

## **BEFORE HEARING COMMISSIONERS**

**IN THE WESTERN BAY OF PLENTY DISTRICT**

**UNDER THE**

Resource Management Act 1991 (“Act”)

**IN THE MATTER OF**

**RC13360L:** an application for resource consent to authorise development works departures and the operation of industrial activities within part of the Te Puna Business Park before all pre-requisite requirements are met.

**BETWEEN**

**TE PUNA INDUSTRIAL LTD**

Applicant

**AND**

**WESTERN BAY OF PLENTY DISTRICT  
COUNCIL**

Consent Authority

## **STATEMENT OF EVIDENCE OF DAVID GRAHAM MANSERGH**

### **INTRODUCTION**

#### **Background Qualifications and Experience**

1. My full name is David Graham Mansergh. I am a qualified Landscape Architect and Recreation Planner.
2. I am a Registered Member of the New Zealand Institute of Landscape Architects (“NZILA”). My qualifications include a Diploma in Parks and Recreation Management with Distinction (completed in 1988), a Bachelor of Landscape Architecture with Honours (completed in 1990) and a Master of Landscape Architecture (completed in 1992), all from Lincoln University, Canterbury.

3. I have been a Director of Mansergh Graham Landscape Architects Ltd since 1996. Before this, I was employed by the company as a landscape architect (1992 - 1996). I have also worked for the Department of Conservation (1986 – 1988) and before that, the Department of Lands and Survey (1985).
4. I was engaged by the Western Bay of Plenty District Council to review the landscape and visual effects assessment associated with the application. I was responsible for preparing the Peer Review Report and recommendations contained in the Project Memorandum dated 12 June 2024, appended to the s42A report.
5. I have over 30 years' experience. During my career, I have been involved in the preparation of and/or the peer review of a significant number of visual and landscape assessments for a wide range of activities and developments. These include industrial developments, ports developments, subdivision developments, quarries (hard rock and sand), mines (coal and gold) and landfills; residential, commercial and industrial buildings within the urban and rural environment; power stations, hydro dams, wind farms, solar farms, power transmission lines, and substations; marine farms, major port facilities, coastal developments, canal housing and marinas; telecommunication masts; ski fields, gondolas and zip lines; dairy factories and poultry farms; and major roading infrastructure projects.
6. Of relevance, I was involved in the recent application by Tinex for resource consent within the structure plan area and appeared on behalf of the Council at an Environment Court enforcement order hearing for the same site. I was also involved in the application by the Ports of Auckland to expand the container terminal at Fergusson Wharf and the establishment of the Waikato Freight Hub (inland container terminal) at Horotiu.
7. I was involved in the NZILA Landscape Planning Initiative, tasked with developing the 'best practice' approach for landscape and visual assessment in New Zealand and provided feedback on the more recent update to the guidelines.
8. I have presented evidence at Resource Management hearings before Councils, the (then) Planning Tribunal and the Environment Court. I also acted as an Independent Commissioner at the Rangitikei District Plan hearings.

### **Expert Witness Code of Conduct**

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 agree to comply with it while giving evidence.
  
10. 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.

### **Purpose and Scope of Evidence**

11. The purpose and scope of my evidence is to respond to the applicant's evidence, in particular Mr Watts, Ms Harris's and Mr Murphy's evidence on landscape-related matters.
  
12. I listened to the evidence presented by these witnesses and the questions put to them by the Commissioners.

### **EVIDENCE**

13. I understand that the Commissioners have taken Ms Perring's section 42A report as read, which contained my review of the effects on landscape and visual amenity (Attachment 7).
  
14. I confirm the content of my report and the conclusions reached, except as amended in my evidence.

### **Further Information Provided by The Applicant**

15. Since preparing my peer review report, an updated landscape concept plan was lodged with the Council. Further amendments to the plan set, dated 08 July 2024, were handed up to the Commissioners during the hearing. When compared to the version submitted at the time of the application, the updated plan has been amended as follows:
  - a) A new potential fill borrow area is identified in the plan.
  - b) The stormwater pond has been shifted westward slightly resulting in the deletion of the wetland buffer planting along the pond's western edge.
  - c) The bunding along the Te Puna Station Road has been removed and roadside planting is shown.

