

**BEFORE AN INDEPENDENT COMMISSIONER**

**IN THE MATTER** of the Resource Management Act 1991 (**Act**)

**AND**

**IN THE MATTER** Resource consent application to construct a storage and distribution facility and three warehouses and ancillary offices in the Rural Zone at 16A Wickham Street, Hamilton

**COUNCIL REFERENCE** Resource consent – LU/0038/23

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Summary Statement of Gareth Moran on behalf of Industrie Property Rua Limited

**DATED: 23 NOVEMBER 2023**

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## **MAY IT PLEASE THE COMMISSIONER**

### **INTRODUCTION**

1. My full name is Gareth Elliot Moran. I am a Senior Associate Planner at Barker & Associates Limited (**B&A**). I have the qualifications and experience set out in my Statement of Evidence on this matter dated 8 November 2023.
2. In this summary statement I am addressing the following matters that have been raised in the evidence by Dr Davey on behalf of Hamilton City Council
  - (a) Provision and funding of Infrastructure
  - (b) Precedent effects
  - (c) Existing environment
  - (d) Higher Order Documents
  - (e) Objectives and Policies of the Waipa District Plan.
3. As noted in my primary statement of evidence, I have read the Code of Conduct for expert witness contained in the Environment Court's Practice Note 2014. I have complied with the Code in preparing this statement. This statement is within my area of expertise and represents my best knowledge about this matter except where I note that I am relying on the evidence of another witness. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

### **PROVISION AND FUNDING OF INFRASTRUCTURE**

4. Dr Davey's evidence records that he is concerned that the proposed development may have financial and planning implications on the development of the wider SL area.
5. I agree with Dr Davey that this is a valid point that requires consideration. If Hamilton City Council (HCC) is unable to recuperate costs either through Development Contributions (DCs) or Development Agreements, it raises uncertainty on how necessary infrastructure will be funded.
6. As indicated in Mr Brimlow's evidence, the site will be developed with the appropriate three waters infrastructure extended to the property boundary. This will be undertaken to ensure that the development is able to connect to public infrastructure when it is available. At this time, if the land has been transferred to HCC, DC's will be able to be collected. Another scenario may be that HCC has sufficient capacity in the water and wastewater networks for the Site to connect before the land is transferred into HCC. In this case a private Development Agreement could be

entered into between the applicant and HCC.

7. In order to give HCC certainty that the Site will connect to water and wastewater networks when they are available, and therefore have certainty of DCs for business case purposes, the following additional consent condition is offered by the applicant:

*The development shall connect to Hamilton City Council's reticulated water and wastewater infrastructure when it becomes available. At this point in time, the Development Contributions for water and wastewater calculated in accordance with the Hamilton City Development Contribution Policy shall be paid to Hamilton City Council, unless a Development Agreement has already been entered into between the Applicant and Hamilton City Council that addresses the timing for connection and payment of development contributions for water and wastewater infrastructure.*

8. The applicant has also offered to pay DCs to HCC for the transportation network. I consider that this is appropriate as the Site connects directly to the HCC roading network. Ms Makinson has advised that the appropriate calculation for the development contribution is to apply the daily traffic demand, and she has recommended using the assessment of the Council's traffic expert Mr Prakash, of 215 vehicles per day.

9. The proposed consent condition is offered by the applicant:

*A Development Contribution for Roding in accordance with the Hamilton City Development Contribution Policy and on the basis of a daily traffic demand of 215 vehicles per day shall be payable to Hamilton City Council prior to the occupation of activities authorised by the consent.*

10. The proposed consent conditions will ensure that the HCC can have certainty that the Site will connect to water and wastewater services when they are available, and will contribute to the HCC roading network.

## **PRECEDENT EFFECTS**

11. The evidence of Dr Davey has raised a concern of potential precedent effects. In particular, at paragraph 46, he is concerned that this application would set a precedent for continued piecemeal growth in this locality that will hinder future integrated planning, including access to a future Southern Links transport corridor.
12. As recorded in by EIC, I have researched the wider SL1 area, and aside from the Wickham Street enclave, I have not been able to locate any other similar sites that are zoned rural, but are used for industrial activities.
13. From a planning perspective, I consider that applying for an application of this nature on rural

land, which is being used for rural activities is not a consentable outcome. What makes this application different is that it is part of a discrete enclave of industrial activities, and the Site has an existing consent authorising industrial use. As such, I consider that the application can clearly be distinguished from other sites within the SL1 area and the grant of this applicant could not be used to support an application for industrial use elsewhere within the SL1 area.

14. In my opinion and as addressed in my EiC, I do not consider that potential precedent effects arise.

## EXISTING ENVIRONMENT

15. The evidence of Dr Davey characterises the existing activities on the Site as temporary in nature, and semi-industrial (yard-based activities which are not strictly urban in nature) and could reasonably be expected to occur further within the rural zone as a rural based activity.

16. There also appears to be some confusion regarding the consented history of the Site; which I will clarify as follows:

- In 2007 the site was consented to establish and operate a site office, and overnight storage of vehicles and asphalt material (council reference LU/0046/003.3) and;
- In 2009 a further consent was granted to establish a transportable house depot, including construction of the yard, offices, timber sales yard, two portacombs for on-site offices, and on-site services for water supply, wastewater and stormwater (Council reference LU/0079/09).

