

BAY OF PLENTY REGIONAL COUNCIL AND TAURANGA CITY COUNCIL

DECISION OF INDEPENDENT COMMISSIONER

IN THE MATTER OF:	The Resource Management Act 1991 and A joint hearing for an application to develop a fuel storage facility
APPLICANT:	Timaru Oil Services Ltd
SITE:	216 Totara Street, Tauranga.
PROPOSAL:	<p>To undertake bulk earthworks on a contaminated site including drilling activities for the purpose of installing four above ground fuel storage tanks and associated infrastructure, along with associated temporary and permanent discharges and</p> <p>To construct buildings within the Flood Hazard Plan Area, undertake earthworks, storage of hazardous substances, use and development of contaminated land, structure and access.</p>
HEARING DETAILS:	<p>The limited notified application was heard by Independent Commissioner Gina Sweetman, under authority delegated by the Bay of Plenty Regional and Tauranga City Councils, on Wednesday 3rd December 2020 at Trustpower Bay Park, 81 Truman Lane, Mount Maunganui, Tauranga.</p> <p>Ms. Sweetman undertook an unaccompanied site visit on Tuesday 2nd December.</p> <p>The hearing was adjourned on 3rd December 2020 and closed on 28 January 2021.</p>

DECISION SUMMARY:	Consent is declined for the reasons given in this decision.
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**HEARING
ATTENDANCE**

The following people attended and presented evidence at the hearing:

For the Applicant, Timaru Oil Services Ltd (TOSL)

- Mr. Philippe Dubau, General Manager, TOSL
- Ms. Vicki Toan, Counsel
- Mr. Tim Ensor, Planner
- Mr. Andrew Smith, Engineer
- Mr. Brad Coombs, Landscape Architect
- Mr. Chris Bailey, Contaminated Land Specialist

For Bay of Plenty Regional Council (BoPRC):

- Mr. Jacob Steens, Planner
- Mr. Reuben Fraser, Consents Manager

For Tauranga City Council (TCC):

- Ms. Stephanie Bougen, Planner
- Ms. Rebecca Ryder, Landscape Architect
- Mr. Dylan Makgill, Consents Team Leader

Submitters:

- Mr. Joel Ngatuere, Whareroa Marae
- Ms. Emma Jones of Clean the Air, in support of Mr. Ngatuere
- Ms. Pia Bennett, Manager of the Environment and Natural Resource Management Unit, Te Runanga o Ngāi Te Rangi Iwi Trust (TRONIT)

Others in attendance:

Ms. Melanie Jones and Ms. Rachel Musgrave from BoPRC provided hearing support.

Mr. Manea Ngatai of Whareroa Marae gave the opening mihi and karakia
The submitters had several people attend in support.

1 Description of the proposal

1.1 The application is described in Section 3 of the applicant's Assessment of Environmental Effects (AEE) dated August 2019 and in Section 3 of the TCC's s42A report and Section 2 of the BoPRC's s42A report. For the sake of brevity, I adopt these descriptions.

1.2 In summary, the application is to construct, develop and operate a fuel storage facility (tank farm). It would incorporate:

- Four bulk fuel storage tanks housing Jet A-1 and diesel, each with a capacity of 11,315m³ useable volume, an approximate diameter of 29m and heights ranging from 20.05 to 20.65m above existing ground level
- Two containment bunds
- Two 170m³ fuel slops tanks
- One 2,750m³ fire-fighting water tank with a height of 13.7m and a diameter of 18m
- A three-truck tanker loading building
- Accessory buildings.

1.3 Development of the site would involve approximately 13,900m³ of earthworks, ground

improvements, dewatering, hydrotesting and discharge of cement.

- 1.4 Once operational, there would be:
 - An ongoing permanent discharge of stormwater from the facility into a drain (the TCC stormwater network which is covered by comprehensive stormwater consent RC 66823).
 - An average of 58 vehicle movements per day, comprising 25 trucks and four staff and visitor cars.
- 1.5 In terms of the regional consent, the applicant seeks a 35-year term for both the permanent discharge of stormwater and the discharge of hydrotest water and a 5-year term for the earthworks, disturbance of contaminated land, drilling and discharge to groundwater.

2 The Site and Background

- 2.1 The site and surrounding area is described in Section 2 of the applicant's AEE (AEE) dated August 2019 and in Section 4 of the TCC's s42A report and Section 3 of the BoPRC's s42A report. For the sake of brevity, I adopt these descriptions.
- 2.2 Particular matters of note include:
 - The site currently contains low scale industrial buildings and structures.
 - The site used to house a tank farm.
 - The site is not located in the mapped extent of the coastal environment.
 - The Whareroa Marae is located to the south-west of the site; at its closest 60m from the site. It is separated from the site by land zoned "Active Open Space".
 - All other boundaries adjoin occupied industrial land, including tank farms, a chemical manufacturing plant and an oil processing plant.
- 2.3 The Whareroa Marae has been present for approximately 150 years, and includes the marae itself, kaumātua housing, residences, a kōhanga reo and the head office of TRONIT.

3 Procedural Matters

Prehearing

- 3.1 I visited the site and surrounding area the day before the hearing.
- 3.2 All relevant expert evidence was pre-circulated in advance of the hearing and taken as read. After the closing date for the submitters' expert evidence, I issued a minute setting out the experts I wished to attend the hearing.
- 3.3 Ms. Bennett's evidence was received on 27th November 2020, two days after the required date for pre-circulation of submitter evidence.
- 3.4 Evidence circulated by both parties is outlined below as stated in the hearing.

The Hearing

- 3.5 Mr. Manea Ngatai opened the hearing with a mihi and karakia.

Applicant Evidence Summary

- 3.6 *Ms. Toan* provided opening submissions, addressing the statutory considerations, the existing environment, the assessment undertaken by the applicant, the matters raised in submissions, and evidence in support of the applicant.
- 3.7 Particular points she expressed included:
- The AEE includes a specific consideration of Part 2 of the RMA
 - The proposal would not result in any adverse cumulative effects
 - TOSL had requested a cultural impact assessment (CIA)
 - That the matters raised by submitters generally relate to wider resource management issues outside the scope of the application.
- 3.8 In response to questions, she submitted that only the operative documents as they stand today can be considered and the Managed Retreat Commitment referenced by submitters is not such a document. The National Policy Statement on Freshwater Management 2020 has little relevance as there is limited interaction with freshwater. The collection of stormwater has been designed to meet the current discharge consent and wider issues do not need to be considered. She highlighted that the land is zoned for a particular type of use with comprehensive objectives, policies and rules, and any potential adverse cumulative cultural effects need to be considered in that context.
- 3.9 *Mr. Dubau* talked about the applicant company, its purpose for seeking to establish in Tauranga and its recent establishment of a tank farm in Timaru. The construction of a tank farm in Tauranga would complete the network, and its location in Tauranga is the only viable solution. TOSL has signed a 40-year lease with the landowner, the Ports of Tauranga. In his view, the submitters' concerns centre on underlying claims and disputes, and the dimensions of these are beyond his ability to address.
- 3.10 Mr. Dubau explained his perspective of the engagement and consultation undertaken with the submitters, which was that he had met with members on the marae for introductions and an exchange of views in September 2019. TOSL had offered to pay for a peer review of the landscape evidence and the preparation of a CIA, by an expert of their choosing. TOSL had subsequently renewed the offer, which had not been taken up. In his view, TOSL could do nothing more than that.
- 3.11 *Mr. Smith* explained how the proposal would be designed and constructed to comply with applicable international and New Zealand engineering codes and standards, New Zealand legislation for Major Hazard Facilities and hazardous substances and general industry best practice. The proposal would involve a number of third-party steps which would address the risks associated with the overall development, which TOSL have experience in achieving compliance with.
- 3.12 In response to questions, he advised:
- In terms of on-going operation, certificates need to be renewed on a 10-year cycle and incidents are likely to trigger an impromptu audit. Audits relating to the Regional Council would be notified to them.
 - The applicant has yet to obtain all necessary consents under other legislation and regulations.

- That risk is subjective. The level of risk with this proposal is reduced because it is a new build, complying with the latest regulations. It would be safer than other terminals, and diesel and Jet-1A are safer than petrol. The risk of loss of hydrocarbon to waterways is addressed through the design of the new tanks, planting, corrosion control, and secondary containment.
 - It is a very safe facility with less hazards compared to others.
 - He would personally be comfortable living adjacent to it.
 - He had yet to engage with the tank farm next door; this would occur as part of the design process to address fire risk.
- 3.13 *Mr. Bailey* addressed contaminated land. He noted the key concern as being risk to groundwater and into Tauranga Harbour. He considered that there was a low risk of a rise of pH level. In his opinion, the conditions for a drain water monitoring and management plan would address any concerns.
- 3.14 In response to questions, he advised:
- Discharges should avoid times when groundwater levels are high enough to be noticeable in the drain.
 - Works would occur over about four weeks, but could occur within two, and are best done in summer, but it can be done safely throughout the year
 - The ecological guidelines have pH trigger levels to protect aquatic life.
- 3.15 *Mr. Coombs* spoke to the attachments to his evidence. He noted that dark colours needed to be steered away from as they heat up fuel. In his opinion, any views to Mauao from the Whareroa Marae are blocked by the Ballance site, to the west of the site.
- 3.16 In response to questions, he advised:
- The simulation locations were agreed with Ms. Lucas, advisor to the Marae.
 - He had incorporated 10 key points from Ms. Lucas's initial review into an update, except for kaitiakitanga as this was outside Isthmus's expertise. This update was provided to a s92 request.
 - They had been mindful of the Whareroa Marae site when they commenced the work. They had visited the area outside the Marae in April 2019 and advised the applicant that photos should be taken from the Marae. This occurred in June 2020, with locations agreed, and then simulations prepared.
 - Cultural impacts should better be explained by the submitters.
 - The two big chemical processing towers are 37m and 39m high and the towers to the east are 15 to 16m. He was unaware of the height of the tanks on the adjacent site.
 - The height and size of the tanks is determined by the volumes of fuel coming in tankers and that the site is quite small, and ultimately, economics.¹
- 3.17 *Mr. Coombs'* view that the trees can be taken into consideration as part of the existing environment, and that their purpose is to buffer the industrial sites from the residential and marae areas. He recommended the conditions be augmented to provide resources to TCC to extent or maintain the planting.

¹ Answered with assistance of Mr. Dubau

- 3.18 *Mr. Ensor* talked to many of the issues raised by submitters. He advised that the site does not sit within the coastal environment and it is not located between Mauao and the Marae. The activity is generally one suitable for this location and zone, which anticipated high infrastructure will be part of the landscape. In his view, both landscape architects had reached the same conclusions. The tank set back would minimize the risk of overshadowing, and risks will be managed. In terms of water quality and Te Mana o te Wai, the drain is linked to the TCC stormwater network and would be indistinguishable from other discharges. Reflecting Te Mana o te Wai in the region is at an early stage, and the network may be looked at down the track.
- 3.19 In response to questions, he advised that:
- While the TCC stormwater discharge consent covers the catchment, it excludes high risk sites, such as this one. As such, the applicant is seeking their own discharge consent, which would overlap with the TCC one, and would meet the quantity and quality conditions of the TCC consent.
 - Should BoPRC identify the drain as a freshwater body with values, there may be a point when BoPRC will need to review all consents to align with those values.
 - The landscape and visual assessment do not hinge on the planting. However, if the planting was removed there would be far greater views of the existing development. He would support enhancing the planting.
 - Little weight should be given to the Managed Retreat Commitment, and my decision needs to be based on the merits of the application based on the operative and notified plans.

