

INDEPENDENT COMMISSIONER HEARING



To: Independent Commissioners Alan Withy (Chairperson) and Tara Hills
From: Todd Whittaker (Consultant Planner on behalf of Waipa District Council)
Subject: Land use and subdivision application to establish a research, administration and manufacturing facility for BBC Technologies Limited
Hearing Date: 9 December 2020
File Reference: LU/0154/20 and SP/0082/20

Applicant:	Land use consent - BBC Technologies Limited LU/0154/20 Subdivision consent - Grass Ventures Limited SP/0082/20
Property Address:	35 Lochiel Road and 326 Airport Road RD 2 Hamilton 3282
Legal Description:	LOT 5 DPS 16200 LOT 2 DP 482423
Site Area:	9.84ha
Activity Status:	Discretionary Activity
Zoning:	Rural Zone
Policy Area(s):	Hamilton Airport overlays including <ul style="list-style-type: none">▪ Outer Control Boundary▪ Subsidiary Strip Approach overlay▪ Transitional Slope overlay▪ Horizontal Surface overlay
Designation(s):	Nil
Proposal:	<p>There are two components to the application.</p> <p><u>Land use application</u> to establish a research, administration and manufacturing facility for BBC Technologies including outdoor growing areas.</p> <p><u>Subdivision application</u> to establish a new title for the BBC Technologies site and create a road to vest splay affecting two existing titles.</p>

1 EXECUTIVE SUMMARY

BBC Technologies and Grass Ventures Limited (the Applicant) have entered into an arrangement whereby Grass Ventures Limited acquired the properties that are the subject of this application, and are progressing the subdivision application. BBC Technologies is the Applicant for the land use consent to enable the development of the new site.

In summary, the Applicant is seeking to establish and operate a new research, administration and manufacturing facility for BBC Technologies. The following activities, buildings and development are proposed:

- A new 6,012m² building comprising a manufacturing warehouse (3,300m²) and office / research facilities;
- 258 carparks (within a carparking area of 8,537m²);
- Alterations to the existing access arrangements onsite;
- A subdivision to create three lots (from two existing titles); and
- An outdoor area for growing fruit.

In respect of the subdivision, Grass Ventures Limited is seeking resource consent to create an additional lot in the Rural Zone to cater for the BBC Technologies activity in accordance with Rule 15.4.2.40 Activities with Land Use Consents. The subdivision is a Discretionary Activity.

The application was limited notified with four submissions and two late submissions received. The Independent Commissioners will need to decide whether to accept the late submissions at the start of the hearing. There are two central issues raised in submissions, these being effects on the roading network and effects on rural character and amenity.

The BBC Technologies facility includes a large building footprint which is designed to cater for up to 306 employees and a two-shift operation is proposed which will see peak vehicle movements in the early morning and late evening periods.

In relation to traffic effects, the Applicant is continuing to engage with the submitters to reach resolution over the outstanding matters. These include potential conflict with large events from the NZ Fieldays site and also the funding of identified upgrade works at the Raynes Road and Airport Road/SH21 intersection. The Applicant has provided a detailed Traffic Impact Assessment and both the NZ Transport Agency and Waipa District Council as road controlling authorities are comfortable with the proposal subject to conditions.

The scale and operation of the BBC Technologies proposal has the potential to affect rural amenity and there is a rural dwelling immediately opposite the entrance to the site at 8 Lochiel Road.

Although the site is located in a Rural Zone, the surrounding context of the site including the Airport Road/SH21 corridor, Airport Business Zone immediately to the west, and Hamilton Airport heavily influence the amenity and character of the area.

In my opinion, this context is more accommodating of the BBC Technologies proposal than what would normally be considered appropriate for other more typical rural areas. In principle, I therefore consider that the application can be considered favourably however there are outstanding issues with mitigation of effects including noise and traffic on 8 Lochiel Road. Subject to appropriate mitigation measure being confirmed, which may include works on 8 Lochiel Road, I consider that consent may be granted to the proposed applications.

2 PURPOSE OF THIS REPORT

This report is a s42A Report, prepared under the Resource Management Act 1991 (RMA), which provides an independent assessment and recommendation on the application.

This report does not represent any decision on the application and only provides the professional assessment and opinions of the report author. This report will be considered by the Independent Commissioners in conjunction with all other technical evidence and submissions which have been received to the application. It does not have greater weight than any other material or submissions that may be presented and considered by the Independent Commissioners.

This report has been prepared by Todd Whittaker. I am an independent planning consultant and Director of Planning Works Limited. I have a Bachelor of Resource and Environmental Planning from Massey University, 1994 and I am a full member of New Zealand Planning Institute (NZPI). I have 24 years of professional experience in the resource management field and have previously served on the Board of the NZPI.

I was engaged by Council to provide an independent planning assessment of the proposal. Waipa District Council is a shareholder of Waikato Regional Airport Limited and have declared an interest in the proposal, on the basis that WRAL were notified as a potentially affected party. For the same reason, Independent Commissioners were engaged to hear and decide on this application.

I have read and complied with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 in preparing this report. I agree to comply with it in presenting this report and any evidence at the hearing. The opinions and assessment within this report are within my area of expertise, except where I have stated my reliance on other identified evidence. I have considered all material facts that are known to me which might alter or detract from the opinions I express in this evidence.

In preparing this report, I have taken into account the technical advice from the following Council staff;

- Bryan Hudson (Roading Manager)
- Glynn Jones (Environmental Health Officer)
- Tony Coutts (Senior Development Engineer)

3 THE SITE

The site is located on the corner of Airport Road (SH21) and Lochiel Road and includes 326 Airport Road and 35 Lochiel Road, which are legally described as Lot 5 DPS 16200 and Lot 2 DP 482423.

The site is bounded by rural residential properties to the north, east and south, and Airport Business zoned land to the west along with Hamilton Airport. Also, in proximity is the Mystery Creek Special Events Zone and the Riverside Golf Club. Airport Road/SH21 forms the western boundary of the site and Lochiel Road forms the southern boundary. The site is generally flat, with limited vegetation and no indigenous vegetation. The Waikato River is approximately 370 metres to the east of the site.

There are two rural-residential dwellings, one on each of the existing properties (which are to remain following the proposed subdivision).

The site contains a total of 9.8ha and the titles are subject to a number of encumbrances which have been identified in the application material and includes limited access gazette notices, right of way easements and a consent notice on Lot 2 DP 482423. The consent notice relates to site development in terms of acoustic insulation, engineering and screening along the SH21 boundary. The Applicant has advised that they will be applying to cancel the consent notices.

Both properties are within the Rural Zone with a number of overlays originating from the Hamilton Airport designation affecting the property. Figure 1 shows the site and surrounding land use.

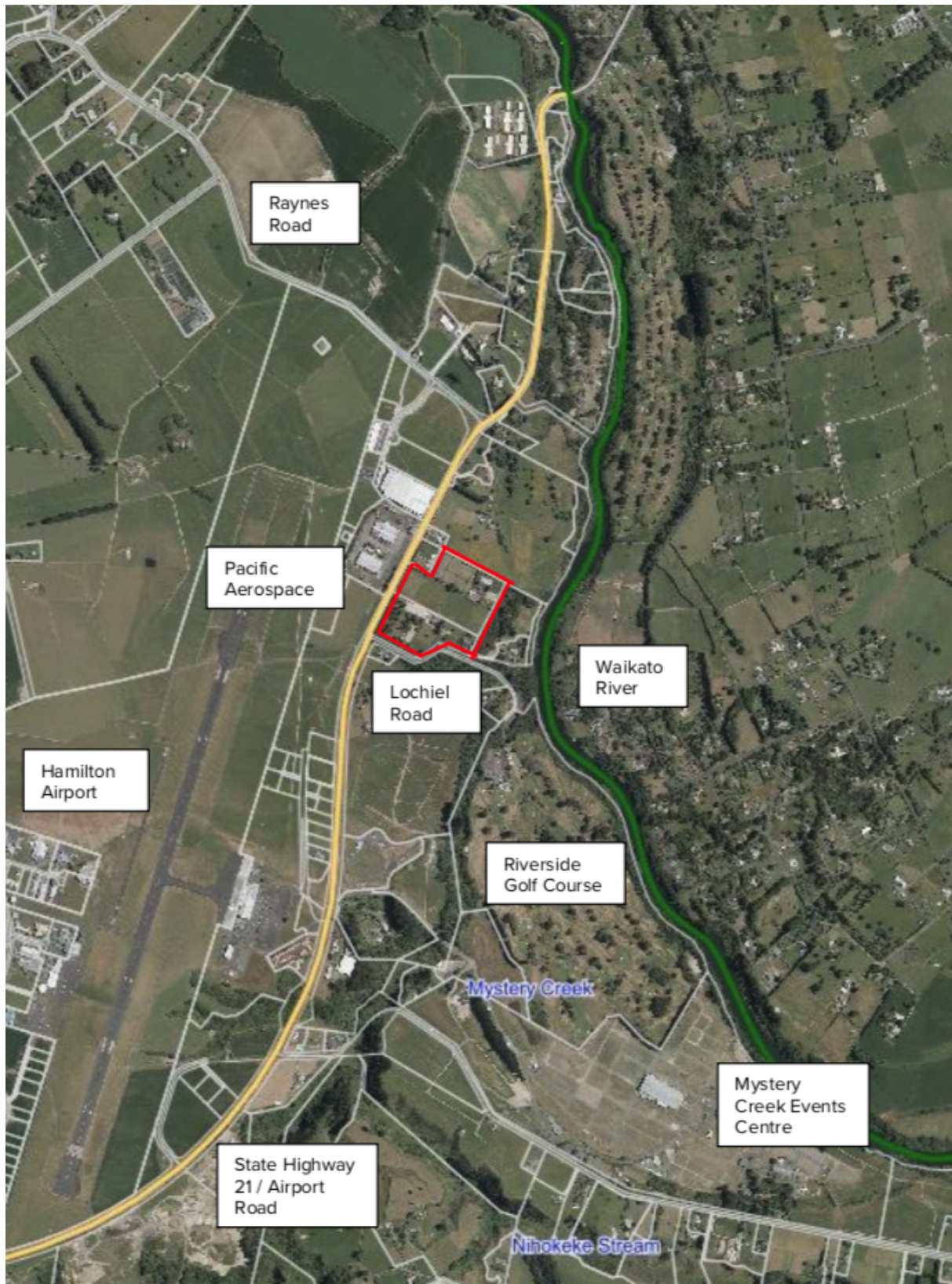


Figure 1: Aerial photograph of site and surrounding land use. (Source – application material).

Table 2 below summarises the relevant interests on the two existing titles.

Record of Title	Address and Legal Description	Size	Date Issued	Relevant Interests
SA14B/258	LOT 5 DPS 16200 35 Lochiel Road	4.06ha	12 May 1972	<ul style="list-style-type: none"> ▪ B537026.1 Gazette Notice declaring State Highway No 21 (Narrows Bridge - SH 3 Intersection) fronting the within land to be a limited access road
678683	LOT 2 DP 482423 326 Airport Road	5.78ha	22 December 2014	<ul style="list-style-type: none"> ▪ B537026.1 Gazette Notice declaring State Highway 21 (Narrows Bridge - SH 3 Intersection) fronting the within land to be a limited access road. ▪ B632968.1 Certificate pursuant to Section 91 Transit New Zealand Act 1989 ▪ 8515957.1 Consent Notice pursuant to Section 221 Resource Management Act 1991 ▪ Subject to a right of way over part marked A on DP 482423 created by Easement Instrument 8515957.3 ▪ The easements created by Easement Instrument 8515957.3 are subject to Section 243 (a) Resource Management Act 1991 ▪ Land Covenant in Easement Instrument 8515957.4 - 8.7.2010

4 THE PROPOSAL

The land use application seeks consent for a research, administration and manufacturing facility for BBC Technologies Limited. A large building is proposed to house these activities which will provide a 3,300m² area for manufacturing/warehousing and two floors of administration and research space with a footprint of approximately 1,300m².

The test plot/fruit growing area of approximately 9,340m² is also proposed to the north of the building. This is an outdoor area for growing fruit associated with the research and development activities within the site.

The Applicant anticipates that the initial expansion of the business, estimated to be achieved by 2023-2025, will see staffing numbers rise from the present number of 148 to 219. The full expansion, estimated to occur between 2026-2028, will be in the order of 306 staff, and the site and building is designed to accommodate this number.

