

BEFORE THE INDEPENDENT COMMISSIONER

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an application for resource consent for the construction and establishment of a storage and distribution facility, warehouses, ancillary offices and site remediation at 16A Wickham Street, Hamilton

**STATEMENT OF EVIDENCE OF MARK NAIRN DAVEY
(PLANNING)**

Dated 15 November 2023

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INTRODUCTION

1. My full name is Mark Nairn Davey.
2. I am the Urban and Spatial Planning Unit Manager for Hamilton City Council (HCC). I have held the role since December 2021.
3. I hold a PhD in Urban Planning and a Bachelor of Planning (First Class Hons) from the University of Auckland. I am a full member of the New Zealand Planning Institute. In my current role as Urban and Spatial Planning Unit Manager for HCC, I lead a team of planners and urban designers tasked with setting the land use policy for the City, as well as sub-regional planning through Future Proof.
4. My previous relevant experience includes Manager Land Use Policy and Planning for Auckland Transport where I was involved in land-use and transport integration with a focus in southern Auckland. I was involved in transport and planning projects in Manukau City Centre, Drury, Pukekohe, Papatoetoe and the wider south-west future urban growth areas. Prior to this role, as Growth and Analytics Manager for Waikato District Council, I was involved in the district's most recent District Plan review, establishing the zoning framework across the district as s42A author, analysing the supply and demand of residential and employment land throughout the district, and providing evidence on the strategic direction (Chapter 2) of the Waikato Proposed District Plan. During the plan review I led the spatial and urban design analysis to inform the introduction of a new medium density residential zone in the main towns and the development of town centre concept plans for Pookeno, Ngaaruawaahia and Huntly.
5. My PhD research investigated urban planning in Auckland under the new Auckland Council and the introduction of spatial planning. As part of this I undertook extensive research into the history of urban growth

management and regional planning in Auckland. I have also been involved in research teams investigating the efficacy of planning frameworks in terms of delivering housing intensification in Auckland. I have undertaken international research into urban growth management, affordable housing and transit orientated developments in North America. I have published a range of articles, book chapters, conference papers and research papers across these themes.

CODE OF CONDUCT

6. I am familiar with the Code of Conduct for Expert Witnesses (Environment Court Practice Note 2023) and although I note this is a Council hearing, I agree to comply with this code. The evidence I will present is within my area of expertise, except where I state that I am relying on information provided by another party. I have not knowingly omitted facts or information that might alter or detract from opinions I express.

SCOPE OF EVIDENCE

7. This evidence is provided in opposition to the Proposed Resource Consent – 16A Wickham Street – Industrie Property Rua LU/0038/2 (the ‘application’). It relies on the expert transportation evidence of Vinish Prakash, and the expert three waters evidence of John van Rooy filed herein.
8. My evidence will discuss strategic planning issues from the following planning documents:
 - Future Proof
 - Waikato Regional Policy Statement
 - National Planning Statement on Urban Development 2020
 - Hamilton Urban Growth Strategy

- Strategic Land Supply Agreement 2022

9. In addition, my evidence will assess the objectives and policies from the Operative Waipā District Plan and cover local and site-specific environmental effects of concern, including the transport and three-waters issues raised by the supporting evidence briefs.

EXECUTIVE SUMMARY

10. I would not ordinarily present evidence at a resource consent hearing of this nature if it was not for the strategic significance of this application for HCC. This application is for an industrial activity in a rural zone abutting HCC's boundary. This locality, referred to as SL1, is intended to be transferred to HCC's administrative control for urbanisation. For good reason, as outlined in my evidence this process has not commenced. The reason for this is twofold. First, there has been no detailed planning undertaken to determine future land uses in this area and how they would integrate with existing uses within HCC's boundary, including the Southern Links designation and State Highway 1c (**SH1c**). Second, as the evidence shows, there is no infrastructure capacity. Solutions are required before development in this area can proceed – these are not insignificant. Boundary transfer processes would also need to be initiated between HCC and Waipā District Council as per the Strategic Boundary Agreement (**SBA**). A local government commission process would follow to effect this change.
11. The strategic direction provided for by the Future Proof Strategy, Waikato Regional Policy Statement (**WRPS**), and reflected in the National Policy Statement on Urban Development is that development is undertaken in an integrated manner, is strategic, and carried out in conjunction with infrastructure planning, financing, and delivery. The expectation set through strategic planning documents is that SL1 is eventually incorporated into Hamilton City. The SBA between HCC and Waipā District

Council reflects this expectation and seeks to keep the land uses within SL1 rural-based to protect that land resource for future urbanisation. In my view the application is contrary to the strategic planning direction for this area.

12. In addition, the evidence shows that the surrounding transport network does not have sufficient capacity to support further development in this area until such time as major physical upgrades are completed. The self-service arrangements for three-waters proposed in the application is representative of capacity issues of three-waters servicing in this part of the City. The Southern Links transport designation and planned Southern Wastewater Treatment Plant are two key pieces of infrastructure required before the SL1 area can be developed. However, neither of these pieces of infrastructure have full planning, funding, and delivery programmes in place.
13. The site is solely reliant on transport access from the local Hamilton roading network, as well as the state highway network managed by Waka Kotahi. Supported by the evidence of Mr Prakash, I consider the application to present unacceptable cumulative safety and operational effects on the roading network. As per Mr Prakash's assessment, the intersections that would be used by the application are already performing poorly. In addition, the Travel Management Plan proposed in the application is not considered by Mr Prakash to be enforceable or effective.
14. The traffic concerns related to this application exemplify why policy settings requiring integrated planning is vital. A portion of the Southern Links transport corridor development is required to enable development in this locality. There is no latent capacity existing in the network until at least a partial formation of the Southern Links corridor along with intersection upgrades onto SH1C. If new development in this area is allowed for in the absence of transport interventions this will lead to a worsening of the safety and operation of the transport network.

