

BEFORE THE WAIPĀ DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 20 – Airport Northern
Precinct Extension to the Operative Waipā
District Plan

REBUTTAL STATEMENT OF EVIDENCE OF BEN MAXWELL INGER

PLANNING (ECOLOGY TOPIC)

10 March 2023

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INTRODUCTION

1. My name is Ben Maxwell Inger. I am a Senior Planner and Director at Monocle in Hamilton.
2. My qualifications and experience were set out in my Evidence in Chief (“**EIC**”) dated 28 February 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 provide an update on Plan Change 5 – Peacocke (“**PC5**”) and I respond to the evidence of:
 - (a) Ms Tertia Thurley on behalf of the Department of Conservation (“**DOC**”);
 - (b) Mr Jesse Gooding on behalf of DOC;
 - (c) Ms Katrina Andrews on behalf of Waikato Regional Council (“**WRC**”); and
 - (d) Mr Denzil Govender on behalf of Hamilton City Council (“**HCC**”).
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.

UPDATE ON PLAN CHANGE 5 – PEACOCKE

5. My EIC referred to HCC’s PC5 which relates to the Peacocke Structure Plan area in southern Hamilton. I explained that *“Although PC5 relates to a different site and different activities and a decision on the plan change hasn’t been issued yet, the amended provisions [where I was referring to the ecology related provisions for PC20] are nevertheless generally consistent with HCC’s proposed provisions in PC5”*.¹
6. The Independent Hearing Panel for PC5 (“**PC5 IHP**”) issued their decision to approve the plan change on 1st March 2023.
7. I encourage the Hearing Panel to read the PC5 decision in full.² My summary of the key findings of the PC5 IHP which I consider have relevance to PC20 follows:

¹ Inger EIC, para. [139].

² <https://storage.googleapis.com/hccproduction-web-assets/public/Uploads/Documents/Content-Documents/Property-Rates-and-Building/PC5-Peacocke-Structure-Plan/Decisions/Commissioners-Decision/Decision-following-the-hearing-of-Submissions-on-Plan-Change-5-Peacocke-Structure-Plan.pdf>

- (a) In relation to evidence from DOC, the PC5 IHP was not persuaded that the effects management hierarchy approach in the National Policy Statement on Freshwater Management (“**NPS-FM**”) or the Exposure Draft National Policy Statement on Indigenous Biodiversity were pertinent or necessary considerations for the exercise of the Panel’s duty in terms of s6(c) of the Resource Management Act 1991 (“**RMA**”);³
- (b) The PC5 IHP found that references to significant indigenous vegetation and significant habitats of indigenous fauna in ECO-P2 and ECO-M13 of the Waikato Regional Policy Statement (“**WRPS**”) are not unqualified directives. The qualifiers in the WRPS include reference to avoidance of loss or degradation “in preference to” remediation or mitigation (ECO-M13)⁴
- (c) The PC5 IHP found that absence of an express reference to compensation in the WRPS does not preclude it from being an available response and referred in that regard to the decision *Waka Kotahi NZ Transport Agency v Manawatu-Whanganui Regional Council [2020] NZENVC 192*. The PC5 IHP considered that references to offsetting in method ECO-M13 of the WRPS (including “no net loss” through “on-site or off-site methods”) are consistent with and broad enough to include the concept of environmental compensation. For PC5, they found that HCC’s evidence and legal submissions clearly demonstrated why offsetting was neither practicable nor possible without significant compromise to the National Policy Statement on Urban Development and Medium Density Residential Zone imperatives pursued;⁵
- (d) The PC5 IHP accepted evidence from HCC’s ecology expert that all reasonably practicable measures to avoid adverse effects have been considered, and where avoidance is not practicable, will be appropriately mitigated. They also accepted evidence from HCC’s ecology expert on why offsetting was ruled out;⁶
- (e) The PC5 IHP accepted evidence from HCC’s ecology expert that when biodiversity offsets cannot be established, the Biodiversity Compensation Model (“**BCM**”) is currently the most transparent and robust approach available;⁷
- (f) The PC5 IHP considered there was sufficient information to determine plan provisions which are appropriate to manage effects on the long-tailed bat and their

³ PC5 Decision, paras. [44] to [46].

