

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

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

**AND**

**IN THE MATTER**      of hearing submissions on Plan Change 9 to the Hamilton  
City District Plan

**BETWEEN**            **THE ADARE COMPANY LIMITED**

**Submitter #423**

**AND**                    **HAMILTON CITY COUNCIL**

**Local Authority**

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**REBUTTAL STATEMENT OF EVIDENCE OF BEN MAXWELL INGER FOR  
THE ADARE COMPANY LIMITED**

**PLANNING (SESSION 2)**

**6 OCTOBER 2023**

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## INTRODUCTION

- 1 My name is Ben Maxwell Inger. I am a Senior Planner and Director at Monocle in Hamilton. I have been engaged by The Adare Company Limited (**Adare**) to provide planning evidence in relation to Plan Change 9 (“**PC9**”).
- 2 I have previously prepared Evidence in Chief (“**EIC**”) dated 28 April 2023 and Evidence in Reply (“**EIR**”) dated 12 May 2023 for Session 1 of PC9. My qualifications and experience were set out in my EIC. I repeat the confirmation in my EIC that I have read and agree to comply with the Code of Conduct for Expert Witnesses.
- 3 In this statement of EIR, I respond to the supplementary evidence of Ms Ashiley Sycamore on behalf of the Department of Conservation (“**DOC**”).
- 4 The fact that this rebuttal statement does not respond to every matter raised in the evidence of a submitter within my area of expertise should not be taken as acceptance of the matters raised. I have focussed this rebuttal statement on the key points of difference that warrant a response.

## RESPONSE TO MS SYCAMORE’S EVIDENCE

### Significant Natural Areas Mapping

- 5 In her supplementary evidence, Ms Sycamore recommends further amendments to two new policies that she suggested be included in Chapter 20 in her evidence on Session 1. Her recommended policies seek to recognise that areas of significant indigenous vegetation and significant habitats of indigenous fauna include:
  - (a) any areas that meet the significance criteria in APP5 of the Waikato Regional Policy Statement (“**WRPS**”); and
  - (b) sites that are scheduled as Significant Natural Areas (“**SNAs**”) in Appendix 9C; and
  - (c) sites that meet the criteria for identifying areas that qualify as SNAs under Appendix 1 of the National Policy Statement for Indigenous Biodiversity (“**NPS-IB**”).
- 6 Clause 3.8(1) of the NPS-IB is clear that it is a territorial authority’s responsibility to identify areas of significant indigenous vegetation or

- significant habitats of indigenous fauna that qualify as SNAs. It states that territorial authorities must do this via a district-wide assessment. Clause 3.8(2) states that the assessment criteria in Appendix 1 must be used and lists principles that the assessment must be in accordance with.
- 7 Clause 3.8(6) of the NPS-IB recognises that territorial authorities may subsequently become aware of additional areas of significant indigenous vegetation or significant habitats of indigenous fauna which qualify as an SNA. It imposes obligations on territorial authorities to conduct assessments as soon as practicable after becoming aware of any additional areas that may qualify and that any new SNA identified as a result must be included in the next appropriate plan or plan change notified by the territorial authority.
- 8 Clause 3.9 sets out that SNAs must be identified in district plans by including the location of the SNA and a description of its attributes, a map of the area and whether the SNA is a geothermal SNA.
- 9 In my opinion, the approach that HCC has taken to PC9 is consistent with clauses 3.8(1), (2) and clause 3.9 of the NPS-IB. A citywide assessment has been undertaken of significant indigenous vegetation and significant habitats of indigenous fauna and SNAs are proposed to be identified in the district plan via a schedule and maps. HCC has called expert evidence that confirms that the approach to identifying SNAs through PC9 is consistent with the NPS-IB.<sup>1</sup>
- 10 If HCC becomes aware of additional areas of significant indigenous vegetation or significant habitats of indigenous fauna in the future that may qualify as SNAs under the NPS-IB, then the obligations for including those areas in the district plan via a plan change promulgated by the Council are clearly set out in clause 3.8(6). From a planning perspective, it is inefficient and unnecessary to restate those obligations through a policy in the district plan, as Ms Sycamore has suggested.

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<sup>1</sup> Supplementary statement of evidence of Emily Buckingham, 1 September 2023, at [17]; Supplementary statement of evidence of Hamish Dean, 1 September 2023, at [13]-[36].

- 11 For these reasons and other reasons given in my EIR dated 12 May 2023, I do not agree with either of the additional policies that Ms Sycamore has recommended be included in Chapter 20.

