

**BEFORE HEARING COMMISSIONERS  
IN THE WESTERN BAY OF PLENTY DISTRICT**

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| <b>UNDER THE</b>        | Resource Management Act 1991 (“ <b>Act</b> ”)  |
| <b>IN THE MATTER OF</b> | an application for resource consent to authorise four existing industrial activities within part of the Te Puna Business Park structure plan area, for a term of two years |
| <b>BETWEEN</b>          | <b>TINEX GROUP LIMITED</b><br><br>Applicant  |
| <b>AND</b>              | <b>WESTERN BAY OF BAY OF PLENTY DISTRICT COUNCIL</b><br><br>Consent authority  |

**STATEMENT OF EVIDENCE OF BARRY DANIEL**

*Before a Hearing Panel: Rob van Voorthuysen (Chair),  
James Whetu (Commissioner)*

**Introduction**

1. My name is Barry Daniel.
2. Together with my wife, Beth Daniel, and an associated company, GI Finlay Trustees Limited, we own the land to which this application relates. I am authorised to give this affidavit on behalf of my wife, and GI Findlay Trustees Limited. I will generally use both “I” and “we” interchangeably.
3. I have had an interest in the site for some time, nearly 32 years. I am a local. I was brought up at Pahoia, near the Waipapa River. I was third generation on the home farm. I went to Pahoia Primary School and Katikati College. I played rugby against Te Puna. They were hard then, and they are still hard now.
4. I have always tried to play by the rules, not break them. The Council’s position seems to be that I am a rogue, and that I should be declined this consent, because I haven’t met all the rules along the way.

5. There is a long history to these matters, and I understand that what is most relevant are the effects and policy issues. I will leave the experts to talk about those things. But I do need to explain some of the key background matters.

### **The Te Puna Business Park Plan Change**

6. As the Council has pointed out, we were part of the planning process that resulted in the land being rezoned for Industrial Activities as "Te Puna Business Park". But it is wrong to say that we must therefore have known about all the rules and requirements. The landowners had a project manager, lawyer, and experts for the process, and I trusted them to do what they needed to do. Much like the current process, I do not understand all the technical matters, but rely on the advice of professionals. Back then, and until quite recently, I didn't really know how to turn on a computer, let alone work through all the details of a plan change, a plan update, or the like.
7. I talk to people, and have spoken to the Council about the requirements whenever possible to understand how everything fits together. Most of this has been in phone calls, which is the old fashioned way I do things. So the email and letter records are limited. As I explain below, I have always sought to comply with the rules.
8. One of the main requirements of the Structure Plan was the installation of the Te Puna Road/State Highway Roundabout. We had initially progressed plans for this with engineering consultants post the 2005 Environment Court decision. Once we realised the actual costs and complexities of this, we were unable to continue with this and had to wait until this was eventually complete by NZTA. As part of the upgrade process, we ended up providing all of our design information (which cost us tens of thousands of dollars) to NZTA free of charge as we were obviously keen to see these works progress.

### **Earthworks**

9. As long ago as 2002, I obtained a resource consent from the regional council for earthworks on the site, to let me fill it to a consistent level for future development. While my health has permitted, I have been hands-on,

and once I got the consent, I started a gradual process of filling the site as my time and sourcing appropriate fill allowed.

10. The regional council was mostly good to deal with, and they came round for monitoring under the consent from time to time. Every three to four months. It was when talking to them that they said to me that as I wasn't undertaking that much earthworks each year, that I could just rely on the permitted activity requirements, and surrender the consent. That would save them coming out for monitoring which was always fine, and I wouldn't have to pay monitoring fees.
11. So I did that. I shouldn't have, it seems, as I understand now in 2012 or so, the district plan required me to get a consent. If I still had my regional consent, then I would have had that authority to continue, rather than technically becoming unlawful. I didn't know about the district plan consent requirements, and the district council never told me that I needed consent, despite obviously continuing to fill the land as I had for many years. The district council knew that I was filling the land so why did they not inform me at the time that I needed a consent from WBOPDC.
12. The earthworks issue only came to light when my application for consent to allow departures from the structure plan more generally was being processes.

#### **The current activities locating on site**

13. A&J was the first of the four current tenants to which this resource consent relates to locate on site. This was in early 2016. A&J had approached me, as they had nowhere else to go. I wanted to help them, and perhaps I shouldn't have, but I agreed to let them locate there while I talked to the council.
14. In March 2016, the council confirmed to me that A&J could continue. This was on the stated basis that the completion of the works on the Te Puna Road/ State Highway 2 Intersection was imminent, and that would "allow the underlying Industrial zone on [my] land to take effect".
15. So I thought that everything was OK at that point. There were no complaints to me as I recall about A&J, other than in respect of its concrete crushing activities, which came a little later.

16. I didn't allow any other activities to establish until Total Relocation in March 2019. This time, however, I asked the council for permission first. Total Relocation had been asked to store dwellings from the Bella Vista development, pending on sale. I thought at that time that the final works to enable the Industrial Zone to be used generally were the Clarke Road improvement works, and that they would be complete within around three months, so all we were really asking for was three months grace. I said this in my email to the council of 11 February 2019, and on 12 February 2019 the council agreed to me.