⁴ PC5 Decision, paras. [63] and [64].

⁵ PC5 Decision, paras. [81] to [86].

⁶ PC5 Decision, para. [163].

⁷ PC5 Decision, para. [181].

habitats. They found that they are not required at this juncture (i.e. at plan change stage) to know exactly how long-tailed bats will be affected or the precise compensation package. Instead, all they need to be satisfied about is that there are mechanisms in the plan which are appropriate, realistic and within jurisdiction and ability of parties to manage;⁸

- (g) The PC5 IHP found that where the development is going to be progressed in stages (over the next 20-30 years for Peacocke), the 10-year district plan review requirement provides appropriate “break-points” where the effectiveness of the compensation package and overall management programme can be reviewed. They also noted that it would be open to Council to review the plan requirements earlier as well as the terms of any subsequent consent granted in reliance on that plan, were it to become concerned about the effectiveness or progress of the compensation package and/or consent conditions in managing effects;⁹
- (h) 50m wide bat corridors were determined to be appropriate and are shown on the Planning Maps and Peacocke Structure Plan rather than minimum 100m wide bat corridors which were sought by DOC;
- (i) Lighting, building setback and vegetation removal rules were included and were unchanged from HCC’s recommendations which I referred to in my EIC.

8. I remain of the view expressed in my EIC that the amended provisions for PC20 are generally consistent with the provisions in PC5.

RESPONSE TO MS THURLEY’S EVIDENCE

9. The purpose of my commenting on Ms Thurley’s evidence is to rebut the conclusions she reaches regarding significance under the WRPS and to explain how her comments on monitoring are addressed in the amended provisions for PC20.

Significance Assessment Under WRPS

10. Figure 2 in Ms Thurley’s evidence is a map of known bat distribution in Hamilton and Figures 4a and 4b are maps of the known home range of 24 bats which were radio tracked in the Hamilton South area in 2018 and 2019. The figures identify that bats are present across a very large area in and around Hamilton.

⁸ PC5 Decision, para. [139].

⁹ PC5 Decision, para. [140].

11. Ms Thurley's proposition is that any area where bats have been found must be significant habitats of indigenous fauna under APP5 of the WRPS.¹⁰ The implication of this for highly mobile fauna, such as long-tailed bats, would be that vast parts of the Waikato Region would be classified as significant habitats of indigenous fauna. I understand from Ms Cummings that this would include many urban areas, including parts of Hamilton City, as well as other areas in Figures 2, 4a and 4b, and numerous home range locations throughout the region where other bat populations exist. Ms Cummings refers non-exhaustively to some of the other bat populations that exist in the Waikato Region in her EIC, including near Raglan, Cambridge, Te Kuiti and Pokeno.¹¹
12. Through various planning processes that I have been involved with, I am not aware of local authorities or decision-makers taking the view that the presence of bats alone equates to the areas where they are found being deemed significant habitats of indigenous fauna without expert judgement being applied.
13. I understand that it is common for criterion 3 in APP5 of the WRPS to be assessed using expert judgement by ecologists, as Ms Cummings has done for the PC20 site. Her approach is based on HCC's approach for determining significant habitats of indigenous fauna in PC5 and also in Plan Change 9 – Historic Heritage and Natural Environment to the Hamilton City Operative District Plan ("**PC9**"). Waikato District Council also applied expert judgement in determining significant habitats of indigenous fauna under criterion 3 of the WRPS for their recent Proposed Waikato District Plan.
14. I consider the approach taken by Ms Cummings' to be reasonable and appropriate. I rely on her expert judgement and conclusion that the PC20 site has low to moderate habitat values for long-tailed bats which are non-significant.
15. Notwithstanding this, Ms Cummings explains in her EIC that the Bat Habitat Areas ("**BHAs**") which are proposed to be protected are the areas that are amongst the highest value habitats on the PC20 site and that they may achieve significance under the WRPS in future following enhancement.¹²

Monitoring

16. Ms Thurley has suggested that monitoring should be undertaken to determine whether the BHAs are being used for foraging and commuting by bats, that the term "used" should be defined in the Bat Management Plan ("**BMP**") and that reassessment of residual

¹⁰ Thurley EIC, para. [13.2].

