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 prior to all pre-requisite requirements being met.

BETWEEN TE PUNA INUSTRIAL LIMITED

Applicant

AND WESTERN BAY OF BAY OF PLENTY DISTRICT COUNCIL

Consent authority

PART REPLY EVIDENCE OF HEATHER PERRING

Before a Hearing Panel: Rob van Voorthuysen (Chair), James Whetu (Commissioner) and Fraser Cambell (Commissioner)

INTRODUCTION

Background, qualifications and experience

1. My name is Heather Louise Perring, reporting planner for Western Bay of Plenty District Council. I re-confirm my experience, that I have read and will comply with the Environment Court Code of Conduct for Expert Witnesses 2023, and that I prepared the Council's 42A report on this application. The fuller version of this statement is laid out at paras 6 – 9 of the 42A report. I confirm I have visited the site once, and the locality on multiple occasions.

Purpose and scope of evidence

2. The purpose and scope of my evidence is to provide a response to the applicant's evidence, and particularly Mr Murphy's evidence on planning related matters. Where relevant, I will also respond to legal submissions.

3. I understand that the Commissioners will take the 42A report as read and there is no need to extensively go through it here. I would like to spend some time to summarise the key points as a way to introduce Council's hearing presentation, and will make any necessary clarifications or corrections to my report. I will then come to my main presentation and partial reply to the applicant and submitters, following the appearances of Council experts.

EVIDENCE

Corrections / clarifications to 42A:

4. In relation to potential effects of the proposed temporary traffic management plan (TTMP) at The Intersection, at para 145, delete "but is likely suitable for construction traffic". And at para 147 first line, after Mr McLean insert "partly", and after 'with this assessment' replace and with "but". The reply evidence from Mr McLean and Mr Jeffcoat will speak further to their positions on the TTMP, which I had not fully understood at the time of preparing the 42A report.

5. Draft conditions dated 17th June 2024, condition 1 – I wish to clarify that the plans and reports referenced were those proposed at the time from the applicant, but that my intention (through bold font on the table headings) was that these were also subject to review and adjustment as necessary through the course of the hearing and any decisions made. In particular, I was not endorsing that the Temporary Traffic Management Plan be approved.

42A Key Points Summary

6. I understand the 42A is taken as read, but to refresh memories will provide a brief summary.

7. The key points were that:

   a) The application was publicly notified as volunteered by the applicant.

   b) There were 273 submissions received, of which one was neutral, the remainder were opposed.

   c) The application is overall a Non-Complying activity, so must pass the Gateway test.

   d) The existing environment does not include any illegal fill that has occurred in the past and remains in situ. Nor any industrial activities occurring on the other sites.

   e) I do not consider the permitted baseline to be appropriate to use in this case, as is Council's discretion.

8. First Gateway Test – Effects Assessment:

   f) Landscape effects are assessed as more than minor without imposed conditions but can be reduced to no more than minor with conditions.

   g) Traffic effects (at the time of my reporting) were more than minor for commencement of industrial traffic via the Te Puna Road/ Te Puna Station Road Intersection (The Intersection) before the permanent upgrade is undertaken. For other traffic effects I was unable to make a conclusion.

   h) The site can be adequately serviced with water, power, telecommunications and internet, with less than minor effects.

   i) Effects from wastewater servicing are no more than minor, although I held some concerns which I invited the applicant to provide further commentary on.

   j) I was unable to draw a conclusion on stormwater, flooding, geotechnical, construction, cultural and archaeological effects due to deficiencies in the information.

   k) Operational and Construction noise effects were found to be no more than minor, with appropriate conditions of

consent.

l) Financial Contribution and Reserves related effects were less than minor, based on the information I had at that time.

m) I noted several positive effects that will result, including a significant improvement for traffic safety from the permanent upgrade of The Intersection.

n) Overall, I was not able to reach a conclusion on whether the application can pass the first gateway test of effects being 'no more than minor'.