15. Another key piece of infrastructure required for the SL1 area is three-waters infrastructure. The application is proposed to be self-serviced. This is because no connections to the Hamilton City water or wastewater network would be allowed due to capacity issues. As outlined by the evidence of Mr Van Rooy, as an urban, industrial activity, the self-service arrangements are not sustainable solutions. This further reinforces why this land should remain rural based until structure planning and infrastructure planning and funding is undertaken and committed, and the land is introduced into the City boundary.
16. I have assessed the objectives and policies of the Operative Waipā District Plan (**OWDP**) against the application. I consider the application to be clearly contrary to the OWDP due to the conflict with its own strategic direction and rural zone expectations. The strategic direction within the OWDP reflects that set out in Future Proof and the WRPS and as such, I consider the application is contrary to these higher-order documents.
17. I do not believe there is a compelling reason for this application to occur on the subject site in a rural zone. In addition, the application is a clear and permanent departure from the rural character expected in the zone, risks undermining the strategic industrial node's future land-use planning, and local infrastructure operations.
18. Notwithstanding this, I want to stress the importance for economic growth and development in the City and sub-region. This proposal would clearly provide positive economic benefits to the City, adding a new business and new jobs to the local economy. However, this should not occur at the cost of the required planning and infrastructure to enable growth and development to occur.
19. Finally, my evidence assesses the application against the gateway test of s 104D and s 104. Relying on the evidence of Mr Prakash, I do not believe

the effects on transport safety and its safe operation are capable of being mitigated by consent conditions. Further, I believe the application is contrary to the objectives and policies relevant to this application. As such, I do not consider the application meets either of the s 104D gateway tests. Given the application's contradictions with all relevant planning documents and agreements, combined with the effects generated, I also do not consider the application passes a broader s 104 assessment. Overall, I consider the application cannot be granted consent.

BACKGROUND AND REASONS FOR HCC SUBMISSION

20. HCC has the legislated purpose to “meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses”¹. HCC's submission was made in accordance with that purpose.
21. Hamilton-Kirikiroa is one of the fastest growing urban areas in Aotearoa New Zealand. Acknowledging land is a finite resource, the City has been proactively working with its neighbouring territorial authorities to identify future areas that may come into Hamilton City's jurisdiction in the future. This has been managed through both collaborative strategic processes and detailed planning at a District Plan level to ensure agreed-upon strategic direction and investments for the City and sub-region are aligned. The objective of HCC's submission is to continue to achieve better, integrated, coordinated planning and infrastructure outcomes for both Hamilton City and Waipā District.
22. The application is situated within a strategic industrial node identified for future inclusion into Hamilton City by both the Future Proof Strategy and the WRPS. This area, known as SL1, is defined by the Southern Links

¹ Local Government Act 2002 Amendment Act 2012, s(7)(1)(b)

designation held by Waka Kotahi, and the area is within Waipa District Council's territory, rurally zoned. I refer to **Appendix A**.

STRATEGIC PLANNING CONCERNS

Southern Links Land Area

23. The location of the proposed activity is within an area identified for future inclusion into Hamilton City, as identified in HCC's submission and **Appendix A**. This area is referred to as 'SL1' and is in-part bounded by the Southern Links Designation. To allow for a successful and sustainable future land-use pattern that efficiently utilises the land resource of SL1, it is crucial that any new land-uses in this area are appropriately aligned with the clear strategic planning direction given in the relevant planning documents. This is so that development, such as the proposed application, does not set a land-use pattern in advance of planning, infrastructure funding and delivery.
24. Given the acknowledged likelihood that SL1 will be brought within the City boundary, the SBA between HCC and Waipā District Council was signed in 2022. This agreement sets out the framework for how the two Councils will work together to transfer the subject land and manage the land-use and infrastructure activities in the area while this process occurs. The agreement notes that land uses within the Southern Links Land Area will continue to be "strategically managed and retained for rural use, in accordance with the existing WDC District Plan, Future Proof and other plans to protect the land resource for its ultimate potential urbanisation"².
25. As per section 7 of the agreement, all strategic land use decision making in this area should take into consideration the terms of the SBA as another matter under s 104(1)(c) of the RMA. I believe the application represents a strategic land-use decision, with potential precedent and cumulative

² Strategic Boundary Agreement 2022, para. 5

effects on the future of the SL1 urban form by setting the land-use pattern before integrated and funded planning and infrastructure can be conducted and completed.

Future Proof

26. The Future Proof Partnership and Strategy (**Future Proof**) is a 30-year growth management and implementation plan specific to the Hamilton, Waipā and Waikato sub-region within the context of the broader Hamilton Auckland-Corridor and Hamilton-Waikato Metropolitan areas³. The strategy sets an agreed settlement pattern and provides a policy framework to manage growth in a collaborative way for the benefit of the Future Proof sub-region. Central to the Future Proof Strategy is a boundaryless approach to planning across the sub-region.
27. The first Future Proof Strategy was adopted on 30 June 2009. The expectation was that the relevant partners would then implement the settlement pattern and density targets in their respective district and regional plans. This occurred throughout the 2010s. The decisions version of the WRPS embedded the Future Proof settlement pattern and density targets requiring subordinate plans to give effect to it. The Future Proof Strategy was later updated in 2017 and a wholly new strategy adopted in 2022.
28. The Future Proof Strategy 2022 recognises the land around Southern Links as a future 'Strategic Industrial Node' and is included as a possible future urban enablement area for industrial purposes. This is reflected in the WRPS. Given the locational significance of the subject area within the Future Proof settlement pattern, I consider an assessment of Future Proof pertinent for any decision-making associated with the subject area.

³ Future Proof (2022), Section A, The value of Future Proof

29. I note that despite both the original application and s42A Planner's Report acknowledging the site's location within the Future Proof future settlement pattern, neither report provides further analysis of the Future Proof Strategy. I consider this omission a mistake given the strategic relevance of this document in the context of this application.
30. The underlying, fundamental principles⁴ that apply within the strategy and its implementation, and which I consider are relevant to this application can be summarised into the following:
- Align growth with infrastructure and investment.
 - Protect existing and future infrastructure from development constraining or compromising its efficiency.
 - Integrate planning with infrastructure and funding decisions.
 - Have a holistic and integrated land use approach.
31. In addition to the above listed principles, the Future Proof Strategy provides growth management directives⁵ concerning current and future growth areas. These directives seek to limit growth in non-urban areas around the Hamilton periphery, and promote integrated land use, funding, and infrastructure through tools such as structure planning.
32. Given the SL1 area remains rural zoned, the Strategy notes "that industrial development should only occur within urban limits unless there is a need for industries to locate in a rural area in close proximity to the primary product source"⁶. In this instance, as a paint storage and distribution facility, the proposed application's operations do not rely on rural primary product sources, rather, the application relies on a transport network and economic market located and managed within the City boundary.

⁴ Future Proof (2022), Section A, Guiding Principles, pg. 18 -.

