

**BEFORE**

the Independent Hearing Panel  
appointed by the Hamilton City Council

**UNDER**

the Resource Management Act 1991

**And**

**IN THE MATTER OF**

Proposed Plan Change 5 – Peacocke  
Structure Plan

**BY**

Hamilton City Council

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**STATEMENT OF EVIDENCE OF JESSE QUENTIN GOODING**

**On behalf of the**

**DIRECTOR-GENERAL OF CONSERVATION / TE TUMUAKI AHUREI**

**SUBMISSION 38 FS013**

**PLANNING**

**Dated: 16 SEPTEMBER 2022**

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## CONTENTS

1.	INTRODUCTION .....	3
2.	CODE OF CONDUCT.....	4
3.	SCOPE.....	4
4.	EXECUTIVE SUMMARY .....	6
5.	POLICY GUIDANCE .....	7
6.	ECOLOGY EFFECTS.....	27
7.	AMENDMENTS TO PROVISIONS .....	32
8.	AMENDMENTS TO RULES, ASSESSMENT CRITERIA AND INFORMATION REQUIREMENTS .....	35
9.	CONCLUSION.....	62

## 1. INTRODUCTION

- 1.1. My name is Jesse Quentin Gooding. I hold the position of Resource Management Act (**the Act**) Planner at the Department of Conservation (**the Department**).
- 1.2. I hold a Bachelor of Environmental Planning from the University of Waikato. I am an intermediate member of the New Zealand Planning Institute. I have five years' experience practicing as a resource management planner.
- 1.3. I have been employed in different resource management positions over the last 5 years. Before working for the Department, I was a Regional Policy Advisor for the Federated Farmers of New Zealand providing planning advice in respect of various plan and policy statement reviews carried out under schedule 1 of the Act such as the full review of the Waikato District Plan. Prior to this, I worked at the Matamata-Piako District Council, assessing a range of applications for subdivision and land use consent.
- 1.4. My experience at the department includes interpreting plans, policy statements and assessing various publicly and limited notified resource consent applications. I have presented planning evidence on behalf of the Director-General of Conservation (the **Director**) in respect of the New Plymouth District Plan review and most recently in the matter of coastal permit applications for sand mining offshore of Pakiri Beach near the Auckland, Northland regional boundary.
- 1.5. Through my participation in various planning processes, I have developed a good understanding of resource management best practice, including in relation to indigenous biodiversity matters.

## **2. CODE OF CONDUCT**

- 2.1. Although this is not an Environment Court Hearing I confirm I have read the code of conduct for expert witnesses as contained in the Environment Court's Practice Note 2014. I have complied with the practice note when preparing my written statement of evidence and will do so when I give oral evidence before the Independent Hearing Panel.
- 2.2. The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence.
- 2.3. Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **3. SCOPE**

- 3.1. I have been asked by the Director-General of Conservation (The **Director-General**) to provide expert planning evidence in relation to the proposed Plan Change 5 – Peacocke Structure Plan (**PC5**).
- 3.2. I provided some technical planning advice on the preparation of the Director-General's submissions.
- 3.3. I understand the submission and further submissions of the Director-General are primarily concerned with:
  - a) The ecological impact of PC5 generally
  - b) In particular, the ecological impact of PC5 on the Nationally-Critical (Threatened) Long-Tailed Bat and,
  - c) Whether PC5 'recognises and provides for' the relevant matters of national importance in Part 2 of the Act and 'gives effect' to the relevant higher order policy guidance.

- 3.4. I attended expert conferencing on the topics set out below and signed the joint witness statement (**JWS**) produced at each of the specified expert conference sessions:
- a) Planning – 18 August 2022;
  - b) Bats and Planning – 24 August 2022; and
  - c) MDRS/Density – 26 August 2022.
- 3.5. I am a resident of Hamilton and have visited the Peacocke area on many occasions, most recently in preparation of my evidence.
- 3.6. The purpose of my evidence is to consider the adequacy of PC5 in light of the requirements of the relevant parts of the Act, higher order planning instruments and to recommend alternatives to the provisions, recommended by the Section 42A reporting planners (**reporting planners**), where I consider that such alternatives would address the concerns in the Director-General's submission.
- 3.7. My evidence will address the following matters:
- a) The Planning Framework
  - b) Ecological Effects and Effects Management
  - c) Recommended amendments to Objectives and Policies
  - d) Recommended amendments to Rules, Assessment Criteria and Information Requirements, and
  - e) My conclusion
- 3.8. I use ~~red strikethroughs~~ and underlining to show changes recommended in the Section 42(a) Report/proposed provisions (**s42a report**), and ~~green strikethroughs~~ and underlining to show changes that I recommend.
- 3.9. I will provide a collated assessment of the effectiveness and efficiency of my recommended amendments in accordance with s32AA of the Act together with a collated document showing all of my recommended amendments and further provisions when I provide my summary of

evidence before the hearing. This will allow me to account for any changes to my recommendations in terms of effectiveness and efficiency that may arise after I have the read primary and rebuttal evidence of the other submitters.

3.10. The full suite of documents I have reviewed in preparation of my evidence is set out in Schedule 1.

3.11. I have read and rely, in part, on the evidence of:

- a) Dr Kerry Borkin - Bat ecology and effects
- b) Ms Moira Pryde – Bat ecology
- c) Ms Susan Mander – Lighting
- d) Dr Ilse Corkery – Biodiversity offsetting

#### **4. EXECUTIVE SUMMARY**

4.1. In my evidence, I identify the applicable higher order planning instruments and summarise the relevant provisions therein. In my evidence I address the relevant provisions from the following statutory documents:

- a) Part 2 of the Act,
- b) the relevant National Policy Statements,
- c) the Waikato River Vision and Strategy (**Vision and Strategy**),
- d) the Waikato Regional Policy Statement (**RPS**), and for context,
- e) the provisions of the Operative Hamilton City District Plan (**ODP**) relating to ecological matters.

4.2. Part 2 of the Act, down through the RPS direct a strong preference for avoidance of adverse effects on threatened species. My evidence is primarily directed at the need for PC5 to give effect to this framework. This emphasis reflects the threatened species status of long-tailed bats, the general assessment that the ecological value of the PSPA for long-tailed bats is very high, and that in the opinion of the ecologists engaged by the Director-General the PSPA meets the criteria for “significance” set out in the RPS.

- 4.3. Arising from these matters is a tension between the enabling provisions for urban development and the requirement to “recognise and provide for” section 6(c), “give effect” to the RPS with regard to indigenous biodiversity matters and be consistent with the district plan’s avoid adverse effects on indigenous biodiversity policies.
- 4.4. In my opinion this tension needs to be resolved in a way that is consistent with the Supreme Court’s King Salmon decision<sup>1</sup>.
- 4.5. This is achieved by recognising and providing for section 6(c) of the Act, giving effect to the RPS and being consistent with the district plan indigenous biodiversity ‘avoid’ policies.
- 4.6. On that basis it follows that development within the structure plan area must be provided for in a way that ensures full protection and enhancement of significant indigenous biodiversity values, especially those associated with the long-tailed bat.

## **5. POLICY GUIDANCE**

- 5.1. The statutory considerations relevant to PC5 are outlined in Part 3 of the PC5 Assessment of Environmental Effects (**AEE**), they are also analysed in the s42A hearing report. In the interests of brevity, I do not repeat that analysis here. Instead, my evidence will address where I disagree with the s42A report and supporting documentation regarding policy guidance.
- 5.2. In my opinion there is a tension between the need for PC5 to provide for housing development and the requirement to protect indigenous biodiversity. Guidance on how to resolve that tension is by way of reference to the section 31 functions of the district council, Part 2 of the Act, national policy statements, the RPS (including the Vision and Strategy) and the ODP’s own policy guidance.
- 5.3. For completeness, I consider PC5 contains all of the necessary information and assessments in terms of clause 22 of Schedule 1 of the Act.

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<sup>1</sup> *Environmental Defence Society v The New Zealand King Salmon Co Ltd*

- 5.4. Firstly, I discuss the relevant functions of the district council with respect to indigenous biodiversity.

*Functions of district council*

- 5.5. Section 31 of the Act sets out the functions of territorial authorities. With respect to indigenous biodiversity, I consider the following functions are particularly relevant (my emphasis in **bold**):

*31(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:*

- (a) *the establishment, implementation, and review of **objectives, policies, and methods** to achieve **integrated management** of the effects of the use, development, or **protection** of land and associated natural and physical resources of the district: ...*
- (b) *the control of any **actual or potential effects** of the **use, development, or protection** of land, including for the purpose of—*  
...  
*(iii) the **maintenance of indigenous biological diversity**: ..*

- 5.6. Regional council indigenous biodiversity functions cover the control of the use of land for the maintenance and enhancement of ecosystems in water bodies and coastal water, and importantly under s30(1)(ga):

*the establishment, implementation, and review of objectives, policies and methods for **maintaining indigenous biological diversity**...*

- 5.7. The main way that the Waikato Regional Council (**Regional Council**) carries out this function is through objectives, policies and methods in the RPS.

*Part 2 of the Act*

- 5.8. Part 2 sets out the purpose and principles of the Act. The purpose of the Act is to promote the sustainable management of natural and physical resources.

- 5.9. Sustainable management is defined in section 5(2) of the Act. In summary it sets out four objectives that must be contemporaneously achieved when managing the use, development and protection of natural and physical resources. In my opinion, the following provisions

summarised from Part 2 of the Act are particularly applicable to the sustainable management of indigenous biodiversity in PC5:

*(b) safeguarding the life-supporting capacity of air, water, soil, and **ecosystems**; and*

5.10. The protection of areas of significant indigenous vegetation and significant habitat of indigenous fauna is a matter of national importance to be recognised and provided for under section 6(c) of the Act:

*c) the **protection of significant indigenous vegetation and significant habitat of indigenous fauna***

5.11. The protection directive applying to section 6(c) is in contrast with and is distinct from the qualified protection from inappropriate subdivision, use and development applying to several other matters of national importance<sup>2</sup>.

5.12. Section 6(c) leads to the policies and methods in Chapter 11 of the RPS that I discuss later.

5.13. Section 7 of the Act sets out the matters to which particular regard must be had. (of relevance my emphasis in **bold**):

*(b) the efficient use and **development** of natural and physical resources*

*(d) intrinsic value of **ecosystems***

Intrinsic values are defined in Section 2 of the Act as:

*“Those aspects of ecosystems and their constituent parts which have value in their own right, including (a) their biological and genetic diversity, and, (b) the **essential characteristics** that determine an **ecosystem’s integrity, form, functioning, and resilience.**”*

5.14. These provisions are to be considered alongside other provisions in Part 2 that I have not identified here, including the provision for, and protection of, tangata whenua interests set out in sections 6(e), 7(a) and 8 of the Act.

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<sup>2</sup> See ss6(a),(b) and (f) for example.

5.15. Of note is the requirement to ‘recognise and provide for’ the matters of national importance in section 6. This is not optional, instead it requires action, directing ‘actual provision’ to be made for each of these matters<sup>3</sup>. This is distinct from the requirement in section 7 to have ‘particular regard to’ other matters which provides for consideration and (if warranted) disregard of those matters.