9. Second Gateway Test – Policy

a) I considered the proposal to be not contrary, partly contrary or contrary to various Objectives and Policies of the District Plan. There were also some I was unable to determine.

b) Overall, I was unable to draw a conclusion at that time, on whether the application is contrary or repugnant to the Objectives and Policies of the District Plan.

10. Due to the inconclusive findings on the Gateway Test, I was unable to determine whether the application can achieve the purpose of the Act. Therefore, the S104 Recommendation I made was to defer or adjourn the hearing to allow the applicant time to address the information gaps and to respond to the PACE.

11. I did present an alternative option for the panel, to decline the application pursuant to s104(6) due to lack of information. However, as stated at para 285 b), my preference was to adjourn or defer the hearing.

WE WILL NOW HEAR FROM THE COUNCIL'S EXPERTS, AND I WILL PROVIDE MY REPLY THEREAFTER.

Reply Statement to Matters Raised in the Hearing

12. I confirm the content of my 42A report with corrections and clarifications as tabled above, and now reply to the applicant's evidence in chief (incorporating updated information where relevant), and to submitters evidence presented.

13. Primarily I will address Mr Murphy's planning evidence, but will reply on notable points from other experts and submitters, as well as from questions made by the Commissioners in the hearing so far.

Reasons for Consent

14. At para 1.5 of his evidence, Mr Murphy states that the District resource consents are required "*primarily for technical departures from the strict provisions of the Structure Plan*". He lists three reasons for consent which I agree are what is deemed in the planning profession to be 'technical' reasons for consent. However, I do not agree the reasons for consent are "primarily" for technical departures and note Mr Murphy has omitted to list all the other reasons for consent here. Further, I do not think it appropriate to opine on whether the rules of the Structure Plan are overly strict (or not). I take the rules for what they are and assume each rule was intentionally written and directed by the Environment Court to deliver outcomes consistent with the policy intent of the District Plan and the zoning.

15. Through paras 4.17 to 4.19 Mr Murphy discusses the Structure Plan staging requirements and suggests they are impossible to meet as they are written. Respectfully, I do not find this problem exists.

16. Rule 12.4.16 that requires staging, must be read in conjunction with 12.4.16.1 which provides that:
"Any subdivision or development of land within the Business Park shall be designed, approved and developed to incorporate and illustrate amenity screen landscaping, acoustics earth

bunds/fences and a stormwater collection system generally in accordance with the Structure Plan and Appendix 7".

The framework of the Industrial Zone rules are also informative. There I note that subdivision is not provided for as a permitted activity, rather, it is a controlled activity where in accordance with Rule 21.4.2. And that rule states:

21.4.2 Subdivision and Development

a. In addition to the subdivision and development standards in Section 12 all subdivision or development of land within the structure plan areas shown on the Planning Maps and in Appendix 7 shall be designed, approved and undertaken to incorporate and illustrate the infrastructure and mitigation features identified, including roading and road widening, walkways and cycleways, buffer areas, amenity screen landscaping, acoustics earth bunds/fences and stormwater collection systems as appropriate to the area.

Any activity not in general accordance with the structure plan will require resource consent as a Non-Complying Activity.

b. No minimum lot size

17. My interpretation (and after a reading of the 2005 Environment court Interim Decision[1] including all annexures), is these rules are purposely included to make it clear that the screening, earth bunds and stormwater system are to be provided with each (or <u>any</u>) stage of development. Is should be noted that the structure plan map was amended following the issue of the Interim 2005 decision, which shifted the OLFP/wetland from between Stages 2 and 3, to on the edge of Stages 3 and 4[2]. Although the operative plan now shows the OLFP/wetland further over within Stages 3

[1] Thompson and Flavell vs Western Bay of Plenty District Council EnvC A016/2005.
[2] See Annexure B attached to the 2005 Environment Court Interim decision, which was the plan proposed by the appellants prior to issue of the final decision.

and 4, practically speaking the OLFP/wetland would likely need to be constructed at the outset to service stages 1 and 2.

