

Abatement Notice



Section 324
Resource Management Act 1991

TO: **A & J Demolition Limited**
2 Cameron Road
Tauranga 3110

1. Western Bay of Plenty District Council gives notice that you must cease the following action:

Using the property at 245 Te Puna Station Road for:

1. Storage of concrete and/or crushed concrete; and/or
2. Crushing concrete.

2. The location to which this abatement notice applies is:

245 Te Puna Station Road, Te Puna (as shown on the aerial photograph attached at Appendix 1).

3. You must comply with this abatement notice within the following period:

By 1 March 2021.

4. This notice imposes the following further conditions:

Western Bay of Plenty District Council compliance officers will, from time to time, undertake inspections to check whether you are complying with the Resource Management Act 1991 and this abatement notice.

5. This notice is issued under:

Section 322(1)(a)(i) of the Resource Management Act 1991.

6. The reasons for this notice are:

Background

Barry Daniel, Beth Daniel and GI Finlay Trustees Limited are the legal owners of 245 Te Puna Station Road, Te Puna which has the legal description Lot 2 Deposited Plan 22158 and is shown in the aerial photograph attached to this notice (the **property**).

The property is shown on the Western Bay of Plenty District Plan (**Plan**) maps as being in an industrial zone known as the "Te Puna Business Park" and containing land that is subject to a flood hazard overlay.

Section 12.4.16 of the Plan provides that the Te Puna Business Park shall be developed in accordance with the Te Puna Business Park Structure Plan in Appendix 7 of the Plan. A number of the requirements of the Te Puna Business Park Structure Plan have not yet been satisfied.

Section 12.4.16 of the Plan sets out a number of staged infrastructure requirements that must be satisfied before any development can take place at the property. A number of these requirements have not yet been completed, namely the requirements set out in clause 12.4.16.3 relating to landscape planting and stormwater management.

Development is defined in the Plan as "any work that involves the disturbance and/or an excavation of the land surface ...".

Rule 21.3.12(c) of the Plan provides that development that is not in general accordance with the relevant structure plans and their stated servicing requirements (including any staged infrastructure requirements) is a non-complying activity and therefore requires a resource consent. The Council has no records of any resource consent being granted to allow development of the property.

Inspection on 31 October 2019

Following a complaint, Council officers inspected the property on 31 October 2019 and found that

development of the property had occurred. Soil and grass had been stripped and sections of the property levelled. Gravel had been installed. Dirt drains had been excavated and the property had been divided into 12 separate fenced sections. There was a sign advertising "INDUSTRIAL FENCED YARDS FOR LEASE".

Abatement notice issued in March 2020

Given that a resource consent was required for development of the property pursuant to rule 21.3.12 of the Plan, but no resource consent had been issued that expressly allowed development, that meant the development at the site was contravening rule 21.3.12 of the Plan.

Accordingly, on 3 March 2020 I issued Barry Daniel and Beth Daniel an abatement notice requiring them to cease the development of the property.

These abatement notices were not appealed. After I issued the abatement notices in March 2020 Mr Daniel told me he would obtain a resource consent for the property. However, at the date of this notice the Council has not received an application for a resource consent.

Complaints about concrete crushing and storage at property

Since July 2020 the Council has received a number of complaints from nearby residents that part of the property is now being used to store large amounts of waste concrete and waste concrete that has been crushed at the property. This has included complaints about dust issues associated with the storage of concrete and crushed concrete and the use of the site by trucks and heavy machinery relating to the storage and crushing of waste concrete.

Following an investigation of these complaints, the Council has established that:

1. Part of the property is being leased to A&J Demolition Limited (**AJ Demolition**).
2. AJ Demolition is using its site at the property (**the AJ Demolition site**) to store waste concrete from demolition sites in the Bay of Plenty.
3. AJ Demolition periodically crush the waste concrete the AJ Demolition site using a concrete crusher.
4. The crushed concrete is stored at the AJ Demolition site until it can be sold for use as aggregate.
5. As at 23 December 2020 a large amount of crushed concrete was being stored at the property (as shown in the photographs attached to this notice at Appendix 2 and 3).

The Council has no records of any consents being issued allowing the storage of solid waste (such as waste concrete and crushed concrete) at the property or allowing concrete crushing to be carried out at the property.

Relevant rules

There are no rules in the District Plan that permit the storage of solid waste (eg concrete waste and/or crushed concrete) at the property. Accordingly, such storage is a non-complying activity pursuant to rule 4A.1 of the Plan and requires a resource consent.

Further, the storage of solid waste and the crushing of concrete at the property do not comply with the following activity performance standards:

2.1. The screening requirements of rule 4C.5 (which apply by virtue of rule 21.4.1(l)). Rule 4C.5 contains two sets of screening requirements that apply to the property, namely:

2.1.1. The screening requirements in rule 4C.5.3.2(a) (screening of activity which has a common boundary with a rural zone); and

2.1.2. The screening requirements for Te Puna Industrial Zone in rule 4C.5.3.2(f), including Appendix 7.

The property lacks the established screening trees required by Appendix 7 and rule 4C.5.3.2 and the existing landscaping starts less than the 20 metre setback distance from the road required by Appendix 7.

