

## Minutes of a meeting of a **Commissioner Hearing – OPEN**

Time and date:	9.30am, Friday, 20 June 2008.
Venue:	Council Chamber, Garden Place, Hamilton.
Commissioner:	Dr P H Mitchell
Committee Advisors:	Mr A J Dick and Miss E Holliday
In Attendance:	Councillor Gower
Committee Advisors:	Mr A J Dick & Miss E Holliday

### **SECTION B: MATTER FOR RECOMMENDATION TO THE COUNCIL BY THE COMMISSIONER**

#### **1. Hearing of Submissions to Variation 16: Ruakura Road Industrial Rezoning: Variation Report**

The Commissioner to consider the above application, evidence and reports from consultants, staff and submitters.

The Commissioner welcomed those in attendance and outlined the procedure to be followed for the Hearing. The Commissioner declared that he had no conflict of interest and that he had conducted a site visit on the evening of 19 June 2008.

#### **APPLICANTS REPORT:**

Appearances on behalf of Hamilton City Council:

Mr R Douch, Senior Planner – Beca Carter Hollings & Ferner Ltd  
Mr B McAlister, General Manager Strategic  
Mr A Parsons, Network Planning Manager  
Mr R Hodges, City Planning Manager

At the invitation of the Commissioner, Mr Douch, Mr Parson and Mr Hodges presented an overview of the application, the location of the subject site, detailing plans, photographs and the issue to be considered.



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Inghams Enterprises (NZ) Pty Ltd, provided written legal

Mr John Musgrave, Inghams' Feed Manager, provided further details about the Inghams operations, the company's relationship with the community and the company's experience regarding reverse sensitivity.

Ms Bernice Hambling, Rigter Place resident, spoke in opposition to the submission lodged by her and her husband.

Ms Athaline Morris, Rigter Place resident, spoke to her submission and that from the Rigter Place Neighbourhood Support Group in strong opposition to Variation 16.

Ms Susan Moroney, Member of Parliament, spoke to her submission in support of the submissions by residents.

Mr Rob Davidson, Cycle Action Waikato, spoke to the submission lodged by Cycle Action Waikato.

Mr Noel Gregory, Hilda Ross resident, spoke to his submission in opposition to Variation 16.

Ms Kimberley Rolton, on behalf of WEL Networks Limited (WEL), read her submission.

**The Hearing was declared closed at 11.30am.**



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**MATTER**

of the Resource Management Act 1991

**IN THE MATTER**

of a Variation to the Hamilton City  
Proposed District Plan to rezone land in  
Ruakura Road

**RECOMMENDATION OF THE INDEPENDENT HEARINGS COMMISSIONER APPOINTED BY  
HAMILTON CITY COUNCIL**

**Dr P H Mitchell**

**7 July 2008**

## RITIES

Pursuant to a resolution of the Hamilton City Council (“HCC”), Dr P H Mitchell was appointed as an independent hearings commissioner pursuant to s 34A of the Resource Management Act 1991 (“RMA”) to hear and make recommendations in respect of Variation 16 to the Hamilton City Proposed District Plan (“**Variation 16**”), this being a proposal to rezone one parcel of land that has been intersected by the recent designation of the Eastern Arterial Link from its present zoning of “Future Urban” to “Industrial”.

### 1.2 THE HEARING

A hearing was held at the Hamilton City Council Chamber on Friday 20 June 2008, commencing at 9am.

Hamilton City Council representatives present at the hearing in support of Variation 16 were:

#### HAMILTON CITY COUNCIL

Mr R Douch (Consultant Planner)  
Mr B McAlister (General Manager Strategic)  
Mr R Hodges (City Planning Manager)  
Mr A Parsons (Network Development Manager – Transportation)

#### SUBMITTERS / FURTHER SUBMITTERS

Submitters who spoke in support of their submissions and/or further submissions were:

Dr J Forret (Counsel for Inghams Enterprises (NZ) Pty Ltd (“**Inghams**”))  
Mr J Musgrave (Inghams’ Feed Manager)  
Ms B Keam (Inghams)  
Ms B Hambling (a Rigter Place resident)  
Ms A Morris (a Rigter Place resident and spokesperson for the Rigter Place Neighbourhood Support Group)  
Ms S Moroney MP (a further submitter)  
Mr R Davidson (Cycle Action Waikato)  
Mr N Gregory (a resident of the Hilda Ross Retirement Village).

A letter and written statement from Ms K Rolton on behalf of WEL Networks Ltd was also tabled.

I conducted a site visit on the evening of 19 June, the day before the hearing, and conducted a further visit once the hearing had concluded.

## 2. THE PROPOSAL AND ITS SETTING

Tainui Developments Ltd owns an approximately 6.1 hectare parcel of land on the north side of Ruakura Road, the legal description of which is Lot 7 DPS 66853 (“**the site**”). The site is pastoral in character and is bisected by the route of the proposed Eastern Arterial Link, a designation for which has recently been put in place. This designation directly affects

e. The residual western part of the bisected site has an area of approximately 1.5 hectares and the eastern part an area of approximately 1.5 hectares.