‘Protection’ is not defined in the Act. However, an interpretation is provided in Part 1 of the Conservation Act:

***protection**<sup>4</sup>, in relation to a resource, means its maintenance, so far as is practicable, in its current state; but includes—*

*(a) its restoration to some former state; and*

*(b) its augmentation, enhancement, or expansion*

5.16. I consider that Part 2 of the Act directs indigenous biodiversity is protected and provided for<sup>5</sup>.

#### *National Policy Statements*

5.17. National Policy Statements provide national policy guidance on specific resource management issues. The District Plan must give effect to national policy statements. There are five operative national policy statements, of which the National Policy Statement for Urban Development 2020 (**NPS-UD**) and National Policy Statement for Freshwater Management (**NPS-FM**) are directly relevant.

5.18. There are also two proposed national policy statements that are likely to be gazetted before PC5 is operative, being the Proposed National Policy Statement for Indigenous Biodiversity (**NPS-IB**)<sup>6</sup> and National Policy

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<sup>3</sup> In *Bleakley v Environmental Risk Management Authority*, the Court held that the phrase “recognise and provide for” requires actual provision (rather just weighing up with other factors) to be made for specified matters.

<sup>4</sup> Section 2 Conservation Act 1987

<sup>5</sup> More detail on the amendments to the proposed plan required to provide that protection is given in section 7-8 of my evidence.

<sup>6</sup> I note that the “issues and Options” Final Report, dated May 2022 has identified that it is effective and efficient to align the review of Significant Natural Area provisions with the policy direction and requirements that are anticipated to come into effect during the concurrent “Plan Change 9” the ODP. In effect PC9 is being proactively aligned with the NPS-IB.

Statement for Highly Productive Land. I consider the NPS-IB offers helpful guidance, acknowledging the NPS-IB is at the stage of exposure draft, with no requirement for PC5 to give effect to it. Nevertheless, it is worth noting that once the NPS-IB is gazetted, indigenous biodiversity will be a matter to have regard to under section 104 1 (b) of the Act. So, while the NPS-IB may not be operative and directly effect this plan change, it will potentially effect decisions on subsequent resource consents within the PSPA.

*National Policy Statement for Urban Development and Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021*

5.19. The NPS-UD sets out objectives and policies for planning well-functioning urban environments under the Act. There is a requirement to intensify and develop infrastructure within Hamilton's urban boundaries to meet the objectives and policies of the NPS-UD.

5.20. Part 3 of the AEE evaluates the extent to which the NPS-UD is given effect in PC5<sup>7</sup>. I generally agree with this assessment. That said, I have identified one aspect of the NPS-UD that has not been fully considered, specifically the qualifying matters relating to Policy 4 and subpart 6 of the NPS-UD and more recently incorporated into the Act under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**HSAA**).

5.21. The HSAA is well described in the evidence of Mr Sirl<sup>8</sup>. Effectively it contains a set of medium density residential standards (**MDRS**), that are to be included in the District Plan to give effect to Policy 3 of the NPS-UD. Tier one councils, such as Hamilton City Council must alter their plan for this purpose. The HSAA, as in the NPS-UD does allow for the MDRS (and therefore Policy 3) to be departed from, with lower densities provided for in their place, but only to the extent required to accommodate a qualifying matter:

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<sup>7</sup> As discussed later in my evidence there is a tension between the 'development enabling' focus of the NPS-UD and the indigenous biodiversity protection directive in other national policy statements and the RPS that is to be appropriately weighed in PC5.

<sup>8</sup> Statement of Evidence - James Sirl – Planning paragraph 36

**Section 77I Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones**

*A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:*

*a matter of national importance that decision makers are required to recognise and provide for under section 6:*

*a matter required in order to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010:*

*a matter required to give effect to Te Ture Whaimana o Te Awa o Waikato—the Vision and Strategy for the Waikato River:*

*a matter required to give effect to the Hauraki Gulf Marine Park Act 2000 or the Waitakere Ranges Heritage Area Act 2008:*

*a matter required for the purpose of ensuring the safe or efficient operation of nationally significant infrastructure:*

*open space provided for public use, but only in relation to land that is open space:*

*the need to give effect to a designation or heritage order, but only in relation to land that is subject to the designation or heritage order:*

*a matter necessary to implement, or to ensure consistency with, iwi participation legislation:*

*the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand:*

*any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, but only if section 77L is satisfied.*

5.22. Mr Foster sets out the qualifying matters accommodated by PC5, and the method for accommodating them. He considers section 6(c) to be a qualifying matter<sup>9</sup>. Mr Foster also identifies a matter required to give

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<sup>9</sup> Statement of Evidence – Samuel Elliot Foster- MDRS/Planning paragraphs 29-30

effect to Vision and Strategy as a qualifying matter. I agree these are qualifying matters.

- 5.23. With respect to section 6(c) Mr Foster appears to consider a 5m setback from the boundary of Significant Bat Habitat Areas (**SBHA**) the only necessary response to this qualifying matter.
- 5.24. To my knowledge identification of SBHAs, buffers, setbacks and corridors, as notified in PC5 has occurred for the express purpose of recognising and providing for section 6(c). Given these areas account for approximately 128 ha<sup>10</sup> of the PSPA I consider they impose a significant constraint on the availability of developable land and therefore potentially limit the density outcome that can be achieved in the PSPA when other factors such as topography are also accounted for<sup>11</sup>.
- 5.25. I therefore cannot agree with Mr Foster's assertion that the 5m setback from significant bat habitat is the only qualifying matter in PC5 in response to section 6(c). Instead, it is one of a range of responses, that no doubt, reduce the area of developable land, and therefore (potentially) impact the ability of PC5 to meet the MDRS density requirement, but are necessary for giving effect to the protection directive in section 6(c). Further, there is a very real question as to whether these measures go far enough in accommodating section 6(c).
- 5.26. In my opinion further amendments to PC5 are required to accommodate the section 6(c) qualifying matter. Overall, I consider these amendments necessary for full accommodation of the section 6(c) qualifying matter so that PC5 can recognise and provide for the protection of significant habitat.

#### *NPS-FM*

- 5.27. The PC5 AEE evaluates whether the proposed plan will give effect to the NPS-FM. It focuses on the operative District Plan provisions that manage the effects of development on water on a city-wide basis (Chapter 23.13 – Three Waters). Said provisions place a heavy reliance on Integrated

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<sup>10</sup> Statement of Evidence - James Sirl – Planning paragraph 72(d)

<sup>11</sup> My s32AA includes an assessment against NPS-UD subpart 6 (3.33) – Requirements if qualifying matters apply

Catchment Management Plans (**ICMPs**) for the various city catchments. I note the provisions in Chapter 23.13 pre-date the NPS-FM (2020), so it can't be assumed they give effect to this policy statement overall. The ICMP was prepared under the NPS-FM 2017 and no gap analysis has been provided to determine whether the ICMP will give effect to the NPS-FM (2020), although one is anticipated. Likewise, the RPS also has not been updated to give full effect to the NPS-FM.

5.28. In regard to the direction given to territorial authorities by the NPS-FM, I consider:

- a) The fundamental concept of the NPS-FM (Te Mana o te Wai) should guide decision making in district planning matters as well as at the regional level.
- b) The overarching Objective<sup>12</sup> of the NPS-FM is to be achieved in an integrated way by territorial authorities and regional authorities.
- c) The NPS-FM largely directs territorial authorities through Section 3.5(4) as noted in the AEE.

5.29. Notwithstanding this I am of the view that other aspects of the NPS-FM are relevant to PC5. In particular:

**Policy 1:** *Freshwater is managed in a way that gives effect to Te Mana o te Wai.*

**Policy 2:** *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.*

**Policy 3:** *Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.*

**Policy 6:** *There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.*

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<sup>12</sup>(1) The objective of this National Policy Statement [fresh water] is to ensure that natural and physical resources are managed in a way that prioritises:

(a) first, the health and well-being of water bodies and freshwater ecosystems  
(b) second, the health needs of people (such as drinking water)  
(c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

**Policy 7:** *The loss of river extent and values is avoided to the extent practicable.*

**Policy 8:** *The significant values of outstanding water bodies are protected.*

**Policy 9:** *The habitats of indigenous freshwater species are protected.*

82

5.30. In providing guidance on the implementation of these policies the NPS-FM provides clear guidance on how the effects management hierarchy is to be applied.

5.31. This is helpful as I consider there are notable omissions in the RPS in terms of a definition for the effects management hierarchy, biodiversity offsetting, and compensation.

5.32. The absence of an interpretation of these concepts in the RPS adds to the challenge of recognising and providing for protection of biodiversity in PC5.

5.33. While the RPS is silent, the NPS-FM clearly defines the effects management hierarchy:

**Effects management hierarchy**, in relation to natural inland wetlands and rivers, means an approach to managing the adverse effects of an activity on the extent or values of a wetland or river (including cumulative effects and loss of potential value) that

**Requires that:**

- (a) *adverse effects are avoided where practicable; and*
- (b) *where adverse effects cannot be avoided, they are minimised where practicable; and*
- (c) *where adverse effects cannot be minimised, they are remedied where practicable; and*
- (d) *where more than minor residual adverse effects cannot be avoided, minimised, or remedied, aquatic offsetting is provided where possible; and*

(e) *if aquatic offsetting of more than minor residual adverse effects is not possible, aquatic compensation is provided; and*

(f) *if aquatic compensation is not appropriate, the activity itself is avoided*

5.34. Clause (2) provides definitions for some of the terms used in the effects management definition.

**Aquatic compensation** *means a conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied.*

**Aquatic offset** *means a measurable conservation outcome resulting from actions that are intended to:*

(a) *redress any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and (b) achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river, where:*

(i) **no net loss** *means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river; and*

(ii) **net gain** *means that the measurable positive effects of actions exceed the point of no net loss*

5.35. While I note the qualifier - “in relation to inland wetlands and rivers” I consider this framework helpful, particularly when considering actual and potential effects on the habitat of threatened fauna.

5.36. I consider the RPS method 11.2.2 is generally consistent with the effects management hierarchy in the NPS-FM up to clause (d). Given the prevalence of compensation proffered in PC5 as a tool for managing residual effects, I consider the NPS-FM more helpful in this regard than the RPS. Accordingly, I am of the opinion that the NPS-FM effects management hierarchy is more complete and offers more clarity on biodiversity offsetting and compensation than the RPS. Where the

management of residual effects is concerned, I find it necessary to refer back to Part 2 and the NPS-FM to resolve matters not addressed in the RPS. I discuss this further below.

### *Waikato River Vision and Strategy*

5.37. The s42A report rightly identifies the Vision and Strategy as the prime direction setting document for the Waikato River.

5.38. The overarching objective of the vision and strategy is to restore and protect the health and wellbeing of the Waikato River for future generations. The vision and strategy form a part of the RPS. Where the provisions of the RPS and the vision and strategy conflict, the vision and strategy prevail over the RPS<sup>13</sup>.

5.39. In light of its purpose, it is clear to me that giving effect to the Vision and Strategy will require a substantial improvement in the water quality of the Waikato River and its tributaries. As the Panel will be aware the *Puke Coal*<sup>14</sup> decision included the following passage:

#### ***Protect and restore surface waters paramount***

*[86] We are unanimous in our view that the adoption of the Vision and Strategy Statement of the Settlement Act within the Regional and District Plans, has led to a stepwise change in the approach to consents affecting the catchment of the Waikato River.*

*[87] We consider that looking at the Waikato River Settlement Act and the Regional and District Plans as a whole, the only reasonable conclusion that can be reached is that there is an intention to improve the catchment of the river and of the river itself within a reasonable period of time (several decades) to a condition where it is safe for swimming and food gathering over its entire length.*

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<sup>13</sup> Under Section 11 of the Act, the Vision and Strategy is deemed in its entirety to be part of any regional policy statement for the Waikato region without the need for public consultation. The Proposed Waikato Regional Policy Statement cannot be inconsistent with the Vision and Strategy. If there is any inconsistency, the Vision and Strategy prevails over that part of the Proposed Regional Policy Statement. The PSPA is within the area covered by the vision and strategy.

