and glare from the commercial zone. No further requirements are considered necessary.

It is not considered necessary to limit the hours of operation within the site as there are other existing controls, such as noise and liquor licensing which would also provide a level of control for activities within the zone.

Additional rules over and above what is currently contained within the District Plan is not considered necessary as this would be overly cumbersome from a relatively small site in an area which already contains a number of existing commercial developments operating under the same rules.

### **Decision**

**Option 1 is adopted. Status quo – existing District Plan provisions;**

The following submissions are therefore:

### **Rejected**

Submission	Point Number	Name
13	5	DC Kirk Family Trust
15	14	Te Puna Memorial Hall Committee
16	32	Te Puna Heartlands

### **Reasons**

The Panel accepts and agrees with the RO's analysis, on the basis that existing dwellings are of sufficient distance where lighting and noise should not be an issue.

Any new dwelling on the northern property will need to meet the rural yard setback requirements. The existing rules have been proven to be adequate in the past and they are considered adequate in this situation.



-----  
**Chairman John Scrimgeour**

On behalf of the Panel

30 August 2022

21 July 2022

Chief Executive Officer  
Western Bay of Plenty District Council  
Private Bag 12 803  
Tauranga Mail Centre  
**TAURANGA 3143**

**Attention** Phillip Martelli

Dear Phillip

**Plan Changes 93 and 94 - stormwater provisions sought by Bay of Plenty Regional Council (BOPRC)**

1. Further to the hearings regarding private Plan Changes 93 and 94 to the Western Bay of Plenty District Plan (**District Plan**) on 6 and 7 July 2022, you have asked us to provide advice on the following matter:

*With respect to the Plan Changes 93 and 94 provisions tabled by the Bay of Plenty Regional Council on 6 July 2022, could you please advise whether:*

- (a) *The provisions are within the scope of Plan Changes 93 and 94, and/or the submission and further submission of the Regional Council?*
  - (b) *The provisions are appropriate for inclusion in a site specific plan change?*
2. We attach the provisions as an appendix to this letter and refer to them as the **Stormwater Provisions**.
3. You have also asked us to confirm whether the structure plan tabled by the applicant for Plan Change 94 (which is dated 7 July 2022 and shows the stormwater pond to the north of the land proposed to be re-zoned to Industrial) is within scope, and we deal with that issue in this letter as well.

**Summary of advice**

4. We think that the Stormwater Provisions are generally within the scope of BOPRC's submission and further submission (in terms of topics covered).
5. We do not think the following would be within the scope of the plan changes:
  - (a) Amendments to sections of the District Plan which are of general application, and were not identified for amendment through the plan changes;
  - (b) Reference to guideline documents or modelling reports which are of general application (also relevant to 'appropriateness' of the amendments).
6. The Council will need to form its own view on the appropriateness of the provisions but as a key comment we note that the provisions are new, and contain policies and reference to guideline

documents or modelling reports which are of general application. A s 32AA assessment would need to consider the appropriateness of incorporating these provisions in the District Plan through these plan changes. We have otherwise highlighted matters that we consider would be reasonable for the Council to consider in making its decision.

- 7. We consider that the structure plan tabled by the applicant for Plan Change 94 (which is dated 7 July 2022 and shows the stormwater pond to the north of the land proposed to be re-zoned to Industrial) is within scope as it still shows the stormwater pond on the structure plan, and the land is owned by the applicant.

**Relevant background**

*District Plan*

- 8. In relation to the architecture of the District Plan and the way in which it utilises structure plans, we note that:
  - (a) Appendix 7 is said to contain additional structure plan information such as infrastructure schedules, cross sections, and any particular requirements for that area;<sup>1</sup>
  - (b) Sections of the District Plan contain provisions relating to specific structure plans. These largely appear within Sections 11 (Financial Contributions) and 12 (Subdivision and Development), with additional specific provisions appearing as follows:
    - (i) Sections 4C (Amenity);<sup>2</sup>
    - (ii) Section 8.6 (Natural Hazards);<sup>3</sup> and
    - (iii) Provisions within the relevant zone sections 13-21.

*Plan Changes 93 and 94*

- 9. Both Plan Changes 93 and 94 are private plan changes which are site specific. Both propose the re-zoning of land, and the inclusion of structure plans within the District Plan.
- 10. In relation to the proposed changes to the District Plan, we note that:
  - (a) Plan Change 93 proposes changes to Sections 3, 4C, 19 and Appendix 7.
  - (b) Plan Change 94 proposed changes to Section 21 and Appendix 7.

