

**RESOURCE MANAGEMENT ACT 1991**

**DECISION OF ŌPŌTIKI DISTRICT COUNCIL**

**ON A RESOURCE CONSENT APPLICATION**

<b>APPLICATION REFERENCES:</b>	RC2024-31
<b>APPLICANT:</b>	Pou Oranga Whai Ora Charitable Trust (incorporated)
<b>SITE ADDRESSES:</b>	19A Baird Road, Kukumoa
<b>LEGAL DESCRIPTIONS:</b>	Lot 2 Deposited Plan 8225
<b>PROPOSAL:</b>	Establish and operate a Residential Care Facility and ancillary offices
<b>ZONING &amp; NOTATIONS:</b>	Rural Zone, Class 2w2 land
<b>TYPE OF ACTIVITY:</b>	Discretionary
<b>DATE OF HEARING</b>	14 February 2025
<b>HEARING COMMISSIONER</b>	Reginald Proffit
<b>APPEARANCES</b>	<u>Applicant</u> Tim Fergusson, Planning Consultant Louisa Erickson (Te Pou Oranga o Te Whakatōhea) Jade Collins (Pou Oranga Whaiora) Karla Hei (Te Pou Oranga o Te Whakatōhea)  <u>Ōpōtiki District Council</u> Laura Swan, Reporting Planner Antoinette Campbell, Group Manager Strategy & Development Peter Edwards, Building & Planning Manager Kurt Bledsoe, IT assistance Tanya Moore, Hearing Administrator

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Bay of Plenty Regional Council

Rachael Medwin, Hydrologist

Ingrid Pak, Hydrologist

Submitters in Support

Jackie Thompson, Cultural Clinical Lead

Dickie Farrar (Te Tāwharau o Te Whakatōhea)

Hohepa Hei (Te Pou Oranga o Te Whakatōhea)

Cary Monreal Clark (Te Whare Wānanga o Te Awanuiārangi)

Linda Steel (Te Ao Hou Trust)

Merita White (Waiariki Whānau Mentoring)

Anna Hayward, Toi Rāwhiti

Memory Mio

Duke Kaitap

Maley Tapeti

Tamati Taylor

Robyn Brooks

Anna Harrison

Waata Heathcote & team (Waiariki Whānau Mentoring)

Ian McKenzie (Te Whatu Ora)

Arana Pearson

Submitters in Opposition

Vivian and Sonny Robinson

Apologies

Noeline and Aaron Miller (tabled evidence attached)

**DECISION**

**Approved**

## INTRODUCTION

1. I was appointed by Opotiki District Council pursuant to s34A of the Resource Management Act (the Act or the RMA) to consider and make a decision on a proposal to establish and operate a Residential Care Facility and ancillary offices at 19A Baird Road.
2. The proposal involves establishing a rehabilitation and wellness centre within the existing three-story dwelling located on site. This will include ancillary office and support activities. The activity best meets the definition of Residential Care Facility under the Ōpōtiki District Plan (ODP). The proposal has resulted from an identified need for the facility by an Iwi Alliance consisting of Whakatōhea, Ngāti Awa, Tūhoe and Tūwharetoa ki Kawerau.
3. The proposed facility will provide accommodation for up to eight residents who will stay at the site for up to 12 weeks. They will receive support (assessment, counselling, education) by staff prior to, or after, attending an off-site drug rehabilitation program. The residents attend the facility voluntarily and can request to leave the program at any time. While on-site they are supervised by staff at all times. They cannot come and go from the site at will.
4. The eight residents will primarily be accommodated in bedrooms on the first floor of the building. The main ground floor of the building will have a central kitchen and lounge area, as well as a reception area, meeting rooms and offices. The facility will typically operate with 3-4 resident support staff on-site and the community team (3-4 staff) will also use the facility as their office base and come and go.
5. The northwestern wing of the building will contain two 'parents rooms' each with an en-suite. These rooms will be used in the instance a resident has a very young child.
6. On-site security will be provided on a 24/7 basis, with at least one security person present at all times. At night a second staff member is also present, and both remain awake throughout the night. The second (top) level of the building will accommodate facilities for the security staff. Therefore, at night there would be a maximum of ten people on the site.
7. The proposal acknowledges residents may have visitors. As part of the proposed operation protocols, all visits must be pre-arranged and managed by staff.
8. Plans showing the proposed building alterations and floor layouts are detailed in Figures 1-2 of Council's Section 42A Report.
9. The proposal does not involve the construction of any new buildings. It does not involve the use of any of the unconsented accessory buildings located on the site. The consent application only relates to the main dwelling.
10. A thorough description of the site and the receiving environment is provided in Council's Section 42A Report and this will not be repeated as part of this decision. The following discussion highlights some of the key aspects related to the proposed application and the site and surrounding environment.
11. Access to the property is from Baird Road, via an existing right of way easement adjoining 19 Baird Road (Lot 1 Deposited Plan 8225), to the west of the property. It is sealed and has a formed width between 2.5 and 3m. No changes to the accessway are proposed.
12. The existing dwelling is connected to an on-site wastewater system. This system will need to be upgraded to service the proposed development and resource consent will be required from the Bay of Plenty Regional Council (BOPRC).

13. A report has been prepared by Waterflow NZ Ltd that details how and where a new system could be provided on the site. It is noted that it must be located on ground that is not subject to flooding in a 20% Annual Exceedance Probability (AEP) flood event. Alternatively, the applicant could extend the existing public wastewater system to service the site. This is the applicant's preferred solution.
14. The site has a connection to Council's reticulated water supply which will continue to be used.
15. Signage has been installed, it is approximately 1m<sup>2</sup> in size. It is currently located in the road reserve. Resource consent is required for the sign's ongoing use. Consideration of signage is part of this consent decision.
16. The site is some 33,484 m<sup>2</sup> and contains a number of auxiliary buildings located in the southeast corner of the property. These buildings are not subject to this consent.
17. The property is zoned Rural in the Ōpōtiki District Plan and located on land classed as having versatile soils, Class 2w2. The proposed activity is a Discretionary Activity in relation to Rules 8.3.4.1.19, 8.3.4.1.5 and 8.3.4.1.16 of the Ōpōtiki District Plan.
18. No evidence of consultation was provided with the application.
19. The revised application for consent was lodged with Ōpōtiki District Council on 20 June 2024.
20. The application was publicly notified on 25 July 2024, with submissions closing on 22 August 2024. Ninety-five (95) submissions were received with 8 submissions lodged opposed to the application, and five submissions were neutral. At the hearing, Mr Fergusson referred to letters received from Elizabeth Mokomoko and Kahatahi Apanui recording their support for the application. The remaining submissions were in support of the application. Matters raised in submissions were summarised in the Council's Section 42A Report as:
  - i. Significant positive social, cultural, health and wellbeing effects for the local and wider Eastern Bay of Plenty community
  - ii. Loss of amenity and privacy
  - iii. Safety and security concerns
  - iv. Adverse noise
  - v. Servicing
  - vi. Traffic volumes
  - vii. Visual effects of signage
  - viii. Effects on rural production
  - ix. Reduced property values
  - x. Re-zoning land to commercial or industrial.
21. Two pre-hearing meetings were held on the 19 and 20 September 2024. A report providing details of the two pre-hearing meetings was included as Attachment E of the Section 42A Report. No formal resolutions were reached, but a set of draft conditions were agreed to be circulated, this occurred in October 2024 and are included in Attachment F of the Section 42A Report.