The application material provides site, elevation and floor plans for the building and site works and is supported by planning, traffic, and servicing. In addition, a cultural impact report and noise assessment were presented after the original Assessment of Environmental Effects (AEE) was received.

The main proposal and site development is shown in Figure 2.



Figure 2: Proposed site Development. (Source – application material).

The Applicant is also seeking a subdivision consent to enable the BBC Technologies site to gain its own title. It is noted that the scheme plan was amended by the Applicant after notification with the new scheme plan received on 4 November 2020 – refer **Appendix A**. The Applicant has advised that additional land is required for the BBC Technologies site to accommodate on-site stormwater retention and disposal.

I have provided the original scheme plan as notified as Figure 3 and the revised scheme plan as Figure 4 (over page). In my opinion, the revised scheme plan can be accepted as a change to the application as it does not change or modify the effects of the main land use components or the notification decision, and noting that proposed Lots 2 and 3 remain part of the application site.

This scheme plan provides the area and configuration of proposed Lot 1 for the BBC Technologies facility with proposed Lot 2 and Lot 3 being the balance areas of the existing land holdings. Proposed Lot 4 provides a road splay to facilitate the upgrade of the Lochiel Road/SH1 intersection.

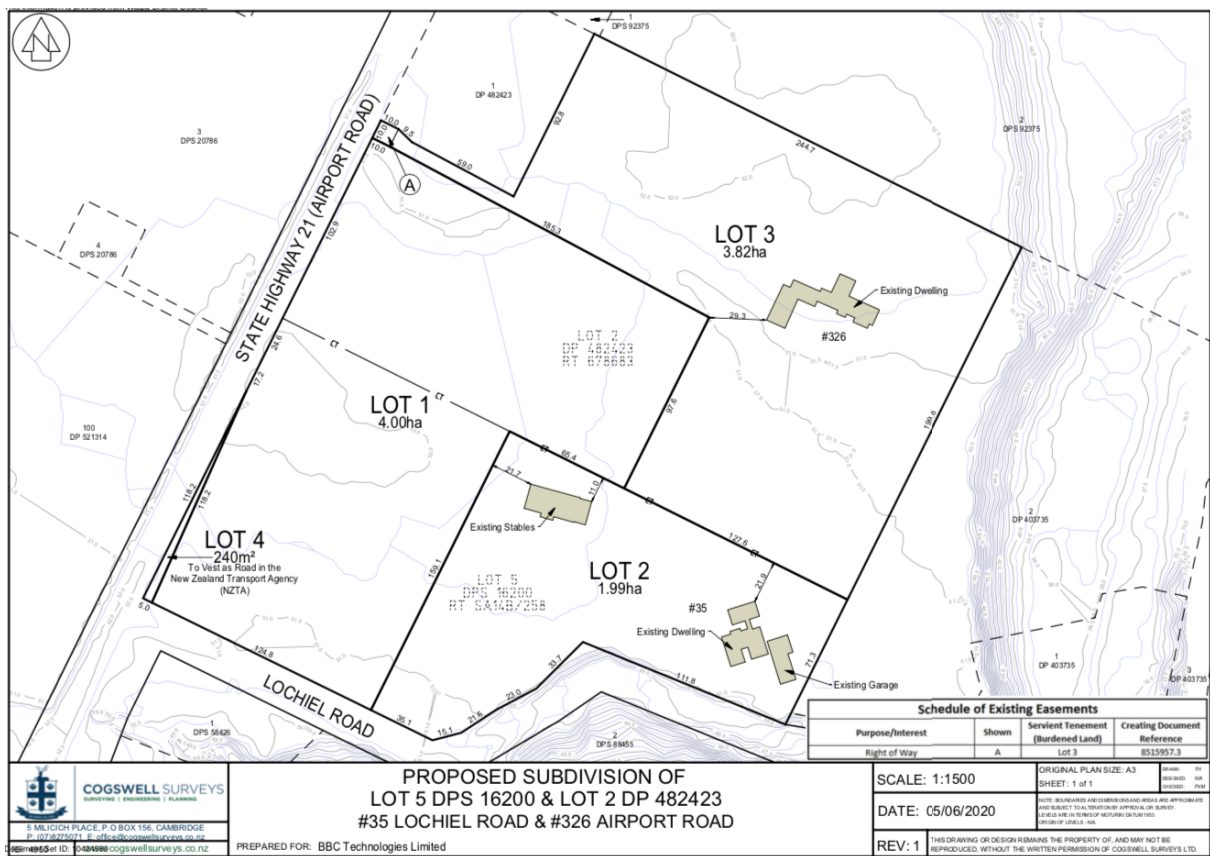


Figure 3: Original Scheme Plan.

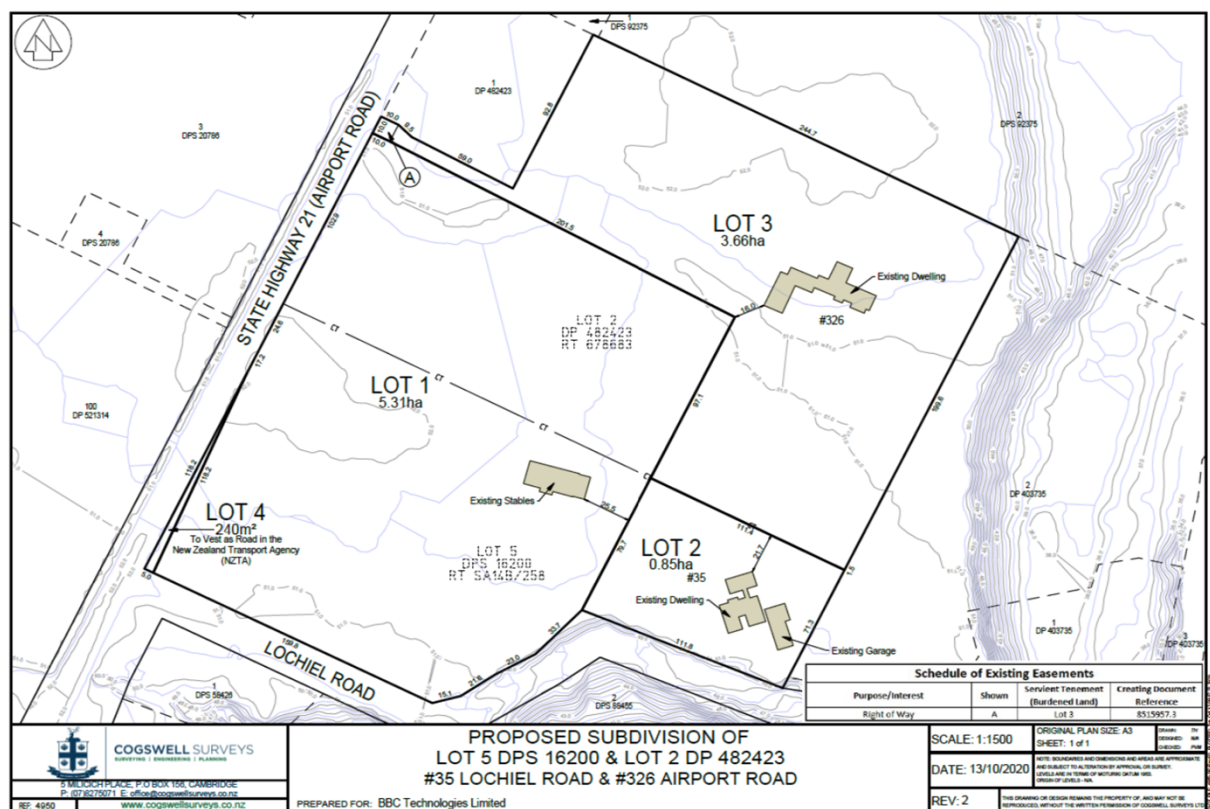


Figure 4: Updated Scheme Plan.

The Applicant is proposing to service the site as follows:

Water Supply

The applicant has estimated that the total daily potable water demand for the site will be between 8.2 – 12.8m³. Should groundwater be utilised for drinking water, this is within the permitted activity take limit in the Waikato Regional Plan.

Sufficient space has been identified within the site to store water for firefighting and domestic use. It is anticipated that the development would require permanent storage of approximately 180m³ for firefighting purposes.

Wastewater

There is currently no wastewater reticulation at the site, and BBC Technologies will need to provide an onsite wastewater system to cater for the site. There are two options BBC Technologies is investigating including wastewater collection and holding tanks or an on-site package wastewater treatment plant with on-site soakage disposal beds or dripper lines to discharge the treated wastewater to ground. This latter option would likely require a resource consent from the Waikato Regional Council.

There is also a third option: to negotiate a joint solution with Waikato Regional Airport Limited (“WRAL”), which is proposing to install a package wastewater treatment plant on the opposite side of Airport Road.

Stormwater

Stormwater runoff from the building roof will be stored for re-use with any surplus to be disposed to ground via on-site soakage systems. The stormwater drained from the hardstand parking area will also be disposed of via stormwater soakage. The design requirement for stormwater soakage is to soak to ground the full runoff from new impermeable areas for the 10-year ARI design storm event.

For storm events exceeding the capacity of the soakage trench, excess stormwater will discharge from the soakage system. As the discharge must be directed away from the buildings on site, the overflow will need to drain to the adjacent road drains or run off along existing contours or gullies to the Waikato River as would occur pre-development. Any discharge permits required will be consented once further details of the system are known.

Power and telecommunications

The Applicant has liaised with service providers regarding new connection to the site.

The existing dwellings on proposed Lot 2 and 3 will continue to provide their own wastewater and water supply.

With regards to access, the Applicant has prepared an Integrated Transport Assessment (ITA) and is proposing to upgrade the existing Lochiel Road/SH21 intersection with widening of Lochiel Road to a 7m carriageway and extending to the

proposed heavy commercial entrance located towards the eastern side of proposed Lot 1.

A full description of the proposal is set out in the application material including the additional information and revision to the application as contained in;

- A Cultural Values Assessment from Ngāti Haua dated 11 August 2020,
- A discussion on activity status and the nature of the proposed activity in relation to the Rural Based Industry definition (email from Abbie Fowler dated 4 September 2020),
- Noise assessment from Marshall Day Acoustics (revised report dated 11 November 2020 to clarify predicted table values and ambient noise levels – Refer **Appendix B**),
- An updated addendum to the Integrated Transportation Assessment and further responses to traffic related issues dated 28 August 2020, and
- Revised scheme plan and correspondence on the late submission and issues affecting 8 Lochiel Road – Mitchell Daysh letter dated 4 November 2020.

5 ACTIVITY STATUS

An assessment of the proposal's compliance with the relevant rules of the District Plan has been completed. In summary, Table 3 below outlines the relevant rules relating to the proposed subdivision.

Rule #	Rule Name	Status of Activity	Comment
Land use			
4.4.1.4(g)	Rural based Industry	Discretionary	The Applicant has lodged the application for a rural based industry on the basis that the activity has a direct connection to the rural /horticulture sector and that it provides for research and development which would fall within the ambit of a rural research facility.
4.4.2.1	Minimum setback from road boundaries	Discretionary	The new building does not comply with the required 30m set back from SH21.
4.4.2.2	Minimum setbacks from internal site boundaries	Restricted Discretionary	The proposed building is setback approximately 15.5 metres from the boundary with Lot 2 (the rear boundary).
4.4.2.10	Maximum building coverage	Restricted Discretionary	The building coverage is approximately 11.6% and does comply with the permitted activity rule of 3%.
4.4.2.15	Noise	Discretionary	Non-compliance has been identified in relation to the peak traffic movements and night time standards (40dBL). It is noted that this non-compliance was not identified in the original AEE

Rule #	Rule Name	Status of Activity	Comment
			but was subsequently modelled and predicted in the Marshall day Noise assessment.
4.4.2.44	Signs	Discretionary	This original proposal included three signs however this has been reduced to one sign on Airport Road and one on Lochiel Road. Each sign is 8 metres in height (the sign and the base). The area of each sign is 17.5m ² and does not comply with the maximum sign size of 1.2m ² visible in any direction and a maximum area of 2.4m ² .
4.4.2.74	Earthworks	Discretionary	The site works are anticipated to be more than the 1,000m ² permitted activity threshold.
16.4.2.23	Car park landscaping and lighting	Restricted Discretionary	BBC Technologies may not provide one tree per every 5 parks. Out of an abundance of caution, BBC Technologies seeks consent under this rule
16.4.2.25	Provision of an integrated transportation assessment	Restricted Discretionary	The proposal will generate over 250 vehicles per day on a local road (Lochiel Road). The activity is therefore a restricted discretionary activity.
Subdivision			
15.4.1.1(q) and 15.4.2.40	Subdivision for activities requiring land use consent	Discretionary	The District Plan does provide for subdivision of named activities which have been operating for two years. Rural Industry is not a named activity and the Applicant is seeking subdivision without the activity operating for two years. In the technical review of the report, questions have been raised on the interpretation of the subdivision rules and whether the subdivision qualifies for subdivision under Rule 15.4.2.40. The rule has a clause that says ' <i>Activities that fail to comply with this rule will require a resource consent for a discretionary activity</i> ' which would support a Discretionary activity status. This may however be inconsistent with the framing of the rules in Table 15.4.1 which require a non-complying consent for activities that fail to comply with the table. The nature of the rule is to ensure that subdivision is not enabled for artificially conflated business activities as a means of gaining additional land titles. Clearly, this is not the case for the BBC Technologies proposal. On this basis, it is considered safe to adopt the Discretionary activity status.

