

BEFORE THE INDEPENDENT HEARINGS PANEL

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

AND

IN THE MATTER Resource consent applications by Te Puna
Industrial Limited in relation to 297 Te Puna
Station Road

**STATEMENT OF EVIDENCE OF VINCENT JOHN MURPHY ON BEHALF OF TE
PUNA INDUSTRIAL LIMITED**

(PLANNING)

27 JUNE 2024

1. EXECUTIVE SUMMARY

- 1.1 My name is Vincent Murphy, I am employed as a Senior Planner at Momentum Planning and Design in Tauranga, and am engaged as a consultant planner to the applicant Te Puna Industrial Limited in respect of intended development of 297 Te Puna Station Road.
- 1.2 The project incorporates the planned development of 297 Te Puna Station Road to give effect to the site's Industrial Zoning and bespoke requirements of the Te Puna Business Park Structure Plan provisions.
- 1.3 The proposal includes the following development and activities:
- (a) Execution of landscaping planting pre-requisites to perimeter boundaries and secondary internal locations in accordance with Structure Plan requirements, save for a bund removed to mitigate flooding effects of the same bund. Large trees to the road frontage are instead proposed.
 - (b) Delivery of comprehensive stormwater management (swales and treatment ponds) and floodwater relief (overland flowpath and wetland) infrastructure. A third stormwater culvert under Teihana Road is also proposed as part of floodwater/stormwater management and relief.
 - (c) Construction of a right turn bay from Te Puna Road into Te Puna Station Road, and upgraded site entrance, delivering considerable safety benefits to the community;
 - (d) Staged earthworks to raise the site out of known flood hazard susceptibility (as required by the District Plan);
 - (e) Construction of an internal cul-de-sac sealed and kerbed industrial road, and implementation of secondary landscape planting requirements to the interior of the site;
 - (f) Following the above, commence use of the site for permitted industrial activities at the site. Known activities at this stage include the storage, distribution, repair and maintenance of Containers for hire, sale and lease by ContainerCo.

- 1.4 Resource consents from BOPRC are required in terms of temporary and permanent stormwater discharge, and bulk earthworks, as a Discretionary Activity.
- 1.5 Resource consents from WBOPDC are required primarily for technical departures from the strict provisions of the Structure Plan in terms of exact site entrance location, a cul-de-sac as opposed to looped through road, and lack of installation of a left turn lane out of Te Puna Station Road on to SH2, which is redundant for several reasons. Resource consents are required as a Non-Complying Activity.
- 1.6 Based on mitigation of effects as a result of the scope of development, and offered conditions of consents, I am of the opinion that any adverse effects of the development are no more than minor and acceptable.
- 1.7 The proposal will deliver significant positive benefits and effects in terms of traffic safety, terrestrial and aquatic ecological improvements, flood risk reduction, and public recreational and cultural wellbeing opportunities with respect to restored wetland space in the Hakao basin and providing access to the Hakao Stream.
- 1.8 I am of the opinion that the proposal is consistent with the relevant objectives and policies of the Bay of Plenty Regional Council Regional Natural Resources Plan.
- 1.9 I am of the opinion that the proposal is strongly consistent with the relevant objectives and policies of the Western Bay of Plenty District Plan, and that plan's intent for the development and operation of the site and relevant infrastructure as governed by the Te Puna Business Park Structure Plan provisions.

2. INTRODUCTION

- 2.1 My name is Vincent John Murphy. I am employed as a consulting Senior Planner at Momentum Planning and Design Ltd, a planning and development, urban and landscape design consultancy based in Tauranga, Bay of Plenty.
- 2.2 I was engaged by TPIL in September 2021 coinciding with when I joined Momentum Planning and Design, to assist with the preparation of the Application. I have prepared the Assessment of Environmental Effects ("**AEE**")

dated September 2023 as publicly notified, being a revised AEE from the January 2022 lodgement version that was submitted to both consenting authorities Western Bay of Plenty District Council ("**WBOPDC**") and Bay of Plenty Regional Council ("**BOPRC**"). This is in addition to the preparation of numerous formal responses to Requests for Information to both WBOPDC and BOPRC in the intervening time, which are reflected in the updated AEE.

Qualifications and experience

- 2.3 I hold the qualifications of a Bachelor of Social Science majoring in Environmental Planning from the University of Waikato (2011), and a Masters of Planning Practice from the University of Auckland (2013).
- 2.4 I have worked as a professional planner for over ten years, employed by territorial authorities, as well as private sector consultants, in New Zealand and the United Kingdom. My planning experience includes employment with Auckland and Wellington City Councils, the London Borough of Lewisham, WSP and Bloxam Burnett and Olliver, prior to my current role.
- 2.5 I am a full member of the New Zealand Planning Institute and a member of the Resource Management Law Association.
- 2.6 My experience has been predominantly undertaking planning assessments in respect of resource consent applications, in a wide range of contexts. This includes commercial, recreational, mixed-use, rural, and urban housing developments and subdivisions, considering their effects and their consistency with provisions of relevant planning instruments. Since 2020, a large proportion of my experience has been focused in the Bay of Plenty region.

Site and surrounding context familiarity

- 2.7 As a result of my involvement in this application, I am very familiar with the site at 297 Te Puna Station Road ("**Site**") having visited it on numerous occasions in the intervening time since late 2021.
- 2.8 I have also had regard over the same time to the properties at 245 Te Puna Station Road ("**Tinex Site**"), and at 250-264 Te Puna Station Road ("**OLP Logistics Site**"), being the two other properties which make up the industrial-zoned land of the Te Puna Business Park under the WBOPDC District Plan. I have also visited on numerous occasions roadside drains, downstream

culverts at Clarke and Teihana Roads, and have traversed on numerous occasions the intersections of Te Puna Station Road/Te Puna Road ("**TPSR / TPR intersection**") and Te Puna Station Road/State Highway 2 ("**SH2**"), being of relevance to the planning contexts in which this application sits with respect to both WBOPDC and BOPRC.

Code of conduct

- 2.9 I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and I agree to comply with it while giving oral evidence before the Hearings Commissioners. Except where I state that I am relying on the evidence of another person, this written evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this evidence.

3. SCOPE OF EVIDENCE

- 3.1 My evidence relates to the resource consent applications by Te Puna Industrial Limited ("**TPIL**") in relation to its Site. The applications are to authorise the development of the Site for the establishment and operation of industrial activities, with associated earthworks and discharge to water, within the Site ("**Project**"). The proposed development seeks to substantially give effect to the Te Puna Business Park Structure Plan ("**Structure Plan**") provisions that apply to the Site under the Western Bay of Plenty District Plan. ContainerCo will be the anchor tenant of the Site. ContainerCo intends to store, repair, and lease out/sell shipping containers.
- 3.2 Regional resource consents to enable the Project are required from BOPRC and land use consents are required from WBOPDC (together, the "**Application**").
- 3.3 This statement of evidence will:
- (a) provide an overview of Site, relevant planning framework, existing environment and the relevant background of the Application, as relevant to the planning assessment;
 - (b) affirm the scope of the Project, including mitigation measures that have been proposed in response to submissions received as well as

Council feedback since volunteering public notification which occurred in September 2023;

- (c) update my assessment of the Project's resource consent requirements, against the scope of the development before the Commissioners;
- (d) provide an updated assessment of the Application against s104D of the RMA which applies to this activity in respect of resource consents necessary from WBOPDC, traversing actual and potential environmental effects and consistency with objectives and policies, against the relevant thresholds and tests specified within s104D;
- (e) provide an assessment of the Application against the statutory requirements under section 104 of the RMA;
- (f) respond to the submissions received where relevant to my planning assessment and identify how these matters are proposed to be addressed;
- (g) respond to matters raised in the Council Officer's s42A report where relevant to my planning assessment, and detail how these have been addressed; and
- (h) consider the recommended consent conditions in both s.42A reports and discuss amendments or additional conditions which may be appropriate.

3.4 I note the Chair's direction in Minute 2 concerning these proceedings dated 12th March 2024 that experts for the applicant need not repeat material contained in previous reports submitted with the application to date. My evidence seeks to reflect this direction as much as possible.

4. OVERVIEW OF THE SITE, PLANNING FRAMEWORK, RELEVANT BACKGROUND

Site and surrounds description

- 4.1 A full description of the features of the Site and the surrounding environment can be found at [2.1]-[2.5] of the AEE. I therefore only provide a brief summary below, with **Figure 1** below being a visual summary of key features of the Site as it exists at present.



Figure 1: Image showing the Site boundaries (solid red), house site (dashed orange), contractor and elevated hard stand/shed space (dashed red) and east-west drain and Hakao Stream at the south-east of the Site (dashed blue, Hakao thicker dash).

- 4.2 The Site is 12.16ha of land on the southern side of Te Puna Station Road, at the western end of the road before it rises to meet Te Puna Road.
- 4.3 The majority of the Site is legally described as Part Lot 3 DO 22158 which is 11.1ha in size. A further 1.06ha of the Site is legally described as Sections 2-3 SO 61751. This 1.06ha corresponds to a 20m strip of land at the southern boundary, which was formerly a paper road which was transferred to adjoining properties. It is unknown to me why the very eastern end of the paper road was transferred to the Site as opposed to the Tinex Site.
- 4.4 Approximately three-quarters of the Site is grassed and is used for grazing of cattle. This reflects the historic use of the Site and the zoning pre-2005 being Rural.
- 4.5 Paddock drains run north-south through the Site. A northern roadside drain

(in which the roadside boundary is located) services both Te Puna Station Road and the Site, connecting to perpendicular paddock drains. A southern boundary drain similarly runs parallel to that boundary and connects with paddock drains. All drains lead to a central west-east drain which flows from the Site across to existing drains at 245 Te Puna Station Road, from there draining east towards the Hakao Stream.

- 4.6 The paddocks parallel to Te Puna Station Road are distinctly higher than paddocks south of the east-west drain. This is due to the northern land being subject to cleanfilling. This activity was authorised by a large-scale earthworks consent from BOPRC¹ which was live between 2005-2013. The Detailed Site Investigation prepared by Pennan and Co submitted with the Application supports that the consent was given effect to in that this land has been found to be cleanfill and not contaminated land.
- 4.7 In the south-west of the Site, land is formed to accommodate contractor space and use, centring on an elevated area of hard-stand and a three-bay shed which has been established at the Site since the early 2000's. It is noted resource consent for a Rural Contractors depot corresponding to this general location and formation of the Site was granted in February 2000.²
- 4.8 A single-storey house is located at the very south-west corner of the Site, which is again further elevated above the rest of the Site.
- 4.9 The Site is low-lying, owing to proximity to the valley floor extending west from the Hakao Stream and Wairoa River waterbodies. The Hakao Stream is at the eastern end of the former paper road now part of the Site; the Wairoa River is some 1.3km east of the Site. Surrounding land to the west/south-west continues immediately to reach Te Puna Road. Beyond the OLP Logistics Site to the north, the landform also rises to Te Puna Road/James Road encompassing also the East Coast Main Trunk railway line embankment. Between the Site and the Wairoa River, Clarke Road is located on an intervening spur and ridge as it runs back to SH2. These being the summary landform features of the immediately surrounding area.

Relevant Planning Framework

- 4.10 My assessment of the relevant planning framework applying under the

¹ Resource consent 69251 dated March 2005
² WBOPDC Resource consent RC401306L, granted February 2000.

WBOPDC District Plan (2012) ("**District Plan**"), and the BOPRC Regional Natural Resource Plan (2008) ("**RNRP**") is found at [2.6]-[2.7] of the AEE (concerning zoning, overlays, Structure Plan provisions, applicable particular definitions under the RNRP), and at [4] in terms of plan requirements for resource consents, and at [9] in terms of identified relevant planning policy applicable under all planning instruments including those administered by both WBOPDC and BOPRC. For completeness, I provide a brief summary below.

Planning Framework – Western Bay of Plenty District Plan

- 4.11 The Site is zoned Industrial and is subject to the provisions of the Te Puna Business Park Structure Plan within the District Plan. Industrial Development is governed by Chapter 21 – Industrial of the District Plan. A more general Chapter 12 – Subdivision and Development chapter provisions apply to development (and subdivision) generally, with a specific section concerning the Te Puna Business Park (12.4.16, with cross reference to a Te Puna Business Park Structure Plan set of illustrations at Appendix 7 of the District Plan). Chapter 4A – General, 4B – Transport, and 4C – Amenity of the District Plan also contain relevant provisions particularly relating to road infrastructure, noise, and landscape screen requirements. Rules within each of these chapters are engaged by the Project and Application.
- 4.12 In my assessment, the Structure Plan creates a distinct planning framework within the District Plan that directs development of the Te Puna Business Park as follows:
- (a) Delivery of a third 1600mm diameter stormwater / floodwater servicing culvert under Teihana Road;³
 - (b) Re-constructing of roadside drains on the southern side of Te Puna Station Road into the Tinex Site and the Site (to enable signalled road-widening by WBOPDC);⁴
 - (c) Establishment of perimeter boundary planting meeting specific requirements (a course of planting comprised of five rows, composed of native shrubs to outer rows, a mix of fast-growing native and exotic

³ Not required by a District Plan (and by extension Structure Plan) rule; however is required by the 'Agreed Statement of Facts' which was annexed and relied upon in the Environment Court Decision A091/2005 as infrastructure requirements to be met by the Business Park landowners.

