

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 5 to the Operative Hamilton
City District Plan

**REBUTTAL STATEMENT OF EVIDENCE OF JAMES (JAMIE) GRANT SIRL
(PLANNING)**

Dated 22 September 2022

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INTRODUCTION

1. My full name is James (Jamie) Grant Sirl.
2. My qualifications and experience are as set out in my primary statement of evidence dated 2 September 2022 (**primary evidence**).
3. I reconfirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and I agree to comply with it. I am presenting this evidence on behalf of Hamilton City Council (**HCC or Council**).

PURPOSE AND SCOPE OF EVIDENCE

4. The purpose of this rebuttal statement of evidence is to:
 - a) Respond to matters raised in planning evidence related to the approach Plan Change 5 (**PC5**) has taken to the protection of long-tailed bat habitat; and
 - b) Respond to matters raised in planning evidence related to the location and extent of the local centre.
5. The other matters of relief raised in submitter evidence in my view comprises of relatively minor amendments that improve clarity and meaning that can be supported, along with other more substantive amendments that will have to be further considered following hearing from the various experts during the hearings process.
6. With respect to the approach PC5 has taken to the protection of long-tailed bat habitat, I address matters raised by:
 - a) Mr Jesse Gooding on behalf of the Director-General of Conservation;

- b) Mr Andrew Collins on behalf of The Adare Company;
 - c) Ben Inger on behalf of Ben and Rachel Inger;
 - d) Bevan Houlbrooke on behalf of Ron Lockwood; and
 - e) Ms Renee Louise Fraser-Smith on behalf of Jones Lands Limited, Northview Capital Limited and Peacocke South Limited.
7. With respect to the location and extent of the local centre, I address matters raised by:
- a) Philip Brown on behalf of Woolworths New Zealand Limited.
8. In forming a view on the matters outlined above I have, in part, relied on the evidence prepared by the experts on behalf of submitters and Council relating to the protection of long-tailed bat habitat and the Local Centre.

REBUTTAL POINTS

PC5 Approach to the Protection of Long-Tailed Bat Habitat

Mr Jesse Gooding – Department of Conservation

9. Mr Gooding in his evidence¹ outlines the strong direction in the RMA and higher order planning instruments for avoidance of adverse effects on threatened species, and the need for PC5 to give effect to this framework.
10. I agree with Mr Gooding that the starting point is Part 2 and in particular s6c of the RMA, followed by Te Ture Whaimana o Te Awa o Waikato, and the Waikato Regional Policy Statement (RPS) in determining the appropriate policy approach to the protection of significant indigenous

¹ Statement of Evidence of Jesse Quentin Gooding dated 16 September 2022.

biodiversity in order to satisfy the requirements of higher order statutory documents.

11. The RPS policy and implementation direction contained with Chapter 11 of the RPS that has informed the approach taken to the preparation of PC5 is considered complete, and I'm not convinced that there is a need to turn to the NPS-FM for further direction as suggested by Mr Gooding. I do not agree that this leads to the need to embed an effects management hierarchy framework specific to habitat of indigenous fauna that requires an exhausting of all options before being able to "move down the ladder" without a degree of practicality being present. To achieve the best ecological outcomes through the proposed PC5 policy framework there needs to be the ability to consider a pragmatic effects management package that results in a No Net Loss or Net Gain outcome. For example, getting stuck at the offsets stage due to the challenge of exhausting this option and not being able to move to consider compensation would be a perverse outcome. I defer to Mr Baber to articulate the challenges of a strict effects management hierarchy approach.
12. In my opinion, PC5 achieves the necessary protection of indigenous biodiversity by identifying and mapping areas of significant indigenous vegetation and significant habitat of indigenous fauna as Significant Natural Areas and Significant Bat Habitat Areas, both with an underlying Natural Open Space zone.
13. In addition, there are specific PSPA wide provisions that manage the effects of lighting on SBHAs and potential habitat removal recommended by the s42A report, along with a retained building setback from the boundary with SBHA.
14. Mr Gooding raises some sound principles relating to addressing the adverse effects on long-tailed bats and their habitat, such as taking a precautionary approach given the degree of uncertainty and incomplete knowledge that is widely agreed when it comes to the impacts of

urbanisation on the continued persistence of bats. However, I am of the view that the PC5 s42A version achieves that whilst also ensuring the provisions meet the efficiency and effectiveness s32 test.

15. I remain of the view that PC5, subject to the recommended amendments contained in the s42A report being accepted, appropriately responds to the requirement to protect significant habitat of the long-tailed bat and provide for the continued presence of long-tailed bat in Peacocke.
16. This view however does not preclude support for any further amendments to plan provisions that improve clarity to support achieving the outcomes sought by PC5, and where supported by robust ecological evidence.
17. Mr Gooding seeks various amendments to the s42A version of PC5 to address what he sees as deficiencies in adequately providing for the required protection of long-tailed bat habitat. In my view, Mr Gooding has sought a number of amendments that are not required to assist in achieving the intended outcomes.
18. The most substantive amendment sought is the increase in minimum width of bat corridors from 50m to 100m. On the basis that 100m was considered the “starting point” without any bespoke measures to ensure the functionality of the existing or proposed corridors, it does not seem necessary to increase the minimum width of the SBHA given the suite of controls relating to the protection of long-tailed bat habitat including lighting and building setbacks on adjoining parcels. Mr Kessels confirms this view in his rebuttal evidence.