In terms of the land use activity status, the Applicant has presented a discussion on the nature of the proposed activity and how this may be considered a Rural Based Industry and Rural Research Facility. The two definitions are as follows:

Rural based industry 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**.

Rural research facility means a research facility concerned with agricultural production, farming or rural land management.

While it is accepted that there are components of the activity which align with the definition of Rural Based Industry, the size, nature and scale of the proposed facility has the character of a large-scale commercial building including significant areas for on-site carparking to cater for some 306 staff. The proposal breaches a number of permitted activity thresholds which reflects some disconnect with the nature and scale of activities that are anticipated in the Rural Zone. These are distinct from the nature of other activities which are specifically named under the Rural Based Industry definition such as agricultural contractors depots, pack houses, meat and poultry processing. If the application, was determined as not meeting the definition of Rural Based Industry, then it would default to a non-complying activity.

It is considered that the scope of activities which may come within the ambit of the Rural Based Industry definition is very broad given that the definition refers to activities that have a *direct connection to* rural activities. Furthermore, while the definition refers to various rural based activities such as packhouses, sales yards, this is not an exclusive list.

I have considered the nature of the activity and its alignment with the definitions of the Waipa District Plan and note that there are submissions lodged challenging the location and nature of the proposal as a rural based industry.

I have reached the conclusion that the activity, overall, falls within the definition of “Rural Based Industry” and can therefore be assessed as a Discretionary Activity. In the event that the Independent Commissioners are of a different opinion and determine this to be a non-complying activity, I have included my assessment of effects and objectives and policies under the RMA section 104D gateway test. The manufacturing/warehousing component of the activity accommodates the development and manufacturing of berry sorting machinery which has a direct connection with horticulture. I however note that many activities could well claim a connection to a rural activity and this does not necessary justify a location within a rural area. The BBC Technologies facility includes an outdoor test crop area and while there will be some convenience with this being part of the same site, it is not clear based on the application material available that this is an essential or functional part of the business operation. I address this further in Section 10 of this report.

In my opinion, the administration and research component of the proposal falls within the ambit of a rural research facility and the proposal taken as a whole can be assessed as Rural Based Industry.

I also note that as a Discretionary Activity, the full scope of adverse effects can be considered in terms of a decision to grant or refuse the application and also in terms of any specific mitigation measures which may be required or imposed on a land use consent.

Overall, the application for both the land use and subdivision consents are deemed to be a **Discretionary Activities**.

6 LIMITED NOTIFICATION

I provided a recommendation to Waipa District Council for the application to be processed on a limited notification basis and this was accepted and resolved under delegated authority on 24 September 2020.

In accordance with the limited notification decision, the application was served on the following parties, with those who made a submission marked with an asterisk.

Surrounding landowners

Street Address	Legal Description		Submission Received
37A Lochiel Road	Lot 2 DP 403735	Peter L Annegarn & Gary C Peek	* 19 October 2020
37 Lochiel Road	Lot 1 DP 403735	Kevin & Cheryl J Robertson	
60 Lochiel Road	Lot 1 DPS 71733	Robbie L & Jessica J Cook	
72 Lochiel Road	Pt Lots 1 and 2 DP 17091, Lot 3 DP 29958	Riverside Golf Club Incorporated	
284 Airport Road	Lot 2 DPS 88455	Kaipaki Promotions Limited	* 22 October 2020 (combined submission with Fieldays)
8 Lochiel Road	Lot 1 DPS 58426	Mervyn C & Marilyn A Clark	* 29 October 2020 (2 x late submissions)
326A Airport Road	Lot 1 DP 482423	Craig T & Rosemarie A Ryan	

Other parties

Street Address	Submission Received
Ngāti Haua Iwi Trust	
Waikato Tainui	
Waikato Regional Airport Authority	* 22 October 2020
NZ Transport Agency	* 16 October 2020
NZ National Fieldays Society	* 22 October 2020 (combined submission with Kaipaki Promotions Limited)

Street Address	Submission Received
Pacific Aerospace	
Riverside Golf Course	
Meridian 37	

7 SUBMISSIONS

Four submissions were received during the statutory submission period which closed on 22 October 2020. Two separate submissions were received from Mr and Mrs Clark of 8 Lochiel Road on 29 October 2020 and are therefore late submissions (received 5 working days after the close of submissions). The full set of submissions are provided in **Appendix C**.

The Independent Commissioners will need to decide in the first instance whether the late submissions from Mr and Mrs Clark can be accepted. Mr and Mrs Clark have not provided any explanation for their late submissions and the Independent Commissioners may invite them to address this as part of the hearing. The Applicant has opposed the acceptance of the late submissions through the letter from Mitchell Daysh dated 4 November 2020. In summary, the Applicant considers;

- the Applicant will be prejudiced by additional time/cost;
- the issues raised in the submissions have been addressed in the application;
- The Rural Zone explicitly contemplates rural based activities;
- Mr and Mrs Clark were on notice about the closing date;
- the Applicant has a good understanding of the issues and mitigation measures that are appropriate, and
- Mr and Mrs Clark may become vexatious objectors/appellants with a desire that the applicant should purchase their property.

The Applicant has consulted with Mr and Mrs Clark however no agreement or written approval has been obtained for the BBC Technologies facility. In my view the above rationale for not accepting the late submissions is not compelling. The late submissions has not affected the timeline for the hearing and even without the submissions, the Independent Commissioners would need to consider the effects on 8 Lochiel Road unless a written approval was secured. This is the most affected property in terms of its location and proximity to the site and in particular the proposed vehicle entrance. I consider that the interests of Mr and Mrs Clark should be addressed and considered in the hearing process with their submissions formally accepted.

In my view, it would be more appropriate to accept the submissions and this would also allow the opportunity for Mr and Mrs Clark to respond directly to any mitigation measures and any additional evidence produced as part of the evidence exchange and hearings process, including the penitential for fencing and screening to be established on their site.

I therefore do not oppose the acceptance of the late submissions and have addressed their submissions below.

I have elected to provide a summary of submissions by individual submitters given the relatively few number of submissions:

NZ Transport Agency

The applicant consulted with NZ Transport Agency as part of the preparation of the application and in particular through the preparation and of the Integrated Transportation Assessment (ITA). Indeed, the NZ transport Agency had the opportunity to comment on the ITA and this was subsequently updated and revised to address matters raised by the NZ Transport Agency.

The NZ Transport Agency has lodged a submission which also refers to correspondence that they provided to the applicant on 12 October 2020. The key points raised in the NZ Transport Agency submission are;

- The NZ Transport Agency is neutral to the proposal;
- If consent is granted, then the NZ Transport Agency has set out a series of conditions which the agency request be imposed on the approval. These primarily relate to the design and construction of the upgrading of the Lochiel Road/SH21 intersection. In addition, conditions are recommended in terms of signage facing onto SH21 and a Travel Demand Management (TDM) Plan;
- The applicant has agreed to the NZ Transport Agency conditions, and
- The NZ Transport Agency understand that the applicant may seek a separate earthworks consent to enable site works to commence. This will require separate comments from the NZ Transport Agency.

Waikato Regional Airport Limited and Titanium Park Limited (WRAL)

The WRAL submission is submitted in opposition. However, the submission goes on to detail that the issue that needs to be addressed and resolved is the effects of the proposal on the future upgrading of the Raynes Road/SH21 intersection which is subject to a Memorandum of Understanding (MOU). While I have not reviewed the MOU or the specific terms and respective obligations on the parties to the agreement, I understand that this in broad terms requires upgrading of the intersection once certain thresholds are reached with the traffic generation and performance of the intersection.

WRAL is seeking further discussions and negotiation between Meridian 37 (as the developer of the industrial zone north of Hamilton Airport), the NZ Transport Agency, the Applicant and WRAL to address the impacts on the Raynes Road/SH21 intersection. WRAL is seeking a shared funding approach and that this is reflected in conditions for any land use consent.

WRAL has also raised concerns about visual effects in relation to the road corridor and have requested landscape planting/screening as a mitigation measure.

NZ Fieldays Society Incorporated and Kaipaki Promotions Limited (Fieldays/Kaipaki)

The Fieldays/Kaipaki submission is primarily concerned with traffic effects and in particular how the additional traffic generated from the BBC Technologies facility will affect the traffic network and event traffic from the Mystery Creek site. The Fieldays/Kaipaki submission provides background and context to the sensitivity of the roading network to traffic modelling and that large events require considerable and complex management. Concerns are expressed about the *ad hoc* approach to managing workers' travel times and behaviours and Fieldays/Kaipaki are seeking additional traffic assessment reporting on the potential traffic effects in relation to both small and large scale events at Mystery Creek and also consideration of cumulative effects.

The Fieldays/Kaipaki submission also raises concerns over the scale and nature of the proposal and request appropriate conditions to ensure that the surrounding amenity values are not adversely affected.

Peter Annegarn

Mr Annegarn is a private landowner at 37A Lochiel Road and raises concerns over privacy, security, and traffic. Mr Annegarn objects to the commercial/industrial nature of the proposal and that alternative and more suitable land is available across Airport Road.

Mr and Mrs Clark (late submissions)

Mr and Mrs Clark have lodged separate submissions which cover identical submission points. These include;

- The Rural Zone of the subject site and their property;
- The scale and nature of the proposal and its disconnect with rural activities;
- Traffic effects including noise, frequency, timing in early morning and late evening periods, size of vehicles, and Lochiel Road upgrades;
- Operational noise;
- Drainage issues and flooding;
- Security, and
- Uncertainty over regional council requirements.

8 SECTION 104 ASSESSMENT

A consent authority must have regard to a number of matters under Section 104 of the Act when making a decision on an application for resource consent. Those matters include:

- The actual and potential effects of an activity on the environment (section 104(1)(a)) and relevant provisions of an operative and/or proposed District Plan;
- Any measure proposed or agreed to by the Applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse environmental effects that may or will result from the activity (section 104(1)(ab));
- The provisions of National Directions, the Regional Plan or the Regional Policy Statement, or any other relevant statutory documents (section 104(1)(b)); and
- Any other matter the consent authority determines relevant and reasonably necessary to determine the application (section 104(1)(c)).

9 ASSESSMENT OF ENVIRONMENTAL EFFECTS (SECTION 104(1)(A))

The meaning of 'effect' is defined under the Act as:

*In this Act, unless the context otherwise requires, the term **effect** includes—*

- (a) any positive or adverse effect; and*
- (b) any temporary or permanent effect; and*
- (c) any past, present, or future effect; and*
- (d) any cumulative effect which arises over time or in combination with other effects —regardless of the scale, intensity, duration, or frequency of the effect, and also includes—*
- (e) any potential effect of high probability; and*
- (f) any potential effect of low probability which has a high potential impact.*

With the above definition in mind, the actual and potential effects of the proposed activity requiring assessment are:

- Traffic and Transportation;
- Rural Character and Amenity;
- Signs;
- Privacy and Security;
- Reverse Sensitivity Effects;
- Construction and Earthworks;
- Cultural Effects;
- Effects on Services and Infrastructure;
- Loss of Rural Land;
- Positive Effects; and
- Subdivision

Traffic and Transportation

The Applicant has provided an Integrated Transportation Assessment (ITA) and addendum¹ prepared by Gray Matter to assess the effects of the BBC Technologies facility on the roading network, including current and future traffic generation, and impacts on safety and efficiency and parking demand.