22. Five submitters confirmed in writing that the draft conditions addressed their concerns and issues raised.
  - i. Fire and Emergency NZ
  - ii. Russell Grant Abbott (19B Baird Rd)
  - iii. Ian Paipa (17 Baird Rd)
  - iv. Alan Baird / Baird Farms 2026 Ltd (36 Baird Rd)
  - v. Kevin Cranshaw (1696 SH2).
23. Two submitters verbally advised the Council processing planner that the conditions were acceptable but did not provide anything in writing leading to the hearing. These being:
  - i. Lizzie Ruha-Smith (1688 SH2)
  - ii. Jeff Rogers (1672 SH2).
24. Three submitters in opposition are;
  - i. Vivienne and Sonny Robinson (3 Baird Rd)
  - ii. Noeline Miller, Todd Miller and Aaron Millar (1700 SH2)
  - iii. Ruth Marsh (103 Hukutai Road).
25. The remaining submitters were in support of the application.
26. A Section 42A (of RMA) Report was prepared by Council's processing planner, Ms Laura Swan. This report analysed the resource management issues associated with the application, including addressing submissions. The key issues identified by Ms Swan were positive effects, safety and security, effects on character, amenity, noise and lighting, natural hazards (flooding), services, access and traffic, signage, effects on rural production and reverse sensitivity.
27. Ms Swan's report concluded that in her view the application would result in significant positive effects for the community and that the social, cultural, health and wellbeing, and economic benefits of the facility are not disputed. Ms Swan further concluded the proposed activity and conditions of consent were consistent with the provisions in the Ōpōtiki District Plan and other regional and national documents.
28. The hearing on the above application took place on the 14<sup>th</sup> of February 2025.
29. The Hearing was adjourned to allow expert witnesses, Ms Swan and Mr Fergusson, time to consider conditions following the evidence shared at the hearing. A Joint Memorandum was received from Ms Swan and Mr Fergusson, providing a revised suite of conditions on the 21 February 2025. This information was circulated to all parties and the opportunity for comments to be received was provided. No comments were received.
30. Mr Fergusson's right of reply was received, and the hearing was closed by issue of Minute 2 on Monday 3 March 2025.

## **MINUTES**

31. During the process of dealing with this application, I issued two Minutes. Minute One confirmed the location, date and time of the hearing, as well as confirming the pre-circulation of evidence timeline. Minute Two communicated my closing of the hearing.

## **SITE VISIT**

32. I undertook a site visit of the application site and the surrounding area on Thursday the 13<sup>th</sup> of February 2025. In attendance was Mr Peter Edwards, Council's Building and Planning Manager. Mr Edwards did not play any part in the hearing.

## **PROCEDURAL MATTERS**

33. Two matters were raised to be addressed by Ms Swan, prior to the substantive matters of the hearing being heard.
34. A minor correction to the Paragraph 6.4 of Section 42A Report was identified by Ms Swan. The report referred to a subdivision consent, which was not part of the application, and it should have referred to a landuse consent. The matter did not have a substantive effect in regard to the information presented, however it was important to ensure an accurate and consistent account of consents required.
35. Paragraph 11.1 of Section 42A Report sought resolution for a proposed extension of time under section 37 and section 37A of the RMA. The working days detailed were incorrect. Ms Swan, at the hearing, submitted an updated timeline, 'Key dates and milestones for RC2024-31'. The proposed new resolution was;
- i. Pursuant to s37 and s37A of the RMA, the Council extends the 20-day timeframe to notify a resource consent by four (4) days, and extends the 75-day timeframe by which a hearing must be held following close of submissions by seventeen (17) working days. The later extension enabled two pre-hearing meetings to be held and the applicant to try and reach agreement with submitters on acceptable conditions. When this could not be achieved a hearing was scheduled.*
36. Section 37A(4) of the RMA stipulates that a consent authority may extend a time period under section 37 only if;
- (a) the time period as extended does not exceed twice the maximum time period specified in this Act; and
  - (b) either—
    - (i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter); or
    - (ii) the applicant agrees to the extension; and
  - (c) the authority has taken into account the matters specified in subsection (1).
37. In my consideration of this resolution, I note a large number of parties to the Application were present at the hearing. I engaged with all parties present, no parties raised issue with the proposed extension. I engaged with Mr Fergusson on behalf of the Applicant, he confirmed agreement with the proposed extension.
38. The proposed resolution as detailed above is accepted. In making my decision, I have taken into account the matters listed in subsection 37A(1).

## **HEARING CLOSURE**

39. I closed the hearing via Minute 2 on Monday 3<sup>rd</sup> March 2025.

## **DISCUSSION**

### **Statutory and Planning context**

40. I am required to consider the matters set out in sections 104(1) (subject to Part 2) and 104B of the Act, given the application is a discretionary activity. As a discretionary activity there are no restrictions, and I am able to consider all aspects of the proposal. Relevant to this case, the s104 matters include:
- any actual and potential effects on the environment of allowing the activity; and
  - any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity
  - any relevant provisions of the district plan, national environmental standard, national policy statement or regional policy statement; and
  - any other matter we consider relevant and reasonably necessary to determine the application.
41. In making my decision, I am able to impose conditions under s.108 should I decide that consent can be granted.
42. In terms of Part 2 of the RMA evidence presented by Mr Fergusson and Ms Swan were in alignment. This being, specific consideration of Part 2 matters are appropriately covered by the Ōpōtiki District Plan, Bay of Plenty Regional Policy Statement and the National Policy Statement for Highly Productive Land.
43. Having considered this matter, I agree with the position of Mr Fergusson and Ms Swan. Detailed consideration of sections 6, 7 and 8 is not required.