⁵ Future Proof (2022), Section B, Our Growth Management Approach, pg. 63

⁶ Future Proof.2022., Section B, Growing a Prosperous Economy, pg. 72

33. The applicant's evidence notes the employment benefits that the application could bring to the local economy. While local jobs could be generated by this application, a holistic perspective is required. Growth, particularly when not planned for or serviced appropriately, can result in negative consequences. In addition, I do not believe the application and its proposed activities are locationally dependent on the subject site but could be located elsewhere.
34. The applicant's evidence suggests that there is a scarcity of industrial land supply elsewhere in the City necessitating land use applications such as this. I do not disagree that there is a scarcity of supply but I do not agree that there is no supply. The most recent Housing Business Capacity Assessment (**HBA**) 2021 shows that there is supply remaining in the Hamilton market for industrial uses. These findings do not account for the ability for industrial activities of this nature to locate in existing industrial premisses already zoned.
35. I consider the following growth management directive on growing a prosperous economy particularly relevant to the above point:

Ensure business land release is co-ordinated with infrastructure provision in the partner councils' long-term plans and 30-year infrastructure plans.⁷

36. Both the guiding principles and growth management directives of the Future Proof Strategy provide a clear expectation that growth areas should be staged and planned in an integrated manner alongside infrastructure funding. The wider SL1 area is indicated to be brought into the City, however, no indicative timing for inclusion into the City has been given – this is largely dependent on integrated planning for the growth area occurring including funding certainty for the progression of Southern Links

⁷ Future Proof.2022. Section B, Growing a Prosperous Economy, pg. 73

and the planned Southern Waste Water Treatment Plant. As mentioned earlier, any decision to urbanise this locality will be subject to HCC decision-making, Waipa District Council's approval and Local Government Commission processes.

Hamilton-Waikato Metro Spatial Plan

37. I would like to briefly touch on the Hamilton-Waikato Metropolitan Spatial Plan (**HWMS**P) which was approved by the Future Proof Implementation Committee in September 2020. The purpose of the HWMS P is to ensure Hamilton City and the neighbouring communities within the Waipā and Waikato districts will grow and develop into one of the most liveable places in New Zealand⁸. The plan has informed and was incorporated as part of the revised 2022 Future Proof Strategy which in turn has been included in the WRPS Plan Change 1 notified on 18 October 2022. Resource management decisions may have regard to this plan.
38. A key aspect underpinning the development of the plan was conceptualising the HWMS P area in a boundaryless manner, looking beyond the arbitrary territorial boundaries of HCC, Waipā District Council, and Waikato District Council.
39. The HWMS P can be summarised as expecting the management of quality urban growth in an integrated and efficient way, by the communities most affected, and with infrastructure investments at centre of mind. These expectations are consistently reflected in both Future Proof, of which the HWMS P is a part of, and the WRPS and as such, I do not believe this application is a consistent reflection of the HWMS P's expectations.
40. The HWMS P has since formed part of the Future Proof Strategy 2022 which has been through the Local Government Act 2002 (**LGA**) Special

⁸ Hamilton-Waikato Metropolitan Spatial Plan .2020. Executive Summary, pg. 4

Consultative Process. The Future Proof Strategy has been established in case law as having “shall give effect to” weighting and has been a determinative factor in land use planning decisions in Hamilton. In my view, the Future Proof strategy is relevant in this consent application and further emphasises the policy position expressed in the Waipā District Plan and the WRPS.

Waikato Regional Policy Statement

41. A change to the WRPS is currently underway to incorporate the requirements of the NPS-UD, and to reflect the updated Future Proof Strategy. The WRPS was amended in October 2022 (Change 1). As such, the proposed WRPS aligns with the NPS-UD and Future Proof Strategy.
42. Given the subject application’s combine locational attributes and the nature of the activity proposed, I consider an assessment of relevant objectives of the WRPS appropriate.
43. Like the s 42A Planners Report ⁹, I consider the Integrated Management chapter to contain relevant objectives including Objective IM-O3 which directs that resource management decision making is holistic and consistent, aligned to regional strategies, takes an integrated approach to managing resources that cross regional and functional boundaries, and has regard to the potential for cumulative effects from activities. Concerning integrated management itself, Policy IM-P1 states that resource management should take “a long-term strategic approach which recognises the changing environment and changing resource use pressures and trends”.
44. In addition to the Integrated Management chapter, I consider the Urban Form and Development chapter within Part 3 of the WRPS contains several

⁹ Waipa District Council. 2023. Section 42A Hearing Report of Hayley Thomas. Para. 12.20 -.

objectives and policies relevant and helpful to the application, namely UFD-O1 Built Environment, UFD-P1 Planned and co-ordinated subdivision, use and development, UFD-P2 Co-ordinating growth and infrastructure, and UFD-P11 Adopting the Future Proof land use pattern. The s42A Planners Report also shares an assessment of UFD-O1.

45. The overarching direction from the abovementioned objectives and policies is the expectation that land use and development is planned, co-ordinated, and integrated with existing and future infrastructure, and strategic planning. UFD-P2 has regard to APP11 Development principles which expects new development to support existing urban areas, that provides clear delineation between urban and rural areas, connects well with existing and planned infrastructure, and does not result in incompatible adjacent land uses, such as industry, rural activities and existing or planned infrastructure.
46. 16A Wickham Street is located within a key future industrial node of the Future Proof settlement pattern; SL1. As expressed in the WRPS, the proposed future corridor of Southern Links is vital to the success and functionality of this strategic industrial node as it seeks to address a key infrastructure constraint in the form of transport capacity issues. Consenting the application would, in my view, 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.
47. To support the above policy context, the WRPS gives clear direction that urban development is planned, co-ordinated with infrastructure planning and investment, and reflects the strategic, long-term vision for the area. To allow urban development that is not integrated with future planning and infrastructure of the area will complicate HCC's ability to sustainably

incorporate an un-planned urban form into the City, creating potential inefficiencies and reducing future land use pattern options.

