

IN THE MATTER OF the Resource Management Act
1991

AND

IN THE MATTER OF a resource consent application
by Pou Oranga Whai Ora
Charitable Trust (incorporated)
to establish and operate a
residential care facility and
ancillary offices on a property
located at 19A Baird Road,
Ōpōtiki

STATEMENT OF EVIDENCE OF TIM FERGUSSON

1 INTRODUCTION

- 1.1 My name is Tim Fergusson. I am a self-employed planning consultant based in Whakatāne. I have a Bachelors Degree in Resource and Environmental Planning (BRP), completed in 2001. I have over 23 years planning and resource management experience and am a full member of the New Zealand Planning Institute. During my career I have been involved in a wide variety of resource consent and plan making processes relating to both district and regional issues, and as a result have been involved in many local authority hearings.
- 1.2 The majority of my experience has been within the Eastern Bay of Plenty and in my current role I undertake planning work for a range of clients. This work is typically of a policy analysis or resource consent-related nature, and is undertaken for local authority, utility, and developer clients.
- 1.3 While this evidence is for a hearing conducted by Ōpōtiki District Council (Council), I consider that the appropriate code of conduct is the Environment Court's Code of Conduct for Expert Witnesses. I have read this Code and can confirm that I have complied with it in the preparation of this statement of evidence. I have not omitted to

consider material facts known to me that might alter or detract from the opinions I express.

1.4 I appear in support of the resource consent application lodged by Pou Oranga Whai Ora Charitable Trust (the Applicant). I prepared the resource consent application and attended the pre-hearing meetings. I have visited the site and am familiar with the surrounding area.

1.5 The purpose of this statement is to provide the Independent Hearing Commissioner hearing the application with expert planning evidence to assist the consideration of the application against the relevant assessment criteria.

2 BACKGROUND

2.1 Te Pou Oranga o Whakatōhea Social & Health Services provides a range of social and health services including peer support, assessment, referral, counselling, education, whānau support and advocacy to support clients with mental health and/or addiction issues. Te Pou Oranga o Whakatōhea Social & Health Services is leading the He Pou Oranga Whai Ora programme on behalf of the Eastern Bay of Plenty Iwi Provider Alliance, which includes Tūwharetoa ki Kawerau, Te Tohu o Te Ora o Ngāti Awa and Tūhoe Hauora. In partnership with BOP Police, Te Whatu Ora and Te Aka Whai Ora (Māori Health Authority), the Alliance was successful in securing funding through the Proceeds of Crime Fund for the Bay of Plenty to develop, implement and deliver the Pou Oranga Wai Ora programme. The aims of the programme are to:

- Achieve a sustained reduction in methamphetamine harm and harm caused by the use of other substances resulting in lower levels of family harm call outs and local criminal activity.
- Work in partnership with the New Zealand Police, to support an increased policing focus on prevention.
- Empower tangata Whai Ora and whānau to achieve improvements in their health and social wellbeing.
- Work in partnership with local Health Agencies and other services (e.g., Whanau Ora) to strengthen access pathways for tangata Whai Ora and whānau to seek services from other local health services and social support.

2.2 The Pou Oranga Whai Ora programme involves the establishment and delivery of two components.

(i) A community based whānau support service incorporating both clinical treatment and mātauranga Māori healing approaches. The community service is delivered by whanau connectors, social workers, employment support workers and counsellors.

(ii) A supported accommodation facility and service (He Pou Oranga Whai Ora). This component is the subject of this resource consent application and is described in further detail below.

3 PROPOSAL

3.1 The application seeks resource consent to establish a Hauora and Recovery Centre (He Pou Oranga Whai Ora) with capacity for up to 8 residents along with ancillary staff facilities. The proposed activity will operate from an existing building on a rural residential property located at 19A Baird Road west of Ōpōtiki.

3.2 The facility will provide a wellness centre to support the rehabilitation of individuals undertaking programmes (delivered on and off-site) to recover from drug dependency. Residents will stay at the facility for up to 12 weeks at a time and receive support services (assessment, counselling, and education) delivered by facility staff, including a psychiatrist, registered health care professionals, support workers and facility manager rostered to cover 24/7 service.

3.3 The facility will typically be operated with 3-4 support staff and 2 trained security staff will also always be present on-site. This will result in the site having a typical maximum occupancy of 14 people, excluding visitors. The ancillary support activity will generally operate during normal business hours with staff also working off-site with clients in the community.

