

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 9 to the Operative Hamilton
City District Plan

OPENING LEGAL SUBMISSIONS ON BEHALF OF HAMILTON CITY COUNCIL

HEARING SESSION 1: SIGNIFICANT NATURAL AREAS

Dated 19 May 2023

LACHLAN MULDOWNY

BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

INTRODUCTION

1. These legal submissions are presented on behalf of Hamilton City Council (**HCC**) and address the Significant Natural Area (**SNA**) topic within Plan Change 9 (**PC9**) to the Hamilton City Operative District Plan (**ODP**).
2. The legal and planning framework under the Resource Management Act 1991 (**RMA**) for the Panel's decision making on PC9 has previously been addressed in the opening legal submissions for HCC dated 17 May 2023 and need not be repeated. Accordingly, these submissions are focussed only on the legal and planning issues arising under the SNA topic.

BACKGROUND TO SIGNIFICANT NATURAL AREA TOPIC IN PC9

3. The ODP contains provisions, based on a mapping exercise undertaken in 2010, which identify and protect 59 SNAs within Hamilton City. While these areas are recognised and protected, there has been a growing recognition that the extent of mapped SNAs within the ODP is seriously inadequate, with extensive areas of the City, particularly within the gully and river networks, clearly warranting greater recognition and protection in the ODP. PC9 sets out to resolve this.
4. The ecological significance of these currently 'unmapped' areas of the City has come under recent judicial scrutiny. In the context of proposed urban development within the Peacocke Structure Plan Area, and its potential effects on the habitat of 'Nationally Critical' Long Tailed Bats, the Environment Court in *Weston Lea v Hamilton City Council* (**Weston Lea**) noted:¹

[38] In accordance with the provisions of s 75 of the Act, the operative Hamilton District Plan 2017 (HDP) gives effect to the provisions set out in the Waikato Regional Policy Statement. The purpose of the HDP is to enable the Council to carry out its functions under the Act. Of most relevance to these

¹ [2020] NZEnvC 189.

proceedings, and as agreed by the parties, are the provisions of Chapter 20, *Natural Environments*.

- [39] These provisions respond to the imperatives of the Act in respect of the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as a matter of national importance. In formal terms, Chapter 20 identifies areas of significant indigenous vegetation, biodiversity and habitats of indigenous fauna which qualify as Significant Natural Areas. To realise this ambition, the plan contains a number of sites that qualify for inclusion.
 - [40] The sites are identified in the Planning Maps and are listed in Schedule 9C: *Significant Natural Areas*, in Volume 2, Appendix 9. To date, such Significant Natural Areas (SNAs) include identified areas of the Waikato River corridor and gully areas, peat lakes and wetlands and remnant indigenous vegetation or trees. It therefore comes as a surprise to the Court, in light of the warranted concern held for the future of the Long-tailed Bat, that no commonly identified and generally agreed Bat Protection Area is currently contained in Schedule 9C.
 - [41] This is an unfortunate oversight. It is a matter requiring urgent redress. In fairness, we understand this to be the case with the necessary policy development work being undertaken by the Council.
 - [42] At the same time, the oversight cannot be ignored. There is a diminishing population of an endangered species of native New Zealand fauna, deemed to be so rare as to be classified “Nationally Critical” pursuant to the New Zealand Threat Classification System. Given the acknowledged adverse effects from land use development, appropriate steps need to be taken based on Part 2 of the Act, s 6(c) and relevant plans.
 - [43] The City has a simple process in respect of identifying and protecting SNAs. It is an on-going process with the end result that there may no longer be any qualifying feature unscheduled. As restoration efforts continue in the City, additional Significant Natural Areas may be created. These will be added to Schedule 9C through changes to the plan through the First Schedule process under the RMA.
5. As the Court recognised in *Weston Lea*, HCC has been undertaking its policy review of the SNA provisions in the ODP since before 2020, with the intent that there be an ongoing process of successive plan changes which add SNAs where qualifying features exist.² PC9’s SNA topic represents HCC’s first significant step towards, what the Court described as, an end result where there is *no longer any qualifying feature unscheduled*.

² *Weston Lea v Hamilton City Council*; para43.

6. The statutory imperative to make provision for SNAs within the ODP derives from s 74(1)(b) of the RMA, which requires a territorial authority to prepare and change its district plan in accordance with Part 2, which includes s 6. Section 6 of the RMA requires that:

Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

...

- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

7. As observed by the Court in *Weston Lea*, pursuant to s 6(c), HCC is under a statutory obligation to take appropriate steps to ensure protection of the specified values and those areas of significant indigenous flora and significant habitats of indigenous fauna.³ “Protection” is the imperative in s 6(c).⁴ The s 6 matters must be provided for as part of the sustainable management of natural and physical resources.⁵
8. Accordingly, the incorporation of SNAs within the ODP represent a critical resource management tool for the discharging of these statutory requirements, with their inclusion within the ODP reflecting HCC’s recognition of its role and functions under the RMA.

SIGNIFICANT NATURAL AREAS - ODP PROVISIONS

9. Within the ODP, SNAs are provide for in Chapter 20: Natural Environments. Reflecting the language of s 6, SNAs are described as areas of significant indigenous vegetation and significant habitats of indigenous fauna.

³ *Minister of Conservation v Hutt City Council* EnvC W013/03.

⁴ *Royal Forest and Bird Society v Manawatu Whanganui RC* [1996] NZRMA 241.

⁵ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.

10. Objective 20.2.1 states that SNAs are protected, maintained, restored, and enhanced. A comprehensive set of 16 policies give effect to the objective, including Policies 20.2.1d and 20.2.1n which state:

Adverse effects of development on the City's Significant natural Areas shall be avoided. The loss of habitat that supports indigenous species classified as at risk or threatened shall be avoided.

11. Rule 20.3 establishes the activity status of activities within an SNA, enabling limited permitted activities in the nature of pruning and maintenance, pest control, and planting of indigenous vegetation or trees.⁶ Non-complying activities include earthworks, buildings or structures, and the removal of indigenous vegetation.⁷
12. Schedule 9C, in Volume 2 of the ODP, sets out the list of SNAs, individually identified from SNA1 to SNA59, with each SNA having a map reference, where the SNA is mapped in terms of its location and spatial extent. The SNAs operate as an 'overlay' which sits across an underlying Natural Open Space Zone. Notably (and one of the key issues addressed by PC9) there are a number of Natural Open Space Zones which do not carry the SNA overlay. As the name suggests, the Natural Open Space Zone recognises and protects natural character, but allows for limited urban activities including buildings, walkways and cycleways, and recreation.⁸ While it offers a degree of recognition, it does not adequately protect any significant indigenous vegetation and significant habitats of indigenous fauna that might exist within the zone. Additional SNAs would cure that shortcoming.

SIGNIFICANT NATURAL AREAS – PC9 PROVISIONS

Preparing the plan change

⁶ Rule 20.3a, b, c, d.

⁷ Rule 20.3g.

⁸ Rule 15.3 - Activity Status.

13. A key ecological feature within Hamilton City is the Waikato River, which bisects the City along 16 kilometres of its reach, and the extensive gully network that feed into it. This network, together with a range of distinct areas and corridors of largely natural character, hold important ecological significance, particularly indigenous flora, and as habitat for indigenous fauna.⁹ Vast parts of these areas are not currently recognised as SNAs, despite having characteristics that meet the criteria set out in s 6 of the RMA, and the 11 criteria for SNAs set out in Policy 11A of the Waikato Regional Policy Statement (**WRPS**).

14. To illustrate the importance of recognising and protecting these areas, the s 32 Evaluation Report notes that:

Within the Hamilton City Ecological District, it is estimated that since 1840, the Hamilton Ecological District has had a 97.8% reduction in indigenous vegetation. The vegetation areas that are left (predominantly in gullies and along the Waikato River) are the habitat for several threatened and/or regionally uncommon species, notably the long-tailed bat where Hamilton is one of only a few cities in New Zealand where long-tailed bats are known to persist in an urban landscape. The overall picture is of a significantly depleted ecological system, with only 1.5% of the total city area protected by the current SNA overlay and numerous areas of key habitat for fauna that are not protected by the operative SNA framework.

15. In response to this situation, in 2021 HCC engaged 4Sight Ecology to review the current SNAs and identify and map other areas within Hamilton City which met the threshold in s 6 of the RMA and the SNA evaluation criteria in policy 11A of the WRPS. As a result, two spatial data sets were created:

- a) 'Floristic SNA' (**fSNA**): Distinct areas of wetland or terrestrial vegetation communities dominated by naturally occurring indigenous plant communities or where naturally occurring indigenous vegetation define the primary aspects of the natural

⁹ Section 32 Evaluation Report; Appendix 2.

area which makes it significant in terms of Section 6(c) of the RMA (for example, the area meets criteria 4, 5, 6 or 10); and