### ***Permitted Baseline***

44. I am able to disregard any adverse effect of an activity on the environment if the District Plan permits an activity with that effect in accordance with s.104(2) of the Act (known as the 'permitted baseline'). In this context Ms Swan provided detailed context of the application of the permitted baseline approach considering Seasonal worker accommodation for up to 12 people, for part of the year, and visitor accommodation for up to four people are permitted by the Ōpōtiki District Plan. Ms Swan in her evidence notes the effects associated with these permitted activities have been disregarded in her assessment of the activity.
45. Whilst the application lodged with Council differed in its consideration of the permitted baseline, at the hearing Mr Fergusson, confirmed agreement and acceptance of Ms Swans' coverage and application as stated in Council's Section 42A Report.
46. Having considered the positions of Ms Swan and Mr Fergusson, I agree that the permitted baseline is of relevance in this case, and this informs my consideration of effects in my decision.

### **Actual and Potential Effects on the Environment**

47. Having considered the details of the proposal, I consider the key issues to be addressed are in relation to; positive effects, safety and security, rural character, amenity, noise and lighting, natural hazards (flooding), services, access and traffic, visual effects (signage), reverse sensitivity, rural production and highly productive land. There are also some other matters raised which I have covered in the discussion.

### **Submitter Statements**

48. Mr Fergusson acknowledged the project is an initiative developed by an Eastern Bay of Plenty Iwi Alliance. He affirmed residents will be required to stay for a 12-week programme receiving support services, assessment, counselling, registered health care and support services. The facility will operate on a 24/7 basis. His statement emphasised the process of assessment of candidates' eligibility for the programme, highlighting the active role of the Community Support Team of Pou Oranga Whai Ora Charitable Trust and stated all residents stay on a voluntary basis and must be assessed as a 'low risk' to enter the programme. Residents are required to be drug and alcohol free during their time at the facility. In addition, he outlined the controls that will be in place, including pre-arranged visitation, lighting, security cameras and signage.
49. Mr Fergusson confirmed an upgrade to wastewater services is still to be addressed outside of this process and outlined two options available. The preferred being a connection to Council's reticulation system the other option being an upgrade to a new onsite system. At this stage discussions with Council are ongoing and proposed conditions of consent covers this aspect.
50. Mr Fergusson addressed the flood risk and in addition to the assessment provided in the resource consent application, confirmed the site is vulnerable to flooding, as detailed in information provided by Bay of Plenty Regional Council. He stated the key point for consideration is that the facility operates from an existing building that is susceptible to flooding. There is no increase in risk from the change of use. He referred to the proposed conditions that require the evacuation of the site and other matters.
51. Through questioning the effectiveness of proposed evacuation conditions were discussed, including the use of river gauges as a means of monitoring. This matter was further canvassed with Bay of Plenty Regional Council staff Ms Medwin and Ms Pak.
52. In summation, Mr Fergusson's opinion was that the proposal is consistent with the rural zone provisions of the Ōpōtiki District Plan and that the activity maintains rural values. He was in general agreement with the conclusions of the Council's 42A Report, however he put forward a number of proposed changes to the conditions of consent presented in the report, noting these are very minor.
53. The proposed changes were detailed in his evidence these being specific to Conditions 1, 8(a), 11(v) and 26. It is noted the majority of proposed changes are minor corrections. Through questioning attention was drawn to the proposed condition 8(a) which would require as part of a Landscape Plan, that a 2m high pool style fence along the southern boundary of the site. Proposed condition 7 states the purpose is to provide security and a visual screen. The proposed change sought a more relaxed approach to fencing than detailed, *'Fencing to a height of 2m'*. Mr Fergusson acknowledged security and visual effects were raised in pre-hearing meetings but was not aware of the origin of the specific requirements detailed in the report.
54. I noted in my site visit I observed a variety of fencing styles currently in place along the site boundaries and that the southern boundary had existing post and wire fencing and hedge line.
55. Louisa Erickson stated the proposal to have a facility to deal with meth use has been in development since 2017. She stated that Ōpōtiki and Kawerau have the highest use of meth in the country and that meth has had a huge impact on employment in Ōpōtiki. Ms Erikson stated a decision was made to put in a proposal to help address this issue and that NZ Police were in agreement. It was her position that sending local people to other locations, away from their local community for help, too often fails.
56. Ms Erikson outlined the service is a Kaupapa Māori Service, one that applies a holistic approach and will be the only one in the country.



57. Ms Erikson acknowledged safety and security is high priority for the operation and for neighbours. The intent is to work with neighbours to ensure safety is addressed. Ms Erikson acknowledged submitters in opposition concerns and her intent to work with neighbours to ensure their safety.
58. Ms Erikson outlined the assessment process to be undertaken of residents, stating those needing help must participate in the community programme first. Residents are present on a voluntary basis and will not be directed from the Courts or on a probationary service.
59. Jade Collins acknowledged the current activity on site and appearance that there are more people on the site. Ms Collins stated that if the facility was to proceed the number of people on site will decrease, with at most nine staff on site on a weekday. On the weekends and overnight there will be two staff for every shift on site.
60. Vivian Robinson, a submitter in opposition to the activity addressed her submission lodged on behalf of herself and her husband Sonny Robinson. Mrs Robinson stated they purchased their property at 3 Baird Road approximately 6 to 7 years ago and that they have 5 children and 3 grandchildren, the two youngest children attend Whakatāne High School. Mrs Robinson stated that since Pou Oranga Whai Ora facility had been in operation at the site, they had observed a lot of unusual activity in the street. These were detailed in her submission and addressed at the hearing. She stated they feel insecure and anxious living there and are looking at installing security cameras, gates to enclose property and the option of owning a dog.
61. In reference to the commentary provided in the Council Section 42A Report, direction from Case Law requires direct correlation of events, such as the unusual activity in the street, to the specific activity. Mrs Robinson could not link the unusual activity directly with the site or the activity currently occurring on the site. In closing Mrs Robinson stated the activity should go somewhere more remote away from residential areas, from families and young children.
62. Waata Heathcote stated his experience comes from practical experience through past employment with Ministry for Social Development, the New Zealand Police, and his current employment as a support worker in the community. He emphasised, successful application of services of this nature depends on trust, where whānau reach out and the community work with community to move them into treatment.
63. Mr Waata works in the community and stated that it is a lot easier working with a resident in a facility like Pou Oranga Whai Ora rather than in the home environment of whānau. He stated this service proposal is within a controlled environment with principles that understand whānau and is based on relationships and trust. He stated he understands what it is like on the streets and that he knows those streets intimately. He has a lived experience of the system and coming through trauma. He acknowledged the meth issue in the community stating they are facing an epidemic with meth. From his experience, a community and collective effort is needed and an appreciation that it is not one size fits all, it needs a holistic approach. Mr Waata emphasised this type of service is needed to bring change to our communities and for Ōpōtiki.
64. Ian McKenzie presented in his role as National Co-Director for Addictions with Te Whatu Ora. Mr McKenzie talked from his 35 years of experience in the sector and his role supporting other providers with their establishment. He acknowledged the Pou Oranga Whai Ora initiative has been built out of the community with support from key agencies.
65. Mr McKenzie acknowledged Whakatōhea's understanding of the community, the initiative is Māori kaupapa based and is formed under an alliance across iwi, and as such they know how to make it work. He stated he strongly supports this work with Māori and with Māori ways.