⁴ Rule 12.4.16.3, WBOPDC District Plan, which refers to Appendix 7 Te Puna Business Park landscape drawing information.

trees to the middle layers, and a native evergreen tree species to the single middle row), to perimeter locations;⁵

- (d) Establishment, and planting with the same specific perimeter pattern mentioned above, of a bund for landscape and visual mitigation purposes is required along the northern boundary (east of current entrance). This bund is required to be 1.5m above finished internal ground levels and 10m wide at its base;⁶
- (e) Establishment, and planting with the same specific perimeter pattern mentioned above, of a bund for acoustic mitigation purposes is required along the southern boundary. This bund is required to be 2m above finished internal ground levels (unless inclusive of planting and an acoustic fence, in which case the bund could be only 1.5m high), and 10m wide at its base;⁷
- (f) Establishment of inter-lot (or, in the absence of subdivision, inter-lease or inter-activity) planting, and along internal roadsides, as two staggered rows of trees;⁸
- (g) Delivery of stormwater ponds on Business Park sites in nominated locations;⁹
- (h) Establishment and delivery of a planted wetland within an overland flowpath (OLFP) traversing land at the Site and the Tinex Site;¹⁰
- (i) Delivery of a series of roading infrastructure improvements, namely upgrades to the intersections of SH2/Te Puna Road¹¹, SH2/Te Puna

5 Ibid.
6 Ibid
7 Ibid
8 Ibid
9 Ibid
10 Ibid
11 Rule 12.4.16.2.a, WBOPDC District Plan This upgrade (roundabout) has been completed.

Station Road¹², Te Puna Road/Te Puna Station Road¹³, and traffic calming measures on Clarke Road;¹⁴

- (j) Delivery of an intersection into the Site at a particular location¹⁵ and meeting particular design standards;¹⁶ and
 - (k) Delivery of a looped through-road through the Site and Tinex Sites.
- 4.13 To clarify from the outset, and as discussed in the evidence of Mr Ken Harris and Dr Margaret Harris, the brief and intent in developing the Site is to meet the Structure Plan pre-requisite sequencing and result requirements.
- 4.14 The exceptions to this, borne out of assessing proposed development of the land nearly 20 years after the Structure Plan and industrial zoning was created with contemporary information, concerns the SH2/Te Puna Station Road intersection; the through road and exact location of the access point into the Site; and a landscape bund on the northern boundary.
- 4.15 In my view these departures are justified and appropriate based on current traffic safety considerations and patterns on Te Puna Station Road, as well as mitigating cultural effects upon the Pukewhanake Pa site (concerning the SH2/Te Puna Station Road intersection and Site entrance); safety and ecological considerations (concerning the through road); and mitigation of flooding effects (concerning the landscape bund to the northern boundary).
- 4.16 I note the Structure Plan divides each property and Structure Plan feature into stages traversing nominated Stages 1-4. I understand this was done to ensure that the Te Puna Business Park was developed progressively and in a coordinated manner. As detailed at [5] in my evidence, TPIL are proposing to deliver the outstanding Structure Plan infrastructure to service the Te Puna

¹² Ibid. Left turn lane required on to SH2. Has not been completed and is not proposed to be by the Application.

¹³ Rule 12.4.16.2.b, WBOPDC District Plan Requires upgrade for intersection to include left and right turn movements, or similar traffic management alternatives, to the satisfaction of Council's Group Manager Infrastructure Services. Upgrades to this intersection have occurred since the plan change to industrial in 2005 and written evidence of satisfactory upgrade in respect of this infrastructure has been issued previously. As of late 2022 Council has maintained that such written indications are void and the intersection remains requiring an upgrade with a right turn bay.

¹⁴ Rule 12.4.16.2.c, WBOPDC District Plan. Traffic calming measures (chicanes) on Clarke Road have been installed.

¹⁵ West of the existing Site entrance so as to be 200m from an entrance into the OLP Logistics Site. Location indicated on the Structure Plan drawing at Appendix 7.

¹⁶ Rule 12.4.16.2.d(ii), WBOPDC District Plan.

Business Park in an integrated manner as envisioned – namely, the TPSR / TPR intersection, floodwater OLFP and in-situ wetland, and a third stormwater / floodwater culvert beneath Teihana Road.

- 4.17 I further note it appears impossible to comply with the Structure Plan sequencing / staging requirements, which set out that Stages 1 and 2 must precede Stages 3 and 4. However, the stormwater pond, OLFP, and elements of planted landscaping development, which in my view are essential pre-requisites to industrial activities commencing, are located within Stages 3 and 4 at the Site.
- 4.18 If any person developed Stages 1 and 2 at the Site only, they would not be delivering the stormwater and wetland/OLFP pre-requisites in particular and would require resource consent. Similarly, if they developed the pre-requisites in tandem with Stages 1 and 2, they would be developing Stages 3 and 4 in advance of completing Stages 1 and 2. This illustrates the ease of which, or very high likelihood that any development of the Te Puna Business Park can attract a Non-Complying Activity status.
- 4.19 In instances such as this with clear and numerous provisions built into a Structure Plan, especially nearly 20 years after said Structure Plan has come into effect, development requiring resource consents for a technical deviation from exact requirements is not considered to be unusual or tantamount to disregarding the intent of the Structure Plan.

Planning Framework – Bay of Plenty Regional Council Regional Natural Resources Plan

- 4.20 I concur with Ms Perring's summary of the relevant background to the zoning of the Te Puna Business Park, as set out in paragraphs 42-53 of the WBOPDC s42A report, noting I was not party to any of those proceedings or interactions.
- 4.21 Stemming from Environment Court appeal decisions in 2005,¹⁷ the Site is zoned Industrial and is subject to the provisions of the Structure Plan within the District Plan. The Environment Court decisions granting the appeal and establishment of the Industrial zoning were not themselves appealed by

¹⁷ *Thompson & Flavell v Western Bay of Plenty District Council EnvC A016/2005 and Thompson v Western Bay of Plenty District Council ENC Christchurch A091/200 (related, June 2005)*

Council or other s274 parties at the time.¹⁸

Relevant Background

- 4.22 I concur with Ms Perring's summary of the relevant background to the zoning of the Business Park, as set out in paragraphs 42-53 of the s.42A report, noting I was not party to any of those proceedings or interactions. Stemming from Environment Court appeal decisions in 2005,¹⁹ the Site is zoned Industrial and is subject to the provisions of the Te Puna Business Park Structure Plan within the WBOPDC District Plan. The Environment Court decisions granting the appeal and establishment of the Industrial zoning were not themselves appealed by Council or other s.274 parties at the time.²⁰
- 4.23 The District Plan review process in the intervening time, completed in 2012, confirmed and upheld the Industrial zoning of the Site and the application of the Te Puna Business Park Structure Plan to apply to development.
- 4.24 The original application for development of the Site was lodged in January 2022, as a distinctly staged approach to deliver a first stage of land suitable for industrial purposes in general accordance with the provisions of the Structure Plan. This evolved to site-wide consideration of development as directed by s.92 Requests for Information issued by both WBOPDC and BOPRC across February – March 2022.
- 4.25 A substantial response package was issued to both Councils in January 2023, including amendments in scope to a site-wide development and clear incorporation of all relevant on-site Structure Plan pre-requisites.
- 4.26 Iterative addressing of further Council feedback on the response package information info occurred through to June 2023. The main focus was on the information provided concerning potential flooding, stormwater, and traffic effects. As of July 2023, it was confirmed by WBOPDC that s92 points concerning these matters were the remaining items considered 'incomplete' in terms of responses. Engagement regarding those potential effects is ongoing.
- 4.27 In August 2023, incumbent engineers at the time, WSP, declared a conflict of

¹⁸ WBOPDC s42A Report at [253].

¹⁹ *Thompson & Flavell v Western Bay of Plenty District Council EnvC A016/2005* and *Thompson v Western Bay of Plenty District Council ENC Christchurch A091/2005 A91/2005* (related, June 2005)

²⁰ WBOPDC s42A Report at [23].

interest in continuing working on the Project. It is for this reason some WSP plans remain included in the scope of relevant plans, and WSP plan information are a base of updated plans. Harrison Grierson consultants, led by Mr Danny Curtis, were engaged from this time to assist in assessing potential stormwater effects and advising on associated management (alongside flooding as assisted by Dr Steven Joynes of Golovin consultants).

4.28 I do not agree with Ms Perring's characterisation at [54] of the WBOPDC s42A Report of 'incomplete' or 'missing' information as at the time of notification (September 2023). Environment Court mediation commitments (alluded to by Ms Perring), related to a separate process, being an abatement notice appeal by Tinex Group Limited). In any event, by this point in time the Environment Court hearing in question concluded, and TPIL had provided a final response package in September 2023 addressing RFI points to both Council's. Overall, TPIL has provided extensive response information across January to September 2023 to address the RFI points, as written and as they stood as issued to TPIL.

5. PROPOSED DEVELOPMENT

5.1 The Project is outlined at [3] of the AEE. Below, I provide summary and clarifications of the Project, including further mitigation elements that have been introduced and submitted to Council since notification in response to submissions received.

5.2 Additional mitigation measures and amendments to the Project now proposed are as follows:

- (a) Commitment to delivering a right-turn bay at Te Puna Road into Te Puna Station Road, including necessary preliminary design and feasibility work;²¹
- (b) Further clarity that the scope of the consent sought includes the potential for earthworking of a nominated 'borrow area' of fill beneath the existing house. This is to enable a reduction in earthworks and construction traffic movements as much as possible;

²¹

Harrison Grierson Technical Memo "Te Puna Road Intersection Constructability."

- (c) Further clarity of scope of consent sought include the undertaking of removal of a 45m-wide OLFP corridor on the Tinex property and establishing the wetland and functioning OLFP within as required by the Structure Plan. This, alongside the third Teihana culvert (separate consenting process) clearly reflecting the direction of the Structure Plan;²²
- (d) Nominating approximately 2ha of the south-east of the Site as a 'Future Development Area'. Consent is sought to undertake earthworks in this area, however rather than a specific landform being proposed, certainty of resulting off-site flooding effects is proposed by way of offered conditions ensuring that existing environment baseline flooding levels are not exceeded in developing that part of the Site. The rest of the Site is sought to be developed and utilised for permitted industrial purposes (with 5.24ha parallel to Te Puna Station Road cut and filled to RL 3m MVD / RL 2.78m NZVD16), whilst delivering downstream floodwater mitigation features (aforementioned OLFP and third Teihana culvert); and
- (e) Removal of a Structure Plan landscape bund to the northern boundary (to be replaced with 2.5m trees along the entire boundary), given the bunding causes flooding effects to the north of the Site.

5.3 With the above in-mind, the scope of the proposed development to facilitate permitted industrial activities commencing operations at the Site is generally planned as follows so as to meet Structure Plan sequencing and result requirements. This would follow completion of (and subject to refinement through) detailed site design for construction purposes and the appointment of development contractors, and following satisfaction of relevant conditions to each item.

On-site / at Tinex Site:

- (a) Undertake boundary planting and Structure Plan acoustic bund construction to the southern boundary. The base of this planting/base of the bunding subject to earthworks as necessary to ensure compatibility with / achieving of minimum bund crest height above, planned finished ground levels inside of the Site to future

²²

Ibid – note the 45m-wide OLFP extending through the Tinex Site.

industrial yard spaces (RL 3m MVD / 2.78m NZVD so as to be above the 100-year rainfall flood level, as set out in the evidence of Dr Steven Joynes).

- (b) Form main Sediment Retention Pond (SRP) at eastern end of the Site (to convert to permanent stormwater treatment wetland/pond upon completion of earthworks), as well as any other necessary erosion and sediment controls.
- (c) Undertake earthworks to clear Tinex OLFP and TPIL OLFP to provide space for floodwater alleviation prior to commencing backfilling and pre-loading to future industrial yard spaces. Tinex OLFP cut-to-waste material to be screened and supervised by suitably qualified and appropriate geotechnical and contamination professionals to ensure a) the fill is confirmed to be consistent with expected contaminant risk appropriate to an industrial land use environment, in accordance with a DSI for that site, and b) the suitability of the fill for use as either structural backfill or pre-load material atop of structural backfill. Depending on the answers to the above, the fill will either be a) cut and placed straight as backfill as filled land underneath industrial yards; or b) stockpiled for use as pre-load material or otherwise in accordance with the DSI.
- (d) Demolish the existing dwelling and undertake excavation earthworks of the land below to use as a source of borrow fill material to be placed in the area parallel to Te Puna Station Road. Planting of cut-face upon completion of earthworks. Extent of cut to be determined following addressing of archaeological authority requirement to the north of the borrow site.
- (e) Importing of clean structural fill, and export of unsuitable remaining fill, as needed to achieve final landform. Stabilise with grass as soon as possible.
- (f) Undertaking of the above earthworks in stages to ensure no more than 4ha is exposed at any one time to ensure adequate water is available for dust suppression purposes. The earthworks stages are expected to traverse at least two earthworks seasons.