Hamilton Urban Growth Strategy

48. The Hamilton Urban Growth Strategy (**HUGS**) is a Hamilton City Council LGA strategy and plan which guides where, when and how Hamilton will grow over the next 50 years. The latest HUGS was adopted by HCC in April 2023 following public consultation in late 2022. The majority of the 91 responses received were supportive of the outcomes sought in the strategy, including the SL1 Developers Group which comprised six landowners who, at the time, owned the land that forms part of SL1.
49. Within HUGS are principles for out of boundary development¹⁰. Any out of boundary development must enhance the overall wellbeing of current and future Hamiltonians and create quality communities. Relevant to the subject application are the following expectations which, in my view, are not being met:
- Sustainable and integrated infrastructure solutions
 - Quality connections to places of work
 - Meeting the costs of all infrastructure
 - Not compromising planned investment.
50. It is important that investment in infrastructure is made in the right place, at the right time. Development that pre-empts this investment and planning risks disrupting or undermining future integrated planning. While the subject application is in Waipā District's rural zone, most of the adverse effects are directly impact Hamilton City, such as the operation of the transport network that the application, as proposed, does not pay for. The practical reality of this is that the application, if granted, would not

¹⁰ Hamilton City Council. 2023. *Hamilton Urban Growth Strategy*. pg. 26.

financially contribute towards the very transport projects that could alleviate some of the transport concerns with the application, such as through development contributions or the ongoing maintenance of the network through rates.

National Policy Statement for Urban Development 2020

51. The National Policy Statement for Urban Development 2020 (**NPS-UD**) sets out the objectives and policies for planning well-functioning urban environments. The NPS-UD applies to planning decisions by any local authority that affect an urban environment¹¹. As previously noted, the WRPS has recently been updated to reflect the NPS-UD, and I consider the direction provided in the Future Proof Strategy to be closely aligned with the content of the NPS-UD.

52. Of the objectives in the NPS-UD, and like the s42A Planner's Report, I consider Objective 6 particularly relevant:

Local authority decisions on urban development that affect urban environments are:

- a) integrated with infrastructure planning and funding decisions; and*
- b) strategic over the medium term and long term; and*
- c) responsive, particularly in relation to proposals that would supply significant development capacity.*

53. Assessing the above objective from the NPS-UD with the application, I consider that it does not meet Objective 6. The proposal is not integrated with any infrastructure planning and funding decisions, nor is it strategic or providing significant development capacity. Failure to perform this integrated planning and infrastructure investment of the area prior to

¹¹ National Policy Statement on Urban Development 2020.

urbanisation also jeopardises the ability to achieve Objective 1 of the NPS-UD - to create a well-functioning urban environment.

54. There is a clear consistency between the NPS-UD and the abovementioned strategic planning documents that relate to the application's development area. Reflecting on the alignment across the hierarchy of planning documents, I consider that there are clear conflicts between the proposed application and these strategic documents which are irreconcilable and must lead to the application being declined.

ACTIVITY CONCERNS

Operative Waipā District Plan

55. Further to the fundamental, strategic concerns relating to the proposed resource consent is the conflict of the application with the Operative Waipā District Plan (**OWDP**) and its expected outcomes for the rural zone. My assessment against key objectives and policies of the OWDP follows.

Strategic Policy Framework

56. The Strategic Policy Framework within Section 1 of the OWDP contains policies and objectives that direct how growth in the Waipā District should be managed. In addition, the Strategic Policy Framework section of the OWDP also explicitly states the development expectations within the rural zone.
57. Key objectives and policies from the Strategic Policy Framework seek consolidated development around existing settlements of the Waipā District, while supporting the operation of regionally significant infrastructure. Within this direction, Policy 1.3.1.1 and 1.3.2.1 refers to the Future Proof Strategy and WRPS and the anticipated settlement pattern shared in those plans. In addition, the expectation that development and infrastructure is coordinated is further reiterated by Policy 1.3.2.6.

58. The Strategic Policy Framework chapter sets development expectations for the rural zone. Under Objective 1.3.1 on the district's settlement pattern, I consider Policy 1.3.1.5 on subdivision and development within the rural zone key to this application as it directs resource use within the zone. The policy seeks to ensure the rural zone continues to be used for rural activities by:

Policy 1.3.1.5

...

- b. Avoiding commercial activities and industrial activities, except for rural based industries and nature tourism; and*
 - c. Ensuring that development and subdivision activities within the Rural Zone do not reduce the area of land available for farming activities in the District; and*
 - d. Rural based industries not being of a size or location where they undermine the role of a strategic industrial node identified in the Proposed Waikato Regional Policy Statement, or have an adverse effect on the strategic road network or other infrastructure. Rural based industries shall have a functional and compelling needs to locate in the Rural Zone; and*
59. As per Policy 1.3.1.5 above, I consider the policy directive is clear and unambiguous that activities such as the one proposed should be avoided in the rural zone. Responding to part b) and c) of the policy above, the proposed application is not a rural based activity - it is industrial. The site could still be utilised for rural related activities, however, the application will entrench the site for industrial use. Concerning part d) of the above policy, the location of the proposal could undermine future planning of SL1 – a future strategic node identified in the WRPS, and as stated in transport

evidence, risks reducing the safe operation of State Highway 1C – a regionally significant piece of infrastructure.

60. In my view, this application does not reflect careful management of the resources in this area, including the land resource and transport infrastructure. Nor does the application maintain the rural character sought in the rural zone. Overall, I consider the proposed activity to be contrary to the above listed objectives and policies.

Rural Zone

61. The rural zone objectives and policies provide the framework that enables anticipated rural activities and the management of effects, including cumulative effects, on the environment. Inclusive of the outcomes expected within the rural zone is the maintenance of rural character as set out in Objective 4.3.7 and its associated policies 4.3.7.1-2.
62. Rural character is considered an integral component of the Rural Zone, as defined by section 4.1.12 of the OWDP. I consider the subject application to be urban in nature, with limited vegetation or open space that lots in the rural zone would typically host. The application is also not low-density but rather an intensive industrial use of the site. As such, I consider the proposal to be contrary to the above stated objective and policies.
63. The OWDP is very clear in its intent for the rural zone. As a non-farming, non-complying activity, I believe the following objective and policies are highly relevant:

Objective - Non-farming activities

4.3.12 Only non-farming activities that have a functional and compelling requirement to locate in the Rural Zone should be enabled to locate in the Rural Zone.

Policies - Non-farming activities

4.3.12.1 To limit non-farming activities in rural areas except for activities that:

- a) Have a functional and compelling reason to establish in a rural area; and*
- b) Do not result in any further loss of land from primary production purposes; and*
- c) Maintain rural character. Activities that do not meet these criteria should be accommodated in urban areas.*

64. Policy 4.3.12.1 provides three criteria that must all be achieved for the subject application to be allowed in the rural zone. Part a) of 4.2.12.1 asks whether the proposed activity has a *functional and compelling* reason to be in the rural zone. I do not consider there to be any compelling reason for the application to be located on the subject site, within a rural area. Overall, I believe the proposed application is contrary to the above objective and policies.