<sup>14</sup> *Puke Coal Limited, Par Society Incorporated, Roger Howlett V Waikato Regional Council, Waikato District Council, Ludger Hinse, Peter William Davie, [2014] NZEnvC 223*

- 5.40. Although a decision in respect of a resource consent application, the passage is applicable here.
- 5.41. In that regard, efforts to respond to the eventual development of ~8000 dwellings within the PSPA need to go beyond mitigation of the impact on the Waikato River and its tributaries (such as the Mangakotukutuku Stream) and provide for restoration and protection as a bottom line.
- 5.42. Dr Borkin discusses the value of wetland habitat to long-tailed bats.<sup>15</sup> Her comments indicate that the protection and enhancement of habitat in the Mangakotukutuku Gully, at the margins of the Waikato River, and wetlands, as is also required for the protection of the long-tailed bats, will go some way toward promoting that outcome.

*Waikato Regional Policy Statement*

- 5.43. I preface this section with a reminder that, as the Panel will be aware, the requirement in respect to PC5 is that it will “give effect” to the RPS.<sup>16</sup> The RPS provides a framework for promoting the sustainable management of the Waikato Region’s natural and physical resources by identifying issues and outlining objectives, policies and methods for addressing these issues. Plans, including PC5 are required to give effect to the RPS.
- 5.44. The AEE identifies the RPS objectives relevant to PC5. I agree with the reporting planners that these are the relevant objectives. In particular the Objectives in 3.12 *Built environment*, 3.19 *Ecological integrity and indigenous biodiversity* and 3.27 *Minimum housing targets for the Future Proof area* should be understood as they set up a tension in PC5 between the directive to provide for a higher density urban environment and the protection of indigenous biodiversity.
- 5.45. Objective 3.12 is focussed on development occurring in an integrated, sustainable and planned manner.

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<sup>15</sup> Kerry Borkin Comment on section 42a report Peacocke paragraph 1.8

<sup>16</sup> As discussed, In *Environmental Defence Society v The New Zealand King Salmon Co Ltd* the Court found “give effect to” to be a strong directive that simply means “implement”.

- 5.46. Objective 3.19 is directed at ensuring the full range of ecosystem types can exist in a healthy and functional state.
- 5.47. Objective 3.27<sup>17</sup> sets out the number of homes to be released over a 10 and 30 years period with the contributions expected from Hamilton City, Waipa District and the Waikato District. Hamilton is to provide 14,300 over the proceeding decade, and a total of 43,100 over a 30-year period. These objectives provide insight into the key resource management issues in hand. That is, the need to provide for well-functioning urban environments while protecting indigenous biodiversity.
- 5.48. Section 6, titled “Built Environment” is directly relevant to PC5. This section sets out the policies and methods intended to ensure subdivision, use and development of the built environment happens in a planned and coordinated manner.
- 5.49. The policies in section 6 seek to implement the built environment objective, among others, in several ways including through planned outcomes<sup>18</sup>, coordinating growth with infrastructure<sup>19</sup>, providing for Marae and Papakāinga<sup>20</sup>, and among other matters, implementing the Future Proof Growth Strategy.
- 5.50. Future Proof seeks to enable well-functioning and quality urban environments, based around transit-oriented development and connected centres. Importantly, the document sets a net target density of 30 – 45 dwelling per ha<sup>21</sup> to be achieved over time in Peacocke.
- 5.51. Section 6A of the Regional Policy Statement sets out general development principles. Where the ecological impact of PC5 is concerned, principle ‘k’ is helpful in clarifying that in addition to the numerous principles relating to urban development, there is a requirement to protect significant vegetation and habitat and an emphasis on enhancement of ecological integrity

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<sup>17</sup> Objective 3.27 was amended on 23 March 2022 as directed by NPS-UD 2020

<sup>18</sup> Policy 6.1

<sup>19</sup> Policy 6.3

<sup>20</sup> Policies 6.13 -6.19

<sup>21</sup> In contrast to the older Future Proof density target for Peacocke which was 16 households per ha.

*k) promote positive indigenous biodiversity outcomes and protect significant indigenous vegetation and significant habitats of indigenous fauna. Development which can enhance ecological integrity, such as by improving the maintenance, enhancement or development of ecological corridors, should be encouraged;*

5.52. This principle is expanded on in Chapter 11 of the RPS.

5.53. Chapter 11 sets out policies and methods for protection and enhancement of indigenous biodiversity. There are three relevant indigenous biodiversity policies, each with supporting methods identified to implement the policy.

5.54. Policy 11.1 is a policy applying to all indigenous biodiversity across the region, including significant indigenous biodiversity.

5.55. The policy states (my emphasis added in **bold**):

*Policy 11.1 Maintain or enhance indigenous biodiversity*

*Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:*

- a) working towards achieving **no net loss of indigenous biodiversity at a regional scale**;*
- b) the continued **functioning** of ecological processes;*
- c) the re-creation and **restoration** of habitats and **connectivity between habitats**;*
- d) supporting (**buffering and/or linking**) **ecosystems, habitats** and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;*
- e) providing **ecosystem services**.*
- f) the health and wellbeing of the Waikato River and its catchment;*
- g) contribution to **natural character** and amenity values;*

- h) *tāngata whenua relationships with indigenous biodiversity including their **holistic** view of ecosystems and the environment;*
- i) *managing the **density, range and viability** of indigenous **flora and fauna**; and*
- j) *the consideration and application of **biodiversity offsets***

5.56. In my view this is an aspirational policy, setting out what is to be achieved at a regional level including through biodiversity offsets.

5.57. Methods identified to implement this policy include maintaining or enhancing indigenous biodiversity, managing adverse effects on indigenous biodiversity, recognising activities that have minor adverse effects on indigenous biodiversity, and information gathering including a biodiversity inventory and threatened species information.

5.58. Method 11.1.1 does provide a useful checklist for the maintenance and enhancement of indigenous biodiversity:

*11.1.1 Maintain or enhance indigenous biodiversity*

- a) *providing for **positive indigenous biodiversity outcomes** when managing activities including **subdivision and land use change**;*
- b) ***having regard** to any **local indigenous biodiversity strategies** developed under Method 11.1.11; and*
- c) *creating **buffers, linkages and corridors** to **protect and support indigenous biodiversity values**, including esplanade reserves and esplanade strips to **maintain and enhance** indigenous biodiversity values.*

5.59. Method 11.1.3 is also of direct relevance to PC5 as it relates to how the effects management hierarchy will be applied to non-significant indigenous biodiversity.

*11.1.3 Avoidance, remediation, mitigation and offsetting (for indigenous biodiversity that is not significant) Regional and district plans:*

- a) *for non-significant indigenous vegetation and non-significant habitats of indigenous fauna (excluding activities pursuant to 11.1.4):*

- i) shall require that where loss or degradation of indigenous biodiversity is authorised adverse effects are **avoided, remedied or mitigated** (whether by onsite or offsite methods).
- ii) should promote biodiversity offsets as a means to **achieve no net loss** of indigenous biodiversity where significant residual adverse effects are **unable to be avoided, remedied or mitigated**.
- iii) when considering remediation, mitigation or offsetting, methods may include the following:
  - iv) **replacing the indigenous biodiversity that has been lost or degraded;**
  - v) replacing **like-for-like** habitats or ecosystems (including being of **at least equivalent size or ecological value**);
  - vi) the **legal and physical protection of existing habitat**;
  - vii) the re-creation of habitat; or
  - viii **replacing** habitats or ecosystems with indigenous biodiversity of **greater ecological value**.
- b) for significant indigenous vegetation and significant habitats of indigenous fauna Method 11.2.2 applies

5.60. Policy 11.2 is more focused, directing protection of significant indigenous vegetation and significant habitats of indigenous fauna:

*Policy 11.2 Protect significant indigenous vegetation and significant habitats of indigenous fauna<sup>22</sup>*

**Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.**

5.61. In respect of indigenous biodiversity the RPS indicates a clear preference for avoidance of adverse effects on significant natural areas and the characteristics that make that area “significant”. In my opinion it

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<sup>22</sup> Dr Bokrin and Ms Pryde consider the entire PSPA meets the RPS criteria for significance for bats.

is plainly intended that one such “characteristic” would be the threatened fauna that depend on that habitat.

5.62. The policies and methods, such as clauses c) to g) of Method 11.2.2 provide for circumstances where adverse effects cannot be avoided essentially by setting out the effects management hierarchy associated with biodiversity offsetting. This includes achieving a no net loss result, that offsetting may not be appropriate where rare, at risk, threatened or irreplaceable species are involved.

11.2.2 *Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna*

*Regional and district plans shall (excluding activities pursuant to 11.1.4):*

- a) *protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- b) *require that activities **avoid the loss or degradation** of areas of significant indigenous vegetation and significant habitats of indigenous fauna **in preference to remediation or mitigation**;*
- c) *require that any **unavoidable adverse effects** on areas of significant indigenous vegetation and significant habitats of indigenous **fauna are remedied or mitigated**;*
- d) *where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (b) and (c), more than minor residual adverse effects shall be offset to achieve **no net loss**; and*
- e) *ensure that remediation, mitigation or offsetting as a **first priority** relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or offsite methods). Methods may include the following:*
  - i) *replace **like-for-like** habitats or ecosystems (including being of at least **equivalent size** or **ecological value**);*
  - ii) *involve the re-creation of habitat;*
  - iii) *develop or enhance areas of alternative habitat supporting **similar ecology/significance**; or*

- iv) involve the **legal** and physical **protection of existing habitat**;
- f) recognise that remediation, mitigation and offsetting **may not be appropriate** where the **indigenous biodiversity** is rare, at risk, **threatened or irreplaceable**; and
- g) have regard to the **functional necessity** of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where **no reasonably practicable alternative location exists**.

5.63. As stated above the RPS omits a definition of offsetting despite continued reference to it. Offsetting in the RPS aims to achieve “no net loss” rather than a net biodiversity gain.

5.64. The RPS does offer a no net loss definition:

**No net loss** – Means no reasonably measurable overall reduction in the type, extent, long-term viability and functioning of indigenous biodiversity. When the term is applied in a policy context it has regard to the overall contribution of regulatory and non-regulatory methods as contained in local indigenous biodiversity strategies. It does not create a no adverse effects regime.

5.65. While the prime biodiversity issue, as already stated by way of reference to Part 2 is whether significant vegetation and the habitat of significant fauna are protected in PC5, a matter secondary to this but of no less consequence is the management of residual effects. Various methods to address residual effects are provided for in PC5 but in the expert opinion of Dr Corkery they all amount to a form of compensation.

5.66. Given the absence of any provisions for compensation in the RPS and the omission of a definition for offsetting there is a very real need for higher order policy guidance on the management of residual effects. I consider this is provided in the NPS-FM, a matter I will revisit later in my evidence.

5.67. In regard to whether the directive policies, such as 11.2, are given effect by PC5 I consider there is a need to reconcile the RPS policies and

methods that support greenfield development with the policies and methods setting out a strong preference for avoiding adverse effects on significant natural areas and the characteristics that make those areas significant, including long-tailed bats.