- d) The planting patterns shown around the perimeter of the site now more closely reflect the requirements of the Te Puna Structure Plan (TPSP).
  - e) The minimum height of planting along Te Puna Station Road is identified as being 2.5m
  - f) The perimeter planting and acoustic bunding are confirmed as being as per the structure plan.
  - g) The Tree Palette plan identifies minimum sizes at the time of planting and spacing.
  - h) Perimeter planting patterns and secondary planting patterns and depths are detailed on page 5 of the plan set.
16. It should also be noted that while the plan has been amended, the revision numbers on the plan have not. This should be updated to remove any doubt where the plan is referenced in the decision and/or conditions of consent.
17. The updated plan addresses some of the concerns raised in my report by confirming the type and configuration of the planting currently proposed will meet the requirements of the TPSP.
18. In my peer review, I noted that internal secondary planting has a role in screening views of the proposed site and activities within it from surrounding elevated locations, helping industrial activities blend with the adjacent rural landscape, as intended by the TPSP and supported by the district plan. However, I am still concerned that due to the large lot/lease areas, the internal and inter-lease planting is significantly less than originally planned, making activities within the site more visible from outside elevated locations. I am less concerned about the loss of inter-lot amenity within the site.

#### **Evidence of Dr Margaret Harris**

19. Dr Harris in her evidence usefully outlines the proposed staging of the development within the site and confirms the evidence of Mr Watts in terms of the applicant's intent to implement the landscape mitigation before commercial activities commence within the site.
20. At 4.6 of her EIC, Ms Harris identifies that an overhead electric gantry crane will be installed on the site. I am uncertain how this may affect the expected amenity values associated with the site as no detail is provided about its type, size or location (e.g. is it a fixed structure taller than 9m). The effects of this crane are not addressed in the evidence of Mr Watts and

details of visibility from surrounding locations are not provided in either the assessment or evidence.

21. At 4.7(d) Ms Harris identifies that the fast-growing exotic species to be used in conjunction with the slower-growing native species along the bunds will be removed after the native have established. This does not appear to be consistent with the requirements of the TPSP, which requires the implementation and maintenance of 5 rows of planting as per Figure 4 (page 18) of my report or the evidence of Mr Watts and Mr Murphy.
22. However, in my opinion, provided that the screening requirements of the planting continue to be met, this is a practical solution to the long-term management of the planted bunds and landscape buffers. It appears to me that, based on the suggested species, the two rows of exotic planting are intended to provide fast shelter and a nurse crop as such for the slower-growing natives.
23. While it is identified in Ms Harris's evidence that containers will be stacked on top of each other from time to time and in Mr Watts's evidence that containers may be stacked up to 3 high, the location, massing and layout of the stack or stacks remains unclear, making it more difficult to understand how effective the proposed changes to the mitigation along Te Puna Station Road will be. Concerning Mr Muphy's evidence where he considers the container storage to be a permitted activity, and therefore the assessment of effects is not required, I am advised by Ms Perring that this is only the case if the TPSP is implemented as intended before any activity occurring on the site.
24. If the Commissioners prefer Ms Perring's interpretation, then further analysis of the effects of the container stacks is required to understand if the proposed mitigation will be effective. If Mr Murphy's interpretation is preferred, then I accept that this will not be necessary.
25. It is my understanding that up to 350 containers will be held on-site.

#### **Evidence of Mr Tom Watts**

26. In paragraphs 10.4 to 10.12 of his EiC, Mr Watts identifies several queries raised in the s42A report and paragraph 10.13 addresses each issue in turn. My rebuttal to his responses is as follows, using the same subheadings as Mr Watts.

## Methodology

27. While it is common practice to use a proxy in an assessment, such as using representative view locations where gaining access to private property for assessment or verification purposes is difficult for an applicant (particularly when an application is not supported by the landowner), the purpose of such proxy's is to allow the assessor (and peer reviewer) to adequately and accurately understand how the viewing audience represented by the view location is affected. It is therefore usual for such photographs to be taken from locations that are like or representative of the view from private land, rather than looking towards it, as in this case.
28. In my opinion, while the approach is an accepted one, its application is less than optimal. I therefore support Ms Perring in her assessment that the approach is "acceptable practice" rather than "best practice".