- (g) Following the pre-load settlement period as advised by geotechnical engineers, plant inter-lease and roadside planting at finished interior ground level following Structure Plan pattern and composition requirements (trees required to be 1.2m minimum in-the-ground height).²³ Construct sealed and kerbed internal road, surface yard spaces (compacted metal), construct and plant roadside and internal swales, undertake all roadside, stormwater treatment and wetland planting, prior to permitted industrial operations commencing.
- (h) Construct workshop building to service the planned immediate use of the Site by ContainerCo for hire, sales, and repair of containers.

Off-site:

- (a) Construction of permanent upgrade to the Te Puna Station Road/Te Puna Road intersection to include a right-turn bay as soon as possible, prior to the commencement of industrial operations from the Site;
- (b) Construction of the third 1600mm Teihana Road culvert prior to commencing backfilling of proposed lease areas commences.
- (c) Ultimately one of two collective floodwater/stormwater drainage schemes across the business park are proposed to be delivered pursuant to conditions of consent – either the primary option expressly proposed as mitigation (OLFPP across Site and the Tinex Site, and third culvert at Teihana Road), or the same measures with improvements to the existing drain north of Te Puna Station Road and de-commissioning of a 900mm culvert which conveys water from the OLP Logistics Site to the north-eastern TPIL/Tinex boundary drain.²⁴

Proposed Landscaping Clarifications

- 5.4 The LVIA submitted with the application confirms the intent to comply with the prescribed planting and landscape outcomes of the Structure Plan.²⁵

²³

WBOPDC District Plan Rule 4C.5.3.1.a.ii regarding height.

²⁴

Appendix 3 to the Application, Momentum Planning and Design Drawings 11 and 12.

²⁵

Appendix 14 of the Application, Momentum Planning and Design "Landscape and Visual Assessment", p. 21; Momentum Planning and Design Landscape "Landscape Plan and Planting Palette Including outline Wetland Establishment Plan",

- 5.5 For clarity, planting and soft landscaping is proposed in the following manner.
- 5.6 Fast-growing perimeter planting, with or without bunds, is required and proposed to be carried out precisely in accordance with the five-row pattern and composition requirements of the Structure Plan. This pattern is illustrated in **Figure 2** below.

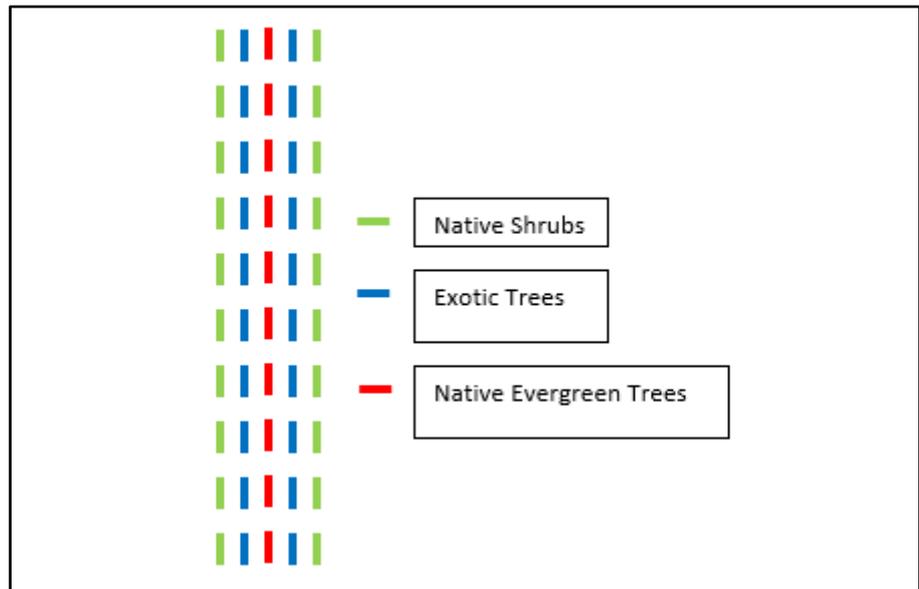


Figure 2: Illustration of Te Puna Business Park Structure Plan perimeter fast-growing landscape planting mix requirements, with or without bunding.

- 5.7 Confirmation of this intent, with further details confirming the execution of this pattern and composition, to the 10m planting width as required by the Structure Plan, has been previously provided to WBOPDC in between April and August 2023. An excerpt of the most recent plan showing planting at perimeter locations is provided below at **Figure 3**. It is reiterated that this is the planting pattern proposed to all perimeter locations, with or without bunding. The correspondence with WBOPDC has confirmed this boundary planting is consistent with the perimeter planting pattern of the Structure Plan satisfying Rule 12.4.16.3.b.

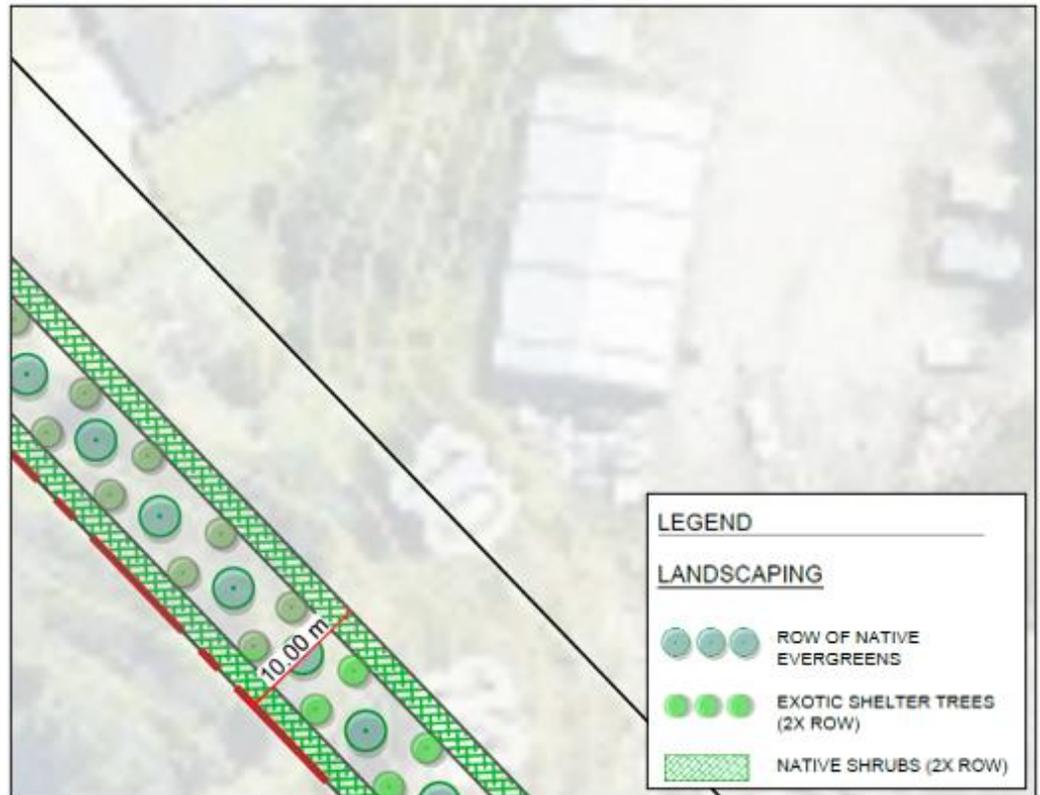


Figure 3: Zoomed-in excerpt of MPAD Drawing ‘Landscape Plan – Permitted Works – Boundary Landscaping’, showing the 5x rows of planting to perimeter locations, with legend inset. This detail of landscaping was prepared by the applicant’s landscape architect and confirmed consistent with the landscaping requirement of Te Puna Business Park Structure Plan so as to satisfy Rule 12.4.16.3.b.

- 5.8 It is acknowledged the landscape screens are required (considering Structure Plan and other District Plan rules) to be in the prescribed pattern, across a width of 10m to perimeter locations/3m to secondary roadside/inter-lease/inter-lot locations, and planted with an in-the-ground height of 1.2m. This is all proposed to be met by TPIL. A segment of perimeter planting has already been implemented at the southern boundary near the existing three-bay shed demonstrating the intent to carry out the landscaping as required.
- 5.9 Inter-lease and roadside planting is acknowledged as being required to be two rows of staggered native and exotic trees. This is committed to be implemented at inter-lease or inter-activity locations, given the absence of any subdivision of land proposed as part of this application. A more lineal approach has been indicated to roadside locations. This is proposed to occur after completion of interior backfilling, as opposed to establishing these at existing ground levels prior to backfilling and pre-loading occurring across a substantial proportion of

the site.

6. RESOURCE CONSENT REQUIREMENTS

6.1 Resource consents are required from both WBOPDC and BOPRC, as explained at ss. 4.2 -4.3 of the AEE. I summarise these below and also consider commentary on the same points from the s42A reporting officers.

WBOPDC District Plan – Resource Consent Requirements

6.2 All necessary consents from WBOPDC are sought by the application to enable the Project as proposed to occur.

6.3 My assessment of the specific resource consent requirements for the Project under the District Plan is set out at section 4.2 of the AEE, with a more fulsome assessment against relevant District Plan rules at Appendix 7 to the AEE.

6.4 I note however that owing to scope amendments post-notification in responding to submissions and to Council feedback, I can confirm one identified resource consent trigger ceases to be the case. The finished surface of all proposed industrial yard spaces is confirmed to be set at RL 3m MVD / 2.78m NZVD16, so as to be above the 100-year flood level as modelled by Golovin flooding consultants.²⁶ Therefore Rule 12.4.1.a concerning building platforms being 'free from inundation' is no longer a resource consent trigger

6.5 I have reviewed Ms Perring's assessment of resource consent triggers,²⁷ and we are in agreement that resource consent is required ultimately as a Non-Complying Activity pursuant to Rule 21.3.12. This is due to technical departures from the Structure Plan and, as above, I have explained that any development of the Site would almost inevitably trigger consent under this rule, given the way in which the staging requirements in the Structure Plan are framed.

6.6 I disagree with Ms Perring, or offer further elaboration contrasting to Ms Perring's framing against resource consent triggers, as follows:

- (a) Rule 4A.1.4 – relates to activities not provided for elsewhere. An activity not in accordance with the Structure Plan is specifically

²⁶ Statement of Evidence of Dr Steven Joynes (dated 25 July 2024) at [4].
²⁷ WBOPDC s42A Report at p. 238-240.

provided for elsewhere in the District Plan (Rules 12.4.9.4 and 21.3.12), as such further triggering of resource consent under the cited rule does not appear correct, in my opinion. This is in any case a moot point, as Rule 4A.1.4 determines an 'activity not provided for' as a Non-Complying Activity, whereas the activity is already determined to be Non-Complying pursuant to Rule 21.3.12.

- (b) Regarding Rule 12.4.16.1, and 12.4.16.3.b – I do not agree subdivision of land into smaller lots is required to be consistent with the Structure Plan. I understand Ms Perring is inferring that because the images of the Structure Plan depict internal secondary planting screens using the labelling of 'boundaries between land parcels', that in turn the land must be formally subdivided down to smaller lots to be consistent with the Structure Plan, or precisely with boundaries in those locations to deliver the same quantum of internal screen landscaping. However, no requirement for subdivision exists in the Structure Plan provisions, and indeed the Environment Court decision considered staging of development with and without subdivision occurring²⁸. I further note the applicable subdivision rules (should subdivision be pursued) do not set a precise number of lots which must be achieved, and by extension average lot sizes which would be achieved (only that no more than 26 lots are created). Rather, in the instance of a lack of subdivision being proposed, I interpret the internal screening requirement to apply to inter-lease or inter-activity boundaries of the site, which is proposed by the application.
- (c) Rule 12.3.4.1 – as explained above, the applicant commits to forming the industrial yard surfaces at RL 3m MVD / RL 2.78m NZVD16, so as to be above the 100-year floodplain level.
- (d) Rule 12.4.9.1 – TPIL does propose to vest the wetland / OLFP reserve with WBOPDC. This can be secured by way of conditions of consent. See comments on conditions of consent later at section 11 of this evidence.

²⁸

Thompson v Western Bay of Plenty District Council ENC Christchurch A091/2005 at 2.5.4.9(c): "subdivision or development may proceed in stages, provided it complies with the intent of the Structure Plan."

- (e) Rule 12.4.9.1.g – there is no indication of wastewater infrastructure in the Structure Plan, or 2005 Environment Court decision documents for that matter, with which the Project could be consistent with.

6.7 The above differences of opinion in interpretation of the District Plan consent triggers do not detract from the overall non-complying activity status for the Application.

BOPRC – Resource Consent Requirements

6.8 I agree with Ms Christian’s summary of the reasons for resource consent under the BOPRC RNRP, and overall activity status of Discretionary pursuant to Rules LM R4 (bulk earthworks) and DW R8 (temporary and permanent stormwater discharge).