The ITA and application material also discusses the consultation with the NZ Transport Agency and Waikato Regional Airport Limited (WRAL).

The BBC Technologies proposal will generate relatively high levels of additional traffic, primarily associated with staff vehicles. It has been assessed that the proposal will generate 840 veh/day with a peak hour generation of 170 veh/hour based on employee projections. The existing traffic count (2019) for SH21 is 7,200 veh/day with the Lochiel Road data showing an average daily traffic count of 597 veh/day (assuming resumption of golf course traffic). To address the increase in traffic on the roading network, the Applicant is proposing to upgrade the existing Lochiel Road/SH21 intersection with provision for a right turn bay and widening of Lochiel Road to the proposed site entrance.

It is noted that the state highway and local roading network surrounding the site is subject to a number of land use developments and strategic roading initiatives which will lead to additional traffic generation over the medium term. The Southern Links project will also result in a significant step change in traffic using SH21 and a number of land use developments are underway in the Airport Business Zone. With regards to traffic around the Hamilton Airport node, developer agreements are in place for the upgrade of key intersections around Hamilton Airport involving both WRAL and Meridian 37.

It is also noted that Mystery Creek and other visitor activities are located to the south of the site and this creates significant additional loadings on the roading network during large scale events.

The NZ Transport Agency is largely satisfied with the assessment of effects on the state highway network. The Applicant has provided a letter from the NZ Transport Agency dated 18 September 2020 which sets out the information and mitigation measures which have been assessed. Subject to agreement over the intersection upgrade works, the NZ Transport Agency is satisfied that the adverse effects on the transport network will be adequately avoided or mitigated. The NZ Transport Agency has also made a *neutral* submission to the proposal which refers back to the earlier correspondence and conditions.

The proposal has been reviewed by Waipa District Council's Roading Manager, Mr Bryan Hudson who has provided a technical memo – refer **Appendix D**. In this memo Mr Hudson addresses the traffic issues, being traffic generation assessed by the Applicant, proposed upgrade works and the matters raised in submissions.

¹ The original Gray Matter report is dated 2 June 2020 and the revised (second) version of the Addendum is dated 28 August 2020.

Mr Hudson has not identified any outstanding issues with respect to transportation matters that would prevent consent being granted subject to appropriate conditions. With regards to the Fieldays submission, Mr Hudson considers that the additional traffic generated by the BBC Technologies facility will not adversely affect event traffic given the traffic management plans that are in place to manage event traffic.

In addition, Mr Hudson has commented on the MOU and upgrade of the Raynes Road/SH21 intersection which has been raised in the WRAL submission. Mr Hudson advises that this is a commercial agreement which he is not able to comment on.

There are many factors affecting the state highway and local roading network around Hamilton Airport which are interrelated. A substantial amount of technical work has previously been undertaken including traffic modelling and trigger thresholds for the upgrading of key intersections around the subject site.

In my opinion, the Applicant has conducted a comprehensive assessment of transportation impacts and has also consulted with the NZ Transport Agency and other stakeholders. The proposal will increase traffic movements on the roading network and this will have an incremental impact on the efficiency and safety of the roading network including other land use activities and users of the transportation network.

Based on the assessment from the Applicant's traffic expert, the review and assessment of the proposal from the NZ Transport Agency and from Council's Roding Manager, I am satisfied that the adverse effects on the roading network will be appropriately mitigated.

The issue raised by WRAL is problematic in terms of the nature of the MOU which is a private agreement and that there is only limited public information available. Implicit in the submission from the NZ Transport Agency is that any effects on the Raynes Road intersection will be mitigated by the upgrade works which are the subject of the MOU. It is therefore surmised that the NZ Transport Agency is satisfied that any additional effects on delay times or traffic safety will be addressed through the existing MOU.

It is understandable that WRAL has a direct interest in any land use activities which will potentially require the funding and upgrading of the intersection earlier than what would have otherwise been necessary. It is however difficult in my opinion for the Independent Commissioners to address this directly as this would require the examination and possible amendment of the terms of a private agreement.

I also note that the Gray Matter analysis of current traffic volumes '... indicate there is 10 years reserve capacity so the risk of the upgrade being required earlier than previous expected appears low'².

The hearing will enable the Applicant and WRAL the opportunity to present any further updates on their discussions and negotiations regarding the timing and funding of works on the Raynes Road intersection. If no consensus is reached, then it is my view that the Independent Commissioners can acknowledge that the MOU does exist and

² Gray Matter ITA Addendum dated 28 August 2020, section 8.1.5.

the NZ Transport Agency is satisfied that any effects on this intersection will be mitigated by that agreement and the parties to that agreement. This mitigation and future upgrade works will occur regardless of whether the BBC Technologies proposal is granted consent or not.

Rural Character and Amenity

In my opinion, there are two key aspects to the assessment of effects in relation to rural character and amenity.

The first aspect is the scale and nature of the proposed BBC Technologies facility which, in my opinion and despite my assessment of the application as Rural Based Industry, has the character and design of a commercial/administration/warehousing building that would typically be located within a contemporary business or industrial precinct setting. The building has a large footprint of 4,640m² and has two office/research levels. Significantly, the building has been designed to accommodate up to 306 employees with a commensurate on-site area dedicated to staff carparking. In my opinion, the design of the building, substantial number of employees who will be employed on a permanent basis and associated parking areas provide a non-rural character to the proposed use.

The second aspect is the context of the site and surrounding area which contain a range of activities and buildings which are not typical of a rural area. This includes;

- The SH21 road corridor;
- The Airport Business Zone on the opposite side of SH21;
- Hamilton Airport immediately to the west of the site;
- Large buildings including aircraft hangers within the Airport Business Zone but with other buildings and activities such as the pistol club, kart track and NZ Honey premises located along the eastern side of SH21; and
- The Fieldays and events land holdings and facilities to the south of the site.

In my opinion, the scale and nature of the proposed building and operation of the BBC Technologies facility and the surrounding context and character both provide an important context for the assessment of effects. I now turn to more specific issues.

Bulk Form and Design

There is an expectation that the rural area will be characterised by a relatively low density of bulk form and that large open spaces of land and trees will dominate the landscape.

The proposed BBC Technologies building and substantial areas dedicated for access, parking and manoeuvring has a commercial/administration character. In my opinion, this is unlikely to sit well in most rural environments. However, in this case, I consider that the proposed building and associated site development will not be out of context with the surrounding area given;

- The building has a maximum height of 9.9m to the apex of the roof line while the Rural Zone provides for a maximum height of 12m,
- The building is located 19.8m from the SH21 boundary which does not comply with the 30m setback for buildings over 100m². The properties opposite Airport Road/SH21 are Airport Business Zone which provide for setbacks between 5m and 15m. As such, I consider there is no particular sensitivity issues to the bulk and scale of the building in terms of the state highway frontage,
- The proposed building is set back more than 100m from the closest non-application³ boundary to the north and is approximately 200m from the closest non-application site boundary to the east, and
- While there is a performance standard of 3 % Building Coverage, the location and separation distance with the non-application sites is such that the proposed site coverage of 11.6% does not create an overbearing or inappropriate visual effect.

I have considered specifically the effects of bulk and location of the building on the property at 8 Lochiel Road owned by Mr and Mrs Clark. I note that the Applicant has engaged with Mr and Mrs Clark over potential mitigation measures however no resolution has been reached at this stage. The building is located 78m from the Lochiel Road boundary and given this separation distance I do not consider there will be undue adverse effects in terms of building dominance. I do however consider that given the scale and nature of the building, there is an obligation on the Applicant to mitigate the built form and appearance of the building along with other effects such as traffic and noise effects. If the Applicant is unable to secure agreement to establish an earth bund and fencing/planting within Mr and Mrs Clark's property then the Applicant should be required to provide clear details of any bund and fencing/planting plans along the frontage of their site and Lochiel Road.

Operational and Traffic Effects

The proposed BBC Technologies building includes manufacturing and warehousing space as well as an office and the administration/research wing. This manufacturing and warehousing space has large doors that open towards Lochiel Road and the property owned by Mr and Mrs Clark. The Applicant is seeking unrestricted hours of operation with reference to a day and night time operational shifts and the flexibility for 7 days per week operation. The Applicant should confirm how often double shifts may be required and whether this will be a typical part of the business operation or only necessary to cater for peak work/orders. The application material refers to shift workers who will arrive before 6.30am and leave after 12 midnight while the delivery and loading of goods will be generally limited to between 8am and 5pm⁴.

³ I use the term 'non-application' site boundary to recognise that part of the application includes the subdivision of the underlying lots. Therefore the site boundary includes the full extent of the underlying lots and the proposed Lots 1 – 3 on the scheme plan.

⁴ Marshall Day Noise Report, para. 3.1 and 3.2.

The provision of two shifts and the arrival and departure of staff in the early morning and late evening periods has a high potential to create noise and other effects from headlights on Mr and Mrs Clark's property. This is particularly the case given that the access to the BBC Technologies site is located at the eastern corner of the proposed Lot 1 and the proposed traffic will therefore run along the full frontage of the their property.

The Applicant has provided a noise report from Marshall Day Acoustics originally dated 3 September 2020. This was updated on 11 November 2020 to address some clarification issues raised by Council in terms of the predicted noise levels and the ambient noise levels during the morning and night-time peak traffic periods. The report has identified the noise sources associated with the proposed BBC activities with a particular focus on the arrival and departure of traffic from the site. The Marshall Day report has assessed the proposed activities in accordance with the permitted activity provisions of the District Plan which are as follows:

Noise rule 4.4.2.15 of the Waipa District Plan contains the relevant noise rules for the site. The rule requires that noise generating activity (excluding farming associated activities) should not exceed the following limits within the notional boundary of any dwelling (not within a mineral extraction site):

- *Daytime – 07:00 to 22:00 hours – 50 dB LAeq*
- *Night-time – 22:00 to 07:00 hours – 40 dB LAeq and 70 dB LMax.*

Noise levels shall be measured and assessed in accordance with NZS 6801:2008 Acoustics – Measurement of environmental sound and assessed in accordance with NZS 6802:2008 Acoustics – Environmental noise.

The Marshall Day report has identified that the noise sources will comply with the permitted activity standards apart from the peak time for arrivals and departures in the night-time period which requires a maximum noise level of 40dB LAeq. A predicted noise exceedance of 3dBA is predicted at 8 Lochiel Road for these peak traffic periods.

While no background noise measurements have been carried out for the site or 8 Lochiel Road, the Marshall Day report has calculated an ambient noise environment of 50-55dB LAeq. The Marshall Day report concludes that the exceedance will be of little significance given the short period of time exposure, that a 3dBA exceedance is barely perceptible and the predicted ambient noise level.

I have visited the site twice, both times during the day time period and my last site visit was on 2 November 2020. I was very much struck with the high levels of background or ambient noise levels, most notably from traffic along Airport Road/SH21. One of the aspects that exacerbates the noise levels at 8 Lochiel Road is that the road carriage is elevated above the ground level and there is no fencing or other barrier to this noise. I also observed the landing of two light aircraft during my last site visit and the aircraft noise was considerable. In my opinion, the existing environment is characterised by background noise levels which are very high compared to other rural areas which are not impacted by road corridor and airport noise.

Council's Environmental Health Officer, Mr Glynn Jones has provided a review and assessment of noise effects – refer **Appendix E**. Mr Jones has reviewed the Marshall Day report and provided commentary on the type of noise sources that exist within a rural environment and the types of issues that can lead to noise complaints. This includes the use of beepers on forklifts at packhouse sites.

Mr Jones broadly accepts the noise assessment and conclusions from the Marshall Day report however he considers that there should be clear methods adopted to mitigate the effects of noise.

I consider that the nature of the access and significant numbers of staff who will enter and exit the site necessitates mitigation by the Applicant. As noted above, this could involve mitigation on Mr and Mrs Clark's property which would require their full co-operation and endorsement. While they are under no obligation to consider works on their site, I do consider this would offer the most effective form of mitigation and that this may also help with mitigation of other road noise from Airport Road/SH21. In some ways it is surprising that Mr and Mrs Clark have not attempted to mitigate road noise through fencing or other measures given that high levels of noise which is generated from the road corridor and which will no doubt will increase through other future land development and the provision of the Southern Links corridor.

