

**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

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**STATEMENT OF REBUTTAL EVIDENCE OF LAURA JANE GALT**

**(Planning – Significant Natural Areas)**

**Dated 12 May 2023**

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## INTRODUCTION

1. My full name is Laura Jane Galt.
2. My qualifications and experience are as set out in paragraphs 2 and 3 of my primary statement of evidence dated 14 April 2023 (**primary evidence**).
3. I reconfirm that I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and I agree to comply with it.

## PURPOSE AND SCOPE OF EVIDENCE

4. The purpose of this rebuttal statement of evidence, which is provided on behalf of Hamilton City Council (**HCC**) as Plan Change 9 (**PC9**) proponent, is to respond to the following expert planning evidence provided by submitters:
  - a) Mr Jacob Robb on behalf of David and Barbara Yzendoorn in respect of Significant Natural Area (**SNA**) c26 at 29 Petersburg Drive;
  - b) Ms Ashiley Sycamore on behalf of the Director-General of Conservation (**DoC**), in relation to:
    - i. Lighting and glare;
    - ii. Noise standards;
    - iii. SNA mapping; and
    - iv. Notification/Non-notification rules.

- c) Mr Stephen Gascoigne on behalf of Te Awa Lakes Unincorporated Joint Venture (**Te Awa Lakes**) in relation to the mapping of SNAs c76 and c59;
- d) Mr Ben Inger on behalf of The Adare Company Limited (**Adare**) in relation to:
  - i. A proposed new explanation;
  - ii. Numbering; and
  - iii. Incorporation by reference.

## RESPONSE TO SUBMISSIONS

### Yzendoorn: Mr Jacob Robb

- 5. The submitter seeks the removal or realignment of SNA c26 at 29 Petersburg Drive.
- 6. By way of background, in August 2020, the submitter lodged an application for a non-complying resource consent to establish a duplex dwelling on the property which is located in the Open Space Zone. The application was limited notified and four neighbouring landowners have submitted in opposition to the proposal. A revised application was subsequently lodged in December 2022. A hearing of the matter has not yet been scheduled. I disagree with Mr Robb's statements in paragraphs 16 and 21 that the consent application is well advanced or "advanced enough" and has sufficient support from the experts involved such that it would be appropriate to realign the SNA boundary through PC9 to avoid the proposed development area. The consent process is a separate and unrelated process for which there are several important steps yet to occur

before a decision on the consent application will issue, and it is not a foregone conclusion that it will be granted. Accordingly, I do not consider the proposed development to be a relevant consideration in determining whether the SNA over the property should be retained, removed or modified.

7. Although not relevant to PC9, I note that Mr Dean's concurrence that the ecological effects of the removal and replacement of an area of 230m<sup>2</sup> of planted vegetation can be addressed (subject to a full effects assessment in that process) has not affected his recommendation that the SNA be retained as notified.
8. At paragraph 22, Mr Robb refers to an easement. I am aware that an easement in favour of HCC applies to the property for the right to drain water. The easement area, shown in red below in Figure 1, has been planted with vegetation, despite the easement restricting the planting and growing of trees or shrubs there.

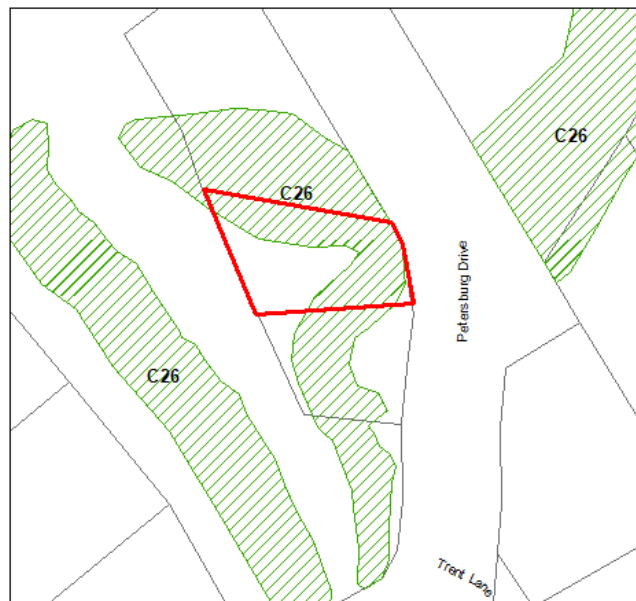


Figure 1: Approximate boundary of easement on 29 Petersburg Drive

9. Mr Robb considers that the SNA should be realigned to reflect the easement. I agree that it would be an absurd outcome to protect, via the application of SNA status under PC9, the vegetation in the easement area which is in fact prohibited by the easement. I consider that SNA c26 should be amended to exclude the area subject to the easement (as shown in **Appendix 1**). Mr Dean's evidence is that, even with the easement area removed, the rest of the proposed SNA over the property should be retained as notified. I agree with his recommendation.