Submitter Evidence Summary

- 3.20 *Mr. Ngatuere* spoke to his background as an explosives specialist, with 12 years' experience in the Defence Force. He holds a Bachelor of Arts and a Masters in Business Administration and currently works for Oranga Tamariki. He talked to a powerpoint presentation.
- 3.21 Particular issues raised by Mr. Ngatuere included:
- That just because the site had been previously used for a purpose does not mean it should remain so.
 - That cumulative effects should be disregarded because of the zoning is disingenuous.
 - 175 trucks per week on the road would have a significant impact.
 - The applicant should have done more due diligence before purchasing the proposed.
 - When seeking the CIA, the applicant should have confirmed full details, including timeframes and deadlines, and followed it up.
 - The Marae would like to talk Māori to Māori – in this case Māori to Tahitian, which is yet to occur.
 - If tank farms are so safe, why do they not happen in urban areas. Its location is further contributing to the marginalisation of Māori communities over the last 60 years.
 - The structures in the industrial area are overbearing on the marae land.
 - The Whareroa community has been exposed to the cumulative impact of air pollution which has had an impact on its mental health.
 - The worst-case event needs to be planned for and needs to be the responsibility of the Councils, planners and experts, not the community.

- That there is a straight line of sight to Mauao from the Marae.
- They are concerned about children swimming in and around the discharge points.
- There are lifecycle effects on tamariki.
- The Councils and the Ministry for the Environment do not understand kaitiakitanga correctly.
- TOSL undermines any notion of a clean green land with its carbon footprint.
- The application fails to meet Te Mana o te Wai and undermines policy 2 of the Tauranga Moana Iwi Management Plan.
- The Councils are failing to meet the requirements of the Regional Policy Statement.
- The land in question was subject to raupatu. No more consents should be given which support the deliberate attack on the health and wellbeing of Whareroa.
- TOSL and Tonkin and Taylor had demonstrated poor practice in their engagement.
- The Whareroa community are living in an unsafe environment, disconnecting whānau from their whenua, where they are too scared for their kaumātua to come home and to put their children into the kōhanga reo.

3.22 *Ms. Jones* appeared in support of Mr. Ngatuere. She is a member of Clean the Air, which is part of a wider conversation in Mt Maunganui and Tauranga. There is a major issue associated with residential and heavy industrial interests. Mt. Maunganui is a polluted airshed; and if there is an issue for the Mount, it must be bad for the Whareroa community. She does not believe that the proposal would not have an impact on air quality. She sought the application be declined.

3.23 *Ms. Bennett* has been in her current role for three years, having undertaken the same role for another iwi previously. In her view, the historical treatment of Whareroa whānau weighs heavily, with their connections, traditions and wellbeing having been severely compromised over the years. This is a Treaty of Waitangi matter and section 8 RMA should not be omitted, as it embodies the case put forward by whānau. The submitters had to challenge BoPRC in respect of iwi consultation; while noting that BoPRC had put a lot of work into encouraging TOSL to consult with the Marae and community. In her view there is case law supporting the relevance of Te Mana o te Wai.

3.24 *Ms. Bennett* queried that the applicant had put forward new landscape evidence at the hearing. She expressed responsibility that under-resourcing at TRONIT was the reason that there was no response to Mr. Dubau's attempt at consultation, and the experts they wanted to engage in support of their submission were not available to them. In her opinion, the applicant cannot rely on someone else's consent conditions to mitigate effects. The site is within the coastal environment, the NZCPS is relevant, and the sea is too important not to be considered. The natural character and landscape decision around Matakana and Maketu show the importance of these issues. *Ms. Bennett* also expressed that the proposal site itself is significant, as it was subject to raupatu², and is worth the lodgment of a claim to return it to its rightful owners. Reverse sensitivity is a relevant consideration.

3.25 In response to questions, she advised:

- Her focus has been on being involved in reviews of the New Zealand Coastal Policy Statement, Regional Policy Statement, Coastal Plan and other regional documents; as being more effective and less reactive than consents.
- That she had inputted into the TCC comprehensive stormwater discharge consent on behalf of another iwi.

² Land confiscation

- Cultural effects are still a relevant factor for the TCC comprehensive stormwater discharge consent, and reliance should not be placed on the consent as the cultural effects assessment and restoration plan has not been implemented.

TCC Evidence Summary

3.26 *Ms. Ryder* spoke to material she had prepared for and during the hearing, in response to Mr. Coombs' evidence and the statement of Ms. Di Lucas, appended to Ms. Bennett's evidence. Matters she raised were:

- In respect of landscape character effects, she anticipates low adverse effects on the current characteristics of the Whareroa Marae and its surrounds; while expressing her view that the vegetation framework that surrounds the area is integral to its character.
- In respect of natural character of the terrestrial coastal environment, the sites have been modified for some time, there will be no cumulative adverse effects. Having considered Ms. Bennett's evidence, while there is no direct effect on the Harbour's Natural Character area, the experiences of the wider area are impacted on by the existing adjoining land uses.
- The industrial land use is sufficiently separated from the Harbour itself the proposal would not adversely affect the factors, values and associations attributed to the Tauranga Harbour Outstanding Natural Feature and Landscape.
- Having considered the evidence of Mr. Ngatuere and Ms. Bennett, with regard to the cultural values attributed to the landscape and interpreting the cultural evidence into the construct of 'landscape', there is a clear adverse effect on the cultural values attributed to the surrounding landscape, as it encompasses tangata whenua as part of this landscape.
- The site is sufficiently distanced from the ONFL3 so that the effects are negligible.
- The sensitivity of the viewing audience at Whareroa is very high to any change to industrial land use.
- The planting in the Active Open Space does provide visual mitigation. Both Mr. Coombs and she rely on this planting for the degree of effects reached. Without the planting, the visual effects are likely to be high, even though these are anticipated by the City Plan. The visual effects would not be the same as assessed if it were removed.
- Conditions of consent should be considered to provide certainty on the role of the planting, should include performance outcomes. The colour controls and recommendations to extend the off-site mitigation planting are supported as critical matters to addressing visual effects, at a sensitive zone interface, and with over-height structures.

3.27 *Ms. Bougen* advised that she felt there was a gap in the landscape assessment undertaken by Isthmus, and in particular, that there would be unacceptable landscape/amenity effects unless an arrangement is in place with the TCC Parks and Reserves team to ensure that the screening remains in place. Without this, not much weight can be given to the trees as mitigation. Cultural effects are more challenging. The proposal would contribute to adverse effects on the health and wellbeing, and intrinsic values, of the Marae, based on IW2B and 5B of the Regional Policy Statement. This should be assigned more weight, as the City Plan has yet to give effect to it. The cultural effects have not been adequately addressed, and as such she does not support the proposal.

3.28 In response to questions, she advised:

- The cultural effects are unacceptable, and the level of landscape and visual effects would be unacceptable if the trees were removed
- The policies on positive effects are not strong and are outweighed by the strong language in the cultural effects policies.
- TCC's traffic engineer had no concerns.

BOPRC Evidence Summary

3.29 *Mr. Steens* acknowledged the impacts of activities on the Marae. He confirmed that this site is high risk and cannot discharge into the network under the comprehensive stormwater discharge consent. The applicant had confirmed that they comply with AQR13 regarding air quality. The discharge will meet Te Mana o te Wai in the drain and in the Harbour. In terms of conditions, he noted that monitoring had not been included, but it should be. The implementation of the cultural effects and monitoring plan should be addressed as a compliance issue and does not affect this consent. His recommendation to grant consent remained.

Adjournment

3.30 The hearing was adjourned on Wednesday 2nd December 2020 after hearing from the Council officers and a closing karakia from Mr. Ngatuere.

3.31 The Panel accepted the applicant's request to adjourn the hearing to allow them to prepare and provide a written right-of-reply and a suite of conditions to the matters raised during the hearing.

3.32 The applicant advised that the right-of-reply and updated suite of conditions would be provided by Friday 11th December 2020.

Post Adjournment

3.33 The applicant's reply submissions and updated suite of conditions was received on 11th December 2020 and circulated on the 14th December 2020.

3.34 Points raised in the reply submissions were:

- That there is sufficient information in order for a decision to be made.
- There were positive effects arising.
- For the matters for which consent is sought from the BoPRC, any adverse effects are less than minor, subject to conditions of consent.
- For the TCC matters, Ms. Bougen in her final recommendation had not discussed what element of the proposal contributes to unacceptable cultural effects.
- The extent of effect anticipated by the zone is a relevant consideration.
- While the submitters have identified that industrial activities have led to an impact on cultural wellbeing, in the context of this consent, the decision is not being made on whether industrial activities are appropriate.
- Policy IW5B is necessarily high level and only provides general guidance. Both Ms. Bougen and Mr. Ngatuere have focused on wholesale avoidance, rather than opportunities to avoid specific effects and remedy or mitigate others.

- Should the planting be removed, the proposal would be seen in the context of the industrial backdrop and would only result in a small degree of change to the existing environment.
- The proposal cannot be described as a major change to the characteristics or key attributes of the receiving environment as it is smaller in area and scale to the industrial backdrop and its neighbours. It is only visible in oblique views.
- In the event of a fire at the facility, any effects are constrained to the site and a small part of the Open Space Zone and would not extend to Whareroa Marae.
- Issues of trucks parking on the roads could be addressed by TCC marking yellow lines; other all traffic matters are acceptable.
- The offering of an *Augier* condition for the reserve land is intended to reduce the risk of adverse visual amenity effects.
- The offering of an *Augier* condition on an independent study on the effects of land use on Whareroa Marae would assist to quantify the effects and input into a potential managed retreat of industrial activities from the area.
- The proposal is consistent with the relevant documents under s104(1)(b).
- The potential future managed retreat is only peripherally relevant as it is in its early stages and any future rezoning should be given very little weight.
- The proposal is consistent with the requirements of the NPSFM as they have been implemented to date, and the conditions can be subject to review.
- The NZCPS is neither relevant nor necessary to consider as the site is not within the coastal environment.
- The stormwater discharges fall within those anticipated.
- The s6 matter of importance is s6(e).
- Where an applicant chooses to consult, neither the manner of consultation nor its outcome should influence the decision.
- The proposal achieves s5 and is consistent with the principles in s6 – 8.

3.35 The updated suite of conditions was circulated to both Councils and the submitters on 17 December 2020. This included two additional conditions, offered by the applicant:

- 1 A one-off contribution of \$5,000 for additional planting on the reserve land and an ongoing contribution of \$2,000 per annum for maintenance, upkeep and enhancement of the planting, to be secured by agreement with TCC; and
- 2 A commitment to participate in and contribute to the funding of an independent study to assess the impact on industrial activities on the Whareroa Marae.

3.36 The BoPRC responded to the updated suite of conditions on 21 December 2020. The TCC responded on the 22 January 2021.

3.37 Following the Councils' response, on 27th January 2021 the applicant subsequently withdrew the offered conditions, offering the following advice note instead:

Advice Note:

The consent holder acknowledges that in August 2020 the Tauranga City Council and the Bay of Plenty Regional Council agreed to explore the possibility of a future managed retreat of polluting industries from the Hewletts Road industrial area in Mount Maunganui. The consent holder records that should the Tauranga City Council and Bay of Plenty Regional Council initiate an investigation, study, reporting, dialogue or the like into the possibility of a future managed retreat; it is willing to participate as a member of an

industrial stakeholder group. This advice note has been included at the consent holder's request.

