

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY WAIPA
DISTRICT COUNCIL**

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

AND

IN THE MATTER of the hearing of applications by BBC Technologies
Limited for Land Use Consent for a Rural Industry and
Grass Ventures Limited for a Subdivision Consent at
Lochiel Road, Rukuhia

BETWEEN **BBC TECHNOLOGIES LIMITED & GRASS VENTURES
LIMITED**

Applicants

AND **WAIPA DISTRICT COUNCIL**

Consent Authority

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF MARK CHRISP
ON BEHALF OF THE APPLICANTS**

(Planning)

Dated: 9 December 2020

INTRODUCTION

1. My name is Mark Chrisp. My qualifications and experience are set out in my Statement of Evidence in chief dated 24 November 2020, along with my commitment to adhere to the Code of Conduct for Expert Witnesses 2014, which I hereby reaffirm.
2. This Supplementary Statement of Evidence is presented on behalf of BBC Technologies Ltd ("**BBC**") and Grass Ventures Ltd. Specifically, my evidence will:
 - (a) Respond to aspects of the evidence of Mr Tim Lester on behalf of Mr Annegarn; and
 - (b) Respond to aspects of the Supplementary Statement of Evidence circulated by Mr Todd Whittaker (the author of the s.42A report) on behalf of Waipa District Council, including the proposed amendments to the consent conditions.

STATUS OF THE ACTIVITY

3. Mr Lester claims that the proposal advanced by BBC should be categorised as an 'Industrial Activity' and therefore be assessed as a Non-complying Activity in the Rural Zone. In doing so, Mr Lester focuses on only one aspect of the BBC proposal. He fails to recognise that certain types of multi-faceted activities (including activities with an industrial component), and certain types of purely industrial activities are expressly defined in the Waipa District Plan as 'Rural based industry'. Rural based activities are provided for as a Discretionary Activity.
4. It is axiomatic that a 'Rural based industry' is likely to include an industrial component (or be entirely industrial in character, e.g., a meat processing plant being one of the specific examples in the definition), whereby it also falls within the ambit of the definition of 'Industrial Activity'. However, the Waipa District Plan specifically provides for certain types of industrial

activities (or activities with an industrial component) to be established in the Rural Zone where they have a *“direct connection to or processes the output of land-based activities involving animal, agriculture, forestry or horticultural crops”*. Based on the evidence of Mr Furniss, there can be no argument, in my opinion, that the BBC proposal falls squarely within that description.

5. The industrial aspect of the BBC proposal (i.e., the assembly of horticultural technology and equipment - most of which is manufactured off-site), is only one component of the overall activity. As set out in my evidence in chief¹, the BBC proposal comprises the following:
 - (a) BBC is a research and development company. The primary aspect of the BBC proposal is that it is a ‘rural research facility’, falling squarely within the definition of that term in the Waipa District Plan²;
 - (b) A key element of the proposal is the growing of horticultural crops on site for research purposes (a Permitted Activity in the Rural Zone); and
 - (c) The BBC proposal includes a manufacturing component assembling the horticultural technology and equipment produced as a direct result of the research and development activities.
6. In terms of the Waipa District Plan, the BBC proposal is a combination of ‘farming activities’, ‘rural research facility’ and ‘rural based industry’. A ‘rural research facility’ forms part of definition of ‘rural based industry’ in the Waipa District Plan. The industrial / manufacturing component of the BBC proposal has a ‘direct connection’ to the growing of horticultural crops and therefore falls within the definition of ‘rural based industry’.

¹ At paragraphs 13 – 16.

² Quoted in paragraph 13 of my evidence in chief dated 24 November 2020.

On that basis, I consider that the proposal is a Discretionary Activity. Mr Whittaker reaches the same conclusion.³

7. Without resiling from the above in any way and out of an abundance of caution, if the Hearing Panel takes a different view and considers the BBC proposal to be a Non-complying Activity, for the reasons presented in the Assessment of Environmental Effects and in the evidence on behalf of the applicant, it is my view that the BBC proposal passes both the "gateway" tests in s.104D of the RMA.

FUNCTIONAL AND COMPELLING REQUIREMENT

8. The s.42A report raised an issue about the extent to which the BBC proposal was consistent with Objective 4.3.12 and the associated policies in the Waipa District Plan which direct that 'non farming activities' have a 'functional and compelling requirement' to locate in the Rural Zone.
9. In my evidence in chief⁴, I set out the fact that the Waipa District Plan presents a definition of a 'Non farming activity' which expressly excludes a 'Rural based industry' from that category. On that basis, Objective 4.3.12 and the associated policies under that objective are not applicable to the current proposal.
10. In his Supplementary Statement of Evidence⁵, Mr Whittaker now accepts the position I have outlined above, but then refers⁶ to Policy 1.3.1.5(d) in the Strategic Policy Framework section of the Waipa District Plan which also refers to Rural based industries having a functional and compelling needs to locate in the Rural Zone. This exposes an inconsistency in the Waipa District Plan (which Mr Whittaker has not sought to reconcile).