### **Indigenous Biodiversity Outside Significant Natural Areas**

- 12 Ms Sycamore has identified that PC9 provides an opportunity for the district plan to address clause 3.16 of the NPS-IB which relates to indigenous biodiversity outside SNAs. She recommends that a new policy should be included in the district plan to set out that the effects management hierarchy must be followed in situations which involve significant adverse effects on indigenous biodiversity outside an SNA.
- 13 In my opinion, there are several problems with this suggestion:
- (a) Chapter 20 covers Significant Natural Areas, Notable Trees, and Peat Lakes, Wetlands and Peat Lake Catchments. It does not relate to indigenous biodiversity outside these areas.
  - (b) In terms of section 32AA of the RMA, I consider that the policy would not be the most appropriate way of achieving the objectives in Chapter 20. There are no objectives in Chapter 20 which Ms Sycamore's proposed policy would relate to.
  - (c) I understand there is no ability to expand the scope of PC9 to include additional provisions which apply outside of SNAs. To the extent that PC9 is not able to fully implement the NPS-IB, this will need to be addressed through a future plan change by HCC in accordance with the implementation timeframes in the NPS-IB. Importantly, the NPS-IB requires that HCC give effect to it as soon as reasonably practicable, with plan changes required to be notified within five to ten years of the NPS-IB commencement date.
  - (d) It is not reasonably practicable to modify the district plan through PC9 to give effect to provisions that were not in existence at the time PC9 was notified or submitted on. I would anticipate that there are people in Hamilton that would be affected by introducing new provisions to PC9 as proposed by Ms Sycamore, who did not make a submission on PC9. Those people would be denied the opportunity to participate in the planning process if Ms Sycamore's proposed changes are accepted.

## Noise

- 14 Ms Sycamore cites clause 3.7 of the NPS-IB as supporting the new policy that she proposed in her EIC to manage potential adverse effects of noise on indigenous biodiversity within SNAs. The policy that she proposes would be contained in Chapter 25.8 (Noise and Vibration) and reads:

*“Policy 25.8.2.1X: Ensure that noise does not adversely affect indigenous fauna in a Significant Natural Area”.*

- 15 Clause 3.7 of the NPS-IB reads (my emphasis):

*“3.7 Precautionary approach*

*(1) Local authorities must adopt a precautionary approach toward proposed activities where:*

*(a) the effects on indigenous biodiversity are uncertain, unknown, or little understood; but*

*(b) those effects could cause significant or irreversible damage to indigenous biodiversity.”*

- 16 The requirement that local authorities must adopt a precautionary approach is qualified by (a) and (b) of clause 3.7. The effects of noise on long-tailed bats in SNAs may be uncertain, unknown, or little understood such that (a) could apply. However, a precautionary approach would only be appropriate if the local authority considers that the effects could cause significant or irreversible damage to indigenous biodiversity. This is a high effects threshold. I acknowledge that I am not a bat expert, but my reading of the evidence on PC9 (including the evidence from Dr Mueller and Dr Borkin in Session 1) does not suggest that the effects of noise on SNAs in Hamilton are such that significant or irreversible damage may occur.

- 17 Regardless, I addressed in my EIR dated 12 May 2023 why I considered the policy to be inappropriate and unnecessary. I summarise those reasons below:

- (a) There are no rules in Chapter 25.8 or elsewhere in the district plan which limit noise specifically in relation to SNAs.
- (b) The objective which the proposed policy would relate to is focused on amenity values, not ecological values. In terms of section 32AA,

the policy would not be the most appropriate way of achieving that objective.

- (c) The purpose statement in Chapter 25.8 similarly refers to adverse effects of noise and vibration on amenity values, not ecological values.
- (d) The effects of urban development on long-tailed bats was considered extensively through the recent PC5 process. No objectives, policies, or rules were imposed for managing noise in relation to SNAs or Significant Bat Habitat Areas (**SBHAs**) within the Peacocke Precinct.

18 My opinion on these matters is unchanged.

### **Lighting and Glare**

19 Ms Sycamore's supplementary evidence also continues to suggest changes to lighting and glare provisions in Rule 25.6.4.X. For completeness I note that the rule would not apply to activities in the Peacocke Precinct, so the changes would not affect Adare's landholdings. I do not comment on this any further.

**Dated this 6<sup>th</sup> day of October 2023**



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**Ben Inger**