

**BEFORE HEARING COMMISSIONERS
APPOINTED BY THE HAMILTON CITY COUNCIL**

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

AND

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

BETWEEN

BEN INGER AND RACHEL INGER

Submitter [No. 46]

AND

HAMILTON CITY COUNCIL

Local Authority

**STATEMENT OF
BEN MAXWELL INGER**

19 September 2022

STATEMENT SUMMARY

1. My name is Ben Inger. My wife and I own a small lifestyle sized property at 29 Peacockes Lane, where we have lived with our family since mid-2015.
2. Our property is proposed to be zoned Medium Density Residential Zone and Natural Open Space Zone under Plan Change 5 (**PC5**). The Natural Open Space zoned land is also identified as a Significant Bat Habitat Area (**SBHA**) in the PC5 Planning Maps and Peacocke Structure Plan (**PSP**) figures.
3. I summarise my statement as follows:
 - (a) I support the confirmation provided by Hamilton City Council (**HCC**) that affected landowners will be compensated at “fair market value” for the land required for SBHAs. I also accept that 50 metres is an appropriate total minimum width for the SBHAs. On this basis, I do not oppose the Natural Open Space Zone and SBHA that is proposed over part of our property.
 - (b) I support HCC’s overall approach of identifying and protecting SBHAs and Significant Natural Areas (**SNAs**) and enabling urban development to occur in other areas. This is the most appropriate way to protect significant habitats of indigenous fauna, achieve the urban development objectives for the Peacocke Structure Plan Area (**PSPA**) and give effect to the National Policy Statement on Urban Development (**NPS-UD**).
 - (c) However, addressing the range of matters identified in the PC5 ecological management plan requirements on a property-by-property basis through individual resource consent applications will result in an inequitable, inefficient and piecemeal approach.
 - (d) I consider that HCC (in collaboration with others) should take greater responsibility in leading a centralised approach to the management of effects on long-tailed bats across the PSPA by proactively acquiring, enhancing and maintaining new bat habitat on land within the SNAs and SBHAs and by undertaking bat monitoring and pest control at a landscape-scale. This would be more equitable and efficient.
 - (e) Matters which are currently addressed in the PC5 rules, ecological

management plan requirements and assessment criteria should be revised to exclude matters that HCC will address in a centralised way, so that they only reflect the matters that will be the responsibility of resource consent applicants.

INTRODUCTION

4. My name is Ben Maxwell Inger.
5. My wife Rachel Vanessa Inger and I are the owners of the property at 29 Peacockes Lane, Peacocke, which is 2.0525 hectares in area. Our family has lived at the property since mid-2015.
6. I am a Director at Monocle, in Hamilton, and prior to this I held the position of Operations Manager – Waikato for Harrison Grierson. I hold the qualifications of Bachelor of Planning (Honours) from the University of Auckland. I am a Full Member of the New Zealand Planning Institute.
7. I am a Senior Planner with 16 years' experience. Over this time, I have been employed in private consultancies working for both private and public sector clients, including developers and local authorities in the Waikato region. My experience includes preparation of plan changes and submissions and planning evidence related to proposed district plans as well as preparation and processing of resource consent applications for residential, commercial and infrastructure projects. I am a current member of Hamilton City Council's Urban Design Panel.
8. I have had extensive ongoing involvement in planning matters related to the Peacocke area since late-2017. I assisted with the preparation of the subdivision and land use resource consent application for the Amberfield development for Weston Lea Ltd. I also presented planning evidence at the Council hearing and participated in expert conferencing and mediation for the Environment Court appeals for Amberfield¹.
9. In addition to preparing our own submission and further submission on Plan Change 5 (**PC5**), I have also assisted The Adare Company Ltd (**Adare**) with inputs into the draft PC5 provisions prior to notification (including liaison with Hamilton City Council (**HCC**) staff and consultants) and with preparation of Adare's submissions on PC5 alongside Adare's other planners and experts. I attended the PC5 expert conferencing sessions for Planning, Planning and Transport, Planning (MDRS/Density) and Planning, Retail Economics and Urban Design on behalf of Adare. My participation in conferencing was

¹ Weston Lea Limited v Hamilton City Council [2020] NZEnvC 189

approved by the facilitator and my involvement was recorded as an observer. My attendance was to assist Adare's other experts given my familiarity with Adare's submission and the PC5 provisions.