66. Mr McKenzie acknowledged as a funder, the role of Te Whatu Ora will be through ongoing auditing of the service. He stated the need for a two-metre-high fence is not supported as it has the feel of a prison and that a sense of security is easy to achieve. In his experience all other rehabilitation facilities are conscious of neighbours and communities. Through working with these communities, it's important to calm anxiety, discuss the process and understand addiction. Mr McKenzie referred to a rehabilitation service located in Te Atatu, amongst a residential area. He stated risk cannot be eliminated but that it is about good association and process throughout the stay.
67. Through questioning Mr McKenzie addressed the auditing role of Te Whatu Ora and outlined the process for Te Whatu Ora if individuals or a community raise issues or complaints about an activity. He confirmed for environmental issues, these would be directed to the Site Manager. If issues raised by the community are not satisfied, then the issue would be raised with the National Commissioner.
68. Arana Pearson stated he moved to Ōpōtiki 10 years ago and was surprised at the lack of services in the community and the high level of addiction. Mr Pearson has worked in Mental Health and when working for Whakatōhea, he worked on the streets. In that role he stated he had helped refer people to rehabilitation for addiction, for people who wanted it.
69. Mr Pearson stated in regard to safety, people can be supported to prepare for recovery to go to rehab and back to our community here at this service. Mr Pearson sought that the application include the use of the ancillary buildings located on the site. On this matter I raised with Mr Pearson that the scope of the proposed activity did not include that aspect and, in fact, specifically excluded the use of those buildings.
70. Ms Swan stated there were no material changes to her recommendation to grant consent as detailed in her Section 42A Report.
71. In regard to the safety, security and flooding issues, Ms Swan acknowledged the applicant had worked hard to provide information to enable her to recommend the application for approval. Ms Swan stated the additional information and evidence presented in the hearing gave her an added degree of confidence. She acknowledged there does need to be a little level of trust that the Applicant will operate as they say they will operate.
72. Ms Swan was of the opinion the applicant cannot control some of the peripheral activity in the community and what other people choose to do in terms of undesirable behaviour. The Applicant can manage the residents on their site and their staff. In taking account of the position of submitters, she was of the opinion that the Applicant cannot control everyone, and a lot of these matters fall to the Police as the appropriate avenue.
73. Ms Swan acknowledged the presentation of Mr McKenzie, in that most other facilities have some sort of procedure on how residents can be managed to be low risk. She did not see it was the place of Council to enforce the applicant's procedures but acknowledged it would be useful to apply a condition that ensures procedures are in place.
74. Ms Swan acknowledged flooding was an issue at the beginning of processing the consent as the site does flood. Ms Swan was satisfied the applicant's proposal to use the existing building and that there is no increase in risk to that building. Ms Swan stated the number of people proposed to stay on site is within the permitted baseline of 12 people and that emergency and evacuation procedures have been developed and are reflected in the proposed conditions.

75. In reference to the use of other small buildings as raised by submitters, this was in an issue in terms of compliance with the Ōpōtiki District Plan and the building code. She confirmed the scope of the proposal was specific to the existing dwelling and use of that dwelling, and if the Applicant sought to do something else in the future, there is a process for them to do so.
76. Regarding fencing, Ms Swan confirmed this was an issue discussed at the pre-hearing meeting, specifically with the submitters adjoining the southern boundary the Millers and Kevin Crawshaw. The issue being amenity, privacy and security for neighbours, particularly for the Millers.
77. Ms Swan accounted the reason for the pool style fencing is to have a structure to stop or limit movement but to also maintain some vegetative feature. As such the proposed landscaping was to avoid an undue burden of cost of planting and ongoing maintenance on neighbours as the effect is directly related to the proposed activity.
78. Through questioning Ms Swan acknowledged that security could be achieved with a lower fence. Ms Swan confirmed security is an issue to be considered for all neighbours but was reluctant to impose on other neighbours who may not want a two-metre-high fence. To this end Ms Swan stated the 2m pool style fence did not originate from submitters but was her attempt to satisfy concerns of neighbours specifically to the south of the site.
79. In regard to noise, Ms Swan acknowledged the noise provisions in the Ōpōtiki District Plan and stated in her opinion it was useful for a consent condition to also stipulate these as it is an easy reference for consent holders who may not be aware of the District Plan provisions.
80. Ms Swan in response to the proposed changes to conditions, stated she accepted the minor changes suggested by Mr Fergusson, these being conditions 1, 11(v) and 26.
81. Rachel Medwin and Ingrid Pak addressed natural hazard matters in relation to the site. In so doing they acknowledged they have limited information of past flooding events for the site, however they have flood river level information. Ms Pak stated 1998 was the last recorded flood of 2.75m, noting this was higher than most of the property. In her opinion the lack of flooding of the site during that event is attributed to the fact the State Highway is located between the site and the river.
82. Through questioning a discussion was had in reference to a proposed condition relying on river monitors as a means of flooding warning. Ms Pak had hesitation to use these in this manner deferring the use of these river gauges primarily for Farmers, noting the different risk profile of this activity to that of Farmers.
83. Ms Swan raised that this was just one aspect to managing and responding to potential flooding. Other considerations include weather warnings from Met Service and Civil Defence. Ms Swan expressed river monitoring was one tool and is not intended to be the whole decision-making process.
84. Noelle and Aaron Miller could not attend the hearing and presented a statement of their concerns which was tabled at the hearing. In addition to concerns raised in their submission they raised;
  - i. No way for Council to police the centre
  - ii. Facility should not be there and they do not want it there
  - iii. Recent assault at similar facility in Auckland
  - iv. Ex prisoners on site at other facilities
  - v. No way to stop facility residents leaving and/or walking out
  - vi. Recent loud Harley Davidson motorcycle, noisy and scaring cattle and stock

- vii. Loud party over Christmas holidays with foul language
- viii. Concerns that more than 8 beds will be established
- ix. Concerns about one of the on-site Managers on front page of paper regarding drug charges.