In my opinion, the Applicant should, by the time of the hearing, either present an agreed plan for works on Mr and Mrs Clark's property, or alternatively they should provide a detailed plan for an earth bund and planting /fencing along the Lochiel Road frontage.

Taking into account the context of the site and specific operational characteristics of the BBC Technologies site, I consider that the adverse effects of noise can be managed and mitigated by appropriate conditions of consent. In broad terms, conditions could include;

- Provision for acoustic mitigation through an earth bund or fencing along the property frontage and/or within the property located at 8 Lochiel Road;
- A noise management plan for operational noise; and
- Provision for a noise compliance and review conditions.

With regards to vehicle headlights, it is my opinion that further clarification is required on how effective any earth bund or fencing will be based on the arrival and/or departure of vehicles. It occurs to me that vehicles exiting the BBC Technologies site will shine their headlights across the full frontage of 8 Lochiel Road including any vehicle access point. As discussed above, some form of fencing/screening along the 8 Lochiel Road frontage will offer the greatest benefit in terms of mitigation. I would urge these parties to take some time and discuss these matters further and prior to the hearing. If this is not able to be negotiated, then the Applicant will need to submit a mitigation plan with works within their own site boundary.

Signs

The Applicant originally sought consent for three large signs, each with a maximum height of 8m and with a signage area of 17.5m². Two signs were proposed along the SH12 frontage and one at the Lochiel Road entrance. Additional façade signage facing the SH21 frontage is also proposed.

The correspondence from the NZ Transport Agency addresses the location and design of signage and requires that only one sign (freestanding) is visible from the state highway. The Applicant has agreed to this condition.

Given the large nature of the site and proposed building, it is my opinion that the provision of a large freestanding sign along the SH21 is appropriate and will not be out of context with the other buildings and signage within the Airport Business Zone and road corridor.

I am more concerned with the need and effects of such a large sign at the Lochiel Road frontage. Clearly, any site entrance signage serves the function of marking the entrance to the site. However, visitors to site will have already turned off SH21 and the entrance will be easily identifiable given the large crossing and development of the site in general.

As the site is directly opposite a rural dwelling, and that the function of a site entrance sign could be equally achieved by a smaller sign, I consider that the size of the sign should be significantly reduced to a maximum height of 4m and that there should be controls over any illumination.

Privacy and Safety

The submission from Mr Peter Annegarn and the Clarks raise specific issues of privacy and safety.

I note that Mr Annegarn's property is located at 37A Lochiel Road and this is separated from the subject site by two rural-residential dwellings which will remain in place if any land use consent is granted for the BBC Technologies facility. A substantial area of trees also exists on Mr Annegarn's site. While there will certainly be a substantial amount of additional traffic and staff/visitors to the BBC Technologies site if consent is granted, I do not see how this would cause any material loss of privacy or safety concerns for Mr Annegarn. It is open for further amenity or screen planting to be provided and negotiated with the Applicant however this would only be necessary if it provided a degree of mitigation over and above the existing trees and plantings.

The Clarks' property is currently exposed to two road frontages with little in the way of fencing or screening. The development of the BBC Technologies site will certainly lead to a substantial increase in traffic movements however I consider there is unlikely to be substantially more pedestrian or cyclists' movements along Lochiel Road. In terms of privacy and views into the Clarks property, I consider that the obligation is on the Applicant to clearly show and demonstrate how these effects can be mitigated.

Reverse sensitivity effects

Reverse sensitivity effects can arise when a more sensitive activity is located within an environment which is subject to existing activities which may be affected by the presence of the new activity. In this case, the state highway corridor and Hamilton airport are high noise generators.

The manufacturing part of the BBC Technologies facility is located closest to the Airport Road/SH21 corridor and this is not regarded as a noise sensitive activity. The office, research and administration wing potentially have some sensitivity to noise and this has been recognised in the application with a 'no complaints' condition proposed in favour of Hamilton Airport.

I note that neither the submission from the NZ Transport Agency or WRAL raise reverse sensitivity issues.

In my opinion, a 'no complaints' condition in favour of Hamilton Airport is appropriate and any reverse sensitivity effects will therefore be minor.

Construction and earthworks

The application material discusses in some detail the construction works which will include bulk earthworks in the first instance. A construction period of approximately 10 months is anticipated. The Applicant has also offered a Construction Management Plan to address the hours and off-site effects of the construction works.

In my opinion, the temporary nature of construction works and the ability to impose appropriate conditions will mitigate the off-site effects and will ensure that any adverse effects will be minor.

I note that the Clarks' submissions raise issues about potential flooding on their property. A letter to the Clarks from Mitchell Daysh dated 17 September 2020 (refer attachment to letter in **Appendix A**), addresses potential issues associated with an undersized culvert under Airport Road/SH21 and that this will be assessed as part of the detailed engineering design for the Lochiel Road intersection.

Any works and roading upgrades will need to ensure that there are no additional flooding issues imposed on the Clarks' property and this can be addressed through the detailed engineering design.

Cultural effects

The Applicant has commissioned a cultural values assessment from Ngāti Haua. This has assessed the potential effects of the proposal on cultural values and has taken into account the provisions of the Waikato-Tainui Environmental Plan, Te Ture Whimana o Te Awaio Waikato, and Te Rautaki Tāmata Ao Turoa o Hauā.

The report and assessment conclude that there is no opposition to the BBC Technologies proposal subject to a number of recommendations that can form conditions of consent. The Applicant has agreed to the recommendations.

Based on the cultural values assessment, it is considered that any adverse effects on cultural values will be less than minor.

Effects on Services and Infrastructure

The application has provided an Infrastructure Report which outlines the proposal for wastewater, water supply and stormwater disposal. This report confirms there is a workable design for each reticulation to ensure the development is serviced appropriately.

Council's Development Engineer, Tony Coutts, has reviewed the Infrastructure Report and is supportive of the services assessment – refer **Appendix F**. Mr Coutts notes this is subject to detailed design plans which can be submitted and managed via consent conditions, should consent be granted.

Section 18 of the Waipa District Plan enables financial contributions to be payable for council services. I have discussed this matter with senior Council staff and I am satisfied that there is no requirement for financial contributions to apply to the BBC Technologies proposal. The Applicant will be providing their own on-site water supply, wastewater treatment and discharge and stormwater mitigation which does not impact on or utilise Council services.

The Applicant is also mitigating their effect on the Lochiel Road intersection and carriageway by undertaking design and construction works which will need to be approved by both road controlling authorities.

As discussed above, there are outstanding issues raised in the WRAL submission regarding the Rayne Road intersection upgrade and the timing and funding of these works. Waipa District Council is not a party to this agreement and it would appear that the upgrade mechanism may be assessed as part of the existing environment.

Based on the technical reports provided with the application and Council's Development Engineering Team advice, it is my opinion that any actual or potential effects on infrastructure will be less than minor and mitigated by appropriate conditions of consent.

Loss of Rural land

If consent is granted, then a 4ha site will be developed for a rural based industry with the site formed from the subdivision of two lifestyle properties. The application material refers to previous orchard and market garden activity on the site however much of this has been cleared. While the new site will be 5.3ha, approximately 18% of this will be used for a research and fruit growing area and therefore the rural soil resource will continue to be utilised.

In my opinion, the development of the site will permanently remove the future utilisation of an area of productive land however this must be tempered with recognition that the site has been a mixed-use site accommodating both orchards/gardens and lifestyle activities and the BBC Technologies proposal does incorporate ongoing use of the soil resource for the growing area.

Positive Effects

Having had regard to the adverse effects of an activity, the RMA provides for the consideration of the benefits and positive effects of an activity. In this instance, the proposal will give rise to positive effects, including but not limited to;

- The opportunity for BBC Technologies to undertake significant investment in their business and design bespoke premises to accommodate their future expansion and with the opportunity to collocate with a test/fruit growing area;
- Job opportunities through both the construction phase and through the longer-term operation and expansion of the BBC Technologies business;
- The potential for associated economic and horticultural sector benefits through associated industry, business and research being attracted to the local region; and
- Upgrade of the Lochiel Road intersection (although this is an essential mitigation measure for the additional traffic generated from the BBC Technologies proposal).

It is appropriate for the Independent Commissioners to give due regard to the positive effects of the proposal in deciding whether the application should be granted or refused.

Subdivision

The above assessment has focused on the proposed land use consent. In addition, the application is seeking approval to the subdivision of the two existing lifestyle properties in order that a separate title can be created for the BBC Technologies site. Obviously, the subdivision consent is only required should the Applicant be successful in gaining consent for the land use consent.

In my opinion, there are no additional effects-based matters that arise from the subdivision consent which have not already been addressed above. If the Independent Commissioners are mindful to grant consent to the applications, then two separate resolutions will be required with two sets of conditions.

Summary of Effects Assessment

In summary, I have reached the view that while the scale and nature of the BBC Technologies facility will have potential adverse effects, these should be considered in terms of the context of the local environment and the design, location and separation distances to other properties.

Both roading authorities have assessed the proposal and are comfortable that the effects of the additional traffic generation can be absorbed by the network and the localised effects can be addressed through the appropriate design and upgrade of the Lochiel Road intersection and carriageway to the site entrance.

In my opinion, there are unresolved issues in terms of the off-site effects with Mr and Mrs Clark's property located at 8 Lochiel Road. This is the most sensitive and affected property to the application site and is immediately opposite the site entrance.

The Applicant has engaged with Mr and Mrs Clark and offered mitigation in the form of an earth bund and planting/fencing which would assist with visual mitigation, traffic, noise and head light effects. Mr and Mrs Clark are under no obligation to consider or accept mitigation on their property and the responsibility is clearly with the Applicant in the first instance to internalise their effects and provide any mitigation on their own site.

As discussed, it is also my opinion that mitigation on the Clarks property will offer the most effective mitigation and I consider the parties should seriously explore this option. In my opinion, the Applicant should provide clear plans and details of the mitigation proposed along their frontages. This should include an earth bund and fencings along the Lochiel Road frontage as well as amenity and visual screening planting.

10 DISTRICT PLAN OBJECTIVES AND POLICIES ASSESSMENT (SECTION 104(1)(B))

The District Plan contains a number of objectives and policies that directly relate to this application. The key provisions are discussed by District Plan section order.

Section 1 – Strategic Policy Framework

The objectives and policies within Section 1 cover a wide range of strategic planning issues for the Waipa District. The key provisions relating to the application are discussed as follows.

Objective - Settlement pattern

1.3.1 *To achieve a consolidated settlement pattern that:*

- (a) Is focused in and around the existing settlements of the District; and*
- (b) Supports the continued operation, maintenance, upgrading and development of regionally important sites and regionally significant infrastructure and nationally significant infrastructure, and provides for on-going access to mineral resources.*

Policy - Hamilton Airport Strategic Node

1.3.1.4 *To enable a defined mixed use, industrial and business area that:*

- (a) Supports the Hamilton International Airport's role as a transport hub; and*

- (b) *Is consistent with the Hamilton Airport Industrial Node in the Waikato Regional Policy Statement, and is not of a large enough size or diverse enough function to compromise the primary commercial centres of Cambridge and Te Awamutu and the Hamilton central business district in the context of the sub-region; and*
- (c) *Fulfils its role as an industrial node and employment area for the sub-region.*

Policy - Subdivision and development within the Rural Zone

1.3.1.5 *To ensure that the natural resources of the Rural Zone, including high class soils, continue to be used for rural activities by:*

- (a) *-*
- (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 [sic] to locate in the Rural Zone; and*

Objective 1.3.1 and more specifically the associated policies are concerned the location of commercial and industrial activities outside established areas and any potential effects on commercial centres. Issues of protecting high class soils are also specifically addressed in Policy 1.3.1.5 which provides very directive policies on industrial activities and rural based industry.

It is my understanding that the BBC Technologies business operation is very specialised around the sorting, optimisation and packing of small fruit. As discussed in Section 5 of this report, I am satisfied that the proposed BBC Technologies facility can be considered a rural based industry by virtue of the broad definition included in the Waipa District Plan.

Some information has been provided from the Applicant in terms of their requirements to establish a new site in the Rural Zone. This essentially relates to the ability to collocate test plots on the same site as their research and development operation. The above policy (and others in Section 4 Rural Zone) require any rural based industry activities to have a *functional and compelling* need to establish in the rural area.