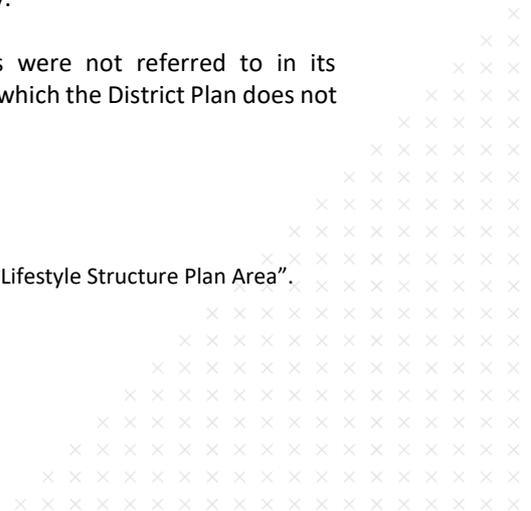
*BOPRC submission and the Stormwater Provisions*

- 11. BOPRC made a submission and further submission on Plan Changes 93 and 94, which we have reviewed but not attached to this letter in the interests of brevity.
- 12. The Stormwater Provisions tabled by BOPRC at the hearings were not referred to in its submission. They include reference to the following documents (which the District Plan does not incorporate by reference):

<sup>1</sup> District Plan, Section 1.3.2.

<sup>2</sup> See for example section 4C.1.3.2.d acoustic standards.

<sup>3</sup> This contains a specific section relating to "Stability Requirements – The Minden Lifestyle Structure Plan Area".



- (a) BOPRC Stormwater Management Guidelines (Guideline Document 2012/01, updated as at December 2015).
- (b) In the stormwater modelling report titled “Western Bay of Plenty Flood Mapping; Model Build Report: dated February 2021” (**Stormwater Modelling Report**).

#### *Stormwater Modelling Report*

- 13. We understand that the Stormwater Modelling Report was commissioned by the Council for “Rural Areas and Small Settlements” to update (in terms of accuracy) the District Plan flood maps for rural areas and small settlements which do not take into account climate change. However, we also understand that the District Plan maps have not actually been changed, but are held outside of the District Plan on MAPI. We understand that the Council released these maps to the public in October 2021 and sent letters to all affected landowners.
- 14. You have advised that the Council uses these new maps when processing building consents to set minimum floor levels and impose s 72 (Building Act) notices on titles. It also uses the new maps when processing resource consents, in some situations, to set minimum floor levels and to consider the effects of building/earthworks on capacity/function of ponds/flowpaths. This is in situations where a resource consent is already triggered by the existing District Plan flood maps and/or where there is a discretionary or non-complying resource consent application which allows the Council to consider all effects including those relating to new flood information.

#### **Relevant legal considerations**

##### *Clause 6, Schedule 1*

- 15. Clause 6 says that once a proposed policy statement or plan change is notified, then certain persons may make a submission on it to the relevant local authority. If the submission is not on the plan change, the Council has no jurisdiction to consider it.<sup>4</sup>
- 16. In *Clearwater v Christchurch City Council*<sup>5</sup> the High Court adopted a two part approach to determine whether a submission was on a variation:
  - (a) A submission is “on” a variation if it addresses the extent to which the variation changes the status quo.
  - (b) But, if the effect of determining that the submission is “on” a variation would remove the opportunity for participation by those potentially affected, then this is a powerful consideration against an argument that the submission is truly on the variation.<sup>6</sup>
- 17. The approach in *Clearwater* was adopted in *Palmerston North City Council v Motor Machinists Limited*<sup>7</sup>, where the High Court said that in regards to the first part of the approach, there were two aspects. First, the breadth of alteration to the status quo entailed in the proposed plan change and second, whether the submission addresses that alteration.<sup>8</sup>

<sup>4</sup> *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, at [19].

<sup>5</sup> *Clearwater Resort Limited v Christchurch City Council* (HC), AP34/02, 14 March 2003.

<sup>6</sup> At [66].

<sup>7</sup> *Palmerston North City Council v Motor Machinists Limited*, above n 4.

<sup>8</sup> At [80].

18. Further, the High Court said one way of analysing whether the submission is within the ambit of the plan change is:<sup>9</sup>

... to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change

19. The High Court then went on to say that the above analysis is then subject to the second part of the test in *Clearwater*:<sup>10</sup>

... whether there is a real risk that persons directly or potentially affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process.

*Clause 10, Schedule 1*

20. Clause 10 prescribes what a local authority must make decisions on in relation to a proposed plan. It is “the provisions and matters raised in submissions” and may include consequential amendments as follows:

may include—

- (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
- (ii) any other matter relevant to the proposed statement or plan arising from the submissions.

