

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

Reply Statement of Bianca Tree on behalf of Industrie Property Rua Limited

DATED: 4 DECEMBER 2023

MAY IT PLEASE THE COMMISSIONER

INTRODUCTION

1. These submissions address:
 - (a) the oral points made in reply at the hearing on 23 November 2023, including any additional matters arising from the memorandum of counsel for Hamilton City Council (**HCC**) dated 29 November 2023; and
 - (b) confirm our case law research on whether there is any authority to support that it is a relevant effect under the RMA to take into account whether or not a proposal will contribute to the business case for public infrastructure.
2. We **attach** the following information as requested by Commissioner van Voorthuysen:
 - (a) A copy of the written approval on behalf of South Park Limited to the minor road markings and new signage in the right of way (**Appendix 1**); and
 - (b) Correspondence to confirm the locations for disposal of wastewater and tradewaste (in the event of a spill) (**Appendix 2**).
3. We also confirm the following in respect of specific queries raised by Commissioner van Voorthuysen during the hearing:
 - (a) The Waste Management facility has been operating since 16 November 2020.¹
 - (b) The Macdonald concrete crushing and landfill site is 9.1795 ha, and consent has been granted for bulk earthworks and relocating approximately 500,000m³ of clean-fill to the adjoining land owned by South Park Limited.²
4. We confirm that Mr Moran for the applicant and Ms Thomas for Waipa District Council (**WDC**) have met to discuss the proposed set of conditions, and a full set of updated conditions, including the draft traffic management plan, will be provided as soon as possible.

¹ Mr Hay EIC, para [13].

² Mr Moran, EIC, para [42].

POINTS OF REPLY

Strategic Boundary Agreement between HCC and Waipa District Council

5. Mr Muldowney submitted that the Site is important as part of a strategic land use resource in the 'Priority 1' area under the Strategic Boundary Agreement. However, the witnesses for HCC did not provide any evidence on how the application will impact on the strategic planning or development of the 'Priority 1' area.
6. Mr Muldowney has provided a copy of the Strategic Boundary Agreement. The Site is located to the west of the alignment of the Southern Links Designation. There are only a few parcels of land further to the west of the Site within the 'Priority 1' area, and only one parcel of land between the Site and the southern boundary of the 'Priority 1' area.
7. The maps for the Southern Link Designation are attached as **Appendix 3**. These show the Site in relation to the designation corridor and that there is no proposed entry / exit from the corridor in the location of the Site. Ms Makinson has confirmed that the Site can be serviced in the future by a southern extension to Wickham Street. Mr Hay confirmed that the proposed development has been designed to provide for an extension to Wickham Street in the future.
8. Mr Muldowney submitted that it is important for master planning to have a "blank sheet", and Dr Davey was concerned about enabling "ad hoc" development.
9. However, there is not a "blank sheet" in this area, and the proposal is not "ad hoc". Industrial activities have been occurring in this location for more than twenty years for the Enviro NZ site, eighteen years for the Waste Management site, and sixteen years for the subject site.
10. Allowing a new industrial activity to establish now, on a site that is already consented for industrial use, will not compromise or adversely impact on the master planning or future development of the wider 'Priority 1' area.

Section 7(b) efficient use and development of the land resource

11. Dr Davey confirmed that this area will be developed for industrial activities in the future. Dr Davey also acknowledged in his evidence support for the economic benefits of the application and the shortage of industrial land.

12. Mr Muldowney could not give any indication of when the area may come into the jurisdiction of HCC and rezoned.
13. On one hand, there is acknowledgement of the shortage of industrial land and recognition of the economic benefits of the application, and on the other hand, no certainty of when the rezoning will happen and therefore when redevelopment (in the opinion of HCC) is appropriate.
14. Mr Moran confirmed that the Site is an existing industrial enclave. There is no disagreement that the proposed development is consistent with the strategic long-term use of the area. The application is simply providing for a new industrial activity on an existing industrial site. To decline the application, and retain the status quo for an unknown time period, would fail to achieve the efficient use and development of the land resource under s7(b) of the Act.

