

**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

**EVIDENCE IN CHIEF OF BEN MAXWELL INGER FOR THE ADARE
COMPANY LIMITED**

PLANNING (SESSION 1)

28 APRIL 2023

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WYNN WILLIAMS

INTRODUCTION

- 1 My name is Ben Maxwell Inger.
- 2 I am a Senior Planner and Director at Monocle, in Hamilton. I hold the qualifications of Bachelor of Planning (Honours) from the University of Auckland. I am a Full Member of the New Zealand Planning Institute.
- 3 I have 16 years' planning experience. Over this time, I have been employed in private consultancies working for both private and public sector clients, including developers and local authorities in the Waikato region. In my previous role at Harrison Grierson, which I held until November 2020, I was responsible for managing the company's operations in the Waikato region.
- 4 My experience includes preparing plan changes, submissions and planning evidence relating to proposed district plans, as well as preparing and processing resource consent applications for residential, commercial and infrastructure projects. I am a current member of Hamilton City Council's Urban Design Panel.
- 5 My recent experience relevant to this plan change and consideration of ecology and biodiversity values includes:
 - (a) Co-author of the Assessment of Environmental Effects for the Amberfield subdivision in Peacocke, preparation of planning evidence and involvement in expert conferencing and mediation for Weston Lea Limited (2017-2021). The subdivision relates to a 105-hectare site adjacent to the Waikato River in southern Hamilton;
 - (b) Author of the Assessment of Environmental Effects for changes to the conditions of the Amberfield subdivision in Peacocke for Weston Lea Limited (2022);
 - (c) Close liaison with Hamilton City Council (**HCC**) on behalf of The Adare Company Limited (**Adare**) as a contributor to the draft provisions for Plan Change 5 – Peacocke (**PC5**) to the Hamilton City District Plan (**District Plan**), as well as preparation of submissions and further submissions and involvement in expert conferencing (2021-2022); and

- (d) Planning evidence on ecology matters for Titanium Park Limited and Rukuhia Properties Limited on Private Plan Change 20 to the Waipa District Plan and master planning for a 130ha industrial business park north of Hamilton Airport referred to as the Northern Precinct of Titanium Park (2019-2023).

- 6 In relation to Plan Change 9 (**PC9**), I assisted with the preparation of Adare's submission and further submission. I also attended expert conferencing on the Planning and Ecology (Session 1) and Planning (Session 4) topics and signed the joint witness statements (**JWS**) produced at each of the expert conference sessions.

CODE OF CONDUCT

- 7 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and agree to comply with it.
- 8 I confirm that the topics and opinions addressed in this statement are within my area of expertise except where I state that I have relied on the evidence of other persons. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions I have expressed.

SCOPE OF EVIDENCE

- 9 I have been engaged by Adare to provide independent expert planning evidence on the issues raised in Adare's submission and further submissions on PC9.
- 10 Many of the issues addressed in Adare's submission and further submission have been satisfactorily addressed in the recommendations in the Section 42A Report. My evidence focuses on key remaining matters where I support different or further changes. Those matters relate to:
 - (a) The explanation following the objective and policies for the Long-Tailed Bat (**LTB**);
 - (b) The note following Activity Table 20.3 which clarifies the applicable rules for park furniture, new public walkways and cycleways and

new infrastructure in Significant Natural Areas (**SNA**) in the Peacocke Precinct;

- (c) Reference to the Eurobats guideline in the explanation which follows the objective and policy for lighting and glare; and
- (d) References to best practice guidance for offsetting and compensation.

OBJECTIVE AND POLICIES FOR THE LTB

- 11 The JWS for Session 1 and the JWS for Session 4 record my agreement to a new objective and policies to give recognition to the citywide nature of providing for the LTB.¹ The recommended objective and policies in the Section 42A Report are as follows:

<u>Objective</u>	<u>Policies</u>
20.2.2 Significant habitat for long-tailed bats is protected and enhanced.	20.2.2a Manage adverse effects on long-tailed bat habitat within Significant Natural Areas in accordance with the effects management hierarchy in Policy 20.2.1d.
	20.2.2b Restore and enhance Significant Natural Areas to improve habitat for long-tailed bats.
	20.2.2c Establish a City-wide Bat and Habitat Enhancement Panel to advise on matters relating to the creation, restoration and enhancement of habitat for long-tailed bats, and the monitoring of long-tailed bat activity.
<i>Explanation</i>	
(this has been left blank)	

- 12 The wording for the objective and policies reflects the drafting that I suggested which is recorded in the JWS for Session 4, except for Policy

¹ Section 3.5.6 in The JWS Session 1 (also agreed to by experts for HCC and WRC) and Section 3.3.6 in the JWS Session 4 (also agreed to by experts for HCC, DOC and WRC).