5.68. As they stand the PC5 provisions, in my opinion, do not resolve this tension.

5.69. I consider reconciling these policy directives requires consideration of the PC5 provisions to ensure adverse effects on significant natural areas and their characteristics, such as long-tailed bats can be avoided. Further, there is a clear need to determine how and under what circumstances mitigation, remediation, offsetting or compensation should be applied. My evidence will go on to do this by considering what the specific actual, potential and residual effects (relating to long-tailed bats) of development enabled in PC5 will be; how the provisions aim to address these; and what changes to provisions are needed, where they are found to be inadequate.

#### *Operative Hamilton City District Plan*

5.70. The ODP manages effects on indigenous biodiversity in Chapter 20 – Natural Environments. I note the provisions in this citywide chapter are currently under review under Plan Change 9 (**PC9**), which was notified 22 July 2022, with submissions closing 2 September 2022. Nonetheless the objectives and policies in Chapter 20 are the operative provisions for consideration and, in my opinion are to be well understood, to properly contextualise what is proposed in PC5 and whether it manages effects on biodiversity consistent with the wider ODP.

5.71. Of relevance are the provisions in Chapter 20 that in my reading direct protection, consistent with section 6(c), whether an area is mapped as an SNA or not (my emphasis in **bold**).

#### **Objective**

**20.2.1 - Significant Natural Areas are protected, maintained, restored and enhanced.**

**Policies**

20.2.1e - The reduction, fragmentation and isolation of indigenous ecosystems and habitats shall be **avoided**.

20.2.1f - The loss or disruption of corridors or connections linking indigenous ecosystems and habitat fragments shall be **avoided**.

20.2.1i - **avoid** loss/disruption of protective buffering of indigenous ecosystems

20.2.1j - **avoid** loss of ecosystem services

20.2.1k - **avoid** loss/damage/disruption to ecological processes

20.2.1n - The loss of habitat that **supports indigenous species** classified as **at risk** or **threatened** shall be avoided.

5.72. I note the absence of “significant’ or Significant Natural Area in all of these policies, indicating clearly that they apply everywhere significant vegetation and the habitat that supports indigenous fauna is found, whether mapped and scheduled as SNA or not.

5.73. In addition, there are various polices that apply directly to mapped SNAs, directing strong protection (my emphasis in **bold**):

**Policies**

20.2.1c - **protect** the particular values and characteristics of Significant Natural Area from adverse effects

20.2.1d Adverse effects of development on the City’s Significant Natural Areas shall be **avoided**.

20.2.1m on pest control within Significant Natural Areas

20.2.1o restore and enhance Significant Natural Areas

5.74. The meaning of avoid, set out by the Supreme Court<sup>23</sup> will be well known to the Panel and the other experts that have appeared before you. But it bears repeating given its continued appearance in provisions. It has the most obvious meaning of “not allow” or “prevent the occurrence of”, an outcome that is plainly directed in the Chapter 20 provisions.

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<sup>23</sup> *Environmental Defence Society v The New Zealand King Salmon Co Ltd*

- 5.75. As stated, PC9 is in an early phase, with submissions to be heard post PC5 hearing. Therefore, I see no certainty as to the approach that will be taken in those provisions. However, there is some value in contemplating the shape they take as notified.
- 5.76. Generally, there is a proposition to remove the avoidance directive from the policies applying outside of SNAs and apply the effects management hierarchy. To an extent the avoidance directive is retained for SNAs, although there are concessions allowing for effects minimisation in particular circumstances in these areas also.
- 5.77. In evaluating the provisions in PC5 against the ODP I consider there is an obvious disconnect between the avoidance directive expressed in the ODP and the broad application of the effects management hierarchy to all areas outside of SBHA in PC5.

## **6. ECOLOGY EFFECTS**

- 6.1. Any plan change needs to be explained and justified, including via the reporting required under section 32A and 42A of the Act.
- 6.2. In this case PC5 is accompanied by an extensive set of reports supporting an assessment of environmental effects. This assessment of effects and other information provided by the council is supplemented and added to by the expert evidence from submitters.
- 6.3. Of particular interest is the ecological evidence provided by the council, the Director-General and by other submitters.
- 6.4. My summary of some of this evidence is that there is significant uncertainty as to the existing environment in the PSPA in terms of its overall importance as habitat for long-tailed bats. If the evidence Dr Borkin and Ms Pryde is preferred three ecological matters are clear:
- a) Long-tailed bats have a large home range, likely encompassing a significant portion, or all of the PSPA<sup>24</sup>

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<sup>24</sup> Dr Kerry Borkin, Statement of Evidence, Bat Ecology and Effects, dated 16 September 2022. Paragraphs to 7.3 – 7.4.

- b) Long-tailed bats are loyal to roost sites, meaning the removal of roost trees is likely to be significant and adverse
  
- c) Bats are intolerant to many of the concomitant effects of urbanisation such as:
  - I. Artificial Lighting
  - II. Increased predation
  - III. Noise
  - IV. Intersection of foraging and commuting habitat by roads, buildings and other structures, and
  - V. The general loss of habitat

6.5. In my opinion the implications of this in terms of the policy directive for protection of significant habitat is that any PC5 provisions designed to address adverse effects on bats and their habitat must exercise due caution.

6.6. Dr Borkin and Ms Pryde set out the various ‘unknowns’ in regard to the ecological characteristics of the PSPA. Having reviewed the evidence of Kessel’s et al<sup>25</sup> and the ecology experts engaged by the Director-General it appears common ground that there is an incomplete knowledge of the existing environment. I note the following passage in Attachment 1 to the evidence of Mr Kessels:

*However, ecological knowledge of the PSPA is incomplete. Planning mechanisms need to acknowledge and account for incomplete scientific knowledge and incorporation of new information which may alter the results of the ecological significant analysis presented in this report and the supporting technical ecology reports.*

6.7. The evidence of Dr Baber<sup>26</sup> refers to the level of residual adverse effect on the local [south Hamilton] population of long-tailed bats i.e. effects not avoided, remedied or mitigated, to be “very high”. In the opinion of Dr

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<sup>25</sup> Kessels GHA 2022 Statement of Evidence of Gerardus Henricus Anthonius Kessels (Ecology) in the matter of Proposed Plan Change 5 to the Operative Hamilton City District Plan. Attachment 1.

<sup>26</sup> Dr Mathew Baber, Statement of Evidence, PC5, Offsetting/Compensation. Paragraph 29(a).

Corkery this indicates a gap in the management of effects, leaving too much to offsetting or compensation where the impact on threatened indigenous biodiversity is likely to result in significant, non-transient and potentially irreversible adverse effects.

- 6.8. In my opinion this creates a significant hurdle for the provisions as recommended by the s42a report in giving effect to RPS Policy 11.2, taking account of its preference for avoidance of significant adverse effects.
- 6.9. My view is that due caution should be taken in the design of provisions in PC5 where there is scientific and technical uncertainty and where the effects on threatened species are potentially significant.
- 6.10. Regarding the management of more than minor residual effects Dr Corkery has raised concerns in her evidence with the applicability of the terms 'no net loss' and 'net gain' where those matters cannot be demonstrated. Her opinion is that attainment of 'no net loss' or 'net gain' must be able to be demonstrated in a measurable way and is only applicable to a biodiversity offset which accords to specified principles. She considers the effects management approach proposed comprises environmental compensation rather than a biodiversity offset. Further, she considers the proposed method for determining the quantum for any biodiversity compensation to be fundamentally flawed and not fit for its purpose. Dr Corkery considers compensation to be generally inappropriate in the case of a nationally critical, threatened species reserving its usefulness to the "last resort".
- 6.11. In my opinion the analysis of Dr Corkery accords with the NPS-FM interpretation of the effects management hierarchy, offsetting and compensation. I concur with Dr Corkery's view that there is need for the inclusion of clear principles for biodiversity offsetting and compensation in PC5. My proposed amendments reflect this.

*Proposed measures to avoid, remedy and mitigate*

- 6.12. There is a focus in PC5 as proposed on largely using corridors or areas currently identified as SBHA and/or zoned Natural Open Space (**NOSZ**)

to avoid, remedy, mitigate and off-set or compensate (although not in that order) for the effects of development on 'identified significant bat habitat areas' and non-identified low to moderate habitat values within the Medium Density Residential Zone.

- 6.13. This means that in the majority of the PSPA effects of development such as lighting, noise, traffic, or an increase in predators including cats, are not required to be avoided or mitigated.
- 6.14. Such a framework places a heavy reliance on the choice of corridors and their widths being sufficient to address actual and potential adverse effects.
- 6.15. If the evidence of Dr Borkin and Kessels is preferred the starting point for the design of corridors, without bespoke measures to minimise effects on bats, is a minimum width of 100m.
- 6.16. Kessels et al<sup>27</sup> move from the 100m minimum in to recommending a minimum width of 50m on the basis of the width that appears to provide for the movement of bats in Sandford Park and the bespoke measures recommended.
- 6.17. In the opinion of Dr Borkin and Ms Pryde both of these reasons are flawed. They maintain a minimum 100m wide corridor will still be required, as outlined by Ms Pryde<sup>28</sup>:

*Mr Kessels in paragraph 29 notes that 100 m is the minimum width to maintain the use of the gullies<sup>78</sup> without bespoke design. I agree with this, but Mr Kessels then goes onto say that the reason they chose 50 m was because the Sandford Park roosts are close to the vegetated areas and are still functional. I have mapped these roosts (Figure 5). As can be seen from the map the roosts are associated with a gully system. The width of the corridor varies from 270 m to ~30 m. The roosts however are associated with the wider corridors of at least 100 m. There are houses nearby but there are also dark gullies. Given the*

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<sup>27</sup> Attachment 1 to the evidence of Dr Kessels

<sup>28</sup> Statement of evidence of Pryde MA dated 16 September 2022, at paragraph 9.1.

*uncertainty of the ability of this colony of bats to survive it would be prudent to maintain corridor widths of at least 100 m.*

6.18. Aside from the comparison that Kessel's et al. make between the proposed gullies and the width of Sandford Park, Pryde and Borkin also consider the proffered measures to minimise and remedy the adverse effects of development on bat habitat do not go far enough, leaving uncertainty as to whether they will be fit for purpose at all. This, to some extent, will be best addressed by a sufficiently wide corridor as stated by the Director-General's experts.

#### *Lighting*

6.19. Attachment 1 to Kessels' evidence supports "*applying best design principals to reduce artificial lighting glare from street and car headlights*".

6.20. In addition, in Ms Mander's expert opinion, other lighting matters such as luminous intensity, luminance, low-reflectance surfaces, light trespass from windows, shielding from headlamps, and flicker should also be considered in PC5, as she considers this would be good practice. Presently, these matters are not addressed. I support Ms Mander's conclusion but reserve any amendments to provisions until I have heard the verbal statements of the relevant experts at the hearing.

6.21. In terms of more general planning considerations, I am unclear as to the necessity of the additions: "*while maintaining safety on adjoining properties*" and the similar "*while also achieving a safe public realm for the community*" to the provisions in 25.6.2.2a and 25.6.2.2b respectively.

6.22. I consider these are unnecessary provided the lighting standards that implement these provisions promote a best practice outcome as supported in the evidence of Ms Mander.

6.23. Nevertheless, If the Panel is minded to include these qualifiers I consider the terms "safety on adjoining properties" and "safe public realm public" will need to be defined in accordance with expert evidence.

6.24. As they stand their meaning is unclear with the result that they either provide no planning purpose or create significant uncertainty. Given this ambiguity I recommend these qualifiers be deleted.