### ***Right of Reply***

- 85. In the right of reply of the Applicant, Mr Fergusson submitted that after hearing from submitters the matters relevant were; an accepted need for the proposed facility, Pou Oranga Whai Ora is as a result of the collective efforts of iwi working in partnership with various agencies to produce a holistic approach, and security, privacy and rural amenity are important to surrounding neighbours. Mr Fergusson also acknowledged the concerns raised associated with traffic and noise generated since the site's purchase by the Applicant.
- 86. Mr Fergusson stated that while concerning, there is no evidence to link those events to the proposed activity.
- 87. In his right of reply, Mr Fergusson provided information from Pou Oranga Whai Ora detailing the assessment process that will be undertaken when considering the placement of residents.
- 88. Mr Fergusson noted the proposed consent conditions have been amended in discussion with Council's reporting planner and subject to a joint memorandum.
- 89. In conclusion Mr Fergusson confirms the Applicant has taken all practical steps to minimise actual and potential effects of the activity and seeks consent to be granted with conditions as detailed in the joint memorandum.

### ***Positive Effects***

- 90. All participants acknowledged the need for a facility and service in response to the high levels of meth use and addiction in the community. There were a large number of submissions that detailed the need and the positive social, community and cultural effects, the facility will provide. Ms Swan in her Section 42A Report stated there were clear consequential economic benefits and positive health, safety and wellbeing effects for residents, their whānau, and wider community.

### ***Findings***

- 91. I accept that these are, to varying degrees, positive effects associated with the proposal. To this end I agree with Ms Swan's accurate definition of the core issue presented in the Section 42A Report, being, "*The key matter for consideration is not the value or worth of the service, but whether the proposed site is appropriate for the activity.*"

### ***Safety and Security***

- 92. As identified by Mr Fergusson and Ms Swan this was the core of issues raised by submitters.
- 93. Council's Section 42A Report outlined relevant case law in regard to situations where the community or neighbours were concerned with potential anti-social behaviour associated with the activity. In summary of the case law, Ms Swan acknowledges the concerns of submitters may be valid, but evidence is needed to substantiate the link between the behaviour and the proposed activity.
- 94. Focus was given to how the facility will operate and, how residents would be selected for admittance. Substantive information was provided at the hearing from the Applicant and submitters in support of the activity. Ms Robinson clearly enunciated these concerns at the hearing and was supported by information

tabled at the hearing by Noelle and Aaron Miller. These concerns were consistent with those detailed in submissions opposing the activity.

95. Further to this, discussion was provided by Mr Fergusson and Ms Swan that canvassed means to manage these concerns including; an additional security camera, fencing, signage and landscaping. Subject to the Joint Memorandum, a suite of conditions were refined and presented for consideration.
96. Mr McKenzie in his presentation outlined the complaints procedures and auditing role of Te Whatu Ora, confirming Te Whatu Ora processes to respond to complaints made by the community, including neighbours. Additional conditions were submitted in the Joint Memorandum giving clarity on the processes available for neighbours or members of the community to employ when exposed to anti-social behaviour and poor operation of the site.
97. In the Joint Memorandum a revised Condition 8(a) was presented. This removed the need for a 2-metre high 'pool style' fence. Reasoning provided stated the revised condition enables other fencing styles to be agreed with adjoining neighbours, noting a hedge must still be established. The Joint Memorandum identified no evidence on the style, or the height of fencing was received from submitters.

#### Findings

98. While I understand the concerns raised by submitters at the hearing and in the submissions in opposition, I rely on the direction case law provides. No clear or direct linkage was provided linking recent anti-social behaviour with the site or to the proposed activity.
99. The additional information provided by the Applicant at the hearing and in the right of reply detailing operational matters and assessment process of residents was helpful. I also relied on the evidence of Mr McKenzie and his experience with similar facilities around New Zealand.
100. Further to this I have reviewed the conditions detailed in the Joint Memorandum. As represented at the hearing by Ms Swan, the proposed condition 8(a) was to address security and amenity concerns of neighbours to the south of the site. I note condition 8(a) of the Joint Memorandum has been relaxed to require the retention of a post and wire fence which is more in keeping with a rural environment.
101. I accept the revised condition 14, new conditions 26 and 27, the purpose being to provide clear processes for the Applicant to establish and maintain a Complaints Policy and Procedure document, maintain a Complaints Register and record of actions taken, and consideration of the register through any review of consent conditions.
102. I am in agreement that the effects associated with safety and security have been appropriately addressed by way of the conditions presented in the joint memorandum.

#### ***Rural Character, Amenity, Noise and Lighting***

103. The site is in a rural area with a number of small or lifestyle lots around the site. The activity is proposed to operate within the existing three-storey dwelling located on site. Both Mr Fergusson and Ms Swan agree that rural productivity is not affected or restricted.
104. The Council's Section 42A Report recommends the use of landscape planting as a means to soften effects and maintaining privacy for adjoining property owners and residents, while maintaining rural character.

#### Findings

105. I agree with Mr Fergusson and Ms Swan that the activity is consistent with activities that occur in a rural environment.

106. I also agree with the suite of conditions provided in the Joint Memorandum as providing a means to manage these effects. I note the change in regard to condition 8(a) and associated landscaping, including the use of screening and establishment of hedges is more in keeping with a rural environment.

***Natural Hazards (Flooding)***

107. Ms Pak and Ms Medwins' evidence was useful to consider the flood risk associated with the site including the increase in risk associated with climate change. Ms Swan in Council's S42A Report agreed with the Applicants assessment of flood risk and concluded the proposed activity is acceptable despite the existing and future flood risk.
108. Critical to this assessment is that the activity will operate from the existing building and no new buildings are proposed. The change in use will not increase the likelihood of the building being inundated and the proposed number of residents and staff present on site are no greater than those numbers that could be present in activities permitted by the Ōpōtiki District Plan.