The site is currently zoned "Future Urban" in the PDP and Variation 16 proposes to rezone the approximately 4 hectares that are unaffected by the designation "Industrial". More specifically, Variation 16 serves to:

- a) Amend Map 12 of the PDP to change the zoning of the site from "Future Urban" to "Industrial", save for the area affected by the designation for the Eastern Arterial Link, which would remain "Future Urban"; and
- b) Amend the controlled activity rule for the Industrial zone in the PDP (Rule 4.5.1) so that it also includes: *"any activity located within Lot 7 DPS 66853 on Ruakura Road, or subsequent lots, which would otherwise be permitted"* and with control being reserved *"with respect to vehicular provision"*.

The area surrounding the site can be summarised as follows:

- The southern boundary of the site abuts Ruakura Road, this being a Minor Arterial Road in the PDP. The land on the southern side of Ruakura Road is a "Residential High Density Area" in the PDP and includes the Hilda Ross Retirement Village;
- The land immediately to the west comprises a number of generally light industrial /commercial activities, with the land being zoned "Industrial".
- To the immediate north is a railway corridor and the land to the immediate north of that is zoned "Residential" in the PDP. This area included Rigter Place.
- The northeast corner of the site abuts land zoned "Industrial" that is owned and operated by Inghams.
- The land to the immediate comprises Transpower's Hamilton sub-station (that is located partly in Hamilton City and partly in Waikato District). The Hamilton City / Waikato District boundary bisects the sub-station. The land adjacent to the sub-station in Waikato District is being used for pastoral farming, but is earmarked by Waikato district Council for urban development as the "Waikato Innovation Park".

## THE HEARING

### COUNCIL'S PROPOSAL

Prior to the hearing, Hamilton City Council distributed a report entitled "*Variation 16: Ruakura Road Industrial Rezoning: Planners Report, June 2008*" that was prepared by Mr R Douch of Beca Carter Hollings and Ferner. I refer to this as the "**planner's report**". I read the planner's report and reviewed the provisions of the PDP prior to the hearing.

The planner's report comprised a variety of information, including:

- The statutory requirements and some background information;
- A description of the consultation undertaken and the process of public notification followed;
- An assessment of the various submissions received, as well as full copies of all the submissions and further submissions; and
- An evaluation of the proposal pursuant to the provisions of section 32 of the RMA.

At the hearing, Mr Douch provided an overview of the matters raised in the planner's report, aided by a powerpoint presentation.

The matters emphasised by Mr Douch were:

- That the "Future Urban" zoning related to the residual rural land within the city boundary and.
- The Future Urban zoning was a holding pattern for areas earmarked for future urban development.
- That the Council's approach to these areas was to consider the uses for them that best enable integration with the existing urban environment in a sustainable manner.
- The designation of the Eastern Arterial Link meant that the opportunity to develop the site under its existing zoning was limited, if any such opportunities actually existed.
- The land to the west of the site was already zoned "Industrial" and the proposed rezoning was a logical extension of that zoning as far as the City boundary.
- Use of the site for industrial activities reduces future reverse sensitivity effects arising in respect of the adjacent Transpower sub-station and railway line.
- Vehicle access to Ruakura Road provides an opportunity for industrial traffic to utilise a minor arterial route and the future Eastern Arterial Link without interacting with local roads.
- Incorporating the Amenity Protection Area provisions of the PDP allow its integration with neighbouring activities, including residential activities.

owner's (Tainui Developments Ltd) views were about [redacted] a submission and there was no other information [redacted] point of view. He advised that the landowner was supportive of the variation, but had chosen not to participate in the formal process.

I then asked Mr Douch about the development controls that would apply to industrially zoned land and the extent to which they would protect amenity of residential properties in the vicinity. Mr Douch referred me to the General Standards in the PDP for industrially zoned land, as set out in Section 4.5.2 of the PDP as well as the city-wide rules in other sections of the PDP. He referred me to the rules requiring an Amenity Protection Area (in this case a 30 meter strip at the northern and southern site boundaries), as well as standards relating to: lighting; glare; noise; smoke, fumes, odour and dust; planting and landscaping; parking and access, bulk and location and height (the maximum height being 20 metres, reducing to 10 m in the Amenity Protection Area). Mr Douch considered that these standards were sufficient to maintain an acceptable level of residential amenity.