17. Dr Davey also considers, at paragraph 74, that it is important that the existing land use was consented under the previous Waipa District Plan (1997). I do not consider that this is relevant, except that it illustrates it has been in industrial use for a long period of time. I have also considered the relevant definitions in the District Plan and consider that the consented activities have no direct correlation or connection to the Rural Zone; and in my view, best align with the District Plan definition of Industrial Activity, rather than Rural Based Industry.

Industrial Activity definition:

*“means any use of land or BUILDING where people or machinery: Extract, process or convert natural resources, excluding FARMING ACTIVITIES and MINERAL EXTRACTION ACTIVITIES; and/or Produce or manufacture goods; and/or Service, test or repair goods or machinery; and/or Store goods (ensuing from the industrial process); and/or Transport or distribute goods including depots”*

Rural Based Industry definition

*“means an ACTIVITY that has a direct connection to or*

*processes the output of land based ACTIVITIES involving animal, agriculture, forestry or horticultural crops, and includes (but is not limited to) rural transportation and agricultural contractors depots, and the preliminary packaging and processing of agricultural produce including PACKHOUSES and coolstores, stock saleyards, sawmills, grain silos and feedmills, meat and poultry processing, wineries and RURAL RESEARCH FACILITIES.*

18. It is clear that the 2007 and 2009 consents have been given effect to and therefore form part of the consented baseline of activities applicable to the Site.
19. The below aerial photograph of the Site taken from 2015 shows the Sites industrial use, existing prior to the 2016 consent approval for a Rural Based Industry was granted. This consent applies to both the Site and the lot to the east as they are held in the same record of title. However, the consent only authorises the parcel of land to the east to be developed for agricultural machinery and equipment storage, and for both sites to have an all-weather metal surface.



*Figure 1: Aerial photograph of the site from 2015*

20. Dr Davey also refers to the recent resource consent granted for the Waste Management site. At paragraph 76 he considers that given the long and iterative consenting history for that site, which is quite different to the subject site, that he does not consider it appropriate to use the consented environment as a basis for approving the application.
21. I was the planner who led the consenting process for the Waste Management site which was approved on a non-notified basis by the Council.
22. As with the subject site, the Waste Management site was zoned rural, but was used for industrial related purposes. This was authorised by way of two resource consents, the first granted in 2005 (RC/4608) to establish an agricultural base with yards, offices, workshops, truck wash and storage facilities. A variation to this consent (RC/4608.02) was granted in 2018 to alter the layout of the site and introduce a number of buildings.

23. The Waste Management facility has been constructed and is now operational, aside from the final stage which includes the construction of a 2,750m<sup>2</sup> Consolidation Building, 481m<sup>2</sup> office, and 563m<sup>2</sup> Workshop and associated storage areas.
24. The facility has proven to be a successful operation, and meets the needs of many Hamilton residents.
25. I note that the Waste Management consent decision included the following reasons for granting consent:

*Any adverse environmental effects resulting from the proposal are deemed to be no more than minor, or can be mitigated by the imposition of appropriate consent conditions. The proposal is therefore considered to meet the gateways tests of Section 104D of the Resource Management Act, for Non-Complying Activities.*

*The site is located within the Rural Zone, adjacent to the Industrial Zone and adjacent to an existing consented industrial activity. The further development of this site for industrial purposes is considered to be consistent with the surrounding area.*

26. The Waste Management application had support from Waipa District Council, Hamilton City Council and New Zealand Transport Agency.
27. I consider that the consenting history and use of the subject site and 16 Wickham Street are very similar. They both form part of the long-established industrial enclave, and should be treated the same from a planning perspective.
28. Before lodging the current application, I attended a pre-application meeting with Waipa District Council on 27 September 2022. Although no formal pre-application meeting notes were circulated, email correspondence from Council following the meeting advised the following:  
  
*“The existing landuse is already light industrial/mixed use and in general the proposal could be supported by Council”*
29. I understand that little weight should be given to Council’s preliminary comment saying that that *‘the proposal could be supported’*, however the fact that Council confirmed that the site is ‘light industrial/mixed use’ is compelling; consistent with the approach taken for 16 Wickham Street, and supports that the use of the site and surrounding sites is ‘industrial’ rather than that of a ‘rural based industry’.
30. As noted above, Dr Davey has also suggested that the activities are temporary in nature, and that the proposal will entrench the site for industrial use.

31. Given the site has operated in a light industrial capacity for circa 16 years, I do not agree that the use could be considered temporary in nature.
32. As mentioned in my EiC, for the Site to be converted back to rural related activities, the Site would need to be completely rehabilitated; and existing buildings and infrastructure removed at a significant cost. Mr Hay has also confirmed that the Site will continue to be used for industrial activities, to change the use is not economically viable.
33. In my view the Site is used for industrial activities and will continue to be used as such, and is part of an existing industrial enclave.