³ At paragraph 11 of his Supplementary Statement of Evidence dated 4 December 2020.

⁴ At paragraphs 20 - 21.

⁵ At paragraph 16 of his Supplementary Statement of Evidence dated 4 December 2020.

⁶ At paragraph 17.

11. As explained in the legal submissions on behalf of BBC, the specific overrides the general when interpreting statutory instruments. On the basis that the more detailed provisions of the Rural Zone explicitly excluding 'rural based industries' from the ambit of the objectives and policies that require non-farming activities to have functional and compelling needs to locate in the Rural Zone, little if any weight should be placed on Policy 1.3.1.5(d) in my opinion.
12. Nevertheless, as explained in the evidence of Mr Furniss and discussed in my evidence in chief, there are in fact functional and compelling reasons why the BBC proposal needs to locate in the Rural Zone and why proposed site on the corner of Lochiel Road and Airport Road is an appropriate location for the BBC proposal. These reasons include:
- (a) The research cannot be undertaken without the horticultural crops;
 - (b) While it is physically possible to do so, it would be grossly inefficient to try to operate the business from multiple sites;
 - (c) The site is across the road from an Industrial Zone and an airport (which creates a degree of compatibility in terms of the scale of the buildings);
 - (d) As noted in my evidence in chief⁷, the BBC proposal is a "rural research facility" which forms part of the definition of "rural based industry" as defined in the Waipa District Plan. Being of a rural nature, makes a rural location entirely appropriate in the same way that other rural research facilities in the Waikato Region are located in rural areas (e.g., AgResearch and Dairy NZ).
 - (e) The nature of the BBC proposal is provided for within the Rural Zone. It is not provided for in any other single zone in the Waipa District Plan.

⁷ At paragraph 19.

PROPOSED CONDITIONS

13. Attached to Mr Whittaker's Supplementary Statement of Evidence is a table setting out further proposed changes to the consent conditions in response to my evidence in chief and additional matters raised by Council personnel.
14. Mr Black has responded to the issues raised in relation to traffic related conditions. I will briefly address the other conditions where they are not agreed as follows:
 - (a) Mr Whittaker has rejected the insertion of the word "verified" in the Advice Note under Condition 9. He states that *"if complaints are not upheld, then the dust nuisance will not be assessed as objectionable or offensive"*. That is precisely why the word "verified" should be included, otherwise the way it is written implies that the mere existence of complaints (including unverified complaints) can be a reason to determine that an objectionable or offensive effect has occurred.
 - (b) Mr Whittaker has proposed some additional wording to Condition 24 (relating to works on the Clark property at 8 Lochiel Road). He has also mistakenly taken the view that the condition was being proffered on an *Augier* basis. The condition is problematic in that the consent holder may be frustrated in fulfilling its requirements. More importantly, because of the addition of the earth bund along the southern boundary of the BBC site, the works on the Clark property are no longer required to address any effects of the BBC proposal. Accordingly, it is my view that the condition should be deleted. Having said that, if the Clarks are willing participants, BBC is still committed to entering into a 'side agreement' to undertake the works set out in my letter to Mr Clark dated 17 September 2020 (particularly planting along the inside of the boundary of the property).

- (c) In my evidence in chief, I sought the deletion of Condition 29 which requires the preparation of a Noise Management Plan. Mr Whittaker rejects this change and claims that it would *"support the consent holders' obligations under Section 16 of the RMA to adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level"*. In the current circumstances, whereby BBC has provided Noise Reports from Marshall Day confirming that the activities will comply with the Permitted Activity noise levels in the Waipa District Plan, the requirement for a Noise Management Plan is completely unnecessary and the costs associated with requiring it are unjustified. In those circumstances, section 16 of the RMA is not in play. In my opinion, this is an example of why the RMA is being constantly criticised where it imposes unnecessary costs on businesses.
- (d) Finally, in my evidence in chief, I sought the deletion of Condition 1(b) relating to the Subdivision Consent. BBC will happily adhere to the protocols set out in the Cultural Values Assessment, but the purpose of conditions on a subdivision consent is to present a list of things that must be completed to a required standard in order to secure a s.224 certificate. Whether or not a karakia or a cultural blessing has been undertaken (by way of example), is not a matter that is relevant to securing a new Certificate of Title. The reference to the Cultural Values Assessment has been retained in Condition 1 of the Land Use Consent and it serves no useful purpose being repeated in the Subdivision Consent.



Mark Chrisp
Dated 9 December 2020