18. In any case, what is made absolutely clear by the rules, is that industrial activities cannot commence operation from any stage of the business park until the above mitigations are delivered, and in some aspects this is required across the Business Park as a whole. So in the consideration of non-compliances with staging and pre-commencement rules, I do not think it is appropriate to minimise the staging requirements as Mr Murphy has, to being outdated, impossible, too strict, or easily attracting a non-compliance. I consider the focus should be on the effects of the non-compliances and whether those effects can be avoided, remedied or mitigated.

19. I will update my rules assessment further on in my evidence, including further discussion of the subdivision rules and how they relate to visual effects.

Relevant Background and Process Matters

20. There are various criticisms made by Mr Murphy and Mr Pilkington, of how I have conveyed within the 42A report, issues with the process for obtaining adequate information and whether the recommendation to potentially decline due to insufficient information was fair.

21. Whilst I do not mean to dismiss the amount of work (and additional mitigations proffered) by the applicant, and I do commend TPIL for proposing to undertake the Teihana culvert installation and The Intersection upgrade especially; there are specific process matters that I wish to reply to.

22. At para 4.27, Mr Murphy outlines the background of the change in civil engineering consultant engaged by the applicant. He refers to WSP plans as being the base of updated plans. However, I wish to make it clear, that a number of the critical issues with obtaining sufficient information throughout this process, relate to the fact that we have not received any updated

civil engineering plans. The applicant has only submitted updates to the MPAD site plans, and new plans for The Intersection design prepared by Harrison & Grierson. To be clear, there have been no further engineering designs for on-site infrastructure or earthworks provided (despite feedback from both councils that the design/plans were inadequate, inconsistent with other plans, or outdated).

23. The other point is that at para 4.28, Mr Murphy implies that within the September 2023 s92 response, matters that were sought to be addressed via the Environment Court mediation process[3] were covered in that s92 response. This is not the case. Council only received information on The Intersection, and on the proposed catchment stormwater/flooding solution in May and June 2024. In my view, these are fundamental aspects of the application.

24. At the time of the 42A report being due, and even now, the stormwater information is inadequate. TPIL have not demonstrated that the effects from stormwater can be adequately managed with a system that works. And there are now more questions than answers on flooding.

25. In the conclusion of the 42A report, I stated my recommendation that the process be adjourned to allow the applicant further time to address the information gaps and demonstrate project feasibility. I understand that the panel have directed further expert caucusing on stormwater and flooding.

Updated Rules Assessment

26. I now turn to updating my 42A rules assessment. At para 6.4, Mr Murphy submits that Rule 12.4.1a. is no longer triggered, due to TPIL now confirming that the finished level of the industrial yard spaces will be to RL 3m MVD (i.e. clear of the 100-year flood event). For the first stage of filling/industrial use I agree. However, the applicant needs to confirm whether the Future Development Area proposed and the Proposed Borrow Area

[3] GI Findlay Trustees vs Western Bay of Plenty District Council, 2003.

would also comply with this rule.

27. The rule states:
"Every existing or proposed site within the development shall have a building site suitable for any approved activity free from inundation, erosion, subsidence and slippage".

28. At para 6.6 of his evidence, Mr Murphy responds to my conclusion that the commencement of industrial activity prior to (or without) the Structure Plan pre-requisites having been met is not otherwise provided for by the District Plan, and therefore it would default to Rule 4A.1.4. He considers that Rules 12.4.9.4 and 21.3.12 are the relevant rules, and in any case it is a "moot point".

29. I have reviewed this carefully and confirm that Rules 12.4.9.4 and 21.3.12 relate only to subdivision and development. They do not apply to use of the site for industrial activity. I reaffirm my opinion that Rule 4A.1.4 is applicable. Nor do I consider it a 'moot point' that the proposal triggers consent for advancement of industrial activity on the site prior to all pre-requisites being completed, or where there are sought departures from the subdivision and development requirements. In my opinion, it is highly relevant to the consideration of short-medium term visual and landscape effects.