## Perimeter Planting

29. In paragraph 10.19 Mr Watts confirms that the screen planting species I raised concern about in my review are to be used as infill planting. This is acceptable from my perspective providing that the balance of the proposed planting is spaced appropriately and results in a contiguous vegetative screen that meets the requirements of the screening provisions within the district plan and the requirements of the TPSP.
30. Mr Watts confirms that the layout of the planting will meet the requirements of the TPSL (10m wide, 5 x rows). At 10.21 he provides a screenshot from a plan entitled *Landscape Plan – Permitted Works Boundary Landscaping (dated 10 August 2023)*, showing the proposed configuration of the planting. This plan was not provided to me for review before the hearing addresses the issues raised in my report relating to this matter and is consistent with the updated landscape plan set presented by him during the hearing. This plan appears to be superseded by the plan set dated 08 July 2024.

31. Later at 10.38, when he discusses the removal of the bund along Te Puna Station Road, he identifies that the 2.5m high trees will be used to establish the appropriate level of screening.

32. I discuss the removal of the bund later in my evidence.

#### Short-medium Term Effects and Shade Cloth

33. I note Mr Watts agrees that the proposed condition requiring the use of shade cloth to mitigate the effects of container colour would be effective in the short-to-medium term but does not consider the condition strictly necessary.

34. Mr Watts has not provided any evidence on whether the containers will meet the reflectivity performance standards contained in the District Plan, making it difficult for me to support his opinion that the condition is not necessary. I proffer the alternative is to ensure that all containers stored in locations visible from outside of the site meet the reflectivity requirements of the district plan before being brought onto the site. However, I do not prefer this option as, in my opinion, it will require greater levels of monitoring by the Council.

#### No Screening to Proposed Workshop

35. In paragraph 10.28, Mr Watts identifies that he considers the proposed boundary planting and western wetland planting to be sufficient to screen the workshop.

36. Provision 4C.5.3.2(f).v and 12.4.16.3.d of the District plan, requires additional amenity screen planting to be provided around each new building over 100m<sup>2</sup>...*Except to the extent already provided...* When read within the context of 4C.5.3.1, which requires consideration of *...the character of buildings/structure or activity on site* when determining the form of screening, I am unable to verify the conclusion reached by Mr Watts given that the final form of the building has not yet been finalised, with two options still being considered (refer paragraph 10.29 of Mr Watts EIC).

37. While such planting may not add any additional screening when experienced from the road level, for the reasons outlined in my discussion around the inter-lease planting above, the

inclusion of additional screening around the building would also assist in mitigating the views from elevated locations.

#### Noise Attenuation Container Rows and Stacked Containers

38. I concur with Mr Watts that, provided that the proposed noise attenuation containers meet the height requirements of the zone there is no additional concern relating to bulk and location. However, this would appear contingent on the levels of mitigation anticipated by the TPSP being in place and effective before the noise attenuation containers are positioned. I have relied on the interpretation of the requirements of the District Plan and the implementation of the TPSP by Ms Perring in reaching this conclusion.
39. I will however draw the Commissioner's attention to the fact that while the evidence assesses the noise attenuation containers and the stacked containers against the relevant maximum height provisions for buildings within the site, they will "read" quite differently from a visual character perspective.

#### Borrow Area

40. While Mr Watts does not assess the effects of the proposed borrow area in any detail in his evidence, and it is unclear if the development of the borrow area will result in the removal of vegetation that will open up views into the site from surrounding properties, in my opinion, the effects associated with the activity are likely to be temporary and can be mitigated through the shaping and replanting the residual slope as recommended by Mr Watts in paragraph 10.35 of his EIC.
41. The mitigation for this area should be included in the proposed landscape plans.

#### Removal of Northern Bund along Te Puna Station Road

42. Further to the proposed amendments to the landscape concept identified above, Mr Watts identifies in paragraphs 6.1(a) and 10.36 of his EIC that the northern bunds (along Te Puna Station Road), as previously proposed, have now been removed to address potential flooding effects. To mitigate the loss of screening afforded by the bund, Mr Watts states that semi-mature trees with a minimum target height of 2.5m, will be established from the outset to provide the required level of screening.