7. SECTION 104D ASSESSEMENT

Statutory framework

7.1 Owing to the Non-Complying activity status, the ‘gateway test’ pursuant to s104D of the RMA applies to determining the consent required for the application under the District Plan. The consents required under the RNRP have a Discretionary activity status and are not subject to the s104D test.

7.2 I have set out the implications of this test at [10.3] of the AEE. In summary, the gateway test consists of two limbs, and consenting authorities (WBOPDC only in this instance) can only grant consent if the authority is satisfied at least one of the limbs are satisfied/met. The two limbs of the test are as follows:

- (a) The adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
- (b) The application would not be contrary to the objectives and policies of the relevant plan.

7.3 It is noted that there is no ‘proposed plan’ ie proposed District Plan change, which affects the subject site. As such, the objectives and policies of the relevant plan to consider are those of the operative District Plan.

7.4 I turn below to my assessment of the Project against the two limbs of the

gateway test. These assessments are made taking into account submission points and concerns raised; points made in both s.42A reports, including mitigation being secured by proposed conditions of consent, all of which is discussed later in my evidence.

Section 104D(1)(a) - Assessment of Adverse Environmental Effects

- 7.5 I acknowledge that this limb of the test concerns solely adverse effects, and therefore positive effects of the application cannot be taken into account. Mitigation proposed in respect of identified adverse effects may however be taken into account.
- 7.6 Ms Perring's s42A Report following my assessment of the same effects concludes following adverse effects are no more than minor:²⁹
- (a) Long-term landscape and visual effects;
 - (b) Noise effects;
 - (c) Servicing effects (stormwater is an exception); and
 - (d) Potential for soil contamination exposure.
- 7.7 I agree with Ms Perring's conclusion on these effects, and these are not considered further in this gateway assessment.
- 7.8 Since the issue of the s42A Report a change to proposed landscaping substitutes a landscape bund (1.5m in height, planted with 1.2m high trees at the time of planting), with larger 2.5m-minimum in-the-ground height at the time of planting, being much more substantial trees immediately planted along entire northern boundary. Drawing on the expert advice of Mr Watts as set out in his evidence on the appropriateness and substitutability of this landscape screening measure, I remain of the opinion that any adverse landscape and visual effects of the project upon any person or the environment generally are no more than minor.
- 7.9 Paragraph 244 of the WBOPDC s42A Report outlines the effects Ms Perring has been unable to draw a conclusion on, being:
- (a) Short-medium term landscape and visual effects;

²⁹

WBOPDC s42A report at [243].

- (b) Effects of temporary traffic management upon the Te Puna Station Road/Te Puna Road intersection, and similarly temporary effects on Te Puna Road;
- (c) Stormwater quality and flooding effects;
- (d) Cultural effects;
- (e) Geotechnical effects; and
- (f) Earthworks and construction effects generally.

7.10 I assess these under the same sub-headings below.

Short-Medium Term Landscape and Visual Effects

- 7.11 Ms Perring considers contrasting expert evidence of Mr Watts and Mr Mansergh on this matter at paragraphs 111-116 of the s42A Report.
- 7.12 I summarise the issue as Mr Watts characterising effects as 'temporary' effects between planting until the time of substantial plant maturity (estimated by Mr Watts to be up to 10 years). Mr Mansergh in turn considers the time from planting, until substantial maturity, to not be 'temporary' effects but rather short-medium term, with an expected duration of 5-8 years in this instance to reach a height of 6m. At this level of plant maturity, I understand Mr Mansergh overall agrees with Mr Watt's as to the conclusions on landscape and visual effects into the long-term period. However it follows that until such time that a 6m level of plant maturity is reached, Mr Mansergh is of the view, short-medium term adverse landscape and visual effects will occur.
- 7.13 Mr Watts acknowledges and responds to this interpretation of short-medium term effects at paragraphs [10.24]-[10.26] of his evidence. I similarly acknowledge the distinction drawn by Mr Mansergh and do not dispute it.
- 7.14 In considering the magnitude of these effects, I consider it appropriate to distil how the Structure Plan anticipates sequencing of landscaping pre-requisites to occur.
- 7.15 This is best reflected in my opinion through consideration of Rule 12.4.16.3 (landscape planting and stormwater management), which states as follows:

12.4.16.3.a – The area of planted land around the Business Park boundary, the area of land subject to the Te Puna Station Road roadscape planting, and the stormwater ponds and overland flow path/wetland as shown in the Te Puna Business Park Structure Plan shall all be **established and vested** in Council prior to commencement of any industrial or business activity within the Business Park [emphasis **added**].

7.16 Distinction can be drawn with the next rule 12.4.16.3.b:

Secondary planting shall be **provided** on boundaries between land parcels in accordance with the Structure Plan.

7.17 The first pre-requisite has a distinction of being required *to be established and vested* prior to any commencement of industrial activities; the secondary planting is required to be *provided* at specified boundaries. It is important to note WBOPDC has advised TPIL early in the consenting process they have no interest in accepting vested planting strips, the only feature caveated for potential vesting has been the wetland with access to the Hakao Stream.

7.18 Noting the three-year maintenance timeframe to enable vesting, plants would be more established and prominent having matured over this time in comparison to the lower threshold of just *providing* plants at a location, and I infer this was a deliberately sought outcome. This is further reinforced by the use of the word 'secondary' planting describing internal planting. I note that the Environment Court decision drafting of proposed rules on this matter also stated:³⁰

'The perimeter planting, stormwater ponds and overland flowpath shall be established prior to any industrial or commercial development within the zone with secondary (development stage boundary) planting established in a staged manner along with filling of the site'.

7.19 In my opinion, the interior secondary planting was anticipated to occur distinct from, and later than, the perimeter planting treatment, so as to be responsive to stages of development and occur alongside filling (and equally future changes in extent of uses and activities permitted to occur) within the Business Park. That is proposed in this instance and is not precluded from being complied with by the development.

7.20 The Structure Plan specifies all perimeter planting is to have a width of 10m, which will be delivered, as set out earlier in this evidence and in the evidence of Mr Watts. In terms of in-the-ground height requirements, there are none

³⁰

Thompson & Flavell v Western Bay of Plenty District Council EnvC A016/2005 at p 47.

imposed by the Structure Plan but are applicable heights under the District Plan generally (through Rule 4C.5.3.1 – 1.2m at the time of planting to achieve a height of 2m within 2 years). This again is proposed to be met by the application,³¹ and has already been implemented to a segment of the southern boundary.

- 7.21 As such, planting to the perimeter and interior of the site, precisely as required in terms of pattern and composition, is proposed in accordance with the Structure Plan.
- 7.22 In my view, there is a salient question responding to the raised issue of short-medium term effects that presents itself. This being: what is the difference in screening attributes between perimeter planting that has been established and maintained for approximately 18 months/1.5 years, and three years. A total of 1.5 years is the estimated minimum time that would lapse between planting occurring (as soon as possible after receiving consents) and an initial stage of industrial development commencing (allowing for pre-load settlement time and delivery of all other necessary pre-requisites).
- 7.23 In comparison, the Structure Plan landscaping provisions require establishment and maintenance of the planting for three years, at which time the planting is intended to vest with Council and commencement of industrial operations could occur from that point. Therefore, three years plant growth is the level of growth that could be expected to have occurred by neighbours with outlook to the Site prior to industrial uses commencing to operate. This has not been addressed by either landscape and visual expert, as far as I can ascertain.
- 7.24 In the absence of this, I note the identified viewshafts assessed by Mr Watts contain, for the most part, in the hundreds of metres of distance from the closest part of the subject site to the identified receptor locations, which themselves are not disputed by Mr Mansergh. Rural dwellings to the west and north-west are discernibly closer. Dwellings generally directly west and east are also considerably elevated above the site (on the spurs/ridges of Te Puna Road/Clarke Road). I note Mr Mansergh's consideration of the Environment Court decision from 2005, in particular paragraph 16 which states that 'a

³¹ Appendix 15 to AEE, Landscape Plan, Planting Palette and Outline Wetland Establishment Plan. Minimum 45L plant bags for trees specified to achieve this outcome.

number of properties at higher elevations overlook the site and it is accepted that no amount of amenity planting could screen this site completely from view'. This logically applies regardless of what stage the development and use of the site is at ie construction, short, medium or long term.

- 7.25 Considering the variance in estimated years to reach a maturity height of 6m (5-8 years i.e. a range of three years, recognised by both experts), I consider that there would be a low degree of distinguishment of plant heights at 1.5 years growth compared to 3 years growth, from these distances and higher viewing points of receptors that outlook most directly and down towards the site from the west and east.
- 7.26 I further note that, alongside delivering the correct composition and sequencing of landscaping proposed, the only known activities proposed at the site are permitted activities. The only known use at this time, the ContainerCo proposed use for storage, repair and leasing/selling of shipping containers, was provided for as a permitted activity under the Environment Court decision,³² and remains provided for as a permitted activity under the operative District Plan.³³ As such, the change in visual amenity is anticipated and not related to a non-compliance of the proposed development (noting landscaping pre-requisites are proposed to be met in-full). I make these comments responding to commentary from Mr Mansergh about visibility of such activities in the short-medium term.
- 7.27 Concluding the above analysis, I am of the position that the only non-compliance with landscape planting requirements of the Structure Plan concerns the likely lack of a growth and maintenance period of three years prior to vesting the landscaping and then commencing any industrial activities. Rather, a period of 1.5 years is likely to lapse prior to industrial activities commencing. Considering expert advice as traversed above, I consider any actual or potential adverse landscape and visual amenity effects upon any identified receptors of this non-compliance no more than minor.

³² *Thompson & Flavell v Western Bay of Plenty District Council* EnvC A016/2005 from [102] Depots, storage and warehousing activities, alongside general industrial activities not requiring an air discharge consent (not applicable) were provided for as permitted activities by the Environment Court decision. Using the operative District Plan definition at that time, 'Depots' means transport, tradesperson or contractor depots and includes land and buildings which are used for the receipt, deliver and transit, and storage of goods and machinery. The ContainerCo operation is assessed to meet this definition.

³³ The same definition applies to the operative District Plan today.

Temporary Traffic (Earthworks and Construction Traffic) Effects

- 7.28 Refinements to estimates of temporary traffic movements have been investigated further in response to this point as well as concerns raised across submissions. The temporary effects are addressed in the evidence of Mr Harrison.³⁴
- 7.29 Mr Harrison outlines a worst-case scenario where 86,000m³ of fill is calculated as necessary to deliver compacted design levels proposed for the site. This number has been derived in consultation with geotechnical expert Robert Taylor and myself, from comparing known level variations across the site to the finished proposed level of RL 3m MVD to the interior of the site. It also conservatively allows for expected settlement (drawing on the December 2022 WSP geotechnical report for the site, and varying rates of settlement expected between lease and road areas). It is further conservatively arrived at by excluding any reliance on the borrow site (worst-case, should that arise as unavailable through the consenting or detailed design process for any reason). Lastly, a multiplier of 1.8 has been utilised to account for the 'loose' nature of fill material when transported to site, which reduces with compaction on-site. This is where the volume of 155,000m³ loose, being 15,500 truckloads or 31,000 in and out truck movements to/from the Site in this worst-case scenario. It should be noted pre-load material would comprise site won material.
- 7.30 Such a scale of earthworks necessitates the allowance of at least two earthworks seasons to complete all works, in a staged manner. The earthworks season runs from 16 September to 31 April (seven months excluding holiday period), with the month of May permitted for stabilisation works. In the instance all filling works were completed inside two seasons, this would equate to an average of 13 truck movements (in and out) per hour per working day.
- 7.31 Subject to the temporary traffic management plan ("**TTMP**") measures, with tailored and specific mitigation proposed at the TPSR / TPR intersection (an outline document of this TTMP has been prepared and submitted by Fulton Hogan, road construction and TTMP experts), and also at the site entrance. Such an effect with this mitigation in place on the safety and operation of the road network is assessed by Mr Harrison as being low and acceptable³⁵. This

³⁴ Statement of Evidence of Bruce Harrison (dated 25 June) at [6.44]-[6.47].