*Proportion of bat habitat retained*

6.25. As discussed, approximately 128 ha<sup>29</sup> of the PSPA, has been identified as high value bat habitat. Ms Pryde identifies 15.6 ha which is covered by the designated corridor for the Southern Links alignment<sup>30</sup>. In the opinion of Ms Pryde, the presence of this road will result in an impediment to the connectivity of the SBHAs and corridors. She notes there is an intent to mitigate this by providing “hop-overs”. Ms Pryde et al point out that hop overs are largely experimental and require site specific base line monitoring to establish the existing flight path of the bats so as to be created in that path, for the hop overs to stand a chance of success. There is no certainty that this work would occur in the recommended provisions.

6.26. For these reasons, among others, it is the opinion of Dr Borkin and Ms Pryde that the quantum of bat habitat to be protected in the proposed provisions is inadequate to secure its functionality as urbanisation occurs.

## **7. AMENDMENTS TO PROVISIONS**

7.1. Taking into account my concerns about aspects of the recommended approach to section 6(c) matters, I consider that amendments to the proposed Plan’s objectives, policies rules, assessment criteria and information requirements are necessary in order to recognise and provide for the protection of significant habitat and give effect to the RPS.

*Amendments in response to: Submission point 38.2, 38.27*

7.2. In their Dr Borkin and Ms Pryde discuss the impact of cats, both feral and domestic on long-tailed bats. They also consider the potential impact of the proliferation of domestic cats, resulting from the urbanisation anticipated in PC5.

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<sup>29</sup> Statement of evidence of Pryde MA dated 16 September 2022, at paragraph 9.7.

<sup>30</sup> Hamilton City Council roading designation A106 (Peacocke Southern Link)

- 7.3. In reviewing the supporting technical reports and evidence of the relevant council experts there appears to be no dispute that cats and other pests could have a significant impact on the south Hamilton long-tailed bat population.
- 7.4. The s42A planners' response to submission point 38.2 is that its intent is supported but the proffered mechanism is impractical on the grounds that it would be unenforceable. I agree to an extent. I consider it is necessary that the plan include a policy directing domestics cats and other predators be controlled through resource consent conditions. Further, it is my opinion that the mechanism for achieving this outcome be made explicit in assessment criteria for subdivision.
- 7.5. In my opinion a new policy is needed to provide for Objective DEV01-PSP08. Without a policy dealing specifically with predators the plan is silent, assessment criteria excepted, on predator control. This is concerning as predator control is, in the opinion of Dr Borkin and Ms Pryde critical to achieving the DEV01-PSP08 and therefore implementing Policy 11.2 of the RPS. Secondly, it is needed to provide for the intended approach to controlling predators in P5 which in my view should be more specific than a general "measures to control pests clause". Further, this policy would form a part of the s104D(1)(b) "gateway test", providing another tool for council to assess the extent to which an application controls predators, including in relation to biodiversity enhancement, when assessing non-complying activities. I suggest a new policy and amendments to the P5 assessment criteria as below:

[x.x.x Policy – In order to protect and enhance areas of significant habitat of indigenous fauna and significant indigenous vegetation:](#)

[Cats, and other pests, are not introduced into the Peacocke Structure Plan Area.](#)

- 7.6. Ensuring rules recognise and provide for the protection required under section 6(c) of the Act is more complex.

- 7.7. It is straight forward for any discretionary or non-complying activities as any relevant resource management matter can be considered when a decision is made on any such application.
- 7.8. For controlled and restricted discretionary activities, effects on indigenous biodiversity generally, and on the values and attributes of areas of significant indigenous vegetation and significant habitats of indigenous fauna cannot be considered unless these are matters identified as a matter of control or discretion. As greenfield subdivision in PC5 will generally be a restricted discretionary activity this is of relevance. In respect to the Director's relief, I agree with the reporting planners that a separate rule dealing specifically with cats is not required. Any application to subdivide land as a restricted discretionary activity or above will be assessed against the assessment criteria in P5.

*x) The extent to which measures for ~~control~~ prohibition of cats and other pests-mustelids has been addressed and the effectiveness of measures proposed, including their implementation and ongoing monitoring. This includes the estimated timing for completion of animal pest control measures and the anticipated ecological enhancement outcomes following implementation of the animal pest control measures. This includes whether the application details the means through which the ~~control~~ prohibition of cats mustelids and other pests within the application site will be carried out, including, at minimum, a proposed condition of consent stating that no cats or mustelids shall be kept on any residential lots created through subdivision due to their potential to be predators of the long-tailed bat and a separate condition requiring the registration of consent notices pursuant to section 221 of the Resource Management Act 1991 on records of title for new residential lots ~~properties~~ with wording to the same effect. ~~created through subdivision.~~*

- 7.9. The introduction of a directive policy to support clear assessment criteria for pest control in subdivision applications clarifies for the developer exactly what the mechanism and intended outcome is. That is, cats are effectively banned from new subdivisions through conditions of consent and consent notices.

7.10. Requiring conditions<sup>31</sup> for the cat ban to be complied with on an ongoing basis is necessary to enable the consent notice mechanism to be used.<sup>32</sup> The consent notice mechanism will ensure that the cat ban is noted against the title for each new lot that is created. Council have flagged the potential difficulty in enforcing a cat ban. My proposed assessment criteria is that the cat ban will support the required pest control initiatives in the PSPA in that it would mean the owners of cats would not be able to complain if their cats are killed or injured for example through other enhancement initiatives. It is also consistent with the Environment Court's view in *Weston Lea Ltd, Director-General of Conservation v Hamilton City Council*:

*[108] The owners of cats would not be able to complain in the event that the predation controls installed killed or targeted cats. Moreover, the Courts experience with other conditions of this type is that they are essentially self-policed by the residents who take ownership of the conditions and bring pressure to bear on the other parties for compliance.<sup>33</sup>*

## **8. AMENDMENTS TO RULES, ASSESSMENT CRITERIA AND INFORMATION REQUIREMENTS**

*Submission Point 38.46 SUB – PREC1-PSP:RULES – Activity Status*

### *25.2.5.2 Vegetation Clearance in the Peacocke Structure Plan Area*

8.1. The reporting planners have identified Rule 25.2.5.2 Vegetation Clearance as a key recommendation in addressing the Director-General's relief and generally enhancing the statutory effectiveness of the provisions. I agree this rule is helpful. Its main purpose is to provide for assessment of vegetation across the PSPA, in order manage effects of development on potential roosting sites. As stated by the reporting planners, where such vegetation (trees >15cm DBH, 1.4m in height) is

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<sup>31</sup> It is noted that conditions of consent can be enforced by private individuals and organisations other than the territorial authority through enforcement orders, for example, whereas Consent Notices cannot.

<sup>32</sup> See section 221 of the Resource Management Act 1991.

<sup>33</sup> *Weston Lea Ltd, Director-General of Conservation v Hamilton Council*. Interim Decision. Paragraph 38

to be removed the activity will be managed in accordance with the assessment criteria in P3.

- 8.2. In my opinion the assessment criteria in P3 need a significant rewrite if they are to recognise and provide for the protection of significant habitat.
- 8.3. I propose the following changes to the rule itself and to the assessment criteria in P3:

*25.2.5.2 Vegetation Clearance in the Peacocke Structure Plan Area*

*a) No removal of trees or vegetation within the Peacocke Structure Plan Area with a diameter of more than 150mm measured at 1.4m in height above ground level, unless:*

- i. ~~It is in conjunction with works~~ ~~a~~ Authorised by ~~an associated~~ subdivision consent; or*
- ii. ~~It is associated with works~~ ~~a~~ Authorised by an existing resource consent; or*
- iii. A report is provided by a suitably qualified ecologist demonstrating that following an assessment of the tree that the tree is not an existing bat roost tree and there is low potential for the tree to be used as habitat for long-tailed bats, and*
- iv. That the above report is provided to Hamilton City Council prior to the removal of the tree(s).*

*Director - General's Submission Points 38.3 – 38.10*

*1.3.3 Restricted Discretionary, Discretionary and Non-Complying Assessment Criteria*

*P3 Development in the Peacocke Precinct*

*e) The extent to which the required Bat Management Plan enables long-tailed bats to thrive by:*

i. Protecting roosting sites within Significant Bat Habitat Areas

ii. Identifying and protecting additional roost sites throughout the Peacocke Structure Plan Area

iii. To protect the Significant Bat Habitat Areas by avoiding adverse effects on the function of the habitat, in terms of commuting and foraging

iv. Providing a full range and extent of vegetation types, including linear features and mature trees, for the long-tailed bat and other fauna.

v. Avoiding injury/mortality of roosting long-tailed bats during any vegetation removal

The extent to which development is designed to respond to ecological corridors and habitat, and ensures they protect and maintain the ecological function of these corridors; including the management of lighting and building location.

x) The extent to which lighting has been designed and located to maintain the function and quality of long-tailed bat habitat.

~~x) The extent to which the proposal measures to avoid, remedies, and mitigates, off-sets or and compensates for the effects of development on identified Significant Bat Habitat Areas and avoid, remedy, mitigate the effects of development on non-identified low to moderate habitat values within the Medium Density Residential Zone, through the provision have been sequentially exhausted.~~

x) The extent to which the proposal offsets the residual effects of development to a net gain outcome, in accordance with the with Appendix 1.2.2.2x

x) Where offsetting has been demonstrated to be not achievable, the extent to which the proposal compensates for the residual effects of development in accordance with Appendix 1.2.2.2x

x) The extent to which the location of cycleway/walkways are located and designed to avoid the removal of trees and vegetation that may be bat roosts or bat habitat, especially within Significant

Bat Habitat Areas. Where this is not possible a Bat Management Plan is required. Department of Conservation's 'Protocols for Minimising the Risk of Felling Bat Roosts' should must be adhered to, to minimise the risk of roost trees being removed to bats during the removal of potential roost trees.

l) The extent to which transport corridors are located and designed to avoid or minimise effects of roadside lights and vehicle headlights on nearby Significant Bat Habitat Areas, and the bat population within that area. Where transport corridors are proposed within Significant Bat Habitat Areas, they should take the shortest route practicable, be aligned and designed to minimise the number of existing trees that are required to be removed, ensure street lighting is designed to ensure that the Significant Bat Habitat Areas maintains its their role and function, and is designed to enable bats to continue to access the wider corridor.

m) The extent to which bat-sensitive street lighting and planted buffer areas have been designed and will be implemented through the consent, where adjacent to or crossing a Significant Bat Habitat Area, to minimise the spill of light into Significant Bat Habitat Areas. Bat-sensitive transport corridor lighting design should be prepared by a suitably qualified and experienced technical lighting specialist in collaboration with a suitably experienced bat ecologist and be sufficiently detailed to enable an assessment of the extent of effect on the long-tailed bat habitat within the application site and immediate environs.

n) The extent to which measures for pest control and the prohibition of cats has been addressed and the effectiveness of the measures proposed, including their implementation and ongoing monitoring. This includes the estimated timing for completion of animal pest control measures and the anticipated ecological enhancement outcomes following implementation of the animal pest control measures.

p) The extent to which an ecological assessment has been carried out that has identified that a financial contribution is required to offset the potential adverse effects on the long-tailed bat population

as a result of the application, through loss of low to moderate long-tailed bat habitat values within the application site, and where those habitat values cannot be restored or replaced within the application site. Where the adverse effect of the loss of those values cannot be offset through habitat restoration and enhancement measures within the site, the purpose of financial contributions shall be to enable Council to undertake habitat enhancement works in a coordinated manner outside the application site.