3.38 I closed the hearing on 28th January 2021.

4 Relevant Planning Provisions and Reasons for Consent

Bay of Plenty Regional Natural Resources Plan 2008

4.1 Section 4.1 of the Regional Council's s42A report sets out the following reasons for resource consent under the Bay of Plenty Regional Natural Resources Plan (the Regional Plan):

- Under section 9(2)(a) of the RMA and Rule LM R4 of the Regional Plan to undertake a **discretionary** activity being the disturbance of land and soil as a result of earthworks that involves contaminated land therefore not meeting the requirements of Rule LM R2.
- Under Section 9(2)(a) and 15(1)(b) of the RMA and Rule DW R25 of the Regional Plan to undertake a **restricted discretionary** activity being the disturbance of contaminated land.
- Under Section 9(2)(a) of the RMA and Rule 40A of the Regional Plan to undertake a **controlled** activity being the drilling of land that intercepts the groundwater table for ground improvements.
- Under Section 15(1)(a) of the RMA and Rule DW R8 of the Regional Plan to undertake a **discretionary** activity being the temporary discharge of fuel tank hydrotest water into a drain (TCC Network).
- Under Section 15(1)(a) of the RMA and Rule DW R8 of the Regional Plan to undertake a **discretionary** activity being the permanent discharge of stormwater from a fuel storage facility into a drain (TCC Network).
- Under Section 15(1)(a) of the RMA and Rule DW R8 of the Regional Plan to undertake a **discretionary** activity being the temporary discharge of water from dewatering activities into a drain (TCC Network).
- Under Section 15(1)(b) of the RMA and Rule DW R8 of the Regional Plan to undertake a **discretionary** activity being the discharge of contaminants (cement) into ground where it may enter groundwater.

4.2 Mr. Steens advised that a bundling approach was not appropriate, as one of the consents is a controlled activity and another a restricted discretionary activity. The AEE and the opening submissions take a bundling approach. Given that controlled and restricted activity components are not able to be easily separated out from the proposal as a whole and are interlinked with the discretionary activity components, I prefer the applicant's approach to bundle the consents as a discretionary activity; while accepting that should consent be granted, separate decisions and condition suites are required on each component.

Tauranga City Plan 2013

4.3 Section 4.1 of the City Council's s42A report identifies the following City Plan Map features as applying to the site:

- Industrial Zone
- City Plan Viewshaft Protection Area – viewpoints No. 3 and No. 14
- Airport Height/Approach area
- Flood Hazard Plan Area
- Statutory Area of Acknowledgement for Waitaha.

4.4 Section 5.1 of the City Council's s42A report identifies the following reasons for consent:

City Reference	Plan	Activity Status	Comment
Chapter 4B Transportation Rule 4B.4		RD	Under Rule 4B.2.7 vehicle access points serving a <i>business activity site</i> shall be a minimum width of 4m and a maximum width of 9m at the <i>site boundary</i> . The northern most access will have a width of 21m at the site boundary. The southern access will have a width of 12.9m at the boundary. Therefore, consent is required under Rule 4B.4 of the City Plan.
Chapter 4C Earthworks Rule 4C.3		RD	The proposal does not comply with permitted Rule 4C.2.2(e), as a consent for remediation has not been obtained from BOPRC and the Detailed Site Investigation (DSI) confirms the presence of contaminants above guidelines within the area of land to be disturbed. The proposal also doesn't comply with permitted Rule 4C.2.4 which requires that earthworks within the Flood Hazard Plan Area do not exceed 500m ³ , except where they are associated with the construction, erection or placement of a building. In this case earthworks greater than 500m ³ are required to prepare the site (and which are not associated with the construction, erection or placement of a building). Based on the above, resource consent is required for the earthworks under Rule 4C.3a).
Chapter 8C Flood Hazard Plan Area Rule 8C.3		RD	Table 8C.1 relates to the erection of any building in the FHPA on land situated lower than 2.5-2.9m above Moturiki Datum. The applicant's coastal inundation assessment identifies that current ground level ranges between RL 1.8m to above 2.8m Moturiki Datum. Resource consent is therefore required pursuant to Rule 8C.3).
Chapter 9 Hazardous Substances Rule 9A.6a)		D	City Plan Table 9A.1 identifies a consent status matrix (effects ratio) for activities in the Industry Zone. Any activities with an effects ratio greater than 1.5 in the Industry Zone requires resource consent pursuant to

		Rule 9A.6a). The proposal has an effects ratio greater than 1.5.
Chapter 18A Industrial Zone Rule 18A.16a)	D	Rule 18A.12.1 (Building Height) permits buildings/ structures in the Industrial Zone to a height of 16m. The proposed height to the top of the tanks is 20.05-20.65m above existing ground level. Resource consent is therefore required pursuant to Rule 18A.16a)i).
Chapter 18A Industrial Zone Rule 18A.15a)ii)	RD	Rule 18A.12.3a) generally requires buildings, structures and activities on a site in an industrial zone adjoining a site in a non-industrial zone, to be set back at least 5m from the zone boundary. The southern boundary of the site adjoins land zoned Active Open Space. Open Space Zones are included in the City Plans definition of Sensitive Zone. Resource consent is therefore required pursuant to Rule 18A.15a)ii) as proposed activities and the associated concrete bund are located within 5m of the adjoining sensitive zone.
Chapter 18A Industrial Zone Rule 18A.15.3c)	RD	Rule 18A.12.3c) requires that where a site boundary adjoins an Open Space Zone, the common boundary shall be fenced with a minimum 1.8m high screen wall. The concrete bund wall along the majority of the southern boundary meets the minimum height requirement for a screen wall, however, at the easternmost length of the southern boundary, the bund is replaced by a retaining wall and mesh security fence which doesn't meet the height requirement. The applicant has conservatively estimated the noncompliant length of boundary at 29m, and, therefore, resource consent is required pursuant to Rule 18A.15a)ii).

4.5 Ms. Bougen provided an addendum to her s42A report on 26 November 2020, to address Plan Change 27 – Flooding from Intense Rainfall (PC27) to the City Plan which was notified on 16 November 2020. PC27 introduced a new rule framework to manage the effects of flooding in intense rainfall events. Ms. Bougen advised the Council's position is that the rules in PC27 have immediate legal effect as they relate to water. Ms. Bougen has identified that consent is also required under PC27 for development of a new industrial activity in a Major Overland Flowpath, which is a restricted discretionary activity under Rule 8D.4.2.3. The relevant matters of discretion are:

- a. *The extent to which the proposal mitigates onsite flood risk, including setting of a minimum freeboard level.*
- b. *The extent to which the proposal mitigates flood risk on neighbouring properties or properties further downstream or upstream.*
- c. *The effects of any decrease of water storage capacity of the floodplain or major overland flowpath.*
- d. *The extent to which the proposal provides for the conveyance of water in the major overland flowpath or floodplain.*
- e. *The provision for safe evacuation of people from the activity during flood events.*
- f. *The effects of any activity or proposed goods storage if mobilized in an intense rainfall event.*

- g. The extent to which mitigation measures are taken to that the design of the car parking ensures that vehicles do not move and cause damage to any buildings or cause blockage of an overland flowpath or floodplain.*

- 4.6 Consent is also required under the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NES-CS) for the following reasons:
- The site is a 'piece of land'
 - The volume of soil disturbance does not meet the permitted criteria under Regulation 8(3)(c) and is a restricted discretionary activity
 - The site contains fibrous asbestos/asbestos fibres exceeding the NES-CS, which is a restricted discretionary activity
- 4.7 Ms. Bougen has bundled the consents and assessed the application as a discretionary activity. I consider this is appropriate.

5 Notification and Submissions

- 5.1 The BoPRC determined that the application should proceed on a limited notified basis on 8 October 2019, identifying Ngāi Te Rangi, Ngāti Kuku, Ngāi Tukairangi and the Whareroa Marae as parties to be served notice on.
- 5.2 The TCC determined that the application should proceed on a limited notified basis on 17 September 2020, identifying Ngāi Te Rangi, Ngāti Kuku, Ngāi Tukairangi and the Whareroa Marae as parties to be served notice on.
- 5.3 Notice was served on the parties on 17 September 2020, with submissions closing on 15 October 2020. Three submissions were received in the submission period and one submission was received late. The late submission was accepted under delegated authority by Council officers.
- 5.4 In section 6.2 of the TCC s42A report, Ms. Bougen identifies the key issues raised in submissions as being:
- a) The proposal will impact on the cultural and spiritual health and wellbeing of people and the environment. The assessment of effects does not give enough consideration to people and communities and their social, economic, aesthetic and cultural conditions.
 - b) The proposal is highly offensive to iwi and does not avoid, remedy or mitigate a range of adverse effects on iwi.
 - c) The proposal represents a further encroachment on treasured lands and the cumulative effects of this activity along with other similar land uses in the area is unacceptable.
 - d) The application disregards issues of reverse sensitivity on the Marae whānau, kohanga reo and on the sensitive activities associated with the marae related activities, which pre-date industrial activity.
 - e) Further severance of viewshafts towards Mauao.
 - f) The proposal does not achieve the requirements of the RMA, particularly Part 2 and Schedule 4.
 - g) The proposal does not give enough regard to the policies of regional planning documents, such as the Regional Policy Statement.
 - h) The application fails to adequately assess the relevant Iwi Management Plans.

- 5.5 The BoPRC s42A report does not provide such a breakdown, but rather provides an assessment against the matters raised in submissions in section 8.5.

6 Statutory Framework

- 6.1 Section 104 of the Resource Management Act 1991 (the RMA) sets out the matters we must have regard to when considering the application, as set out below:

104 Consideration of applications

- (1) *When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (a) *any actual and potential effects on the environment of allowing the activity; and*
 - (ab) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (b) *any relevant provisions of—*
 - (i) *a national environmental standard:*
 - (ii) *other regulations:*
 - (iii) *a national policy statement:*
 - (iv) *a New Zealand coastal policy statement:*
 - (v) *a regional policy statement or proposed regional policy statement:*
 - (vi) *a plan or proposed plan; and*
 - (c) *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*
- (2) *When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.*
- (2A) ...³
- (3) *A consent authority must not,—*
- (a) *when considering an application, have regard to—*
 - (i) *trade competition or the effects of trade competition; or*
 - (ii) *any effect on a person who has given written approval to the application:*
 - (c) *grant a resource consent contrary to—*
 - (i) *section 107, 107A, or 217:*
 - (ii) *an Order in Council in force under section 152:*
 - (iii) *any regulations:*
 - (iv) *wāhi tapu conditions included in a customary marine title order or agreement:*
 - (v) *section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:*
 - (d) *grant a resource consent if the application should have been notified and was not.*
- (4) *A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent*

³ Not relevant to this application.

authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.

- (5) *A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.*
- (6) *A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.*
- (7) *In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.*

- 6.2 Section 104B of the RMA outlines the matters for which the Council can have regard to when considering an application for a discretionary activity.

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

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

- 6.3 Section 105 of the RMA sets out matters relevant to certain applications, in this instance being the discharge permits sought from the BoPRC:

- (1) *If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—*
 - (a) *the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and*
 - (b) *the applicant's reasons for the proposed choice; and*
 - (c) *any possible alternative methods of discharge, including discharge into any other receiving environment.*
- (2) *If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104(1), consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent.*

- 6.4 Section 107 of the RMA sets out restriction on grant of certain discharge permits:

- (1) *Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—*
 - (a) *the discharge of a contaminant or water into water; or*
 - (b) *a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or*
 - (ba) *the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—*
if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:

- (c) *the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials;*
 - (d) *any conspicuous change in the colour or visual clarity;*
 - (e) *any emission of objectionable odour;*
 - (f) *the rendering of fresh water unsuitable for consumption by farm animals;*
 - (g) *any significant adverse effects on aquatic life.*
- (2) *A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—*
- (a) *that exceptional circumstances justify the granting of the permit; or*
 - (b) *that the discharge is of a temporary nature; or*
 - (c) *that the discharge is associated with necessary maintenance work— and that it is consistent with the purpose of this Act to do so.*
- (3) *In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.*

7 SECTION 104 ASSESSMENT

Section 104(1)(a) Effects on the Environment Assessment

Existing environment:

- 7.1 The existing environment is well described in the two s42A reports and the AEE. I adopt those descriptions and refer back to them as necessary.