Industrial nature of the site

15. Mr Muldowney referred to paragraph 30 of *JARA Family Trust* and listed the various activities that were occurring in the industrial / commercial enclave in that decision.³ He then described the various activities in the area surrounding the Site. However, he started his description further to the west at the racing stables on Tuhikaramea Road and carried on past the Site to the east to the main trunk line.
16. Mr Muldowney's description of existing activities, which included activities rural in nature, was much wider than the area of the industrial enclave. This did not undermine the industrial nature of the Site, but helpfully illustrated that there are clear boundaries between the existing industrial enclave and adjoining activities that retain a rural character.
17. Further, it is not alignment with the specific activities listed in *JARA Family Trust* that is relevant. In *JARA Family Trust* it was recognised that there was an existing industrial / commercial enclave despite the rural zoning of the land, it was something of an anomaly, and allowing for continued industrial use did not give rise to adverse effects or do harm to the integrity of the plan.⁴ The same applies here. The Site is within an existing industrial enclave despite the rural zoning. As noted by Mr Hay, when visiting the Site, it appears as just an extension to the adjoining industrial zone.

³ *JARA Family Trust v Hastings District Council* [2015] NZEnvC 208

⁴ *Ibid* at [35].

Precedent and rural based industries

18. Mr Muldowney in responses to questions during the hearing conceded that the existing activities on the Site do not have a rural connection.
19. Mr Muldowney has provided a copy of the resource consent LU/0002/16 granted by WDC on 5 February 2016 and stated that it authorises a 'rural based industry' on the Site and the parcel of land to the east of the site.
20. This is incorrect. LU/0002/16 authorises a 'rural based activity', and specifically an agricultural machinery and equipment storage facility, on Lot 1 DP 486522, the parcel of land to the east of the site. In respect of the Site (Lot 1 DP 396081), LU/0002/16 authorises an all-weather metalled surface only.
21. The notification and decision report for LU/0002/16 shows that the Site was already developed for industrial activities at this time (see Figure 1). The notification and decision report also describes the site as being surrounded by industrial development.
22. The existing resource consents that apply to the Site are detailed in the s42A report and Mr Moran's evidence. The activities authorised are not consistent with the definition of 'rural based industry'.
23. Mr Muldowney has also provided aerial photos of a number of sites in the rural zone of the Waikato or Waipa districts, which he submits are of similar size and have existing rural activities which have a similar level of amenity, as the subject site. He submits that if the application is granted the elements of rural character and amenity that the Site retains will be lost. It seems that Mr Muldowney has provided these examples to support that a precedent effect could arise.
24. Mr Moran disagrees that the Site, or the industrial enclave, retains any rural character or rural amenity values. It is also not clear why this is an issue for HCC, given the intended future industrial use of the wider area.
25. The examples of 'rural based industry' in the rural zone are also not surprising or unique. The question to be addressed is if there are any other sites within the Southern Links Land Area that have the same or similar characteristics to the subject site, such that a precedent effect could arise. Mr Moran confirmed that he was not aware of any other existing industrial areas, or even any 'rural based industry', in the Southern Links Land Area. The further information provided by HCC supports this finding.

26. There are no precedent effects that could arise from granting the application.

Effects on the transport network

27. Mr Muldowney submitted that the traffic safety effects at the Kahikatea Drive / SH1C intersection are a significant adverse effect, as although they are low probability, they are high potential impact as it could result in loss of life. However, he also advised that HCC and Waka Kotahi had not allocated any budget for safety improvements to this intersection.
28. Ms Makinson helpfully put the increase in crash risk in perspective – the increase in traffic from the application may, at worst, result in one additional injury crash every 55 – 80 years. This also does not take into account the proposed traffic management plan (**TMP**) which prohibits certain turning movements at this intersection, nor does it take into account that the existing traffic movements to and from the Site do not have any traffic route restrictions. The TMP is providing a belt and braces approach.
29. If Mr Muldowney's standard of effects on the transport network were to apply, then no development that would utilise the Kahikatea Drive / SH1C intersection should be granted consent.
30. Mr Muldowney has also provided the trip generation limits for the requirement of an integrated transport assessment (**ITA**) under the Hamilton City District Plan. The Site does not have access onto a strategic network or major arterial transport corridor, and therefore the triggers of 500-1499 vehicles per day for a simple ITA or 1500 vehicles per day for a broad ITA applies. It is noted that the potential traffic generation from the Site is 215 vehicles per day (based on the HCC assessment).
31. Ms Makinson finds that the traffic effects are negligible to less than minor even without the TMP in place.