3.4 The community service component of He Pou Oranga Whai Ora works alongside the residential care facility, although the services are operated separately and there are no joint programmes. Community service clients will not attend day programmes at the facility.

3.5 Residents are able to have visitors on a pre-arranged basis. This is managed by facility staff with set days and times for visiting.

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- 3.6 The proposed activity has been assessed as a residential care facility¹ under the Operative Ōpōtiki District Plan (District Plan), although the residents are not physically or mentally impaired. All residents attend the facility voluntarily and can choose to leave the programme. Residents at the facility have either arrived directly from a residential living situation in the local community or have completed a treatment programme and are returning to their homes in the community.
- 3.7 To be eligible for residency, candidates have completed a six-week assessment by the community support team to ensure they meet the suitability criteria for acceptance into the programme which requires that they must be assessed as low-risk. All residents (Whai Ora) are required to be free from drug /alcohol use and are regularly tested while at the facility. Due to the limited capacity of the facility and the high demand for the service, it is important to ensure that candidates selected are suitably prepared to make the best use of the opportunity. The selection process is not linked to judicial processes, such as Court-ordered sentencing or bail conditions. The facility will not provide a bail address for anyone facing charges and the programme is not designed for convicted criminals who are required to complete a residence and treatment programme as a condition of a sentence.
- 3.8 The service provided by the proposed facility is voluntary and if residents choose to leave the programme at any time, staff will arrange transport to their chosen destination.
- 3.9 The facility will operate from the main building (dwelling) on the property. Internal alterations will be undertaken to configure the layout for the proposed use and to meet building code requirements for the change in use. There are several other accessory buildings on the property which are not proposed to be used as part of the facility. Most of these buildings existed at the time the property was purchased by the applicant and are unconsented. Council's s42A report refers to three unconsented buildings having recently been placed on the property. The applicant has advised that only two buildings have been relocated to the property under the assumption that building consent was not required as the buildings are temporary and not sited on permanent foundations.
- 3.10 The ground floor of the building will provide three office spaces and a meeting room, lounge/dining and kitchen facilities as well as two self-contained units available for use if a resident has a child solely reliant on that parent i.e. being breast fed. The first floor of

¹ Means an activity providing residential accommodation for eight or more people who need physical, medical, or psychiatric support and who are unable to live independently.

the building will provide five bedrooms for guests (8 occupants in total), a lounge and bathroom facilities. Security staff facilities are located at second floor level.

- 3.11 Vehicle access to the site is controlled by a motorised gate at the entrance. A security camera will be positioned at the entrance to monitor vehicle access to the property. There are several motion detection security cameras positioned around the perimeter of the site along with night-time lighting around the exterior of the building. Cameras and lighting have been directed to avoid affecting the privacy of adjoining properties or causing a glare nuisance.
- 3.12 A single sign has been installed at the intersection of the shared accessway with Baird Road. The location of this sign was agreed in consultation with the adjoining neighbours. As noted in the Council's s42A report, the sign has inadvertently been placed partly within the road reserve. The applicant is agreeable to relocate the sign or obtain a Licence to Occupy.

4 THE SITE AND SURROUNDS

- 4.1 The site is situated at 19a Baird Road, on the western side of State Highway 2 and the Waioeka River, near the outskirts of Ōpōtiki township within the Ōpōtiki District. It is a rear property accessed via a shared right-of-way and vehicle entrance on the southern side of Baird Road. The right-of-way is also used by the neighbouring property to the west. The accessway is formed to a sealed standard with a width of between 2.5m and 3m. The vehicle crossing to Baird Road is unsealed.
- 4.2 The property contains a 415m² three-story residential building along with several smaller accessory buildings. The main building comprises five bedrooms and was previously used as seasonal worker accommodation. Prior to this, the property was operated as visitor accommodation (Kukumoa Lodge), although this use was unconsented.
- 4.3 The topography of the site is flat, with ground levels ranging from 1.6m RL to 2.9m RL (Moturiki Datum). The elevation of the land around the existing dwelling is 1.8m RL. The ground floor level of the main dwelling on the property is approximately 2.6m RL (0.8m above ground level), except for an area in the southwestern corner of the building which has a floor level approximately 0.5m lower.
- 4.4 The site is within the Waioeka River catchment and the Waioeka-Otara River scheme. The site is at risk of flooding from the river overtopping the stopbanks and SH2 to the

north in events larger than the 5% AEP² event. The Bay of Plenty Regional Council (BOPRC) has provided detailed advice regarding flood levels in this location under different scenarios, including an allowance for climate change to 2130. The 2% AEP flood level in this location is 4.3m RL, including climate change and freeboard. BOPRC advice is attached to the Council's s42a report.