Permitted effects:

- 7.2 The permitted baseline was not raised as matter of relevance or contention in the hearing, beyond Ms. Toan and Mr. Ensor highlighting that the Industrial Zone provides for the proposed activity.

Effects in contention

- 7.3 After analysis of the application and evidence (including the offered and proposed mitigation measures), undertaking a site visit, reviewing the two s42A reports, reviewing the submission and concluding the hearing process, I consider that the proposed activity raises the following principal effects in contention:
- a) Positive effects
 - b) Landscape and visual effects
 - c) Traffic effects
 - d) Discharge effects, including water and air
 - e) Contaminated land and hazardous substance effects
 - f) Cultural effects
 - g) Cumulative effects, including air quality.
- 7.4 I address each of these effects in turn. There were other effects addressed in the AEE and s42A, including earthworks and flooding. I have adopted and accepted the officers' recommendations in those respects, and do not address them further.

Positive effects

- 7.5 The applicant identifies positive effects in section 5.2 of the AEE and in Mr. Dubau and Mr. Ensor's statements of evidence. These are:
- The redevelopment of the site and establishment of a new fuel storage activity
 - Providing for the economic wellbeing of the applicant and the community, being employment (construction and then five full time jobs) and storage of fuel for the oil industry
 - The efficient use of the site, which could not be used for a more sensitive land use
 - The addition of increased competition in the fuel retail sector
 - Reliance on local suppliers for a majority of goods and services
 - Indirect employment resulting from compliance, maintenance and transport related activities.
- 7.6 On questioning, Mr. Dubau advised that some of these benefits arise from the proposed size of the tanks. Mr. Steens does not address positive effects in his s42A report. In her s42A report, Ms. Bougen accepts the applicant's assessment of positive effects, but considers that these fall mainly on the applicant, with no compelling evidence of economic or community benefit.
- 7.7 I accept that there will be positive effects arising from the development of the site and the operation of the fuel tanks. I address the relevance and weight of these later in this decision.

Landscape and visual effects

- 7.8 One of the key matters in contention was that of the landscape and visual impact of the tanks, which require consent for exceeding the maximum height and setback standards in the City Plan.
- 7.9 The submitters were overall concerned about the cumulative effects arising from additional industrial activity in proximity to them, which included that the structures would be overbearing on the Marae. They also expressed concern about the landscape and visual impact on the coastal environment, the Area of Significant Cultural Value ASCV-4 Te Awanui (Tauranga Harbour) and the Outstanding Natural Feature and Landscape of Tauranga Harbour (ONFL 3). Ms. Bennett appended a review of an earlier version of the Isthmus Landscape and Visual Assessment by Ms. Di Lucas in respect to these matters. I note the advice of the applicant and Ms. Bougen that the site is not located within any of these areas.
- 7.10 Both Mr. Coombs and Ms. Ryder addressed the impact on the coastal environment, the Area of Significant Cultural Value ASCV-4 Te Awanui (Tauranga Harbour) and the Outstanding Natural Feature and Landscape of Tauranga Harbour (ONFL 3) at the hearing. Both experts were satisfied that any effects on these were acceptable from a landscape and visual assessment perspective, both acknowledging that they did not have the expertise to comment from a cultural perspective. I address this aspect later in the decision. I accept their evidence in respect to the effects on these three aspects.
- 7.11 There was no dispute about the non-compliances with the City Plan standards. Mr. Coombs' final position was that the adverse visual effects of allowing the proposal would be low (less than minor), and that he did not rely on the vegetation in the recreation reserve for this opinion. Ms. Toan's reply submissions put the applicant's position as:

- 21 *If the existing vegetation were removed, much more open views of the application site and the proposal would be available, as would views of the surrounding industrial development and wider Port of Tauranga setting, which would be the main view to the north of Whareroa Marae. The development within view would include the Balance Agri Nutrients site, the Waste Management site, the Lawter site, tank farms between the application site and Hewletts Road, the log yards and the backdrop of Industrial land uses and port activity to the north.*
- 22 *The introduction of the proposal into this backdrop and immediate neighbouring industry would result in a small degree of change to the existing environment, filling a relatively small gap in the extensive pattern of Industry around the intersections of Hewletts Road, Totara Street and Taiaho Place.*
- 23 *Mr Coombs has advised the applicant that the “high adverse effect” described by Ms Ryder likely refers to a major change to the characteristics or key attributes of the receiving environment or visual context within which it is seen.*
- 24 *I submit that the proposal cannot be described as being a major change to the characteristics or key attributes of the receiving environment if it is smaller in area and scale than the immediate industrial backdrop and neighbouring properties, and similar in character. The proposed development would be visible in oblique views over a relatively small area and would result in a **Low** level of visual effect, being consistent with the description of a ‘Low Effect Rating’ in the BM Methodology.*
- 7.12 I also note Mr. Coombs’ statement in paragraph 82 of his statement of evidence that *“an alternative development, which complies with the permitted height limit of 16m, but with a much larger footprint could be developed on the site and have a much greater effect on the landscape amenity values of the area”*. Mr. Coombs did not provide any visual simulations or evidence to substantiate this opinion, and I therefore can only give it little weight. I also bear in mind the evidence of Mr. Dubau which was that the tanks had to be the size proposed because of economics.
- 7.13 Mr. Coombs was also of the view that *“as the application is for a continuation of the historic and existing industrial uses of the site and the adverse effects have been appropriately mitigated, the proposal will not have any adverse cumulative effects on the landscape and amenity values of the area”*. However, he also recommends the retention and enhancement of the planting, as it is an important part of the existing environment and its loss would mean the effects would increase (albeit the effects are a small part of an overall increase in effects from the adjacent industrial land uses)⁴.
- 7.14 Mr. Ensor supported Mr. Coombs’ opinion, concluding the tanks do not compromise the landscape character of in the industrial zone or the adjacent zones. He also notes Mr. Coombs opinion in respect of low adverse visual amenity effects. In terms of cumulative effects, his advice was:
93. *I am not aware of any proposal for the Ballance site, or any of the other surrounding industrial sites to be vacated. On this basis, and as discussed by Mr Coombs, this existing development contributes to the cumulative effect but also provides context for the consideration of whether other development such as the proposal contributes to*

⁴ Paragraphs 96 and 97.

the effect in any meaningful way. Given the dominance of the Ballance site, the other industrial development in the zone, and the development anticipated by the Industry Zone, my view is that the contribution of the proposal to cumulative visual is low.

7.15 The Council's position differed to that of Mr. Coombs. Ms. Ryder concluding comments were that:

26. *Sensitivity of the viewing audience at Whareroa is very high [sic] any change to the industrial land use. When referring to the visual effects this is focused to the interface between the sensitive zones and the industrial zone, inclusive of this application.*
27. *It is my view that the planting proposed along Taiaho Place, within the Active Open Space, clearly provides a current visual mitigation role for the existing environment, in that it visually screens the industrial zone. The recommendations of the Isthmus LVA recommends (at 115) the retention and extension of the planting along Taiaho Place. This would include additional planting that would ensure that the existing vegetation comes towards the end of it's [sic] life a mature vegetated screen remains. The extent of this is not yet clear but the intent is to continue visual mitigation.*
28. *Mr Coombs also addresses this [sic] (at paragraph 102) that the existing landscape planting should be enhanced". Recognising that the existing planting forms a functional role providing visual mitigation between sensitive zones. It has been acknowledged today that the planting does provide visual mitigation of which I agree with. I note however there is no current certainty as to the purpose and function and performance standards that the planting should achieve, for it's [sic] perceived function.*
29. *In my view there is reliance on this planting for the degree of effects reached by Mr Coombs and by myself, in my peer review capacity. Without this vegetation the visual effects on the residents and marae are in my opinion likely to be high. The anticipated outcome for the interface between the zones relies on Policies in the TCP that speak to providing visual mitigation between sensitive zones. Whether intentional or unintentional the existing planting within TCC's land clearly provides this function for the current sensitive zone interface.*
- ...
31. *Whilst I have reached an earlier similar conclusion on the visual effects, I am of the view the visual effects that should the vegetation be removed, the visual effects would be high, even though anticipated by the City Plan. Further to this the City Plan considers this interface as a sensitive zone boundary (Policy 18A.6.1.1c and 18A.6.2.1a) and visual mitigation is a required consideration for this interface. Therefore, considering the premise that direct views to the industrial activity from a sensitive zone, would be anticipated is not entirely accurate.*
32. *I am of the view that the Isthmus LVA and Mr Coombs rely heavily on this off site planting providing mitigation and it is clear in the Isthmus LVA report and recommendations that in order to manage visual effects to a low level that the planting should be managed and protected for this purpose. I do not concur that if the planting were to be removed that the visual effects would be the same as assessed, on the premise they are anticipated by the Tauranga City Plan. The*

Tauranga City Plan anticipated this as a sensitive zone interface and Policy 18A directs the methods to manage this. I also note that whilst a permitted building of 16m could be achieved this does not assume that the City Plan's, [sic] anticipated effect would be low.

7.16 Ms. Bougen preferred Ms. Ryder's opinion on the basis that:

I don't think the viewing audience, who are subject to that effect, care too much about planning assessments such as baseline arguments, or the extent of effect anticipated by the zoning of the land, or the comparable level of effect to other adjacent industrial developments. The viewing audience is only interested in what they can see. We heard today that the marae consider these structures to be overbearing and suffocating⁵.

I accept that the adverse visual amenity effect is likely to be low, however, there is a small risk, that this effect could become high, and in my view this would be unacceptable, particularly considering those key policies which expect mitigation between industrial developments and sensitive land uses. However, my opinion would be different if the applicant was to advance Mr Coombs recommendation that planting along Taiaho Place is enhanced. This would need to be through a formal arrangement with the TCC Parks team, and if such an arrangement were in place, we could be more confident that the off-site trees will continue to screen the proposed tank farm into the future⁶.

7.17 Ms. Bougen made particular reference to Policy 18A.6.1.1. of the City Plan:

Policy 18A.6.1.1 of the City Plan requires industrial development within the Industry Zone to be limited to a building envelope sufficient to provide for that development, while "Ensuring the effects of development is mitigated by the inclusion of large specimen plantings and appropriate building form, where the provided building envelope is exceeded". Policy 18A.6.2.1 requires that development within the Industry zone, which is adjacent to or opposite a sensitive zone includes building setbacks and frontage landscape planting to soften the appearance of that development. In my opinion, non-compliance with these policies weighs against the proposal.

7.18 While the offered condition has now been withdrawn, I note that Ms. Bougen advised that the Council did not support it. The applicant's position remains that the actual and potential adverse landscape and visual effects are less than minor.

7.19 The issue of contention between the applicant and the Council is therefore the magnitude of effects arising from the proposed development.

7.20 I accept the applicant's proposition that the visual effects of the proposal need to be considered within the wider context of the surrounding area, which contains several large scale buildings and structures, which based on the aerial photographs provided, some of which have been present for some time. Some of these already well overheight buildings and structures are visible from the Whareroa marae, with different levels of screening. I also accept their proposition that should the planting of Taiaho Place be removed that the proposed development would need to be considered in that wider context. I note that the visual simulations demonstrate that the top of the tanks would be visible from Whareroa

⁵ Paragraph 6 of her closing statement.