³⁵ Statement of Evidence of Bruce Harrison (dated 25 June 2024) at [7.17] and [10.2].

is subject to ensuring the TTMP only facilitates earthworks/construction vehicle passage rather than the possibly greater intensity of operational industrial traffic to the site, and that the TTMP is removed between earthworks seasons/construction periods so as to avoid driver fatigue and the effectiveness of the TTMP.³⁶

- 7.32 I accept the expert advice of Mr Harrison in this regard. I further note the expert advice of Mr Craig Richards of Beca consulting to WBOPDC, who agrees the TTMP solution during the earthworks/construction period only, would be appropriate.³⁷ Ms Perring notes Mr Calum McLean, WBOPDC Transportation Manager, agrees with the Beca review.
- 7.33 Adopting this expert advice, conditions of consent can secure that the TTMP only facilitates earthworks and construction movements, and the permanent intersection upgrade to TPSR / TPR intersection, and proposed permanent site entrances, are delivered prior to industrial operations commencing.
- 7.34 The Structure Plan provides for the development of the Business Park, however it was transparent at the time of the plan change that filling activities would be necessary to form suitable areas in which industry can establish. As such, the nature of staged earthworks and construction activities proposed, and related TTMP measures to manage traffic, can be reasonably expected as part of development of the Business Park.
- 7.35 I note that a slower speed environment for roads in Te Puna has been recently publicly signalled.³⁸ This is in addition to longtime local (and expertly verified) knowledge that the TPSR / TPR intersection is unsafe with its current geometry and operation. This was the reason development of the Business Park has a pre-requisite to improve the intersection, as it was already deficient. This remains the case today.
- 7.36 As such, TTMP measures alongside development activities proposed at the proposed locations (site entrance and Te Puna Station Road/Te Puna Road

³⁶ Statement of Evidence of Bruce Harrison (dated 25 June 2024) at [8.9] and [10.2].

³⁷ Te Puna Industrial Limited – Transport Review, prepared by Craig Richards (dated 13 June 2024) at 3.

³⁸ WBOPDC Speed Management Plan 2024, p 4 – Te Puna between SH2 and harbour – all roads proposed to be 60km/h if not already less. Te Puna Road is currently 80km/h. <https://www.westernbay.govt.nz/repository/libraries/id:25p4fe6mo17q9stw0v5w/hierarchy/council/policy%20updates/Speed%20Management%20Plan%20%284%20April%202024%29.pdf>

intersection), as subject to lower temporary speed limits, is not considered to be an unexpected temporary effect.

- 7.37 I do acknowledge that 6-7 trucks (12-14, 13 average, separate movements in and out) per hour to and from Site will likely be a noticeable change in driver experience on Te Puna Station Road and to a lesser degree Te Puna Road.
- 7.38 Considering the expert advice and mitigation by way of conditions traversed above, and the temporary nature of the effects attached to signalled/zoned development and intersection changes, I am of the view any adverse construction and earthworks effects can be managed so as to be no more than minor on any person or the environment generally.
- 7.39 I note there is some disagreement between Mr Harrison and Mr Richards, who raises concerns that construction vehicle tracking has not been sufficiently considered for the temporary management solution at the Te Puna Road/Te Puna Station Road intersection in respect of surface availability and power pole obstruction. I am aware Mr Harrison has interrogated this precise issue with Fulton Hogan, as well as independently again as set out in his evidence. As such, I adopt the advice of Mr Harrison that there is sufficient clearance available (subject to the provisions of the Fulton Hogan Outline TTMP which includes re-marking of the intersection over its existing seal whilst subject to TTMP management). I further note there is over 5m of mild-gradient berm space within legal road reserve adjacent to the turning path through the intersection (to eastern side) in the event some slight re-widening of the seal was needed.

Stormwater quantity and flooding effects

- 7.40 These effects are addressed in the evidence of Dr Steven Joynes (flooding/flood modelling) and Mr Danny Curtis (stormwater engineering) on behalf of the applicant.
- 7.41 Concerning flooding, the evidence of Dr Joynes presents that in the 50 and 100-year rainfall events (as adjusted for climate change, using BOPRC's preferred RCP 8.5 scenario), there is an unequivocal reduction in flooding hazard upstream and downstream of the site, comparison to the lawful existing environment baseline scenario.
- 7.42 In the 10 year storm event, there is a 10mm, 10 minute duration increase

identified to occur on the OLP Logistics Site. This is concluded to be less than minor and inconsequential by Dr Joynes.³⁹ In all other upstream and downstream locations, there is again reduction in flood hazard.

- 7.43 This mitigation of adverse flooding effects occurs owing to the proposed floodwater mitigation measures – specifically a restricted platform area in which future industrial yards and road can immediately locate within (5.24ha subject to filling, with additional land around the three-bay shed already outside of the 100-year floodplain totalling 7.5ha); combined with delivery of the OLFP within the site and at 45m wide through the Tinex Site, and a third 1600mm culvert beneath Teihana Road.
- 7.44 For completeness, the flood modelling has checked the implications of Tinex unconsented fill (outside of the 45m-wide OLFP through that site) staying in-situ alongside the proposed development scenario, to provide a ‘real-world’ evaluation should that currently unconsented scenario persist for any period of time. This demonstrates in the 100-year storm event, a maximum adverse flooding effect of 14mm occurs (on Tinex land; outside of Tinex land, the additional adverse effect is 9mm). It is to be stressed this additional effect is in no way attributable to TPIL’s proposed development. I note that Mr Pennington, consulting stormwater and flood engineering advisor to WBOPDC, considers an 8mm effect (from a previous version of Dr Joynes flood modelling information) to be ‘trivial’.⁴⁰ I further note Ms Christian, planner for BOPRC, concludes a 14mm flooding effect is less than minor.⁴¹
- 7.45 Considering the above expert engineering advice, and parallel planning assessment reviewed, I also am of the view that any adverse flooding effects of the application (with or without Tinex unconsented fill remaining in-situ) would be less than minor.
- 7.46 Regarding the effects of developing in the Future Development Area. There remains capacity for further filling in this area, without exceeding baseline flooding data. This is confirmed in the evidence of Dr Joynes in endorsing a recommended condition which ensures approved development of that part of the site is demonstrated to not increase flooding effects, cumulatively with the development of the rest of the site, beyond the baseline levels identified.

³⁹ Statement of Evidence of Dr Steven Joynes (dated 26 June 2024) at [5.6] – [5.7].
⁴⁰ Review of Flood/Stormwater Effects for Te Puna Industrial, 297 Te Puna Station Road prepared by Tonkin and Taylor at section 2.2.

⁴¹ BOPRC s42A Report at [7.47].

Subject to this condition, I consider potential flooding effects from developing this area to be appropriately mitigated. I would further add that there is no deferral of effects assessment, as there is certainty of the flood risk outcome – baseline flooding levels will not be exceeded, or otherwise a variation to the existing consent (and effects assessment) would be needed.

7.47 Turning to stormwater quantity and management. I understand Ms Perring has been unable to draw a conclusion on effects in this regard. I interpret primary concerns from Mr Pennington, echoed to some degree by Ms Rhynd, regarding general stormwater management and further detail preferred to be available as follows:

- (a) The gradient available, and sizing, of proposed internal swales to service the secondary stormwater management event (100-year event). It is accepted the swales were sized by WSP for the 10-year event, whilst the stormwater treatment wetland/pond was sized for the 100-year event;
- (b) Correct sizing of the pond/provision of conveyance for stormwater within the development, that currently is conveyed through the site from elevated property to the west/south-west;
- (c) Clarity regarding roadside drain changes;
- (d) Impacts of stormwater pond proximity to north-eastern boundary drain, potentially affecting drain integrity and function (this drain is required to be maintained to give effect to the Structure Plan).

7.48 The evidence of Mr Curtis primarily addresses these matters. Regarding a cited lack of gradient across the long breadth of the Site, Mr Curtis evidence is that there are options to deal with this such as a parallel pipe network collecting from multiple low points along a shallow drain.⁴² This can be sized to accommodate the 100-year storm flow, thereby matching the 100-year rainfall sizing of the receiving pond to comprehensively service this storm event. These outcomes can be secured through conditions of consent requiring engineering approval of detailed design.

7.49 Regarding upstream off-site water to the west demanding conveyance, Mr

⁴² Statement of Evidence of Danny Curtis (dated 26 June 2024) at [7.16].

Curtis canvasses three options that could be implemented at the site and integrated with the existing planned development to service this water.⁴³ Similarly, the option elected can be confirmed at detailed design stage and illustrated to Council satisfaction through conditions of consent.

- 7.50 Mr Pennington cites that northern roadside drain changes in tandem with the new site entrance have not been considered. I disagree. This has been canvassed in WSP reports and plans provided to WBOPDC across 2023. The WSP design ensured maintenance of the hydraulic profile and capacity of the drain, whilst delivering the widened site access, and ensuring adequate room to protect trees to the north of the existing drain. Geotechnical reviews by WSP and more recently CMW Geosciences have confirmed geotechnical methodologies for constructing the accessway infrastructure.
- 7.51 Regarding the proximity of the stormwater treatment pond to the north-eastern drain, and uncertainty as to impacts on the drain raised by Mr Pennington and Mr Olatunbosun. This is responded to in the evidence of Mr Robert Taylor, who I note is a Category 1 WBOPDC/TCC Accredited Geo-Professional and Chartered Professional Engineer. Mr Taylor confirms⁴⁴ that standard detailed design practice ensures that stability in an Ultimate Limit State seismic event is ensured to be achieved (for both pond batters and any open drains). Engineering design inclusions such as rockfill shear keys, or geogrid, are readily available solutions to the stability of the pond and nearby drain in this location.
- 7.52 The above further analysis, in combination with extensive professional engineering information submitted concerning stormwater management to-date, is considered to illustrate clear, expert-led confidence that stormwater can and will be appropriately managed. This extends to the Teihana culvert, which has been the subject of separate engineering design by Harrison and Grierson and will be the subject of a separate consenting process. The design fundamentally ensures appropriate quality and quantity of stormwater to be discharged from the site via a fit-for-purpose treatment train approach, and further 'natural' management and enhancement of site stormwater then delivered through the wetland in the OLFP. The OLFP, and downstream third Teihana culvert, ensures that stormwater and floodwater relief infrastructure is implemented as envisioned by the Structure Plan and as expected by the

⁴³ Statement of Evidence of Danny Curtis (dated 26 June 2024) at [7.6] – [7.7].
⁴⁴ Statement of Evidence of Robert Taylor (dated 25 June 2024) at [5.8].

community.

- 7.53 Also as stated in the WSP civil engineering report, the ContainerCo workshop runoff is serviced via a proprietary treatment system, separating solids, and treating stormwater at source, prior to discharge of water into the treatment train throughout the Site.
- 7.54 Considering the above, I am of the view any potential adverse stormwater management, and flood hazard, effects of the Project would be less than minor.

Cultural Effects

- 7.55 Ms Perring refers to the Pirirākau Tribal Authority's Assessment of Cultural Effects ("**PACE**") submission on the Application, which objects to the Project on the basis of cultural effects upon mana whenua Pirirākau. The concerns raised in the PACE are shared to some degree across two other submissions made in the name of Pirirākau Tribal Authority, and numerous other submissions discussing cultural effects more generally.
- 7.56 I agree with the summary of the scope of the broad cultural concerns and objections as outlined by both Ms Perring and Ms Christian in the s.42A reports. In summary, I understand these to be:
- (a) Effects upon the interconnected culturally significant landscape of Pukewhanake, Te Wairoa Awa and Te Hakao, the basin of which the site sits within;
 - (b) Effects upon the wairua and mauri of the Te Hakao in particular, through manipulation of punaha wai (watershed) nourishing the stream;
 - (c) Sediment loading from the site and quality effects to water;
 - (d) Disturbance of burials within Te Hakao basin; and
 - (e) Diminished ability to exercise cultural values and practices such as mahinga kai and kaitiakitanga.
- 7.57 I understand through case law and acknowledging contemporary planning practice and the importance of addressing not only RMA matters but the Te Ao Māori worldview also, only mana whenua / tangata whenua can authentically

ascertain precise cultural effects, and as such I cannot and do not attempt to do so. I do acknowledge and agree with the assessments of Ms Perring⁴⁵ and Ms Christian⁴⁶ that the effects of the re-zoning cannot be re-considered here, rather it is the effects of the Project which are to be assessed.

7.58 The effects of the Project have been comprehensively considered in my opinion, and mitigation of any identifiable potential adverse effect (with due consideration of the requirements of the Structure Plan) has been sought to be achieved. Of relevance to topics and adverse effects discussed in relation to cultural effects is the following:

- (a) ecological investigation and assessment of effects, which confirms a lack of any identifiable adverse ecological effects of the Project upon the natural environment;⁴⁷ and
- (b) further archaeological investigations have been undertaken by archaeologist Ken Phillips, an archaeologist with significant experience in the Bay of Plenty. This acknowledges the potential for discovery of archaeological material in the floodplain area of the Site, however ascribing a low likelihood of discovery.

7.59 I appreciate the above expert advice does not address cultural effects and values, rather peripheral considerations that may or may not be considered relevant by mana whenua.

7.60 The potential for mitigation of any adverse cultural effects has been sought to be clearly enabled and secured by way of proffering an extensive suite of conditions of consent. These were set out in the formal mitigation package issued to both Council's in June, and I am aware these have been provided to the chair of Pirirākau Tribal Authority by TPIL in ongoing engagement⁴⁸. I am not aware of any response from Pirirākau at the time of issuing this evidence. The conditions of consent seek to provide methods for cultural effects to be mitigated in direct conjunction with Pirirākau through an 'Environmental and Cultural Management Committee' (ECMC) in relation to development and operation of the site.

⁴⁵ WBOPDC s42A report at [253].

⁴⁶ BOPRC s42A report at [7.76] – [7.77].

