

**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

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

PLANNING (SESSION 1)

12 MAY 2023

PO Box 2401 AUCKLAND 1140
Tel +64 9 300 2600
Fax +64 9 300 2609

WYNN WILLIAMS

Solicitor: Mike Doesburg
(mike.doesburg@wynnwilliams.co.nz)

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 My qualifications and experience were set out in my Evidence in Chief (“**EIC**”) dated 28 April 2023. 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 rebuttal evidence, I respond to the evidence of Ms Ashiley Sycamore on behalf of the Department of Conservation (“**DOC**”).
- 4 I have also read the ecological evidence of Dr Kerry Borkin for DOC. Dr Borkin’s evidence suggests a wide range of changes to PC9 which are not all reflected in the changes proposed by Ms Sycamore in her evidence. I have focused on responding to the specific changes which Ms Sycamore has outlined in her planning evidence.
- 5 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

Lighting and Glare

- 6 The Section 42A Report recommends a new lighting rule (Rule 25.6.4.X) in Chapter 25.6 (Lighting and Glare) to manage lighting effects on SNAs. The rule specifically excludes the Peacocke Precinct. That is because the recent decisions on Plan Change 5 (“**PC5**”) inserted another new Rule 25.6.4.4 which contains lighting controls to manage effects on existing and proposed bat habitat within Significant Bat Habitat Areas (“**SBHAs**”) that are mapped in the Peacocke Structure Plan.¹ The decisions on PC5 also include rules requiring minimum 5m building

¹ All SNAs in the Peacocke Precinct are also SBHAs.

setbacks to SBHAs.² I understand that none of these rules have been appealed.

- 7 Ms Sycamore's evidence outlines two changes that she considers should be made to Rule 25.6.4.X.³ I have no comments to make on those changes because they would not affect Adare's landholdings in Peacocke.
- 8 However, Ms Sycamore goes on to state that other provisions to minimise the effects of lighting on indigenous biodiversity could be included in PC9 if the changes that she proposes to Rule 25.6.4.X are not supported.⁴ She refers to potential measures including increased building setbacks for lighting standard Rule 25.6.4.X and/or additional planting between SNA boundaries and buildings to buffer light. It is unclear whether she intends that the buffer planting would be a city-wide standard or whether it would be a standard in Rule 25.6.4.X in which case it would not apply in the Peacocke Precinct.
- 9 I consider that lighting and glare effects in relation to SBHAs (and SNAs) in the Peacocke Precinct have been thoroughly considered and comprehensively addressed through PC5. If additional or amended controls are determined to be required through PC9 to manage lighting effects on SNAs in other parts of the city, then those provisions should continue to exclude the Peacocke Precinct.

Noise

- 10 Ms Sycamore suggests in her evidence that a new policy should be included in Chapter 25.8 (Noise and Vibration) to manage potential adverse effects of noise on indigenous biodiversity within SNAs.⁵ The policy that she proposes is "*Policy 25.8.2.1X: Ensure that noise does not adversely affect indigenous fauna in a Significant Natural Area*".
- 11 I consider the proposed policy is inappropriate and unnecessary because:

² MRZ-PREC1-PSP: R38(8), NCZ-PREC1-PSP: R48(4) and LCZ-PREC1-PSP: R42(5).

³ At [20]-[24].

⁴ At [25].

⁵ At [29].

- (a) The relevance of the policy is unclear given 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 that the proposed policy would relate to is Objective 25.8.2.1 which is “*Activities have minimal adverse noise and vibration effects on other activities and sites, consistent with the amenity values of the receiving environment*”. The objective and the existing noise policies are focused on amenity values, not ecological values. In terms of section 32 of the RMA, I consider that the policy would not be the most appropriate way of achieving the objective – it responds to a different issue than the objective addresses;
- (c) The purpose statement in Chapter 25.8.1 similarly refers to adverse effects of noise and vibration on amenity values, not ecological values; and
- (d) Despite extensive consideration being given to effects of urban development on long-tailed bats through PC5, no objectives, policies or rules were imposed for managing noise in relation to SNAs or SBHAs within the Peacocke Precinct.

