

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

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

**AND**

**IN THE MATTER** an application for resource consent to establish a research, administration and manufacturing facility for BBC and concurrent Subdivision Consent in the Rural Zone.

**BETWEEN** **BBC Technologies and Grass Ventures Limited**

**Applicant**

**AND** **WAIPA DISTRICT COUNCIL**

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**STATEMENT OF EVIDENCE (PLANNING) OF TIM  
LESTER  
ON BEHALF OF SUBMITTER (PETER ANNEGARN)**

**Dated: 1 December 2020**

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## **INTRODUCTION**

1. My full name is Timothy John Lester. I am an Environmental Resource Management Planner based in Hamilton and employed by Blue Wallace Surveyors Ltd.
2. I am presenting evidence on behalf of the submitter Mr Peter Annegarn who resides at 37A Lochiel Road – and who has been identified by the Waipa District Council as an affected party in regard to the proposed industrial land use by BBC Technologies Limited.
3. I am a full member of the New Zealand Planning Institute and the Resource Management Law Association.
4. I have a Masters degree in Resource and Regional Planning from the University of Otago (2004) and have 15 years' experience as a Resource Management Planning Consultant.
5. I have appeared as an Expert Planning Witness at many Council hearings.
6. In preparing this evidence I have reviewed:
  - (a) The resource consent applications to Waipa District Council (“WDC”) for Land use to establish a research, administration and manufacturing facility for BBC Technologies including outdoor growing areas, and
  - (b) Subdivision application to establish new titles for the BBC Technologies site, and
  - (c) The s 42A report dated 17 November 2020 prepared by Todd Whittaker (Consultant Planner on behalf of Waipa District Council), and
  - (d) Submissions made with respect to the Applications.

## **SCOPE OF EVIDENCE**

7. Blue Wallace Surveyors Ltd has been engaged by Mr Peter Annegarn ('the Submitter') to present planning evidence in relation to the BBC Technologies Land Use Consent and Subdivision Application. Specifically, my evidence includes:
  - (a) A summary of the Application and how it is defined within the Operative Waipa District Plan;
  - (b) An overview of the adverse effects that will be experienced by the Submitter;
  - (c) Clarification of the Activity Status;
  - (d) Comment on key matters raised in the Application and s42A Report
8. In Summary of this evidence, the Submitter contends that defining the proposed activity as a 'Rural Based Activity' with a 'functional need' is inaccurate - and that the proposed land use is inappropriately located within the Rural Zone. The submitter therefore seeks that the application be declined.

## **CODE OF CONDUCT**

9. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014 and I agree to comply with it.
10. My qualifications as an expert are set out above. I confirm that the issues addressed in this evidence are within my area of expertise, except where I state that I have relied on the evidence of other persons.

## **INDUSTRIAL ACTIVITY**

11. The Submitter has reviewed the application as prepared by Michell Daysh on behalf BBC Technologies Ltd and Grass Ventures Ltd ('the Applicant') and considers that the application material falls short in regard to a balanced justification why the activity is deemed to be a 'Rural Based Industry' as defined in the Waipa District Plan, when the substantive undertaking is that of an 'Industrial Activity'.
12. Upon reading through both the application, as well as the s92 information request response, the Applicant's justification for the land use is to enable research and development activities associated with the sales, supply, and manufacturing of automated soft fruit grading machinery to take place within a site that contains "Test Crops"; moreover, it is because of the Site's ability to provide "Test Crops" that the land use activities have a 'functional need' to be located within the Rural Zone - regardless of the fact that there is a Future Proofed industrial node located on the opposite side of Airport Road (SH21).
13. The application material is not decisive as to explicitly defining the proposed land use activities and why test crops present a functional need, as opposed to a convenience, to be located within the same property as the manufacturing facility – and furthermore why such crops cannot be brought to the facility for research purposes.
14. Reference in the application indicates that the land use is to be; 1) a new research campus; 2) an expansion of the Applicant's current activities; 3) manufacturing and warehousing activities; 4) storage of goods; and 5) goods distribution.
15. The Submitter does not doubt that the proposed activity will be multifaceted – however, the application material has been presented so that a definition of a 'Rural Based Industry' dominates the overall

development.

16. The Submitter disagrees that the specific activity should be solely assessed as a 'Rural Based Industry' given the Applicant's significant manufacturing, servicing of machinery, goods storage (i.e., warehousing), and customer distribution logistics.