⁴⁷ Net ecological benefits only are ascertained to result from the Project, as set out in the Statement of Evidence of Henry Whyte (dated 25 June 2024).

⁴⁸ Statement of Evidence of Ken Harris (dated 25 June 2024).

- 7.61 The conditions of consent secure, in summary:
- (a) a framework for an ongoing and long-term engagement and working relationship with Pirirākau;
 - (b) the framework providing for the exercise of design input, environmental controls (through contributions to management plans, Accidental Discovery Protocols and the appointment of kaitiaki monitoring staff to supervise land-disturbing earthworks) cultural and environmental monitoring, the exercise of matauranga and kaitiakitanga;
 - (c) co-design of the wetland, reflecting directly an express outcome of the Environment Court decision (and Structure Plan) in addressing Pirirākau concerns to the plan change at that time;
 - (d) resourcing of Pirirākau in undertaking the above should Pirirākau wish to do so; and
 - (e) should Pirirākau exercise their right to not form an ECMC with TPIL, ensuring regardless that the same opportunities are provided to the Pirirākau Tribal Authority.
- 7.62 I consider the substance and suite of conditions offered to have substantial potential to mitigate concerns raised in relation to adverse cultural effects. I note that such a vast and committed approach to proactively seeking to ensuring mitigation of potential adverse cultural effects as initiated here by TPIL is unlike any other I have witnessed of a private land developer or investor in my planning career.
- Geotechnical Effects*
- 7.63 I infer from the WBOPDC s42A Report that the reason for being unable to draw a conclusion on geotechnical effects of the Application lies with uncertainty on the stability of potential cuts attached to the borrow site, with WBOPDC not having had the WSP Geotechnical Assessment Report (December 2022) expertly peer reviewed.
- 7.64 In anycase, WSP's findings (which were based on testing of the borrow site)⁴⁹

⁴⁹

WSP Geotechnical Assessment Report dated December 2022 at [6.3].

have been independently reviewed, by Mr Robert Taylor who as previously mentioned is a WBOPDC-approved Geo Professional and Chartered Geotechnical Engineer. Mr Taylor recommends decreasing WSP's advised maximum slope gradient of 1:1.75, to 1:2 ie a less steep slope, based on his experience, as applicable to the borrow site.

7.65 Adherence to these recommendations can be secured by conditions of consent.

7.66 Considering the degree of geotechnical investigation undertaken to date, and expert professional opinion provided addressing safety of slopes at the proposed borrow site (and across the landform), I consider the potential risk of instability in undertaking the development affecting the subject or neighbouring land to be sufficiently lowered so as to be no more than minor.

Conclusion – Section 104D(1)(a) – Effects No More than Minor

7.67 As set out above, I agree with Ms Perring's conclusions regarding effects that are no more than minor. Where Ms Perring has an inability to draw a conclusion, I have undertaken further assessment, relying on up-to-date technical evidence and also offered conditions to secure mitigation. I conclude that subject to the proposed mitigation being secured, no more than minor effects in terms of short-term landscape and visual effects, stormwater and flooding effects, temporary traffic effects, cultural effects and traffic effects would result on any persons or the environment generally, in my opinion.

Section 104D(1)(b) Objectives and Policies

7.68 I have reviewed Ms Perring's assessment of consistency with relevant objectives and policies under the District Plan.⁵⁰ Given the pertinent test under the second limb of the s104D gateway test is whether or not the Project is contrary the objectives and policies of the District Plan, I have focused on my assessment on objectives and policies that Ms Perring considers the Project is either contrary or partly contrary to, or is unable to draw a conclusion on.

7.69 I would note from the outset of objectives and policies assessment, that Ms Perring and I appear to have different professional opinions as to the finding of an activity or development being 'contrary' to the objectives or policies of a

⁵⁰ WBOPDC s42A Report, at [11]. As relevant to both ss 104 and 104D RMA assessments.

plan.

- 7.70 Ms Perring considers at paragraph 248 of the s42A Report being ‘contrary to’ as being opposed to in nature, different, or opposite to. And then states that ‘*it is not necessary for the proposal to actually cut across or contradict objectives and policies before it can be said to be contrary to*’.
- 7.71 I disagree with this framing or interpretation of assessing consistency with objectives and policies of a planning document. My understanding and approach is consistency can be considered on a scale from clearly or absolutely consistent at one end, through to repugnant and contrary at the other end.
- 7.72 I also understand case law has determined that ‘contrary’, particularly for the purposes of the s.104D test, would not be characterised as merely different to. Rather, it is a threshold of being repugnant (ie greater than inconsistent) to the objectives and policies of the plan as a whole and the plans overall intent in respect of a particular resource management issue.
- 7.73 I provide my assessment of the consistency of objectives and policies of concern below.

Chapters 12 – Subdivision and Development, and 21 – Industrial Zone

- 7.74 Ms Perring finds that the Project is contrary to the objective 21.2.1(6) of the District Plan which directs ‘*the protection of sensitive environments downstream of industrial areas from the adverse effects of infrastructure required to service such areas*’. This is based on Ms Perring’s view that a workable stormwater solution has not been presented, and questions remaining concerning wastewater pollution. The same concerns frame a position of contrary to similar objectives and policies within Chapter 12.
- 7.75 As traversed in the evidence of Mr Curtis, fit for purpose stormwater management solutions aligning with Structure Plan provisions are feasible to implement at the Site.
- 7.76 Concerning wastewater management concerns, I note Ms Perring’s assessment of relevant effects at paragraph 168-175 of the s.42A report inviting further comment. In response, I would simply note that the containerised wastewater management solution is fit-for-purpose for the

known activities and staff/visitor demand known to be generated by the proposed activity (hire and sales and repairs with workshop), and is utilised at ContainerCo yards across the country. The delivery of more comprehensive off-line infrastructure is not precluded, and would be enabled to be investigated appropriately alongside the determination of fill composition across the Site (to identify potential on-site wastewater disposal options servicing a more intense use of the site as permitted). I note the yard spaces will be elevated out of the 100-year flood plain, and as such the containerised wastewater management infrastructure is not considered to be at undue risk of compromise in flood events. I therefore maintain my position that any adverse effects of wastewater management are acceptable, and the risk of pollution appropriately mitigated. As such, I consider the Project to be consistent with this objective.

- 7.77 For the same reason concerning wastewater, I consider the Project is consistent with Policy 21.2.2(1) and 21.2.2(5).
- 7.78 Insofar as determinations of contrary outcomes to objectives and policies cited with Chapters 12 and 21 concerning wastewater and stormwater management, for the reasons stated above I disagree with Ms Perring and consider the Project consistent with the same objectives and policies.
- 7.79 Ms Perring appears to transfer a finding of 'more than minor' effects (in terms of construction and earthworks traffic generation) to a finding of being partly contrary with Policy 21.2.2(2), concerning protecting the environment from, amongst other matters, traffic generation.
- 7.80 I note the construction and traffic effects of concern are directly linked to earthworking requirements to a) deliver the stormwater, wetland and landscaping pre-requisites of the Structure Plan and b) to deliver industrial land at a level free from inundation in accordance with other WBOPDC rules.
- 7.81 In other words, the Te Puna Business Park industrial estate could not come into being, whilst being in accordance with the relevant Structure Plan and District Plan requirements, without these effects occurring in-principle. I do not consider the 'protection' direction of this policy reflects an intent of the plan to avoid these temporary traffic generation effects. Such an interpretation would render the Industrial zoning and Structure Plan provisions and rigour redundant.
- 7.82 Permanent traffic generation would only come online following upgrades to site

entrance and TPSR / TPR intersection upgrades to suitably protect the functioning of the receiving traffic environment.

7.83 As such, I consider the Project consistent with this policy.

Chapter 4 – Transport and Access

7.84 Ms Perring finds that the Project is inconsistent with numerous objectives and policies of this chapter, all of which are premised on the concerns with temporary construction and earthworks traffic management.

7.85 This has been considered with revised scrutiny in the evidence of Mr Harrison. Ultimately, subject to TTMP measures at both the Site entrance and the TPSR / TPR intersection during the construction and earthworks periods, with particular rigour at the latter intersection, Mr Harrison can support the Project in terms of management of temporary movements. It is noted that these effects will be temporary to the construction and earthworks periods (estimated to be two seasons however may be longer), with Mr Harrison recommending TTMP controls be eased outside of these times to avoid driver fatigue.

7.86 The use of TTMP in the manner proposed is supported in enabling earthworks and construction by Council's transportation advisor Mr Richards as explained elsewhere in this evidence.

7.87 For these reasons, I do not consider the temporary changes to levels of service and functioning of the road environment, as covered by the objectives and policies cited by Ms Perring in this chapter, to be contrary or partly contrary to the objectives and policies. Rather, given these temporary effects are incidental and necessary to give effect to the intent of the District Plan as it applies to this Site, I consider the temporary effects (with management) to be consistent with the same objectives and policies.

Chapter 8 – Natural Hazards

7.88 Ms Perring affirms a position of 'unable to determine' consistency with objectives and policies concerning natural hazard risk management, concerning in particular geotechnical and flooding hazards.

7.89 These two precise hazards as they present risks to safely developing the site (and the potential to affect neighbours or other land) have now been

comprehensively considered in my opinion. The expert evidence of Dr Joynes confirms clear benefits to the surrounding catchment in terms of reduced flooding effects as a result of drainage infrastructure proposed with the application. Robust geotechnical consideration firstly by WSP and latterly and on specific matters by Mr Taylor of CMW Geosciences is considered to comprehensively account for potential risk of geotechnical hazards affecting the development. The avoidance or appropriate reduction and management of the presence of such risks is considered to be achieved by the Project, as directed by the cited objectives and policies. As such, I consider the Project consistent with these objectives and policies.

Chapter 7 – Historic Heritage

- 7.90 Ms Perring concludes that consistency with Objective 7.2.1(3) concerning respect of kaitiakitanga of tangata whenua is unable to be determined. For the reasons traversed in relation to cultural effects above, and considering the offered conditions proactively seeking to provide for the exercise of kaitiakitanga in undertaking the development, subject to hearing the evidence of Pirirākau (should they lead any) at the hearing, I draw the conclusion that the Project is consistent with this objective.
- 7.91 I appreciate the cultural effects advice that the Site is part of an identified cultural landscape of significance to Pirirākau. However, the direction to 'protect' identified sites of significance (as cited by Ms Perring – Policy 7.2.2) in my opinion should be read and considered in its full context of the District Plan. When doing this, I observe the site or proposed development areas are not listed in the Schedule of Identified Significant Historic Heritage Features (Cultural Heritage) list at Appendix 3 of the District Plan. This appears to be the primary (although not exclusive) tool for giving effect to objective and policy direction to protect historic heritage.
- 7.92 Rather, the District Plan expressly provides for this development (of the Business Park, subject to bespoke pre-requisite delivery) to occur. On this basis, I find the Project would be consistent with the objectives and policy when properly put in its District Plan context, or at most inconsistent when balancing with the up-to-date cultural advice from Pirirākau. I do not consider the Project to be contrary to Policy 7.2.2.

Conclusion – Section 104D(1)(b) – Objectives and Policies

7.93 The assessment above traverses objectives and policies that Ms Perring has concluded the project is either contrary or partly contrary to, or otherwise has been unable to determine. For the reasons as set out above, I am of the view that Project is consistent with the specified objectives and policies as relevant to this site, project and intent of the District Plan (in respect of the particular objectives and policies, and well as the intent of the District Plan as a whole concerning development of the industrial Te Puna Business Park).

Overall Conclusion – s104D Gateway Test

7.94 For the reasons discussed above, I confirm my opinion that:

- (a) Any adverse effects of the proposed development, subject to conditions of consent securing mitigation included in the scope of the application, would be no more than minor; and
- (b) The application would be not be contrary to the relevant objectives and policies of the District Plan applying to this site and development.

7.95 On this second limb of the test, the site is zoned Industrial. And is subject to Structure Plan provisions prescribing a set of bespoke pre-requisites to be met to ensure the intent of the Plan in respect of this site is met. These prerequisites, particularly where landscaping, stormwater and floodwater management, and wetland provision are concerned (which in part respond to the rural/semi-rural surrounding context of the site) are all proposed to be met as required. I am therefore strongly of the view that Project is clearly consistent with the intent of the District Plan as it applies to this Site and Project.

7.96 I therefore conclude, having had regard to the parallel assessment of Ms Perring, that it is my opinion that the Project satisfies both limbs of the gateway test and therefore is not precluded from the potential to be granted resource consent, in my opinion.

8. SECTION 104 - ASSESSMENT OF ENVIRONMENTAL EFFECTS

8.1 Following the assessment of adverse effects, as subject to mitigation as traversed in the s104D assessment above, I turn to consider all statutory considerations within s104 of the RMA of relevance to both consenting authorities.