The planner's report summarised the consultation undertaken prior to notification of Variation 16, this comprising the immediately adjoining landowners (i.e those with a boundary abutting the site – i.e. the property owners to the immediate east and west and ONTRACK (the owner of the railway) - and Waikato University, as well as what Mr Douch referred to as "interested parties", these being Tainui Group Holdings Ltd (presumably a related company to Tainui Developments Ltd, the site owner), Nga Mana Toopu O Kirikiriroa, and Inghams. Given the number of submissions in opposition from immediate neighbours, I asked Mr Douch whether, in hindsight, he considered that it might have been desirable to consult more widely on the matter. He said that he remained of the opinion that the consultation was appropriate. I'm bound to say that I disagree, as I discuss later.

### **3.2 MATTERS RAISED BY SUBMITTERS**

Variation 16 attracted 110 submissions, 108 of which were in opposition. One of these (from A L Woodington) was subsequently withdrawn. There was 1 submission in support (from Inghams) and 1 that was neither in support or opposition. Eleven (11) further submissions were received. Two of the further submissions supported the proposal, one being from WEL Networks Ltd and the other from Inghams, with the remainder being opposed. The planner's report considered that 4 of the further submissions were invalid as they did not relate to one of the original submissions. I agree that technically that is correct. However I also note that the matters raised in these invalid submissions are also raised in one or more of the submissions from other parties. As such, I have been able to consider all the issues raised by submitters.

I also wish to record that I read all the submissions before the commencement of the hearing.

A summary of the matters raised by the submitters at the hearing is set out below.

provided written legal submissions and spoke to them. She explained that Inghams owns land to the north-east of the site, on the northern side of the railway line, from which they have a feed mill and processing plant where bulk stock feed is manufactured for distribution. The Inghams site is zoned Industrial and includes a number of tall structures, with the maximum height being approximately 27 metres.

Inghams is particularly keen to see the site used for purposes that are consistent with their activities and that will not cause conflict due to reverse sensitivity effects.

Dr Forret noted that Inghams is mindful of its proximity to residential activity and considers that complaints may be received in the future if the Inghams site was perceived as being an industrial pocket surrounded by predominantly residential activity. She also noted that zoning the site Industrial would ensure that the land bounded by Peachgrove Road, Ruakura Road, the railway line and the Innovation Park can support industrial and light industrial uses that are consistent with the existing activities within the industrial zone.

Dr Forret submitted that Variation 16 is consistent with the principles of sustainable management and sufficiently avoids, remedies and mitigates adverse effects. The Amenity Protection Overlay and the existing standards in the PDP would, in Dr Forret's submission, ensure that residential activities were not adversely affected, and that industrial activities on the site were compatible with the existing amenity values of the area.

Dr Forret also considered that Variation 16 is not inconsistent with the PDP or the Waikato Regional Policy Statement, or the Waikato Regional Plan.

**Mr J Musgrave** provided further details about the Inghams operations, the company's relationship with the community and the company's experiences regarding reverse sensitivity.

Mr Musgrave noted Inghams long history on the old Bisley's site which now produces 77,000 tonnes of product per annum and that this is set to increase in response to the growth of the dairy sector. He also stated that Inghams employs 15 fulltime staff and 10 part time staff on their site. Inghams views their Hamilton site as a key part of their New Zealand operation. Mr Musgrave also noted that one building on site has a height of some 27 metres and that there were 9 grain silos about 20 metres high.

Mr Musgrave said that the company considered it had a good relationship with the community. Although there had been some concerns about odour in earlier times a number of actions and meetings with community representatives had meant that over the last 4 years there had only been a couple of complaints received, relating to nighttime noise. These were addressed by improved on-site practices.

Mr Musgrave explained several situations in New Zealand and Australia when poultry industry sites had considerable difficulties when residential development had crept towards them. Examples cited were the van den Brink property in Franklin District, the Hill property in Matamata-Piako District, the Rickerby property in Canterbury and at Inghams' sites at Hoxton Park and Wannaroo in Australia.

Mr Musgrave explained that the Eastern Arterial Link was an advantage for Inghams and that having more residential activity in close proximity would, in his view, be inconsistent with their operations.

er Place and spoke to the submission lodged by her and her husband. Mr and Mrs Hambling oppose Variation 16 and consider that the site is the last piece of green belt left in the area, which would be destroyed by industrial development. Mr and Mrs Hambling were concerned about the effects on residential amenity caused by such things as noise, fumes, continuous lighting and the like, as well as the possible intensification of railway traffic to an industrial area. Mr and Mrs Hambling considered that a park was a better future use for the site and that access to it from the retirement village could be provided under Ruakura Road. Provision for car parks and a turn-around area for buses would also be desirable. Mrs Hambling also expressed concern that not all residents of Rigger Place had been notified about Variation 16. I note here there were a number of submissions from Rigger Place residents, including one from Rigger Place Neighbourhood Support Group, all expressing concern about the effects of possible industrial land use on the site. This, and the fact that Variation 16 was publicly notified mean that I am satisfied that the process followed has enabled a thorough canvassing of issues of concern to residents in that area.