**DoC: Ms Ashiley Sycamore**

*Paragraphs 20-25: Lighting and glare*

10. In respect of lighting and glare, I rely on the rebuttal evidence of Dr Mueller and Mr McKensey. Accordingly, in terms of Ms Sycamore's proposed changes to Rule 25.6.4.X:
- a) I support the amendment to b.iii. to replace 3000k with 2700k, which is consistent with Mr McKensey's primary and rebuttal evidence; and
  - b) I do not support the amendment to b.iv. to replace 5 minutes with 1 minute, which is not supported by Mr McKensey. Dr Mueller notes that whether a shorter sensor light period will minimise effects on Long-Tailed Bats (**LTB**) is unknown.<sup>1</sup>

*Paragraphs 26-29: Noise*

11. Dr Hannah Mueller acknowledges that emerging research indicates that noise potentially adversely affects LTB, however there is insufficient

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<sup>1</sup> Paragraph 13.

evidence available to understand the effects of noise or to guide the implementation of effective controls and mitigation measures.<sup>2</sup>

12. I consider that noise effects should not be disregarded simply because the research is in its early stages. However, it is difficult to implement noise standards when it is unclear what level of effects are being controlled and whether the controls will be effective.
13. I note that Ms Sycamore's planning evidence seeks the addition of noise provisions to Chapter 25.8 of the District Plan, but no specific standards are provided. Ms Sycamore then proposes wording for a new policy to address the noise issues. I consider that the proposed policy should not be included in isolation, without corresponding noise standards. I consider that further work/research is required to understand the effects of noise on LTB before any changes are made to the district plan.
14. In addition, I consider there are practical difficulties with introducing a separate noise standard for new activities into an already urbanised area, with its own existing noise sources and noise controls.
15. In any event, I consider that there is no scope within PC9 to introduce noise standards in relation to SNAs. They were not included in the notified provisions, nor was the proposal evaluated in the s 32 report.

*Paragraphs 42-49: SNA mapping*

16. At paragraphs 43 to 45, Ms Sycamore states that HCC's expert evidence and the s42A report focussed on whether black mudfish should be protected, rather than considering the broader submission point seeking

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<sup>2</sup> Paragraph 6.

to include provisions for the protection of unmapped areas that meet the WRPS criteria for an SNA.

17. I consider that there is no scope to include provisions for unmapped areas in the district plan including to protect black mudfish habitat in PC9. I concur with Dr Mueller's evidence on this point and Ms Buckingham's statement in the s42A report that *"... protection of mudfish habitat is provided through regional policy and rules, and also would be expected to be addressed through any plan change process for the urbanisation of rural areas."*
18. I do not support the policies proposed by Ms Sycamore in paragraph 48. In relation to the first proposed policy, when read as a whole, Chapter 20 already references the WRPS criteria (Appendix 5<sup>3</sup>) in the purpose. In addition, Policies 20.2.1a and b. address the identification and mapping of SNAs and it is unnecessary to repeat this.
19. In relation to the second proposed policy, I do not support the inclusion of a policy seeking recognition of unmapped sites as it would potentially result in new 'unmapped' areas being identified that were not identified in the preparation of PC9. It is also unclear how identification would occur. I consider that the proposed policy is outside the scope of PC9.

*Paragraphs 50-54: Notification/Non-notification rules*

20. I do not support DoC's requested change to Figure 1.1.9a. as set out in paragraph 54 of Ms Sycamore's evidence. Figure 1.1.9a, a flow chart for determining notification, is included as **Appendix 2** to my evidence. The flow chart only applies to Restricted Discretionary Activities. The activities DoC's submission relates to are those that fail a standard and default to Non-Complying Activity status. So under the Figure 1.1.9a flow chart, DoC

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<sup>3</sup> I identify this as a minor error for correction at paragraph 55 a) of my primary evidence.

would fail the first limb and fall to be considered under s95 in the normal way. In practical terms the flow chart simply does not apply, and amending it to accommodate a non-complying activity will deliver nothing useful for DoC.