Section 104(1)(a) – Actual and Potential Effects

- 8.2 I note with respect to BOPRC regional consenting considerations, the s42A Report concludes a provisional recommendation of granting of consent, having had regard to all relevant matters pursuant to s104 of the RMA including in relation to potential positive and adverse effects under s104(1)(a). The 'provisional' element concerns further clarity on stormwater and cultural effects. I therefore do not traverse other effects in the domain of BOPRC on the understanding that all other potential adverse (such as geotechnical, earthworks stability and management, dust suppression, groundwater effects, and contamination disturbance) are considered to be able to be appropriately mitigated, subject to conditions of consent securing mitigation as proposed.
- 8.3 For the reasons discussed in the s104D assessment, and considering in particular the evidence of Mr Curtis and Dr Joynes, I am of the view there is expert-led confidence and viability of a fit-for-purpose stormwater management system being delivered. This would deliver robust treatment and management of all necessary stormwater, whilst ensuring no adverse off-site flooding effects occur.
- 8.4 I further note that the proposed conditions applying to the Future Development Area provide certainty of outcome in terms of flooding effects, in that no flooding effects beyond the baseline levels identified by Dr Joynes would result.
- 8.5 Similarly, for the reasons discussed regarding cultural effects in the s104D assessment above, I consider the offered conditions of consent to substantially mitigate the potential for adverse cultural effects to arise.
- 8.6 With regard to potential adverse effects relevant to WBOPDC s.104(1)(a) considerations, I refer to the above 104D assessment. I can confirm that where I (and I note some overlap with Ms Perring) have concluded adverse effects are no more than minor, I uphold my assessment within the AEE and the overall conclusion that any potential adverse effects can be mitigated so as to result in acceptable environmental outcomes in this context.
- 8.7 I note the application has numerous positive effects of relevance to s.104(1)(a) determination. These are set out below.

Positive effects

- 8.8 Taking into account the evidence of all technical experts party to the proceedings, as well as the s.42A assessments of effects, I am of the view that the following positive effects will directly result from the project if consented:
- (a) A significant positive effect for the surrounding transport network and Te Puna community by way of permanent upgrade to the TPSR / TPR intersection. This intersection has been expertly determined, and is locally known, to be unsafe and regardless of whether or not development in the Business Park occurs, requires upgrading with a right-turn bay.
 - (b) Improved safety along Te Puna Station Road through the advanced site intersection design.
 - (c) A positive benefit to local ecosystems and water quality, through the combination of proposed tree provision (native-species-led), stormwater management and the restoration of wetland in the basin of the Hakao Stream. It is noted this would be unlikely to be feasible to restore if through road access to the Tinex Site was pursued, insofar as the wetland is concerned.
 - (d) Positive benefits in terms of reduced flood risk to surrounding landowners in the Hakao Stream catchment, this being of particular concern to numerous submitters.
 - (e) Improved rural roadscape and boundary treatment, sense of visual separation from the industrial land (in time) to neighbouring rural properties;
 - (f) Provision for improved cycling and pedestrian access in the area, with the design of the site allowing for road widening, cycleway provision, and pedestrian access from Te Puna Station Road through wetlands to the Hakao Stream. The opposite side of the Stream is WBOPDC reserve land. Therein lies the potential for considerable positive public recreational benefits, as well as cultural effects in terms of delivering access and further restoration potential to Te Hakao.

- (g) Positive cultural effects in terms of directing heavy traffic away from Pukewhanake Pa site and Wairoa River as sites of significance to tangata whenua;

Objectives and Policies - 104(1)(b)

- 8.9 Again noting the BOPRC s42A recommendation of provisional approval, and the addressing of the provisional stormwater and cultural effects considerations above, I maintain the overall conclusions reached in the AEE (section 9.2) of overall consistency with relevant objectives and policies of the RNRP.
- 8.10 I differ from Ms Perring as to consistency with WBOPDC District Plan objectives and policies. As outlined in the s.104D assessment above, I am of the view the project is clearly consistent with the relevant objectives and policies of the Plan and the Plans intent in respect of the site. The proposed development is, in my view, clearly giving effect the intent of the District Plan as it applies to the site, whilst responding to contemporary traffic operations in the area which is the reason for technical departures from the Structure Plan.
- 8.11 Overall I confirm my opinion that, for the reasons as set out in this evidence concerning the management and mitigation of effects, and consistency with policy direction applying to the site through its zoning and the application of the Te Puna Business Park Structure Plan, the Project is consistent with the relevant objectives and policies of the RNRP and District Plan. I also am of the view that the proposal remains consistent with relevant higher-order planning documents within the ambit of 104(1)(b), subject to the mitigation proposed being secured by through conditions of consent.

Other Matters – Section 104(1)(c)

- 8.12 I maintain the same conclusions reached in terms of relevant 'other matters' as set out in my AEE, noting greater potential for mitigation of cultural effects through offered conditions of consent, which is relevant to considered provisions of the Pirirākau Hapu Management Plan and Tauranga Moana Iwi Management Plan.

Alternatives

- 8.13 As outlined in the Statement of Evidence of Margaret Harris, the Applicant has considered alternative sites to carry out the Project. I consider this appropriate

and satisfactory consideration of alternatives in the event of potential significant adverse effects arising, as contended in some submissions.

9. RESPONSE TO ISSUES RAISED IN SUBMISSIONS

9.1 I have reviewed submissions on the Application. I agree with the summary of submission themes as presented by Ms Christian⁵¹ and Ms Perring⁵².

9.2 I have provided a 'mitigation package' to WBOPDC and BOPRC titled 'Response to Submissions, Further Mitigation' dated 6th June 2024 setting out responses or clarifications to submission themes. I note my summary of submission themes and concerns generally matches the scope of the summaries of Ms Christian and Ms Perring. I understand this information is available to the Commissioners and submitters and rather than repeat the addressing of submissions in this evidence, defer readers to that material.

9.3 I also note that individual briefs of evidence of technical experts have responded to relevant areas of concerns.

9.4 I believe the substance of concerns with the Project raised in submissions, have been addressed through the following actions:

- (a) Comprehensive tenancy-specific and master noise management plans to be implemented across the Site;
- (b) Responding to the traffic safety concerns with the unequivocal commitment and investigation into upgrading the TPSR / TPR intersection, including maintaining cycleway access and providing for cycleway access along the site frontage with Te Puna Station Road frontage;
- (c) Clear demonstration of adherence to the sequencing, composition and delivery of structure plan landscaping and stormwater management pre-requisite requirements;
- (d) Rigorous modelling of flooding effects to ensure no adverse flooding effects occur. This is the reason a landscape bund has been removed from the road frontage;

⁵¹ BOPRC s42A Report at [6.5].
⁵² WBOPDC s42A Report at p. 232-238.

- (e) Ensuring groundwater flows are not going to be altered;
- (f) Committing to operational site traffic management to avoid sensitive locations such as the Pukewhanake Pa site, Wairoa River environs, and Clarke Road;
- (g) Devising tailored and expert-driven TTMP solutions or options to manage necessary construction and earthworks movements.

10. RESPONSE TO MATTERS RAISED IN THE SECTION 42A REPORT

- 10.1 My evidence has sought to respond to any differences of opinion, or uncertainty of effects assessment, as outlined in both s42A Reports as relevant to s104(1)(a) and 104D of the RMA. I believe the differences of opinions, or suggested gaps concerning stormwater, flooding, wastewater, landscaping, and temporary traffic effects, as raised across both s42A Reports have been addressed above with due regard to technical expert evidence also.
- 10.2 I have also sought to respond where the s42A Reports have 'invited' commentary on certain items or conditions of consents.
- 10.3 I note that further caucusing is to occur on stormwater and flooding matters as invited by BOPRC, addressing those matters in further detail in advance of the hearing commencing.

11. COMMENTS ON PROPOSED CONDITIONS

- 11.1 I have reviewed the proposed conditions for consent for the Application as detailed in both s42A Reports. These in turn appearing to have been at least partially premised on offered conditions of both consents as part of the 'mitigation package' submitted to both Councils. Informal caucusing between planners has also occurred on 7th June concerning mitigation and potential conditions of consent, in the event of consent being granted by Commissioners.
- 11.2 In reviewing the evolution of draft conditions from my draft to those now in the BOPRC s42A Report, I make the following comments concerning potential amendments:

- (a) Permanent Stormwater Discharge Consent (RM22-0010-DC.01, **condition 4** – Stormwater Management Plan. I question if this condition is strictly necessary, given the permitted activity conditions governing discharges (and the need for consents concerning quality of discharge). Particularly noting that, in addition to this, permanent stormwater infrastructure within the site will be subject to detailed design approval and certification against BOPRC Stormwater Management Guidelines, and Hydrological and Hydraulic Guidelines prior to construction and operation (as per condition 9 of bulk earthworks draft conditions).
- (b) Bulk Earthworks Consent (RM22-0010-LC.01), **condition 4.5**. I have no issue with the substance of this condition, however the applicant may seek to define more earthworks staging that may introduce amendments to this condition as drafted.
- (c) Bulk Earthworks Consent (RM22-0010-LC.01), **condition 10.3**. I am unsure if a 'producer statement' is the appropriate document to certify appropriate performance of the wetland, or if they are routinely issued by ecologists – I understand these are issued by engineers confirming adequacy of design, construction of buildings/structures etc. I suggest this is amended to require ecologist certification of conformance with the Wetland Planting Plan.
- 11.3 In reviewing the evolution of draft conditions from my draft to those now in the WBOPDC s42A Report, I make the following comments concerning potential amendments:
- (a) **Condition 7** – I note neither Mr Mansergh or Mr Watts appear to consider the shade cloth condition strictly necessary. Further to the assessment of short-term landscape and visual effects assessment in my evidence above, and the key concern being differences in 1.5 over 3 years of plant growth, I do not consider this condition required to deliver necessary mitigation, in my opinion.
- (b) **Condition 8** - perimeter planting is not what the Structure Plan calls for at the interior locations covered by this condition. I suggest secondary planting relative to staged development be scoped into condition 2 instead, and condition 8 deleted.

- (c) **Condition 9** may or may not be necessary, depending on Commissioner assessment of the need for a shade cloth temporary screen to the ContainerCo facility and use of the site in the short-medium term.
- (d) **Condition 10** is sought to be replaced with a vesting requirement for the wetland and access as a reserve.
- (e) **Condition 11** – reflecting the agreement of traffic experts, this condition is recommended to be amended to require delivery of the permanent TPR/TPSR intersection prior to industrial operations commencing. Related conditions would ensure the use of CTMP during earthworks periods as assessed by Mr Harrison, noting reliance on Fulton Hogan Outline TTMP management devised for TPR/TPSR intersection.
- (f) **Condition 16** – tenancy areas are not defined. Suggest firefighting capacity is supplied for the site.
- (g) A placeholder is provided for wastewater and stormwater. No wastewater conditions are considered necessary. I note permanent stormwater infrastructure is recommended to be subject to detailed design approval to the satisfaction of BOPRC. I suggest stormwater conditions remain as a placeholder until completion of scheduled caucusing.
- (h) **Condition 22** – yard areas, the purpose of this condition is not clear. It is suspected to be related to traffic generation. If so, I recommend the maximum yard areas are to be stipulated to apply ‘only until such time that the Takitimu North Link opens, at which time this condition would cease to apply to the operation of the site’.
- (i) Financial contribution conditions. It is not accepted that firstly these be paid within 40 days of receiving consent. Rather, the water supply payment should be timed to be paid after confirmation of supply of potable and firefighting water reticulated supply to the site boundary.
- (j) It is requested that the roading contribution is not paid to Council, but is rather committed directly to the upgrade of the TPR / TPSR intersection. This is the subject of a work-in-progress agreement to

be tabled to Council in advance of the hearing. Ultimately, the roading FINCO will be paid, however to contractors by TPIL when constructing the intersection, to ensure efficient construction of the intersection upgrade as soon as possible, as governed by separate agreement with Council.

(k) The amounts as per the FINCO calculations are requested to be amended as follows:

(l) A total of 7.8ha net developable area is calculated (includes Future Dev Area).

Roading FINCO = \$29545/net developable hectare, adjusted from Q4 2002-Q1 2024 = \$50424.13, x 7.8 = 393,308.22.

Water supply FINCO = \$20052/net developable hectare, adjusted from Q4 2002 = \$34,222.53 Q1 2024, x 7.8 = 266,935.75

The 7.8ha net developable area is calculated as follows (excludes landscaping and road areas):



(m) The same condition as adopted by BOPRC concerning floodwater management (including for Future Development Area) would be accepted if imposed on the WBOPDC consent.

- (n) At this point in time, the proposed NES-CS conditions are not agreed to be imposed.
- (o) I note that offered conditions of consent concerning cultural mitigation are not scoped into potential conditions in either s.42A report. These are appended for consideration by the Commissioners.