¹¹ Cummings EIC, para. [61].

¹² Cummings EIC, para. [68].

effects should occur if the BHAs are not used by bats¹³. Ms Thurley supports wider landscape monitoring in collaboration with other developers and agrees with Ms Cummings that monitoring effects on bats in isolation would be extremely difficult.¹⁴

17. I would like to comment on how these matters are addressed in Rule 10.4.2.14B in the amended provisions:

(a) Rule 10.4.2.14B(a)(vii) requires that the BMP must include details of pre- and post-development monitoring for long-tailed bats, including how the monitoring could be co-ordinated with other monitoring occurring within the known home range of the local long-tailed bat population; and

(b) Rule 10.4.2.14B(a)(ix) requires that the BMP must identify procedures for reviewing and amending (if necessary) the BMP.

18. I consider that these provisions in Rule 10.4.2.14B will ensure the concerns raised by Ms Thurley can be appropriately addressed. I also note that it is likely that subdivision of the PC20 site will occur through many staged consents over a number of years and that changes could also be made to district plan provisions if necessary through future reviews of the Waipa District Plan (“WDP”). Prescribing the requirement for the definition of terms to be used in a future management plan required under a future resource consent is not something that in my experience is usually included in district plan provisions.

19. I note that Mr Goodings’ evidence confirms his agreement to Rule 10.4.2.14B, except for one discrete change which is unrelated to monitoring requirements.¹⁵

REPONSE TO MR GOODING’S EVIDENCE

Relevance of Potential Future Development to Assessment of PC20

20. Mr Gooding and Ms Thurley both raise concerns about potential adverse effects on long-tailed bats from future development which has been identified in non-statutory documents. They cite the SL1 and SL2 areas which are identified in HCC’s submission as examples of this.¹⁶

¹³ Thurley EIC, paras. [12.2] and [12.3].

¹⁴ Thurley EIC, para. [12.1].

¹⁵ Gooding EIC, para. [10.16].

¹⁶ Gooding EIC, para. [6.3] and [6.4] and Thurley EIC, para. [8.5].

21. While I agree that there are other areas being considered for urban growth in the wider area surrounding the PC20 site, I do not consider this to be relevant to decision-making for PC20 except where those areas have been identified within plans that have statutory effect and that there is sufficient certainty that these areas constitute the future state of the environment. It is not for PC20 to address the potential future effects of development which may or may not occur. Those potential effects would need to be assessed and managed through other statutory processes in future.

WRPS Policy ECO-P2 and Method ECO-M13

22. Because Mr Gooding relies on Ms Thurley's evidence that the entire PC20 site is significant under the WRPS (including the 41ha already zoned Airport Business), he has not referred to provisions which relate to biodiversity that is non-significant, such as ECO-M3. My EIC explains the provisions of the WRPS which are relevant to non-significant biodiversity, as well as the provisions which relate to significant indigenous vegetation and significant habitats of indigenous fauna. I remain of the view that the relevant provisions in the WRPS are those that relate to non-significant biodiversity because Ms Cummings has concluded that the PC20 site is not significant in terms of the criteria in APP5 of the WRPS.
23. As such, I premise my comments that follow with a reminder that policy ECO-P2 and method ECO-M13 only apply to significant indigenous vegetation and significant habitat of indigenous fauna.
24. Mr Gooding misquotes ECO-M13 in his evidence¹⁷ by excluding the following underlined words from clause 2 of the method:
- "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."*
25. I consider that it is important to point this out, not only to ensure the Hearing Panel is referring to the correct provision, but also because the PC5 IHP made particular reference to this clause in their decision on PC5 which found that it is not an unqualified directive. The qualification is in the words that Mr Gooding has omitted.
26. I also consider that Mr Gooding has inaccurately summarised ECO-M13 in his evidence.¹⁸ He says that the method directs on-site avoidance of adverse effects,

¹⁷ Gooding EIC, para. [8.37].