21. Instead, 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.

**Te Awa Lakes: Mr Stephen Gascoigne**

22. Dr Mueller and Mr Dean address SNA c59 and c76 in their rebuttal evidence and state that the areas that have not been the subject of consented vegetation clearance still hold ecological values and critical habitat. They conclude that SNAs c59 and c76 should be retained except for the areas identified by Mr Dean in his primary evidence dated 14 April 2023.
23. In relation to c76, I support the recommendation to not remove any further areas other than the amended boundaries recommended in the primary evidence of Mr Dean. This is because as at the date of mapping, the vegetation and the associated ecological values remain. Unless the landowner presents evidence of the guaranteed future removal of all this remaining vegetation (which is not necessarily what the consent envisages), the SNA may still serve a purpose. I accept however that if the vegetation is guaranteed to be removed, the SNA serves little purpose.
24. Similarly, regarding C59, whilst it is noted that there are ecological values in the area referred to as 'the pines', this area has been identified for removal as part of consent 010.2021.11468.001. However, as noted by Dr Mueller, removal has yet to occur and there is evidence of bat habitat in the area. It is quite possible that as part of the Ecological Management Plan

associated with that removal, some critical vegetation may be retained, which would then be protected by the proposed SNA.

25. Ultimately, I consider that the SNA must serve a useful purpose, and if all identified ecological values are removed as a result of the consents being given effect to, then there may not be any useful purpose to the SNA. But until that position is made clear by the consent holder, there are ecological values that warrant protecting.

**Adare: Mr Ben Inger**

*Paragraphs 11 - 14: Proposed new explanation*

26. I support the inclusion of an explanation to accompany the proposed new objective and policies as was agreed during expert conferencing and confirmed in the s 42A report.
27. I have reviewed Mr Inger's proposed explanation but consider it goes wider than the objective and policy intent, which is to address SNAs throughout the City, but not other areas and zones. Accordingly, I suggest the following amendments:

*Significant Natural Areas throughout the City provide habitat for the threatened – nationally critical long-tailed bat which is important to protect and enhance. To help to achieve this an integrated approach across all Significant Natural Areas in the City, ~~a citywide approach is important~~ for restoration of long-tailed bat habitat and monitoring of long-tailed bat activity is required. The role and responsibilities of the City-wide Bat and Habitat Enhancement Panel are addressed in Appendix 1.5.4 r).*

*Paragraphs 15-17: Numbering*

28. I agree that the numbering may require correction. This is an administrative issue which will be identified and resolved through the e-plan process.

*Paragraphs 18-23: Reference to Eurobats*

29. I disagree that the reference to the EUROBATS guideline in the objective and policy referred to by Mr Inger should be deleted on the basis that it will make the provisions less clear and because Plan Change 5 did not do so. I have no objection to its inclusion as recommended in the s42A report.
30. I note that Mr Inger has 'consolidated' the Plan Change 5 changes and the PC9 recommended changes in his Attachment A. I disagree with the ordering of the points in the explanation, including the movement of the sentence in blue below the explanation for the Peacocke Precinct. I note that this is an administrative issue which will be settled once the plan changes are made operative and merged with the Operative District Plan.

*Paragraphs 24-27: Offsetting and compensation*

31. In my view, the general reference to best practice guidelines for biodiversity offsetting is appropriate, particularly given the Draft National Policy Statement on Indigenous Biodiversity (**NPS-IB**) has yet to be gazetted and may well result in a future amendment to the District Plan if it occurs after PC9 is heard/decisions made. I disagree that until that occurs, there should be no reference to best practice guidelines in the District Plan.
32. If biodiversity offsetting and compensation principles are embedded in the NPS-IB, then this can be dealt with at a later stage. It is unclear when the NPS-IB will come into effect, however it could be some time before that occurs.