⁶ Paragraph 8 of her closing statement.

Marae, with the planting on Taiaho Place screening the majority of the bulk of the tanks. I have also carefully considered the applicability of the permitted baseline in terms of what could occur on the site. However, while industrial development is certainly anticipated, the development does not comply with the setback and height standards, and the resultant effects are not anticipated. I also accept the painting of the tanks will provide some level of mitigation, as will the separation distance.

- 7.21 I prefer the views of the Council in respect of the significance of the planting to mitigate the visual effects of the proposal. In considering the effects generated, like Ms. Bougen and Ms. Ryder, I am guided by the policies in the City Plan, which require appropriate building form and landscape screening where the provided building envelope is exceeded. The planting in Taiaho Place is providing mitigation for the visual impact of the industrial development in the area on the sensitive environment of Whareroa Marae. This is also accepted by Mr. Coombs, who recommends it be retained and enhanced (noting his conclusion on the magnitude of effects). However, as has been established, it cannot be relied upon for ongoing mitigation. I accept the submitters' position that the proposed development would contribute to an additional, cumulative overbearing effect on the Marae, a sensitive environment.
- 7.22 Overall, I find that the effects of the additional height and proximity of the tanks on the Whareroa Marae are unacceptable, both in itself and when considered cumulatively with the existing development in the area.

Traffic effects

- 7.23 The submitters raised concerns about the impact of additional traffic generated by the proposal, both on the immediate area but also on the wider network. They did not raise any specific concerns relating to the width or location of the vehicle access. The concerns around the immediate area focus on people's safety.
- 7.24 As outlined earlier, the proposal would result in approximately 25 trucks per day, plus staff vehicle movements. The applicant and TCC address transportation effects in section 5.8 of the AEE and 7.3 of the s42A report respectively. TCC's Traffic Engineer did not raise any concerns regarding the proposal, including any safety concerns. I note that the application did not require consent for the traffic movements, the only transport-related matter being the width of the vehicle access points.
- 7.25 Ms. Bougen notes that the City Plan does not limit the number of movements to and from the site but is rather concerned with maintaining the road function. Her view is that the proposal would not result in any adverse effect on the functioning of the surrounding road network. In terms of safety, her view is that based on the Traffic Engineer's advice and the location of the site in an industrial area with minimal pedestrian foot traffic, any adverse safety effects associated with the vehicle access points would be acceptable.
- 7.26 In his evidence, Mr. Ensor cites Ms. Parsons' statement of evidence, that the predicted increase in vehicle movements would be approximately 2 to 3% on Totara Street, which is well within the network's capacity and unlikely to be noticed. Ms. Toan identifies in her closing submissions that the issues cited by the submitters of contained trucks parking on Totara Street may be able to be resolved by TCC marking it with broken yellow lines.
- 7.27 Having considered the submissions and expert evidence, I prefer that of the applicant and the Council. There was no evidence before me that the proposal would result in

unacceptable effects on the roading network, nor on people's safety. The concerns raised by the submitters centre more on what the zoning and transport provisions in the Plan provide for, which are beyond the scope of this consent.

Discharge effects, including water and air

7.28 The submitters were concerned about the impact of discharges on both water and air quality. In terms of water quality, they were particularly concerned about the impact of additional discharges to the Harbour and the impact that this would directly have on the space where their children swim, kaumātua wet their feet and where they seek to invigorate “te pātaka kai⁷ a Taiaho”. Ms. Jones was of the view that tank farm venting is a huge contributing factor to air quality in the area and sought more information on the odours and chemicals that would be discharged.

7.29 The applicant's position was that the proposal:

- Incorporates measures so that it will meet the conditions for discharges to the stormwater network set in the TCC comprehensive stormwater discharge consent, both in terms of quality and quantity
- Incorporates measures, including management plans to ensure that there would not be a measurable increase in the pH of the Harbour and that effects on groundwater quality and the Harbour to be acceptable
- Will not create any barrier to ensuring Te Mana o te Wai cannot be given effect to in the future
- Will minimise any adverse effects on the life supporting capacity of water in the coastal environment
- Complies with the permitted standards for discharge to air.

7.30 Mr. Steen's position, based on expert advice, was that the discharges were acceptable, and in the case of air, permitted. While not subject to it, the effects generated from the discharges from the site would meet the conditions of consent for the comprehensive stormwater discharge consent. Mr. Steen was also satisfied that any future changes to the policy and rule framework as a result of giving effect to the NPSFM and Te Mana o te Wai could be addressed through a review condition.

7.31 While I accept and understand the submitters' concerns in respect to discharges, there was no evidence before me that the discharges would lead to unacceptable effects on the receiving environment, including public health, either in itself or cumulatively. I am satisfied that a review condition would appropriately address any changes to the framework; while also noting that s128(1)(b) and (ba) would provide for BoPRC to undertake a review irrespective.

Contaminated land and hazardous substance effects

7.32 Mr. Ngatuere raised concerns that the applicant, the Councils and Fire and Emergency NZ do not have adequate hazard management equipment to safeguard the community and or the environment should a serious incident occur. Ms. Bennett identifies that the fact the site has elevated levels of contaminants and requires remediation is evidence that over time, and / or through a combination of activities, significant residual effects will result.

⁷ Food storage, storehouse.

- 7.33 The applicant addresses contaminated soil disturbance and hazardous substances in sections 5.3 and 5.4 of the AEE. Mr. Bailey gave expert advice for the applicant in respect to contaminated land. He was satisfied any potential adverse effects could be adequately mitigated and in addition to the already recommended conditions, recommended a drain water monitoring and management plan. Mr. Smith provided expert evidence for the applicant in respect to hazardous substances. I questioned him on the checks and balances that would be put in place, the role of other consents, regulations and legislation and the level of risk associated with the facility. As outlined earlier, Mr. Smith advised that this would be a very safe facility with a lot of checks and balances and third party reviews required.
- 7.34 Mr. Ensor addresses effects of hazardous substance storage in paragraphs 41 to 48 of his statement of evidence. I note his conclusion that the proposal adequately recognises the risk of storing hazardous substances, the proposed controls would limit the spatial extent of a potential fire to an acceptable distance, avoiding any adverse effects on the Whareroa Marae and any effects would be acceptable. In terms of contaminated land and soil disturbance, Mr. Ensor concludes that any adverse effects on human health will be appropriately managed and any adverse effects associated with soil disturbance would be acceptable, based on the mitigation offered.
- 7.35 Ms. Bougen and Mr. Steens, both relying on the advice of Council experts, agree with the applicant's position, and considered any effects were acceptable.
- 7.36 I can understand the submitters' concerns in respect to the risk of living in close proximity to buildings that store hazardous substances, and that the development of contaminated land may result in offsite effects, particularly on water quality and public health. I can also understand their concerns of the potential risks and consequences of the cumulative effects if an incident was to happen on another site. I am satisfied that based on the evidence before me, particularly the knowledge that there are extensive controls in place through other regulation and legislation and the recommended conditions, that any effects in this regard are acceptable. There was no evidence before me that there would be any unacceptable cumulative effects arising.

Cultural and cumulative effects

- 7.37 The submitters considered that the cultural effects arising were significant, particularly when considered alongside the cumulative effects of the proposal with the existing environment. While acknowledging that TRONIT had not responded to consultation requests, one of their significant concerns was that the applicant had not appropriately and sufficiently addressed cultural effects. I have considered cultural and cumulative effects together, as my interpretation of the submitters' concerns was that the cumulative effects resulted in adverse cultural effects.
- 7.38 Ms. Toan addressed the definition of cumulative effects in her opening submissions with reference to *Dye v Auckland Regional Council* [2002] 1 NZLR 337, as follows:

Cumulative effects encompass effects arising over time or effects arising in combination with other effects:

The concept of cumulative effect arising over time is one of a gradual build up of consequence.

The concept of combination with other effects is one effect A combining with effects B and C to create an overall composite effect D. all of these are effects which are going to happen as a result of the activity under consideration.

7.39 I accept this definition.

7.40 Ms. Bennett was of the view that the consent authorities have failed to deal with the cumulative effects arising from the grant of individual resource consents, the consequence being environmental degradation becomes a timing issue of when not whether. In her view, that the site has elevated levels of contaminants and requires remediation is evidence that significant residual effects will result. She also raised concerns about impacts on water quality. Responding to the evidence, Mr. Ngatuere was of the view that disregarding cumulative effects because of the site zoning is disingenuous and that the proposal may result in cumulative water quality, traffic and air pollution effects. The submitters did not present any expert evidence to support their opinions of the potential cumulative effects in respect to water, traffic, air or contaminants.

7.41 Both the applicant and Mr. Steens were of the view that the proposal would not result in adverse cumulative effects. Mr. Steens' opinion was that the cultural effects related largely to the presence of the fuel tanks, a matter outside the regional council's delegations. Mr. Ensor acknowledged that only tangata whenua can express whether a proposal results in cultural effects or not; however, in respect to matters raised by submitters, he advised:

- The continued use of the Industrial zone for industrial purposes is outside of the scope of this hearing process
- Both Mr. Bailey and Mr. Feltoe have provided professional opinions in respect to groundwater and hazardous facilities
- The landscape and visual assessment considered effects on the Whareroa Marae
- The evidence of Mr. Bailey and compliance with the TCC network stormwater discharge consent demonstrates that the proposal will avoid further degradation.

7.42 Ms. Bougen did not address cumulative effects in her s42A report but did at the hearing, stating her opinion that:

9. *It is now clear to me that this proposal will contribute to an unacceptable cultural effect, particularly on a cumulative basis.*

10. *Policy IW 2B of the RPS reminds us that "only tangata whenua can identify and substantiate their relationship and that of their culture with their ancestral lands". Today I've heard that that the proposal will contribute to adverse effects on the on the [sic] health and wellbeing of the marae and the community, and what I would term the 'intrinsic values' of the environment around the marae. We have also heard about the personal experience of a cumulative effect, and I found this submission particularly compelling. From what I have heard today, I think it would be a stretch to say that the proposal will achieve Policy IW 5B of the RPS which states [abridged]:*

When considering proposals that may adversely affect any matter of significance to Māori, recognise and provide for avoiding, remedying or mitigating adverse effects on:

- *The exercise of kaitiakitanga;*
- *Māori, particularly in relation to land*
- *Places and areas with significant cultural value to tangata whenua; and*
- *Existing marae or papakāinga land.*

7.43 I appreciate the submitters' concerns in respect of potential cumulative effects, and I heard and acknowledge their grievance of their disenfranchisement from their land and the impact that urban development has had on the health and wellbeing of their community. While my view of the zoning is irrelevant, zoning for industrial development so close to an established sensitive cultural environment is very unfortunate. I can appreciate the submitters' position that allowing further development to occur is another nail in the coffin (so to speak) for the Whareroa community.

7.44 However, I accept Mr. Ensor's advice that I can only make a decision based on what the existing zoning is, and not what it perhaps should be. Quite simply, the City Plan anticipates industrial development in this area. I also received expert advice from the applicant and the Councils in respect of the extent of effects on landscape and visual amenity, traffic, air and water quality, contaminants and hazardous facilities.

7.45 My finding is that the issues being raised by the submitters in respect to cultural and cumulative effects are a direct response to the zoning of the site and surrounding area, rather than necessarily in relation to this proposal. I had no evidence before me, that with the exception of the visual impact of the proposed tanks, that there would be any unacceptable cumulative adverse effects arising from the proposed development, either singularly or when considered with other existing development in the area. In respect of that visual impact however, I consider that there are adverse cumulative effects arising from another large structure within an environment already containing many such structures, which will be visible with or without the planting in Taiaho Place and this effect results in an adverse cultural effect on the Whareroa community.