20.2.2a. I agree that the amended wording for Policy 20.2.2a in the Section 42A Report is appropriate.

- 13 I note, however, that the explanation that follows the objective and policies has been left blank in the Section 42A Report, whereas all other objectives and policies in Chapter 20 are followed by an explanation. My suggested wording for the explanation is as follows:

“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, a city-wide approach is important for restoration of long-tailed bat habitat and monitoring of long-tailed bat activity. The role and responsibilities of the City-wide Bat and Habitat Enhancement Panel are addressed in Appendix 1.5.4 r).”

- 14 This explanation identifies the purpose underpinning the objective and policies, which is to recognise Hamilton’s LTB population and to address the city-wide approach and the responsibilities of the Bat and Habitat Enhancement Panel. I understand that the relevant parts of the PC5 decision on Appendix 1.5.4 r) have not been appealed. This drafting is consistent with other decisions, including the Environment Court’s decision on Amberfield and the Panel’s decision on PC5. While the explanation is relatively simple, I consider it is better to include an explanation, than to leave it blank and have plan users wondering why no explanation has been provided.

PARK FURNITURE, WALKWAYS AND CYCLEWAYS AND NEW INFRASTRUCTURE IN SNAS IN PEACOCKE PRECINCT

- 15 I support the recommendation in the Section 42A Report to include a new Note 5 after Activity Table 20.3 in Chapter 20 to clarify that the applicable rules for park furniture, new public walkways and cycleways and new infrastructure in SNAs in the Peacocke Precinct are the rules contained in the decision on PC5.
- 16 The note currently refers to Rules 20.3(ga), (gb) and (gc) applying in the Peacocke Precinct. Those rules, which relate to park furniture, new walkways and cycleways and new infrastructure respectively, are included in the decision on PC5 but they are not currently included in Activity Table 20.3 in the Section 42A Report for PC9.

- 17 The numbering may need to change but I expect that this is a simple administrative matter that can be addressed when the integration of PC5 and PC9 occurs. I understand that the relevant parts of the PC5 decision on Chapter 20 have not been appealed.

REFERENCE TO EUROBATS GUIDELINE

- 18 The Section 42A Report recommends that the following additional text is added to the explanation that follows Objective 25.6.2.1 and Policy 25.6.2.1a which relate to lighting and glare:

“For guidance on addressing adverse effects of light spill on long-tailed bats refer to EUROBATS Publication Series No. 8 Guidelines for consideration of bats in lighting projects (2018).”

- 19 It is helpful to read the recommended changes to the lighting and glare objective, policy and explanation in the context of other changes introduced by the decisions on PC5. A consolidated version of the PC5 changes and the PC9 recommended changes is included in **Attachment A** of my evidence. I understand that the relevant parts of the PC5 decision on Chapter 25 have not been appealed.
- 20 As can be seen in the consolidated version, the decisions on PC5 resulted in the inclusion of a new objective and two new policies which are specific to the Peacocke Precinct. The effect of the change proposed by the Section 42A report is that the new explanation would apply to all of the objectives and policies in that section (i.e. Objective 25.6.2.1 and Policy 25.6.2.1a and the new objective and policies for the Peacocke Precinct).
- 21 In my opinion, the outcomes related to the LTB that are required to be achieved under the lighting and glare objectives, policies and rules are clear without the reference to Eurobats. The objectives and policies provide a clear statement of what the chapter is trying to achieve. The existing explanation (from PC9 as notified and the PC5 decision) identifies the issues that the objectives and policies respond to.
- 22 From a planning perspective, I consider that introducing reference to Eurobats in the explanation would be inappropriate given it is not referenced in the objectives, policies or rules in the District Plan. Further, the proposed drafting does not actually explain the issues the objectives

and policies are addressing – it refers to one possible source of guidance. Overall, I consider that the reference would make the provisions less clear, rather than improve them.

- 23 Finally, while detailed consideration was given to lighting effects on the LTB through PC5, the changes to the District Plan arising from recent decisions on PC5 do not include any reference to Eurobats. I am not aware of any reasons why reference to the guideline should now be included in the District Plan.