21. The Environment Court in *Re Vivid Holdings* said that any decision of the Council must be:<sup>11</sup>

(1) fairly and reasonably within the general scope of:

- (i) an original submission; or
- (ii) the proposed plan as notified; or
- (iii) somewhere in between

provided that:

(2) the summary of the relevant submissions was fair and accurate and not misleading.

22. The question of whether an amendment is reasonably and fairly raised in submissions should be approached in a realistic workable fashion rather than from the perspective of legal nicety.<sup>12</sup> In relation to consequential alterations, the Environment Court in *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* stated:<sup>13</sup>

“While I accept that consequential relief may be granted as a matter of law, subject to considerations of fairness (for which section 293 may be a remedy) and the application of *Motor Machinists*, I consider that Albany North did not introduce a principle that submissions on lower order provisions in a plan (change) can drive 'consequential'

<sup>9</sup> At [81].

<sup>10</sup> At [82].

<sup>11</sup> *Re an Application by Vivid Holdings*, EnvC, C86/99, 17 May 1999 at [19].

<sup>12</sup> *Royal Forest & Bird Protection Society Inc v Southland District Council* [1997] NZRMA 408 at p 10.

<sup>13</sup> *Arthurs Point Outstanding Natural Landscape Society Inc v Queenstown Lakes District Council* [2019] NZEnvC 150 at [69] and [70].

changes further up the hierarchy of provisions in the same document, precisely because they are not usually (in my view) 'reasonably foreseeable'.

It is also worth noting that reasonableness and fairness may work against each other in this context. There is a tension between a reasonable interpretation of a submission - which tends to widen the express words - and fairness, which tends to read them closely so that members of the public are not surprised."

*Clause 14, Schedule 1*

23. Clause 14 sets out the grounds on which a person may appeal:

- (1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—
  - (a) a provision included in the proposed policy statement or plan; or
  - (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
  - (c) a matter excluded from the proposed policy statement or plan; or
  - (d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
- (2) However, a person may appeal under subclause (1) only if—
  - (a) the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan; and
  - (b) the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole.
- (2A) For the purposes of subclause (2)(b), proposed plan does not include a variation or a change.

24. To establish whether an appeal is in accordance with cl 14(1), a three limb test was adopted by the Environment Court in *Re Vivid Holdings*. The Court asked:<sup>14</sup>

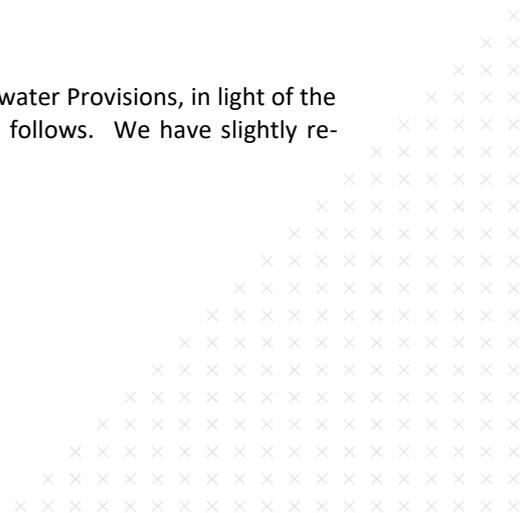
- (1) Did the appellant make a submission?
- (2) Does the reference relate to either:
  - (i) a provision included in the proposed plan; or
  - (ii) a provision the local authority's decision proposes to include; or
  - (iii) a matter excluded from the proposed plan; or
  - (iv) a provision which the local authority's decision proposes to exclude?
- (3) If the answer to any of (2) is 'yes', then did the appellant refer to that provision or matter in their submission (bearing in mind this can be a primary submission" or a cross-submission)?

**Our advice**

25. Having reviewed the submission from the BOPRC, and the Stormwater Provisions, in light of the relevant legal considerations discussed above, our views are as follows. We have slightly reframed the questions.

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<sup>14</sup> *Re an Application by Vivid Holdings, EnvC, C86/99, 17 May 1999* at [18].