Overall assessment of effects and implications for three waters business case

32. Mr Muldowney and Dr Davey confirmed that the only adverse effects from the application that are more than minor, are traffic effects. It was accepted that the concerns raised by Mr van Rooy in respect of three waters are minor or less than minor.
33. Mr van Rooy raised a concern that if the Site provides for its own three waters that it will be excluded from participating in any broader long term strategic infrastructure solution, such as the Southern Wastewater Treatment Plant project, and in particular would not be

included in the business case for that project. Mr Muldowney submitted that this is an effect that could be considered under the RMA.

34. I consider that this is a moot point, as the applicant has offered on an Augier basis a condition of consent confirming that the Site will connect to Hamilton City Council water and wastewater services when they are available. Therefore, the Site can be included in HCC's business cases for water and wastewater infrastructure.
35. Mr Muldowney has referred to the High Court decision *Olliver v Marlborough District Council* to support that failure to ensure that development proceeds strategically, and in manner integrated with public infrastructure, can be declined under s104 even where adverse effects are minor. He submits that this arises where a precedent effect is established, and the effects could be more than minor on the public infrastructure and sustainable development of the land resource.
36. As addressed above, there is no risk of a precedent effect here due to the unique nature of the consenting history of the Site and its surrounding industrial enclave, and that there are no other similar sites in the Southern Links Land Area.
37. In addition, the Site is proposed to be developed in a way that it can connect to public infrastructure when it is available. Allowing the continued industrial use of the Site will also not frustrate or undermine the future master planning for the immediate area, which is earmarked for industrial use, or the wider Southern Links Land Area due to its fringe location.
38. The *Olliver* decision was largely determined on the grounds that the application was contrary to the objectives and policies of the district plan. Here, due to long established industrial use on the site and wider area, there are few objectives and policies in the Waipa District Plan that are directly relevant. However, the absence of support does not mean that the application is 'contrary to' the plan. Overall, Mr Moran found that the application was not contrary to the plan.

DATED at Auckland this 4th day of December 2023



Bianca Tree

Counsel for Industrie Property Rua Limited

From: Les Harrison <les.harrison@lhtgroup.nz>
Sent: Wednesday, 22 November 2023 8:49 pm
To: Andrew Hay <Andrew.Hay@strideproperty.co.nz>; Gareth Moran <GarethM@barker.co.nz>
Cc: Craig Foster <craig.foster@lhtgroup.nz>; John Moore <jmoore@kingstons.co.nz>; 'Leanne Hansen' <leanne@truckservices.net.nz>
Subject: RE: End of Wickham - Traffic

Hi Andrew,

Yes, I can confirm option 1 for the intersection at Wickham Street,

Kind regards

Les Harrison



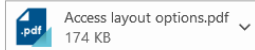
Hamilton & Tauranga
07 8472074
021980998

FW: End of Wickham - Traffic



Andrew Hay <Andrew.Hay@strideproperty.co.nz>

To: Les Harrison



Mon 13/11/2023 6:48 pm

Hi Les,

As discussed last week I have received feedback from Enviro NZ suggesting Option one is a better option as vehicles exiting their site or the right of way can see vehicles leaving Waste Management, so it is best that the give way signal is on the right of way and the Enviro NZ driveway.

Can you please confirm agreement by reply and we will facilitate the signage and painting.

Thanks
Kind regards

Andrew Hay
Fund Manager - Industrial

M: +64 21 308145
andrew.hay@strideproperty.co.nz

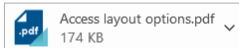
End of Wickham - Traffic



Andrew Hay <Andrew.Hay@strideproperty.co.nz>

To: Les Harrison

Cc: Craig Foster



Wed 1/11/2023 3:11 pm

God afternoon Les,

As discussed just now Enviro NZ, who run the green waste facility in Wickham Street, have raised concerns over traffic prioritisation and risk of accidents at the end of Wickham street.

Attached are two possible traffic calming measures proposed by our traffic engineer at CKL. These probably just reflect what should be or is happening anyway.