- b) 'Corridor/indigenous fauna habitat SNA' (**cSNA**): Areas that are able to be delineated by topographical or vegetation features (such as gully systems, which can be dominated by exotic vegetation or restoration planting), which:
 - i. Provides significant fauna habitats (including steppingstone or corridor habitats), including regularly used habitats by nationally At Risk or Threatened indigenous fauna species (for example, the area meets criterion 3); or
 - ii. Provides ecological buffering to a regionally or nationally important SNA, (for example, the area meets criteria 7, 8, 9,11).
16. A total of 52 cSNA were identified, which equated to approximately 6.1% of Hamilton City's area and cover 671.81ha. This area includes the Waikato River (137ha) and waterbodies of the City's peat lakes. 63.5% of the significant sites were assessed as 'Nationally' or 'Regionally' significant, primarily as a result of 'Threatened - Nationally Critical' bat species utilising the site.¹⁰
17. A total of 65 fSNA were assessed as significant, comprising an area of 121.86 ha of high-quality vegetation situated within or overlapping with the cSNA layer. Of the significant fSNA, 60% (16 sites totalling 72.53 ha) were assessed as 'Nationally' significant, 16% as 'Regionally' significant (17 sites accounting for 19.74 ha), and 24% as 'Locally' significant (32 sites totalling 29.49 ha).¹¹

¹⁰ Section 32 Evaluation Report; Appendix 2, p59.

¹¹ Section 32 Evaluation Report; Appendix 2, p60.

18. On 2 February 2022, approximately 1,700 letters were sent to property owners of land with potential SNA areas identified on their property. Ground truthing of particular SNA boundaries occurred where public feedback indicated that further checking was required. A total of 39 private landowners were visited to review potential cSNA mapping, and a total of 13 private landowners were visited to review potential fSNA mapping. Eight fSNA on public land were also visited and ground-truthed and changes were made to the extent of a number of sites.
19. In addition to the revised mapping, a planning review of the ODP provisions relating to SNAs was also undertaken to ensure they were fit for purpose, and aligned with the exposure draft of the Nation Policy Statement for Indigenous Biodiversity (**NPS-IB**).

Notified provisions

20. The notified provisions gave effect to this full reassessment of all existing SNAs within the ODP (excluding the Peacocke Structure Plan Area which was updated via PC5) and all other potential SNAs across the City. Schedule 9C in Volume 2 of the ODP was updated to incorporate the new expanded list of SNAs within the City, and all planning maps were updated accordingly.
21. The policies in Chapter 20 Natural Environment which relate to SNAs were updated to change the focus from an absolute 'avoidance' approach to an effects management approach that focuses on first avoiding adverse effects on key ecological values and functions (loss of ecosystem function, fragmentation), and from there reflecting the effects management hierarchy to protect SNAs.¹²
22. There is a revised activity Rule 20.3 and revised standards in Section 20.5 to reflect the new management regime for SNAs with clearer

¹² Policy 20.2.1d.

permitted and consenting pathways for certain activities, including taking a different approach to the management of fSNA and cSNA for some activities recognising their different functions and values.¹³

23. Appendix 1.1 Definitions and Terms and Appendix 1.3 Assessment Criteria relating to SNAs are updated to align with changes to the policies, and consequential amendments were made to Chapter 15 – Open Space and Chapter 25.2 – Earthworks and Vegetation Removal to ensure internal consistency within the ODP.

SUBMISSIONS

24. Of the 2025 submission points raised on PC9, 472 relate to the SNA topic, received from 140 individual submitters. Key themes that emerge from the submissions include:
 - a) Impacts on landowners/private property rights: A number of submitters raise concerns about the impact that the identification of an SNA and the associated plan provisions have on private property rights, future development aspirations, property values, and the ability to build, replace or maintain structures and carry out other works within SNAs;
 - b) Support for the PC9 approach to SNA mapping: A number of submissions were generally supportive of the intent of PC9 to protect SNAs and to extend existing SNAs to cover gully areas. Generally, they do not seek wholesale changes to the SNA-related components of PC9, or that the entire SNA regime be rejected.
 - c) Opposition to the SNA extent: Many submissions on this topic were concerned about the extent of SNA on specific properties

¹³ Rules 20.3a – r.

and seek either the adjustment of the boundary of the SNA or the exclusion of the property from the SNA altogether. Reasons for seeking a change to an SNA extent include encroachment on private property rights, the burden of the consenting requirements, the area including poor quality or degraded vegetation, the dominance of exotics and weeds, the removal of vegetation, lack of ground truthing, and to enable future development of the site.

- d) Requests to amend the policy and rule framework associated with SNAs: A number of submitters seek amendments to the policy and rule framework and consenting requirements associated with SNAs. Generally, these submissions seek greater flexibility to undertake activities within or adjacent to an SNA. Some seek deletion of the SNA provisions altogether.
- e) Support for the Policy and rule framework associated with SNA: Some submissions are generally supportive of the policy and rule framework associated with SNAs and do not seek wholesale changes to the provisions. A number of submissions sought more effective and extensive protection of biodiversity values.