Advisory Note: Council will investigate and seek to implement a Peacocke Structure Plan Area wide animal pest control programme, in collaboration with other key stakeholders, particularly those with statutory obligations to protect long-tailed bats, such as the Department of Conservation and Waikato Regional Council. The programme will target the key animal pests of long-tailed bats in urban areas and include measures to prohibit the widespread introduction of domestic cats as urbanisation occurs.

- 8.4. The major issue with the assessment criteria in P3 is that they do not restrict council's discretion to assessing the effectiveness of the Bat Management Plan against a clear objective<sup>34</sup>. This is a serious omission as it potentially limits the extent to which the BMP may be assessed or required in the case of a restricted discretionary application, as is intended if the standards in 25.2.5.2 are breached.
- 8.5. The other fault I have identified is their improper application of the effects management hierarchy. Dr Corkery comments on this in detail in her evidence<sup>35</sup>. In my opinion the proposed matters of discretion miss their mark on several points, being:
- a) they do not give council discretion to assess the extent to which a genuine attempt to avoid the loss of significant habitat has been exhausted as is the strong preference of the higher order planning framework.

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<sup>35</sup> Dr Ilse Corkery, Statement of Evidence, PC5 , Biodiversity Offsetting, dated 16 September 2022

- b) they allow for recourse directly to the compensation stage without demonstrating sequentially whether mitigation, and remediation of effects can occur, or whether offsetting of residual effects is appropriate, and
- c) they do not link the requirement to offset or compensate to ‘best practice’ set out in clear principles. My amendments require an application to demonstrate that each step in the effects management hierarchy has been sequentially exhausted, that it is made clear that biodiversity offsetting is the preference to compensation and must adhere to clear principles<sup>36</sup>.

8.6. My recommended changes to the assessment criteria in P5 generally address the same issues as amended in P3 along with the predator ban, already discussed. As such I do not repeat my discussion of them where they overlap. Again, the prime issue is with the corresponding management plan, in that the assessment criteria in P5 do not make specific reference to the Enhancement Remediation Management Plan (**ERMP**), potentially allowing a restricted discretionary subdivision to proceed without council fully assessing or requiring an ERMP.

8.7. My amendments are set out below:

*P5 Subdivision in the Peacocks Structure Plan*

~~g) The extent to which subdivision has been designed to manage the effects of development and subdivision on the role and function of Significant Bat Habitat Areas.~~

~~r) The extent to which the proposal mitigates or off-sets the effects of development on Significant Bat Habitat Areas through the provision and enhancement of ecological corridors.~~

~~x) The extent to which the proposal achieves the objective of the required ERMP to measurably enhance the values and~~

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<sup>36</sup> Paragraph 7.3 (a) – (k) and Paragraph 9.3 (a) – (m) in Dr Ilse Corkery, Statement of Evidence, PC5 , Biodiversity Offsetting, dated 16 September 2022, these are intended to form a new section of Appendix 1.2

attributes of terrestrial and aquatic ecology within significant bat habitat areas and other areas by:

- vi. Design and implementation of monitoring to determine the ecological significance of any freshwater and terrestrial ecological values, including aquatic biota, wetlands in accordance with NES-FW natural wetland protocols, indigenous birds, indigenous lizards, and long-tailed bats.
- vii. Protecting the Significant Bat Habitat Areas by avoiding adverse effects on the function of the habitat, in terms of commuting, and foraging
- viii. Providing the values and attributes of bat habitat within Significant Bat Habitat Areas, including by providing a full range and extent of vegetation types, including linear features and mature trees, for the long-tailed bat and other fauna

x) The extent to which the proposal measures to avoids, remedies, and mitigates, off-sets or and compensates for the effects of development on identified Significant Bat Habitat Areas and non-identified low to moderate habitat values within the Medium Density Residential Zone, through the provision have been sequentially exhausted.

x) The extent to which the proposal offsets the residual effects of development on Significant Bat Habitat Areas and other areas of habitat to a net gain outcome, in accordance with Appendix 1.2.2.2x

x) Where offsetting has been demonstrated to be not achievable, the extent to which the proposal compensates for the residual effects of development on Significant Bat Habitat Areas and other habitat in accordance with appendix 1.2.2.2x .

x) The extent to which the location of cycleway/walkways are located and designed to avoid the removal of trees and vegetation that may be bat roosts or bat habitat, especially within Significant Bat Habitat Areas. Where this is not possible then the

Department of Conservation's 'Protocols for Minimising the Risk of Felling Bat Roosts', version 2, dated 2 October 2021 (or any subsequent version) should be adhered to, to minimise the risk to bats during the removal of potential roost trees.

~~x) The extent to which an ecological assessment has been carried out that has identified that a financial contribution is required to offset the potential adverse effects on the long-tailed bat population as a result of the application, through loss of low to moderate long-tailed bat habitat values within the application site, and where those habitat values cannot be restored or replaced within the application site. Where the adverse effect of the loss of those values cannot be offset through habitat restoration and enhancement measures within the site, the purpose of financial contributions shall be to enable Council to undertake habitat enhancement works in a coordinated manner outside the application site.~~

~~x) The extent to which measures for pest control and the ~~control~~ prohibition of cats and other pests ~~mustelids~~ has been addressed and the effectiveness of measures proposed, including their implementation and ongoing monitoring. This includes the estimated timing for completion of animal pest control measures and the anticipated ecological enhancement outcomes following implementation of the animal pest control measures. This includes whether the application details the means through which the ~~control~~ prohibition of cats ~~mustelids~~ and other pests within the application site will be carried out, including, at minimum, a proposed condition of consent stating that no cats or mustelids shall be kept on any residential lots created through subdivision due to their potential to be predators of the long-tailed bat and a separate condition requiring the registration ~~ring~~ of consent notices pursuant to section 221 of the Resource Management Act 1991 on records of title for new residential lots ~~properties with~~ wording to the same effect. ~~created through subdivision.~~~~

Advisory Note: Council will investigate and seek to implement a Peacocke Structure Plan Area wide animal pest control

programme, in collaboration with other key stakeholders, particularly those with statutory obligations to protect long-tailed bats, such as the Department of Conservation and Waikato Regional Council. The programme will target the key animal pests of long-tailed bats in urban areas and include measures to prohibit the widespread introduction of domestic cats as urbanisation occurs.

*Amendments in response to: Director-General's submission point 38.3*

*Director-General's further submission (FS013) in opposition to submission point 46.3*

- 8.8. As stated in paragraphs 6.15 – 6.18 of my evidence the expert opinion of the council and Director-General's ecologists is that 100m is the appropriate width, absent measures to avoid, remedy or mitigate adverse effects on long-tailed bats.
- 8.9. If the evidence of Dr Borkin and Ms Pryde is preferred these measures as recommended by the reporting planners are inadequate to manage adverse effects on long-tailed bats and the reasons for reducing the corridor width to 50m are not robust. In my view there is a strong evidential basis, in respect to managing ecological effects, for retaining the minimum width of 100m.
- 8.10. In terms of planning basis, I consider there are two fundamental considerations, specifically (a) will the 100m width better recognise and provide for significant habitat as required in section 6(c) and down through Policy 11.2 of the RPS? And (b) is the loss of developable land resulting from the increased width needed to accommodate the section 6(c) qualifying matter under s77I of the HSAA and considering subpart 6, 3.33 of the NPS-UD?
- 8.11. In my view the questions are inextricably linked with the answer to one leading to the other. Again, the evidence supporting the 100m, from an ecology perspective, appears to be that 100m is the appropriate width to provide for the functionality of the SBHAs, and support the corridors themselves as commuting and foraging habitat.

8.12. Dr Borkin and Ms Pryde consider that if the functionality of the SBHA is lost so is its significance and so ultimately may the threatened fauna (bats) that make it significant be lost. Insofar as the expert evidence informs me that the 100m corridor width is necessary for the functionality of this habitat I consider corridors with a minimum 100m width are necessary to recognise and provide for the protection of significant habitat in accordance with Section 6(c) and give effect to WRPS Policy 11.2.

8.13. In respect to the HSAA I consider that expanding the corridor width by an additional 50m is necessary to accommodate section 6(c) as a qualifying matter. In support of this I have assessed the additional 50m width against NPS-UD subpart 6 clause (3.33):

**3.33 Requirements if qualifying matter applies**

*The evaluation report prepared under section 32 of the Act in relation to the proposed amendment must: demonstrate why the territorial authority considers that:*

- (i) the area is subject to a qualifying matter; and*
- (ii) the qualifying matter is incompatible with the level of development directed by Policy 3 for that area; and assess the impact that limiting development capacity, building height or density (as relevant) will have on the provision of development capacity; and assess the costs and broader impacts of imposing those limits. A matter is not a qualifying matter under clause 3.32(1)(h) in relation to an area unless the evaluation report also: identifies the specific characteristic that makes the level of development directed by Policy 3 inappropriate in the area, and justifies why that is inappropriate in light of the national significance of urban development and the objectives of this National Policy Statement; and includes a site-specific analysis that:*

- (i) identifies the site to which the matter relates; and*

The Peacocke Structure Plan Area.

- (ii) evaluates the specific characteristics on a site-specific basis to determine the spatial extent where intensification needs to be compatible with the specific matter; and*

8.14. The presence of long-tailed bats, their use of certain communal and maternal roost sites and their need to commute and forage within the Peacocke Structure Plan Areas is well documented by the ecological evidence and the technical reports that support PC5. The other expert planning evidence that I have reviewed concurs with my own view that section 6(c) is a qualifying matter. The spatial extent of where intensification needs to be compatible with the specific matter is 50m width to be added to all corridors identified on the “Land Use” Map, in Appendix 2 Structure Plans<sup>37</sup> to direct that where subdivision includes areas that are identified as Bat Corridors, they are designed to be a minimum width of 100m. As this additional width will be NOSZ no development intensification will occur in this corridor.

***(iii) evaluates an appropriate range of options to achieve the greatest heights and densities directed by Policy 3, while managing the specific characteristics.***

8.15. The proposed Medium Density Residential Zone, Increased Height Overlay and other intensification tools proposed in PC5 will achieve the greatest heights and densities, while managing the specific characteristics.