10. In preparing this statement I have read the Plan Change documents prepared by HCC, including the Section 42A Report.

CODE OF CONDUCT

11. My statement relates to the Natural Open Space Zone and SBHA which is proposed over part of our property, and the ecological provisions in PC5.
12. Although I am a qualified and experienced Planner, this statement is provided in my capacity as a submitter and landowner. My statement is not provided as expert evidence per the Environment Court Code of Conduct for expert witnesses.

SCOPE OF STATEMENT

13. My statement is structured by topic and covers the following:
 - (a) Background to our submission;
 - (b) Purchase of land required for SBHAs;
 - (c) Protecting significant habitat of long-tailed bats and enabling urban development;
 - (d) Specific PC5 provisions for managing effects on long-tailed bats;
 - (e) My overall conclusions.

BACKGROUND

14. Our property at 29 Peacockes Lane, Peacocke, is proposed to be zoned Medium Density Residential Zone and Natural Open Space Zone under PC5 (**Figure 1**).



Figure 1: PC5 Zoning of 29 Peacockes Lane (Yellow = Medium Density Residential Zone, Green = Natural Open Space Zone)

15. The part of our property which is proposed to be Natural Open Space Zone is in pasture and forms part of a 'proposed bat corridor' which is intended to be created to link the Waikato River and the Mangakotukutuku Gully. The PC5 Planning Maps and the PSP both identify the land within the proposed bat corridor as SBHA. The PC5 rules require that the land must be vested in HCC as Local Purpose (Ecological) Reserve at the time of subdivision².
16. We currently do not intend to sell or undertake any subdivision of our property for at least 5 years. This is partly due to lifestyle reasons, as well as the time that we expect will be required for infrastructure to be constructed to service urban development of our property, such as roading upgrades, reticulated services and stormwater wetlands.

PURCHASE OF LAND REQUIRED FOR SIGNIFICANT BAT HABITAT AREAS

17. A key issue raised in our submission is the importance of receiving certainty from HCC that affected landowners will be appropriately compensated for the land which is required for SBHAs. It is pleasing that HCC has confirmed through the Section 42A Report that compensation will be provided at "*fair market value based on the value of the land if it was within the Medium Density*

² SUB-PREC1-PSP:R25 Provision of Ecological Areas.

*Residential Zone, to avoid landowners being 'penalised' for land being zoned as Natural Open Space Zone given the uneven distribution of this land across the Peacocke Structure Plan area and equity issues that would otherwise arise*³.

18. Although our submission sought a reduction in the width of the SBHA for the proposed bat corridors from 50 metres to 35 metres, I have read relevant comments in the Section 42A Report, evidence on behalf of HCC and the Joint Witness Statement – Planning and Bats⁴ and I accept that 50 metres is an appropriate total minimum width.
19. On this basis, I do not oppose the Natural Open Space Zone and SBHA that is proposed over part of our property, as shown on the PC5 Planning Maps and the PSP figures in the Section 42A Report.

PROTECTING SIGNIFICANT HABITAT OF LONG-TAILED BATS AND ENABLING URBAN DEVELOPMENT

20. Given the urban development objectives of PC5, it will not be possible to avoid adverse effects on low and moderate value long-tailed bat habitat outside of the high value areas which have been identified as SBHAs and SNAs. A key aspect of the proposed protection of significant habitats of the long-tailed bat in PC5 is the enhancement (including planting and pest control) that is proposed within SBHAs and SNAs as mitigation and compensation for adverse effects of urban development on low and moderate value habitat in the PSPA.
21. The Section 42A Report recognises that this approach will also contribute to mitigating adverse effects of existing urbanisation on the habitat of the long-tailed bat in other parts of Hamilton City. The following new objective and policy have been recommended in the Section 42A Report to be included in Chapter 3A:

Objective DEV01-PSP:O xxx

Maintain and enhance a network of open space that support ecological values of the Peacocke Structure Plan Area and contributes to the

³ PC5 Section 42A Report, para. [7.80].

⁴ Joint Witness Statement dated 24 August 2022.

mitigation of the adverse effects of existing urbanization and future development on the habitat of the long-tailed bat across all of Hamilton City.