*Are the Stormwater Provisions within the scope of the BOPRC submission and/or further submission?*

26. We have condensed the provisions sought in accordance with their headings and respond as follows. We note that the provisions sought by BOPRC are very detailed (much more so than the submission and further submission on the plan changes). We regard the topics as being generally ‘within scope’:

New objective – Water quality	Water quality issues are raised in the BOPRC submission, and it lodged a further submission relating to Oturu Creek. However it did not seek objectives. We would say that the topics would be within the scope of the submission but as per our discussion below consider this risks addressing BOPRC functions, and being a matter not on the plan change (new objectives and policies).
New policy – Water quality	Water quality issues are raised in the BOPRC submission. We are not clear that the Stormwater Guidelines were referred to. <sup>15</sup> We think this is marginally within scope if the same guidelines are being referred to. However we consider this risks being a matter not on the plan change (new objectives and policies) – discussed below. It appears that this policy is to apply to the structure plan area only. However, we note that if it was to apply to areas outside the structure plan then we think this risks not being fairly and reasonably raised within the submission on the basis that members of the public would not have expected the BOPRC submission to lead to general policies.
New rule – inert roof materials	Inert roof materials were not raised directly, but we agree it is consistent with the BOPRC submission. We are not clear that the Stormwater Guidelines were referred to. <sup>16</sup> We think this is marginally within scope if the same guidelines are being referred to. For the same reasons as above, if this rule was to apply to areas outside the structure plan then we think this risks not being fairly and reasonably raised within the submission.
New Objective: Stormwater Management – Te Puna Springs Structure Plan	Stormwater management issues are raised in the BOPRC submission, however not objectives. The topics are generally within the scope of the submission but as per our discussion below we consider this is a matter not on the plan change (new objectives).
New policy: Stormwater Management Plan	The topics are generally within the scope of the submission, however the provision appears to encapsulate much more detail.
New provisions – (Stormwater Management Plan (SMP) Compliance: NEW	The topics are generally within the scope of the submission, however the provision appears to encapsulate much more detail.

<sup>15</sup> The BOPRC submission refers to BOPRC’s Hydrological and Hydraulic Guidelines 2012/02.

<sup>16</sup> The BOPRC submission refers to BOPRC’s Hydrological and Hydraulic Guidelines 2012/02.



*Are the Stormwater Provisions ‘on’ Plan Changes 93 and 94?*

- 27. We think it is under this heading, that some of the provisions start to veer *off* the plan changes. The plan changes are private plan changes to specific sections of the District Plan. Some of the provisions are objectives and policies, which were not proposed by the plan changes. While that is not necessarily definitive,<sup>17</sup> the Council should turn its mind to where the proposed provisions would sit and whether they are truly ‘on’ the plan change.
- 28. The High Court in *Palmerston North City Council v Motor Machinists Limited* said that one way of analysing whether the submission is within the ambit of the plan change is “to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change.”<sup>18</sup>
- 29. Against that background we comment as follows:

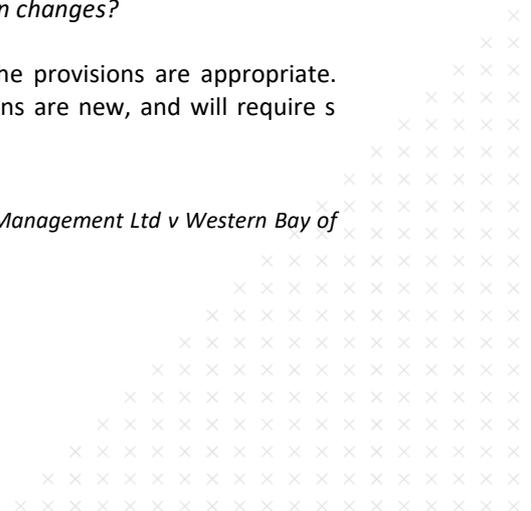
New objective – Water quality	It is not clear where the new objective would sit. Options would be sections 5 or 12 of the District Plan. We consider this veers <i>off</i> the plan changes.
New policy – Water quality	It is not clear where the new policy would sit. Options would be sections 5 or 12 of the District Plan. We consider this veers <i>off</i> the plan changes.
New rule – inert roof materials	Yes to extent that it relates to stormwater management within a structure plan area. We are not clear where the proposed rule would sit. We do not think it is open to the Council to include rules of general application in the District Plan.
New Objective: Stormwater Management – Te Puna Springs Structure Plan	We did not understand there to be any specific objectives proposed for the structure plan area (let alone specific to stormwater management). We think this would be marginally within the plan changes.
New policy: Stormwater Management Plan	We did not understand there to be any specific policies proposed for the structure plan area (let alone specific to stormwater management). We think <i>a policy</i> would be marginally within the plan changes. This policy reads more like a rule. It also looks to introduce reference to the Stormwater Modelling Report. We do not consider that specific reference to the Stormwater Modelling Report is within the scope of the plan changes.
New provisions – (Stormwater Management Plan (SMP) Compliance: NEW	This connects to the proposed Stormwater Management Plan – as above.