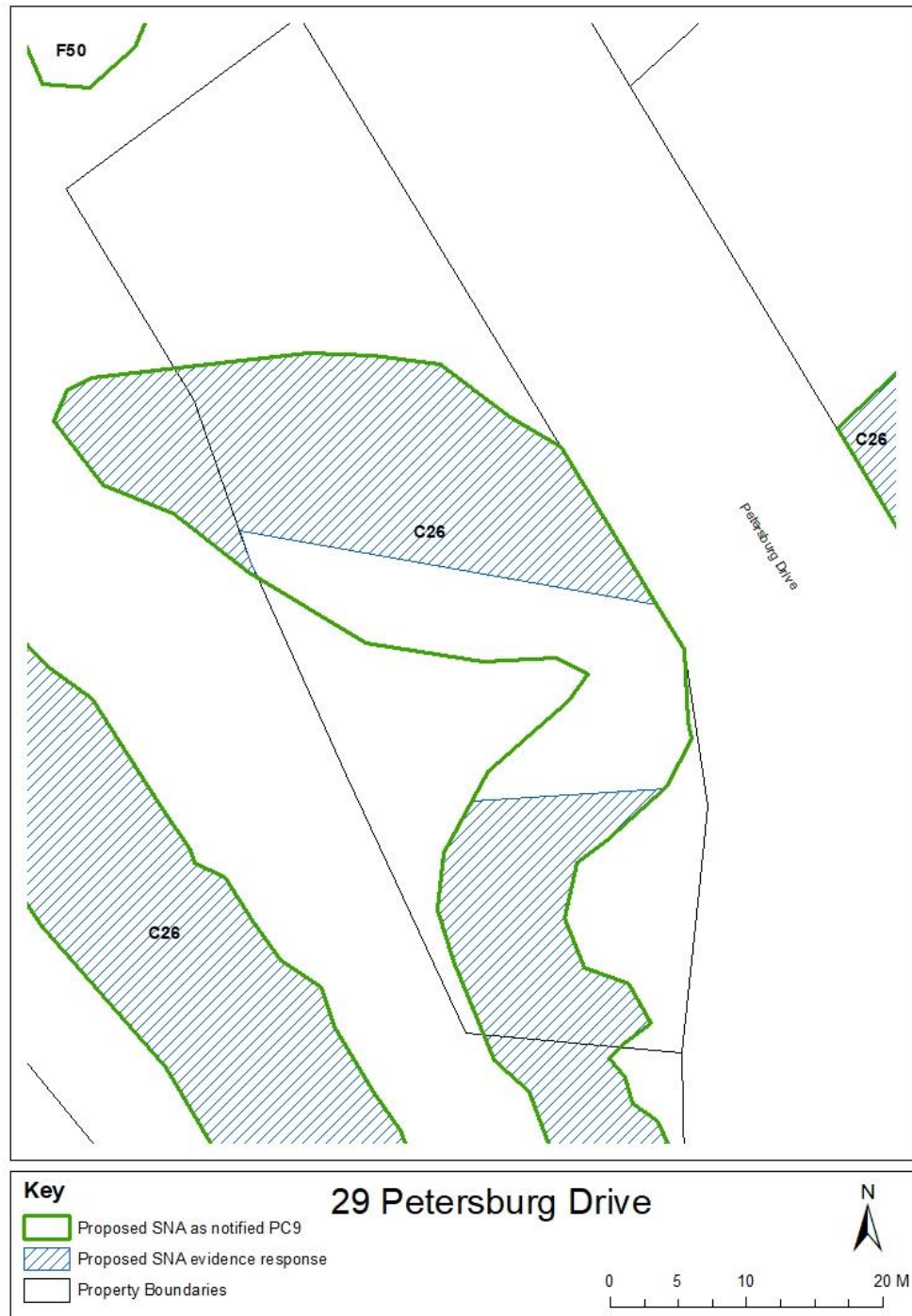
**CONCLUSION**

33. I recommend removing the easement area from SNA c26 at 29 Petersburg Drive. The rest of the SNA extent should be remain as notified.

34. I do not support the proposed noise policy proposed by DoC as it is beyond the scope of its submission and PC9.
35. I do not support the proposed policies relating to SNA mapping as the suite of SNA provisions already include reference to the WRPS and mapped SNAs in the district plan. Furthermore, I strongly oppose the inclusion of un-mapped areas being subject to the same SNA provisions, as this goes beyond the scope and intent of PC9.
36. I do not support the amendment of Figure 1.1.9a.
37. I support the removal of c59 from the SNA mapped layer on the Te Awa Lakes land if the identified ecological values are removed as a result of the consents being given effect to, only if the position has been made clear by the consent holder. However, I do not support any further amendment to c76, unless the landowner presents evidence of the guaranteed future removal of the remaining vegetation.
38. I support the inclusion of an explanation to accompany the proposed policy related to LTB to be inserted in the district plan, however I propose alternative wording as set out above.
39. The numbering issues are noted and are an administration issue to be resolved through the e-plan process.
40. I support Ms Emily Buckingham's recommendations regarding the referencing of documents and consider that they should be retained.

**Laura Jane Galt**

**12 May 2023**

**Appendix 1 - Proposed amended boundary of c26 at 29 Petersburg Drive**

## Appendix 2 – Figure 1.1.9a. of ODP

Figure 1.1.9a Process to determine notification of resource consent applications