BEST PRACTICE GUIDANCE FOR OFFSETTING AND COMPENSATION

- 24 The Section 42A Report recommends a new information requirement (Appendix 1.2.2.X) for any activity requiring resource consent relating to a SNA where biodiversity offset or compensation measures are proposed. For those applications, Appendix 1.2.2.X would require an assessment of the proposal against Policies 20.2.1d and 20.2.1e as well as “... *the most recent best practice guidelines on offsetting and compensation*”. The note in Appendix 1.2.2.X refers to current guidance documents including ‘*Guidance on Good Practice Biodiversity Offsetting in New Zealand*’ (August 2014) and ‘*Biodiversity Offsetting under the Resource Management Act: A Guidance Document*’ (2018).
- 25 In my opinion, it is good practice for material incorporated by reference in a District Plan to be explicit to avoid uncertainty and ambiguity. In this case, the reference to the “*most recent best practice guidelines*” is unclear, particularly as the examples in the note suggest that it is not just the most recent best practice guideline (i.e. the 2018 guideline) that would require consideration (i.e. the 2014 guideline would also need to be considered).
- 26 The Draft National Policy Statement on Indigenous Biodiversity (**Draft NPS-IB**) includes principles for biodiversity offsetting and compensation.² If principles for offsetting and compensation are retained in the final NPS-IB then it is likely to be considered the “*most recent best practice guidelines*” once the national policy statement has been gazetted. However, ambiguity would remain as to whether there is also a need to refer to other guidelines, which could be particularly problematic

² Draft NPS-IB, Appendices 3 and 4.

if non-statutory guidelines were to be released after the NPS-IB. In that case, they could be considered the “*most recent best practice guidelines*” and the District Plan could potentially be inconsistent with the NPS-IB.

27 I consider the simplest solution is to delete Appendix 1.2.2.X altogether. The additional information requirement is unnecessary because:

- (a) While the Draft NPS-IB remains a draft and has no legal status in terms of decision-making on PC9, if principles for offsetting and compensation are retained in the final NPS-IB then regard will be required to be had to those matters when preparing a resource consent application in accordance with section 104(1)(b)(iii) and clause 2(1)(g) of the Fourth Schedule of the RMA; and
- (b) Regard will be required to be had to Policies 20.2.1d and 20.2.1e (and any other relevant policies in the District Plan) when preparing a resource consent application in accordance with section 104(1)(b)(vi) and clause 2(1)(g) of the Fourth Schedule of the RMA.

CONCLUSION

28 Many of the issues addressed in Adare’s submission and further submission have been satisfactorily addressed in the recommendations in the Section 42A Report.

29 My evidence has focused on key remaining matters where I support different or further changes to the provisions which are recommended in the Section 42A Report. In summary:

- (a) I consider that an explanation should be added following the new objective and policies relating to the LTB;
- (b) I support Note 5 which follows Activity Table 20.3 subject to the administrative changes necessary to incorporate the PC5 provisions that are referred to in the note into the table;
- (c) The reference to Eurobats in the explanation that follows the lighting and glare objectives and policies is inappropriate and unnecessary; and

The Adare Company Limited

Ben Inger (Planning)

Submitter number 423

Evidence-in-chief

- (d) I consider that the information requirement in Appendix 1.2.2.X is unnecessary and should be deleted.

Dated this 28th day of April 2023



Ben Inger

ATTACHMENT A

Black text is existing District Plan provisions.

Green text (underline and strikethrough) is PC9 notified changes.

Blue text (underline) is PC9 Section 42A Report recommended changes.

Red text (underline) is PC5 decisions changes.

Objective	Policies
25.6.2.1 An environment free from the adverse effects of intrusive lighting.	25.6.2.1a Ensure that light spill and glare do not detract from the amenity values of other properties, compromise traffic safety, or have a negative effect on people's health and general welfare, <u>or adversely affect indigenous fauna in a Significant Natural Area.</u>
<u>25.6.2.2</u> <u>Lighting in the Peacocke Structure Plan Area is managed to ensure areas identified as Significant Bat Habitat Area retain their usability and functionality for bat activity.</u>	<u>25.6.2.2a</u> <u>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.</u> <u>25.6.2.2b</u> <u>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.</u>
Explanation	
<p><i>Intrusive lighting may include light from floodlights, security lights and activities such as welding. Light spill and glare have the potential to disturb people's sleep, which could adversely affect their health and general welfare. <u>It also has the potential to adversely affect indigenous fauna, in particular the long-tailed bat, in identified Significant Natural Areas adjoining urban land uses.</u> Unlike other adverse effects of activities, like smoke or noise, which are difficult to contain completely, light spill is reasonably simple to avoid by correct aiming or baffling (shading) of the light source.</i></p> <p><u><i>The Peacocke Precinct is an important habitat for long-tail bats which are a threatened native species. Due to the presence of bats in the area, it is important the effects of development are managed to ensure bats are able to continue to move and forage through the area. This needs to be balanced against the safety needs of the community. Bats are particularly sensitive to light, which has the potential to inhibit their movement and feeding habits. For this reason it is important that those areas of Peacocke identified as being Significant Bat Habitat Areas are protected from the effects of excessive lighting and glare.</i></u></p> <p><u><i>For guidance on addressing adverse effects of light spill on long-tailed bats refer to EUROBATs Publication Series No. 8 Guidelines for consideration of bats in lighting projects (2018).</i></u></p>	