**Ms A Morris**, a resident of Rigger Place, spoke to her personal submission and that from the Rigger Place Neighbourhood Support Group. She expressed strong opposition to Variation 16, noting also, that any type of industry would be able to be located on the site if Variation 16 was approved. Ms Morris felt they would be entirely unsuitable and have adverse effects on residential amenity. She noted that people had bought houses in the area because of the open nature of the surrounding land. She considered that a park, and/or some form of community use would be more suitable, noting too the importance of retaining a green belt.

Speaking on behalf of the Rigger Place Neighbourhood Support Group, Ms Morris stated that the residents "strongly objected" to Variation 16. In addition to the matters she raised personally, it is clear that the Rigger Place Neighbourhood Support Group has a similar view, and this is evident from the various written submissions. The submission referred to a Group meeting on 3 November at which one resident who moved to the area during the last 5 years produced a LIM report that makes no mention of the prospect of industrial land use and describes the surrounding land as residential.

The Group was also concerned about household security as well as the effects that industrial development would have on residential amenity. The submission also requested that if the industrial zoning does go ahead, the Council provides a reassurance that only light industry be contemplated and that any such proposals were acceptable to the community.

Ms Morris also wondered if it would be possible to zone the two areas of the site differently, with, for instance one side being developed in some way and the other side being a reserve.

**Ms S Moroney**, who is a Member of Parliament, spoke to her further submission, lodged in support of the submissions by residents. Ms Moroney confirmed that she was not personally affected by Variation 16 and her submission was on behalf of the community.

Ms Moroney noted the effect that industrial zoning would have on residential property values. She also considered that further industry would change the character of the overall community. She noted the strong sense of community in Rigger Place and the Hilda Ross Retirement Village, and cited the example of two families combining to share a vegetable garden. Ms Moroney considered that the site lends itself to further residential or urban uses and not industry. She felt that it was inappropriate for the Council to have recently granted resource consent for the retirement village and then to undermine that by creating an industrial zone immediately across the road. Ms Moroney accepted that there was already

between the site and Peachgrove Road, but that this was  
sale and nature.

Ms Moroney considered that further industrial development, which she acknowledged was needed in Hamilton, should occur outside what she referred to as the "central city" - which I took to mean outside the current urban area.

Ms Moroney considered that a "Park and Ride" facility would be a preferred use for the site and this would be consistent with the other Hamilton-wide public transport initiatives.

**Mr R Davidson** spoke to the submission lodged by Cycle Action Waikato ("CAW") and also elaborated on this in an additional written statement. Mr Davidson noted that the recommendation in the planner's report to reject CAW's submission was based on the incorrect assumption that the designation for the Eastern Arterial Link is sufficient to include provision for cycle/pedestrian traffic. Mr Davidson stated and emphasised with several plans, that the designation for the Eastern Arterial Link does not protect enough land to provide properly for the required underpasses and ramps.

Mr Davidson considered that because Variation 16 is taking place before the construction of the arterial link, development of the land would restrict the ability to construct the arterial link to a suitable standard for cyclists and pedestrians. He also stated that Variation 16 would invalidate the conditions imposed on the designation for the arterial link which requires "*Provision shall be made for signalized at grade or underpass facilities for pedestrians and cyclists to safely cross ..... Ruakura Road ...*"

Mr Davidson stated that CAW's concerns by imposing three conditions on Variation 16:

- That HCC commits to designing three underpasses with associated access ramps for the Eastern Arterial / Ruakura Road roundabout and demonstrate they can be fitted onto the designated land.
- If they do not fit, then the extra land needed be removed from the land proposed to be rezoned by Variation 16.
- That HCC commits to investigating the construction of three underpasses for the Eastern Arterial / Ruakura Road roundabout.

**Mr N Gregory** was a submitter who had indicated that he did not wish to be heard. However, he was present at the hearing and said he would like to speak to his submission. Hamilton City Council stated that they had no objection to this. Mr Gregory who is a resident of the Hilda Ross retirement village, opposed Variation 16 and endorsed the other submissions in opposition. He said that further consideration should be given to having the eastern portion side of the site zoned Industrial with the western portion being used for a Park and Ride facility.

## COUNCIL RESPONSE TO MATTERS RAISED

Mr Douch requested that he do so, but first requested a short adjournment so that he could discuss matters with Council staff.

Mr Douch commenced by formally tabling the letter from WEL Networks that I have referred to earlier.

He then proceeded to give me the references to the standards in the PDP that were applicable to an industrially zoned site. I do not need to present that information here, other than to note that they relate to the matters I have mentioned in Section 3.1 above and that I have read those provisions.

With regard to the alternative uses/zonings for the site suggested by the submitters, the Council had evaluated a range of these before proceeding with Variation 16. In that regard, he referred me to Table 2 on page 7 of the planner's report in which the advantages and disadvantages of various uses (residential, commercial, industrial, community use and recreational) we presented.