***Findings***

109. I agree with the assessment and reasonings detailed by Ms Swan and Mr Fergusson in regard to no increase in risk as a result of the activity occurring on site. The requirement through conditions for an Emergency Response Plan and the matters to be addressed, provides appropriate means to manage this risk.

***Services***

110. The site has an existing water connection for potable water supply and a condition has been agreed in relation to supply of water for Fire and Emergency purposes for the site.
111. Council's Section 42A Report addressed the need for appropriate means for the disposal of wastewater. Submissions also raised concerns with the appropriateness of the design of on-site wastewater given ground conditions. A report from Waterflow confirmed it is possible to design and install a new on-site system. The Applicant's preferred means to satisfy wastewater disposal is a connection to Council's reticulated system.
112. Conditions have been proposed providing necessary flexibility to allow the Applicant to pursue either option for disposal.

***Findings***

113. I agree with the conditions proposed in the Joint Memorandum as being sufficient to address concerns with the provision of on-site wastewater disposal.

***Access and Traffic***

114. The existing sealed right of way and on-site parking area are considered appropriate by Mr Fergusson and Ms Swan. Council's Section 42A Report identifies Council is not concerned with the width or formation of the existing right of way.
115. Council's Section 42A Report states the vehicle crossing with Baird Road is in a deteriorated state and a condition is recommended to ensure it is resealed and complies with standard Drawing R28 in Council's Engineering Code of Practice.
116. Council's Section 42A Report stated effects related to access and transportation matters are acceptable.

Finding

117. I am in agreement with Ms Swan's statement in Council's Section 42A Report stating effects related to access and transportation are acceptable. Conditions are appropriate to require the vehicle crossing serving the lot is upgraded and re-sealed.

**Visual Effects (Signage)**

118. Mr Fergusson and Ms Swan both agree the activity and use of the existing dwelling will not have a significant change in terms of visual effects. A new sign is proposed to be used, approximately 1m<sup>2</sup> in size. This issue was not raised in submissions.
119. Council's Section 42A Report noted the sign does not adversely affect sight lines and are not un-common in rural areas.

Findings

120. I agree with the evidence of Ms Swan and Mr Fergusson that the activity does not cause a significant change in the visual effects related to the proposed activity.

**Reverse Sensitivity**

121. Council's Section 42A Report recognises reverse sensitivity effects may occur when a new, more sensitive activity establishes in an area causing tension and potentially constraints on the lawful operation of existing activities. It is noted the area contains both rural production and residential activities. The site has an established use for residential and visitor accommodation, which are permitted.
122. Ms Swan and Mr Fergusson are in agreement the proposed activity is unlikely to result in reverse sensitivity effects on adjoining activities.

Findings

123. I agree with the evidence of Ms Swan and Mr Fergusson that the activity is unlikely to result in reverse sensitivity effects on adjoining activities.

**Rural Production and Highly Productive Land**

124. Council's Section 42A Report noted the Ōpōtiki District Plan defines the site as holding Class 2 land being Versatile and Highly Productive Land as defined in the National Policy Statement for Highly Productive Land (NPSHPL). It notes the proposed activity will occur within part of the site which is already developed. No new development of the site is proposed as part of the application.
125. Mr Fergusson agreed with Ms Swan who stated in Council's Section 42A Report that the proposal will not cause adverse effects that may limit or constrain rural productivity or a loss of highly productive land.

Findings

126. I agree with the evidence of Ms Swan and Mr Fergusson that the proposed activity will not adversely affect rural production and highly productive land.

**Other Matters**

127. As noted in Council's Section 42A Report, a number of submissions requested re-zoning of their land to commercial or industrial. This is outside the scope of this application which is focused on the proposed activity being undertaken at the site of 19A Baird Road.

128. Submissions also stated concerns due to a potential decrease in property values as result of the activity operating at the site. Council's Section 42A Report outlined property values are not a relevant matter or effect on the environment and that considering property values would amount to a double weighting of any effects.
129. Having considered these matters, I agree with the response detailed in Council's Section 42a Report and these matters are not considered in my decision.

#### ***Overall Conclusion on Effects***

130. In determining my overall conclusions on the effects on the environment, I note the coverage of effects as detailed in Council's Section 42A Report, and Mr Fergusson accepting and agreeing with the assessment detailed by Ms Swan.
131. Specific progress and agreement was attained in relation to a revised suite of conditions as presented in the Joint Memorandum of Mr Fergusson and Ms Swan. Particular attention was given to safety and security measures to address concerns of neighbours but also that of the Applicant. Conditions requiring application of a Complaints Policy and Procedure document, and a Complaints Register provides clear processes and clarity to neighbours to raise issues with the operation of the activity at the site.

#### **Findings**

132. Having reviewed all the evidence before me, I agree with Ms Swan and Mr Fergusson and have concluded that overall, the effects of the proposed activity would be no more than minor. In reaching this conclusion I accept that a reasonable degree of mitigation will be required in terms of landscaping, including fences, screening and hedges to provide security and privacy to neighbours and residents, and processes are required where neighbours can raise concerns with anti-social behaviour or non-compliance of consent conditions. I agree these matters need to be controlled via conditions to ensure it occurs.
133. I consider any effects associated with visual effects, reverse sensitivity and rural production and highly productive land will be less than minor and that there is agreement the proposed activity will have positive effects.

#### **Relevant Provisions**

134. The following planning instruments are relevant to consider the application;
- i. National Policy Statement for Highly Productive Land
  - ii. Bay of Plenty Regional Policy Statement
  - iii. Bay of Plenty On-Site Effluent Treatment Regional Plan
  - iv. Ōpōtiki District Plan (5 January 2021)

#### ***NPS for Highly Productive Land (NPSHPL)***

135. The NPSHPL notes the site as containing Class 2 land, being Versatile Land and Highly Productive Land.
136. Council's Section 42A report noted the proposal does not rely on the qualities of soil in any way and that the proposal will occur within an area of the site that is already developed. The proposal does not require any further development which may affect or limit the use of the land within the site than already exists.
137. Mr Fergusson noted his agreement with the assessment of effects and the consideration of statutory requirements as detailed by Ms Swan in Council's Section 42A Report.



### **Bay of Plenty Regional Policy Statement (RPS)**

138. The RPS sets out a framework for determining if flood risk is acceptable and if it can be managed. The RPS contains Schedule L which outlines the process to determine the level of risk, high, medium or low and seeks that high risk is reduced and that new activities achieve a low level of risk. Medium risk, while tolerable, is not desirable and opportunities to reduce medium levels of risk should be taken.
139. The RPS objective 26 directly seeks to sustain the productive potential of the regions rural land resource and the growth and efficient operation of rural productions are provided for.
140. Ms Swan in the Council's Section 42A Report assessed the application in consideration of these provisions and stated the proposal is consistent with the relevant provisions of the RPS.