Policy DEV01-PSP: P xx

Recognize that the establishment of Significant Bat Habitat areas within Peacocke Structure Plan Area contributes to the mitigation of the adverse effects of existing urbanization on the long-tailed bat across all of Hamilton City.

22. I support this overall approach to protection of bat habitat for the following reasons:
- (a) It is consistent with the approach taken for the Amberfield resource consents where high value long-tailed bat habitat was identified to be protected and enhanced and where urban development was enabled in areas with low and moderate value habitat values.
 - (b) It is consistent with section 6(c) RMA which identifies “*the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*” (my emphasis) as a matter of national importance to be recognised and provided for.
 - (c) It will have city-wide benefits by making a significant contribution towards HCC’s stated goal in the Nature in the City Strategy of achieving 10% indigenous vegetation cover across the City. Approximately 143 hectares has been zoned Natural Open Space Zone and identified as SBHA through PC5, which is a very large area and considerably more than 10% of the PSPA.
23. In addition to protecting the significant habitat of the long-tailed bat, the PC5 provisions also must “give effect” to the NPS-UD. This includes, amongst other things, requirements to achieve well-functioning urban environments that enable all people and communities to provide for their social, economic, and cultural wellbeing (Objective 1, Policy 1 and Policy 6), that planning decisions improve housing affordability (Objective 2) and that local authority decisions on urban development that affect urban environments are integrated with infrastructure planning and funding decisions (Objective 6).

24. To achieve these outcomes, it is important that PC5 efficiently enables urban development to occur outside of the SBHAs and SNAs. The PC5 provisions must ensure that these areas can be developed to achieve the planned overall housing yields for the PSPA. Otherwise, the significant costs which have already been committed to new and upgraded infrastructure for the growth of Peacocke will need to be met by fewer household units. This in turn could significantly impact Council's ability to fund the infrastructure and, in turn, impact housing affordability.

SPECIFIC PC5 PROVISIONS FOR MANAGING EFFECTS ON LONG-TAILED BATS

Centralised approach

25. HCC has recognised the benefits of a centralised approach to the management of effects on long-tailed bats across the PSPA and wider area, as follows:
- (a) The planning evidence of Mr Jamie Sirl for HCC explains that provisions within the district plan are only one part of the integrated package of measures needed to recognise and provide for the protection of significant habitat of indigenous fauna and that the district plan cannot be expected to deliver all the necessary compensation⁵. Mr Sirl refers to other mechanisms which could be used to fund the necessary restoration and enhancement such as development contributions or a targeted rate to provide an equitable approach to apportioning costs associated with land required for SNAs and SBHAs, restoration and enhancement planting, and interventions such as ongoing predator control⁶. He states that HCC considers that the matter of landscape scale protection of long-tailed bats and their habitat requires a collaborative and multi-agency approach⁷.
 - (b) Mr Sirl's evidence identifies that a centralised, independent monitoring programme for long-tailed bats can, and should be achieved through established groups such as Project Echo and the Waikato Bat Alliance

⁵ Evidence in Chief of Jamie Sirl, para. [48].

⁶ Evidence in Chief of Jamie Sirl, para. [208].

⁷ Evidence in Chief of Jamie Sirl, para. [210].

or in conjunction with a dedicated Bat and Habitat Enhancement Review Panel⁸.

- (c) A report prepared by Mr Gerry Kessels of Bluewattle Ecology on behalf of HCC⁹ recommends that landscape level bat monitoring by a central body (as opposed to monitoring for any particular subdivision or property) is preferable to account for cumulative effects, to monitor changes across the area and for consistency and transparency¹⁰.
 - (d) The Bluewattle Ecology report recommends investigation by HCC of a PSPA wide animal pest control programme in collaboration with other key stakeholders, particularly those with statutory obligations to protect bats (including the Department of Conservation (**DOC**) and Waikato Regional Council (**WRC**))¹¹.
26. The Section 42A Report also recognises the benefits of a landscape level approach. However, it explains that “...*this wider response outside of the district plan is in an establishment phase at this time, and with a lack of clarity as to the scope and shape of the wider programme*”¹².
27. This lack of clarity is problematic because it causes uncertainty as to what matters HCC will take responsibility for and what matters applicants will be required to address through resource consent applications.