**Mr Parsons** noted that the Council was actively working on evaluating Park and Ride opportunities across the city. He stated that he considered that access to/from the site was not particularly suitable for such a use, however, such uses would be permitted activities in the Industrial zone.

Mr Douch reminded me that the land to the west of the site was zoned Industrial and could be utilised for that purpose as a permitted activity. As such Mr Douch stressed that the current uses of this land were well within the applicable development controls and much more "industrialisation" was authorised to occur there.

Mr Parsons stated that Council staff were satisfied that the designation for the Eastern Arterial Link was sufficient to enable compliance with all the conditions imposed.

Mr Hodges confirmed that the "Future Urban" zoning contemplated a wide variety of urban uses, and was not confined to residential use. He referred to, and read out the "Rule Statement" for the Future Urban zone, as set out in Rule 4.11 of the PDP. It states:

### **Rule Statement**

The Future Urban Zone applies to the majority of rural land within the city. The purpose of the zone is to protect land which is intended for future city growth from inappropriate subdivision, use and development to ensure an efficient and logical pattern of future urban development is not compromised. At the same time, the zone seeks to accommodate a range of rural activities in an environmentally acceptable manner. The provisions are designed to manage the transition from rural to urban to ensure compatibility with existing rural amenity values and potential urban development.

I referred Mr Douch to page 3 of the section 32 report where it states:

The dimensions of the two parcels of land does [sic] not automatically lend themselves to being suitable for development, however the western parcel does have the better opportunity of being developed. The eastern parcel due to its dimensions and the location of the high voltage power lines, may only be useful to the extension of the substation or associated uses.

and asked him whether a rezoning was therefore appropriate. Mr Douch stated that this dilemma arises because of the designation for the Eastern Arterial Link and remains

the site. He considered that an industrial use, as an  
the only development opportunities. (I think the land Mr  
the west of the site, not the east as stated by Mr Douch.)

Mr Douch concluded by saying that he remained of the opinion that Variation 16 was appropriate and that I should recommend approval of same to the Council.

## 4. EVALUATION

Before considering the specifics of my recommendation to the Council, I address a number of matters raised by the Council and the submitters.

The first of these is the suggestion that the land in question be utilised as a reserve or for community facilities. I think the important factor to consider here is that the land is not Council land, but is privately owned. I am not aware of any Council intentions to acquire the land and so I think use of the land as a reserve, or similar, is not a realistic proposition in the circumstances.

The second issue is the other potential uses to which the site might be used. In that regard, I note that the clear intention of the "Future Urban" zoning is to provide for its development. In fact the use of the land prior to those decisions being made is actively discouraged in the PDP, remembering that the Rule Statement states that the "... purpose of the zone is to protect land which is intended for future city growth from inappropriate subdivision, use and development to ensure an efficient and logical pattern of future urban development is not compromised." The question therefore, is what constitutes "an efficient and logical pattern of future urban development"? In the context of privately owned land the realistic development scenarios are industrial, light industrial / commercial or residential.

In my opinion development of the site for residential use is not appropriate in the context of it being immediately abutted by: an industrial zone to the west; a substation to the east; a designated arterial road through the middle and a railway line to the north, and with a further industrial zone to the north east. Whilst there is some residential land in the vicinity of the site it is separated from the site, by the railway to the north and by Ruakura Road to the south.

I also note that there is no "Light Industrial" zoning in the City. Rather there is an Industrial Zone that provides for all scales of industrial development, and a Commercial Services Zone. The "Rule Statements" and "Expected Outcomes" for these zones are particularly helpful. They state:

### **RULE 4.4 COMMERCIAL SERVICE ZONE**

#### **Rule Statement**

This zone enables the establishment and operation of a wide range of moderate to low intensity commercial, community and service activities on the fringe of the central area and in a number of locations in other parts of the city. The emphasis is on vehicle oriented retail activities including large format shops, drive-through services and outdoor retailing. In some situations, amenity, heritage and open space values necessitate additional controls through a Special Amenity Area and a High Rise Area accommodates an area of established multi-storey office blocks adjoining the city centre.

The zone standards focus on managing the traffic impacts of activities especially on major arterial roads. The interface with residential development is also addressed, by controlling building scale and open space provision.

#### **Expected Outcome**

and community activities enabled while the effects associated  
and impacts on the amenity value of adjoining residential  
ted.

#### RULE 4.5 INDUSTRIAL ZONE

##### Rule Statement

The Industrial Zone provides for a wide range of industrial activity and associated uses **subject to performance standards designed to manage adverse environmental effects**. These include effects of "reverse sensitivity" where non-industrial activities in the zone require higher standards of amenity than what is normally found in industrial areas. In such cases responsibility for the mitigation of adverse effects arising from industrial activities should be borne by those non-industrial activities desiring higher standards.