Infrastructure and Transport

65. The s42A Planner's Report provides an assessment against the objectives and policies from Section 15 – Infrastructure, Hazards, Development and Subdivision, as well as Section 16 – Transport. These objectives and policies largely reflect the overall strategic direction that development is planned and integrated with infrastructure to make the best use of the land resource.
66. The s42A Planner's Report concludes that the application is not consistent with Objective 15.3.1 concerning character and amenity, and inconsistent

with Objectives 15.3.4 and Policies 15.3.4.6-7 concerning urban consolidation¹². I agree with these conclusions.

67. I also think it is important to consider Policy 15.3.3.2 on the co-ordination between servicing and development and subdivision. Policy 15.3.3.2 expects development to be in areas where infrastructure capacity is planned and funded. The policy also expects development to include provision for both strategic and local infrastructure networks. Noting the transport and three-waters evidence prepared by Mr Prakash and Mr van Rooy, the proposal adds traffic to a poorly performing network, and in a location where there is limited to no capacity in the local three waters network. Infrastructure capacity for the subject area has not been planned for nor is it funded. Further, the application does not contribute to the provision of either strategic or local infrastructure upgrades that are required before this area is formally urbanised.
68. In addition, the s42A Report does not assess Policy 15.3.4.8 which states the following:

Policy - Rural Zones: infrastructure

15.3.4.8 To ensure that development does not give rise to demand or potential demand for the uneconomical and unplanned expansion of infrastructure services, or the upgrade of existing infrastructure, by avoiding residential cluster, ad hoc and ribbon development.

69. I believe the development does risk the creation of demand for unplanned and potentially uneconomical expansion or upgrades to infrastructure. This is a view shared by Ms Thomas in her Notification report¹³. As per the evidence of Mr Prakash, ad-hoc, urban development in this area creates

¹² Waipa District Council. 2023. Section 42A Hearing Report of Hayley Thomas. Pg 31-34.

¹³ Waipa District Council. 2023. Notification Report Landuse Consent – LU/0038/23, Section 5.5.1

additional demand on the local transport network that is already performing poorly. This increases the demand for transport infrastructure upgrades in the area. Further, such development would be expected to connect to reticulated water services. As stated in Mr van Rooy's evidence, there is limited capacity for additional connections in this part of the City until such time as infrastructure network upgrades are provided. Further capacity for wastewater is significantly constrained and predominantly reliant on the Southern Wastewater Treatment Plant. The proposed activity would exacerbate these capacity constraints, but due to its non-reticulated approach, fails to contribute to the business case for the Southern Wastewater Treatment Plant by removing this site from the relevant catchment. The timing is problematic, activating these urban land uses on this site should wait for the reticulated network to be available to service it, thus contributing to the need for the infrastructure. By being self-servicing on site, the catchment demand reduces and the business case for the infrastructure intervention is weakened.

70. Regarding the transport related objectives and policies referred to in the s 42A Report, the Report concludes that the application is inconsistent with these objectives policies, noting the concerns submitters raised ¹⁴. The objectives (16.3.1-3, 16.3.5, and 16.3.5) and policies (16.3.2.1 and 16.3.2.3) seek integrated land use and transport planning which maintains the transport network's efficiency, while keeping people safe. I agree with the s42A Report's conclusion that the application is inconsistent with these objectives and policies. Discussion on transport effects, informed by Mr Prakash's transport evidence, is further discussed below.
71. Overall, I consider the proposed activity to be contrary to the key objectives and policies of the OWDP listed above. It is my view that urban, industrial activities are firmly discouraged from occurring in the rural zone

¹⁴ Waipa District Council. 2023. Section 42A Hearing Report of Hayley Thomas. Section 11.23.

of the OWDP. I consider the application risks jeopardising the fundamental purpose of the rural zone – to be used for rural activities.

72. In addition, I believe the proposed activity should be accommodated in an urban area with the appropriate servicing and planned expectations of effects, as expected by the OWDP and higher order planning documents. These effects, as well as an assessment against s 104, are further discussed below.

ENVIRONMENTAL EFFECTS

73. I consider the application will generate effects that cross two territories, and two respective zones with entirely different expectations of land use activities and associated effects. These effects include rural character, traffic and three waters effects.

Rural Character

74. I believe that the application is an inherently urban activity, proposed in a rural area and as such, has effects on the rural character of the rural zone. Noting that the site is presently used for semi-industrial purposes in the form of yard-based activities, this is not strictly urban in nature and could reasonably be expected to occur further within the rural zone as a rural based industry. It is also important to note that the existing land-use was consented under the previous Waipā District Plan, and not the current, operative version.
75. The applicant considers that, due to the neighbouring property – 16 Wickham Street, and its industrial operation as a waste management site, the local area does not constitute a typical rural area in terms of character and amenity. I agree that the immediate area north of the site is not typically rural. However, I disagree with the conclusion that the local,

consented environment justifies further deviation from rural character expected by the OWDP.

76. For example, the consenting history of 16 Wickham Street is long and complex. The present non-rural activities at 16 Wickham Street have evolved over the past 16-year period following the granting of a resource consent in 2005 to establish agricultural-based activities with yards, offices, workshops, truck wash and storage facilities that covered large portions of the site. Between 2012 and 2018 the site obtained two approvals to change conditions of consent pursuant to section 127 of the RMA. These changes related to modifications to the site layout; there were no changes to the original consented 'agricultural base' use. In March 2020, resource consent was granted for the establishment and operation of a refuse and recovery park at the site. Given the long and iterative consenting history of 16 Wickham Street, which is quite different to that of the subject site, I do not consider it appropriate to use the consented environment as a basis for approving the proposed application.
77. The subject site has only been previously consented for yard-based activities that could reasonably be expected to occur in the rural zone. Further, the consented activities are significantly different in scale and nature. The existing yard-based activities, which could still be rural-related, have minimum building coverage or permanent structures. In comparison, I believe the proposed application is an intensive industrial use of the site that is not of the same nature to the existing activities on the site. While the existing environment does not align neatly with the rural zone expectations, I do not consider this justification to continue to allow activities that are contrary to the OWDP. To allow this subject application would fully depart from the rural zone's rural character, which is still intact.
78. Regardless of what has occurred and been consented in a piece meal manner in the past, the strategic context in this locality has changed. These changes are evidenced by the 2017 Southern Links Designation, the

updated Future Proof Strategy of 2017 and 2022 which recognises Southern Links and the surrounding land area, the 2022 Strategic Boundary Agreement, the Southern Wastewater Business Case 2021 which outlines a servicing solution for growth in this location, Plan Change 1 to the WRPS and the recent election announcement by the in-coming National-led Government to fund the Southern Links roading corridor. Together, these events significantly alter the planning environment in this area which in my view requires an integrated and strategic approach to any further land-use change and decision-making in this area. Put simply, preserving the rural nature of the zone is aligned with this strategic intent.