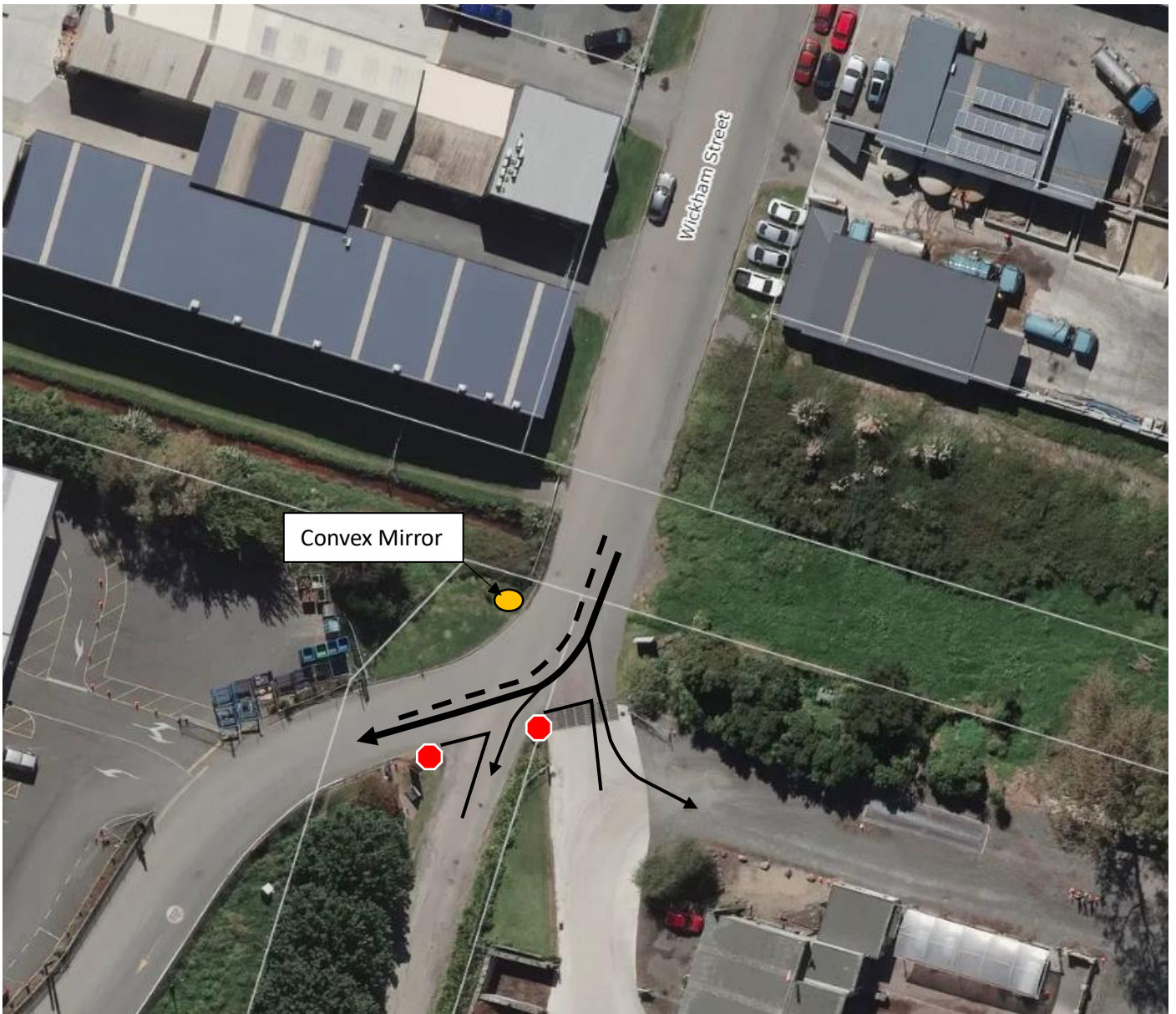
I propose option 2 apply as on the ground it appears Wickham Street just continues past the two driveways anyway.

Can you please confirm agreement on this option and once we also have agreement from Enviro and Waste Management we will proceed with the installation at our cost.