Within the Industrial Zone lower standards of amenity are accepted. However **where industrial activities are close to the interface with Residentially zoned areas higher levels of on-site amenity are achieved through the Amenity Protection Area to protect the amenity of adjacent sites**. Performance Standards are also used to enhance the visual appearance of city entrance routes where they pass through industrial areas.

##### Expected Outcome

Industrial and related activities accommodated where their **adverse effects on the environment can be controlled, particularly at the residential zone interface** and along major arterial routes, and where the reverse sensitivity impacts of non-industrial activities in the zone can be managed. Standards are also used to enhance the visual appearance of city entrance routes where they pass through industrial areas. [emphasis added]

The Commercial Service Zone is aimed primarily at large format retail activities and office facilities. Whilst that scale of activity could be seen as being generally compatible with the current land uses to the immediate west of the site, the fact remains that those areas are in the Industrial Zone and can, in future, be utilised for that purpose, generally without the need for resource consents.

I have highlighted several of the above provisions for the Industrial Zone because I think they are of relevance. In particular I note that:

- The performance standards for the Industrial zone are specifically designed to manage adverse effects;
- The zoning makes specific provision to maintain residential amenity when industrial activities are close to residential properties; and
- A specific outcome the zoning sets out to achieve is controlling adverse effects at the residential zone interface.

Subject to the incorporation of appropriate performance standards, I consider that an Industrial zoning is appropriate for the site, and that this can be managed such that residential amenity is not compromised.

I have also given consideration to whether it would be desirable to apply a different zoning to the two portions of the site on either side of the proposed Eastern Arterial Link. I am satisfied that the scope of what is contemplated within the Industrial zone is sufficiently broad, as set out further below, to make this unnecessary.



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appropriate performance standards should be. A useful “activity” rule for the Industrial Zone (i.e. those activities that require a resource consent), as set out in Rule 4.5.1 a) of the

1 D1, which states.

**Permitted Activities**

The following are Permitted Activities provided they comply with the standards in Rules 4.5.2 and the relevant standards in Rule 4.5.3:

- ~ Any Industrial Activity
- ~ Offices
- ~ Transport Depots
- ~ Parking Lots and Parking Buildings
- ~ Any Retail Activity (subject to Rule 4.5.3 c)
- ~ Licensed Premises
- ~ Health Care Services
- ~ Community Centres
- ~ Places of Assembly
- ~ Marae
- ~ Education and Training Facilities
- ~ Informal Recreation and Ancillary Buildings
- ~ General Recreation
- ~ Accessory Buildings
- ~ One Detached Dwelling and ancillary buildings per allotment but only on lots 1 — 13 DPS 4106 and lots 1 — 4 DPS 3843 (Anne Michelle Street)
- ~ Relocated Buildings.
- ~ Fire Stations

This rule makes it clear that a very wide range of activities are contemplated provided the standards in Rules 4.5.2 and 4.5.3 are satisfied. Rules 4.5.2 and 4.5.3 state:

**4.5.2 General Standards**

The following general standards apply to all Permitted and Controlled Activities.

- a) Extent of the Amenity Protection Area
  - i) The extent of the Amenity Protection Area for sites adjoining a Residential Zone shall be as shown on the Planning Maps. Where the Amenity Protection Area does not coincide with cadastral boundaries it shall extend for a depth of 50m, measured at right angles, from the Industrial Zone boundary into the site.
  - ii) The extent of the Amenity Protection Area for sites which are separated from the Residential Zone by a road or railway designation (where the underlying zoning of the railway designation is residential) shall be as shown on the Planning Maps. Where the Amenity Protection Area does not coincide with cadastral boundaries it shall extend for a depth of 30m, measured at right angles, from the Industrial Zone boundary into the site.

(ratio of gross floor area to net site area): 1:1.

- iv) Maximum Site Coverage:
  - " 100%
  - " 75% where the site is in the Amenity Protection Area.
- c) Building Height
  - i) Maximum Building Height:
    - " 20m
    - " 10m where the site is in the Amenity Protection Area.
  - ii) Height Control Plane: No part of a building may penetrate a Height Control Plane rising at an angle of 45° commencing at an elevation of 3m above the boundary of any adjacent Residential Zone.
- d) Building Setback
  - i) Minimum Setback from the front boundary:
    - " 5m where fronting an arterial road or in an Amenity Protection Area.
  - ii) Minimum Setback from any other boundary:
    - " 8m in an Amenity Protection Area where adjoining the Residential Zone;
    - " 8m for any non-industrial activity
    - " 8m for any noxious or offensive activity
    - " Nil for any other industrial activity except in the Amenity Protection Area (Refer to Rule 4.5.3 d) ii) in relation to buildings fronting Major Arterial Roads).
- e) Service and Outdoor Storage Areas
  - i) Any building shall be provided with a service area as follows:
    - " The service area shall be not less than 10m<sup>2</sup> or 1% of the gross floor area of the building whichever is the greater and with a minimum dimension of 2.5m
    - " Any service area shall be maintained with an all-weather dust free surface.
  - iii) Where any area is used for the outdoor storage of goods it shall comply with the following:
    - " All activities shall accommodate the storage of goods, materials, and waste products in a manner that does not conflict with vehicle access, manoeuvring, and parking
    - " Any material stored outdoors shall be done in a manner that avoids adverse effects beyond the boundaries of the site, or impacts on the receiving environment
    - " Any outdoor storage area shall be maintained with an all-weather dust free surface
    - " No outdoor storage area shall encroach onto a required parking, loading or planting area.
- f) Noise  
Activities shall comply with Rule 5.1.
- g) Parking, Loading, and Access  
Activities shall comply with Rule 5.2.
- h) Planting and Screening  
Activities shall comply with Rule 5.3.
- i) Lighting and Glare  
Activities shall comply with Rule 5.4.
- j) Smoke, Fumes, Dust and Odour  
Activities shall comply with Rule 5.5.
- k) Building Restrictions along Roads  
Activities shall comply with Rule 5.6.