17. As defined in the Waipa District Plan:

*"Industrial activity*

*means any use of land or BUILDING where people or machinery:*

- *Extract, process or convert natural resources, excluding FARMING ACTIVITIES and MINERAL EXTRACTION ACTIVITIES; and/or*
- *Produce or manufacture goods; and/or*
- *Service, test or repair goods or machinery; and/or*
- *Store goods (ensuing from the industrial process); and/or*
- *Transport or distribute goods including depots."*

18. The proposed land use constitutes 4 of the 5 criteria of the 'Industrial Activity' definition.

19. Placing weight against the proposed land use's research and development components, rather than the substantive Industrial Activity definition, is incorrect in my opinion – particularly in regard to justifying the facility's establishment within the Rural Zone and the ensuing rural amenity impacts on the local community.

20. I draw attention to Part A *Section 4.6* of the Waipa District Plan where it states:

*"If an activity falls within more than one category the more specific activity listing applies."*

21. In this regard I believe the more "specific activity" is 'Industrial', and 'Rural Based Industry' is the lesser activity.

22. I consider that the activity status of the proposed land use be subject to a greater level of analysis by Council, or alternatively further quantification of the land use activities that would lend them to Rural based activities over and above that of an industrial activity could be further presented by the Applicant.
23. An appropriately weighted activity definition is a critical consideration in regard to validating the proposed land use – and it is the Submitter’s concern that the proposed land use effects (being that of an industrial activity) are not clearly weighted in the application.
24. The Applicant has not applied a fair and reasonable justification in defining the proposed land use as a ‘Rural Based Industry’ – whereby recognised good planning practise is that of applying the more onerous provisions of the District Plan (i.e., the precautionary principle).
25. It is sought that in deliberating on the proposed land use, the hearings panel apply the precautionary principle as directed by Section 4.6 of the District Plan so as to ensure the appropriate and sustainable environmental decision-making process results.

#### **ACTUAL AND POTENTIAL ADVERSE RURAL AMENITY EFFECTS**

26. It is submitted that the proposed land use development will result in adverse environmental effects on the residents of 37A Lochiel Road (and surrounds), and furthermore, the Applicant has not adequately considered such effects beyond that of the property located at 8 Lochiel Road and 326A Airport Road.
27. It is noted that specific servicing matters are yet to be confirmed by the Applicant – rather, the effects assessment has been based on a

land use 'envelope' with specific designs for service connections yet to be detailed.

28. Notwithstanding the specified effects below, the Submitter wishes to express their concern about groundwater contamination given that there could be potential for on-site wastewater management to be proposed.
29. The Submitter sources potable water from a shallow water table. Without detailed information regarding how the wastewater from a facility with up to 306 employees is to be managed, it is considered that an appropriate level of effects assessment cannot be provided by the Applicant.
30. As submitted, the cumulative effect of concern relates to those on rural amenity; and are categorised as:
  - (a) Traffic
  - (b) Noise
  - (c) Security.

#### Traffic

31. The Submitter acknowledges that the application has included a traffic effects assessment as contained within the Integrated Transportation Assessment (ITA).
32. Based on the projected traffic generation brought about by the proposal (i.e., by up to 306 staff), mitigation of the traffic effects has been considered in regard to the section of SH21.
33. Notwithstanding the coverage of matters focused upon in the ITA, the Submitter contends that the assessment has not provided enough context to the other users of Lochiel Road, and the consequential

adverse traffic effects are not considered in regard to the wider transportation environment (it is acknowledged that an ITA addendum was submitted by the Application which went some way in providing a wider transportation context).

34. The Submitter wishes to express their concerns that they will be adversely affected by the additional 840 vehicle movements per day entering and exiting what is a quiet local road. Whether these are increased waiting times at the SH21 intersection, or the increased traffic volume being enabled by the proposed widening of the Lochiel Road carriage way – the Submitter considers the ITA’s use of modelled assumptions to justify acceptable transportation effects on Lochiel Road are misleading, particularly in regard to the master planned transportation network contained to the west of State Highway 21.
35. In addition to the above, the Submitter is unsure, and consequently concerned about the proposed Lochiel Road upgrading – and what this might mean in regard to the provision of street lighting.
36. The Rural Zone is a scarce resource for residential purposes and therefore has a high degree of amenity associated with it. The effect of increased street lighting and the consequential loss of rural ambience derived from the proposed upgrading is an unreasonable effect on local residents – which further exacerbates frustrations for the Submitter in that a strategically planned transportation network for such activities has been provided for within the industrial node to the north of SH21.

#### Noise

37. Based on the application material – the Submitter’s property is located 180m east of the Land use consent application site (being the edge of the carpark).