12. CONCLUSION

- 12.1 Sequencing of proposed landscaping, stormwater and floodwater (including wetland) infrastructure, is proposed alongside staged development of the site in accordance with sequence expected by the Te Puna Business Park Structure Plan.
- 12.2 Traffic upgrades to the deficient Te Puna Road/Te Puna Station Road intersection will be delivered prior to industrial operations commencing from the site.
- 12.3 Resource consents from BOPRC (Discretionary) and WBOPDDC (Non Complying) are required.
- 12.4 The proposal is assessed to satisfy both limbs of the applicable 'gateway test' pursuant to s.104D of the RMA.
- 12.5 Pursuant to s.104 of the RMA:
 - (a) Any actual or potential adverse effects of the proposal are considered to be mitigated so as to be no more than minor and acceptable;
 - (b) The proposal will result in significant positive benefits and effects in terms of traffic safety, ecology, flood risk reduction, public recreation and potential cultural wellbeing opportunities.
 - (c) The proposal is assessed to be consistent with the relevant objectives and policies of the RNRP, the District Plan and relevant higher-order planning documents. The proposal is considered to be particularly reflective of the intent of the District Plan as it applies to the site through the industrial Te Puna Business Park Structure Plan.

Vincent John Murphy

27 June 2024

PROPOSED CULTURAL MITIGATION CONDITIONS

1. Environmental and Cultural Management Committee ("ECMC")

- a. Prior to any earthworks hereby approved commencing, the consent holder shall invite Pirirākau to appoint two representatives to form an Environmental and Cultural Management Committee, including a Co-Chair, alongside two nominated representatives from the consent holder.
- b. In the event the initial offer is not accepted by Pirirākau, then the offer shall be repeated every 6 months until it is accepted or it is agreed with Pirirākau it is not the appropriate forum for ongoing engagement. The WBOPDC / BOPRC shall be notified of each offer, the processes undertaken in extending the offer, and the response the consent holder receives from Pirirākau within 10 working days of the offer being made and any responses received.
- c. If an offer to form an ECMC is accepted, the ECMC shall operate for the duration of the industrial use of the site, unless otherwise agreed by the ECMC in which case WBOPDC / BOPRC shall be notified of that agreement.

2. Purpose and Functions of the ECMC

The consent holder shall record minutes and actions of all hui reflecting the ECMC working towards the purpose and function of the ECMC which is as follows:

- a. Creating a framework for ongoing and long-term engagement and working relationship between the consent holder and Pirirākau, including management and monitoring of environmental effects, and the extent of those activities and effects against Pirirākau values and cultural indicators, including provision of reports to Council that might trigger a s.128 RMA review.
- b. Recognise the importance of Pukewhanake, Te Wairoa Awa and Te Hakao and the interconnected cultural landscape and provide recommendations to the consent holder as to how, through meeting the requirements of consent conditions, Pirirākau can exercise kaitiakitanga of affected whenua and awa, during the construction and operational phases of the consented development.
- c. Providing for cultural inductions for employees / contractors of the consent holder, karakia as appropriate for milestone events, including at the start of earthworks and construction activities, and opening of the site for permanent operations..
- d. Providing comments on draft management plans proposed or required by conditions of WBOPDC and BOPRC consents.
- e. Reporting to the consent holder and the Council on any cultural indicators that identify or suggest increasing or decreasing mauri of Pukewhanake, Te Wairoa Awa and Te Hakao.

- f. Developing a cultural monitoring plan for the Te Hakao Stream immediately upstream and downstream of the relevant discharge point (i.e. a mauri monitoring plan). The objective of the plan would be to identify whether a decline in mauri is occurring over time as a result of the project and to identify processes and methods for improving the mauri of Te Hakao over time.

3. Terms of Reference for the ECMC

The Co-Chairs of the ECMC shall set the terms of reference for the ECMC upon establishment of the ECMC, including but not limited to:

- a. meeting protocols, including any appropriate quora.
- b. a process for resolving any disputes that cannot be resolved by direct negotiation,.
- c. a mechanism for Pirirākau to maintain and enhance their relationship with the land (whenua), and waterways (awa) within and adjacent to the site,;
- d. a mechanism to provide recommendations as to how, through the implementation of the obligations in WBOPDC and BOPRC the consent conditions, Pirirākau can exercise kaitiakitanga of affected whenua and awa;
- e. a mechanism to provide recommendations to, and request responses from, the Consent Holder in respect of the matters listed above or other matters that the ECMC may raise from time-to-time; and
- f. have in place measures that protect against the unintended or misuse (includes secondary use) of Pirirākau mātauranga.

4. Consent Holder Obligations to ECMC

The consent holder shall ensure the following occurs in respect of the ECMC:

- a. The consent holder shall appoint a senior leader from within ContainerCo (or otherwise the current company forming the landowner or substantial occupier of the site) to sit on the ECMC and be Co-Chair.
- b. The Consent Holder shall invite the ECMC to hold regular meetings at least quarterly, provided that the frequency and duration of meetings may be reduced or increased where the Pirirākau representatives of the ECMC agree, with this reported back to Councils.
- c. The consent holder shall ensure that any monitoring and / reporting required under consent conditions are provided to the ECMC at the same time it is provided to the relevant Council.
- d. The consent holder shall ensure that Tuna monitoring occurs during earthworks, overland flowpath and wetland formation. Where any Tuna are discovered, works in the immediate vicinity of the discovery are to cease so that the Pirirākau Co-Chair of the ECMC can be notified and

ECMC provides advice on the safe removal and transfer of the Tuna into a safer habitat.

- e. The consent holder shall provide a venue for the ECMC's meetings at the Consent Holder's cost;
- f. The consent holder shall provide remuneration for all appointed representatives and Co-Chairs (such remuneration to be agreed to between the Consent Holder and the Pirirākau Co-Chair);
- g. The consent holder shall resource any other needs or costs associated with the reasonable functioning of the ECMC as described in conditions, as agreed between the Co-Chairs;
- h. The consent holder shall consider and, if requested by Pirirākau representatives of the ECMC, provide a written or other agreed appropriate response to all recommendations made by the ECMC, to the extent detailed in these conditions or otherwise agreed by the MWEC;
- i. The consent holder shall ensure its ECMC representatives attend all ECMC meetings and ensure the attendance of the site manager at all ECMC meetings;
- j. The consent holder shall make available any staff members or independent experts engaged by the Consent Holder to appear before the ECMC, with the costs of the experts' attendances and any necessary preparation to be met by the Consent Holder;
- k. Subject to any operational or health and safety constraints, the consent holder shall provide ongoing opportunities for Pirirākau, through the ECMC, to walk the site before works commence and for ongoing visits to the site over the life of the consented activities.

The consent holder shall record the main points arising from each meeting of the ECMC and provide a copy of that record to the Pirirākau members of the ECMC within 5 working days following each meeting.

5. Consent Holder Obligations: Management Plans

- a. The Consent Holder shall provide opportunities to the Pirirākau Co-Chair of the ECMC to review, provide comments to, and request responses from, the Consent Holder on the following management plans to be prepared and submitted to either WBOPDC or BOPRC as part of compliance with resource consents:
 - i. Earthworks and Construction Management Plan
 - ii. Earthworks and Construction Traffic Management Plan
 - iii. Earthworks and Construction Noise and Vibration Management Plan
 - iv. Operational Master Noise Management Plan
 - v. Site Travel Management Plan; and
 - vi. Wetland Establishment Plan

- b. The consent holder shall request comments from the Pirirākau Co-Chair of the ECMC on the above plans no less than 10 working days (as defined by the RMA or successor legislation) prior to submission of the plans for certification by either WBOPDC or BOPRC. Should no response be received from the Pirirākau Co-Chair of the ECMC within 10 working days, the Consent Holder after that point may submit the relevant plan for certification from either WBOPDC or BOPRC in compliance with this condition.

6. Additional Consent Holder Notification Obligations to ECMC

- a. Separate to any specific notification obligations in this consent or elsewhere, the consent holder shall notify the ECMC of any non-compliance with the conditions of this consent within 5 working days of the consent holder confirming the non-compliance.

7. Engagement with ECMC: Additional/Related Consents

- a. In the event of other resource consents being pursued to give effect to any development within the scope of this application, the Consent Holder shall engage with the Pirirākau Co-Chair of the ECMC (at minimum through written correspondence) for the purpose of ascertaining potential cultural effects of that activity.
- b. In the event that the request for engagement concerning potential cultural effects is refused or not responded to, the request shall be repeated at least twice across a 6-week time period (excluding the period 20th December – 10th January). Should no response be received from the Pirirākau Co-Chair of the ECMC within 10 working days, the Consent Holder after that point may submit further applications for resource consents in compliance with this condition.

8. Kaitiaki Monitoring, Accidental Discovery:

- a. Prior to the commencement of earthworks, the consent holder shall prepare an Accidental Discovery Protocol (ADP) in conjunction with the Pirirākau Co-Chair of the ECMC, in respect of procedures to follow in the event of accidental discovery of archaeological artefacts or koiwi during earthworks. Should no response be received from the Pirirākau Co-Chair of the ECMC within 10 working days, the Consent Holder after that point may complete the ADP. The ADP shall be prepared in conjunction with advice from a suitably qualified and experienced archaeologist.
- b. All site works contractors shall be made aware of the contents and processes of the ADP and identification requirements applying to potential archaeological sites or koiwi discoveries. The ADP shall be available for viewing on-site during earthworks at the request of the Pirirākau Co-Chair of the ECMC or WBOPDC/BOPRC staff.
- c. At least 20 working days (as defined by the RMA or successor legislation) prior to the commencement of any earthworks or construction works, including site investigations and enabling works,

the consent holder shall request in writing that the Pirirākau Co-Chair of the ECMC appoint Pirirākau kaitiaki officers to undertake cultural monitoring of land-disturbing earthworks and for ensuring compliance with the ADP. Resourcing of kaitiaki monitoring staff is to be agreed between the Pirirākau Co-Chair of the ECMC and the consent holder and then provided for by the consent holder upon commencement of the periods of kaitiaki monitoring.

- d. In the event that an archaeological site and/or koiwi is unearthed during earthworks, the consent holder shall immediately stop work on the part of the site that the archaeological site or koiwi is located, and contact Heritage New Zealand Pouhere Taonga (Lower Northern office) and the Pirirākau Co-Chair of the ECMC to ensure correct preservation and procedural requirements are followed in accordance with the ADP.

9. Wetland Co-Design:

- a. Within two months of the commencement of consent, the consent holder shall request the Pirirākau Co-Chair of the ECMC appoint a representative of Pirirākau to engage directly in detailed co-design of the wetland and overland flowpath features of the proposed development as outlined in Drawing No. 002 – Landscape Concept Plan approved by this consent. In the event that this request is not responded to by the Pirirākau Co-Chair of the ECMC within 10 working days (as defined by the RMA or successor legislation), this request shall be repeated to both the Pirirākau Co-Chair of the ECMC and to the current Chair of Pirirākau Tribal Authority Incorporated society. Should no response be received within 10 working days of the further request being made, final design and formulation of a final wetland establishment plan in accordance with the plans hereby approved (and as subject to other conditions of this resource consent) may commence in compliance with this condition.
- b. Resourcing of the representative's time in engaging and advising on detailed design shall be firstly agreed by the ECMC, or if the ECMC is not in place, the consent holder and then covered by the consent holder.
- c. In the event the detailed co-design of the wetland nominates areas of exclusive access required to be in favour of Pirirākau (for example, for storage of cultural monitoring equipment), necessary easements in favour of Pirirākau shall be registered on the property title within six months of the establishment of the wetland.

10. Consent Holder Obligations to Pirirākau in the event the ECMC is not formed (in addition to Wetland Co-Design):

In the event the ECMC is not formed, the consent holder shall regardless ensure the following occurs:

- a. A request is made to the current Chair of the Pirirākau Tribal Authority Incorporated for cultural effects commentary no earlier than 10 working days prior to the submission of any plans for further certification by WBOPDC or BOPRC as required by conditions of resource consent.

- b. Any monitoring and / reporting required under consent conditions to be provided to the current Chair of the Pirirākau Tribal Authority Incorporated at the same time it is provided to the relevant Council.
- c. Notification of any non-compliance with the conditions of this consent within 5 working days of the consent holder confirming the non-compliance, occurs in writing to the current Chair of the Pirirākau Tribal Authority Incorporated.
- d. Requests are to be made to the current Chair of the Pirirākau Tribal Authority Incorporated regarding cultural inductions for employees / contractors of the consent holder, and karakia / blessing ceremonies of milestone events, including at the start of earthworks and construction activities, and opening of the site for permanent operations, at least 20 working days in advance of the events taking place.
- e. In the event of other resource consents being pursued to give effect to any development within the scope of this application, the Consent Holder shall engage with current Chair of the Pirirākau Tribal Authority Incorporated (at minimum through written correspondence) for the purpose of ascertaining potential cultural effects of that activity.
- f. Kaitiaki monitoring to be requested to the current Chair of the Pirirākau Tribal Authority Incorporated (and resourced if provided), and archaeological/koiwi discovery protocols to be in place in accordance with condition 8 above.
- g. Subject to any operational or health and safety constraints, provide ongoing opportunities for Pirirākau to walk the site before works commence and for ongoing visits to the site over the life of the consented activities, including for tuna or other cultural and environmental monitoring activities.
- h. Where any Tuna are discovered to be affected by consented earthworks, works in immediate vicinity are to cease so that the current chair of Pirirākau Tribal Authority Incorporated can be notified and provide advice on the safe removal and transfer of the Tuna into a safer habitat.