activities specified below.

- a) Amenity Protection Area
- i) Any items stored in the Amenity Protection Area shall not exceed the height of any screen fence or encroach into any buffer strip required under Rule 5.3 Planting and Screening.
- b) Retail Activity
- For any retail activity, the gross leasable floor area on any site which may be utilized for retail purposes including any ancillary retail activity shall either not be greater than 150 m<sup>2</sup> or not be less than 1000 m<sup>2</sup>.
- i) For any retail activity other than an ancillary retail activity, not more than one retail activity shall be permitted on a site and the minimum net site area shall be 1000 m<sup>2</sup> with a minimum frontage of 15m, or 30m where frontage is to a Major Arterial Road.
  - ii) Rule 4.5.3 b) i) shall not apply to:
    - ~ Any Drive-Through Service
    - ~ Any Retail Activity where goods and services are offered or exposed to the public in the open and the total yard area used for such purposes (including any area under a canopy or similar structure and any outside area used for outside storage of goods) exceeds 400m<sup>2</sup>.
- c) Sites Fronting a Major Arterial Road
- Where any site has frontage or access to a Major Arterial Road then activities shall comply with the following standards:
- i) Minimum Site Frontage: 30m
  - ii) No buildings shall be sited within 15m of the road frontage.
  - iii) Any vehicular entry/exit onto a major arterial road may not serve 50 or more car parking spaces.
- Provided that these standards do not apply where the site and adjoining land is segregated from the carriageway of the major arterial road by a service road along the frontage.
- d) Drive-Through Services
- i) Minimum Net Site Area: 1000m<sup>2</sup>
  - ii) Minimum Site Frontage:
    - ~ 20m
    - ~ 30m where fronting a major arterial road.
  - iii) The dispensing and associated storage of motor fuels and related products shall comply with Rule 3.2.
- e) Residential Activities
- i) Not more than one Ancillary Flat shall be permitted per allotment.
  - ii) Each Ancillary Flat shall be provided with a minimum outdoor living area of 12m<sup>2</sup> having a minimum dimension of 1.5m.
  - iii) The outdoor living area shall be site adjacent to and easily accessible from the residential unit.
  - iv) Where any detached dwelling and ancillary buildings is located on Lots 1 — 13 DPS 4106 and Lots 1 — 4 DPS 3843 (Anne Michelle Street) then notwithstanding the provisions of Rule 4.5.2 and Rule 4.5.3, those standards in Rule 4.1.2 which relate to a detached dwelling shall apply.
- f) Traffic Impact Study
- i) A Traffic Impact Study shall be prepared for any activity which:
    - ~ will provide 50 or more car parking spaces on site either to meet the requirements of this District Plan or to meet the demand generated by the activity, or
    - ~ will have an average daily traffic generation/throughput of 250 vehicle movements or more (ingress and egress is 2 movements) whichever is the lesser.
  - ii) The Traffic Impact Study shall address the following matters:
    - ~ On site provision of car parking, servicing and manoeuvring space;
    - ~ Safe and efficient provision of ingress and egress;
    - ~ Safe sight visibility distance for access points;
    - ~ Safe separation of access points from intersections and other access points;
    - ~ Impact of access on safe and efficient traffic flow on the roading network;
    - ~ Impact on traffic volumes and capacity of the roading network.
  - iii) Where any activity required to prepare a traffic impact study is subject to a resource consent then the provisions of Rule 6.4.5 relating to roading contributions shall apply.

located building shall be carried out and completed within six  
of the relocated building on its new site.

These rules are, in my view, comprehensive and do not provide for *carte blanche* industrial development as feared by residents. Whilst they do provide for a large number of activities to be undertaken there are extensive controls in place to control their adverse effects.