43. In my opinion, to achieve a level of screening comparable to that required by the relevant screening provisions (2m high screening at 2 years as per 4C.5.3.1.a.ii and 5 rows of screen planting on a 1.5 – 2m high bund in accordance with the requirements of the TPSP), the planting would need to achieve a height of 3.5m - 4m high within 2 years (depending on if the bund was 1.5m or 2m) and be visually impermeable from the finished ground level up. This would ensure that views beneath the canopies of the proposed specimen trees, which would otherwise be blocked by the bund, do not open up as the trees grow.
44. In my opinion, to meet the above performance standard, the central 3 rows of the proposed mitigation planting would need to comprise the 2.5m specimens capable of reaching 3.5m-4.0m within 2 years and be planted at a spacing that ensures that canopy closure occurs within the same timeframe. I concur with the statement made on page 4 of the updated landscape plan set (8 July 2024) the *...Spacing of trees to be approximately 2-3m dependent on species used at time of planting*. Specifically, the spacing required will be dependent on the form and branching habits of the species selected. The outer two rows of native plants would need to comprise larger grade, lower growing species capable of filling the gaps beneath the canopy to ensure that the screen foliage is continuous and visually impervious. As such, the requirement for 2.5m high trees at the time of planting is more appropriately applied to only the central 3 rows within the landscape strip, as per Figure 1 in Mr Watts EIC and Mr Murphy's Figure 2.
45. In my opinion, removing the bund along Te Puna Station Road and replacing it with larger plants can provide comparable screening to a planted bund. However, its initial effectiveness depends on the size and spacing of the plants at the time of planting, the form and branching habits of the chosen species, and whether the landscape area is elevated to the same level or higher than the proposed site filling for flood attenuation. There is a higher risk of the larger specimens "sulking" after transplant, as it takes longer for a larger plant to establish the network of fine (or feeder) roots required to sustain growth than a smaller plant, meaning that the growth rate may initially be slower than predicted.
46. Greater care will also be required to ensure that the soil conditions are appropriate for the larger specimens which, in my experience, can be more sensitive to transplant stress. At the end of the day, trees are living things and there is a degree of unpredictability about potential survival and the suitability of species for the conditions. This is normally addressed

at the time of design, through careful species selection, particularly in areas subject to compaction or saturation, as is potentially the case here.

47. The evidence presented by the applicant does not appear to address the above in any detail and it is unclear if the perimeter landscape area is to be not built up or not. A review of the updated contour plans lodged with the consent suggests that the planting would be at the original ground level (i.e. below the new fill level proposed within the site). If this is the case, it will take longer for the mitigation planting to achieve a comparable level of screening if the site is not filled.
48. Without a greater understanding of the above factors, I am unable to determine how effective the proposal will be, and if it will achieve the intended outcome of the TPSP.
49. I would note that it may be difficult to source enough of the proposed roadside tree species (for the proposed roadside planting along Te Puna Station Road), at 2.5m high, to achieve the level of screening proposed by Mr Watts, within the two-year timeframe identified in the District Plan.

#### **EVIDENCE OF MR VINCENT MURPHY**

50. In Figure 2 paragraph 5.6, of his EiC Mr Murphy clarifies the intended planting configuration within the 10m landscape strips with and without bunding. In paragraph 5.9 he confirms that the applicant will commit to the establishment of inter-lease planting between inter-lease or inter-activity locations within the application site.
51. Mr Murphy discusses the issues relating to landscape and the implementation of the structure plan landscape requirements between paragraphs 7.11 and 7.27 in his EiC.
52. I agree with Mr Murphy (para 7.19) that the interior secondary planting is distinct from the perimeter planting and is intended to be responsive to the stage of development when as they occur. In my opinion, this also suggests that an appropriate level of secondary planting should be established in response to this application, with additional planting established between lease areas or changes in use or function as may occur in the future. I consider that the road reserve planting within the site should occur regardless.