- 4.5 The site is located within a small group of established rural residential properties. The closest neighbouring dwelling (1700 SH 2) is located 85m to the south of the proposed facility building. There are seven other dwellings positioned between 150m and 200m from the site. The closest neighbouring building is a large shed on the adjoining property to the south (1700 SH 2) which is positioned approximately 5m from the applicant's boundary.
- 4.6 The site is located within the Rural Zone, as indicated on the Ōpōtiki District Planning Maps. The planning maps do not identify any overlays or scheduled features affecting the property. Adjacent land is also zoned Rural, while the land on the eastern side of State Highway 2 is zoned Coastal Zone.
- 4.7 There is a land covenant registered on the title of the property which restricts buildings from an area of land to the north of the existing buildings on the property as identified in the resource consent application and Council Officer's report.

5 ACTIVITY STATUS

- 5.1 Section 8.3.4.1 of the District Plan lists residential care facilities as a discretionary activity within the Rural Zone (Activity 19). As discussed above, the proposed activity does not exactly fit within the definition of a residential care facility. For the purposes of this application, however, a residential care facility is the closest match in terms of the activity types listed in the District Plan. The offices included within the facility have been assessed as an ancillary activity. Activities and building accessory to a discretionary activity are also listed as discretionary activities (Rule 8.3.4.1, Activity 5). The relevant rules are set out in the Council's s42a report. I agree with the identification of relevant rules and the overall activity status of the application.
- 5.2 The discretionary activity status is subject to compliance with the Zone Standards in Chapter 8 of the District Plan. The proposal will comply with all relevant Zone Standards. Although the existing building does not meet the 2% AEP floor level

² Annual exceedance probability

requirement³, this is an existing situation, and the proposed development does not include the construction of any new buildings. An assessment of all relevant Zone Standards is provided in the resource consent application documents⁴.

5.3 Overall, the proposal requires assessment as a discretionary activity.

6 RESOURCE CONSENT PROCESS

6.1 The application was publicly notified on July 25, 2024, with the submission period closing on August 22, 2024. A total of 95 submissions were received, with eight opposing the application, five neutral and 82 in support of the application.

6.2 Submissions in support have identified significant positive social, cultural, health and wellbeing effects of the activity for the local and wider Eastern Bay of Plenty community. Submitters highlight the urgent need for the service, citing the high rates of methamphetamine use within the Eastern Bay of Plenty communities and the benefit of providing a facility locally.

6.3 A summary of the concerns raised by opposing submissions is provided in the Council's s42a report and will be presented by the submitters. I have reviewed all the submissions received and agree with the summary of the key submission points included in the Council Officer's Report.

6.4 Concerns commonly raised by opposing submitters include:

- Safety and security concerns
- Noise nuisance
- Amenity effects, including loss of privacy and visual effects
- Traffic volumes
- Effects on rural production
- Reduced property values

6.5 Two pre-hearing meetings were held with opposing submitters. The purpose of these meetings was to clarify the issues raised by submitters and discuss possible ways of addressing these concerns. I attended both meetings. In addition, the applicant has met

³ Zone Standard 8.6.10.1

⁴ Section 6.3.2

or spoken with several submitters individually to discuss their specific concerns and potential mitigation options. The outcomes of these discussions have been incorporated into the resource consent conditions relating to landscaping and security.

6.6 In response to the matters raised in submissions and discussed at the pre-hearing meetings, a set of recommended consent conditions have been developed to address matters of concern.

6.7 The following sections of my evidence address these concerns where relevant.

7. ACTUAL AND POTENTIAL ENVIRONMENTAL EFFECTS

7.1 The receiving environment and permitted baseline are relevant considerations for this assessment. In this case, the proposed activity will operate from the existing building on the property, which was lawfully established and therefore forms part of the existing environment.