¹⁸ Gooding EIC, para. [8.38].

followed by mitigation and remediation where that option (i.e. avoidance of adverse effects) has been exhausted. I consider that it is important for the method to be referred to correctly and for clauses (2) to (4) to be read together:

“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.

3. require any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated.

4. where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (2) and (3), more than minor residual adverse effects shall be offset to achieve no net loss”.

27. ECO-M13 does not refer to avoidance measures needing to be “exhausted” as Mr Gooding suggests.
28. Elsewhere in his evidence, Mr Gooding expresses the opinion that the WRPS contains a “strong preference” for avoiding adverse effects on the significant habitat of indigenous fauna.¹⁹ I consider this to be overstated. ECO-M13-1 is clear that avoiding the loss or degradation of significant habitats of indigenous fauna is preferred (rather than strongly preferred). However, the method also recognises remediation, mitigation and offsetting as necessary requirements where adverse effects on significant habitats of indigenous fauna are unavoidable. Principal reason ECO-PR1 explains that *“No net loss of indigenous biodiversity is to be achieved at a regional scale and does not create a no adverse effects regime”*. Principal reason ECO-PR2 recognises that some loss or damage to these areas may be unavoidable.
29. Mr Gooding considers that the qualifiers in clauses 6 and 7 of ECO-M13 need to be carefully weighed before acceptance of residual effects management.²⁰ I respond as follows:
- (a) Clause 6 is *“recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable”* (my emphasis). I consider this clause to mean that the appropriateness (or otherwise) of remediation, mitigation and offsetting (or compensation) needs to be assessed and determined on a case-by-case basis

¹⁹ Gooding EIC, para. [8.47].

²⁰ Gooding EIC, para. [8.40].

depending on the circumstances. Ms Cummings' view is that the proposed approach to effects management for PC20 is appropriate and will provide a superior outcome for long-tailed bats compared to minimisation of habitat fragmentation on-site;²¹

- (b) Clause 7 is *"have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habitats of indigenous fauna where no reasonable practicable alternative location exists"*. In para. 8.43 of his evidence Mr Gooding provides his opinion that a business park could occur anywhere and that the Applicant cannot demonstrate a functional necessity for the rezoning request and subsequent industrial and retail activities. In reaching this conclusion, he has failed to recognise that the Airport is identified as a Strategic Industrial Node in the WRPS and WRPS Change 1 meaning that it is a location where development is planned to occur²². The WDP refers to the Airport area as the Hamilton Airport Strategic Node and to land surrounding the Airport as a scarce and valuable resource which needs to be efficiently and effectively used²³. I therefore disagree with Mr Gooding and consider that the WRPS and the WDP not only recognise that there is a functional need for industrial activities to be located near the Airport, the land also must be efficiently and effectively used; and
- (c) Finally, I note in regard to clause 7 that Mr Gooding refers to a definition for "functional need" which appears to be from an Auckland Council Practice and Guidance note on the NPS-FM.²⁴ I do not consider that definition has any relevance to the WRPS or to PC20. I consider functional necessity to be clear enough without recourse to an unrelated definition.

30. Even in the event that the Hearing Panel were to determine that some or all of the PC20 site is significant under the WRPS then I do not consider this to be a fatal flaw for PC20 because the proposed approach and the provisions in PC20 would still give effect to the WRPS.

