

Abatement Notice

Section 324
Resource Management Act 1991



TO: **Barry Care DANIEL**
245 Te Puna Station Road
RD 6 Tauranga 3176

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, Te Puna, for any industrial activity (including, but not limited to, as a storage facility for swimming pools, as a storage facility for relocatable homes, as an earthmoving tyre company depot, as a demolition company depot).

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 November 2022

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. The requirements of the Te Puna Business Park Structure Plan relating to shelter planting, secondary boundary planting, secondary internal planting, wetland planting, acoustic bunding and stormwater ponds, have not yet been satisfied in relation to the property.

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 in clause 12.4.16.2 relating to road upgrading and the requirements 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. There is no resource consent that allows development of the property.

Industrial activities are permitted at the property under rule 21.3.1 of the Plan. However, all permitted activities at the property must comply with the performance standards in rule 21.4.1 of the Plan, otherwise the activity is a restricted discretionary activity and requires a resource consent under rules 21.3.8(b) and 21.4.1 of the Plan. There are no resource consents that authorise industrial activities at the property that do not comply with the activity performance standards in section 21.4 of the Plan.

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. A resource consent was applied for on the 9 June 2021 seeking consent to vary some of the specified requirements for the Te Puna Business Park Structure Plan to allow development to proceed. On the 24 June 2021 Council put the application on hold pending a submission of an additional resource consent for earthworks in a floodable hazard area under Rule 8.8.3c.

However, no application for a resource consent was lodged until 7 April 2022. That application seeks resource consent for earthworks at the property but at the date of this notice that application has not been granted. As stated, there is no resource consent that authorises industrial activities at the property.

Inspection on 31 March 2022

On 31 March 2022 I, Mark Keaney, a Council enforcement officer inspected the property and found the following compliance issues:

1. Following the development of the property into separate sections, a number of businesses are using those sections for industrial activities. This includes the following:

1.1. One section of the property is being used by Total Relocation Limited for storing relocatable homes.

1.2. One section of the property is being used by Earthmover Tyre Services Limited for storing a number of large tyres from earthmoving vehicles and five trucks.

1.3. One section of the property is being used by Central Pools Limited (trading as "Compass Pools") for the storage of at least 15 swimming pools.

1.5. One section of the property is being used by AJ Demolition as a storage depot for equipment including an excavator and large demolition waste skips.

(Photographs showing the foregoing industrial activities at the property on 31 March 2022 are attached at Appendix 2 of this notice.)

2. None of the requirements for the property as shown in Appendix 7 of the Plan, have been established. This includes shelter planting on the property's zone boundary, acoustic bunding, planting on the property's internal roads, planting between the property's land parcel boundaries and stormwater ponds.

3. The industrial activities at the property (including but not limited to storage of swimming pools, storage of relocatable homes and earthmoving and demolition company storage depots) do not comply with the following activity performance standards:

3.1. The requirements of rule 4C.5 of the Plan (which apply by virtue of rule 21.4.1(l)), namely:

3.1.1 Rule 4C.5.3.2(f)(i) provides that any development of land within the Te Puna Industrial Zone must be developed to incorporate the amenity screen landscaping, acoustics earth bunds and stormwater collections system in accordance with the Te Puna Rural Business Park Structure Plan in Appendix 7 of the Plan. The acoustic earth bunds, amenity screen landscaping and stormwater collection system required by the Structure Plan in Appendix 7 of the Plan have not been installed at the property.

3.1.2. Rule 4C.5.3.2(f)(ii) provides that prior to commencement of any industrial or business activity within the Te Puna Industrial Zone, the area of planted land around the zone boundary as shown in the Te Puna Rural Business Park Structure Plan shall all be established and vested in Council. The shelter planting along the property's boundary which is part of the Te Puna Industrial Zone's boundary has not been established.

3.1.3. Rule 4C.5.3.2(f)(ii) provides that prior to commencement of any industrial or business activity within the Te Puna Industrial Zone, the stormwater ponds shown in the Te Puna Rural Business Park Structure Plan shall all be established and vested in Council. The relevant ponds shown in the Structure Plan have not been established at the property.

3.2. 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 property are not sealed.

Conclusion

Section 9(3) of the Resource Management Act 1991 (**RMA**) provides that no person may use land in a manner that contravenes a district rule unless the use-

- (a) Is expressly allowed by a resource consent; or
- (b) Is allowed by section 10; or
- (c) Is an activity allowed by section 10A.

Because the activity performance standards in rule 21.4.1 are not being complied with, the industrial activities at the property are restricted discretionary activities and require a resource consent pursuant to rule 21.3.8(b) and/or rule 21.4.1 of the Plan. However, no resource consents have 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 RMA.

Therefore I have reasonable grounds to believe and am of the opinion that you (as the owner of the property) are contravening rule 21.3.8(b) and/or rule 21.4.1 of the plan and/or section 9(3) of the RMA.

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.

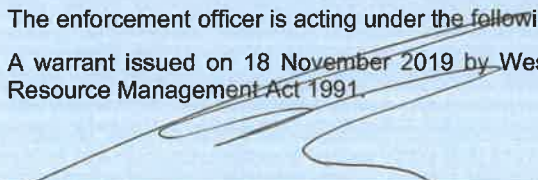
You also have the right to apply in writing to Western Bay of Plenty District Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.

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

Western Bay of Plenty District Council, Barkes 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: 18 May 2022

Appendix 1 – Aerial photograph of property (taken in December 2020)



Appendix 2 – Photographs of industrial activities at site