30. Mr Murphy and I have opposing views of whether subdivision is required by the rules, and how this may impact on internal landscaping requirements. At para 6.6 (b), Mr Murphy outlines how he does not consider the Structure Plan strictly requires subdivision to occur, or that it should be consistent with the structure plan. He also considers that the Environment Court decision envisaged staging of development with and without subdivision occurring. He further notes that "*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".

31. I agree that the rules do not explicitly require that subdivision occurs. That is, there is not a rule that states for example that the site must be subdivided in accordance with the Structure Plan. However, the Structure Plan (Appendix 7) does show 26 lots across the business park, with 10 of those on the applicant's site, and planting on the allotment boundaries. Rule 12.4.16 states that *"The Te Puna Business Park shall be developed (including staging) in accordance with the Te Puna Business Park Structure Plan in Appendix 7*". And as noted earlier, the industrial zone chapter provides for subdivision in accordance with the structure plan as a controlled activity, with any non-compliance falling to Non-Complying.

32. Plan rules are to be interpreted by seeking the plain ordinary meaning of the rule, but that exercise isn't to be undertaken in a vacuum. Where there is ambiguity in a rule, regard can be had to the immediate context (including objectives, policies and methods) and in some cases it may be necessary to refer to other sections as well.

33. I have considered all those matters and I have also reviewed the underlying plan change that created those rules. I have undertaken a careful analysis of the Interim Environment Court decision from 2005 which sets out the main issues considered by the Court. I now table Annexure A of that decision, which is the draft Structure Plan promoted by the appellants at that time.

34. Looking at that proposed version of the Structure Plan, it appears that the appellants sought that secondary planting only be required on development stage boundaries. The Court, in considering density controls, determined at para 82 "*because the entire site can be overseen, we have concluded that there is some merit in considering a combination of setback and controlling density by limiting the number of lots*". It was decided that setbacks should be imposed around the external boundaries of the sites, and the Court noted at para 86 that "*we accept that*

this will mean there are going to be internal boundaries where there is no setback between buildings at all, leaving the ability to conglomerate buildings. Our view is that this can be adequately controlled by limiting the number of lots rather than specifying an area of coverage. Rather than specifying a minimum lot size, we have concluded that it would be better for the concept plan of the area to demonstrate the number of sites and the relative size of those sites".

35. And at para 87 "*having regard to the 26 hectares available for development, we have concluded the total number of sites should be no more than 26, with the configuration of this to be shown on the concept plan, including all landscaping and other development. In this way a more predictable outcome can be ascertained*."

36. Considering this, and referring to Annexure A, and comparing that to the final and operative Structure Plan, it is obvious that the Court specifically ordered that the Structure Plan demonstrates the number of sites and size of those sites, along with the amount of secondary planting. Annexure A shows that the appellants attempt to have planting only between stages was not accepted by the Court, rather the final plan required planting between lots (or land parcels).

37. I infer from the above that the Court did not contemplate a scenario absent of subdivision. They certainly sought to avoid a scenario where buildings are conglomerated or where density (and perhaps intensity) is unmitigated. In any event, my opinion based on all of the above, is that the Plan does clearly require compliance with Appendix 7 (i.e. the Structure Plan). As such, I reaffirm my opinion that the applicant is proposing substantially less internal planting than what the Structure Plan requires, and that requires consent pursuant to rule 12.4.16.1 and 12.4.16.3.a. The effects of this non-compliance can rightfully be assessed.

38. Regarding other rules and my assessment at para 80 of the 42A, I confirm the following reasons for consent can be removed, given recent changes to the proposal offered by the applicant:

a) Rule 12.4.16.2.b: the applicant has now confirmed that they will not commence industrial traffic until The Intersection is permanently upgraded.
b) Rule 12.3.4.1a: the applicant has now confirmed that the first stage of filling (and consequently the ContainerCo workshop and any other buildings) will be at or above the 100 year flood level. As per my earlier comment, clarification should be provided about the Future Development Area.
c) Also regarding the borrow area, confirmation on slope stability is required to confirm compliance with Rule 12.3.4.1a.