EXPERT WITNESS CONFERENCING

25. Following the submission period, the Panel directed expert conferencing. Conferencing was undertaken on several topics facilitated by former Environment Court Commissioner Ms Marlene Oliver. Expert conferencing on the SNA topic occurred on 14 March 2023. Dr Hannah Mueller and Mr Hamish Dean (Ecology) and Ms Laura Galt (planning) attended for HCC. An expert conferencing session was held on 20 March 2023 to deal with planning matters across the three topics. Ms Galt attended the planning session for HCC.

26. A Joint Witness Statement (**JWS**) was produced and signed by the attendees for both conference sessions¹⁴. HCC considers that conferencing was effective in narrowing and, in some cases, partly resolving issues raised by submitters through recognising possible amendments to plan provisions. A summary of the proposed changes agreed at conferencing are as follows:

- a) SNA Extents: The northern and southern gullies on Fonterra's Te Rapa site are not to be identified as SNA¹⁵.
- b) New objective and policies should be included in Chapter 20: Natural Environments to give recognition to the city-wide approach to provide for Long-tailed bats. The Adare Company Ltd (**Adare**), the Director-General of Conservation (**DOC**), Waikato Regional Council (**WRC**) and HCC agreed in principle on the content of these provisions.
- c) A wording change to Rule 20.3(b) and the definition of 'pest control' to better enable clearance of pest plants was largely agreed with WRC and others, with exact wording to be refined.
- d) A wording change was agreed with Kāinga Ora to Rule 20.3(a) to provide for pruning in proximity to existing buildings.
- e) The addition of a note at the end of Activity Table 20.3 was agreed with Adare to make it clear that specific rules apply for the Peacocke Precinct rather than the city-wide rules.
- f) A clarification wording change was agreed with Kāinga Ora to Rule 25.2.3(k) relating to pruning of trees overhanging SNA boundaries.

¹⁴ Mr McNutt did not sign the JWS as he only attended part of the conference.

¹⁵ Agreed by Mr Chrisp and Ms Buckingham.

- g) Minor wording changes and corrections to definitions of biodiversity compensation and offsets were agreed with DOC, as well as additional information requirements relating to indigenous fauna effects in Appendix 1.2.1(h)(iii).
 - h) Agreement was not reached regarding DOC seeking specific reference as an affected party for purposes of notification.
 - i) Agreement was not reached on the definition of 'restoration', to require restoration be carried out in accordance with the National Environmental Standard for Freshwater and HCC's Gully Restoration Guide.
27. HCC considers that the proposed updated PC9 provisions appended to Ms Galt's primary evidence incorporate most, if not all, drafting edits or improvements agreed at the conferencing.

SECTION 42A REPORT

28. Mr Craig Sharman and his team prepared two reports under s 42A of the RMA. The first was a 'Themes and Issues' Report and the second a more detailed Planning Report. In relation to the SNA topic Mr Sharman, and Ms Emily Buckingham, made recommendations informed by the technical reports appended to the primary evidence of Mr Dean, Dr Mueller and Mr McKensey in relation to the scheduling of SNAs and recommended amendments to the PC9 provisions in response to the issues raised by submitters. These are described in Section 6.0 of the Planning Report and are reflected in the recommended provisions in Appendix A of the report.

HCC RESPONSE TO SUBMISSIONS

29. Since notification, HCC has carefully considered all feedback received, including issues raised in submissions, through conferencing and in the s 42A report, and has sought to respond constructively.
30. Dr Mueller and Mr Dean undertook a comprehensive review of each SNA, and the associated issues, that were identified in the submissions. In relation to submissions challenging SNA extent, roughly 100 properties the subject of submissions required further investigation to clarify the current vegetation boundaries. For most sites this consisted of a desktop appraisal and, where landowner permission was granted, a site visit to ground-truth the SNA overlay. An assessment was then made as to whether the linework in the notified mapping was accurate, or whether features such as lawns, buildings, or orchards had been captured. Recommendations for boundary adjustments or removal of SNA were not made unless it was clearly misidentified. In total 89 site visits were conducted in response to submissions and 31 sites were recommended to be changed as a result.
31. Mr Dean recommends that changes are made to the extent of 22 SNAs relating to 32 submissions as detailed in the aerial mapping set out in Attachment 1 to his primary evidence and also in the table in Attachment 2 to his primary evidence which is the further Technical Ecology report he co-authored with Dr Mueller. Mr Dean otherwise does not support wholesale changes or deletion of SNAs from individual properties. His evidence is that, in most cases, they form part of a much larger SNA site and to consider them on a standalone basis is not ecologically sound.
32. In addition to the mapping changes, Mr Dean supports changes to the notified provisions relating to restoration, vegetation clearance, and

weed control that have been proposed as a result of submissions, including:

- a) Tightening of permitted activity standard 20.5.7 so that a total clearance area applies per asset and re-planting is required if a cleared area is not needed for ongoing access;
 - b) The new allowance for small structures associated with restoration and access (Rule 20.3 j(a), Standard 20.5.8);
 - c) The change to the definition of pest control to cover a wider range of problem species and situations and better reflect impact on ecological values; and
 - d) Allowance for greater than 50m² of clearance of pest species where standard 20.5.6(c) can be complied with¹⁶.
33. Mr Dean's evidence is that the amended PC9 provisions relating to SNAs provide good protection for the natural values of these sites, without unduly restricting the restoration activities of individuals and groups which are so vital to biodiversity protection and enhancement in Hamilton City.
34. Submissions from Royal Forest and Bird and DOC sought amendments to the SNA provisions with respect to the effects of lighting on fauna within SNA. Having reviewed the submissions, Mr John McKensey supports the notified provisions with respect to lighting effects subject to the introduction of a new rule that controls light sources in proximity to or within SNAs (excluding Peacocke Precinct)¹⁷.

¹⁶ Mr Dean has updated his recommendation to reflect the updated PC9 provisions which he will confirm in his oral evidence.

¹⁷ Primary evidence of Mr McKensey, para 46.

35. Dr Mueller has provided evidence responding to some of the issues raised in DOC's submission relating to lighting, infrastructure within SNA, habitat mapping beyond SNAs, and offsetting and compensation. She supports:
- a) The addition of further provisions to limit the effects of light intrusion of any new lighting on an SNA as recommended by Mr McKensey and controls on additional lighting, screening and setbacks to achieve minimisation of lighting effects within SNAs;
 - b) Changes to the provisions that control public access to SNAs (e.g. walkways, cycleways) to ensure that there is no additional light intrusion into SNAs, and that no future conflicts are created between public access and the requirement to protect potential bat habitat or potential bat roosting trees; and
 - c) Inclusion of a reference to best practice guidelines for offsetting and compensation in the information requirements for ecological effects assessments.
36. HCC's planning expert, Ms Galt has reviewed the amended plan provisions appended to the s 42A report, and the evidence of Mr Dean, Mr McKensey and Dr Mueller and supports both the updated SNA mapping recommended by Mr Dean and the provisions attached to the s 42A report. However, on one issue, concerning the difference between an outdoor lighting colour temperature limit of 2700k and 3000k, she prefers 2700k, as recommended by HCC's lighting expert Mr McKensey¹⁸. DOC also supports that colour temperature limit.

¹⁸ Primary evidence of Laura Galt, para 15.

ISSUES REMAINING OUTSTANDING

37. Of the 140 submitters on this topic, only five lodged expert evidence.

Fonterra

38. Fonterra Ltd lodged planning evidence from Mark Chrisp confirming its support for the recommendation in the Planning Report¹⁹ to delete part of SNA C59 on the north-eastern part of the Te Rapa site as shown in Annexure 1 to the JWS dated 14 March 2023 and in Mr Chrisp's planning evidence²⁰. Mr Dean's evidence acknowledges that, in accordance with an exemption in the RPS criteria concerning vegetation that has been created in connection with artificial structures, a planning decision was made during expert conferencing to exclude the areas that are directly associated with water control structures and ponds. Mr Dean recommends that the remaining areas of C59 that are not associated with structures be retained as shown in the map included in Attachment 1 to his evidence²¹.

Te Awa Lakes

39. Te Awa Lakes seeks removal of SNA C59 and C76 from the land it describes as Horotiu East North and Horotiu East South. Discussion and a site visit relating to this submission occurred after expert conferencing.
40. Ms Galt has reviewed and supports Mr Dean's recommendation to amend the SNA boundary to exclude the areas where vegetation removal has already occurred, and the area covered by track for SNAs C59 and C76 as shown in Attachment 1 of his evidence.

¹⁹ Planning Report, Section 5.3.3.

²⁰ Primary evidence of Mark Chrisp, para 3.6.

²¹ Primary evidence of Hamish Dean, paras 57-59; Attachment 1 and 2.