Conclusion - Section 104(1)(a) Effects on the Environment

7.46 In respect to those matters requiring consent from the BoPRC, for the reasons outlined above, I adopt and accept Mr. Steens opinion that the effects are acceptable and there are adequate consent conditions to address the site specific activities of earthworks, disturbance of contaminated land, drilling and discharge associated with mass stabilisation. Cumulatively, based on the evidence before me, I do not consider that the effects requiring regional consent are unacceptable.

7.47 In respect to those matters requiring consent from TCC, I find that the effects are acceptable in respect to the transport, earthworks and flooding related matters. However, the effects related to the bulk and location of the proposed tanks are unacceptable, both in themselves and when considered cumulatively in terms of the impact on the Whareroa Marae and its community.

Section 104(1)(ab) Ensuring Positive Effects Through Offsets and Compensation Assessment and Conclusion

- 7.48 The AEE does not address s104(1)(ab). Neither Mr. Steens nor Ms. Bougen address s104(1)(ab) in their s42A reports. Mr. Ensor addresses the offsite mitigation offered by the applicant in his statement of evidence. The offered conditions were withdrawn and as such I cannot consider them.

Section 104(1)(b) Relevant Planning Documents Assessment

- 7.49 In accordance with section 104(1)(b)(i)-(iv) of the RMA, I have had regard to the relevant standards, policy statements and plan provisions of the following documents:

- New Zealand Coastal Policy Statement 2010 (NZCPS)
- National Policy Statement on Freshwater Management 2020 (NPSFM)
- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health 2012 (NES-CS)
- The Bay of Plenty Regional Policy Statement 2014 (RPS)
- The Bay of Plenty Regional Natural Resources Plan 2008 (RNRP)
- The Bay of Plenty Regional Coastal Environment Plan 2019 (RCEP)
- The Tauranga City Plan 2013 (City Plan)

New Zealand Coastal Policy Statement

- 7.50 As identified earlier, neither the RPS, the RCEP or the City Plan identify the site as being within the coastal environment, or in the case of the RPS and the RCEP, the coastal marine area.

- 7.51 Mr. Ensor identified Objective 2 and Policy 23 of the NZCPS as being relevant in his statement of evidence:

Objective 2

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

- *recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;*
- *identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and*
- *encouraging restoration of the coastal environment.*

Policy 23 Discharge of contaminants

- (1) In managing discharges to water in the coastal environment, have particular regard to:*

- (a) the sensitivity of the receiving environment;*
- (b) the nature of the contaminants to be discharged, the particular concentration of contaminants needed to achieve the required water quality in the receiving environment, and the risks if that concentration of contaminants is exceeded; and*
- (c) the capacity of the receiving environment to assimilate the contaminants; and:*
- (d) avoid significant adverse effects on ecosystems and habitats after reasonable mixing;*
- (e) use the smallest mixing zone necessary to achieve the required water quality in the receiving environment; and*

- (f) *minimise adverse effects on the life-supporting capacity of water within a mixing zone.*
- (2) *In managing discharge of human sewage, do not allow:*
 - (a) *discharge of human sewage directly to water in the coastal environment without treatment; and*
 - (b) *the discharge of treated human sewage to water in the coastal environment, unless:*
 - (i) *there has been adequate consideration of alternative methods, sites and routes for undertaking the discharge; and*
 - (ii) *Informed by an understanding of tangata whenua values and the effects on them.*
- (3) *Objectives, policies and rules in plans which provide for the discharge of treated human sewage into waters of the coastal environment must have been subject to early and meaningful consultation with tangata whenua.*
- (4) *In managing discharges of stormwater take steps to avoid adverse effects of stormwater discharge to water in the coastal environment, on a catchment by catchment basis, by:*
 - (a) *avoiding where practicable and otherwise remedying cross contamination of sewage and stormwater systems;*
 - (b) *reducing contaminant and sediment loadings in stormwater at source, through contaminant treatment and by controls on land use activities;*
 - (c) *promoting integrated management of catchments and stormwater networks; and*
 - (d) *promoting design options that reduce flows to stormwater reticulation systems at source.*

7.52 Mr. Ensor considers that the proposal is consistent with Policy 23, as the expected pH change of the stormwater discharge is unlikely to be discernible from the pH of the seawater and any adverse effects on the life supporting capacity of water in the coastal environment will be minimised.

7.53 The letter from Mr. Alex Gifford to the Councils dated 18 August 2020 also identifies Objectives 1, 3, 5 and 6 and Policies 2, 11, 13, 15, 21 and 25 as being relevant. That letter concludes that the proposal is consistent with the NZCPS, while also noting that the site is not located within the coastal environment or coastal marine area and that at the time of preparing the letter, information from mana whenua was not available to inform cultural effects.

7.54 Neither Mr. Steens nor Ms. Bougen addressed the NZCPS in their respective s42A reports. Mr. Ngatuere did not address the NZCPS.

7.55 The review of the first Landscape and Amenity Effects Assessment undertaken by Ms. Di Lucas which is appended to Ms. Bennett's evidence identifies that the LVA has ignored both the NZCPS and the RCEP. Ms. Lucas's view is that Policies 13.1(b) and 15(c) of the NZCPS are relevant. However, as Ms. Lucas was not called as a witness, I did not have the opportunity to question her. The submission of Ngāi Te Rangi Iwi identifies that the application fails to recognise the NZCPS. In her statement of evidence, Ms. Bennett raises that the receiving environment for the discharge of stormwater is ultimately the Harbour, which is in the coastal marine area. She also identifies the relevance of the Areas of Significant Cultural Value – ASCV4 – Te Awanui (Tauranga Harbour).

- 7.56 I note that while Mr. Coombs and Ms. Ryder address the coastal environment, they do not address the NZCPS directly.
- 7.57 I note that the RPS, the RCEP and the City Plan all post-date the NZCPS. I received no evidence that the RPS, RCEP or City Plan failed to implement the NZCPS or that there were any “gaps” or omissions in them; rather the focus was on the lower-order documents.
- 7.58 Accordingly, I find that the proposal is generally consistent with the NZCPS.

National Policy Statement on Freshwater Management 2020

- 7.59 Mr. Ensor identified the objective of the NPSFM as being relevant:

2.1 Objective

- (1) *The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:*
- (a) *first, the health and well-being of water bodies and freshwater ecosystems*
 - (b) *second, the health needs of people (such as drinking water)*
 - (c) *third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.*

- 7.60 Mr. Ensor addresses the NPSFM in paragraphs 60 to 62 of his statement of evidence, noting that the NPSFM is still to be given effect to in the Bay of Plenty. In his view the proposal will not create a barrier to giving effect to Te Mana o te Wai through a future process involving the community and tangata whenua because:
- there will be a future values identification and limit setting process that will address the health and wellbeing of the drain.
 - the sealing of the site on completion will potentially reduce the level of existing contaminants reaching groundwater, and while not vastly improving water quality, it is likely to assist to maintain the quality of the groundwater resource.
- 7.61 Mr. Steens refers to the NPSFM as a whole, identifying that it requires improved freshwater management by *“directing regional councils to establish objectives and set limited for freshwater in their regional plans, specifically using the framework of Te Mana o te Wai. This framework seeks to set limits which put the health and well-being of freshwater at the forefront of that process.”*
- 7.62 Mr. Steens has a similar view to Mr. Ensor that there will be future processes to give effect to the NPSFM, which will involve input from tangata whenua. However, he is of the view that the proposal as it stands is consistent with the NPSFM, and that a review condition will ensure that the consent can be reviewed should any changes to the affected freshwater bodies be required as a result of implementing the NPSFM and Te Mana o te Wai.
- 7.63 Ms. Bougen did not address the NPSFM. I note that there is an obligation under Clause 3.5 Integrated Management in Part 3, Implementation as follows:
- (1) *Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:*
- (a) *recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and*

- (b) *recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and*
- (c) *manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and*
- (d) *encourage the co-ordination and sequencing of regional or urban growth.*
- (2) *Every regional council must make or change its regional policy statement to the extent needed to provide for the integrated management of the effects of:*
 - (a) *the use and development of land on freshwater; and*
 - (b) *the use and development of land and freshwater on receiving environments.*
- (3) *In order to give effect to this National Policy Statement, local authorities that share jurisdiction over a catchment must co-operate in the integrated management of the effects of land use and development on freshwater.*
- (4) *Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments*

7.64 However, at this time, TCC has yet to review its City Plan to give effect to the NPSFM.

7.65 Ms. Bennett's view is that the application does not demonstrate how Te Mana o te Wai has been given effect, noting that in its simplest sense, Te Mana o te Wai means putting the wellbeing of water first. Mr. Ngatuere did not address the NPSFM.

7.66 I have addressed water quality earlier in this decision, where I found that any adverse effects would be acceptable, both individually and cumulatively. In terms of giving effect to the NPSFM and Te Mana o te Wai, I accept Mr. Ensor and Mr. Steens' advice that the BoPRC is yet to give effect to these and that there are mechanisms to review any consent conditions in the future. I received no evidence that the proposed discharge to the stormwater and groundwater would be contrary to the objective and policies of the NPSFM. Accordingly, at this point in time and based on the evidence before me, I find that the proposal is generally consistent with the NSPFM.

National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health NES-CS

7.67 I addressed contamination effects under the effects in contention, where I found any effects would be acceptable and able to be appropriately managed. The expert assessments informing that finding considered the NES-CS, noting that the NES-CS does not contain any objectives or policies, rather matters of control and discretion. Having considered those matters, I find that the proposal sits comfortably with the NES-CS.

Regional Policy Statement

7.68 Mr. Ensor, Mr. Steens and Ms. Bougen all considered the RPS. Between them, the following objectives and policies were identified as relevant:

Objective 29:

Land use activities are:

- 1 *Within the capability of the land to support the activity;*

- 2 *Integrated with the wider environmental values of their surroundings; and*
- 3 *Within the capacity of receiving waters to assimilate any discharge.*

Policy WL 7B:

Achieve regional consistency by controlling land and soil disturbance activities to:

- (a) *Avoid accelerated erosion and soil loss; and*
- (b) *Minimise silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained.*

Objective 31:

Avoidance or mitigation of natural hazards by managing risk for people's safety and the protection of property and lifeline utilities.

Policy NH 1B:

Take a risk management approach to control the use, development and protection of land to avoid or mitigate natural hazards by assessing the level of risk according to the likelihood of natural hazards occurring and their potential consequences.