7.2 The permitted baseline enables a consent authority to discount an effect if a District or Regional Plan permits an activity with that effect. Activities permitted within the Rural Zone include RSE accommodation for up to 12 people, two dwellings (on sites 1-4ha in size), and marae. In this case, flood levels restrict the ability for permitted land uses to be established on the land and provide a credible permitted baseline. A non-fanciful permitted baseline for assessing traffic effects and rural amenity effects is the use of the existing building for seasonal worker accommodation for up to 12 people. This is discussed in further detail below.

7.3 As the activity status is discretionary, the consideration of actual and potential effects is not limited. The relevant actual and potential environmental effects have been assessed in the resource consent application documentation, which is also discussed in the Council's s42A report. I do not propose to repeat this assessment here but provide a summary below with specific focus on the key factors determining the acceptability of the proposal, which include matters raised by submitters and identified through the resource consent process.

Positive Effects

7.4 He Pou Oranga Whai Ora has been established to address the severe community harm caused by methamphetamine use in the Bay of Plenty region. I have attached a letter from He Pou Oranga Whai Ora (**Attachment 1**) which outlines the service, its need and

benefits. This document explains that towns within the Eastern Bay of Plenty have some of the highest levels of methamphetamine use in the country based on wastewater testing. Drug and alcohol addiction has been identified as a significant factor contributing to a cycle of crime and social problems in these communities. He Pou Oranga Whai Ora works alongside other agencies in an iwi led and community focused approach which targets early prevention over enforcement with a holistic approach to enhance health and social well-being.

7.5 As noted in the Council's s42A report, there is acceptance by all parties that there is a need for the service provided by He Pou Oranga Whai Ora. The significant level of support for the programme is evident in the large number of supporting submissions received on the application.

7.6 Given the clear need for a facility such as the proposal, the key consideration is the suitability of the proposed site for the activity.

Rural Character and Amenity Values

7.7 The amenity values of the site and its surrounding environment are typical of a peri-residential area, with a combination of rural production land uses with rural residential and smaller residential properties. The application site is characterised by open space surrounding the main building, with landscaped gardens, amenity plantings, and areas of pasture. The site maintains substantial separation from adjacent dwellings, with hedges and fencing along the external boundaries.

7.8 The District Plan aims to manage the effects of development to maintain rural character and amenity values and manage reverse sensitivity effects⁵. As the proposed activity will use an existing building without any significant external modifications, I have assessed the effects on the visual aspects of amenity values as less than minor. When observed from outside the property, the site will maintain its existing appearance as a substantial rural residential property or as an accommodation facility for seasonal workers (a permitted land use in this location). It is not proposed to remove vegetation or undertake any modifications to the land.

7.9 The establishment of an activity such as the proposal within a rural area has the potential to result in a change in the character of the neighbourhood through increased traffic, noise and activity. In this case, the site has a well-established use as an

⁵ Objective 8.2.1, Policies 8.2.1.1, 8.2.1.2, 8.2.1.4

accommodation facility and has previously been used for seasonal worker accommodation as a permitted activity. Concerns regarding security and safety are discussed below.

- 7.10 The proposed land use is expected to generate noise levels which are typical of residential activities and within the noise standards specified for the Rural Zone⁶. On this basis, noise effects can be disregarded. The applicant has been made aware of concerns with noise from construction workers on site, including loud music playing and has committed to ensuring noise nuisance is not an ongoing issue during building works.
- 7.11 External lighting will be limited to security lighting attached to the building and will be directed to avoid any glare or light spill nuisance effects beyond the property boundary. This is covered by a recommended consent condition.
- 7.12 The site will operate with on-site security staff residing within the facility. The purpose of the on-site security is to manage access to the facility outside of normal staffing hours and to provide general site security.
- 7.13 In summary, taking into account the nature of the proposed activity, the limited physical changes proposed to the existing building, and the separation from neighbouring dwellings, it is considered that the amenity effects will be, at most, minor.
- 7.14 To address concerns expressed by adjoining neighbours to the south of the property regarding privacy, visual effects and security, a set of landscaping consent conditions have been developed. These conditions set out landscaping requirements which involve planting and fencing on the 90m long southern boundary of the property. The primary purpose of the boundary treatment is to mitigate visual amenity and loss of privacy effects, although it will also reduce the likelihood of people entering or existing the property via this boundary. The existing fencing, hedges and planting along the other external boundaries of the property will be maintained or enhanced in agreement with the adjoining neighbours. The applicant has existing landscaping contractors who are engaged to carry out these maintenance activities.
- 7.15 I am generally supportive of the proposed landscaping condition and the amendments that have been made in the version included with the Council's s42A report, which incorporates feedback received from submitters.