41. In respect of the submission point seeking the removal of C59 (pines) and C76 (riparian vegetation) which still physically exist, as advised by the ecologists, the ecological values warrant protection through SNA mapping. Subject to one matter of clarification to be made by Mr Dean, Ms Galt and Mr Dean agree that Areas 2 and 4 on the Te Awa Lakes site should be retained as SNA, unless the vegetation and the ecological values are guaranteed to be removed.

Yzendoorn

42. David and Barbara Yzendoorn seek removal of the SNA over 29 Petersburg Place, Flagstaff. The Yzendoorns have provided planning and ecological evidence in support of their submission. Ms Galt agrees that the SNA should be removed from the area over which there is an easement restricting planting. However, she disagrees that there should be any modification to the SNA extent on the basis that the submitter has applied to HCC for a resource consent to establish a duplex dwelling on the site. The planning issues on the site are complex, there is strong opposition from neighbours and the application has been slow to progress, with a hearing yet to be scheduled. Mr Dean and Ms Andrews (the Yzendoorn's expert ecologist) have assessed the planted indigenous vegetation on the property as significant. Mr Dean considers that these ecological values warrant protecting. Accordingly, other than on the easement area, neither Ms Galt nor Mr Dean support removal of the SNA from 29 Petersburg Place.

DOC

43. DOC's submission is supportive of the PC9 approach to increasing the levels of mapped SNA in the City, however it seeks a small number of changes relating to lighting, noise, unmapped SNAs and the notification rules. It has provided ecological and planning evidence in support of this relief. Regarding noise, Dr Kerry Borkin's ecological evidence refers to

recent research that noise may adversely impact Long-tailed bats and their usage of habitat and recommends that noise controls be introduced under PC9. Dr Mueller acknowledges that the research in this area is still emerging and there is currently insufficient evidence available to fully understand the effects of noise, or to guide the implementation of effective controls, limits and potential mitigation measures. As Ms Galt states in her evidence, it would be challenging to implement such rules within an existing urban environment. Further, in developing PC9, no consideration was given to introducing noise standards which raises doubt that such relief is “on” PC9 in terms of the *Clearwater* tests. Regardless of the scope question, dealing with the merits, Ms Galt considers that further work/research is required to understand the effects of noise on Long-tailed bats before any changes are made to plan provisions controlling noise in an existing urban environment. Accordingly, HCC does not support any amendments to PC9 to address noise effects within SNA.

44. Turning to lighting, Dr Borkin’s evidence is that a lower lux limit of 0.1 lux at an SNA boundary (rather than 0.3 lux) would further reduce potential adverse effects on bats associated with artificial lighting. This is acknowledged by Mr McKensey; however, he considers that it is impractical to implement in an existing built environment. Instead, mitigation measures are proposed to achieve the minimum light spill practical. The lighting rule in the s42A report recommends a maximum colour temperature limit of 3000k for outdoor lighting. Dr Borkin and Ms Sycamore seek a limit of 2700k. This is consistent with Mr McKensey’s lighting rule which includes a limit of 2700k. We understand there is little practical difference between the two, but that 3000k bulbs are more readily available.
45. DOC seeks an amendment to the lighting rule to reduce the security light duration time from 5 minutes to 1 minute. Dr Mueller states in her

evidence that there is no scientific evidence that shows that the length of motion sensor timers minimises effects on Long-tailed bats. The amendment is not supported by Mr McKensey or Ms Galt.

46. DOC also seeks that additional areas that meet the SNA criteria for 'significance' under the WRPS, such as black mudfish habitat, be mapped under PC9. DOC also seeks to include new policies in Chapter 20 to recognise areas of significant indigenous vegetation and habitats of indigenous fauna and account for unmapped areas of significant indigenous biodiversity. Ms Galt considers the policies to be unnecessary as the existing provisions sufficiently cover these matters, and that the mapping of mudfish habitat has not been undertaken and that SNA mapping cannot occur without it. More fundamentally however, it is not within the scope of PC9 to map additional areas relating to mudfish. As the Court described in *Weston Lea*, the SNAs will be progressively mapped and introduced via successive plan change processes.
47. Finally, Ms Galt does not support Ms Sycamore's requested change to Figure 1.1.9a, to make DOC an affected party to be limited notified in relation to activities that have restricted discretionary status. The amendment was not supported in expert conferencing by parties, nor is it supported by Ms Galt. In practical terms, the flow chart simply does not apply to the activities the subject of DOC's submission which have non-complying status. Ms Galt's considers that DoC should be satisfied that any Non-Complying Activity that causes a minor or more than minor adverse effect on bats or any other threatened or at risk indigenous fauna will be evaluated under s 95 in the usual way, which will ensure DoC is a notified party when appropriate.

