

Abatement Notice



Section 324

Resource Management Act 1991

TO:

Andrew Grant Overton
260 Te Puna Station Road
RD 6 Tauranga 3176

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

Development of the property at 250-264 Te Puna Station Road for any industrial or business activity.

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

250-264 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:

Immediately.

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

Andrew Grant Overton and Pingao Trustee 305 Limited are the registered owners of 250-264 Te Puna Station Road, Te Puna which has the legal description Lot 2 Deposited Plan 317426 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".

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 and acoustic bunding 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 are no resource consents that allow development of the property that is not in accordance with the Te Puna Business Park structure plan.

Development of the property

On 16 September 2020 I, Mark Keaney, a Council enforcement officer inspected the property and found that:

1. Development of the property has occurred. Soil and grass has been stripped and sections of the property levelled. Gravel has been installed and the property has been divided into at least five separate sections.
2. Following the development of the property into separate sections, a number of businesses are using those sections. This includes the following:
 - 2.1. One section of the property is being used by RFT Engineering Limited for engineering activities including steel fabrication.
 - 2.2. One section of the property is being used by Earthcube Limited for storage of at least 12 containers and as the location of a show home constructed of containers.
 - 2.3. One section of the property is being used by Bax Firewood for the processing of firewood and storage of firewood for commercial sale.
 - 2.4. One section of the property is being used for the storage of at least 15 swimming pools.
 - 2.5. One section of the property is being used by John Mather Construction Limited (JMC) for the storage of earthmoving machinery. There were two excavators in this part of the property at the time of my inspection.
3. The acoustic bund required along the property's western boundary in Appendix 7 of the Plan, the stormwater pond required at the southeastern corner of the property in Appendix 7, and the shelter planting required along the property's northern boundary in Appendix 7 of the Plan have not been established. When I spoke with Mr Overton about these issues he told me that he has no intention of installing the shelter planting required by Appendix 7 and he will "fight the Council all the way on this issue".
4. The industrial activities at the property (including but not limited to storage of swimming pools, storage of relocatable homes and engineering activities) do not comply with the following activity performance standards:
 - 4.1. The requirements of rule 4C.5 of the Plan (which apply by virtue of rule 21.4.1(l)), namely:
 - 4.1.1 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 and acoustics earth bunds in the Te Puna Rural Business Park Structure Plan in Appendix 7 of the Plan. The acoustic earth bunds required by the Structure Plan in Appendix 7 of the Plan have not been installed on the property's western boundary.
 - 4.1.2. 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 northern boundary which is part of the Te Puna Industrial Zone's boundary has not been established.
 - 4.1.3. 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 pond shown in the Structure Plan has not been established at the property.
 - 4.2. 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.
5. There are currently two access roads for the property where only one is allowed by clause 12.4.16.2(d) of the Plan.

Photographs showing the industrial activities at the property on 16 September 2020 are at Appendix 2 of this notice.

I have subsequently obtained aerial photographs of the property that show that development of the property has been occurring since 2010. An aerial photograph showing the property in 2010 prior to being developed and an aerial photograph showing the property in 2019 following development are attached at Appendix 3 of this notice.

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.

No resource consent has been issued that would expressly allow development at, or of, the property. Development of the property is not an existing use or activity that is allowed by sections 10 or 10A of the RMA.

Given that a resource consent is required for development of the property pursuant to rule 21.3.12(c) of the Plan, but no resource consent has been issued expressly allowing this activity, I have reasonable grounds to believe, and am of the opinion that you are contravening Rule 21.3.12(c) 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.

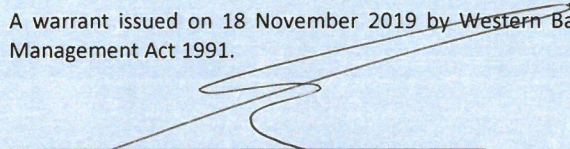
You also have the right to apply in writing to Western Bay of Plenty District Council to change or cancel this notice in accordance with section 325A of the Resource Management Act 1991.

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: 11 May 2021

Appendix 1 – Aerial photograph of property



Appendix 2 – Photographs of industrial activities at site





Appendix 3 – Aerial photographs showing property before and after development

Before development (2010)



After development (2019)