39. Due to inadequate information, I am still unable to conclude assessment against the relevant stormwater rules from Chapter 12.

40. On wastewater, at para 6.6 (e) of his evidence, Mr Murphy states that "*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*". I concur. Rule 12.4.9.1.g applies to all structure plans generally and requires wastewater to be provided in the general locations shown on the structure plans. However, no wastewater is shown on the Te Puna Business Park Structure Plan. I therefore accept that rule 12.4.9.1 does not strictly require wastewater mains at the site.

41. However, as there is no specific provision for wastewater for Te Puna Business Park, and because extension of the existing wastewater main from Te Puna Station Road is cost prohibitive, I consider that Rule 12.4.6.3 is applicable. This provides that:

"*Where an extension to the wastewater reticulation system or the provision of a new system inclusive of a disposal facility is not possible in accordance with Council's District Plan or Development Code then the treatment and disposal of effluent is to be contained within the property boundaries, subject to the requirements of the Regional Council including obtaining a discharge consent where necessary. Connections to Council*

pressurised systems are discretionary." The applicant does not propose that the new industrial yards be serviced with on-site effluent disposal facilities.

42. There is now a new reason for consent, being no roadside bunding – this is a further non-compliance with Rule 12.4.16.1.

43. Finally, Mr Murphy at para 7.27 of his evidence considers that "*the only non-compliance with landscape planting requirements of the structure Plan concerns the likely lack of growth and maintenance period of three years prior to vesting the landscaping and then commencing any industrial activities*". I do not agree that this is the only non-compliance with landscaping requirements.

44. Furthermore, I don't think that Rule 12.4.16.3 clearly stipulates that the vesting and then commencement of industrial activity has to wait for the completion of the three-year maintenance period. There is another possible interpretation that the vesting could occur at any time after subdivision or after planting is established, but regardless, the landowner would need to maintain the landscaping for a period of three years.

45. Rule 12.4.16.4 confirms this; providing that "*the approved three-year landscaping maintenance programme shall be determined from the date on which a Section 224 Certificate is obtained under the RMA or the planting undertaken, whichever is the latter*".

Existing Environment

46. In response to debate about the existing environment and in particular the issue raised by Mr Overton about possible illegal fill on the application site, I would need some time to look into this in collaboration with Regional Council and report back to the panel.

47. There was a matter raised by Mr Cowley about the applicant measuring noise while illegal industrial activities were operating, and therefore is not the true (or legal) background noise. Again,

I will need to look into this and report back to the panel.

48. Otherwise, I believe that the existing environment described in the 42A report is still valid and correct.

Permitted baseline

49. At paras 97-101 of the 42A I outlined my reasons for why I consider the permitted baseline is not applicable for this application.

50. The evidence of Mr Murphy and the legal submission of Mr Pilkington, stress that the industrial activity is a permitted activity in the zone, yet Mr Pilkington has stated at para 4.4 of his submission that "*TPIL does not seek to rely on the permitted baseline. All effects – positive and adverse – of both the district and regional applications have been fully assessed".*

51. In my opinion there are multiple non-compliances with rules that are required to mitigate visual effects from adjacent properties and including Te Puna Station Road. At this point in time, Mr Murphy does not agree that some of these rules are triggered, and hence the applicant's evidence has not fully assessed the effects of those non-compliances.

Assessment of Effects - Landscaping

52. I now turn to the assessment of effects related to landscaping and the ContainerCo activity, on which there are matters of contention.

53. Mr Murphy has helpfully provided an outline of the likely development sequence on-site in para 5.3 of his evidence. At sub-clause (g) he confirms that the roadside planting will be completed following pre-loading and filling, so that it is established at finished ground level. I infer from this, that compared to the immediate provision of the required road-side bund and planting, the planting will now be delayed by at least several months (allowing for filling settlement). The effect of this change has not been assessed.