This is a high threshold and I consider it would be useful for BBC Technologies to provide further discussion around their business operation, how they manage and access test plots currently, are these located in different areas with different crops, will the identified test plot be the only outdoor field area used by the research and

development team and what impediments would exist to the business operation if the test plots were located off site.

While the BBC Technologies facility has a large footprint, the bespoke nature of the business operation and connection to the rural/horticulture sector is such that there is unlikely, in my opinion, to be any strategic issues with the undermining of other commercial nodes.

Section 4 – Rural Zone

The objectives and policies within Section 4 – Rural Zone, provide a framework to enable continued use of the Rural Zone for a wide range of rural productive activities while emphasising the need to internalise adverse effects, and avoid cumulative adverse effects of land use activities on the environment. The objectives and policies further seek to find a balance between economically driven farming practice and amenity, landscape, biological, cultural and social values.

In my opinion, any assessment of the objective and policies must take into account the local environmental conditions and land use activities that establish the context and character of the site. The objectives and policies specifically relevant to this proposal are as follows:

Objective - Rural resources

- 4.3.1 *To maintain or enhance the inherent life supporting capacity, health and well-being of rural land, ecosystems, soil and water resources.*

Policy - Protect the rural soil resource

- 4.3.1.4 *The versatility and life supporting capacity of the District's rural land and soil resource, particularly high class soils and peat soils, are protected from development, subdivision or activities that would prevent its future use for primary production, or its ability to maintain the District's ecological/biodiversity values.*

Policy - Earthworks

- 4.3.1.6 *To ensure that earthworks are carried out in a manner that avoids adverse effects on infrastructure, between properties and on water bodies.*

Objective 4.3.1 and Policy 4.3.1.4 highlight the significance of the rural resource for its life supporting capacity. The development of the BBC Technologies facility will permanently remove the majority of Lot 1 from a *rural* land use.

In my opinion it is difficult to clearly quantify the effects on the soil resource when only one application is being considered at a time. There is a risk of cumulative effects occurring unless clear data is available to record and assess any substantial loss of versatile soils over time. I understand that Waipa District Council does not have this data.

It is noted that the existing properties were utilised as lifestyle lots with some orchard/market garden activity. The BBC Technologies facility will promote horticultural production and therefore there is some nexus between the activity and

greater efficiency and technological advancement within the horticultural sector which includes utilization of the soil resource on the site for the outdoor growing area.

In my opinion, appropriate conditions can be imposed in terms of any earthworks and the proposal is consistent with the objectives and policies on soil resources at a broad scale.

Objective - Rural based industry

4.3.4 *To enable appropriate rural based industry to locate and operate within the Rural Zone.*

Policy - Adverse effects

4.3.4.1 *To ensure that rural based industry activities are designed and located to internalise adverse effects on the environment as far as practicable.*

Policy - Scale and location of rural based industry

4.3.4.2 *The scale and location of rural based industry shall:*

- (a) *Be consistent with the capacity, design and function of the roading hierarchy; and*
- (b) *Not adversely affect rural character; and*
- (c) *Take potential reverse sensitivity issues into account.*

Objective 4.3.4 and the associated policies helpfully provide specific guidance on the assessment of rural based industry. The objective refers to *appropriate* activities and therefore some form of discretionary judgement is required to determine what is an appropriate industry.

In my opinion, the Applicant has put forward a reasonable justification for selecting a site within a rural environment with strong linkages to other industry. The scale and nature of the activity requires some careful consideration in terms of whether it is an appropriate activity and if it is determined that there are significant effects on other parties, then this would undermine a positive evaluation of the activity under Objective 4.3.4. The interface of the site with Lochiel Road and the potential effects on 8 Lochiel Road are matters which in my opinion are outstanding and require resolution.

In terms of the policies, I consider that the issues of roading hierarchy and capacity have been addressed and there are no outstanding issues in regards to reverse sensitivity. Policy 4.3.4.1 refers to the internalisation of adverse effects *as far as practicable*. In my opinion, the Applicant will need to provide further mitigation along the Lochiel Road frontage to satisfy this policy.

Objective - Rural character

4.3.7 *Rural character and amenity is maintained.*

Policies - Rural character

4.3.7.1 *Land use activities should be at a density, scale, intensity and location to maintain rural character.*

4.3.7.2 Rural character and associated amenity values shall be maintained by ensuring rural land uses predominate in the Rural Zone, and buildings are of an appropriate scale and location.

Objective 4.3.7 and its associated policies outline the key elements for consideration for any activity within the Rural Zone with a central theme being the maintenance of rural character.

As discussed in Section 9 of this report, I consider the subject site and surrounding area is atypical of most rural environments where a low density of built form and rural production activities predominate. The site forms part of a corridor along Airport Road/SH21 and is heavily influenced by the traffic movements along this corridor. The Airport Business Zone and Hamilton Airport to the west of the site also have a significant bearing on the amenity and environmental attributes of this area.

In broad terms, and taking into account the nature and character of the local environment, I am satisfied that the proposal is aligned with the planning objectives and policies which are seeking to maintain rural character.

Policy 4.3.7.1 and 4.3.7.2 refer to scale and location of buildings. The BBC Technologies facility is a large building with a footprint and character which is not often found in a rural area. In my opinion, the building will not be obtrusive or domineering given its profile and setback from the application site boundaries. However, I consider that the Applicant does need to provide clear planting and mitigation plans in terms of the visual appearance and operational effects of the facility.

The most sensitive property is that owned by Mr and Mrs Clark at 8 Lochiel Road and there is an obligation on the Applicant to clearly demonstrate what their mitigation proposal is and how this will assist with the internalisation of the effects of the activity.

In addition, specific consideration to landscaping treatment along the Airport Road/SH21 frontage is required although this in my opinion is more for amenity planting than screening purposes.

Objective - Rural amenity: setbacks

4.3.8 To maintain rural character and amenity and avoid reverse sensitivity effects.

Policy - Transport network boundaries

4.3.8.1 Buildings and activities are set back from road boundaries and railway tracks to maintain safety, rural character and amenity, and to avoid reverse sensitivity effects.

I consider that Objective 4.3.8 and the associated policy have been addressed through the *neutral* submission from the NZ Transport Agency as the road controlling authority and that the land opposite is Airport Business Zone.

Objective - Rural amenity: signs

- 4.3.9 *To ensure that signs do not have an adverse impact on the amenity values of the Rural Zone, landscape values, heritage values, or public safety.*

Policy - Signs to reflect local character and transport environment

- 4.3.9.1 *Ensure that signs reflect the rural character and amenity values of the surrounding environment, including any identified landscapes, significant natural areas, viewshafts, and the nature of the adjacent transport environment, by restricting the location, size, number, and content of signs.*

Policy - Location of signs

- 4.3.9.2 *Avoid the establishment of signs in the Rural Zone which are not related to the site on which they are located.*

In my opinion, the proposed signage for the BBC Technologies facility will be appropriate in terms of the Airport Road/SH21 frontage. However, in my opinion, the need for and function of an 8m high sign at the site entrance and directly opposite 8 Lochiel Road should be reconsidered. Both the Applicant and Mr and Mrs Clark may wish to consider the scale of the sign and whether any agreed outcome may be reached.

Objective - Rural amenity: noise and vibration

- 4.3.10 *To maintain rural amenity while enabling the operation of noise and vibration generating farming activities within the Rural Zone.*

Policy - Noise: rural activities

- 4.3.10.2 *To ensure that the adverse effects of noise generated by rural activities are avoided, remedied or mitigated*

Objective 4.3.10 refers to rural amenity and the associated policy requires that adverse noise effects generated by *rural activities* are avoided, remedied or mitigated. It is perhaps arguable if a rural based industry is a rural activity given that it can only be established through a Discretionary land use consent. In any case, the policy requires that adverse effects are avoided, remedied or mitigated which is the standard approach to the mitigation of effects. For the reasons outlined in Section 9, I consider that further clarification on the mitigation proposal is required for Mr and Mrs Clark's property.

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.*

4.3.12.2 *The introduction of non-farming activities in rural areas shall not prevent or constrain intensive farming activities from operating.*

Policy - Reverse sensitivity

4.3.12.3 *Non-farming activities in rural areas shall internalise adverse effects and should not cause adverse effects that would result in farming activities being prevented or constrained from operating.*

Objective 4.3.12 and associated policies 4.3.12.1 and 4.3.12.3 are instrumental in the policy direction for non-farming activities and how these may be considered in the Rural Zone.

The key consideration regarding Objective 4.3.12 is to determine whether the activity has a '*functional and compelling requirement*' to be located in the Rural Zone. In my opinion, the Applicant has provided information on the desirability and convenience of having the BBC Technologies located within a Rural Zone with the benefit of co-location of the outdoor growing area. In my opinion, the Applicant's justification is reasonable. However, based on the information presented to date, it does not necessarily reach the threshold of demonstrating a functional and compelling need for location in a rural environment. Therefore, it would be useful for the Applicant to provide further discussion on their business operation and their functional need to be located within a rural area and the policy direction set out in the Waipa District Plan.

I note that Objective 4.3.12 states that that where this threshold is met, then the activity should be *enabled* to establish in a rural area. Therefore, if the threshold is not met, I see that this requires an assessment of the activity on its merits rather than the plan provisions seeking to actively enable the activity.

Policy 4.3.12.1 then goes on to provide further policy direction to limit non-farming activities. While I consider that the context of the site is able to more comfortably accommodate the BBC Technologies facility and scale of activity, I consider that further work and details are required on the mitigation of off-site effects.

I am satisfied that granting consent will not constrain intensive farming activities or lead to reverse sensitivity effects.

Section 15 – Infrastructure, Hazards, Development and Subdivision

There are a range of objectives and policies within Section 15 which refer to infrastructure and servicing issues. In addition, there are a number that overlap with the land use policies in the areas of reverse sensitivity, fragmentation of rural land, protection of soils, and integrated development.

In my opinion, the BBC Technologies is either consistent with the objectives and policies or these matters are otherwise discussed as part of the land use policies.

Section 16 – Transportation

Section 16 of the District Plan sets out its focus for an integrated approach to land use and transport. There are a considerable number of objectives and policies within this section that seek to ensure that the pattern of land use and interaction with the transportation network provides a safe and efficient network for all users (i.e. vehicles, cyclists and pedestrians). The objectives and policies that are specifically relevant to this application are as follows:

Objective - Ensuring sustainable, integrated, safe, efficient and affordable multi-modal land transport systems

16.3.1 *All new development, subdivision and transport infrastructure shall be designed and developed to contribute to a sustainable, safe, integrated, efficient (including energy efficient network design) and affordable multi-modal land transport system.*

Policy - The timing and availability of planned funding for transport infrastructure

16.3.1.3 *The provision of transport infrastructure for any development or subdivision shall be managed in such a way that it takes into account the timing and availability of planned funding for transport infrastructure.*

Objective - Integrating land use and transport: ensuring a pattern of land uses and a land transport system which is safe, effective and compatible

16.3.2 *Land use and transport systems successfully interface with each other through attention to design, safety and amenity.*

Policy - Integrating land use and transport

16.3.2.1 *Development, subdivision and transport infrastructure shall be located, designed and managed to:*

- (a) Minimise conflict on and across arterial routes and provide appropriate access; and*
- (b) Include access that is safe and appropriate for all road users, including those with restricted mobility; and*
- (c) Minimise the need for travel and transport where practicable; and*
- (d) Facilitate travel demand management opportunities where practicable.*

Objective - Maintaining transport network efficiency

16.3.3 *To maintain the ability of the transport network to distribute people and goods safely, efficiently and effectively.*

The above objectives and policies provide focus on the need to ensure that a safe and efficient transportation network is maintained. As discussed in Section 9 of this report both the NZ Transport Agency and the Waipa District Council, as road authorities, have reviewed the Applicant's ITA and are satisfied that transportation effects will be minor taken into account the capacity of the existing network, future and programmed upgrade works and existing traffic management plans in relation to large-scale event traffic.

In addition, the concept design for the upgrading of the Lochiel Road/SH21 intersection and the Lochiel Road carriageway to the site entrance has been reviewed and endorsed subject to final design.

Policy 16.3.1.3 refers to the funding and timing of planned upgrades and this is relevant in terms of the MOU for the Raynes Road upgrade. As previously discussed, the WRAL submission is seeking agreement and contributions from BBC Technologies to the future Raynes Road upgrade works which is subject to a private agreement between WRAL, Meridian 37 and the NZ Transport Agency.