31. Loss or degradation has been avoided to the extent practicable and in a way that will protect and enhance the habitats on the site that are amongst the highest value and

²¹ Cummings EIC, para. [126].

²² Mr Goodings' recognition of Hamilton Airport/Southern Links area as a Strategic Industrial Node in the WRPS and as a location which is identified for future growth in Appendix S1 of the WDP is recorded in Section 3.1.1 of the JWS Ecology and Bat Habitat. He also identifies the Hamilton Airport as a Strategic Industrial Node under WRPS Change 1 in para. [8.23] of his evidence.

²³ WDP, Appendix S1 and Section 10.1.3.

²⁴ Gooding EIC, para. [8.42].

provide the best opportunities for protection and enhancement. Where effects are unavoidable they will be mitigated and remaining residual effects which are more than minor will be compensated to achieve no net loss for long-tailed bat habitat values. This approach is consistent with clauses (2) to (4) in ECO-M13.

32. ECO-M13 is associated with and helps to interpret policy ECO-P2. That policy also includes a qualifier (underlined):

“Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.”

33. The most important characteristics of the PC20 site are the BHAs which are proposed to be protected and enhanced. There will be loss of pasture/maize and some trees, however, Ms Cummings’ considers that those areas are low or moderate value habitats. The mitigation and compensation that will be required to achieve no net loss for long-tailed bat habitat values will result in a net increase in high value habitat over time (of which there is none within the PC20 site currently). PC20 will therefore not adversely affect significant habitat of indigenous fauna to the extent that the significance of habitat is reduced. I note that this is the same approach that was taken by HCC in PC5.
34. Furthermore, the mitigation and compensation that are proposed will be for the entire PC20 site, including the approximately 41ha of Airport Business Zone land which could be developed currently without any requirement to avoid, mitigate or compensate adverse effects on long-tailed bat habitat values. This means that adverse effects from the Northern Precinct as a whole will need to be managed.

Compensation for Residual Adverse Effects

35. Mr Gooding considers that there is a need for surety that the residual effects management proposed will achieve no net loss.²⁵
36. It is useful to refer to the PC5 IHP’s findings which are summarised in para. 7(f) of my rebuttal evidence. I agree with the PC5 IHP’s decision on PC5 where it finds in para. 139:

“... we consider that we have sufficient information to be able to determine plan provisions which are appropriate to manage effects on the LTB and their

²⁵ Gooding EIC, para. [8.47].

habitats. As counsel for the Council noted, we are not required at this juncture to know exactly how LTBs will be affected or the precise compensation package that will (or will need to) be adopted. Instead, all we need to be satisfied about is that there are mechanisms in the plan which are appropriate, realistic and within the jurisdiction and ability of parties to manage those matters.”

37. Rule 10.4.2.14B(a)(vi) in the amended provisions for PC20 (which Mr Gooding has confirmed his agreement with) requires that:

“(vi) Where more than minor adverse effects are unable to be avoided or mitigated such that there will be more than minor residual effects on long-tailed bat habitat values, the Bat Management Plan shall include details of proposed offset or compensation measures (which may include habitat enhancement and/or pest control) to contribute to a no net loss outcome. Where off-site measures are proposed they shall preferentially be within the known home range of the local long-tailed bat population. Connectivity with features in the wider landscape and potential opportunities for co-ordination with other habitat enhancement initiatives shall be considered.”

38. The plan provisions therefore provide the mechanisms to ensure that a no net loss outcome for long-tailed bat habitat values is required to be achieved. Other than ensuring the PC20 provisions are fit for purpose, the details of how that outcome is achieved is a matter for future resource consents, not this plan change. That said, the applicants for PC20 have taken steps to acquire the 11ha compensation site discussed in my EIC. In my experience, such an approach is not common at a plan change stage.