The Adare Company Ltd

48. Adare has provided planning evidence from Mr Inger. He confirms that many of the issues addressed in Adare's submission and further submission have been satisfactorily addressed in the recommendations in the Section 42A Report. There are a small number of matters where he supports different or further changes, which are as follows:
- a) Proposed wording for the Explanation following the objective and policies for the Long-tailed bat. Ms Galt supports the inclusion of an Explanation but has recommended a minor amendment to the wording of the Explanation to reflect the objective and policy intent, which is to address SNAs throughout the City, but not other areas and zones.
 - b) Numbering corrections to the note following Activity Table 20.3 which clarifies the applicable rules for park furniture, new public walkways and cycleways and new infrastructure in SNA in the Peacocke Precinct. Ms Galt agrees that a numbering change may be required but considers this to be an administrative matter that will be resolved by HCC once the plan changes are made operative and merged with the ODP.
 - c) Deletion of reference to the Eurobats guideline in the explanation which follows the objective and policy for lighting and glare. Ms Galt disagrees that the reference should be removed on the basis that it will make the provisions less clear and because Plan Change 5 did not do so. She has no objection to its inclusion as recommended in the s42A report; and
 - d) Deletion of the reference to best practice guidance for offsetting and compensation in Information Requirement Appendix 1.2.2.X.

Ms Galt disagrees and considers that it is appropriate to include the reference.

Lay presentations

49. Of the 140 submitters on the SNA Topic, a comparatively small number have indicated their wish to present at the hearing. Without any pre-circulation of their evidence²², it is not possible to provide a comprehensive account and response during the opening of HCC's case, however set out below is a brief summary of the relief sought by submitters and HCC's response:

- a) Patricia Morgan (279): Ms Morgan's submission does not set out specific relief, however she expresses concern about her garden being identified as SNA. Mr Dean recommends that the SNA extent be amended to exclude the garden and lawn areas on the property.
- b) Alexander Gillespie and Claire Breen (80.3): The submission seeks "strong protection for the natural environment and restoration of degraded areas". That is exactly the intent of PC9. PC9 addresses the current lacuna in the ODP in relation to the breadth of its provisions directed to addressing adverse environmental effects of activities on SNA.
- c) Michael John and Julia Griffin (222.1): The submission seeks "no plan change to our property". The submitters state that the SNA is not justified as there are no native trees in the area, which is covered in gorse and black berry. The submitters are concerned that the SNA will reduce the value of the property. Mr Dean recommends that the SNA boundary be adjusted to exclude the paddock area and to follow the fenceline.

²² Noting that Kevin and Alison Sharp have provided additional material in support of their submission.

- d) Mary Burton/The Landscape Design Studio Ltd (270): The submitter supports the protection of SNA on public land but opposes it on private land, including with respect to her land. The submitter opposes restrictions being placed on her large gully section. Mr Dean recommends that the SNA be retained as notified. He notes that it includes some open grass areas but the overall ecological value is consistent with the rest of the SNA.
- e) John Caradus (434): Mr Caradus seeks that the SNA over 6 Geoffrey Place, Riverlea be removed. Mr Caradus opposes the restrictions and consenting requirements that the SNA imposes on the property. Mr Dean recommends that the SNA be retained as notified as it has established indigenous vegetation connected to important bat habitat.
- f) Sharp Planning Solutions/Kevin and Alison Sharp (391): The Sharps have made a detailed submission on the SNA topic. In summary, while supporting greater biodiversity protection, they are concerned about the restrictions on maintenance and pruning within SNAs. The Sharp's property at 48 Amanda Avenue adjoins the SNA over Bremworth Park which they submit, is unmanaged such that it presents a risk to life and property should vegetation fall on the dwelling. They also challenge whether the SNA meets the criteria for SNA classification as it has been planted with exotic and native species. The Sharps seek a number of amendments to the rule framework, and an adjustment of the SNA boundary over Bremworth Park. Mr Dean recommends that the boundary be adjusted to follow the property boundary so that the gardens along the edge of the SNA are excluded.
- g) Mark and Sara Paris (286): The submitters seek removal of SNA c35 from the property at 27 Keswick Crescent. In the alternative, they seek that all rules that restrict activities within SNAs be deleted.

Mr Dean recommends that the SNA boundary be adjusted to exclude the retaining wall, gardens, and fruit trees. HCC does not support deletion of all SNA rules.