2.2. The requirement for sealed parking and loading areas in rule 4B.4.10 (which applies by virtue of rule 21.4.1(g)). The parking and loading areas at the A&J Demolition site are not sealed.

Pursuant to rule 21.4.1 if any of the activity performance standards in rule 21.4.1 are not complied with, the activity is a restricted discretionary activity and therefore requires a resource consent.

The Council has no records of any resource consents having been issued that would allow these activities at the property. These activities are not existing uses or activities that are allowed by sections 10 or 10A of the Resource Management Act 1991.

Therefore I have reasonable grounds to believe and am of the opinion that you are contravening rule 4A.1 and/or rule 21.4.1 of the plan and/or section 9(3) of the Resource Management Act 1991.

IMPORTANT NOTES – PLEASE READ

If you do not comply with this notice, you may be prosecuted under section 338 of the Resource Management Act 1991 (unless you appeal and the notice is stayed as explained below).

You have the right to appeal to the Environment Court against the whole or any part of this notice. If you wish to appeal, you must lodge a notice of appeal in form 49 with the Environment Court within 15 working days of being served with this notice.

An appeal does not automatically stay the notice and so you must continue to comply with it unless you also apply for a stay from an Environment Judge under section 325(3A) of the Resource Management Act 1991 (see form 50). To obtain a stay, you must lodge both an appeal and a stay with the Environment Court.

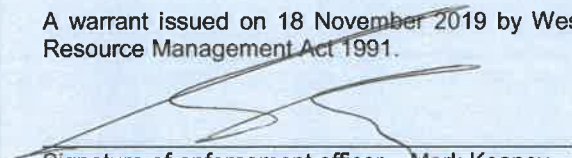
You also have the right to apply in writing to Western Bay of Plenty District Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.

Western Bay of Plenty authorised the enforcement officer who issued this notice. Its address is:

Western Bay of Plenty District Council, Barks Corner, Cameron Road, Tauranga
Private Bag 12803, Tauranga; Telephone: (07) 571 8008

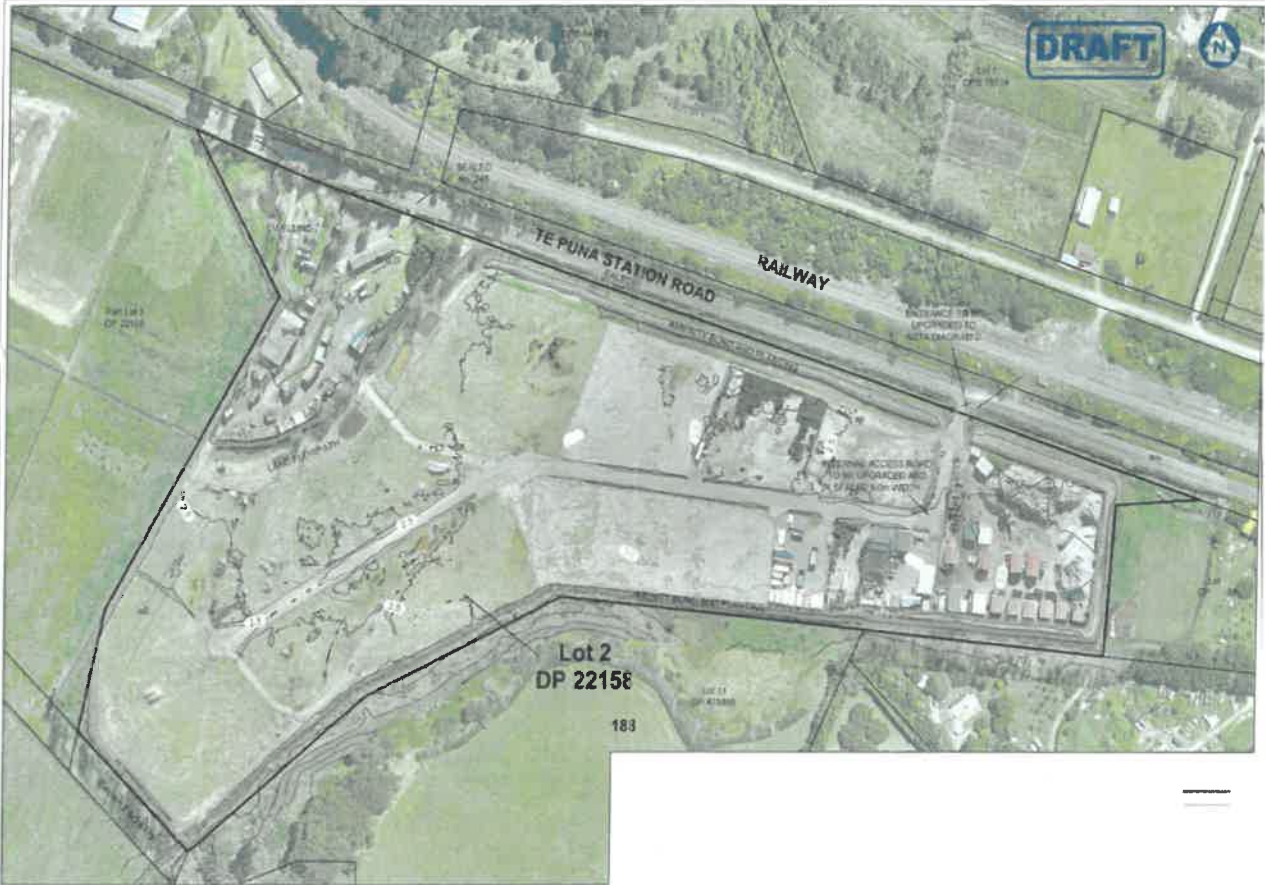
The enforcement officer is acting under the following authorisation:

A warrant issued on 18 November 2019 by Western Bay of Plenty District Council pursuant to section 38 of the Resource Management Act 1991.

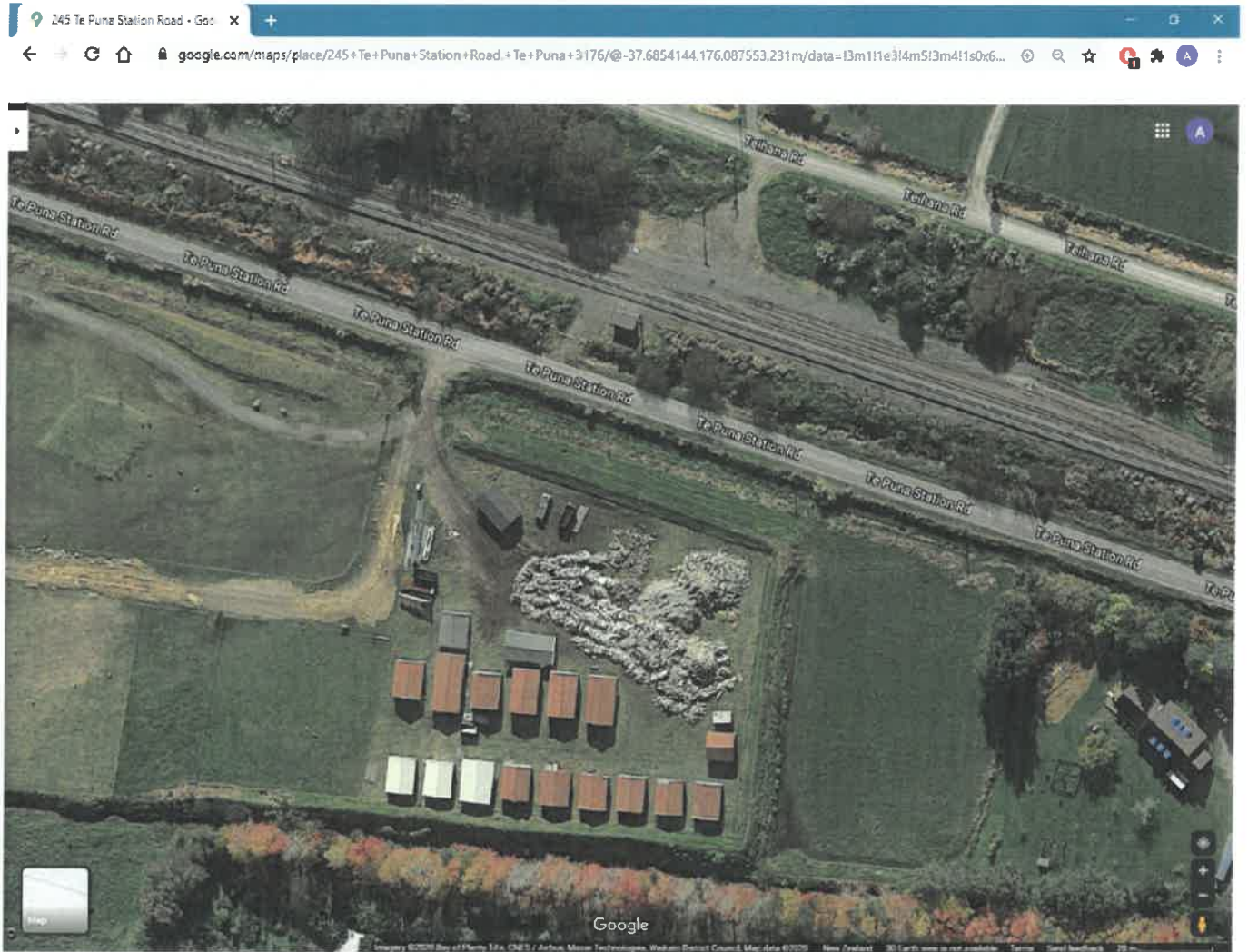


Signature of enforcement officer – Mark Keaney
Date: 23 December 2020

Appendix 1 – Aerial photograph of property



Appendix 2 – Aerial photograph of AJ Demolition's site



Appendix 3 – Photographs of storage piles of crushed concrete