Policy IR 5B:

Give regard to the cumulative effects of a proposed activity in contributing to:

- (a) *Incremental degradation of values of sites identified as having high natural character (in accordance with Policies CE 2B and CE 8B);*
- (b) *Incremental degradation of matters of significance to Māori including cultural effects (in accordance with Policy IW 5B);*
- (c) *Incremental degradation of water quality from point source and non-point source discharges including urban stormwater;*
- (d) *Inefficient use of space associated with sprawling or sporadic new subdivision, use or development;*
- (e) *Incremental degradation of scenic values, amenity, open space, recreation and the general use and enjoyment by the public;*
- (f) *Adverse impacts on coastal processes, resource or values, biodiversity and ecological functioning;*
- (g) *The availability of freshwater resources;*
- (h) *Increased risk from natural hazards;*
- (i) *The loss of versatile land for rural production activities;*
- (j) *Effects on the function, efficiency and safety of infrastructure; and*
- (k) *Social and economic wellbeing.*

Policy IW 2B:

Proposals which may affect the relationship of Māori and their culture and traditions must

- (a) *Recognise and provide for:*
 - i. *Traditional Māori uses and practices relating to natural and physical resources such as mahinga mātaītai, waahi tapu, papakāinga and taonga raranga;*
 - ii. *The role of tangata whenua as kaitiaki of the mauri of their resources;*
 - iii. *The mana whenua relationship of tangata whenua with, and their role as kaitiaki of, the mauri of natural resources;*
 - iv. *Sites of cultural significance identified in iwi and hapū resource management plans; and*
- (b) *Recognise that only tangata whenua can identify and evidentially substantiate their relationship and that of their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga.*

Policy IW 3B:

Exercise the functions and powers of local authorities in a manner that:

- (a) Takes into account the principles of the Treaty of Waitangi;*
- (b) Recognises that the principles of the Treaty will continue to evolve and be defined;*
- (c) Promotes awareness and understanding of councils' obligations under the Act regarding the principles of the Treaty, tikanga Māori and kaupapa Māori, among council decision makers, staff and the community;*
- d) Recognises that tangata whenua, as indigenous peoples, have rights protected by the Treaty and that consequently the Act accords iwi a status distinct from that of interest groups and members of the public; and*
- (e) Recognises the right of each iwi to define their own preferences for the sustainable management of natural and physical resources, where this is not inconsistent with the Act.*

Policy IW 4B:

Ensure iwi and hapū resource management plans are taken into account in resource management decision making processes.

Policy IW 5B:

When considering proposals that may adversely affect any matter of significance to Māori recognise and provide for avoiding, remedying or mitigating adverse effects on:

- (a) The exercise of kaitiakitanga;*
- (b) Mauri, particularly in relation to fresh, geothermal and coastal waters, land and air;*
- (c) Mahinga kai and areas of natural resources used for customary purposes;*
- (d) Places sites and areas with significant spiritual or cultural historic heritage value to tangata whenua; and*
- (e) Existing and zoned marae or papakāinga land.*

Policy IW 6B

Encourage tangata whenua to recommend appropriate measures to avoid, remedy or mitigate adverse environmental effects on cultural values, resources or sites, from the use and development activities as part of consultation for resource consent applications and in their own resource management plans.

Policy MN 7B

Assess, whether subdivision, use and development is inappropriate using criteria consistent with those in Appendix G, for areas considered to warrant protection under section 6 of the Act due to:

- (a) Natural character;*
- (b) Outstanding natural features and landscapes;*
- (c) Significant indigenous vegetation and habitats of indigenous fauna;*
- (d) Public access;*
- (e) Māori culture and traditions; and*
- (f) Historic heritage.⁸*

7.69 Of particular contention during the hearing was the consistency of the proposal with the iwi management policies.

⁸ I note that the RPS predates the addition of s6(g) the protection of protected customary rights and 6(h) the management of significant risks from natural hazards to the RMA.

- 7.70 Mr. Ensor agreed with Ms. Bougen that the City Plan appropriately or fully addresses the relevant provisions in the RPS, except for the Iwi Resource Management policies. In his view Policies IW 4B and IW 5B are of particular relevance. Having considered the Tauranga Moana iwi management plan as being relevant for considering cultural effects, in Mr. Ensor's view, the proposal would avoid further degradation of groundwater and stormwater.
- 7.71 In closing submissions, Ms. Toan identifies Policies IW 2B and IW 5B as being high level that provide general guidance, and which will inform the lower-level planning documents.
- 7.72 Having heard from the submitters on cultural effects, Mr. Steens' view stated in his s42A remained through the hearing, which was the proposal is consistent with the RPS, and all adverse effects on the physical environment can be mitigated or avoided through consent conditions.
- 7.73 Ms. Bougen remained of the view that significant weight should be assigned to policies IW 2B and IW 5B of the RPS, given these contain matters that need to be recognised and provided for and that the City Plan is lacking with respect to iwi resource management policies. In her closing statement, Ms. Bougen expressed her opinion that non-compliance with these two policies weighs heavily against the proposal.
- 7.74 In her statement of evidence, Ms. Bennett expressed concern that the AEE had not sufficiently addressed Policy IW 2B and in particular the relationship that mana whenua have with their surrounds. She does not otherwise specifically address the objectives and policies. Mr. Ngatuere expressed at the hearing that the Councils are not meeting the objectives or policies of the RPS.
- 7.75 There are particular matters I need to bear in mind in respect of considering the RPS. It is a document that I need to have regard to, and not one that I have to give effect to as if this was a plan change. I accept Ms. Toan's position that they provide higher level direction and will inform plan changes. I also accept Ms. Bougen's position that the City Plan is light in respect to dealing with iwi resource management matters and additional consideration need therefore be given to the RPS.
- 7.76 I have carefully considered policies IW 2B to IW 6B. In respect of Policy IW 2B, while I accept the submitters' concerns about the existing environment, I had no evidence, including Mātauranga Māori evidence, before me that the proposal would further compromise or degrade from the matters sets out in the policy. In respect of Policy IW 3B, this is a broader policy matter that is not directly relevant to this consent application. In respect of Policy IW 4B, I have received evidence on the iwi resource management plans, and I have taken these into account. I address these elsewhere in this decision, where I find the proposal itself to sit generally comfortably with them. I agree with Ms. Toan that the matters raised in those IMPs will inform future plan changes.
- 7.77 In respect of Policy IW 6B, it is unfortunate that the engagement between the applicant and the Whareroa community occurred late in the process and that TRONIT were not in a position to meaningfully engage in the process and inform its development. However, in my view, Policy IW 5B is the most significant. As with Policy IW 2B, I received no evidence that there would be adverse effects that could not be avoided, remedied or mitigated, except for that of the visual impact of the proposed development on the existing and zoned

marae and papakāinga land. In that regard, I find that the proposal will adversely affect the existing and zone marae and papakāinga land at Whareroa Marae, and those adverse effects will not be avoided, remedied or mitigated.

- 7.78 I accept the applicant and Council officers' advice that the proposal is generally consistent with the relevant RPS objectives and policies, with the exception of Policy IW 5B, which I find the proposal to be inconsistent with.

Bay of Plenty Regional Natural Resources Plan

- 7.79 Table 6.2 of the AEE and Section 9.1 of the BoPRC s42A set out and include an assessment against the relevant objectives and policies of the RNRP. These objectives and policies cover matters that I have already addressed under s104(1)(a). Having heard from the submitters on cultural effects, Mr. Steen's view stated in his s42A remained through the hearing, which was the proposal is consistent with the RNRP, and all adverse effects on the physical environment can be mitigated or avoided through consent conditions.
- 7.80 Mr. Ensor's statement of evidence provides more detailed of the matters traversed in the RNRP and the matters raised by submitters. Both Mr. Ensor and Ms. Toan expressed that the proposal is consistent with the RNRP.
- 7.81 Ms. Bougen, Ms. Bennett and Mr. Ngatuere did not address the RNRP.
- 7.82 Having received no evidence to the contrary, I find that the proposal is consistent with the RNRP.

Bay of Plenty Regional Coastal Environment Plan

- 7.83 There was contention as to the relevance of the RCEP to the application. Ms. Bennett identifies the RCEP as being relevant, while Mr. Ensor and Mr. Steens do not consider it applicable, as the site is not identified as being in the coastal environment.
- 7.85 The RCEP was made operative on 3 December 2019 and covers both the coastal marine area⁹ and the "land backdrop". The site is not identified as being subject to the RCEP. The site is also not identified as being in the coastal environment in the City Plan.
- 7.85 I accept Mr. Ensor and Mr. Steens' positions. Given the site is not identified as being subject to the RCEP, it is not a relevant document for the purpose of s104(1)(b). The appropriate avenue to address whether the site should be identified within the coastal environment is through a plan review or plan change process.

Tauranga City Plan

- 7.86 Table 6.3 of the AEE and Appendix B of the TCC s42A both identify and include an assessment against the relevant objectives and policies of the City Plan. For the sake of brevity, I have not repeated all of the relevant objectives and policies.
- 7.87 Ms. Bougen's addendum to the s42A report also addressed PC27, which was notified on 16th November 2020. Ms. Bougen brought my attention to Policy 8D.1.1.2, as being relevant

⁹ Coastal marine area is defined in s2 of the RMA.

to the proposal. She advised little weight should be assigned to it, given the early stage in the plan change process. I also consider it relevant to consider new Objective 8D.1.1, as this is what policy is aimed to achieve.

8D.1.1 Objective - Avoidance or mitigation of flooding from intense rainfall

The flood risk to life, property and infrastructure resulting from subdivision, use and development of land is reduced over time taking into account the effects of climate change.

8D.1.1.2 Policy - Overland Flowpaths - General

Maintain the function of overland flowpaths to safely convey flood water and reduce risk to life, property and infrastructure by:

- a) Maintaining the water carrying capacity of an overland flowpath;*
- b) Maintaining the water storage capacity of a major overland flowpath;*
- c) Restricting activities that may obstruct an overland flowpath;*
- d) Ensuring that the risk of flooding is not transferred to other people, property or infrastructure; and*
- e) Ensuring that the minimum freeboard level of habitable rooms is 500mm above the flood level; and*
- f) Demonstrating that safe evacuation during flood events is provided*

7.88 I accept the applicant and TCC's positions that the proposal would be consistent with these provisions, as well as those relating to transport and earthworks. I also accept the advice that industrial development is anticipated within the Industrial Zone.

7.89 However, the issue in contention in respect to the proposal was the impact on the landscape character and amenity values of the surrounding area. Of the City Plan provisions brought to my attention, I agree with Mr. Ensor and Ms. Bougen that those in contention are as follows:

Policy 6A.1.9.1

By ensuring that development does not adversely affect the landscape character values of urban areas by:

- a. Maintaining and enhancing the characteristics and elements that determine the character and amenity of the surrounding area;*
- b. Ensuring the bulk and scale of the built form is compatible with that anticipated in the surrounding area;*
- c. Maintaining and enhancing amenity between different land uses by screening, buffering or otherwise providing an appropriate interface treatment;*
- d. ...*
- e. ...*
- f. Protecting areas of cultural or heritage value;*
- g. ...*

Objective 18A.6.1

Buildings are of a bulk and scale sufficient to provide for the needs of industry while not compromising landscape character or the amenity of adjacent zones.

Policy 18A.5.2.1

By providing Industrial Zones for a variety of industrial and complementary uses, thereby facilitating the coordination of industrial land use and development, and through these locations avoid these uses impacting on the amenity of non-industrial urban and rural areas.

Policy 18A.6.1.1

By limiting industrial development within the Industry Zone to a building envelope sufficient to provide for that development, while:

- a. Ensuring the maintenance of the landscape character of the locality;*
- b. Ensuring the amenity of surrounding zones is not compromised;*
- c. Ensuring the effects of development is mitigated by the inclusion of large specimen plantings and appropriate building form, where the provided building envelope is exceeded.*

Policy 18A.6.2.1

By providing an unrestricted layout and design of buildings in the Industry Zone, unless development is adjacent to or opposite a sensitive zone or area of natural character where:

- a. By requiring development opposite a sensitive zone to provide building setbacks and frontage landscape planting to soften the appearance of that development;*
- b. Ensuring activities have regard to the amenity of adjacent zones by providing a physical separation of activities and building form to minimise disturbance, visual intrusion and overshadowing of the sensitive zones;*
- c.*

7.90 I have addressed the impact on the coastal environment, the Area of Significant Cultural Value ASCV-4 Te Awanui (Tauranga Harbour) and the Outstanding Natural Feature and Landscape of Tauranga Harbour (ONFL 3) earlier, and that any effects are acceptable. In terms of these provisions, I consider the proposal is consistent with them.