17. I had this understanding because I was talking to the council at the relevant time. It was further reinforced in an email to me of 23 May 2019, where the council said:

Council has undertaken the traffic assessment of Te Puna Station Road/SH2 intersection. The current performance of the intersection meets the requirements of the District Plan. The Te Puna roundabout meets the requirements for that intersection upgrade, and the Te Puna Road/Te Puna Station Road intersection has been upgraded. The roading improvements remaining that are required to enable the industrial area to develop is the traffic calming on Clarke Rd (apart from your own internal road entranceways onto Te Puna Station Road).

18. That same Council email to me of 23 May also advised:

The process from here is as follows:

Landowners provide feedback on the design and above funding repayment proposal.

Agreement is reached on the design and funding proposal. If agreement is not reached, the project does not proceed.

The agreed traffic calming design (not funding) is discussed with the landowners on Clarke Road.

The traffic calming measures are finalised.

MOU is drawn up and agreed to by the industrial landowners and Council. First payments made.

Physical works are undertaken.

Final payments made.

**Industrial development is able to commence.**

19. It wasn't in the end until 21 July 2020 that we reached agreement about the Clarke Road improvements, and the council had never raised any concerns with that was happening on the site at that time. In the 21 July 2020 agreement, the Council said:

- E. The Te Puna Road/Te Puna Station Road intersection has been upgraded by Council which satisfies the requirements of District Plan clause 12.4.16.2(b).
  - F. The roading improvements remaining that are required to enable the Industrial Area to develop is the traffic calming on Clarke Rd.
20. But in any event, I thought all was good in the meantime, and Compass Pools located on site in August 2019, and Earth Mover Tyres in November 2019.
21. As I say, no issues were raised with me until the March 2020 abatement notice that was to stop further development of the site. I took this to mean no further tenants, and not the removal of the existing tenants.
22. It wasn't until December 2020 that an abatement notice was issued in respect of the concrete crushing. And not until May 2022 that the current abatement notices were issued.
23. I was very surprised by this, as there were no issues with the existing activities, and we had been working hard to progress our consent applications for the overall existing activities and structure plan breaches, as well as earthworks, at the time.
24. In short, I accept that we have not always met all of the rules or consent requirements that we were supposed to. We have, however, never hidden what we have done, and have tried to do the best to comply with all the rules that we can in the circumstances.

### **Personal / health issues**

25. Submitters have been critical of our apparent "inaction" since the plan change was approved.
26. Health has had a huge impact on and influenced how we have been able to advance things. In 1999, I fractured my femur, and was diagnosed with having a giant cell tumour in my right leg. This was treated but has compromised my knee since.
27. In 2008 I got my first hip replacement, followed in 2014 by a second hip joint replacement, a knee replacement in 2015. In 2017 I was diagnosed with prostate cancer and was operated on, but it had spread and so I had

hormone treatment followed by radiation. In 2018 I was in Intensive Care, on life support. And in 2019 I had my knee joint replaced twice.

28. In summary, from 2018 to 2021, I endured 10 major surgeries.
29. Throughout this period of time, my main focus was keeping myself alive, and mentally stable, whilst trying to remain positive and focused. Much of the time I was physically immobilised. There was of course also covid happening as well.
30. In addition, in April 2022, my mother died, and I had been supporting her in her decline before then. In 2022, we have also had 3 grandchildren born, including a premature baby.
31. So if it is relevant, there have been some very real personal matters arising that have prevented my advancing the development of the Business Park as we would have ideally liked.

### **Concluding comments**

32. In short, we have always tried to abide by the rules. That is important to us.
33. We have had assurances from the Council that let us proceed with the tenancies we now have. Where issues have been raised such as with concrete crushing, we have worked with our tenant and the council to resolve.
34. Health issues have been a major part of why we haven't been able to get more ahead with all the Structure Plan requirements.
35. We are still wanting to do the right thing, and ask for this consent to be granted, so we have a revenue stream to advance the Structure Plan. We also feel for our tenants if our consent were to be declined, and they had to move or close.
36. Our goal is to get the site compliant and operational as soon as we practically can. We are trying to work collaboratively with the council on this, but we seem to be getting caught in red-tape. I am disappointed that the council did not agree to put the abatement notice proceedings on hold, and that we have had to go through the cost of that process as well, when

we have been trying to get authorised through this, and the other consent processes.

37. Overall now, since we commenced with the consent processes in 2019, until present we have spent over \$600,000.00 on consultants, planting, and a contribution to council's roading upgrades (including \$31,000 on planting and payment to a local contractor recommended by Pirirakau for the planting, and \$69,000 roading contributions to Council). This represents a significant commitment towards meeting necessary consent requirements and overall structure plan requirements or suitable alternatives.
38. Finally, I note that without the income from the existing tenants this progress would not have been possible. That income remains important for completion of the remaining structure plan requirements.

**25 September 2023**

**Barry Daniel**