54. At para 7.18 of his evidence, Mr Murphy has quoted an extract from the Environment Court drafting of proposed rules, which mentions secondary planting on the development stage boundaries. For clarification, and as per my earlier discussion of the Interim decision, those were the provisions sought by the appellants. They were not the rules imposed by the Court. Rather, the Court required planting on all land parcel (allotment) boundaries.

55. For the reasons outlined above, and also based on Mr Mansergh's evidence, I do not agree with Mr Murphy's summation at para 7.21, that "*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*".

56. Nor do I concur with the opinion presented through paras 7.23 to 7.27 by Mr Murphy, related to the height of planting and a distinction between plant heights at 1.5 years and 3 years. Mr Murphy seems to be saying that 3 years of plant growth is all that is required to mitigate visual effects.

57. I do not infer that the Court accepted that visual effects would be fully mitigated after the plants have been maintained for three years. I have not found any such statements in either of the decision reports. Rather, I consider that visual effects were deemed to be sufficiently mitigated if the Business Park is developed in accordance with the Structure Plan.

58. Further, the vesting and maintenance requirement does not apply to internal planting. Moreover, where it does apply to the perimeter planting/ bunding and the planting in the wetland, that assumes that all landscaping is provided in accordance with the Structure Plan.

59. In the case of this application, there are departures from landscaping requirements which overall mean there is a lesser amount of planting (and now bunding) provided, and there is no screening proposed of the building over 100m2. I maintain my opinion that these non-compliances, combined with the commencement of the ContainerCo activity on-site before all pre-

requisites are completed creates adverse visual or landscape effects in the short-medium term.

60. Due to these non-compliances, I have assessed that the visual effects from the use of the site for industrial activities (including an unscreened building over 100m2) cannot be dismissed through a permitted activity comparison.

61. As such, I strongly disagree with Mr Murphy's statement at para 7.26, that "*the change in visual amenity is anticipated and not related to a non-compliance of the proposed development".*

62. I concur with Mr Mansergh's evidence and maintain that the 42A recommended conditions of consent for landscaping are necessary to achieve effects which are no more than minor.

63. In terms of the roadside bund removal, there are questions about that relate to flooding management that need to be resolved before I can provide an opinion on this non-compliance. I will address this further on.

Assessment of Effects - Transportation

64. As the applicant has now committed to upgrading The Intersection prior to commencing industrial (operational) traffic, that reason for consent falls away.

65. Regarding the proposed TTMP for construction traffic, there remain unanswered questions and I am not convinced that the permanent intersection upgrade should not occur prior to the commencement of construction traffic.

66. Potential effects on Te Puna Road safety have not been thoroughly explored by the applicant, and in that regard, I find the lay evidence presented by the community to be helpful. I accept the point that the Court did not anticipate that most of the Business Park traffic would travel via Te Puna Road. I would also clarify that the applicant has not been forced into that by the Te Puna Station Road slip. Rather, this was promoted by the applicant before the slip, as a way to avoid adverse effects on the

State Highway 2 / Te Puna Station Road intersection[4].

67. I note that the applicant has been given some 'homework' by the panel on construction traffic estimates.

68. I concur with the evidence of Mr Jeffcoat and Mr McLean; and overall I am unable to draw a conclusion on traffic effects at this point in time until that further information is available and has been assessed by Council's experts.

Assessment of Effects – Wastewater Servicing

69. Nothing in this hearing changes my assessment of effects from wastewater, other than due to the applicant now confirming minimum fill height of 3m RL (MVD) I don't hold significant concerns about wastewater facilities being flooded.

Assessment of Effects – Stormwater Management

70. I prefer Mr Pennington's assessment and agree that the information remains to be inadequate for determining if there is a feasible design and thereby if stormwater effects can be mitigated to an acceptable level.

