

**BEFORE THE INDEPENDENT HEARING PANEL  
APPOINTED BY HAMILTON CITY COUNCIL**

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

**AND**

**IN THE MATTER** of hearing submissions on Plan Change 5 to the Hamilton  
City District Plan

**BETWEEN** **THE ADARE COMPANY LIMITED**  
**Submitter #53**

**AND** **HAMILTON CITY COUNCIL**  
**Local authority**

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**EVIDENCE OF ANDREW COLLINS FOR THE ADARE COMPANY LIMITED  
REPLYING TO SUPPLEMENTARY EVIDENCE**

**PLANNING**

**28 OCTOBER 2022**

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## INTRODUCTION

1. My name is Andrew Collins.
2. I prepared a statement of evidence in chief dated 16 September 2022 (**EIC**) and a rebuttal statement of evidence dated 21 September 2022 (**EIR**) on behalf of The Adare Company Limited (**Adare**) in relation to planning matters that arise under Proposed Plan Change 5 (**PC5**).
3. I reaffirm my commitment to adhering to the Code of Conduct for Expert Witnesses contained in the Environment Court's Practice Note dated 1 December 2014.
4. This statement of supplementary evidence responds to the matters raised in the supplementary evidence of Mr Jamie Sirl<sup>1</sup> and the statement of evidence of Mr Gregory Carstens,<sup>2</sup> both on behalf of Hamilton City Council (**HCC**).
5. This statement addresses matters raised in HCC's s.42A response. This is done for the purpose of contextualising the response to the evidence of Messrs Sirl and Carstens and is not intended as rebuttal to the s42A response.

### **Landscape-scale initiatives and need for both LGA and RMA policy**

6. I support the view expressed by Mr Sirl<sup>3</sup> regarding the need for HCC to take additional steps to address ecological compensation on a landscape wide basis, including initiatives around centralised monitoring, data collection, pest and predator control, habitat restoration and land acquisition, within and outside of the Peacocke Structure Plan Area (**PSPA**). This is consistent with my opinions expressed in my EIC<sup>4</sup>.
7. I also agree with Mr Sirl's discussion<sup>5</sup> around the need for HCC policy development in the context of its Local Government Act (**LGA**) functions, as many of the initiatives required are derived from broader functions

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<sup>1</sup> Supplementary Statement of Evidence of Jamie Sirl, 11 October 2022.

<sup>2</sup> Statement of Evidence of Gregory Carstens, 11 October 2022.

<sup>3</sup> Refer paragraph 7 of Jamie Sirl's supplementary evidence.

<sup>4</sup> Refer paragraphs 38 to 54 of my EIC.

<sup>5</sup> Refer paragraphs 9 to 12 of Jamie Sirl's supplementary evidence.

under that Act and the details are beyond what can be achieved by PC5 alone.

8. I would like to distinguish between the policy discussed by Mr Sirl (a future LGA policy still to be developed) and the suggested new policy that I discussed in my EIC<sup>6</sup> (which would be a PC5 policy, appropriate under the Resource Management Act 1991). They are two distinct policies which are, in my opinion, both needed but only the latter can be delivered within the scope of PC5. In this regard, I note that in the s.42A report update dated 3 October 2022<sup>7</sup>, HCC's reporting planners are now recommending a new PC5 policy and a new method, both of which I fully support for all the reasons set out in my EIC.

### **Funding sources**

9. Mr Sirl notes the need for a management strategy to deliver the policy outcomes sought, and that this strategy would identify the potential sources of funding to implement the strategy<sup>8</sup>. In this discussion he refers to Mr Carstens' evidence.
10. I note Mr Carstens' conclusion that *"...the two most suitable and likely mechanisms to recover growth-related costs in the Peacocke compensation programme are development contributions and rates ..."*<sup>9</sup>. In his prior analysis he concludes that development contributions (**DCs**) are a funding source for capital expenditure (but not operational expenditure) and rates are an appropriate funding source for operational expenditure such as pest control, education programmes and Bat Ecology Panel functions<sup>10</sup>.
11. I note that rates can be used to fund both capital and operational expenditure, while DCs can only be used to fund growth-related capital expenditure. I agree with the analysis and conclusions of both Mr Sirl and Mr Carstens in relation to these two funding sources (DCs and rates)

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<sup>6</sup> Refer paragraph 49 of my EIC.

<sup>7</sup> Refer paragraphs 46 and 48 of the s.42A report update.

<sup>8</sup> Refer paragraphs 13-15 of Jamie Sirl's supplementary evidence.

<sup>9</sup> Refer paragraph 23 of Mr Carstens' evidence.

<sup>10</sup> Refer paragraph 21 of Mr Carstens' evidence.

being the most appropriate and equitable funding sources for the Peacocke and wider area ecological compensation programme.