Transport

79. I rely on the evidence of Mr Prakash concerning transport matters which informs my own evidence. Mr Prakash concludes that the proposed application would create potential effects on the transport network relating to its safety and daily operation.
80. As per the evidence of Mr Prakash, the road network surrounding SH1C with Higgins Road, Killarney Road and Duke Street is performing poorly with higher-than-expected crash rates at these intersections. Adding any additional load to these poorly performing intersections will continue to negatively impact the safe operating function of these intersections and the overall network.
81. The required interventions to remedy the safety issues with this part of the roading network and to provide increased capacity is through physical works to the at-risk intersections. Any works would require third party approval. In addition, the scale of upgrades required, such as signalised intersections or roundabouts, would be unreasonably expensive given the scale of the activity proposed.

82. The physical remedial works would include intersection upgrades, one of which would be to the Kahikatea/SH1C, this would be reliant on Waka Kotahi as the road controlling authority. This intervention, along with other intersection upgrades are impracticable and disproportionate to the proposal. The only practicable solution to minimise the adverse effects on the roading network is through a TMP. However, Mr Prakash believes there is little assurance that a TMP proposing voluntary behaviour changes would sufficiently address the safety concerns. The voluntary nature of the TMP provides no guarantee that the traffic movements generated by the proposed activity will utilise alternate routes which avoid the SH1c/Kahikatea intersection. On this basis, there is no guarantee that the adverse effects which have been identified are going to be fully mitigated by the proposed TMP intervention. The more likely scenario is that residual adverse transport safety effects will remain.
83. As per the evidence of Mr Prakash, the disciplinary and enforcement action with any non-compliance of the TMP is outside the control of both Waka Kotahi and HCC and is largely dependent on self-enforcement by the applicant. In addition, the transport evidence notes that spot checks fail to capture non-compliances outside of spot check times.
84. With the enforceability of the TMP in substantial doubt, I believe the effectiveness of the TMP is questionable. The effectiveness of the TMP remains unanswered and no evidence or examples are available that suggest a TMP, as proposed, would be effective.
85. The cumulative effects of this application should not be overlooked, and I note that the s42A Planner's Report does not address this. The applicants evidence claims that the proposal has minimal impacts on the transport network from a volume perspective. I believe that this position fails to address the cumulative effects of that additional load on intersections that are already performing poorly. When the traffic effects of the subject application are added to other existing activities and reasonably

foreseeable land-uses (should this application be granted) in this area, there is a real risk of unacceptable and more than minor cumulative traffic effects that cannot be addressed via consent conditions.

86. In my opinion, the poorly performing network combine with the concerns relating to the TMP expressed by Mr Prakash illustrates that there are few solutions to improve the network until such time that an integrated transport network upgrade occurs. Overall, I consider the proposed activity's transport effects to be more than minor.

Three waters

87. I refer to the evidence of Mr van Rooy concerning three waters matters which informs my evidence. Overall, the proposed three-waters servicing arrangements represent an undesirable outcome for an inherently urban activity in a Rural Zone. In addition, the proposed servicing arrangements could further complicate integration of the site into the City should this area be included within the City's boundary in the future.
88. Onsite wastewater storage tanks will be periodically emptied to tankers and with the contents conveyed via road to an undisclosed location. Since lodgement, we now understand that this location is intended to be the Cambridge Wastewater Treatment Plant. As per the evidence on Mr van Rooy, there are environmental and health risks and implications of that waste being stored and transported in addition to generating additional heavy traffic movements and the potential implications of the waste stream on municipal wastewater systems. Mr Van Rooy considers that a tankered method of waste management for an urban activity is not considered a sustainable or reliable long-term solution for wastewater servicing.
89. The application proposes rainwater harvesting and onsite storage supplemented by tankered water to the site to meet its water needs. Mr

van Rooy states his concern with roof collection and tankered water as not a reliable method for potable water. Mr van Rooy considers there to be health risks and implications of that water being transported and stored, in addition to generating additional heavy traffic movements.

90. I support Mr van Rooy's position. In my view, if there was funding, timing, and certainty of delivery for a publicly reticulated three-waters servicing solution then an interim solution would be more supportable from a planning point of view.

Funding of infrastructure

91. Given this property is outside of the HCC's administrative boundary, it is not required to provide development contributions to support the delivery of infrastructure solutions, and nor is it paying rates to fund the on-going delivery of services which would enable these land use activities to occur. Yet, the site is solely reliant on the HCC roading network to gain access. Its neighbouring site at 16 Wickham relies on the water and wastewater supply from the City. For all intents of purposes, these are HCC properties except for the fact that it is currently in Waipā District Councils administrative control. This is a peculiar relationship between administrative control, servicing, and land use activities which the SBA seeks to address.
92. This is particularly problematic in my view. Land use must be linked to infrastructure funding and in turn linked to infrastructure planning, delivery and servicing. In this application, these are disconnected from one-another. This illustrates un-integrated planning which leads to adverse environmental effects such as limited or no three-waters servicing and a lack of transport network capacity leading to safety and performance effects. I have sought a development contribution analysis if this locality was within HCC's administrative control. I refer to **Appendix B**. This analysis shows that this land use should be contributing to stormwater,

transport, wastewater and water infrastructure provisions. These provisions total \$1,041,343.55 (GST incl.) in development contributions that would, in part, go towards network upgrades that increase capacity and daily operation of the three-waters networks¹⁵. If three waters contributions were removed, the contributions would still be \$380,964 (GST incl.) that would go towards wider traffic safety and operational improvements, for example.