#### **HIGHER ORDER DOCUMENTS**

34. I agree with Dr Davey that strategic documents are vital to ensure integrated planning occurs in a manner that provides: sustainable and integrated infrastructure solutions; quality connections to places of work; meets the costs of infrastructure; and does not compromise planned investment.
35. However, it is important to consider this Site in its context, and how the development relates to or frustrates any strategic planning for the area. The Site and adjoining sites are already used for industrial; the site and the surrounding sites will continue to be used for industrial. They are located and connected to the existing industrial zone in a way that they are seen as part of it. They are a discrete area that will not frustrate or compromise the wider structural planning for the SL1 area.
36. The Strategic Boundary Agreement and the higher order documents (notably Future Proof and the WRPS) have signalled that the site will be used for industrial in the future. Therefore, the development also aligns with the future intended use of the site and wider area. This does not appear to be raised as an area of contention.
37. In my view, the principal issue in question is around timing, and that Dr Davey's considers that the development of the Site should not occur until a master plan / structure plan for the wider area is established.
38. However, from my analysis and review of the evidence I consider that the proposed development will have little to no effect on strategic development of the SL1 area. I note that Ms Makinson has addressed this from a transport perspective, and the proposed consent conditions provide certainty of connection to water and wastewater services when they are available.
39. It is also unclear how one individual site (whose use won't be altered by way of this proposal), could potentially frustrate a potential master planning process.
40. In addition, the development will create significant benefits in terms of stormwater quality,

contaminated land remediation, amenity and job opportunities.

41. Given it has been demonstrated that any adverse effects can be appropriately avoided or mitigated, and the proposal would result in a number of positive effects, in my view there is no planning basis why the development should be delayed.

## **OBJECTIVES AND POLICIES OF THE WAIPA DISTRICT PLAN**

42. As stated in my EiC, I have reached the conclusion that the proposal is not inconsistent with the relevant objectives and policies of the Waipa District Plan and any potential adverse environmental effects are no more than minor. I have concluded that the proposal is able to pass through both limbs of the s104D gateway test.
43. In Dr Davey's evidence, he states that the proposal is contrary to the objectives and policies, and in particular considers that Objective 1.3.1 and Policy 1.3.1.5 are key to the application as it directs resource use within the rural zone, and seeks that the rural zone continues to be used for rural activities.<sup>1</sup>
44. However, Dr Davey excludes the very first part of the policy which says (emphasis added):
- "To ensure that the natural resources of the Rural Zone, including high class soils, continue to be used for rural activities by..."*
45. As concluded throughout my EiC, as the site is currently used for industrial activities, and has been for approximately 16 years, the underlying consents do not have an expiry date, and there is nothing to suggest that they (or any like for like activity) will not remain in operation for the long term, the site cannot continue to be used for rural activities.
46. Dr Davey also identifies the Rural zone objective 4.3.12 and policy 4.3.12.1 relating to 'non-farming activities' to be highly relevant. I agree with Dr Davey on this point. Dr Davey then concludes the application is contrary to this objective and policy on the basis the proposal doesn't have a '*compelling reason*' to be located on the subject site within a rural area.
47. As identified in my EiC,<sup>2</sup> I disagree with this conclusion. Further, policy 4.3.12.1 provides to 'limit' non farming activities, not to 'avoid' or 'prohibit', and the exception in (a) is where the activity has "a functional and compelling reason to establish in a rural area", while here the industrial use is already established.
48. In terms of the wider objectives and policies associated with rural character and amenity, I do not agree that the development would adversely affect the rural amenity values given the existing

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<sup>1</sup> Paragraph 59 of Dr Davey's evidence.

<sup>2</sup> Paragraphs 89 and 90 of my EiC discusses the 'functional and complying' objective and policy.



environment. In my view the evidence of Dr Davey overstates the rural environment and amenity values relating to the site; when it is clearly not rural in nature.

49. Dr Davey also addresses a number of objectives and policies in Chapter 15 relating to the provision of infrastructure, including that development does not give rise to demand for the uneconomical and unplanned expansion of infrastructure services. I do not consider that the application is contrary to these objectives and policies as it is designed to be able to connect to water and wastewater services when they are available, and provide for water and wastewater services on site until this can occur. The conditions offered by the applicant provide certainty to HCC of this for its infrastructure planning, and also contributes to the roading network.
50. The subject site represents an anomaly in that it is zoned rural, but has been developed for industrial activities; as such the objectives and policies need to be interpreted in light of this context.
51. When forming an overall assessment in terms of the objectives and policies, it is important to give certain objectives and policies more weight, depending on their relevance to a particular proposal. Overall, even though there are not objectives and policies which specifically recognise and support the 'anomaly' of the site, I also would not expect this to be the case, but equally when considered as a whole and due to the uniqueness of the site, I do not consider that the proposal is contrary to the objectives and policies of the Plan.

## CONCLUSION

52. Having considered the evidence of Dr Davey, and Ms Makinson's response to Mr Prakash's evidence, I maintain that the conclusions reached in my EiC that it is appropriate for the application to be granted consent.
53. I have also included an updated set of proposed conditions of consent **attached** to this summary statement.

Gareth Moran  
22 November 2023