12. In relation to ecological restoration and enhancement costs, Mr Carstens concludes that these can effectively be capitalised and covered by DCs<sup>11</sup>. I agree but, bearing in mind that HCC is effectively in “catch up mode” after decades of urbanisation and associated removal of habitat for long-tailed bats in the wider city, there may well also be a case for some habitat restoration and enhancement costs to be covered by rates as well. However, I acknowledge that this is a matter that is more appropriately considered by HCC at a later date, as it is not a matter that can be resolved as part of PC5.

### **Bat Management Plan provisions**

13. Mr Sirl states that the part of the proposed management strategy relating to pest and predator control *“would integrate with subdivision and land use consent conditions”*.<sup>12</sup> I agree that this integration opportunity exists, but I remain concerned that the provisions proposed by HCC do not reflect the functions that Mr Sirl recommends should be centralised.
14. The s.42A report update proposes no changes at all to the extensive information requirements set out in clauses a) to m) of 1.2.2.28 (Bat Management Plans).<sup>13</sup> As a result, where trees exceeding 15cm diameter at a height of 1.4m are proposed to be removed, applicants for subdivision and land use consent in the PSPA will each have to prepare their own extensive Bat Management Plans.
15. In relation to 1.2.2.28, the HCC reporting planners do not support the majority of the amendments proposed in my EIC<sup>14</sup>. They do not support the *“removal of substantial portions of the provision .... given the criticality of this provision to the broader framework of Council’s PC5 bat protection response. This would weaken the overall response as the amendments limit the BMP provision to an ecological assessment that reports on the*

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<sup>11</sup> Refer paragraph 16 of Mr Carstens’ evidence.

<sup>12</sup> Refer paragraph 16 of Jamie Sirl’s supplementary evidence.

<sup>13</sup> Refer paragraphs 57 to 61 of the s.42A report update.

<sup>14</sup> Refer paragraphs 73 to 79 of my EIC, and also Amendment #51 in Attachment 1 to my EIC.

*values present, but with removal of the action-oriented elements of the BMP provision in an entirely unsuitable manner”<sup>15</sup>.*

16. In contrast, the wording I supported in my EIC for 1.2.2.28<sup>16</sup> provides for ecological assessments (as opposed to Bat Management Plans). These ecological assessments would need to be prepared by suitably qualified bat ecologists and would include:
  - a) Plans showing the location of trees to be removed;
  - b) Ecological assessment of trees proposed to be removed, with specific identification and assessment of all confirmed or potential bat roost trees;
  - c) Best practice acoustic or visual monitoring to establish the presence of any roosting bats;
  - d) Assessment of the practicability and appropriateness of retaining confirmed or potential roost trees having regard to stated criteria;
  - e) Identification of trees to be retained;
  - f) For trees to be removed, the methodology and timing in accordance with DOC tree felling protocol;
  - g) Any proposed mitigation, offset or compensation measures proposed, including any proposed financial contribution offered or required as a means to provide off-site compensation for the adverse bat habitat effects generated by the removal of a confirmed or likely bat roost.
  
17. Other subdivision policies, standards and assessment criteria exist that ensure that Significant Bat Habitat Areas (**SBHAs**) will be vested at time of subdivision and which would also enable consent notices to be imposed on subdivisions to restrict ownership of cats and mustelids. Appropriate conditions of consents would, in turn, be imposed based on the above ecological assessments.

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<sup>15</sup> Refer paragraph 59 of the s.42A report update.

<sup>16</sup> Refer to Amendment #51 in Attachment 1 to my EIC.

18. DCs would be paid by all developers in the PSPA to cover the capital costs of SBHA acquisition, and restoration and enhancement planting in accordance with HCC's Bat Management Strategy (as discussed by Mr Sirl and Mr Carstens). Depending on the outcomes of the ecological assessment required under 1.2.2.28, the wording that I have suggested would also enable funding through financial contributions. It would be important to ensure that financial contributions are only required where the adverse effects associated with tree removal are not otherwise managed through the centralised restoration and enhancement which is intended to be funded by DCs and rates (i.e. so that there is not 'double dipping').
19. With my suggested wording, the ecological assessments under 1.2.2.28 would include robust information (as noted above), but *would not* need to include:
  - a) Ongoing bat monitoring obligations for consent holders (as the HCC centralised programme would apply);
  - b) Initiatives that link to other areas within or outside the PSPA (as the HCC Bat Management Strategy would provide this Peacocke-wide coordination function);
  - c) Plans for restoration or enhancement planting within SBHAs nor associated permitting requirements, biosecurity protocols, timing, roles and responsibilities (as the HCC centralised programme, paid by DCs and rates, would apply);
  - d) Pest and predator control programmes (as consent notices could be imposed to restrict ownership of cats and mustelids in development areas while the HCC centralised programme will apply to reserve areas including SHBAs when vested);
  - e) Ongoing reporting obligations to the Bat Ecology Panel (as without a), b), c) and d) above, there is no need for ongoing reporting).
20. All the above are currently information requirements contained within clauses a) to m) of 1.2.2.28 (Bat Management Plans). As noted

previously, the s.42A report update recommends that they all be retained as information requirements for individual developers.