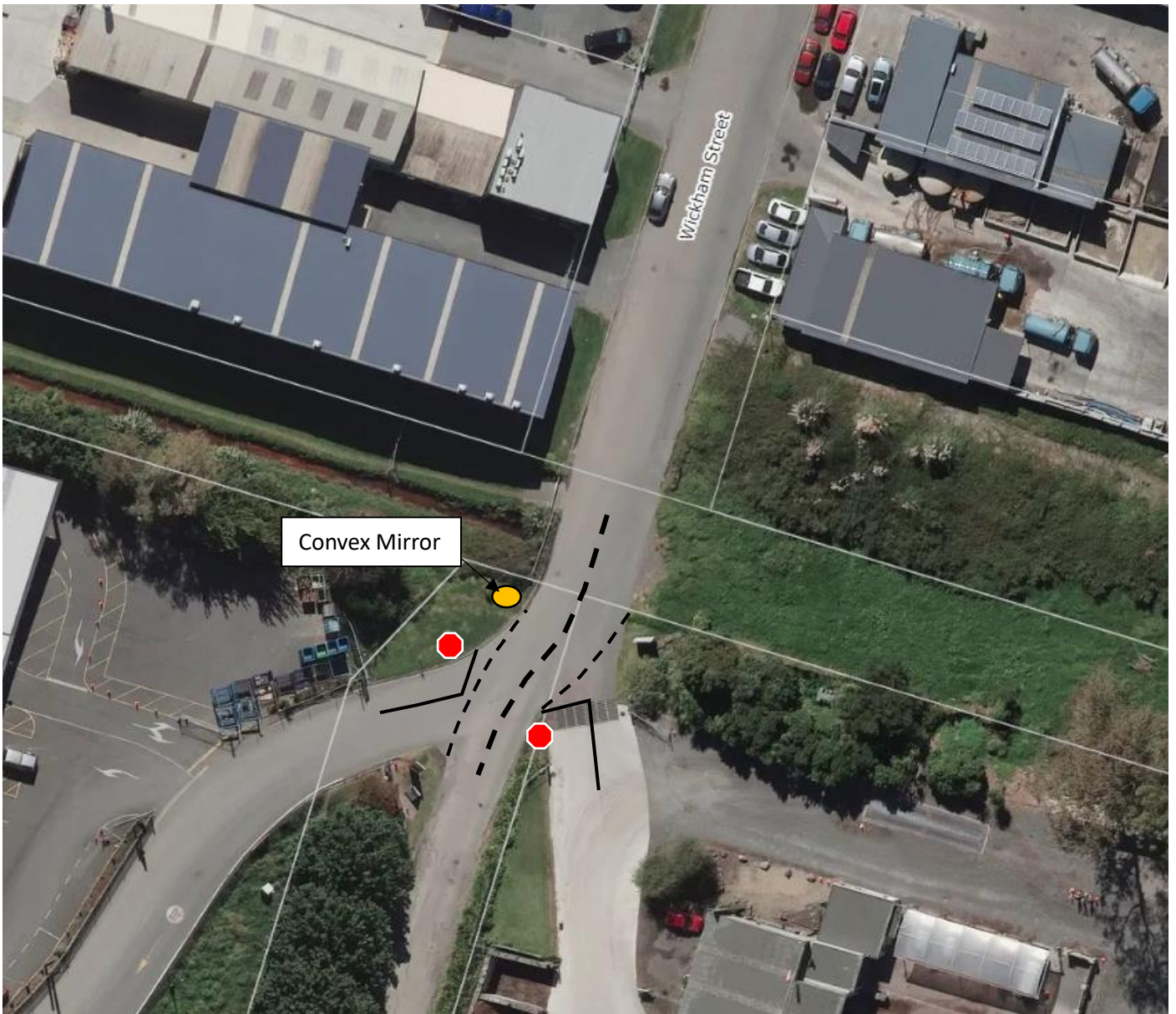
Thank you for your prompt reply, it would be good to address this now it has been raised.

Thanks
kind regards

Andrew Hay



Option 1: Priority To Waste Management



Option 2: Priority To Proposed Development

Confirmed Disposal Locations – Wastewater
16A Wickham Street Resource Consent

Domestic Waste

Christian Shouler christian.shouler@colabsolutions.govt.nz
Senior Trade Waste Officer
07 838 6867 or 0800 357 358
tradewaste@colabsolutions.govt.nz
www.colabsolutions.govt.nz