*SUB – PREC1-PSP: R24 Provision of Ecological Areas*

*1) Where subdivision includes areas identified as Bat Corridors a Significant Bat Habitat Area, these shall be provided as Local Purpose (Ecological/Esplanade) Reserve or Local Purpose (Esplanade) Reserve and vested in Council, in accordance with the Peacocke Structure Plan and be designed to meet the following requirements:*

*a) Maintain a minimum width of ~~50m~~ 100m*

*Amendments in response to: Director-General’s submission point 38.37*

*Director-General’s Further submission (FS013) in support of submission point 30.30*

*25.6.2.2 Lighting in the Peacocke Structure Plan that does not meet the requirements of 25.2.5.2 – RD*

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<sup>37</sup> Appendix 2 Structure Plan PC5 as notified

8.16. The reasons for my recommended changes to the lighting provisions are discussed in paragraphs 6.19 - 6.24 of my evidence. My amendments are as follows:

25.6.2.2a Manage light spill and glare of fixed lighting at the boundary of the Significant Bat Habitat Area to ensure that the useability of long-tailed bat habitat is maintained. ~~while maintaining safety on adjoining properties.~~

25.6.2.2b Ensure that fixed lighting in public spaces, such as parks and road corridors is designed to minimise the effects of lighting and glare on Significant Bat Habitat Area. ~~while also achieving a safe public realm for the community~~

*Amendments in response to: Director-General's submission point 38.37*

*25.6.4.4 Peacocke Medium Density Zone: Peacocke Precinct*

8.17. I have addressed the proposed lighting standards in paragraphs 6.19 - 6.24 of my evidence. Given the technical uncertainty in regard to this matter I reserve my position on the need for amendments until I have heard the verbal submissions of the relevant experts at the hearing. To assist the Panel I identify some areas for further consideration in **yellow**, with the exception of defining security lighting in clause b as the proposed standard has an independent subclause clause (iv) I consider it helpful to clarify that artificial outdoor lighting shall include security lights, which I infer to be the intent of Mr Mckensey. I also suggest, as a drafting note, that as the above provisions (25.6.2.2a and 25.6.2.2b) make specific reference to the management of glare, that these performance standards should address glare.

a) Lighting shall not exceed 0.3 lux (horizontal and vertical) when measured at the external boundary of the Significant Bat Habitat Area.

b) **Added illuminance** from artificial outdoor lighting shall not exceed 0.3 lux (horizontal and vertical) at any height at the external boundary of the Significant Bat Habitat Area (SBHA).

c) Artificial outdoor lighting. shall be fixed artificial outdoor lighting. ~~including security lights.~~-Lighting attached to a vehicle is not considered to be fixed.

d) Artificial outdoor lighting on land adjoining a SBHA, including land immediately on the opposite side of a road which adjoins a SBHA, must;

i) Emit zero direct upward light.

ii) Be installed with the light emitting surface facing directly down and be mounted as low as practical.

iii) Be white LED a maximum colour temperature of;

• 3000k on land with a residential use where separated from a SBHA by a public road with maximum 2700K lighting

• 2700k for land with any residential use directly abutting a SBHA

• 2700K for all other uses

iv) In the case of exterior security lighting, be controlled by a motion sensor with a short duration timer (5 minutes).

b) Artificial outdoor lighting within a SBHA is only permitted for the express use of providing emergency lighting for an essential public service that could require unavoidable maintenance at night – e.g. a waste water pumping station. The lighting must be white LED with a maximum 2700K colour temperature, installed with the light emitting surface facing directly down, emit zero direct upward light and be mounted as low as practical.

Advisory Notes:

1. The term 'Added Illuminance' means illuminance added by artificial outdoor lighting that is therefore additional to illuminance present from natural ambient lighting. The Ambient Illuminance should be measured at a nearby proxy location on the same night and for the same sky conditions (clouds, weather, etc). The proxy location must have an unobstructed view of the sky, sufficient to ensure that the measurement is not affected. The Added Illuminance may then be determined by subtracting the Ambient Illuminance from the Measured Illuminance.

2. Any illuminance meter must be recently calibrated by a suitably accredited laboratory. The calibration should consider the spectral response and the meter must accurately read to 0.1 lux.

*Amendments in response to Director-General's submission point: 38.3, 38.8 and 38.7*

*Information Requirements – Management Plans*

*1.2.2.25 Ecological Rehabilitation and Management Plans Peacocke Structure Plan*

8.18. My prime amendment to proposed ERMP is the addition of an objective, clearly setting out what is to be achieved so council have a yard stick by which to measure the ERMP's effectiveness. This is best practice for design of management plans that are introduced by conditions of consent and fundamental to achieving effective adaptive management. In my opinion, if a condition is to provide for some change in a limit or threshold, for example in establishing an adaptive management framework, then the basis on which changes may be made and the limits of such changes should be explicitly set out in the conditions. Conditions setting out the outcomes to be achieved or the purpose to be pursued should be in stand-alone conditions.

8.19. In the plan context I consider a rule or assessment criteria to be roughly equivalent to a condition. As such I have added the ERMP objective to the assessment criteria in P3 and P5, I also recommend setting it out at the start of the management plan. In my opinion a management plan must be subject to an objective for the consent holder and council to refer back to in measuring compliance with the plan.

8.20. An issue addressed in the evidence of Kessels et al<sup>38</sup> is the suitability of the proposed land area threshold for the ERMP. The ecological evidence indicates a reduction in the threshold to 0.5 ha is appropriate<sup>39</sup>. In terms of planning basis, I consider the 0.5 ha achieves the appropriate balance between capturing as many subdivision applications as possible while retaining the efficiency of the ERMP as it will still be implemented over (relatively) large lots that are likely to encompass most of the values the ERMP is set up to address. A smaller, or no threshold scenario would require an ERMP on lots that have few or none of the values it aims to restore, imposing an onerous requirement on plan users for limited ecological benefit.

8.21. The Panel will note I have highlighted the Indigenous Fish Management Plan (IFMP) **yellow**. The issue with the IFMP is that, as proposed, there is no defined objective for this management plan. In my opinion this is inconsistent with good practice. I recommend separating out the IFMP and giving it an objective in principle. That said, freshwater ecology is not my area of expertise, so I will reserve any amendments to the IFMP and consequential amendments to the ERMP and assessment criteria until I have seen the rebuttal evidence/heard the verbal statements of the relevant experts at the hearing.

All subdivision applications within the Peacocke Structure Plan adjoining or including any natural open space zone—or for fee simple subdivision in the Medium Density Residential Zone involving more than two hectares 5,000m<sup>2</sup> of land shall include, as part of the resource consent application, an Ecological Assessment and Rehabilitation Management Plan (ERMP).

The objective of the ERMP is to enhance the values and attributes of terrestrial and aquatic ecology within significant bat habitat areas and other areas of natural open space by:

ix. Design and implementation for of monitoring to determine the and assessment of ecological significance

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<sup>38</sup> That is, the evidence of Mr Kessels, Mr Barber and Ms Mueller

<sup>39</sup> "Updated PC5 provisions require an ecological management and restoration plan prepared by a suitably qualified ecologist for subdivisions greater than 2 ha. We recommend that from an ecological perspective, this area threshold triggering a subdivision consent requirement in relation to ecological matters needs to be set to encompass as many subdivision consent applications within the PSPA as practical to ensure the majority of potential ecological."

of any freshwater and terrestrial ecological values, including aquatic biota, wetlands in accordance with NES-FW natural wetland protocols, indigenous birds, indigenous lizards and long-tailed bats.

- x. Protecting the Significant Bat Habitat Areas by avoiding adverse effects on the function of the habitat, in terms of commuting, and foraging.
- xi. Enhancing the values and attributes of bat habitat within Significant Bat Habitat Areas, including by providing a full range and extent of vegetation types, including linear features and mature trees, for the long-tailed bat and other fauna

The ERMP will include:

- i. Measures to avoid, remedy, and mitigate, offset or compensate for any significant adverse effects on habitats of indigenous fauna including birds, lizards and long-tailed bats and their habitats.
- ii. An indigenous fish management plan for any stream or wetland habitat within the site, including a summary of fish habitat and species present, a summary of planned works, permitting requirements, procedures for dealing with pest fish, biosecurity protocols, timing of works, procedures for recovering indigenous fish prior to and during works, roles and responsibilities of parties, reporting requirements and any specific mitigation measures
- iii. Measures to remedy and mitigate other adverse effects on habitat of indigenous fauna including birds, lizards and long-tailed bats and their habitats.
- iv. Where residual effects remain for indigenous fauna including birds, lizards and long-tailed bats and their habitats, provide a biodiversity offset that will achieve a

net gain in biodiversity values, in accordance with Appendix 1.2.2.2x

- v. Consideration of herpetofauna and avifauna and related habitat where values are likely to be affected.
- vi. Measures to minimize harm on indigenous fauna species during any habitat removal or modification
- vii. Evidence that the Fixed lighting is designed that to achieves the required lighting standards in relation to areas of Significant Bat Habitat, and is sensitive to minimise light spill and glare to protect the functionality of the bat habitat bats in the wider area, including avoidance of upward-facing lighting and UV lighting, and avoidance of lighting in wetland and riparian margin areas.
- viii. The establishment and enhancement of identified Significant Bat Habitat corridors as identified within the Peacocke Structure Plan.
- ix. Evidence of engagement with tangata whenua during preparation of the ERMP including how the outcomes of that engagement have been addressed.

8.22. In my opinion PC5 uses the Bat Management Plan (**BMP**) to impose an adaptive management framework on any application that requires consent due to not meeting Rule 25.2.5.2. In my opinion the BMP must be robust if PC5 is to meet it's statutory obligations in terms of protecting significant habitat. As explained in respect of the ERMP all management plans should be grounded by an objective so council can measure their effectiveness against a defined outcome. Given the need to recognise and provide for the protection of significant habitat, and the preference for avoidance of adverse effects on that habitat in the RPS I consider the BMP should seek protection of actual roosts and mitigation of effects on other habitat. In my opinion the BMP should have the following roles:

- A. To delineate between actual and non-roost sites where there is some (but not fulsome) evidence of the presence of bats

- B. Take all measures to protect and entirely avoid roosts sites when they are identified. If all avoidance options are exhausted, apply the effects management hierarchy.
- C. Ensure biodiversity offsetting in response to residual adverse effects is as close to the impact site as possible, achieves a net biodiversity gain, ideally by centring enhancement measures around additional areas of significant bat habitat through the discovery of other roosts/habitat within the application site.
- D. Allow removal of vegetation subject to the effects management hierarchy where that vegetation is not a bat roost site but is within an area set aside for the protection of bats such as SBHA or NOSZ.
- E. Allow removal of vegetation without measures to avoid, remedy, mitigate when it is confirmed the vegetation is not a roost site and not within a protected area.

8.23. Taking account of these principles my recommended amendments to the Bat Management Plan are:

*1.2.2.27 Bat Management Plan*

*All applications within the Peacocke Structure Plan Area, that seek to remove any trees or vegetation with a diameter at breast height (DBH) higher than 15cm shall include a bat management plan.*

*The objective of the BMP is to enable long-tailed bats to thrive by:*

- A. Protecting roosting sites within Significant Bat Habitat Areas*
- B. Identifying and protecting additional roost sites throughout the Peacocke Structure Plan Area*
- C. To protect the Significant Bat Habitat Areas by avoiding adverse effects on the function of the habitat, in terms of commuting and foraging.*
- D. To enhance the values and attributes of bat habitat within Significant Bat Habitat Areas, including by providing a full range and extent of vegetation types, including linear features and mature trees, for the long-tailed bat and other fauna*

E. *Avoiding injury/mortality of roosting long-tailed bats during any tree removal.*

The Bat Management Plan shall be prepared and undertaken by a suitably qualified bat ecologist (Class D or E) and include:

Identification of what type of habitat is proposed to be removed, including any trees that are proposed to be removed. In particular, the identification of all trees to be removed, that are  $\geq 15\text{cm}$  diameter at breast height and that provide or potentially provide roost habitat and buffering of light for long-tailed bats.

A. A methodology for pre- and post- development monitoring for bats using, as a minimum automated bioacoustics bat detectors.

B. A pre-felling monitoring regime that includes, at a minimum: a) An assessment of the trees/vegetation proposed to be felled with a DBH  $> 15\text{cm}$  and whether they contain any of the following features:

- i. Cracks, crevices, cavities and/or fractured limbs large enough to support roosting bat(s).
- ii. Sections of loose flaking bark large enough to support roosting bat(s).
- iii. A hollow trunk, stem or branches.
- iv. Deadwood in canopy or stem of sufficient size to support roost cavities or hollows.
- v. Bat droppings, grease marks and/or urine staining around cavities.
- v. Bat droppings, grease marks and/or urine staining around cavities

Note: If no features are identified, then no further information is required.

b) Where potential roost features are identified:

- i. Identified methodology of how acoustic or visual monitoring is to be undertaken in accordance with best practice to establish the presence of roosting bats.