7.91 Mr. Ensor's view was that:

- The proposed tanks and buildings had been sized to meet the needs of the facility. Mr. Dubau confirmed this in questioning.
- It is not possible to include 'large specimen plantings' within the site as mitigation due to the containment bund requirements.
- The planting within the Passive Open Space Zone, which if taken up, further aligns the proposal with the policy as far as is practicable given the circumstances.
- The potential for adverse cumulative effects is low because the impact of the proposal needs to factor in the relative scale of other development.
- The portion of the Active Open Space Zone adjacent of the site is not particularly sensitive, being taken up by a stormwater drain, a grassed verge and a road, with no dedicated recreational facilities.
- Where possible, the proposal meets the rules, and actions have been taken to mitigating effects so the amenity of the adjacent zone is not compromised.

7.92 Drawing on the evidence of Ms. Ryder, Ms. Bougen takes the alternative view that the non-compliance with these policies weighs against the proposal. She has also taken a wider interpretation of what adjacent means, considering the effects on the Whareroa Marae, and not just limited to the immediately adjacent Taiaho Reserve. While I did not receive any evidence on the meaning of adjacent, its common meaning and interpretation is not limited to abutting but being close or near to.

7.93 I have addressed the effects on visual amenity earlier, which I found to be unacceptable. Based on Ms. Ryder and Ms. Bougen's evidence, I concur that the proposal does not sit comfortably, or consistently with the policy direction that:

- the amenity of adjacent zones is not compromised

- the effects of development is mitigated by the inclusion of large specimen plantings and appropriate building form; particularly given no large specimen plantings are provided and the planting within Taiaho Place cannot be relied upon for mitigation
- a physical separation of building form is provided to minimise visual intrusion.

7.94 In my view, the inconsistency with these provisions weighs higher than the other objectives and policies. While industrial development is anticipated, objective 18A.6.1 is clear that this is subject to the amenity of adjacent zones not being compromised. I accept that the amenity of Whareroa Marae has been adversely impacted for many years by the overheight buildings and structures adjacent to it. Additional overheight structures would in my view, further compromise the amenity of that adjacent sensitive zone. The economics required for developing the site and having the tanks the height and location they are, with no room for onsite mitigation, does not outweigh this impact on the adjacent sensitive zones. The other objectives and policies that are triggered by this consent are secondary to the main industrial activity itself. Overall, I find the proposal is inconsistent with the TCC Plan.

Conclusion - Section 104(1)(b) Relevant Provisions

7.95 Overall, while I find that while there are many elements of the proposal that are consistent with the relevant planning provisions, these are generally secondary elements to the main activity itself. In terms of the activity itself, which trigger the need for other consents, I find that the overall bulk of the buildings, their contribution to a further compromise of visual amenity to the sensitive adjacent environment of Whareroa Marae and the lack of on-site mitigation, means that the proposal sits unfavourably with the TCC plan provisions and the most relevant policy IW 5B in the RPS.

Section 104(1)(c) Other Matters

7.96 All parties identified iwi management plans as being relevant.

7.97 Mr. Henry's submission sought that should the application be granted that the general nature of any conditions sought to be part of the consent include the Iwi Management Plan. The submission from Ngāi Te Rangi Iwi states that the proposal fails to adequately assess the application against the provisions in the relevant iwi planning documents (Te Awanui Plan 2008, Tauranga Moana Plan 2016 and Ngāi Te Rangi Iwi Management Plan 1998).

7.98 Mr. Ngatuere particularly addressed the Tauranga Moana Iwi Management Plan 2016-2026 at the hearing, with the view that the proposal undermined the following provisions:
Policy 2 – Avoid further degradation of water quality within Tauranga Moana.

Coastal objectives

Policy 7: Ensure an holistic and integrated management approach to restoring the health and wellbeing of coastal water within Tauranga Moana (including Te Awanui/Tauranga Harbour).

Policy 8: Work together to address conflicting uses and values within Tauranga Moana (including Te Awanui/Tauranga Harbour).

Policy 9: Avoid further degradation of water quality within Tauranga Moana.

Policy 10: Reduce the impacts of sediment on Te Awanui/Tauranga Harbour.

Land use effects

Policy 23: An holistic and integrated approach is taken to the sustainable use and management of land within Tauranga Moana.

Mauri of land, soil and freshwater resources

Policy 24: Manage the effects of rural and urban air discharges on the health and wellbeing of our people.

Policy 26: Manage the effect of urban land use and development on the health and wellbeing of Tauranga Moana.

Cultural Heritage

Policy 30: Ensure that sites and areas of significance are cared for and protected from disturbance or destruction

Policy 31: Support aspirations by Tauranga Moana iwi and hapū to reconnect whānau, strengthen cultural identity and create a sense of belonging.

Our people

Policy 32: Enable Tauranga Moana iwi to exercise tino rangatiratanga through active involvement in resource management processes and decisions.

Knowledge

Policy 37: Increase knowledge and understanding of resource management issues, approaches and processes.

Policy 38: Foster the next generation of kaitiaki of Tauranga Moana.

7.99 Ms. Bennett did not address the IMPs at the hearing.

7.100 Mr. Steens and Ms. Bougen both considered the IMPs in their s42A reports. Mr. Steens concludes that the issues raised in these IMPs can be sufficiently mitigated through the conditions of consent. He also notes that the Ngāi Te Rangi Iwi Management Plan identifies that the values Ngāi te Rangi has with its lands should be acknowledged and respected, but that the submissions did not explain what this link was. Ms. Bougen's view is that the IMPs are not of particular relevance to the land use aspects of the proposal.

7.101 Mr. Ensor addressed the IMPs in his statement of evidence. He identified Objective 6.1.1, to restore and protect freshwater, and Objective 6.4.1, to restore and protect the mauri o Te Awanui, as being relevant, with the policies 2 and 9 seeking to avoid further degradation. In Mr. Ensor's view, the proposal will avoid further degradation and is therefore consistent.

7.102 Based on the evidence before me, I concur with the applicant and Council officers that the proposal generally sits comfortably with these policies, many of which are more focused at plan review and development level.

7.103 Another matter that was raised by submitters was the Managed Retreat Commitment. In Ms. Bennett's view, the BoPRC considering the Commitment as being irrelevant failed to consider the fundamental concepts of partnership and protection embedded in the principles of Te Tiriti¹⁰. I queried the status of this Commitment during the hearing. The advice I received was that it was in its infancy and it has no statutory weight. Given this, I give it no further consideration, while acknowledging that the process that follows entering into the commitment may result in future changes to the planning framework.

¹⁰ The Treaty of Waitangi

7.104 Ms. Bennett and Mr. Ngatuere also raised the background of the site, identifying that the site, and surrounding area was part of the lands that were taken under the Public Works Act. I accept that there have been historic actions which has resulted in alienation and marginalisation of land. However, it is accepted through the Courts that a resource consent process is not the appropriate means to address such historic actions.

Section 105 and 107

7.105 There was no evidence presented at the hearing that would lead me to not accept the applicant's and Mr. Steens' conclusions that the proposal should be approved under sections 105 and 107 of the RMA.

Subject to Part 2:

7.106 The applicant addressed Part 2 in the AEE, Mr. Ensor's evidence and Ms. Toan's closing submissions. Mr. Ensor's conclusion was that setting aside cultural effects, the proposal would be an appropriate and efficient use of the site, that would maintain the quality of the environment, and provide for the economic and social wellbeing of the community, while avoiding and mitigating adverse effects on the environment. Ms. Toan submitted that the proposal achieves sustainable management and is consistent with sections 6 to 8 because:

- (a) the proposal will not result in any direct adverse environmental effects on the Whareroa Marae;*
- (b) the proposal makes use an existing zoned land resource that is currently used for industrial activities;*
- (c) the proposal will not adversely affect existing amenity values, and will result in some enhancement in the form of increased planting and maintenance on recreational reserve along Taiaho Place;*
- (d) the adverse effects of the proposal may be appropriately avoided, or mitigated through consent conditions; and*
- (e) the proposal provides the local and wider community with an alternative source and supply of an essential energy resource.*

7.107 Ms. Toan's response to the TCC comments on the conditions¹¹, withdrawing the offer of the planting in Taiaho Place, did not provide an updated evaluation.

7.108 Mr. Steens and Ms. Bougen were of the view that recourse to Part 2 was not necessary as the relevant planning instruments traversed all those matters in Part 2 and has been competently prepared.

7.109 Mr. Ngahuere was of the view that the proposal did not sit comfortably with Part 2, in particular referencing the cumulative effects arising from increased hazards, construction, burping, stormwater and carbon monoxide and their impact on what is 'arguably' the country's most environmentally at-risk community. He also spoke of the proposal being inconsistent with most of the section 7 principles, including kaitiakitanga, the intrinsic values of ecosystems and the quality of the environment. Ms. Bennett did not address Part 2 specifically.

¹¹ Dated 27 January 2021

7.110 I agree with the Council officers that the planning instruments, from national to district plan level, competently and comprehensively address Part 2 and recourse to it is not required. However, was I to do so, for the reasons provided in my conclusion and reasons below, I consider the adverse impacts on the social and cultural wellbeing of the Whareroa community outweigh the economic benefits that may accrue from the proposal, and the proposal as it stands does not achieve the purpose of sustainable management.

Section 108 Conditions

7.111 I have carefully considered the assessments made by Mr. Steens and Ms. Bougen and conditions proposed by the applicant. As is, I do not believe that the conditions as a whole would appropriately avoid or mitigate the amenity and cultural effects arising for the submitters.

8 Overall Conclusion and Reasons

8.1 There are many elements of this proposal that weigh positively in favour of granting consent, particularly the regional council components. In that regard, I consider the proposal as it stands and the methods and conditions offered by the applicant would appropriately avoid, remedy or mitigate any adverse effects and be consistent with the planning instruments.

8.2 However, as I have discussed earlier, the reasons the proposal requires consent from the regional council are as a result of establishing the activity itself, a matter that is managed through the City Plan. While the proposal sits comfortably with some of the City Plan provisions, again these are secondary to the activity itself. Simply, the applicant seeks to establish an overheight tank farm adjacent to and visible from an existing established sensitive area, that is of great significance to tangata whenua and where they live, work and play. I agree with the applicant that the proposal will sit within a context of large established industrial buildings and structures. However, contrary to the applicant's and consistent with the TCC's view, I find that this sits unfavourably against the application.

8.3 The applicant has not provided on-site mitigation for the visual amenity effects, citing requirements on containment measures to be provided on site instead. I have also carefully considered the likelihood of the existing planting in Taiaho Place being removed, which provides some level of relief to Whareroa Marae. As the TCC Manager has identified, there is a risk it may be removed, and if it was, I prefer Ms. Ryder's evidence that the effects would be high, and unacceptable. Irrespective, it is well established case law that mitigation on a third party's property cannot be considered without that party's express approval.

8.4 I have carefully considered the positive effects that may arise should consent be granted and the reasons why the applicant sought to establish the tank farm at such a bulk and location, without onsite mitigation. In my view, these do not outweigh the visual amenity and cultural effects arising from the primary reason for the consent, which I find are unacceptable and inconsistent with the relevant objectives and policies in the RPS and City Plan.

8.5 For this reason, I find that consent cannot be granted.

9 Decline of Consent

Pursuant to the authority delegated to me by the Bay of Plenty Regional Council and Tauranga City Council and pursuant to sections 104 and 104B of the RMA, I **decline consent** to the application by Timaru Oil Services Ltd.



Commissioner Gina Sweetman

Date: 4 February 2021