Assessment of Effects – Flooding Effects

71. I prefer Mr Pennington's assessment and agree that the information remains to be inadequate for determining if flooding effects are mitigated to an acceptable level.

Assessment of Effects – Geotechnical Effects

72. I accept the evidence of Mr Telford and recommend that further information should be sought from the applicant regarding potential effects on the road and in-road infrastructure, and the slope stability.

Assessment of Effects – Construction Effects

73. At para 228 of the 42A report, I raised a number of points for which further information on construction would be useful. The

[4] This was also agreed within the GI Findlay Trust transportation conferencing Joint Witness Statement, January 2023.

applicant has now provided some further information on the intended construction sequence; however the timing and staging is still unclear. Similarly, construction traffic volumes have been estimated, but the panel has requested further detail.

74. Construction effects from the opposite widening of the accessway remain unanswered to any degree of detail that allows a conclusion on feasibility and effects.

75. The potential borrow area still requires further investigation on soils, ecology and slope stability.

76. Accordingly, I am still unable to draw an overall conclusion on construction effects.

Assessment of Effects – Noise

77. All noise experts are in agreement, and on that basis I had concluded in 42A that both the operational and construction effects would be no more than minor.

78. In reply to my question, the applicant's noise expert has confirmed that on-site traffic was included in their noise modelling.

79. Mr Runcie has confirmed he is comfortable that the Borrow Area can be managed in accordance with the CNVMP (and comply with consent conditions).

80. Submitters have raised several matters on noise that I consider do warrant consideration, particularly from an enforcement perspective and how the consent conditions could work.

81. I note that in the 42A recommended consent conditions, I included a s128 review condition related to noise. This is due to two factors:

    a) Many of the methods within the Noise Management Plans are reliant on the consent holder, tenants and their staff being familiar with those methods and consistently

implementing them correctly. For some aspects specific training is required such as for container stacking, vanning and devanning.

b) There has been a focus on the noise generated from 'the site' being the application site itself. However, I am unclear as to whether the experts have considered how that would be consistent with the Structure Plan which assumes cumulative noise from all activities across the entire Business Park, when only part of the park is being developed through this application. For example, what happens in a scenario when all three sites are operating industrial activities? And would TPIL have already taken more than their third of noise from the Te Puna Business Park 'noise bucket' so to speak? As such, I consider imposition of a noise review condition appropriate as a precautionary approach.

82. The only remaining noise matter I wish to raise at this point is that the final set of draft conditions provided by the applicant include operational noise limits that are 5dBA lower than the operative District Plan limits. Or in other words, they are consistent with the limits imposed by the Court in 2005. However, the applicant's acoustic assessment confirms that these old and lower limits cannot be met. The applicant will need to clarify if the limits proposed in the condition are an error, or otherwise.

83. I will report back further to the panel on matters raised by submitters in a final written reply.

Assessment of Effects – Cultural and Archaeological

84. The applicant has now provided an Archaeological report prepared by Mr Ken Phillips. This has identified a midden on a spur near the existing dwelling. It is not clear to me if the applicant will apply to Heritage NZ for an Archaeological Authority approval to modify or destroy this, and if so, at what stage.

85. Given the submissions heard from Mr Bidois, which further reinforces the possibility of a discovery being made during

earthworks, including within Te Puna Station Road and the works to form the OLFP, I consider that a General Authority application should be made to Heritage NZ for all earthworks (excavations) proposed.

86. I believe that further consultation with Pirirakau (via an adjournment if deemed necessary) would further facilitate opportunities for passing on of oral and written histories and collaboration with TPIL's archaeologist.

87. Nothing in the hearing has led me to amend my opinion that I am unable to draw conclusions on cultural effects.

Assessment of Effects – Financial Contributions

88. I have taken an understanding from para 11.3 (i) of Mr Murphy's evidence that there is no dispute on the FINCO calculation methodology. I accept that the developable area has changed within recent updates, and that the final calculation should be based upon the stamped plans (should consent be granted).