⁶ Rule 8.6.6.1

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- 7.16 The only component of this condition which is not supported is the specific reference to pool-style fencing in clause (a), which I consider unnecessary. The purpose of the landscaping is to provide a vegetated visual screen (hedge) along with 2m high fencing to provide additional security.
- 7.17 I accept that the specified fencing style will complement the 'soft' screening provided by the hedge and that stating the fence type in the condition provides certainty to all parties. I also note that the condition provides for an alternative fencing design to be agreed between the neighbours. Irrespective of this, in my opinion, a 2m high, metal fence is not in keeping with the character of the surrounding rural environment and other, more conventional rural fencing types using materials such as timber and wire would be more appropriate and achieve the intended purpose. In addition, the applicant has been unable to source a 2m high pool fence "off the shelf" and it is therefore likely that the fence would need to be custom-built at considerable cost.
- 7.18 Whilst the recommended condition wording enables alternative fencing types to be agreed with the adjoining neighbour, the condition sets an expectation of a default fence design. For this reason, and taking into account the points outlined above, it is requested that clause (a) be amended to replace the reference to 'pool-style' with fencing to a height of 2m.

Safety and Security

- 7.19 Security and safety is a matter of particular concern to submitters. Some of these concerns appear to be based on a perception of the proposed activity. As explained previously, the facility provides support services for community residents who have volunteered to undertake a programme to address drug dependency issues. The facility is not a detention centre and is not designed for people who are unable to live independently, require full-time care or are a risk to others. In the absence of the facility, the residents would continue to reside within the community as they do currently.
- 7.20 Council's s42a report has discussed submitters concerns regarding security and safety associated with the proposed activity. This has been informed by relevant case law which provides useful guidance on assessing these types of concerns, noting that the cases referenced involve proposals to establish periodic and juvenile detention facilities, which are materially different to He Pou Oranga Whai Ora, which is a healing and wellness centre. Detention centres require forced residence, whereas the proposed facility is voluntary. Despite these differences, the key points of relevance from the case

law examples are that safety and security concerns may be a valid consideration in resource consent processes where there is evidence to substantiate them. If this is the case, mitigation measures should be adopted.

7.21 The concerns raised by submitters are also influenced by issues associated with previous land uses on the property, which included guests/residents crossing neighbouring properties as a short-cut to the town centre. Since the initiation of the project, the applicant has sought to engage with neighbours and submitters to provide further detail regarding the nature of the activity and the management and operational measures designed to ensure residents pose a low risk to facility staff and surrounding neighbours. These measures have included CCTV cameras, lighting, security staff and fencing.

7.22 Taking into account the operational regime described by the applicant together with the mitigation measures set out in the recommended conditions, I am of the opinion that the proposed activity will be appropriately managed to ensure the safety and security of neighbouring residents.

Reverse Sensitivity

7.23 The site has an established history of use for residential purposes and RSE accommodation, and it is surrounded by properties developed for rural residential land uses.

7.24 It is recognized that some neighbouring properties are used for both rural production and residential activities. Changes in land use, including activities within existing buildings, have the potential to give rise to reverse sensitivity effects. However, in this instance, the proposed activity is not anticipated to exhibit a greater sensitivity to such effects than the existing residential use of the site or permitted uses such as seasonal worker accommodation.

Traffic

7.25 The proposed activity will utilize the existing vehicle entrance, shared accessway, and on-site parking and manoeuvring areas, which will be maintained to their current sealed standard. The accessway has a formed width below the required standard for two users but two vehicles are able to pass using the grass verge along both sides of the carriageway. The accessway and entrance have good visibility and align with the rural

character of the area. There is an existing sign advising users of a 20 km/h speed limit along the accessway.

7.26 The other user of the shared accessway and Fire and Emergency New Zealand (FENZ) are both submitters on the application and have confirmed the acceptability of the current formation standard and ability for fire appliances to safely access the site. FENZ have confirmed that the recommended consent conditions are satisfactory to address the matters raised in its submission.

7.27 The on-site parking and manoeuvring areas are sufficient for staff, visitors and service providers, and the existing access design is adequate. Overall, I consider the traffic effects of the proposal to be less than minor.