In terms of fairness and equity, it is reasonable for WRAL to raise this as part of the resource management process. However, it is difficult to see how the Independent Commissioners can exercise any jurisdiction over a private agreement. As the NZ Transport Agency has also submitted in a neutral position on the application, but with conditions to mitigate the transportation effects based on the Lochiel Road intersection upgrade, it is considered that the NZ Transport Agency does not have any outstanding issues with the application and any effects on the wider state highway network.

Section 18 – Financial Contributions.

As discussed in Section 9, I consider that given the servicing provision outlined by the Applicant, then the BBC Technologies application is not subject to the payment of financial contributions.

That said, the issue that WRAL has brought to the table may be considered in light of the Section 18 provisions:

Objective - Equitable sharing of costs

18.3.2 To ensure that there is a fair and reasonable share of the costs of upgrading or providing new infrastructure to meet demands generated by the development or subdivision, and to enable future growth.

Policy - Contribution to consumption of installed infrastructure capacity

18.3.2.2 Requiring a contribution towards any previous upgrading of off site infrastructure when a new development or subdivision will utilise installed infrastructure capacity.

Again, the issue for the Independent Commissioners is that the MOU for the Raynes Road upgrade is a private agreement and Waipa District Council is not party to the agreement. The parties to the MOU and this hearing will have the opportunity to provide an update on their negotiations and a way forward through evidence and submissions.

Section 20 – Health and General Amenity

Section 20 of the District Plan addresses matters that have the potential to create a nuisance and detract from the amenity and health of residents and businesses. This

may include, but is not limited to, discharges to air, lighting and glare, buildings and sites left in disrepair, and electrical interference.

Objective - Artificial lighting and reflected glare

20.3.2 To avoid, remedy or mitigate adverse effects from artificial lighting and reflected glare from buildings or building materials.

Policy - Artificial lighting

20.3.2.1 To ensure that artificial lighting is installed and utilised so as to avoid, remedy or mitigate adverse effects on adjoining and adjacent properties and roads.

The Applicant has advised they will comply with the permitted activity standards for artificial lighting and conditions can be imposed on any consent to this effect. Therefore, the application is consistent with these provisions.

Summary of Objective and Policy Assessment

The above objective and policy assessment has considered the proposal's consistency with the relevant objectives and policies of the District Plan with particular regard to the provisions in Section 4 – Rural Zone and Section 16 – Transportation. There is a strong policy direction to protect rural amenity and directive policies regarding the establishment and location of rural industry activities within the Rural Zone.

In my opinion, the BBC Technologies proposal is largely consistent with the objectives and policies framework however there are two matters which require further clarification.

The character and amenity of the local area around the subject site is heavily influenced by the traffic along Airport Road/SH21 and Hamilton Airport. This is significant in considering how any adverse effects on rural amenity are assessed. In my opinion, the Applicant needs to clearly articulate and provide a mitigation plan in terms of noise, visual effects and traffic heads lights focused on the Lochiel Road frontage and the Clark's dwelling at 8 Lochiel Road.

In addition, I consider that the Applicant needs to provide further discussion on the nature of their business operation to demonstrate that they have *a functional and compelling need* to establish in the rural zone.

Subject to these matters being addressed and appropriately resolved, I consider that the objectives and policies of the Waipa District Plan would accommodate the favourable consideration of the BBC Technologies application.

Other Waipa District Plan provisions

There is a vast array of other objectives and policies which may have some relevance to all land use activities including infrastructure, natural hazards, subdivision design and layout, impacts on the Waikato River and the protecting of the operation of regional significant infrastructure.

I have reviewed these provisions and have also reviewed the Applicant's comprehensive assessment of the other objectives and policies of the Waipa District Plan as set out section 6.4.5 of the AEE Report. In my opinion, the nature, location and scope of the proposal is not materially affected by these other objective and policies. In terms of three waters servicing, there are no contested issues and conditions have been proposed from council engineers for the land use and subdivision consent.

11 PROVISIONS OF OTHER STATUTORY PLANNING DOCUMENTS (SECTION 104(1)(B))

Pursuant to Section 104(1)(b), the consent authority must have regard to any relevant provisions of a national environmental standard, other regulations, a national policy statement, the regional policy statement and the regional plan. Below is an assessment of these provisions.

National Policy Statements

National Policy Statements (NPSs) are instruments issued under section 52(2) of the Resource Management Act 1991 that enable Government to prescribe objectives and policies for matters of national significance which are relevant to achieving the sustainable management purpose of the RMA. An NPS may also give particular direction to local authorities as to how they need to give effect to the policies and objectives of the NPS. The current NPSs that are in effect are:

- National Policy Statement on Urban Development
- National Policy Statement for Freshwater Management
- National Policy Statement for Renewable Electricity Generation
- National Policy Statement on Electricity Transmission
- New Zealand Coastal Policy Statement

Of the abovementioned NPSs the NPS on Urban Development requires further consideration with regard to this application.

National Policy Statement on Urban Development 2020

The new National Policy Statement on Urban Development (NPS-UD) was gazetted by the New Zealand government on 23 July 2020 and came into effect on 20 August 2020. The NPS-UD requires councils to plan well for growth and ensure a well-functioning urban environment for all people, communities and future generations. This includes:

- ensuring urban development occurs in a way that takes into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi);
- ensuring that district and strategic plans make room for growth both 'up' and 'out', and that rules are not unnecessarily constraining growth;
- ensuring urban development is integrated with infrastructure planning and funding;

- developing, monitoring and maintaining an evidence base about demand, supply and prices for housing and land to inform planning decisions;
- aligning and coordinating planning across urban areas; and
- changing district plans to implement the NPS-UD.

All councils must give effect to the NPS-UD 2020 and it is noted the NPS-UD requires councils to remove parking requirements from the District Plan. Waipa District Council is currently preparing a plan change for the NPS-UD 2020.

In this case the Applicant's development plans have always provided for on-site car parking and this has been assessed as suitable for meeting the needs of BBC Technologies staff, visitors and loading vehicles.

I consider that there are no other matters arising from the NPS-UD 2020 which have a direct bearing on the assessment and determination of the application.

Te Ture Whaimana o Te Awa o Waikato/Vision and Strategy for the Waikato River – (Te Ture Whaimana)

Te Ture Whaimana is a statutory document under the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Under that Act, Te Ture Whaimana prevails over any inconsistent provisions in a National Policy Statement, and must be had regard to in terms of section 104(1)(b).

The overall vision of Te Ture Whaimana is:

.. for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for generations to come.

Te Ture Whaimana has been incorporated into the regional and district planning instruments and has been addressed in the Applicant's cultural impact assessment prepared by the Ngāti Hauā Iwi Trust.

The BBC proposal may require an on-site discharge consent for treated wastewater and this will require assessment against the Waikato Regional Plan. The proposed BBC Technologies building is approximately 370m away from the Waikato River and is located on a higher plateau outside the river corridor. Based on the assessment provided in the cultural impact assessment and the separation distance to the Waikato River, I am satisfied that there are no outstanding issues regarding Te Ture Whaimana.

National Environmental Standards

National Environmental Standards ('NESs') are regulations issued under section 43 of the Resource Management Act 1991 that prescribe technical and on-technical standards which apply across the country. The current NESs that are in effect are:

- National Environmental Standards for Air Quality;

- National Environmental Standards for Sources of Drinking Water;
- National Environmental Standards for Telecommunication Facilities;
- National Environmental Standards for Electricity Transmission Activities;
- National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health;
- National Environmental Standards for Plantation Forestry; and
- National Environmental Standards for Freshwater.

None of these NESs are particularly relevant to this application apart from the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect (NES- Soils). The Applicant has completed an environmental site investigation to assess whether there is any potential contaminated soil issues which would require further assessment under the NES Soils.

It is noted that the site is identified as an unverified HAIL site relating to historical use or storage of pesticides. The Applicant's report has undertaken both desk top research and soil sampling and while part of the site has previously been used for orcharding, no contaminants have been identified which would require any further assessment or consents under the NES-Soils.

Waikato Regional Policy Statement: Te Tauākī Kaupapahere Te-Rohe O Waikato

Te Tauākī Kaupapahere Te-Rohe O Waikato provides an overview of the resource management issues in the Waikato Region, and the ways in which integrated management of the Region's natural and physical resources will be achieved. It provides policies and a range of methods to achieve integrated outcomes for the region across resources, jurisdictional boundaries and agency functions, and guides development of sub-ordinate plans (regional as well as district) and consideration of resource consents. The Te Tauākī Kaupapahere Te-Rohe O Waikato outlines 27 objectives on key regional issues. Those most relevant to this proposal are:

Objective 3.1 – Integrated management

Natural and physical resources are managed in a way that recognises:

- a. *the inter-relationships within and values of water body catchments, riparian areas and wetlands, the coastal environment, the Hauraki Gulf and the Waikato River;*
- b. *natural processes that inherently occur without human management or interference;*
- c. *the complex interactions between air, water, land and all living things;*
- d. *the needs of current and future generations;*
- e. *the relationships between environmental, social, economic and cultural wellbeing;*
- f. *the need to work with agencies, landowners, resource users and communities; and*

- g. *the interrelationship of natural resources with the built environment.*

Objective 3.2 - Resource use and development

Recognise and provide for the role of sustainable resource use and development and its benefits in enabling people and communities to provide for their economic, social and cultural wellbeing, including by maintaining and where appropriate enhancing:

- a. *access to natural and physical resources to provide for regionally significant industry and primary production activities that support such industry;*
- b. *the life supporting capacity of soils, water and ecosystems to support primary production activities;*
- c. *the availability of energy resources for electricity generation and for electricity generation activities to locate where the energy resource exists;*
- d. *access to the significant mineral resources of the region; and*
- e. *the availability of water for municipal and domestic supply to people and communities.*

Objective 3.21 - Amenity

The qualities and characteristics of areas and features, valued for their contribution to amenity, are maintained or enhanced.

3.25 Values of soil

The soil resource is managed to safeguard its life supporting capacity, for the existing and foreseeable range of uses.

Objective 3.26 - High class soils

The value of high class soils for primary production is recognised and high class soils are protected from inappropriate subdivision, use or development.

Policy 6.14 Adopting Future Proof land use pattern

Within the Future Proof area:

- a) *new urban development within Hamilton City, Cambridge, Te Awamutu/Kihikihi, Pirongia, Huntly, Ngaruawahia, Raglan, Te Kauwhata, Meremere, Taupiri, Horotiu, Matangi, Gordonton, Rukuhia, Te Kowhai and Whatawhata shall occur within the Urban Limits indicated on Map 6.2 (section 6C);*
- b) *new residential (including rural-residential) development shall be managed in accordance with the timing and population for growth areas in Table 6-1 (section 6D);*
- c) *new industrial development should predominantly be located in the strategic industrial nodes in Table 6-2 (section 6D) and in accordance with the indicative timings in that table except where alternative land release and timing is demonstrated to meet the criteria in Method 6.14.3;*
- d) *other industrial development should only occur within the Urban Limits indicated on Map 6.2 (section 6C), unless there is a need for the industry*

to locate in the rural area in close proximity to the primary product source. Industrial development in urban areas other than the strategic industrial nodes in Table 6-2 (section 6D) shall be provided for as appropriate in district plans;

- e) new industrial development outside the strategic industrial nodes or outside the allocation limits set out in Table 6-2 shall not be of a scale or location where the development undermines the role of any strategic industrial node as set out in Table 6-2;*
- f) new industrial development outside the strategic industrial nodes must avoid, remedy or mitigate adverse effects on the arterial function of the road network, and on other infrastructure;*
- g) where alternative industrial and residential land release patterns are promoted through district plan and structure plan processes, justification shall be provided to demonstrate consistency with the principles of the Future Proof land use pattern; and*
- h) where land is required for activities that require direct access to Hamilton Airport runways and where these activities cannot be accommodated within the industrial land allocation in Table 6-2, such activities may be provided for within other land adjacent to the runways, providing adverse effects on the arterial road network and other infrastructure are avoided, remedied or mitigated.*

The above provisions parallel many of the policy directions set out in the Waipa District Plan. My assessment of matters associated with amenity, soils and infrastructure has already been presented and applies equally to the provisions of Te Tauākī Kaupapahere Te-Rohe O Waikato.