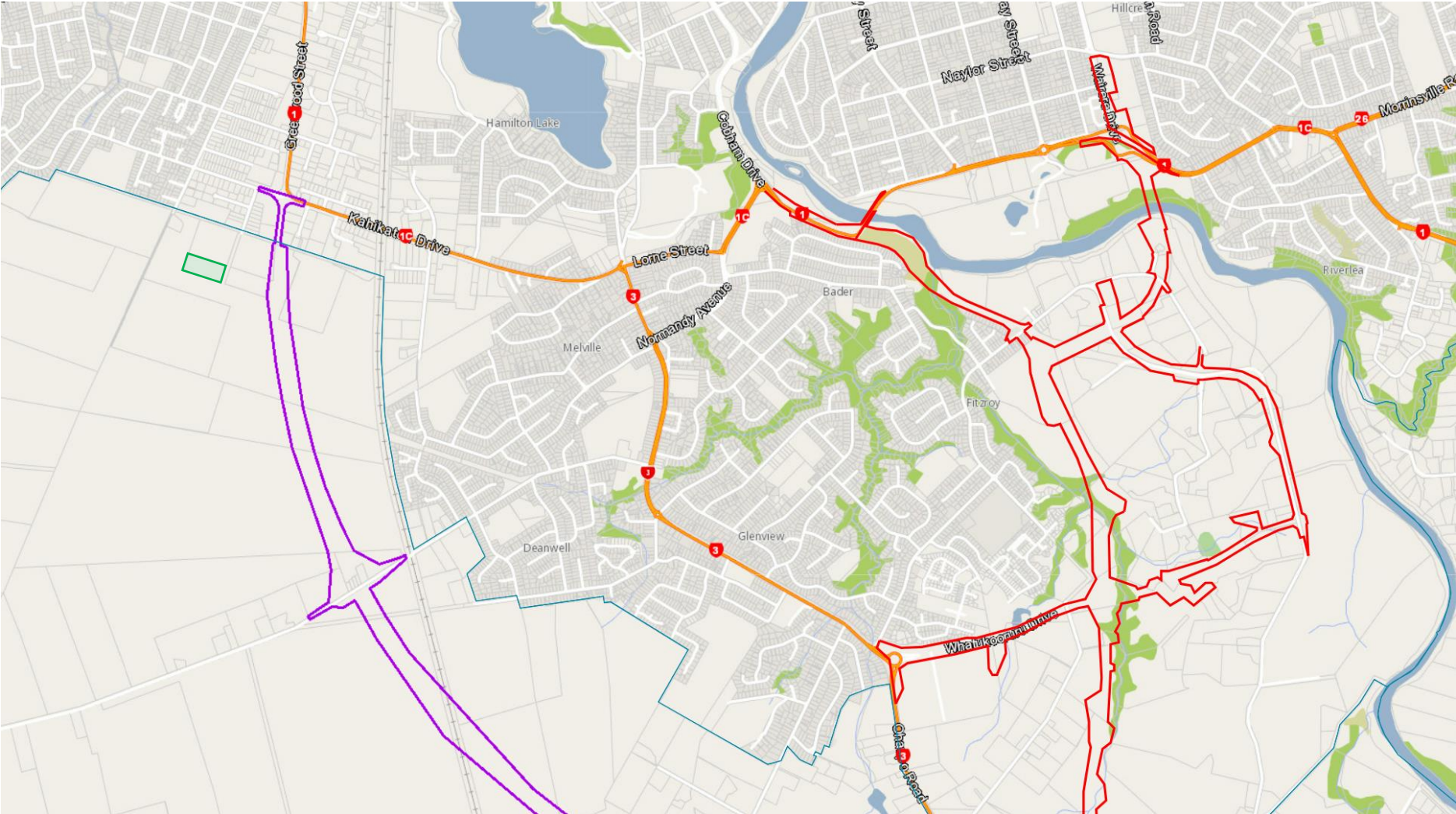
*To accept approximately 10,000L per week of domestic waste
Disposal in Waipa DC*

Commercial and trade waste

Aaron James Morrow - aaron@allensunited.co.nz
Transport & Technical Manager
Allen's United Waikato 1986 Ltd
15 Wickham Street, Hamilton 3204
078461294
0276222136
www.allensunited.co.nz

Southern Links Designations

Waka Kotahi Map



Legend

- 16A Wickham Street Site
- State Highway Designations
- Local Road Designations
- Territorial Authority Boundaries



- Designation Boundary
- HCC Local Road Alignment (Indicative)
- NZTA Southern Links SH Alignment (Indicative)
- Current State Highway Alignment
- Waikato Expressway

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- Designation Boundary
- HCC Local Road Alignment (Indicative)
- NZTA Southern Links SH Alignment (Indicative)
- Current State Highway Alignment
- Waikato Expressway

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