89. Regarding timing on when the water FINCO should be paid, Mr Murphy rejects payment within 40 days of receiving consent, and suggests it should be due after confirmation of supply is provided to Council. Upon further review I accept this, given that Rule 12.4.16.5 also indicates this, however that rule also requires that it shall be paid prior to commencement of industrial activity. I recommend that the condition be updated to require that.

90. At para 11.3 (j), Mr Murphy requests 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*".

91. This proposal was tabled to Council on Thursday 4th July. Council has responded to the applicant that there has been insufficient

time to consider it, let alone reach any agreement prior to the hearing. So, there is no agreement for funding of The Intersection, and it is not clear whether the applicant is now seeking a departure from the financial contribution rules, specifically, for payment of a mid-block FINCO to go towards widening and maintenance of the local roads.

92. In my opinion, the Structure Plan requires that the Business Park developers pay for the upgrade of The Intersection, as well as pay the FINCO for roading. This is evidenced by the Statement of Facts that was annexed to the Courts Interim Decision.

93. Further, the traffic evidence has raised questions about the safety of the under-width Te Puna Road, and there are geotechnical indications that the upgraded sections of road will suffer from settlement. Submitters have also raised concerns with the wear and tear (or pavement consumption) from the trucks on the roads. Accordingly, I consider that the roading FINCO may fully be required for addressing these effects alone. At this stage, there is not enough information on those effects for Council to assess whether a portion or all of the roading FINCO could go towards The Intersection upgrade.

Conclusion on Effects – First Gateway

94. I hope to be in a position to make a final conclusion on effects and the first gateway in further written reply, after receipt of further information.

Objectives and Policies – Second Gateway

95. Due to the missing information, I remain unable to draw an overall conclusion on the second gateway at this time. Again, I will address this in written reply after receipt of the further information directed by the panel. I will also respond to Mr Murphy's criticisms of my assessment approach if that would assist the panel.

Draft Consent Conditions

96. I will now touch on a few areas of contention on consent

conditions, but given all the 'homework' required of the applicant, and many effects not being able to be determined, I will reserve most of my reply on conditions to my final written reply.

97. I have already responded to draft conditions as they relate to Financial Contributions.

98. Mr Murphy has rejected recommended condition 22 of my 42A saying the purpose is not clear, which specified "*The ContainerCo yard shall be limited to an area of 4.8ha in accordance with the approved site plans referenced in Condition 1 above. Other industrial yards may occupy a combined area of no more than 3.95ha*".

99. To explain, the reason for this condition is threefold. Firstly, Mr Harrison's traffic generation estimates are based on a formula which utilises yard area based on the type of activity. Secondly, the noise assessment is based on the ContainerCo yard being in a defined part / area of the site. Finally, I deem it appropriate to limit the ContainerCo yard area to provide more certainty on the scale of the activity, which also ties back to the visual effects and screening.

100. I am now of the opinion after hearing the evidence, that there should be conditions which limit both construction and operational traffic generation. However I am unable to specify what an appropriate limit would be at this time.

101. I note I omitted to include a condition on yard setbacks which reflect the Te Puna Business Park setback rules. I will include this in my final set.

102. There are a number of questions the panel have raised on conditions, which I have recorded and will respond to in my final reply. Though I am also happy to answer any questions today.

103. One final important matter is that for any management plan conditions, these need to include not just an action for those to be certified, but also that the activity shall be managed in

accordance with those certified plans.

S104 Decision Recommendation

104. Upon further consideration of positive effects, I am reluctant to place much weighting on those which result simply from complying with requirements of the Structure Plan. For example, The Intersection upgrade. Yes, the upgrade will bring significant benefits to the community, but the fact is, that it is required to facilitate the safe operation of the Business Park.

105. Due to the missing information, and lack of clarity on feasibility of some aspects of the proposal at this stage, my recommendation remains as it was within the 42A report – primarily that the hearing be adjourned for further information.