Section 42A Report recommended PC5 provisions

28. The Section 42A Report recommends that an Ecological Rehabilitation and Management Plan (**ERMP**) (Appendix 1.2.2.26) should be required to be prepared by applicants to address the establishment and enhancement of identified Significant Bat Habitat Corridors (amongst many other things). The ERMP requirements would apply to all subdivision applications adjoining or including any open space zone or involving more than 5,000m² of land.
29. The Section 42A Report also recommends that a Bat Management Plan (**BMP**) (Appendix 1.2.2.28) should be required to be prepared by applicants to address matter such as replacement planting, bat monitoring, pest control

⁸ Evidence in Chief of Jamie Sirl, para. [233].

⁹ Bluewattle Ecology, ‘Hamilton City Council, Plan Change 5 Technical Ecology Report’, 31 August 2022 (**Bluewattle Report**).

¹⁰ Bluewattle Report, sections 6.5.3 and 6.9.3.

¹¹ Bluewattle Report, section 7.3.

¹² PC5 Section 42A Report, para. [7.59].

measures, installation of artificial roost boxes, off-site compensation or biodiversity off-setting and financial contributions (which are required to be calculated in a model developed by ecological experts engaged by each applicant). The BMP requirements would apply to all applications seeking to remove trees or vegetation with a Diameter at Breast Height higher than 15cm¹³.

30. The costs associated with engaging ecologists to prepare these management plans will be high, particularly for applicants whose land includes SBHAs where the requirement for the design, enhancement and presumably maintenance (at least initially) of new bat habitat will fall to the affected landowners. This is a big commitment for a property such as ours which includes SBHA and a small area of land for residential development. The costs to prepare and implement ecological management plans will likely be incommensurate with the adverse effects of subdivision and development. Landowners who have SBHAs within their properties will be “penalised”, despite that being an outcome which HCC has agreed should be avoided¹⁴.
31. Vesting and enhancing proposed bat corridors in a way that is reactive to subdivision and development will also be inefficient and piecemeal because the corridors span property boundaries (both in terms of their width and length). The Assessment of Environmental Effects prepared by HCC for PC5 explains that “*The urbanisation of Peacocke is anticipated to occur over the next 30 years*”¹⁵ so it is likely that the creation of the proposed bat corridors will take a very long time if a reactive approach is persevered with.
32. A more effective and efficient approach would be for HCC to take greater responsibility in leading a centralised approach to the management of effects on long-tailed bats across the PSPA by proactively acquiring, enhancing and maintaining new bat habitat on land within the SNAs and SBHAs (including proposed bat corridors) and by undertaking bat monitoring and pest control at a landscape-scale. This should be done as early as possible (to minimise lag effects) and in collaboration with DOC and WRC, with the costs funded through sources such as development contributions, financial contributions,

¹³ I note this measurement method differs from the measurement method which is recommended in Rule 25.2.5.2 which refers to 150mm at 1.4m in height above ground level.

¹⁴ PC5 Section 42A Report, para. [7.80].

¹⁵ Hamilton City Council, Plan Change 5 Assessment of Environmental Effects, Peacocke Structure Plan, Section 2.3.

rates (potentially targeted and general¹⁶), funding from DOC and other grants (if they are available).

33. Matters which are currently addressed in the rules, ecological management plan requirements and assessment criteria should be revised to exclude matters that HCC will address in a centralised way, so that the provisions only reflect the matters that will be the responsibility of resource consent applicants.

Proposed amendments to provisions

34. I have read the planning evidence of Mr Andrew Collins for Adare and I support the changes that he has recommended in his Attachment 1 to the bat related provisions in SUB-PREC1-PSP:R25, Rule 25.2.5.2, Appendix 1.2.2.26, Appendix 1.2.2.28, Appendix 1.3.3 and Appendix 1.5¹⁷.
35. I consider that the changes recommended by Mr Collins would appropriately address the issues that I have raised in my statement. I give my opinion on the key changes below:

(a) SUB-PREC1-PSP:R25 Provision of Ecological Areas.

As I have previously stated, I now accept that 50 metres is an appropriate total minimum width for the proposed bat corridors. However, reference in the rule to the land being required to vest as reserve with a 50 metre minimum width is problematic because in many cases (including for our property) the SBHA straddles property boundaries. Although the area within each property is not necessarily 50 metres wide, the total zoned width of the corridor is at least 50 metres. I therefore support the proposed deletion of reference to a 50 metre minimum width in this rule.

