

BEFORE

the Hearing Panel appointed by Waipā
District Council

IN THE MATTER OF

the Resource Management Act 1991

And

IN THE MATTER OF

Private Plan Change 20: Titanium Park
Limited and Rukuhia Properties Limited
– Airport Northern Precinct Extension

SUMMARY STATEMENT JESSE QUENTIN GOODING

On behalf of the

DIRECTOR-GENERAL OF CONSERVATION

PLANNING

Dated: 17 March 2023

Counsel for Director-General of Conservation

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1. INTRODUCTION

- 1.1 My full name is Jesse Quentin Gooding.
- 1.2 I have been asked by the Director-General of Conservation (**Director-General**) to provide expert evidence on Plan Change 20 (**PC20**) to the Waipā District Plan.
- 1.3 My experience and qualifications are set out in my evidence in chief provided to you on the 7th March 2023 (**EIC**).
- 1.4 I ask you to note the following corrections to that EIC:
 - (a) The covering page of my EIC is dated 7th February 2023. The correct date is 7th March 2023.
 - (b) Under paragraph 8.37 I have mis-recorded Waikato Regional Policy Statement (**WRPS**) method ECO-M13. In particular, the last part of clause 2 was not copied into my EIC. To be clear this was an error in formatting, my intent was to record clause 2 in full. It should read (my underline):

2. require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation.
- 1.5 Since filing my EIC I have read and considered the following documents:
 - (a) The rebuttal statement of Mr Joshua Markham
 - (b) The rebuttal statement of Ms Georgia Cummings
 - (c) The rebuttal statement of Mr Ben Inger
 - (d) The rebuttal statement of Mr Nicholas Grala
 - (e) The EIC of Ms Katheryn Drew
 - (f) The EIC of Ms Katrina Andrews
 - (g) Opening legal submissions for Titanium Park Limited and Rukuhia Properties Limited (**the Applicant**)

(h) Legal submissions for the Director-General of Conservation
(**Director-General**).

2. CODE OF CONDUCT

2.1 I reconfirm that I have read the Code of Conduct for expert witnesses as contained in the Environment Court's Practice Note 2023. I have complied with the Code when preparing my EIC and summary statement of evidence and will do so when I give oral evidence before the Panel.

3. KEY FEATURES OF EVIDENCE

3.1 My evidence considers the higher order planning framework, to which PC20 must give effect.

3.2 I wish to emphasise that my evidence is primarily directed at the management of the actual and potential effects anticipated by PC20 on long-tailed bats (**bats**) as explained in paragraph [3.9] of my EIC.

3.3 I therefore take the approach of walking you through the pertinent objectives, policies and methods in the WRPS, where the bats are concerned, namely those contained in the ECO topic. This approach is also taken as I am cognisant that the evidence of Messrs Inger¹ and Grala² together record all of the higher order provisions relevant to PC20.

3.4 There are areas of disagreement between us in the interpretation of certain provisions, however I do not dispute their identification, and do not seek to belabour the Panel with a duplicated recording of them.

3.5 Turning now to paragraph to 6.1 of my EIC I contextualise the PC20 rezoning application with the notable planned and proposed development to occur in the home range of the affected bats.

3.6 In my view it is important to recognise that the adverse effects on bats anticipated by PC20 will be cumulative to those already enabled or likely to be enabled by other planning processes.

¹ Inger EIC. Annexure 1.

² Grala EIC. Paras [100 – 129].

4. BAT HABITAT VALUES AND SIGNIFICANCE

- 4.1 In the opinion of Ms Thurley, the PC20 site in its entirety, apart from buildings meets the WRPS criteria for significance (APP5, Table 28) in terms of criteria 3.
- 4.2 Notwithstanding the PC20 site covering application, titled *Private Plan Change 20 – Airport Northern Precinct Extension*³ and its Appendix 8 *Ecology Report* reaching the same conclusion⁴ there is now disagreement on the significance of the PC20 site between bat ecology expert Georgia Cummings and Tertia Thurley.
- 4.3 In my view the WRPS anticipates such differences of opinion and instructs a read as written approach to the significance criteria in method ECO-M14. This is recorded under paragraph 7.4 of my EIC.

5. STATUTORY AND POLICY FRAMEWORK

- 5.1 In my evidence I address the following statutory documents:
- (a) Part 2 of the Act,
 - (b) the relevant National Policy Statements,
 - (c) the Waikato River Vision and Strategy (**Vision and Strategy**),
 - (d) the WRPS, and
 - (e) the provisions of the Operative Waipā District Plan (**WDP**) relating to ecological matters.
- 5.2 In paragraphs [8.5 – 8.7] I confirm that one of the functions of the territorial authority, in this case Waipā District Council, is to maintain biological diversity.⁵
- 5.3 In paragraphs [8.8 and 8.9] I consider the matter of national importance that must be recognised and provided for under section 6(c).