Mr Andrew Collins on behalf of The Adare Company.

19. Mr Collins, in his evidence, expresses general support for the PC5 approach to the protection of significant indigenous vegetation and significant habitat of indigenous fauna through the spatial framework established by the structure planning approach.

20. However, Mr Collins promotes the need for a wider landscape approach to be more explicitly recognised in PC5. I support this view to the extent that a collaborative and coordinated approach is needed to ensure the continued presence of bats within the PSPA, Hamilton, and the wider sub-region, as expressed by many of the bat experts who have provided evidence on PC5, and as agreed at the Bats and Planning JWS².
21. Although I strongly support efforts to ensure long-tailed bats thrive in the Waikato, I struggle to accept that the needed wider-landscape approach, and the potential responsibilities that come with the approach, appropriately sits with HCC to own given the sub-regional context, as it requires the commitment and funding from other agencies and groups across the sub-region.
22. I question whether it is the role of a territorial authority alone to establish and fund species-specific committees or panels that are responsible for wider landscape strategies and the implementation of actions such as sub-regional bat monitoring.
23. Nevertheless, if there is a need for a Peacocke-specific panel to undertake specific functions such as those outlined in the advisory note relating to the “Peacocke-wide Bat and Habitat Enhancement Review Panel” in Appendix 1.2 Information Requirements as recommended in the s.42A report, then I see this as a much more area-focused panel that would most appropriately be established and coordinated by HCC.
24. This panel would be one method, outside of the district plan, to ensure that the outcomes sought by PC5 and the management of the significant residual effects identified through PC5 is effective in achieving a No Net Loss outcome.

² Planning and Bats JWS dated 24 August 2022, section 3.3.

25. The funding source for the operation and actions undertaken by such a panel would require further consideration and I'm not sure that can be resolved in the context of PC5.
26. I'm not of the view that a specific policy is required as suggested by Mr Collins but agree that the establishment of a panel would be appropriately included as an 'other method' of implementation in Volume 2, possibly in 1.5.4. This approach aligns with how the district plan refers to the established independent non-statutory Urban Design Panel that is coordinated by HCC.
27. It is important to note that the advisory note relating to a "*Peacocke-wide Bat and Habitat Enhancement Review Panel or similar entity*" included in Appendix 1.2 states "*This entity could*". This is important as the specific function, membership, decision-making delegation, and funding would need to be determined.
28. As outlined in my primary evidence, there is also the Waikato Bat Alliance as an established cross-organisational group that could potentially undertake some of the functions that best sit with a panel with a wider-landscape remit.
29. Mr Collins also notes support for the "*confirmation in both the s42A report and in the Planning and Bats JWS that Council intends to acquire reserve areas based on "fair market value" and the value of the land if it was Medium Density Residential Zone*"³. For clarification, the Planning and Bats JWS⁴ included confirmation that Council intends to acquire reserve areas based on "fair market value" but did not include any reference to valuing the land on the basis of a Medium Density Residential Zone. If this is the correct interpretation of the statement made in the s42A⁵, I disagree with that statement. Any Council acquisition of land is informed by a valuation

³ Evidence in Chief of Andrew Collins dated 16 September 2022, para 53.

⁴ Planning and Bats JWS dated 24 August 2022, section 3.4

⁵ PC5 Section 42A Report, paragraph 7.80.

from an independent property valuer which would consider various aspects including development potential and the relevant land use zone. Council will not be acquiring land other than based on registered valuer advice.

30. I agree with Mr Collins that a proactive acquisition approach would have benefits, as would habitat restoration and enhancement to minimise lag-time, however I also note that the current Long-Term Plan has relatively limited funding for gully acquisition in Peacocke that is spread across a 10-year timeframe.

Ben Inger

31. Mr Inger raises matters in relation to the “benefits of a centralised approach to the management of effects on long-tailed bats across the PSPA and wider area” that I have addressed in response to Mr Collins’ evidence. On this basis I don’t propose to repeat my views on these matters, other than stating that PC5 provides a planning framework to ensure that any adverse effects of land use and subdivision are appropriately managed, even if that is at a property or individual development scale.

Bevan Houlbrooke on behalf of Ron Lockwood

32. Mr Houlbrooke on behalf of Ron Lockwood raises similar points to Mr Collins and Mr Inger regarding compensation for land required for SBHA. I have covered that issue above. I do not support the proposed addition to NOSZ – PREC1- P: ISSUES as it is proposed by Mr Houlbrooke. I also note that esplanade reserve when required through subdivision is vested at no cost to Council.