Servicing

7.28 Stormwater from buildings and impermeable surfaces on site is discharged to ground soakage with no changes proposed. The site has an existing reticulated water supply which will continue to supply the facility. FENZ has confirmed that a suitable fire fighting supply can be provided.

7.29 As noted in the Council's s42a report, the site is serviced with an existing on-site wastewater system. This system has been assessed and will require upgrading to cater to the proposed level of use with a design for the upgraded system provided with the resource consent application. It is the applicant's preference, however, to connect to Council's reticulated wastewater network which is within the State Highway road reserve. Council's engineering staff have agreed in principle to allow this connection. Both options are covered by the recommended consent conditions, and I support this approach.

7.30 It has been noted by a submitter (Kevin Crawshaw) that greywater has been discharging from the site to their property which adjoins the site. This will be rectified through the upgrading of the wastewater system required by the recommended resource consent conditions.

Natural Hazards

7.31 As outlined previously, the site is vulnerable to inundation from floodwaters overtopping the Waioeka River stopbanks on the northern side of the State Highway. This risk is expected to increase over time with the influence of climate change,

particularly sea level rise. This has been discussed in detail in the resource consent application and the Council's s42a report, which includes advice provided by BOPRC which sets out flood levels under various scenarios.

7.32 Flood levels at the site are predicted to inundate the building during large flood events (1% and 2% AEP) with significant water depths in excess of 2m during these events. Flood modelling also indicates that parts of the site will be inundated during smaller, more frequent flood events (5% AEP), although floodwaters are unlikely to inundate the building.

7.33 The Bay of Plenty Regional Policy Statement (RPS) requires a risk management approach to natural hazards based on an assessment of likelihood and consequence. The RPS sets out a risk assessment framework (Appendix L) which is primarily aimed at assessing large scale land development projects. In this case, a full Appendix L assessment is deemed unnecessary due to the proposal's small scale and the use of the existing building on the property. The resource consent application documentation has provided an assessment which has adopted the RPS assessment methodology and has considered the relevant objectives and policies in the RPS along with the Ōpōtiki District Plan. A summary of the key points from this assessment are set out below:

- (i) The site has historically supported residential and accommodation uses, and the proposed activity will operate from the existing building on the property. The change in use does not increase the likelihood of inundation.
- (ii) The number of people residing on the property will be no higher than is permitted by the District Plan based on the use of the site as seasonal worker accommodation.
- (iii) An Emergency Response Plan (ERP) has been prepared, outlining evacuation procedures and routes to be implemented in the event of flooding.
- (iv) The functional impact of flooding on the building necessitates planning for continuity of services. If the building is inundated, the service is able to be delivered from other Hauora facilities within the Eastern Bay of Plenty.
- (v) Flood levels within the Waioeka River are readily available through live monitoring and provide advanced warning of flood events, allowing for timely evacuation. Occupants, being able-bodied, can evacuate efficiently, minimising health and safety risks.

- 7.34 The proposal does not significantly increase risk compared to previous uses, and the ERP effectively mitigates residual risks. For the reasons outlined above, I consider that the overall natural hazard risk can be mitigated to a level where the effects are no more than minor. These mitigation measures have been incorporated into the proposal and recommended consent conditions. I support these conditions, including the addition of a requirement for marker posts recording water depth along the accessway.

8 STATUTORY FRAMEWORK

- 8.1 The resource consent application and supporting documents provide an analysis of the relevant objectives and policies from the applicable planning documents, including:
- 8.2 Although I have considered all the relevant objectives and policies contained in these documents in reaching my conclusions, I will make comment on only the most relevant provisions.

National Policy Statements and Standards

- 8.3 The site is not located within the Coastal Environment, therefore the New Zealand Coastal Policy Statement is not applicable.
- 8.4 The land use classification within the site is Class 2 and therefore the National Policy Statement for Highly Productive Land (NPS-HPL) applies. The purpose of the NPS-HPL is to protect highly productive land from inappropriate subdivision, use and development to ensure its availability for food and fibre production. The provisions of the NPS-HPL have been assessed in section 5.3.1 of the resource consent application and in the Council's s42a report.
- 8.5 The proposal is limited to the already developed portion of the site and will utilise an existing building. The car parking and access areas are already established. Consequently, there is no loss of productive land, and rural production, or other rural activities can continue on the remaining portion of the property. This undeveloped land will remain available for rural production, both now and for future generations. The proposal aligns with the NPS-HPL and is not expected to generate any adverse effects.
- 8.6 The site is not identified by BOPRC as a HAIL site and has no current or previous land use history for HAIL activities, therefore the National Environmental Standard for

Assessing and Managing Contaminants in Soil to Protect Human Health 2012 does not apply.