- h) Stephen Gale (308.2, 308.3): The submitter seeks removal of SNA C78 from the property at 1858 River Road as it is a garden and is not primarily indigenous or natural vegetation. He takes issue with the approach to identification of SNA and the consenting requirements. Mr Dean recommends that the SNA be retained as notified.
- i) Nancy Caiger/Mactan Property Trust (364): Ms Caiger seeks that, if the SNA bordering 913 River Road (F57 and C72) is confirmed, HCC needs to maintain the area and prevent further erosion and deterioration. Ms Caiger also seeks that SNA C54 be removed from 5/5a Tauhara Drive as shown in Map 2 attached to the submission. Mr Dean recommends that the SNA be retained as notified. He notes that although very weedy this small area contributes to the overall ecological integrity of the gully vegetation and removing it could compromise that integrity. Regarding the issue of maintenance responsibility, this is not a matter that can be the subject of a decision of the Panel. However, HCC is willing to discuss such practical issues directly with Ms Caiger.
- j) Ian Williams (312): The submitter supports, in part, the gullies at 440 Peacockes Road being an SNA. However, he seeks that HCC forfeits rates on any portion of land declared a SNA; or that it pay for the land taken as SNA; or it reimburses any work undertaken by a land owner to improve an SNA. As Ms Galt states in her evidence, HCC does not provide any direct financial assistance with respect to landowners affected by SNA, including any consent fee

waivers for restoration work²³. Such relief is not within the scope of PC9. Nonetheless, her evidence is that the updated PC9 provisions more appropriately provide for restoration activities within an SNA²⁴.

- k) Roger Wilhelmsen (260): The submitter seeks that SNA C18 be removed from 7 Opal Place, Chartwell. He states that 7 Opal Place contains no indigenous vegetation or habitat. It is covered with grass, agapanthas and a tree fern. The canopy shown in the aerial view is almost entirely borrowed from 5 and 9 Opal Place. Mr Dean recommends that the SNA be removed. He states that the area is weedy and connected to a recently cleared gully arm and has little visible ecological value with no corridor or buffer value.²⁵
- l) Helen and David Nielsen (126): The submitter seeks removal or amendment to SNA C78 over 1877 River Road so that it applies to the land/vegetation that is an SNA, as ground truthed, and that amendments to the rule framework be made to reduce the constraints/consenting requirements that would apply to the property in relation to building on the site. Specific amendments have not been provided. Mr Dean recommends a minor adjustment to the SNA to exclude the fruit trees on the property.
- m) Rosemarie van der Poel (264): The submitter seeks removal of SNA C46 from 11 Balloch Street. Mr Dean recommends that the SNA be retained as notified as it includes wetland vegetation and values consistent with the rest of the SNA.

50. Of the remaining submitters who have indicated they intend to present at this hearing, without the benefit of pre-circulated evidence, it is not possible to accurately capture their relief and HCC's response. Those

²³ Primary evidence of Ms Galt, para 54.

²⁴ Primary evidence of Ms Galt, para 54.

²⁵ The submitter also seeks to amend Chapter 20 (20.1, 20.2 and 20.3) but has not specified any drafting changes.

submitters include: Roderick Aldridge (328), Wiremu Puke (169), Jason Oliver (180), John Badham (326), Arthur Giffney (393), Anthony Endres (256). Accordingly, HCC reserves its position to hear the evidence presented, and respond as required.

51. In respect of the submitters seeking removal, or alteration to the boundary of SNAs over particular properties, except for Yzendoorn and Te Awa Lakes, none have provided ecological evidence in support of their challenge to Mr Dean's recommendations. While the evidence of these lay witnesses is helpful to the Panel in its deliberations, on matters of ecology and biodiversity, the Panel should place strong reliance on the evidence of Mr Dean and Dr Mueller.

CONCLUSION

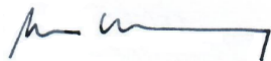
52. Hamilton City is fortunate to have substantial areas of land with high ecological value, much of which supports nationally threatened or at-risk species.
53. The revised and expanded SNA provisions proposed in PC9 represent a major step in HCC's ongoing efforts to ensure the protection of these areas of significant indigenous flora and significant habitats of indigenous fauna.
54. Inevitably this additional protection impacts both public and private property. Where private property interests are affected, PC9 seeks to minimise that impact while ensuring the necessary protection is afforded. HCC is confident that PC9 strikes the appropriate balance.
55. Subject to any minor modifications which are justified on the evidence presented to the Panel at this hearing, HCC seeks the Panel's decision to approve PC9.

PROPONENT EVIDENCE

56. In support of PC9, Topic 2: SNA, HCC will present evidence from the following witnesses:

- a) Dr Hannah Mueller - Ecology;
- b) Mr Hamish Dean – Ecology;
- c) Mr John McKensey – Lighting; and
- d) Laura Galt – planning.

Dated 19 May 2023



L F Muldowney / S K Thomas
Counsel for Hamilton City Council