I have considered carefully the submission by Cycle Action Waikato. I have formed the view that to the extent the existing designation for the Eastern Arterial Link does not adequately provide for cyclists (noting that Mr Parsons did not agree that this was the case), that is a matter that rests with the designation and is not relevant to Variation 16. I further note that the underlying zoning does not, of itself, influence construction of the arterial link, and the problem cited by Mr Davidson would remain, irrespective of the zoning.

Hamilton City Council does not propose that industrial development on the site should be allowed to proceed as a permitted activity. Rather, as set out in Section 2 above, they propose that the "controlled activity" rule for the Industrial zone be utilised (Rule 4.5.1 b)), with control being reserved "*with respect to Vehicular Provision*". This would mean that any development on the site would require a resource consent to be obtained, with the only matter able to be considered being the vehicle provisions. Rule 4.5.1 b), as currently contained in the PDP states:

#### **Controlled Activities**

The following are Controlled Activities provided they comply with the standards in Rules 4.5.2 and the relevant standards in Rule 4.5.3, and will be controlled in respect of the matters identified:

- Drive-Through Services
  - with respect to site layout, landscaping, vehicular provision
- Any permitted non-industrial activity required to prepare a traffic impact study in accordance with Rule 4.5.3 g) i)
  - with respect to building design and configuration, site layout, landscaping, vehicular provision
- Ancillary Flats
  - with respect to building design and configuration, site layout, vehicular provision
- Any Permitted Activity (fronting a Major Arterial Road and being a controlled activity in accordance with Rule 4.5.4 a))
  - with respect to the design and configuration of buildings, site layout, vehicular provision (subject to Rule 5.2) and landscaping.

The precise wording Hamilton City Council has proposed be added to Rule 4.5.1 b) is as follows:

- Any activity located within Lot 7 DPS 66853 on Ruakura Road, or subsequent lots, which would otherwise be permitted.
  - with respect to vehicular provision.

I agree that the controlled activity status is appropriate, although there are two matters that I consider need to be included. First is that the re-zoning is, in my understanding, not to apply to that part of the site designated for the Eastern Arterial Link, and hence the wording of the proposal needs to be amended to reflect this. Second, I am not satisfied that limiting control

...ent, notwithstanding the provisions of Rules 4.5.2 and ...  
...ew, control should also be reserved over the design and ...  
...aping. I have reached this view for two related reasons.  
... themselves acknowledge about the extent to which the ...  
... site can actually be developed. Because this has the potential to encourage innovative uses ...  
... of the site, I think it prudent and necessary for control to be retained over the design and ...  
... configuration of buildings and landscaping. The second reason is the lack of consultation ...  
... with neighbouring residential property owners, a matter I have already alluded to, and the ...  
... widespread concerns expressed about amenity values, irrespective of the use to which the ...  
... site is put. Whilst the submission and hearing processes have allowed the interests and ...  
... concerns of the neighbours to be articulated, the lack of meaningful engagement means that ...  
... it is desirable and necessary for the specific “visual parameters” of any proposal to be able to ...  
... be considered by the Council at the time any such proposal was being contemplated.

Accordingly, I consider that the precise wording of the controlled activity rule inserted into the PDP by Variation 16 should be amended to read:

- Any activity located within Lot 7 DPS 66853 on Ruakura Road, or subsequent lots, **but excluding the land subject to the designation for the Eastern Arterial Link**, which would otherwise be permitted.
- with respect to vehicular provision, **design and configuration of buildings, and landscaping.**

## 5. CONCLUSIONS

I am satisfied that Variation 16, as amended in the final paragraph of Section 4 above, is appropriate and should be incorporated into the PDP. I have reached this conclusion for the following reasons:

- The rezoning of the site to “Industrial” would promote the purpose of the RMA, that being it would promote the sustainable management of natural and physical resources;
- The provisions of section 32 of the RMA have been satisfied;
- The benefits of adopting Variation 16 outweigh the costs and any dis-benefits;
- The rezoning would be subject to standards that would result in environmental effects that are acceptable and which are avoided, remedied or mitigated;
- Residential amenity would be maintained at an acceptable level; and
- The rezoning sits comfortably within the framework of the various statutory planning documents.

## TO HAMILTON CITY COUNCIL

ing sections, I recommend to Hamilton City Council that:

1. Variation 16 be approved, but that the clause inserted into Rule 4.5.1 b) of the Hamilton City Proposed District Plan be amended to read as follows:

Any activity located within Lot 7 DPS 66853 on Ruakura Road, or subsequent lots, but excluding the land subject to the designation for the Eastern Arterial Link, which would otherwise be permitted.

- with respect to vehicular provision, design and configuration of buildings, and landscaping.

2. Accept, accept in part, or reject the submissions and further submissions accordingly.

Signed by:

**DR P H MITCHELL  
COMMISSIONER**

**7 JULY 2008**

The above minutes of a Commissioner Hearing before the Council.

**Resolved:** (Crs Saunders/Gower)  
That the recommendation in Section B be adopted.