53. In paragraph 7.20 Mr Murphy identifies the requirement of Rule 4C.5.3.1 that screen planting must be 1.2m high at the time of planting and capable of reaching 2m within 2 years. He goes on to discuss the difference in the screening attributes between perimeter planting that has been established and maintained for 1.5 years and 3 years and suggests a link between the maintenance period and the time at which the commencement of industrial operations could occur within the site.
54. In my opinion, there is a clear distinction between the performance standards contained in the district plan and TPSP, which identify the size at the time of planting and the growth rate required over the first two years, and a maintenance period of 3 years. It is common practice to require planting to be maintained for a period to ensure that the plants are established correctly and continue to grow. Ms Perring addresses this issue and how it relates to the vesting and commencements of activity further in her evidence.
55. With regard to the amended proposal to remove the bund from along Te Puna Station Road, the implications are different. As previously outlined, in my opinion, to achieve the same level of screening that would occur if the bund and planting were implemented per the performance standards and TPSP, the landscape planting along Te Puna Station Road (where the bund is proposed to be removed) will need to reach a height of 3.5m – 4.0m within two years and be visually impervious.
56. While this might be achieved using taller plants at the time of establishment as per Mr Watts's evidence, in my opinion, the test should be around the effectiveness of the screening as opposed to the maintenance period timelines suggested by Mr Murphy in 7.23 of his EIC.
57. In para 7.24 Mr Murphy suggests that the identified receptor locations are not disputed by me. While I do not dispute the locations, as previously outlined in my evidence I still hold concerns about the specific method Mr Watts has used to identify the potential effects on each of those locations.
58. I am not entirely sure I understand Mr Murphy's line of argument where he suggests in paragraph 7.25 that there would be a low level of distinguishment between plants at 1.5 years of growth and 3 years of growth from the more elevated and distance view locations.

If planted at best practice spacings, the species identified should put on sufficient growth to achieve more height and closure during this time, resulting in the planting appearing contiguous from a distance.

59. While I concur with Mr Murphy, in paragraph 11. 3 that the recommended Condition 7 (requiring shade cloth around containers) may not strictly be necessary, this is only contingent on the containers meeting the reflectivity performance standards of the plan. Because there is no evidence that the containers will meet the reflectivity standards, in my opinion, the condition offers a practical approach to the mitigation of a potential effect of unknown consequence and duration. I note a similar situation arose in the recent application for temporary consent for the adjacent Tinex Site, to mitigate the effect of the pink swimming pools stored on one of the lots.

#### **SUBMITTER EVIDENCE**

60. I have listened to the evidence presented by the submitters and address key landscape/visual issues as follows.
61. In general terms, the evidence of many of the submitters (who addressed landscape and visual) was impassioned and represents an indication of the sensitivity of those who live in the area to landscape change. While Mr Watts assessment did not address viewer sensitivity in detail in his analysis or evidence, this is consistent with the *Te Tangi a te Manu Aotearoa Landscape Assessment Guidelines* which now recommend:

*While it was previously common to assign a sensitivity rating to audience types (e.g. residents as more sensitive than passers-by), it is better to simply describe the audience. Residents, for example, are likely to cover a range of sensitivities to certain activities and they are better placed to describe that themselves. Likewise, 'sensitivity' depends on the relationship between the person and the proposal and the context...<sup>1</sup>*

62. During her presentation Ms Cowley raised questions about whether the proposed wetland planting was suited to fluctuations in environmental conditions that may be experienced within the site, including fluctuation in water temperature in the ponds.

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<sup>1</sup> Page 242. Te Tangi a te Manu Aotearoa Landscape Assessment Guidelines

63. In my opinion, while Ms Cowley's concerns highlight a risk that the wetland might not establish as expected, these are concerns can be addressed through detailed design if consent is granted. I consider the risk to be relatively low as any failure to select appropriate plan species (resulting in their deaths), would result in a requirement to replace them under the required 3-year maintenance period. I would however recommend that the conditions of consent be amended to ensure that the replacement of dead and dying plantings within the landscape areas occur within the same planting season (as opposed to at the end of the three-year maintenance period).

## **CONCLUSIONS**

64. The effects associated with the proposed departures from the requirements of the TPSP, including the removal of the proposed bund and the proposed activities within the site occurring before the establishment of the required mitigation are still unclear.

65. I consider that most of these issues relating to the technical departures from the TPSP can be addressed by the provision of more detailed information during the hearing and/or through carefully drafted conditions of consent. I remain of the opinion that there is no reason from a landscape and visual effects perspective why consent cannot be granted subject to the inclusion of a set of conditions that require a level of mitigation to be achieved to be commensurate to that required by the performance standards contained in the District Plan and TPSP, as discussed in my evidence above.

66. Should the Commissioners decide to grant consent to the application, I recommend that the landscape conditions contained in the s42A report and further amended to address the issues raised in my evidence above.