Unmapped Significant Natural Areas

- 12 Ms Sycamore considers that it is necessary to amend PC9 so that unmapped areas within Hamilton City that meet the significance criteria in APP5 of the Waikato Regional Policy Statement (“**WRPS**”) are protected.⁶ I understand her proposition to be that areas which are assessed at any stage in the future as meeting the significance criteria in APP5 should be classified as SNAs (with the associated objectives, policies and rules applying) even if those areas are not mapped or scheduled in the District Plan.
- 13 To achieve this outcome, Ms Sycamore has proposed two new policies for inclusion in Chapter 20 (Natural Environments). The policies that she has suggested would be under the sub-heading Significant Natural Areas and they would be associated with Objective 20.2.1 which is

⁶ At [42]-[49].

“Significant Natural Areas are protected, maintained, restored and enhanced”.

14 The policies that she has suggested are:

“Policy 20.2.1X: Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as being any area that meets one or more of the criteria in APP5 of the Waikato Regional Policy Statement.”

“Policy 20.2.1X: Recognise that areas of significant indigenous vegetation and significant habitats of indigenous fauna within Hamilton City includes:

- sites scheduled in Appendix 9C and identified in the planning maps as Significant Natural Areas; and*
- sites that are not identified on the planning maps but that meet one or more of the criteria in APP5 of the Waikato Regional Policy Statement.”*

15 Ms Sycamore has also identified that the purpose of SNAs under Chapter 20.1 and the wording within Schedule 9C of the District Plan would need to be amended. She does not provide any specific details of what those changes would be.

HCC’s approach in PC9

16 HCC’s approach for identification of SNAs under PC9 is described in the report prepared by 4Sight Consulting for HCC ‘*Significant Natural Areas of Hamilton City District: Terrestrial and Wetland Ecosystems*’ dated June 2022. The assessment covered all of Hamilton City, except for the Peacocke Structure Plan area where SNAs were identified as part of the recent PC5 process. The identification process included assessment against the criteria in APP5. It also involved letters being sent to all landowners inviting feedback on the draft SNAs.

17 In my opinion, the mapping and scheduling of SNAs in the District Plan is an efficient and effective approach for protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna. It is transparent, allows affected landowners the opportunity to provide feedback and make submissions and ensures that clear information is

provided in the District Plan which can be readily understood by affected landowners, prospective purchasers of land and other stakeholders.

- 18 The mapping approach is also consistent with the WRPS. ECO-M14 requires that *“The characteristics that have contributed to an area being significant should also be communicated to the relevant landowners and kept on record by the local authority”*. In my opinion, district plans are the logical place for this information to be communicated and recorded.
- 19 ECO-PR2 refers to APP6 in terms of the roles and responsibilities for identifying areas of significant indigenous vegetation and significant habitat of indigenous fauna. APP6 outlines a process involving provisional mapping and assessment of areas against the criteria in APP5 by Waikato Regional Council. Data refinement is identified as a joint responsibility (presumably between WRC and territorial authorities) and territorial authorities have responsibilities for implementation through district plans and other mechanisms. APP6 does not refer to responsibilities for identifying areas of significant indigenous vegetation and significant habitat of indigenous fauna falling to landowners.
- 20 PC9 recognises that additional SNAs may be identified and added to the District Plan through the First Schedule process under the RMA (Purpose 20.1(d)). This is the most appropriate approach if additional sites are identified in the future which meet the criteria in APP5 of the WRPS.

Uncertainty and Administrative Difficulty

- 21 The changes that Ms Sycamore proposes would introduce considerable uncertainty for landowners, prospective purchasers of land and other stakeholders, as well as administrative difficulty for HCC in implementing the District Plan. If the changes are made, it would be unclear on the face of the District Plan whether many activities would be permitted or whether they would require resource consent.
- 22 Landowners would be required to engage ecological expertise to determine whether their sites are an SNA, which would be a considerable expense and cause potential delays. Many of the criteria in APP5 are subjective and it would be unclear who the final decision-maker would be if the findings were in dispute.

Costs and Benefits

- 23 Ms Sycamore has not provided any analysis of what the costs and benefits of the alternative approach that she has proposed would be, including whether the provisions are the most appropriate way to achieve the objectives of PC9 and Chapter 20. Ms Sycamore's evidence does not demonstrate the likely areas of significant indigenous vegetation and significant habitats of indigenous fauna that are unidentified, nor the threat those areas are facing.
- 24 In the absence of detailed assessment and noting the issues I have identified, in my opinion, the policies proposed by Ms Sycamore are not the most appropriate way to achieve the objectives of PC9 and Chapter 20.

Dated this 12th day of May 2023



Ben Inger