NON-COMPLYING ACTIVITY, s 104D and s 104

93. The proposed application is a non-complying activity under the OWDP, being an industrial activity that is not provided for in the rural zone and, therefore, an assessment against s 104D applies. As per s 104D, a non-complying activity can only be granted if a consent authority is satisfied that either –

a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or

b) the application is for an activity that will not be contrary to the objectives and policies of—

i. the relevant plan, if there is a plan but no proposed plan in respect of the activity; or

ii. the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

iii. a proposed plan in respect of the activity.

94. In assessing the s 104D (a) gateway test, I refer to the above sections of this evidence where I consider that the proposal results in effects that will be more than minor. I do not consider that these effects can be adequately dealt with via consent conditions.

¹⁵ Hamilton City Council. 2021. Schedule of Assets – Development Contributions Policy 2021-22.

95. While there are a range of planning documents, I consider relevant to this application, the OWDP is the primary planning tool for this application. Concerning the OWDP alone, I consider the proposed application contrary to the objectives and policies of the Plan. I believe there is a clear contradiction between the application and those objectives and policies identified in the Section 1 - Strategic Planning, Section 4 – Rural Zone, Section 15 – Infrastructure, Hazards, Development and Subdivision, and Section 16- Transportation.
96. Overall, I consider that the application fails to pass both limbs of the gateway test within s 104D and, therefore, cannot be granted resource consent. Nonetheless, even if the s 104D tests were to be passed, an assessment of the proposed application against s 104 and any actual or potential effects of the activity would still be required.
97. Concerning a s 104 assessment, as established above, I consider that the actual and potential effects of this application to be more than minor, and incapable of being addressed by consent conditions.
98. Given the strategic nature of the area that this application is set in, being a strategic industrial node identified in future settlement pattern of the sub-region, I consider the regional planning documents such as the WRPS and Future Proof Strategy highly relevant in this s 104 assessment. This position is supported by the OWDP's reference to these documents in Policy 1.3.2.1.
99. Throughout my evidence, I outline the consequences of this application being granted against the strategic direction of this area, including setting a precedent of uncoordinated development within SL1. I believe there to be a clear contradiction between the application and the outlined objectives and policies of the WRPS, Future Proof Strategy, and NPS-UD as assessed in my evidence. This contradiction can be extended to Part 2 of

the Act and specifically ss 5 and 7 relating to sustainable management, the efficient use and development of natural and physical resources. As noted earlier, the application does have economic merit, but this benefit does not outweigh the various adverse effects.

100. In addition, the application is inconsistent other relevant matters including the SBA between HCC and Waipā District Council, and HUGS. The SBA reflects the principles of the wider strategic direction provided for in the WRPS, Future Proof and the OWDP. Of relevance to this proposed application is section 5 of the agreement which states that land uses within the subject area will:

Continue to be strategically managed and retained for rural use, in accordance with the existing WDC District Plan, Future Proof and other plans to protect the land resource for its ultimate potential urbanisation.

101. Overall, I believe that the application is not consistent with the OWDP, in addition to being inconsistent with Future Proof, the WRPS, the HUGS, the NPS-UD, and Part 2 of the Act. In addition, the actual and potential effects generated by the proposal are incapable of being addressed by consent conditions and therefore remain significant and unacceptable. As such, under a s 104 assessment, I do not consider the proposed application could be granted.

Section 42A Planners Report

102. I would like to briefly comment on the s 42A Planners Report prepared by Ms Thomas. I have referred to the s 42A Report throughout my evidence, particularly regarding assessments against planning documents such as the OWDP. There are several areas of alignment between my own conclusions and Ms Thomas'. Alignment is most noticeable in our assessments against the OWDP and WRPS.

103. I do believe, however, that the s42A Report should have further addressed the Future Proof Strategy. In addition, the s 42A Report refers to Waipā Council's Development Engineers' assessment that the TMP could mitigate potential adverse traffic effects¹⁶. As per my evidence, informed by Mr Prakash, I do not believe the TMP to be enforceable or effective. While it may mitigate some adverse effects, Mr Prakash's evidence clearly states that there is not confidence that it will alleviate all adverse effects.
104. In her conclusion, Ms Thomas considers the application to be finely balanced to be either granted or declined. I respectfully disagree. As per my own evidence, I believe the application clearly contradicts the relevant planning documents, including the OWDP. In addition, the effects of the application cannot be addressed via consent conditions and risks the creation of more than minor effects. I do not believe the application passes the s 104D gateway test. If the Panel disagree with this assessment and find that the application passes one limb of the 104D gateway test then, in my view, it most certainly fails the wider s 104 assessment and should not be granted consent. The decision to decline the application is more clear cut in my view.

Applicant's Evidence

105. I would like to now turn briefly to some key points raised within the applicant's evidence. The applicant's planning evidence prepared by Mr Moran places heavy emphasis on the non-rural character of the subject site and its immediate surrounds to support the application. Mr Moran considers that the application is a continuation of consented industrial activities on the site¹⁷. I do not disagree that there has been departure from the rural zone's anticipation of activities, eroded by previous consenting decisions. However, I respectfully disagree that this is sufficient

¹⁶ Waipa District Council. 2023. Section 42A Hearing Report of Hayley Thomas. Para. 10.10.

¹⁷ Evidence of Gareth Moran on behalf of Industrie Property Rua Limited. 2023. Para 89.

justification for perpetuating these non-rural uses in this locality. There is strong evidence to show that additional urban activities in this rural locality will have an adverse effect and is now contrary to higher-order strategic planning documents.