³ Private Plan Change 20 – Airport Northern Precinct Extension. Section 7.4. Pg 51.

⁴ Appendix 08 – Ecology Report. Section 6. Pg 20 – “Based on the threat classification of bats, it is considered that the vegetation across the TPL property meets criteria 3 of the WRPS for determining significance in biodiversity.”

⁵ Ss31(b)(iii) RMA

5.4 In my opinion this matter is recognised and provided for in the Waikato Regional Policy Statement (**WRPS**) which is in turn to be “given effect” in PC20.

5.5 I mention the provisions in Part 2 of the Act, not because I consider the WRPS is defunct or incomplete, I do so simply to emphasise the role of the District Council and to clarify that section 6(C) and the directive cascade of WRPS provisions are engaged in PC20.

6. WAIKATO REGIONAL POLICY STATEMENT

6.1 While the significance of the site is of importance, I do refer to WRPS provisions that relate to biodiversity that is non-significant.

6.2 As examples I point to ECO-P1⁶, methods ECO-M1 through to ECO-M11⁷. I consider method ECO-M3 outlines a useful checklist for adverse effects on indigenous species along with requiring that the district plan recognise that these are cumulative.

6.3 I do this because these provisions are still relevant regardless of the ecological significance of the PC20 site and because they require a response to cumulative effects.

6.4 Turning now to the more directive policy ECO-P2 I consider this is directly relevant to the PC20 site. ECO-M13 provides clear direction on implementation of this policy.

6.5 I confirm that ECO-M13⁸ does provide a qualifier in clause 2, allowing for remediation and mitigation, but in my opinion, only after an activity has demonstrated adverse effects are unavoidable.

6.6 I consider it important that the Panel note the often-overlooked clauses 6 and 7 of ECO-M13. Clause 6 directs recognition that management of unavoidable effects may not be appropriate due to the threat status or irreplaceability of the species. Clause 7 is to have regard to the functional necessity of activities being in or near areas significant indigenous vegetation where no reasonably practical alternative location exists.

⁶ Gooding EIC, para 8.30

⁷ Gooding EIC, para 8.31

⁸ Gooding EIC, para 8.37

- 6.7 I do note clause 7 is a 'have regard' to clause, meaning it does not present a fatal flaw to PC20 whether you consider the functional necessity means the more commonly used National Policy Statement for Freshwater Management 2020 (**NPS-FM 2020**) definition or the response to clause 7 given by Mr Inger⁹ in his rebuttal evidence that, in my opinion, describes an operational need.
- 6.8 These directive WRPS provisions in the ECO topic are in my opinion paramount in considering the management of bat related effects under PC20.

7. WAIPĀ DISTRICT PLAN

- 7.1 I am generally in agreement with Ecology provisions in the WDP as summarised by Mr Inger. I do record the objective 24.3.3 as being relevant along with Policy 24.3.3.2. In my opinion it is important that this policy is identified to show that while the WDP does not restrict the removal of indigenous vegetation outside Significant Natural Areas (**SNAs**) at all it does anticipate that it's current SNA schedule is not complete and that SNAs will continue to be identified over time, including through planning processes and consent applications.

8. PC20 PROVISIONS

- 8.1 The area of disagreement between myself and Mr Inger, is in fact narrow, regarding the proposed provisions themselves. I explain the reasons for the limited additional changes I consider would further assist PC20 in meeting its statutory obligations in section 10 of my evidence. Fundamental to this outcome, however, are landing an appropriate design of the Structure Plan at the PC20 stage and ensuring enough compensation land will be available so that future consent applications are not frustrated when they design their residual effects compensation package in detail.

9. CONCLUSION

- 9.1 PC20 is situated within the home range of the south Hamilton long-tailed bat population (nationally critical – threatened). This population faces

⁹ Inger rebuttal, para [29 (a)(c)]

increased fragmentation of its habitat from planned and proposed development.

- 9.2 The PC20 site contains significant habitat for the long-tailed bat.
- 9.3 PC20 therefore needs to recognise and provide for section 6(c) and give effect to the WRPS 'avoid' and 'no net loss' of indigenous biodiversity policies.
- 9.4 This could be resolved by PC20 protecting more habitat within the proposed northern precinct as BHA, maximising opportunities to mitigate and remedy effects on the site and providing more offsite compensation to work towards a no net loss outcome.
- 9.5 There is disagreement between the ecology experts as to whether the proposed onsite avoidance and mitigation will be fit for purpose given the wider cumulative effects felt by the bats and their nationally critical – threatened status. Therefore, careful design of the overall effects management approach, will be required to achieve a no net loss outcome.

Dated 16 March 2023



Jesse Quentin Gooding