### **Bay of Plenty On-Site Effluent Treatment Regional Plan (OSET)**

141. The site is exposed to flooding as detailed in the Application and Council's Section 42A Report. Effects associated with potential flooding of the site include damage to land, buildings, its contents, personal property of residents, access and onsite effluent treatment system.
142. Conditions have been proposed to provide for wastewater disposal, this includes the option of either connecting directly to Councils reticulated services or the installation of an appropriately designed on-site effluent treatment system.
143. A report from Waterflow confirmed it is possible to design and install a new on-site system. Council's Section 42A Report confirms either option will satisfy the requirements of the OSET.

### **Ōpōtiki District Plan (ODP)**

144. The Ōpōtiki District Plan contains objectives and policies specific to Rural Character, Natural Hazards, Access and Transportation, Reverse Sensitivity, and Rural Land. These have been canvassed and assessed in the Council's Section 42A Report. This consideration and assessment is not repeated in this decision.
145. No evidence was presented in opposition to the assessment provided. Mr Fergusson in his presentation noted the assessment detailed in the Council's Section 42A Report and stated agreement with the assessment detailed.

### ***Findings***

146. I defer to the assessment of relevant provisions as detailed in Council's Section 42A Report, and in my opinion the key matters for consideration, as detailed, have been adequately addressed. I see no need to deviate from this assessment. Accordingly, it is my determination the proposal is consistent with objectives and policies of the RPS, ODP and the NPSHPL.

### **Part 2 of the RMA and Overall Conclusion**

147. Mr Fergusson in his opening presentation noted his agreement with the approach outlined by Ms Swan in Council's Section 42A Report in regard to Part 2. Ms Swan noted Part 2 consideration is not always necessary, particularly where the relevant planning documents have been competently prepared having regard to Part 2 and contains coherent set of policies to achieve clear environmental outcomes. Ms Swan noted the Ōpōtiki District Plan became operative in 2021 and gives effect to the higher order planning document. Ms Swan also noted natural hazards have been expressly considered as has the NPSHPL. Ms Swan put forward detailed consideration of Sections 6, 7 and 8 will not assist further.
148. I consider the proposal will achieve the intent of the NPSHPL and will not undermine the rural amenity and quality of the environment.

149. While I accept there will be some adverse effects associated with the proposal, in my opinion the key matters have been adequately addressed and/or mitigated through the suite of conditions proposed which contain specific requirements which need to be met in order for development to proceed. I also consider there are positive effects stemming from the proposal, particularly in the form of social, economic, cultural health and wellbeing and economic benefits of the facility.

**CONDITIONS**

150. I have reviewed the revised suite of conditions put forward in the joint memorandum presented by Council and the Applicant. In my opinion they are extensive.

**DETERMINATION**

151. For the foregoing reasons, land use consent RC2024-31 to establish and operate a Residential Care Facility and ancillary offices at 19A Baird Road, Ōpōtiki, is approved pursuant to sections 104, and 104B of the Act subject to the conditions set out in Appendix 1 below.

A handwritten signature in black ink, appearing to read 'Reginald Proffit', is written over a light grey rectangular background.

**Reginald Proffit**

**Hearings Commissioner**

**24 March 2025**

### **CONDITIONS**

1. Except as modified by a condition of this consent, the Residential Care Facility and ancillary office 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 Whaiora Emergency Response Plan: Evacuation Plan for Te Whare Ora O Kōpūārau Addiction Residence.
  - iv. Section 3 of the Statement of Evidence of Tim Fergusson, Pou Oranga Whai Ora Charitable Trust, 19A Baird Road, dated 28 January 2025.
  - v. Attachment A to the Applicant's Right of Reply dated 21 February 2025.

#### **Pre-occupation and pre-operation conditions**

2. Prior to use and occupation of the facility by residents, the lot shall be connected to council's reticulated wastewater system.

*Advice Note: Agreement for the connection to the wastewater reticulation and the full design for the connection must be obtained from the Ōpōtiki District Council's engineering team. This approval process is separate from the resource consent process. A building consent will be required for any wastewater connection works.*

3. As an alternative to condition 2, an on-site effluent treatment system (OSET) that complies with a resource consent granted by the Bay of Plenty Regional Council (BOPRC) shall be installed on the site to service the facility, prior to use and occupation by residents.

*Advice Note: Building consent will be required for the installation of the OSET system. A copy of the resource consent obtained from BOPRC should be provided with the building consent application documentation.*

4. The buildings must be provided with an adequate supply of water and access to water supplies for firefighting purposes that is in accordance with New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008, except that the vehicle accessway may have a sealed carriageway of 3m only.

*Advice Note: Compliance with this condition will need to be demonstrated as part of the building consent application documentation.*

5. The vehicle crossing serving the lot shall be upgraded and re-sealed in accordance with Standard Drawing R28 of the Ōpōtiki District Council's "Code of Practice – Subdivision and Development" version 1: 2000.
6. Security cameras shall be installed at the entrance of the site and directed to provide coverage of the shared accessway.

7. No less than 20 working days prior to the commencement of the activity, the Consent Holder shall provide a Landscaping Plan to the Ōpōtiki District Council for certification by the Building and Planning Manager. The purpose of the Landscaping Plan is to detail both fencing and hedge plantings that will be established along the entire southern boundary of the site to provide security and a visual screen to a height of 2 metres.
8. Unless an alternative is agreed in writing with the adjoining landowner(s), the Landscape Plan required by condition 7 shall provide for:
  - i. Retention of a post and wire stock-proof fence.
  - ii. Details of a hedge to be planted and maintained by the consent holder at a height of 2m and minimum width of 1.5m;
  - iii. Species and planter bag size at time of planting. The plants chosen shall be suitable for the location and achieve the required height after 2 years;
  - iv. Provision of 2m high temporary screening comprising green shade cloth that is to be installed and maintained during the hedge establishment phase to provide effective visual screening from the commencement of the activity;
  - v. Site preparation details and timing and method of planting;
  - vi. Maintenance requirements for the plant establishment period, and replacement of dead or diseased plants; and
  - vii. Maintenance requirements for the pruning of the hedge to achieve and maintain the required height and width.
9. The permanent and temporary screen fence components of the certified Landscape Plan shall be established prior to the operation of the activity. The planted component of the certified Landscape Plan shall be implemented within the first growing season (April – September) following implementation of this consent.
10. Landscaping and fencing shall be maintained on the site in accordance with the certified Landscape Plan for the duration of the consented activity.
11. Prior to use and occupation of the facility by residents, the Emergency Response Plan (ERP) for Site Inundation, 19A Baird Road, Ōpōtiki referenced in condition 1 shall be updated and provided to the Council's Building and Planning Manager for certification. The ERP shall include the following additional information as a minimum:
  - i. the name and contact details for the site manager or other person(s) responsible for ensuring implementation of the ERP.
  - ii. details of the sources of information that the responsible person(s) will utilise to obtain information about natural hazard events.
  - iii. The trigger levels for implementation of specific actions, including communication with council and civil defence staff and when to voluntarily and pre-emptively evacuate the site.
  - iv. Additional details and more specific stated timeframes for staff training and at least annual review of the ERP.
  - v. A copy of each revised ERP shall be provided to the council for record keeping by emailing [info@odc.govt.nz](mailto:info@odc.govt.nz)