38. In consideration of this proximity the Submitter wishes to express their concern about the actual and potential effect that noise will have on their otherwise peaceful lifestyle at 37A Lochiel Road.
39. Similar to the ITA, the Submitter acknowledges that the Applicant has engaged a reputable noise consultant for the proposed land use; however, upon review of the noise report, the Submitter still holds factual concerns over the actual and potential adverse effect of noise that will be generated by the proposed activity.
40. The application has not provided enough security to the Submitter in regard to noise generation as the proposal merely seeks to define a development envelope as opposed to that of a defined operational land use plan (i.e., layout and orientation could be subject to change).
41. Specific concerns over noise effects are derived from the Submitter not being adequately considered in regard to the location of truck manoeuvring areas, loading areas, or the sources of low frequency nuisance noise such as tonal hum from transformers or ventilation units.
42. As indicated within the application's noise assessment, the modelling scenarios of sound have not included that of B-train heavy vehicles. The submitter is unsure as to whether deliveries or dispatch of such vehicles are to be undertaken during the night-time working hours – as only internal activity noise has been scenario tested (e.g., page 10 of the Marshall Day Acoustic Report).
43. The Submitter also notes that no account of noise reflection has been taken into account whereby night-time sound pressure from heavy vehicle manoeuvring and loading mobile plant (forklifts) reflects off the significant building façade – and is thus directed to surrounding

sensitive land uses.

44. Again, as the land use has not been subject to a finalised design, the Submitter considers that an accurate noise effect assessment cannot be undertaken with an appropriate degree of certainty.
45. It is acknowledged that a noise condition has been proposed; however, until a more robust noise assessment has been undertaken (which includes noise penalties for nuisance noise under NZS 6802:2008), the sought noise mitigation as proposed cannot be guaranteed.
46. The Application makes mention of heavy vehicles associated with the manufacturing and distribution aspects of its operation. The noise associated with such activities are significantly above and beyond that envisioned within the Rural Zone – not least of all in the night-time hours. Heavy vehicle decompression breaking, accelerating, mobile plant reversing ‘beeps’ – are all effects of a typical Industrial Activity dispatching their goods to market - such noise effects *do not sit comfortably within the ambit of a Rural Based Industry*.

#### Security

47. The third aspect of concern expressed by the Submitter is that of Security.
48. Whilst it is difficult to quantify this concern as an adverse environmental effect, crime prevention through environmental design (CPTED) is a valid consideration for urban development in which the Submitter considers should be assessed as a component of the proposed industrial development.
49. It is a concern of the Submitter that security risks to their property will be increased because of the out of zone Industrial Activity.

50. The Industrial Zone to the west of Airport Road contains land use security cameras and patrols, along with CPTED principles underlying development within the land use zone. The discrete location of the proposed Industrial land use will not have such comprehensive security measures in place for the local community – yet significantly elevated public accessibility will be brought to the section of Lochiel Road as a result of the proposal.
51. In considering the three core areas of the Submitter’s environmental effects concern, they all revolve around the loss of rural amenity through the establishment and operation of *ad hoc* industrial land uses being located within the Rural Zone.
52. The Airport Business Zone has been through a long and robust master planning process whereby the internalisation of traffic, noise, and CPTED has been provided.
53. The application site is out of zone industrial land use that is ‘creeping’ outside of the Airport Business Zone and into the Rural Zone.

#### **FUNCTIONAL NEED**

54. Upon consideration of the application material it is apparent that the land use consent has selected the site due to a ‘functional need’ for the facility to be located amidst agricultural crops for research and development purposes:

*“This is the case for BBC Technologies where there is a functional need for the activity to be located in a Rural Zone, due to its connections to the horticultural activity and the component of the site that focuses on growing fruit.”*

(page 91 of the AEE)

55. The Submitter is clear in that the facility seeks to leverage benefit from a convenient source of soft fruit produce for machinery testing;

however, upon further consideration there is actually no functional need – rather, and without a more sound rationale, it is considered to be a convenience desire as test crop produce could easily, and otherwise, be imported to the site.

56. Given the central argument behind establishing the facility in the rural zone – the Submitter considers that the functional need logic is flawed as a functional need will only be created upon the establishment of the facility. In taking this logic further, manufacturing a functional need post development of any given enterprise in the rural zone presents an undesirable planning precedent whereby future erosion of the District’s rural resource could occur based on a pre-emptive functional need argument.
57. In addressing the Waikato Regional Policy Statement (*Policy 6.14 – Adopting Future Proof land use pattern*) - page 91 of the application’s planning considerations report states that as a component of the site focuses on growing fruit, that there is a functional need for the facility to be located within the Rural Zone.
58. There is concern that the functional need for the facility has been pre-emptively manufactured through the Applicant’s purchase of the land to contain the facility in May of this year.
59. The Submitter has discussed the operation of the Site as a research and development facility with experienced blueberry growers and wishes to raise with the hearings panel that in order to establish a viable growing operation a period of up to 5 years will be required for sustainable yield mass and maturity.
60. Such a time consideration has not been satisfactorily addressed in the application – whereby it can only be assumed that ‘Test Crop’ produce is being delivered to the facility until at least on-site test crop

maturity/sustainability.