Policy 6.14 is a significant regional policy direction relating to the provision of *Future Proof* and the strategic approach which has been developed between the partner agencies in terms of managing and providing for growth across the region. This policy addresses the location of industry outside the identified nodes and any impacts on the road network and the role of the identified strategic nodes.

The BBC Technologies facility includes both industry/manufacturing activity along with research and development directly associated with the horticulture sector. It therefore does appear to have some relatively unique requirements in terms of its strategic and locational requirements to other industry and the rural area. While it is a large building it is unlikely to affect other industrial nodes and I understand that BBC Technologies undertook an extensive investigation into potential sites for its new premises before the option to lodge consents for the current site.

Waikato Regional Plan

The Waikato Regional Plan (Regional Plan) 2007 is intended to provide direction regarding the use, development and protection of natural and physical resources in the Waikato Region.

The Applicant has identified that there may need to be regional consents applied for with respect to wastewater and storm water management and discharge as well as for bulk earthworks. In my opinion, any matters associated with the Regional Plan can be addressed through these separate application processes.

12 OTHER MATTERS (SECTION 104(1)(C))

Iwi Management Plans

Tai Tumu, Tai Pari, Tai Ao – Waikato Tainui Iwi Environmental Management Plan

The purpose of Tai Tumu, Tai Pan, Tai Ao is to enhance collaborative participation between Waikato Tainui and agencies in resource and environmental management. It provides high level guidance on Waikato Tainui values, principles, knowledge and perspectives on, relationship with, and objectives for natural resources and the environment.

The plan highlights the need for enhancement and protection of landscape and natural heritage values. Site management protocols ensure a precautionary approach to managing (known or undiscovered) wahi tapu sites and taonga tuku iho discovery. Adequate control of sediments and erosion prevention are target areas to improve water quality.

Te Rautaki Tāmata Ao Turoa o Hauā — Ngāti Hauā Environmental Management Plan

Te Rautaki Tāmata Ao Turoa o Hauā explains the importance of communication between local authorities and Ngāti Hauā in terms of keeping the Iwi Trust informed about projects, providing a feedback loop and opportunity for relationship building. The plan clearly outlines that engagement is expected for earthworks activities and that the Iwi seek opportunities to participate in consent and site monitoring and restoration projects.

The property is within the Ngāti Hauā Area of Interest and therefore the provisions of Te Rautaki Tāmata Ao Turoa o Hauā are relevant.

The Applicant has provided a comprehensive discussion⁵ on the BBC Technologies proposal in relation to Tai Tumu, Tai Pan, Tai Ao and Te Rautaki Tāmata Ao Turoa o Hauā and I am comfortable to adopt this as a fair and reasonable assessment.

The application was also served on Waikato Tainui and Ngāti Hauā and no submissions were received. Ngāti Hauā was also commissioned to prepare a Cultural Impact Assessment (CIA) of the BBC Technologies proposal. The CIA provides an overview of the cultural values and issues of significance to Ngāti Hauā and advises that they do not oppose the land use activity with recommendations for a number of protocols to be adopted as consent conditions.

⁵ Mitchell Daysh AEE, Section 6.4.6

13 NON-COMPLYING TEST (SECTION 104D)

As discussed earlier in this report, there are some interpretation issues associated with both the land use and subdivision components of the application.

The scale and nature of the BBC Technologies facility has been challenged in some submissions and the technical review of this report has also raised some questions on the subdivision rules which require and land use to be operating for two years.

In my opinion, both components of the application can be assessed as a Discretionary Activity. In case the Independent Commissioners wish to examine these matters further and in particular, if a non-complying activity status is determined for either the land use or subdivision component, I have provided the following S.104D assessment.

Land Use Application

The land use application can only be considered as a Discretionary Activity if it meets the definition of *Rural Based Industry*.

If the proposal fails to meet this definition, then it would be assessed as a non-complying activity and would be assessed on its merits as an 'out of zone' activity.

In my opinion, the Applicant will need to provide final details of the mitigation measures for the Lochiel Road frontage and I have also identified that the Applicant should address the policy direction and threshold of any 'non-rural' activity requiring a functional and compelling reason to justify its location in a rural environment.

In my opinion, subject to these matters being addressed satisfactory, then I consider that the application would satisfy both arms of the S.104D test.

Subdivision Application

The subdivision application is seeking consent under Rule 15.4.2.40. This requires a land use consent to be in effect for no less than two years and refers to *industry* but not *rural based industry*. An interpretation issue arises as the rule also refers to any activity failing to comply with this rule requiring a Discretionary activity consent. This seems unusual and the question arises whether the subdivision can be considered under Rule 15.4.2.40 in the first instance.

I have had experience with these types of rules and the pressure that can sometimes be exerted on councils to grant new titles to land use activities which have a limited degree of capital investment or longevity to justify the creation of a new title. In my view, these circumstances do not apply to the BBC Technologies proposal. At the same time, there must be some form of linkage condition from the subdivision back to the land use and I discuss this further in the commentary on the draft conditions in Appendix G.

In my view, the primary issues associated with actual and potential effects and the policy direction of the Waipa District Plan can be addressed through the assessment of

the land use application. If the Independent Commissioners determine that the land use application can be granted consent, then I see the subdivision application as only a mechanism to provide separate land tenure to the BBC Technologies site which in this case leaves two balance lifestyle lots.

If there is a non-compliance with the subdivision rules, then I do not see this as giving rise to any adverse effects which are more than minor or being contrary to the objectives and policies of the Waipa District Plan.

14 PART 2 MATTERS (SECTION 104(1))

Under Section 104(1) of the RMA, when considering an application for resource consent the consent authority must have regard to Part 2 of the RMA. Part 2 outlines and promotes the concept of sustainable management, lists matters of national importance as well as matters related to achieving the purpose of the RMA, and requires the principles of the Treaty of Waitangi to be taken into account.

The Court of Appeal Decision (the Davidson decision⁶) has established the appropriate framework in which to assess resource consent applications. This was necessary given that S.104 makes the assessment of applications *subject to Part 2* however other High Court decisions had brought into question the relevance of Part 2 when the national, regional and district policies and plans are all required to give effect to Part 2. The Davidson decision now establishes that Part 2 can be considered however this is more appropriate when there are deficiencies in the planning instruments and their alignment to Part 2.

In my opinion, the provisions of the Waipa District Plan do not contain deficiencies which would suggest a misalignment with Part 2 and indeed I consider that the objectives and policies are very comprehensive and give effect to the higher order planning instruments. For completeness, I will provide some commentary around Part 2 and Sections 5 – 8 of the RMA.

Purpose of the Act – Section 5

The overall purpose of the RMA is to promote the sustainable management of natural and physical resources. “Sustainable management” is defined as managing the use, development and protection of natural and physical resources in a way that enables people and communities to provide for their social, economic and cultural well-being and their health and safety. At the same time, they must:

- Sustain the potential of resources to meet the reasonably foreseeable needs of future generations;
- Safeguard the life-supporting capacity of air, water, soil and ecosystems; and
- Avoid, remedy or mitigate adverse effects on the environment of the activity.

⁶ *R J Davidson Family Trust v Marlborough District Council* [2018] NZCA 316

Having regard to the definition of "sustainable management", BBC Technologies has invested significant time and resources into selecting a site which provides long term expansion and growth of their business operation.

The site is located within a rural area which BBC Technologies see as necessary for their business development and research and development programme. This raises some planning issues in terms of the provisions of the Waipa District Plan and transportation and amenity issues given the location of the site.

In my opinion, the Applicant will need to address the amenity effects and provide details of the mitigation measures for off-site effects, particularly on the property located at 8 Lochiel Road. Transportation effects have been assessed by both road controlling authorities which consider that consent can be granted subject to appropriate conditions.

From the submissions received, there are outstanding matters in terms of the funding of the Raynes Road intersection and potential conflict with the Fieldays event traffic. The evidence and hearings process will allow all parties the opportunity to further discuss these matters and whether any additional methods may be adopted to address off-site effects.

In my opinion, granting consent will be consistent with the sustainable management purpose of the RMA subject to a firm proposal for the amenity effects as discussed in Section 9 of this report.

Matters of National Importance – Section 6

In my opinion, there are no Section 6 matters which are directly relevant to the proposal.

Matters for Consideration – Section 7

Section 7 lists the matters that the consent authority is required to have particular regard to in achieving the purpose of the RMA. The listed matters are not threshold tests or criteria but, where a proposal raises issues of the kind listed, they are to be given particular regard. Key matters relating to this application are considered to be the efficient use and development of natural and physical resources, maintenance and enhancement of amenity values, and maintenance and enhancement of the quality of the environment.

In my opinion, the BBC Technologies proposal will represent the efficient use and development of the land resource by utilising parts of two lifestyle properties and developing these into a purpose designed research, administration and manufacturing facility.

There are matters associated with amenity values and the quality of the environment affecting 8 Lochiel Road which need to be resolved. However, as noted in this planning report, the context of the site and surrounding land use activities which include the

state highway corridor and Hamilton Airport must all be factored into the assessment of environmental effects and appropriate form and degree of mitigation.

Principles of the Treaty of Waitangi – Section 8

Section 8 of the RMA requires that the principles of the Treaty of Waitangi are taken into account. In this instance, the proposal is not considered to be of direct relevance to the Treaty.

15 CONCLUSION

BBC Technologies seek land use and subdivision consent to enable the establishment on a large-scale research, administration and manufacturing facility.

The Waipa District Plan makes provision for *rural based industry* and by virtue of the broad nature of this definition, I consider that the application can be assessed as a Discretionary Activity in accordance with this definition. In the event the Independent Commissioners determine it is not rural based industry and is a non-complying activity, I have included commentary on the gateway test for completeness. The subject site and properties located on Lochiel Road are located within the Rural Zone. The Airport Road/SH21 road corridor, Airport Business Zone opposite the site and Hamilton Airport all having a major bearing on the environmental qualities and character of the area.

The submissions raise two key issues. The first relates to the immediate effects of the activity with the rural area and whether the type and scale of the proposal is appropriate in a rural area. The second issue relates to transportation effects in terms of event traffic from the Fieldays site and the private agreements in place for the Raynes Road intersection.

In my opinion, further details are required in terms of the mitigation methods and proposal for the Lochiel Road frontage and in particular the property located at 8 Lochiel Road. The Applicant has engaged with Mr and Mrs Clark who own and occupy 8 Lochiel Road including a proposal (albeit not agreed) to develop earth bunding and fencing/screening on their site. Amenity planting and signage details also require further clarification. On the basis of the information that has been provided and on which I base my report, I consider the effects on this submitter can be mitigated although the final details of this mitigation need to be confirmed.

In terms of transportation effects, the NZ Transport Agency has provided correspondence and a submission which adopts a neutral position, but with recommendations primarily concerned with the design of the Lochiel Road intersection. No other outstanding transportation effects are identified. Waipa District Council as road controlling authority has also reviewed the application and submissions and is comfortable that the proposal can be granted subject to appropriate conditions on the upgrade and intersection works.

WRAL and Fieldays will have the opportunity to present any further information or assessment of the transportation matters which can be further considered as part of the hearings process.

The objectives and policies of the Waipa District Plan place a heavy emphasis on the protection of rural amenity and limit the nature and type of activities that may be established in the rural area. As discussed in this report, the surrounding land use context and dominant presence of road corridor and airport noise is an important matter in considering the amenity values and character of the site and its ability to absorb and accommodate a rural based industry with the scale and intensity of the BBC Technologies proposal.

The Waipa District Plan only provides for non-rural activities in the rural environment where there is a *functional and compelling reason* for this location. BBC Technologies has provided some rationale for the rural location which is primarily around the co-location of the horticulture test plots. It would be helpful for BBC Technologies to provide further discussion on their search for appropriate land for their new business premises and how their business operation is functionally dependent on a rural location. This would assist with assessing a favourable alignment of the proposal with the policy direction of the Waipa District Plan.

In my opinion, while there are some matters which require further assessment and clarification from the Applicant, the BBC Technologies proposal is capable of gaining land use and subdivision consent. Subject to appropriate conditions and I recommend the granting of application on this basis. I have prepared draft conditions for discussion and review by the parties to the hearing in **Appendix G**.



Todd Whittaker
CONSULTANT PLANNER
16 NOVEMBER 2020

Reviewed by



Quentin Budd
CONSENTS TEAM LEADER

Approved for Release to the Independent Commissioners by



Tony Quickfall
MANAGER DISTRICT PLAN AND GROWTH