21. In my opinion, this contradicts Mr Sirl's acceptance, in his supplementary evidence, of the need for HCC to address ecological compensation on a landscape wide basis, including initiatives around *centralised* monitoring, data collection, pest and predator control, habitat restoration and land acquisition, within and outside of the Peacocke area.<sup>17</sup>
22. It seems that HCC's revised position seeks to have both a centralised and a decentralised approach at the same time. In my opinion, such a mixed approach would lead to a plethora of individual management plans (one for each application for land use or subdivision that requires tree removal) leading to uncertainty as to responsibilities and with high potential for inefficiency, duplication and inconsistency with each other and the HCC proposed management strategy.
23. In contrast, I consider that my proposed wording for 1.2.2.28 dovetails well with the approach outlined by Mr Sirl for an HCC bat management strategy and various *centralised* initiatives, equitably funded by DCs and rates.
24. Mr Sirl discusses the various roles of the proposed Bat Ecology Panel<sup>18</sup> and, for the most part, I agree with him for all the reasons set out in my EIC. However, our views diverge in one respect, in that Mr Sirl also sees the role of the Panel as "*assisting consent applicants with the formulation of proposed bat management plans and effect mitigation strategies, to accompany applications*". This disagreement is a consequence of my preference for robust ecological assessments and associated conditions of consent, rather than ongoing Bat Management Plan requirements for areas that are proposed to be urbanised.

### **Ecological Rehabilitation and Management Plan Provisions**

25. The s.42A report update recommends several amendments to 1.2.2.26 Ecological Rehabilitation and Management Plans (**ERMPs**) in response

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<sup>17</sup> Refer paragraph 7 of Jamie Sirl's supplementary evidence.

<sup>18</sup> Refer paragraphs 18 to 20 of Jamie Sirl's supplementary evidence.

to my EIC, however, only minor amendments are recommended to clause (ix) which relates to vesting and enhancement of SBHAs. The s.42A report update states that *“The proposed amendments to clause ix) are only partially supported, as consent applicants are likely to be required via consent condition to contribute to enhancement of SBHAs”*<sup>19</sup>.

26. For the same reasons that I have explained in relation to the Bat Management Plan provisions, I consider this contradicts Mr Sirl’s supplementary evidence which refers to habitat restoration and enhancement being centralised. I therefore remain of the view that 1.2.2.26 (ix) should be amended as I have suggested in my EIC to delete the requirement for the ERMP to include enhancement of SBHAs<sup>20</sup>.

### **Assessment Criteria**

27. Attachment 1 to my EIC identifies changes to the assessment criteria in P3 and P5<sup>21</sup> to reflect the changes that I have proposed to the Bat Management Plan and ERMP requirements. I remain of the view that the assessment criteria should be amended as I have suggested. This is so that individual applications will still be assessed against appropriate site-specific matters while *not* having to be assessed against the various operational matters that are to be led by HCC in a centralised and coordinated manner in accordance with its Bat Management Strategy (as discussed by Mr Sirl and Mr Carstens). Specifically, the assessment criteria for individual applications should not refer to ecological enhancement, predator control and bat monitoring programmes within SBHAs, nor to *“residual pest indices relevant to bat conservation”* as currently set out in development criteria P3(j), (o) and (p) and their counterpart subdivision criteria in P5.

### **Bat Ecology Panel**

28. Mr Sirl’s supplementary evidence refers to a Bat Ecology Panel whereas the provisions which have been recommended in the s.42A report update refer to a Bat and Habitat Enhancement Panel. I have no preference

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<sup>19</sup> Refer paragraph 56 of the s.42A report update.

<sup>20</sup> Refer to amendment #49 in Attachment 1 to my EIC.

<sup>21</sup> Refer to amendment #52 and #54 in Attachment 1 to my EIC.



between these two terms, but I do consider that it is important that consistent terminology is used in the PC5 provisions (and in any other HCC policy).

### **Conclusion**

29. I generally agree with the supplementary evidence of Mr Sirl and Mr Carstens. However, I remain of the opinion that amendments are required to the Bat Management Plan provisions, Ecological Rehabilitation and Management Plan provisions and assessment criteria to reflect the centralised approach that HCC has now agreed is necessary to address initiatives around bat monitoring, data collection, pest and predator control, habitat restoration and land acquisition.

**Dated this 28th day of October 2022**

A handwritten signature in black ink, appearing to read 'A Collins', is written over a horizontal line.

**Andrew Collins**