- 8.7 There are no other national policy statements or standards relevant to the proposal.

Bay of Plenty Regional Policy Statement

- 8.8 The objectives or policies in the Regional Policy Statement (RPS) relevant to this application concern the productive use of rural land and the management of natural hazards.

- 8.9 The RPS seeks to protect the productive potential of rural land and manage reverse sensitivity effects on rural production activities. These matters have been addressed in the resource consent application and in earlier sections of my evidence. The current size of the property limits its productive potential, and the property and neighbouring land has a long history of rural residential land use. The Natural Hazards objectives and policies of the RPS are also relevant and have been discussed previously.

- 8.10 For the reasons discussed previously, in my opinion the proposal is consistent with the provisions of the Regional Policy Statement.

Ōpōtiki District Plan

- 8.11 Section 5 of my evidence provides an analysis of the effects on the environment and considers the relevant provisions of the Ōpōtiki District Plan.

- 8.12 The relevant objectives and policies in the District Plan are contained in Chapter 8 (Rural Zone) and Chapter 18 (Natural Hazards). For the reasons given I am of the view that the proposal is consistent with these provisions and the outcomes sought by the Ōpōtiki District Plan for the Rural Zone. In particular, the proposal maintains rural amenity values through utilizing an existing building and through management of the activity to ensure rural amenity values are maintained within the surrounding area.

Resource Management Act – Part 2

- 8.13 Section 104 is subject to Part 2 of the Act and therefore the overriding determination of the activity is the appropriateness of the proposal in the context of the purpose and principles of the Act. Case law has now clarified that a Part 2 assessment is not necessary in all cases and may not add particular value where the relevant plans have been competently and comprehensively prepared. In my opinion, the provisions of the

regional and district planning documents do not contain deficiencies which would suggest a misalignment with Part 2. As a consequence, I have not given any further direct consideration to Part 2 in my evidence.

9 COUNCIL STAFF REPORT

9.1 Council's Consultant Planner, Ms Laura Swan has produced a thorough report on the proposal which has carefully considered the concerns raised by submitters and the relevant assessment criteria. I agree with the identification of relevant matters, the assessment of those matters and the conclusions reached in her report regarding the overall acceptability of the proposed activity.

9.2 The report recommends that resource consent be granted subject to conditions. I support the recommendation and conditions, subject to the following minor amendments:

9.3 Condition 1 – minor correction:

1. Except as modified by a condition of this consent, the Residential Care Facility activity shall be carried out in general accordance with the plans and information lodged with application ref. RC2024-31, including the:

i. Plans by DD2 Architectural for the Hauora and Recovery Centre rev 2 dated 4 October 2023.

ii. Emergency Response Plan (ERP) for Site Inundation, 19A Baird Road, Ōpōtiki

iii. Appendix 1: Pou Oranga Whai Ora Emergency Response Plan: Evacuation Plan for Te Whare Oranga O Kōpūārau Addiction Residence

9.4 Condition 8 – amendment to clause (a)

A 2m high 'pool style' fence. Fencing to a height of 2m.

9.5 Condition 11(v) – minor correction:

9.6 *v. A copy of each revised ~~ERP~~ shall be provided to the council for record keeping by emailing info@odc.govt.nz*

9.7 Condition 26 - minor clarification

That a single monitoring fee of \$190 (including GST) shall be paid to the Opotiki District Council for the monitoring and supervision of this resource consent. Notwithstanding the above, where there is good and reasonable cause for unprogrammed monitoring and additional site inspections, the costs of that will be charged to the consent holder. Such costs are recovered on an actual and reasonable basis as defined in the Fees and Charges Schedule as approved by the Council in terms of Section 36 of the Resource Management Act 1991.

10 CONCLUSION

- 10.1 In conclusion, having regard to the purpose and principles of the Resource Management Act and to the criteria in Section 104 of the Act, I consider that granting of the consent sought is both appropriate and desirable.



Tim Fergusson
28 January 2025