106. The site is currently consented for yard-based activities with minimal building coverage. I consider the consented activities to be temporary in nature. Conversely, the proposed application is an intensive industrial activity with large scale warehousing and logistics operations proposed. I believe the proposal represents a clear escalation in urban land-use and is not a small-scale continuation of existing activities.
107. Further, Mr Moran's evidence claims that the site can only be used for industrial purposes¹⁶. I respectfully disagree with this view. The underlying consents for the site are for yard-based activities. Such activities with similar effects can be reasonably expected to occur within the rural zone under rural-based industry and be returned to rural use in future. Land-use consent LU/002/16 provided for rural-based industry on the site immediately east of the subject site. This site is similar in size, shape, and access arrangements. The two sites, overall, are almost identical. LU/002/16, granted by Mr Moran in 2016, proves that the subject site can still be used for rural-related activities, and is not solely limited to industrial uses.
108. Mr Moran's evidence notes the strategic direction heralded for the site and wider area. Mr Moran believes that as the site will likely be zoned industrial in the future, the application appropriately aligns with the anticipated use of the site, the strategic direction, and will not frustrate future incorporation of the land into the city¹⁸. In responding to Mr Moran's evidence, I acknowledge that the wider area has been earmarked as a *future* strategic industrial node under the WRPS and Future Proof. However, no form of detailed land-use or infrastructure planning has been

¹⁸ Evidence of Gareth Moran on behalf of Industrie Property Rua Limited. 2023. Para 63-64.

undertaken for this area. The SBA recognises the land for *potential* urbanisation. There is no timing on this area being incorporated into the City, nor is its inclusion in the City guaranteed – this is subject to local government commission processes. The SBA does not identify the site for industrial use, rather it sets an expectation that it will be non-rural in the future. In the meantime, the land should not be urbanised any further and should be strategically managed to avoid unintegrated development from occurring. I do not believe it can be claimed the application is an appropriate form of development for the site when what might be considered appropriate for the site and wider area is yet to be considered or determined.

109. Before the land is ready for urbanisation, integrated land-use and infrastructure planning needs to occur. Factors such as roading layouts, water and wastewater capacity, and stormwater management need to be addressed in an integrated manner.
110. Mr Moran considers that the site will not generate any additional demand on infrastructure due to its self-service arrangements and traffic effects. Like the assessment in the Notification report prepared by Ms Thomas¹⁹, I do not believe it is unreasonable to expect that these proposed activities will seek connection to the City's reticulated networks. In addition, despite the additional traffic volumes generated by the proposal, as per the evidence of Mr Prakash, the transport network effect is performing poorly from a safety perspective and the proposal will contribute to the cumulative deterioration of the network's safety in the absence of satisfactory mitigations.
111. Overall, I believe the application is entirely contrary to the integrated planning and strategic land-use management that the planning hierarchy and strategic documents, such as the SBA, seek to ensure.

¹⁹ Waipa District Council. 2023. Notification Report Landuse Consent – LU/0038/23, Section 5.5.1

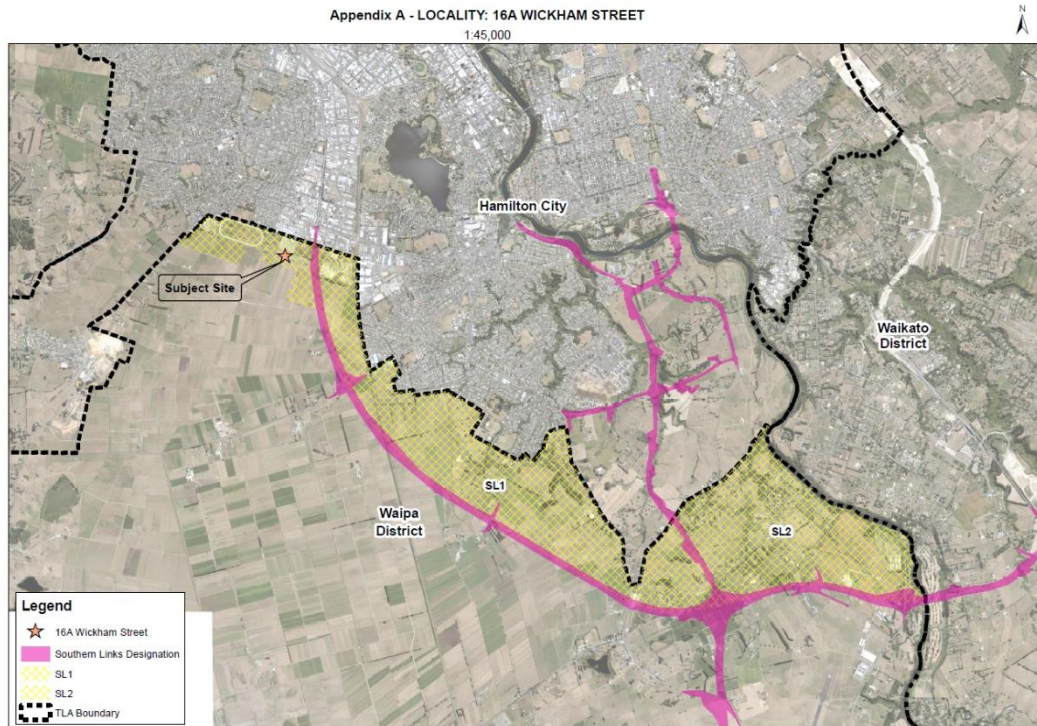
CONCLUSION

112. Overall, I do not consider the application can pass either of the s 104D gateway tests and must be declined on that basis. If the hearing commissioner considers that one of those gateways can be passed, taking account of all relevant factors in the broader s 104 assessment, the application must also be declined.

Dr Mark Nairn Davey

15 November 2023

Appendix A – Site Locality



Appendix B - Development Contribution Analysis

Assessment	Final Assessment						
Title	State	Application Group	Inputs				
☑ Credit - Industrial	Existing	Building Consent	GFA: 381.10 m ² Site Area: 1,270.60 m ²				
☑ Demand - Industrial	Proposed	Building Consent	GFA: 9,984.00 m ² Site Area: 17,801.80 ...				
▶ ☑ Demand - Commercial	Proposed	Building Consent	GFA: 1,236.80 m ² Site Area: 2,205.20 m ²				
☑ Assessment Summary							
Variance							
Activity	Funding Area	Existing HUEs	Proposed HUEs	Chargeable HUEs	Residual HUEs	DC Chg ex GST	DC Chg Ind GST
▶ Reserves	Infill West	0.00	0.00	0.00	0.00	\$0.00	\$0.00
Stomwater	Waitawhiriwhiri	3.57	58.52	54.95	0.00	\$68,538.47	\$78,819.24
Transport	Infill West	2.36	83.42	81.06	0.00	\$331,273.35	\$380,964.35
Wastewater	West	1.14	36.11	34.97	0.00	\$164,944.91	\$189,686.65
Wastewater	Infill West	1.14	36.11	34.97	0.00	\$213,887.47	\$245,970.59
Water	Infill West	0.80	25.76	24.97	0.00	\$126,871.94	\$145,902.73
Community Infrastructure	Infill West	0.00	0.00	0.00	0.00	\$0.00	\$0.00
						\$905,516.13	\$1,041,343.55