*Are the Stormwater Provisions appropriate for inclusion in site specific plan changes?*

- 30. We think the Council should form its own view on whether the provisions are appropriate. However we make the overriding observation that the provisions are new, and will require s

<sup>17</sup> The Court upheld objectives and policies as being within scope, in *Bluehaven Management Ltd v Western Bay of Plenty District Council* [2016] NZEnvC 191.

<sup>18</sup> At [81].



32AA analysis if they are to be adopted. That will include specific consideration of the proposed new objectives and policies, given that the plan changes do not include objectives and policies.

31. Against that background we comment as follows:

<p>New objective – Water quality</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> <li>• The objective is stated in a way that is more akin to Regional Council functions.</li> <li>• Existing objectives (e.g. 5.2.1.4) sets a high threshold with preservation.</li> <li>• BOPRC has further control over water quality through its consent processes.</li> </ul>
<p>New policy – Water quality</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> <li>• The Structure Plan provisions of Section 12 also apply – including that all developments shall be required to demonstrate how they will address on or adjacent to the site the improvement of stormwater quality (12.4.10.6.c).</li> <li>• The Stormwater Guidelines are not incorporated by reference in the District Plan. There is a question as to whether it is appropriate to incorporate such guidelines on site specific plan changes (as opposed to a District Plan review).</li> <li>• BOPRC has further control over water quality through its consent processes.</li> </ul>
<p>New rule – inert roof materials</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> <li>• The extent to which these matters are already addressed by the District Plan.</li> <li>• The Stormwater Guidelines are not incorporated by reference in the District Plan. There is a question as to whether it is appropriate to incorporate such guidelines on site specific plan changes (as opposed to a District Plan review).</li> </ul>
<p>New Objective: Stormwater Management – Te Puna Springs Structure Plan</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> <li>• The extent to which these matters are already addressed by the District Plan (e.g. sections 5 or 12).</li> </ul>
<p>New policy: Stormwater Management Plan</p>	<p>We think the Council is entitled to consider the following factors:</p> <ul style="list-style-type: none"> <li>• The extent to which these matters are already addressed by the District Plan.</li> <li>• Whether, if a Natural Hazards Assessment were required, it is appropriate to require it in this way through a Management Plan. (On this topic, we think that the Council should determine whether it accepts the applicant’s approach (land use change is below 4.8 ha so assessment not required) and if so whether it then exercises its discretion under Policy NH 9B(b) not to require an assessment).</li> <li>• Whether the Stormwater Modelling Report should be specifically referenced for these plan changes as opposed to it being incorporated in a district wide plan review.</li> <li>• Whether the policy goes into too much detail for a policy, and a site specific structure plan.</li> </ul>

	<ul style="list-style-type: none"> <li>• BOPRC has further control over water quality through its consent processes.</li> </ul>
New provisions – (Stormwater Management Plan (SMP) Compliance: NEW	We think the Council is entitled to consider the following factors immediately above.

*Plan Change 94 – structure plan tabled 7 July 2022*

- 32. Plan Change 94 seeks to re-zone approximately 7 ha of land from Rural to Industrial. That has been notified, and there is certainly no scope to increase the land proposed to be re-zoned.
- 33. The structure plan is clearly part of the plan change, including submissions on the structure plan and responses to those submissions. That would encompass changes to the structure plan.
- 34. Moving the stormwater pond outside of the area proposed to be rezoned would be of concern if it were moving on to land owned by a third party but we understand that it is owned by the person making the private plan change request.
- 35. In our view the key requirement is that the plan change / provisions of the District Plan are clear about the expectations for stormwater management. The District Plan provisions in Section 12 primarily deal with infrastructure expectations with reference to structure plans, although not exclusively. For example, for Rangiora Business Park there are both onsite options (as shown on the structure plan) and offsite options (not shown on the structure plan).
- 36. Against that background, we make the following comments:
  - (a) For clarity, it would be ideal to show the stormwater pond on the structure plan. If the stormwater pond is to be relocated to the north, then some additional words on the structure plan may be appropriate. E.g. “the stormwater pond to service Industrial zoned land”.
  - (b) It appears that the original location of the proposed stormwater pond is no longer ‘live’. If it is, then a further option is to adopt a Rangiora style approach, i.e. provide for two options on the structure plan, with corresponding text:
    - (i) Option 1 – within the Industrial land as shown on the structure plan;
    - (ii) Option 2 – to the north of the Industrial land as shown on the structure plan.

Yours faithfully  
**HOLLAND BECKETT LAW**

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