*Advice Note: Voluntary and pre-emptive evacuation of the site may be necessary in a natural hazard event where a Civil Defence Emergency has not been declared and emergency staff and police do not have extraordinary powers under the Civil Defence and Emergency Management Act 2002.*

*Advice Note: With regard to Clause, 11(ii), potential sources could include weather reports, BOPRC monitoring data for river levels, and civil defence warnings. The appropriateness of any source will need to be confirmed as part of the development of the final ERP.*

12. The Emergency Response Plan (ERP) or subsequent revisions of the ERP shall be implemented for the duration of the consent.
13. Water level marker posts shall be installed and maintained at, at least four points along the eastern edge of the accessway. They shall be installed to demarcate both the edge of the open drain and the height of any flood waters.
14. Prior to occupation of the facility by residents, the consent holder shall develop a Complaints Policy and Procedure (CPP) document. A copy shall be provided to the Building and Planning Manager, Ōpōtiki District Council for certification and then the certified copy shall be provided to all landowners and occupiers of properties located on Baird Road and within 300m of the site.

The objective of the document is to clearly outline the process that any person should utilise if concerns arise regarding the operation of the facility. It shall also detail the procedures the consent holder will follow to record and address any concern. The CPP document should specify as a minimum:

- i. That complaints are to be directed to the Site Manager in the first instance to respond to and action as appropriate;
  - ii. If the response is not acceptable, complaints directly related to compliance with conditions of a resource consent should be directed to the Council's Monitoring officer.
  - iii. If the response is not acceptable, other complaints relating to operation of the facility should be directed to Health New Zealand Te Whata Ora.
  - iv. The CPP shall include the name and contact details for the Site Manager, Ōpōtiki District Council's Monitoring Officer ([info@odc.govt.nz](mailto:info@odc.govt.nz)) and the relevant position within the Addictions Service at Health New Zealand Te Whata Ora.
  - v. A procedure for the consent holder to review the CPP at least annually to ensure it is up-to date.
15. The consent holder shall maintain and implement operational procedures and selection criteria as described in the application documentation referenced in condition 1, or equivalent nationally accredited screening criteria as required by Health New Zealand Te Whatu Ora, to ensure that residents of the facility have been assessed by suitably qualified staff as being low risk to staff and other residents.

#### **Use and occupation conditions**

16. The Residential Care Facility activities authorised by this consent shall only be undertaken within the main "dwelling" building located on the site.

*Advice Note: The other buildings on the site are not lawfully established and the use of them is not authorised by this consent.*

17. No more than eight people may reside on the site at any one time while receiving treatment and rehabilitation services at the facility.
18. A maximum of ten people (residents and staff) may be present overnight on the site.
19. A minimum of two staff members must always be present on the site.
20. Ancillary office activities for a maximum of eight on site staff members may occur as part of the operation of the facility.
21. The operation of the facility shall not include any on-site day-patient services, such as workshops, training, education or counselling for people not residing on the site.
22. The facility shall maintain and implement a visitor procedure to ensure that anyone wishing to visit residents must pre-arrange a date and time for their visit with staff.
23. All exterior security lighting shall be designed, installed, and maintained so that the light emitted does not overspill site boundaries, or cause glare or nuisance to residents of adjacent properties.
24. All activities on the site shall be undertaken to meet the following noise limits at any point within the notional boundary of any dwelling on another site within the Rural zone.
  - Daytime:** 7am to 10pm Monday to Sunday including Public Holidays: 50 LA<sub>eq</sub>
  - Night-time:** At all other times – 40 LA<sub>eq</sub> and 70 LA<sub>max</sub>
25. Noise shall be measured in accordance with the provisions of NZS 6801:2008 Measurement of Sound and assessed in accordance with the provisions of NZS 6802:2008 Assessment of Environmental Noise.
26. The Ōpōtiki District Council may, 5 years after the activity commences and annually thereafter on the anniversary of the consent, serve notice on the consent holder under s128(1) of the Resource Management Act 1991 of its intention to review conditions 11 and 12 of this resource consent for the purpose of addressing any adverse effects that have arisen during the operation of the activity as a result of changes to natural hazard risk, and which are appropriate to deal with at a later date.

All costs associated with any review shall be met by the consent holder.
27. The consent holder shall maintain a register of complaints received regarding the operation of the facility and document actions taken to respond to them. The register shall be provided to an authorised officer of Ōpōtiki District Council upon request.
28. Ōpōtiki District Council may, one (1) year after the activity commences and annually thereafter on the anniversary of the consent, serve notice on the consent holder under s128(1) of the Resource Management Act 1991 of its intention to review conditions related to amenity, safety and security, including conditions 6, 7, 8, 9, 10, 14, 14A, 18, 21, 22 of this resource consent for the purpose of addressing any adverse effects that have arisen during the operation of the activity.

All costs associated with any review shall be met by the consent holder.

29. 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.

#### **Other Advice Notes**

- 1. As the land itself is subject to a hazard, the Council must consider the provisions of Sections 71-75 of the Building Act as part of the building consent process.*
- 2. Please note that resource consent is not consent to undertake buildings works. A building consent must be issued prior to any building work being undertaken.*
- 3. Any Signage for the facility is partly located in the public road reserve. Landowner approval from the Ōpōtiki District Council is required if the sign is to remain in that location.*
- 4. In accordance with section 127(1) of the RMA, the consent holder may apply to the consent authority for a change or cancellation of any condition of this consent.*