- ii. If monitoring confirms the habitat is not being used as a roosting site, but the proposed works are within SBHA or NOSZ the works may proceed, subject to (e) – (m).
- iii. If monitoring confirms the habitat is not used as a roosting site and the proposed works are within the Medium Density Residential Zone, the works may proceed. No further information is required.
- xii. How trees which are identified as roosting sites are to be protected ~~managed to ensure effects on bats are to be avoided, remedied or mitigated~~ roosting sites are avoided. Where avoidance is not practicable the applicant must mitigate and remedy the effects at the application site. While the Bat Management Plan focuses on mitigation it should also outline measures to avoid and remedy bat values. and offset or compensate where this is not possible. ~~Roost tree protection should also be included in the Bat Management Plan for all other identified or potential roost trees,~~ within the application site. While the Bat Management Plan focuses on avoidance and mitigation at the site, it should also outline measures for offsetting if it is not possible to avoid, remedy or mitigate at the application site. For offsetting to occur through the creation of new suitable roosts within functional habitat at another site within the PSPA. Offsetting measures are to accord with the principles in Appendix 1.2.2.2x.
- f) Bat Management Plan should address residual adverse effects with biodiversity offsetting in accordance with the principles in Appendix 1.2.2.2x. Offsetting initiatives should occur as close to the application site as possible and aim to enhance other identified roost site or habitat.
- e) The Bat Management Plan initiatives ~~should link~~ integrate with ~~to~~ other areas within the Peacocke Structure Plan Area

wherever possible to ~~create~~ ensure a consistent approach to monitoring and identification of roost sites. ~~where possible~~

- f) A summary of planned works including proposals for replacement planting of indigenous tree species to provide indigenous vegetation and habitat for indigenous fauna, permitting requirements, biosecurity protocols, timing of works, roles and responsibilities of parties, reporting requirements and any specific mitigation measures. The planned works should employ the Department of Conservation 'Protocols for Minimising the Risk of Felling Bat Roosts' document, version 2, dated 2 October 2021 (or any subsequent version) where potential roosting trees for long-tailed bats are being removed and/or for trees with a diameter at breast height (DBH) of 15cm or greater for trees being removed as part of an application.
- g) Ongoing monitoring obligations that the consent holder is required to conduct including the purpose of monitoring, the form of monitoring required, the baseline identified for monitoring, the timeframe the monitoring obligations continue for, and reporting to the Bat and Habitat Enhancement Review Panel (or other identified entity) as the centralised entity to coordinate monitoring activity, to ensure consistent methodology and management of cumulative effects.
- h) Include pest control measures (including for domestic/feral cats and other pests mustelids) to be implemented either within the application site and/or other locations as may be directed by the Bat and Habitat Enhancement Review Panel (or other identified entity) to enhance the Significant Bat Habitat Area or nearby bat corridor, including as a compensation measure beyond the application site
- i) Include any proposals for the consent holder to install and maintain artificial bat roost boxes with predator control bands within the site and/or within Hamilton City Council reserves

(where prior approval has been granted from Council), where known high activity of bats occurs.

- j) Proposals for any off-site compensation or biodiversity off-setting to address residual adverse effects on bats and to achieve a net biodiversity gain such as habitat enhancement and targeted predator control that achieves residual pest indices relevant to bat conservation.
- k) The extent to which the application proposes the vesting of land to Council as Local Purpose (Ecological) Reserve or Local Purpose (Esplanade) Reserve (for a subdivision application) or the setting aside of communal open space (for a land use application) to enable retention or enhancement of long-tailed bat habitat values within the application site.
- l) The extent to which the application provides for the protection of trees identified to be bat roosting trees to be protected in perpetuity. For a subdivision application this would be via the use of a consent notice on the record of title for the relevant lot or a similar mechanism. For a land use application this would be via registering a land covenant on the record of title or a similar mechanism.
- m) Proposals for the provision of a financial contribution as a means to provide offsite compensation for the adverse bat habitat effects generated by the application that are not being compensated for within the site. The purpose of any financial contribution is to offset such effects through a financial contribution for the purpose of habitat restoration and/or enhancement offsite, and monitoring to address any short-term adverse effects (or risk of such effects) of the proposed subdivision or development on the long-tailed bat population. This is intended in addition to any long-tailed bat habitat restoration and enhancement activities within the application site, including the vesting of land for the purposes of re-vegetation and other protection/enhancement measures.

*Advisory Note: The financial contribution proposals should include calculations of the monetary in accordance with a model developed by the applicant, generally in accordance with the methodology stated within the report prepared by Tonkin and Taylor Limited titled 'Preliminary Assessment of Ecological Effects – Peacocke Structure Plan Area' dated July 2021.*

*Amendments in response to: Director-General's submission point 38.3 38.6*

- 8.24. The expert opinion of Dr Corkery is that the framework for principles for biodiversity offsetting and compensation set out in her evidence be included in the plan.
- 8.25. She considers these principals are reflective of the Business and Biodiversity Offsets Programme (BBOP), the NPSFM and the Local Government Guidance Biodiversity Offsetting Guidance document. Notably, they are also included in the NPS-IB exposure draft, recommended for inclusion there by leading experts on residual effects management.
- 8.26. In order to address the Director-General's relief and provide sufficient guidance to the plan user as to how and when biodiversity offsetting and compensation should apply, I also recommend inclusion of these principles in the plan, specifically in the Appendix 1.2 as an "information requirement". Further I consider these principles will adequately support the net loss outcome for management of more than minor residual effects in the RPS and are reflective of the more focussed biodiversity offsetting and compensation definitions in the NPS-FM.
- 8.27. I propose the addition of:

*Appendix 1.2.2.2x*

- i. Adherence to effects management hierarchy: A biodiversity offset is a commitment to redress any more than minor residual adverse effects and should be contemplated only after steps to avoid, minimise, and remedy adverse effects are demonstrated to have been sequentially exhausted.*

- ii. **When biodiversity offsetting is not appropriate:** Biodiversity offsets are not appropriate in situations where biodiversity values cannot be offset to achieve a net gain outcome, and if biodiversity values are adversely affected, they will be permanently lost. This principle reflects a standard of acceptability for demonstrating, and then achieving, a net gain in biodiversity values. Examples of where an offset would be inappropriate include where: (a) residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the indigenous biodiversity affected: (b) effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse: (c) there are no technically feasible options by which to secure gains within acceptable timeframe.
- iii. **Net gain:** The biodiversity values to be lost through the activity to which the offset applies are counterbalanced and exceeded by the proposed offsetting activity, so that the result is a net gain when compared to that lost. Net gain is demonstrated by a like-for-like quantitative loss/gain calculation of the following and is achieved when the ecological values at the offset site exceed those being lost at the impact site across indigenous biodiversity: (a) types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence; and (b) amount; and (c) condition.
- iv. **Additionality:** A biodiversity offset achieves gains in indigenous biodiversity above and beyond gains that would have occurred in the absence of the offset, such as gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.
- v. **Leakage:** Offset design and implementation avoids displacing activities that are harmful to indigenous biodiversity to other locations.
- vi. **Landscape context:** Biodiversity offset actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district,

and consider the landscape context of both the impact site and the offset site, taking into account interactions between species, habitats and ecosystems, spatial connections, and ecosystem function.

- vii. **Long-term outcomes:** Biodiversity offsets are managed to secure outcomes of the activity that last at least as long as the impacts, and preferably in perpetuity.
- viii. **Time lags:** The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the offset site is minimised so that the calculated gains are achieved within the consent period.
- ix. **Science and mātauranga Māori:** The design and implementation of a biodiversity offset is a documented process informed by science and mātauranga Māori where available.
- x. **Stakeholder participation:** Opportunity for the effective and early participation of stakeholders is demonstrated when planning for biodiversity offsets, including their evaluation, selection, design, implementation, and monitoring.
- xi. **Transparency:** The design and implementation of a biodiversity offset, and communication of its results to the public, is undertaken in a transparent and timely manner.

#### Biodiversity Compensation Principles

- i. **Adherence to effects management hierarchy:** Biodiversity compensation is a commitment to redress more than minor residual adverse impacts, and should be contemplated only after steps to avoid, minimise, remedy, and offset adverse effects are demonstrated to have been sequentially exhausted.
- ii. **When biodiversity compensation is not appropriate:** Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for, for example because: (a) the indigenous biodiversity affected is irreplaceable or vulnerable; or (b) effects on indigenous biodiversity are uncertain, unknown, or little

understood, but potential effects are significantly adverse; or (c) there are no technically feasible options by which to secure proposed gains within acceptable timeframes.

- iii. **Scale** of biodiversity compensation: The values to be lost through the activity to which the biodiversity compensation applies are addressed by positive effects to indigenous biodiversity, (including when indigenous species depend on introduced species for their persistence), that outweigh the adverse effects on indigenous biodiversity.
- iv. **Additionality**: Biodiversity compensation achieves gains in indigenous biodiversity that are above and beyond gains that would have occurred in the absence of the compensation, such as gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.
- v. **Leakage**: The design and implementation avoid displacing activities or environmental factors that are harmful to indigenous biodiversity in other locations.
- vi. **Landscape context**: Biodiversity compensation actions are undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The actions consider the landscape context of both the impact site and the compensation site, taking into account interactions between species, habitats and ecosystems, spatial connections, and ecosystem function.
- vii. **Long-term outcomes**: Biodiversity compensation is managed to secure outcomes of the activity that last as least as long as the impacts, and preferably in perpetuity.
- viii. **Time lags**: The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the compensation site is minimised.
- ix. **Trading up**: When trading up forms part of biodiversity compensation, the proposal demonstrates that the indigenous biodiversity values gained are demonstrably of higher indigenous

biodiversity value than those lost. The proposal also shows the values lost are not to Threatened or At Risk species or to species considered vulnerable or irreplaceable.

- x. **Financial contributions:** Financial contributions are only considered when there is no effective option available for delivering indigenous biodiversity gains on the ground. Any contributions related to the indigenous biodiversity impacts must be directly linked to an intended indigenous biodiversity gain or benefit.
  
- xi. **Science and mātauranga Māori:** The design and implementation of biodiversity compensation is a documented process informed by science and mātauranga Māori where available.
  
- xii. **Stakeholder participation:** Opportunity for the effective and early participation of stakeholders is demonstrated when planning for biodiversity compensation, including its evaluation, selection, design, implementation, and monitoring.

**Transparency:** The design and implementation of biodiversity compensation, and communication of its results to the public, is undertaken in a transparent and timely manner.

9. **CONCLUSION**

- 9.1. There is tension between the enabling provisions regarding urban development and the requirement to recognise and provide for section 6(c), give effect to the RPS with regard to indigenous biodiversity matters, and be consistent with the district plan's avoid adverse effects on indigenous biodiversity policies.
- 9.2. In my opinion this tension needs to be resolved in a way that is consistent with the Supreme Court's King Salmon decision.
- 9.3. This is achieved by recognising and providing for section 6(c), giving effect to the RPS and being consistent with the district plan indigenous biodiversity 'avoid' policies.
- 9.4. In responding to the Director-General's relief my recommended amendments meet the relevant statutory tests by ensuring development must be provided for in a way that ensures full protection and enhancement of indigenous biodiversity values, especially those associated with the long-tailed bat.



Jesse Quentin Gooding

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