(b) Rule 25.2.5.2 Vegetation Clearance in the Peacocke Structure Plan Area.

The proposed amendments more appropriately require resource consent for vegetation clearance involving trees outside a Natural Open Space Zone which are over 150mm diameter at 1.4m in height

¹⁶ Use of general rates would recognise the benefits which extend beyond the PSPA.

¹⁷ Planning Evidence-in-Chief of Mr Andrew Collins for Adare, Attachment 1.

if they are assessed by a bat ecologist as being a confirmed or potential bat roost tree. A key difference is that the proposed rule in the Section 42A Report would also capture trees which have low potential to be “used as habitat for long-tailed bats”. That terminology is unclear and it would potentially capture many more trees.

I understand that the removal of bat roost trees is the activity that requires managing so that suitable protocols can be in place to avoid direct mortality of bats, or to consider whether the roost trees could be practicably retained. Other potential habitat should be assumed to be lost because it will be mitigated and compensated through enhancement of the SNAs and SBHAs, and potentially other areas outside of the PSPA.

(c) Appendix 1.2.2.26 Ecological Rehabilitation and Management Plan Peacocke Precinct.

I agree with the proposed changes which would require an ERMP to be prepared as part of subdivision consent applications only if watercourses, wetlands, significant indigenous vegetation or significant habitats of indigenous fauna are identified within the site through an ecological assessment. I also agree that the objectives of an ERMP should more clearly relate to managing construction related effects and enhancing ecological values within public roads or reserves within the site.

I support the proposed deletion of reference to the “establishment and enhancement” of identified Significant Bat Habitat Corridors. Although it is appropriate for the ERMP to refer to vesting of these areas, the planting design, implementation and maintenance should be proactively led by HCC.

I also support the proposed deletion of reference to fixed lighting design. That is not a matter that will be known at the time of subdivision, and it is more appropriately addressed through lighting land use standards (Rule 25.6.4.4) than in a management plan.

(d) Appendix 1.2.2.28 Bat Management Plan.

I support the proposal to change the requirement for a BMP to a requirement for an Assessment of Effects on Long-tailed Bat Habitat. I consider that effects are likely to be capable of being addressed through consent conditions, rather than requiring a management plan.

The proposed new clause (c) is useful for providing clarity and direction as to the specific matters which should be considered in determining the circumstances in which a bat roost tree found outside an SBHA might be able to be practicably retained and protected.

The proposed amendments retain reference to the Department of Conservation 'Protocols for Minimising the Risk of Felling Bat Roosts'. I support the proposed addition of a specific version and date reference for those protocols.

(e) Appendix 1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria, P – Peacocke Structure Plan.

I support the proposed changes to the assessment criteria to reflect that adverse effects on bats may be either avoided, remedied, mitigated, off-set or compensated through direct interventions by an applicant or through funding contributions (such as financial contributions or a targeted rate) towards HCC's centralised efforts. I consider specific reference to enhanced ecology corridors and animal pest control should be deleted because the responsibilities for those requirements should sit with HCC. I also support the changes which reference specific circumstances in Appendix 1.2.2.28 when bat roost trees outside of SBHAs might be considered for protection.

(f) Appendix 1.5 Other Methods of Implementation.

I agree that Section 1.5.4 Collaboration and Partnership is a suitable place to record HCC's commitments to the wider response to management of effects on long-tailed bats outside of the district plan, including the proposed references to the establishment and role of the City-wide Bat and Habitat Enhancement Panel.

CONCLUSION

36. In conclusion, I do not oppose the Natural Open Space Zone and SBHA that is proposed over part of our property as it shown on the PC5 Planning Maps and the PSP figures in the Section 42A Report.
37. I support the overall approach in PC5 of identifying and protecting SBHAs and SNAs and enabling urban development to occur in other areas. However, HCC (in collaboration with others) should take greater responsibility in leading a centralised approach to the management of effects on long-tailed bats across the PSPA by proactively acquiring, enhancing and maintaining new bat habitat on land within the SNAs and SBHAs and by undertaking bat monitoring and pest control at a landscape-scale.
38. The rules, ecological management plan requirements and assessment criteria should be revised to provide better clarity on remaining matters that will be the responsibility of resource consent applicants to address.

Dated this 19th day of September 2022



Ben Inger