Renee Louise Fraser-Smith on behalf of Jones Lands Limited, Northview Capital Limited and Peacocke South Limited

33. Ms Fraser-Smith raises concern that Significant Bat Habitat Areas have been zoned for natural open space (**NOSZ**), where they are unrelated to any mapped SNA or associated buffer for the SNA.
34. To clarify, the SBHA has been determined by a 20m buffer from the edge of identified SNA, and also reflects the identified bat/ecological corridors. The NOSZ has been applied to the areas of SBHA as part of the indigenous biodiversity 'protection package' to ensure that inappropriate activities do not occur within the SBHA, which would not be the case if a residential zone was applied.
35. Ms Fraser-Smith notes that the PC5 methods assume that final width of the SBHA will be determined at resource consent stage, but that would not involve reducing the minimum width of 50m and therefore would not result in land zoned NOSZ being outside of the SBHA.
36. I agree with Ms Fraser-Smith that the District Plan cannot compel Council to acquire land for open space, however do not see this as a reason for not providing the certainty that zoning brings to establishing the proposed corridors and buffers that make up the SBHA. Confirming this through zoning at the plan change stage also avoids the need to litigate the location at the resource consent stage.

LOCATION AND EXTENT OF THE LOCAL CENTRE

37. The centres hierarchy in the district plan was developed in response to historical retail and office distribution trends that were identified to be having an impact on the vitality of the Hamilton central city.

38. Hamilton is also serviced by two sub-regional centres in the north of the City that provide complementary retail and commercial uses to the Central City. Local centres then provide retail and commercial uses at a lower-level catchment to provide services and jobs, commensurate with their role and function.
39. The purpose of the hierarchy is to ensure lower order centres, such as local centres, do not have significant adverse impacts on the central city, whilst providing the activities and services at a scale that serves their intended catchment.
40. It's worth noting that HCC's Intensification Planning Instrument – Plan Change 12 does not make any changes to the centres hierarchy.

Mr Philip Brown on behalf of Woolworths

41. Mr Brown's evidence⁶ outlines Woolworth NZ Limited's (**Woolworths**) position that the property at 410 Peacockes Road (1.7ha) located on the south-western corner of the intersection of Peacockes Road and the proposed east-west minor arterial road, should be included in the Local Centre Zone.
42. Mr Brown's opinion that the Woolworths site is a suitable site for the establishment of a supermarket is one that is well set-out and I have no reason to disagree with this position.
43. In my opinion, based on Mr Akehurst's analysis, there is no justified need to increase the total area of the Local Centre Zone to accommodate an additional 1.7ha on the Woolworths site. The risk of doing so is that it would enable a local centre that could compete with the sub-regional centres and central city. The proposed GFA cap for retail and commercial

⁶ Statement of Evidence of Philip Brown on behalf of Woolworths New Zealand Limited, dated 16 September 2022.

activity of 20,000m² would assist in minimising that risk. However, at the very least it could result in an unnecessarily large total area of Local Centre Zone.

44. Mr Brown's analysis of the walking catchment concludes that extending the local centre to the Woolworths site would improve the percentage of residential land use contained within a walking catchment. The reality is that this increased catchment would only apply to that part of the local centre proposed by Mr Brown to be located on the Woolworths site, being the proposed supermarket. It would improve accessibility to the degree that a greater number of residents may be in closer walking distance to a supermarket. However, it does not result in any significant improvement to accessibility of the local centre from the wider catchment.
45. I agree with Mr Brown's assertion in paragraph 5.14 of his evidence that the "ability for pedestrians to conveniently cross Peacockes Road is necessary for the efficient functioning of the local centre in any event, irrespective of whether the local centre straddles the intersection or is located on one side or the other". However, there is a difference between the convenience needed to draw shoppers across the road from a supermarket to support the local centre, and the convenience needed to draw shoppers from residential areas (including if the Woolworth's site was high density residential). If the local centre is contained only to the east of Peacockes Road, any person accessing the local centre from the west by active modes is going to cross the road to access the centre regardless, unless the intersection is extremely inconvenient to cross, which it will not be given it is a signalised intersection.
46. Taking into consideration the evidence from the experts on behalf other parties and Council relating to the Local Centre I remain unconvinced that splitting the local centre, with a large format supermarket on the opposite corner, will not undermine the vitality and viability of the finer-grained local centre to the east. This potential impact on the local centre to the

east would be further exacerbated if smaller format retail was to also establish on the Woolworths site.

CONCLUSION

47. I have reviewed the planning evidence specific to the protection of long-tailed bats from the evidence statements of:
- a) Mr Jesse Gooding on behalf of the Director-General of Conservation;
 - b) Mr Andrew Collins on behalf of The Adare Company;
 - c) Ben Inger on behalf of Ben and Rachel Inger;
 - d) Bevan Houlbrooke on behalf of Ron Lockwood; and
 - e) Ms Renee Louise Fraser-Smith on behalf of Jones Lands Limited, Northview Capital Limited and Peacocke South Limited.
48. I have also reviewed the planning evidence specific to the local centre from the evidence statements of Philip Brown on behalf of Woolworths.
49. After considering these statements, I have no specific changes to recommend in response to the matters I have considered but note that there may be minor amendments contained within these statements that improve clarity and meaning that can be supported and be addressed by further s42A recommendations.

Jamie Sirl

22 September 2022