61. The Submitter contends that the Hearings panel will need to satisfy themselves that if they were to approve the resource consent applications that there is enough uniqueness about the proposal that they will not be setting a precedent for out of zone industrial development based on arguments of pre-emptive functional need.
62. Based on discussions with experienced blueberry growers within the District, test produce can readily be transported to the facility from surrounding farms – and that it is not clearly articulated in the application material why the dominant manufacturing facility needs to be located on a greenfield site approximately 180m to the west of the submitter's property when produce can be delivered to the facility from the rural zone.

#### **ACTIVITY STATUS**

63. The application for land use consent and subdivision has been applied for and assessed on the proposal being a Discretionary Activity, and therefore providing planning traction upon which Council can more readily consider the sought land use and subdivision effect mitigation from a s104 perspective.
64. Whilst the Council Planner's s42 report lends itself to the overall discretionary activity status, the Planner does note some activity status uncertainty:

*"If the application was determined as not meeting the definition of a Rural Based Industry then it would default to a non-complying activity."*

(page 12 of the s42A Report)

65. The Submitter has considered the application and considers that the proposal should carry a Non-Complying activity status.

66. As stated in the application (AEE page 50):

*“... It is considered that the proposal fits within the definition of “Rural Based Industry” as the technology being developed and manufactured by BBC Technologies has a direct connection to horticultural activities (i.e. the sorting of blueberries and cherries). Furthermore, there will be growing operations on site which means that the activity is not suitable for a location in the Industrial Zone (that aspect of the proposal being a farming activity).”*

67. To reiterate earlier points made in relation to the specific activity weighting - the submitter considers that the primary (or specified) function of the facility is demonstrably the sales, manufacturing, storage and logistical distribution of machinery for BBC Technologies core business (as indicated on the BBC Technologies website), and that research and development is subservient to the core business. In this regard, the application should be reflective of its primary activity, as opposed to it being loosely defined as being within the ‘ambit’ of the ‘Rural Based Industry’ definition.
68. As pointed out in paragraph 20 above, the District Plan provides clear and unambiguous guidance whereby if an Activity falls within more than one category then the more specified activity classification is to prevail.
69. An ‘Industrial Activity’ is considered to represent the more specific activity listing for the proposed land use, in which case Rule 4.4.1.5(b) of the District Plan directs the proposed land use to that of a non-complying activity.

#### *Subdivision*

70. In regard to the proposed subdivision - Page 57 of the application’s planning considerations report states that there is no activity status

for the subdivision pursuant to 15.4.1.1(q) of the District Plan – conversely, Part A Section 5.10 of the District Plan states:

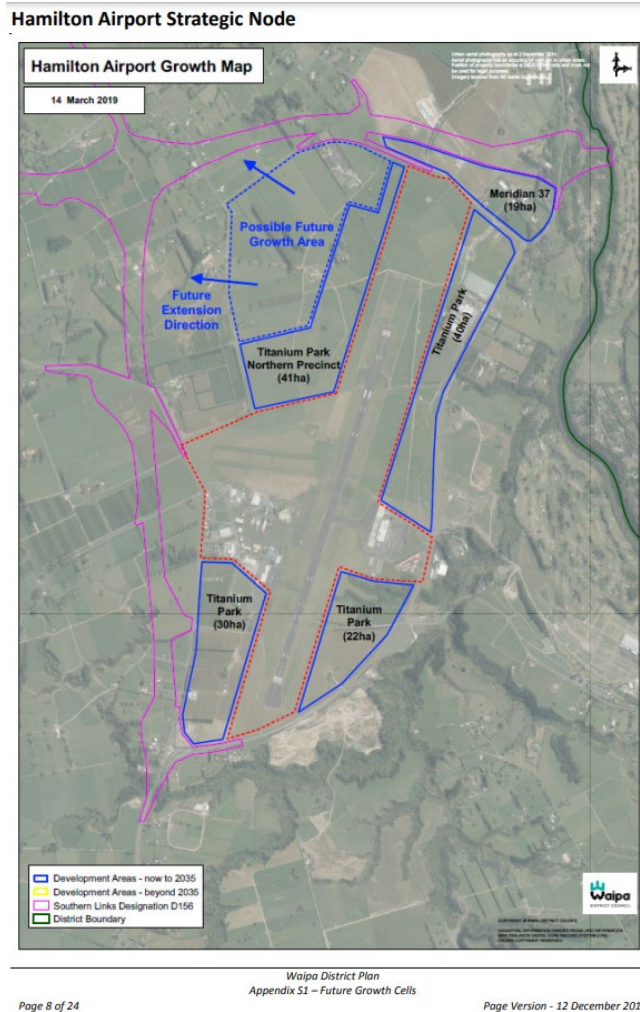
***“Non-Complying Activities***

*5.10 In most cases, non-complying activities are listed in the activity status tables. However, there are some situations where an activity might also become non-complying because the activity does not meet a relevant zone or district wide performance standard rule. Additionally, activities that are not listed in the activity status tables carry a non-complying status by default. Non-complying activities require resource consent, and the consent could be declined.”*

71. In this regard, the Submitter considers that the land use activity and subdivision is a non-complying activity and thus a wider set of effects assessment and statutory considerations will need to be undertaken for the proposed activity. Such an assessment should include that of out of sequence development (commercial/industrial), cumulative effects, and the appropriateness of the resource consent process under s88, as opposed to that of a more comprehensive and publicly notified Plan Change process.

**DISTRICT PLAN INTEGRITY**

72. The Submitter purchased their property back in 2012, at which time Plan Change 57 for Titanium Park was being considered to be adopted into the Operative District Plan.
73. Plan Change 57 was the result of a strategic assessment of future industrial land budgets and is currently represented in the Waipa District Plan within a future growth node for the next 15 years:



(Waipa District Plan: Appendix S1 – Future Growth Cells)

74. The Submitter is justifiably concerned that the proximity of the proposed land use, and its adverse rural amenity effects, will have the impact of undermining the strategic purpose of the well-defined and delineated Airport Business Zone.
75. It is considered inappropriate to diminish the Submitters environmental concerns by claims in the Council Planners s42A report, and indeed the application itself, that the Airport Business Zone and airport functions heavily influence the amenity and character of the wider area.
76. The Submitter's land, as well as the surrounding land use in the Rural Zone, experience a quality of rural amenity that is not diminished by the higher impact land use clearly contained to the west of State

Highway 21.

- 77. It is therefore important to protect the integrity of District Plan by maintaining a well-defined zone interface buffer, and not permit transient environmental effects to usher in non-complying land uses.
- 78. The Submitter considers that a function of the District Plan is to protect land use in any given zone. Such protection is an expectation of the community whereby any undermining of this expectation needs to be avoided, or otherwise subject to a more complete and cumulative analysis.

## **CONCLUSION**

- 79. The application seeks to establish and operate an industrial manufacturing and research facility as a Rural Based Industry in the rural zone.
- 80. The proposed facility 'envelope' will see the construction of a 6,000m<sup>2</sup> commercial building, employ 306 staff, contain a 8,500m<sup>2</sup> carpark, generate 840 vehicle movements per day, not be restricted in the hours of operation – and which will be positioned approximately 180m to the west of the residential dwelling located at 37A Lochiel Road.
- 81. The application has been defined as that of a 'Rural Based Industry' as the core business is that of the sales and manufacturing of automated soft fruit grading machinery, and that there is a functional need for the facility to have 'Test Crops' located within the Site – with this functional need not able to be provided in the Industrial Zone.
- 82. The Submitter seeks that the land use consent of BBC Technologies is declined as the proposed land use will have adverse environmental

effects that of an Industrial Activity (traffic noise and security), and that overall the proposal will have an unacceptable effect on Rural amenity.

83. The Applicant has not provided a sound rationale as to the functional need of the facility's location in the rural zone, and that the proposed activity is more accurately defined by its operation and effects as that of an 'Industrial Activity'.
84. The proposed activity is more appropriately suited to the Industrial Zone on the western side of State Highway 21 whereby any research and development operations can be provided by test crops being brought to the site.
85. The proposed land use represents an activity with impacts that are significantly out of step with the rural zones ability to absorb such effects.
86. Industrial land use effects have been subject to a master planned Industrial Zone to the west of the site whereby such effects can be effectively internalised.
87. As reasoned in the evidence above, the proposed land use should be located within the industrial zone so as to avoid the unplanned encroachment of industrial land use within the areas rural resource zone.

**Dated this 1<sup>st</sup> day of December 2020**



**Tim Lester**