Spatial Extent of BHAs

39. Although Mr Goodings’ evidence contains minimal reference to provisions in the WRPS other than those in the ecosystems and indigenous biodiversity topic, he considers that a tension exists between development and the policies in the WRPS that he refers to as ‘avoid’ and ‘no net loss’ of indigenous biodiversity policies.²⁶

40. He considers that this tension could be resolved by protecting more habitat within the PC20 site as BHA, by maximising opportunities to mitigate and remedy effects on the site and by providing more offsite compensation to work towards a no net loss outcome.²⁷

I respond as follows:

²⁶ Gooding EIC, para. [12.3].

²⁷ Gooding EIC, para. [12.4].

- (d) Neither Mr Gooding nor Ms Thurley have provided any evidence which identifies the additional areas of the PC20 site that they consider should be protected as BHAs. Mr Gooding suggests a higher quantum of land for protection and a wider corridor²⁸. However, he does not specify the alternative width that he considers the corridor should be, nor does he explain his rationale for why a wider corridor and a further quantum of land for protection is necessary. He also does not assess how the further loss of developable land within a Strategic Industrial Node would accord with other provisions in the WRPS;
- (e) Similarly, neither Mr Gooding nor Ms Thurley have made any suggestions for further opportunities to mitigate and remedy effects within the PC20 site;
- (f) Mr Gooding considers that if it is not feasible to provide a higher quantum of land for protection and a wider corridor then the approach to achieving no net loss for residual effects would need to be strengthened.²⁹ I expect that Mr Gooding is likely referring to the quantum of compensation, which is a matter that I address in (g) below;
- (g) While Ms Cummings' and Mr Markham have referred to the BCM in terms of their preliminary findings on environmental compensation, neither Mr Gooding nor Ms Thurley have provided an alternative assessment which credibly supports their reasons for concluding that more compensation is required to achieve no net loss for long-tailed bat habitat values. In any case, Ms Cummings' and Mr Markham are clear in their EIC that their assessments of the potential compensation requirements using the BCM are preliminary findings. The details of the compensation that will be required to achieve the no net loss outcome in the amended provisions for PC20 will need to be determined through resource consents, not as part of this plan change; and
- (h) I understand Mr Goodings' general support for the amended provisions to be confirmation that he and I are in agreement that no net loss is an appropriate outcome in relation to management of residual effects, which accords with the WRPS. I note that it is somewhat cautious because the WRPS refers to no net loss at a regional scale.

41. In my EIC I referred to Policy IM-P1 in the integrated management overview of the WRPS which requires an integrated approach to resource management to be adopted.³⁰ I

²⁸ Gooding, EIC, para. [10.11].

²⁹ Gooding EIC, para. [10.11].

³⁰ Inger EIC, para. [68].

explained that I consider this policy to be important in the context of PC20 given the identification of the Airport area as a Strategic Industrial Node in the WRPS and WRPS Change 1 and the presence of long-tailed bats within and around the PC20 site. I highlighted clause 5 of policy IM-P1 which refers to maximising opportunities to achieve multiple objectives. I remain of the view that the proposed BHAs and the approach to mitigation and off-site compensation is consistent with Policy IM-P1 and the associated method IM-M9 which relates to off-site mitigation of adverse effects where it is not practical or appropriate to mitigate the adverse effects of an activity on site.

42. I disagree with Mr Gooding that changes are required to the Airport Business Zone Structure Plan, with one exception. I agree with his suggestion to show the area referred to as the 'Hub' entirely outside of the BHAs.³¹ This change has been made on the amended Structure Plan which is included in **Annexure 1** of my rebuttal evidence. This change also responds to a similar recommendation of Ms Andrews for WRC.

Mapping of Significant Natural Areas

43. Mr Gooding considers that if the evidence of Ms Thurley is preferred on the significance of the PC20 site then mapping of a Significant Natural Area ("**SNA**") on the PC20 site would be required to achieve Policy 24.3.3.2 of the WDP.³² While reiterating that Ms Cummings' opinion is that the site is not significant, I also respond as follows:
- (a) Mr Gooding is unclear as to what part of the PC20 site he considers should be mapped as a SNA. Ms Thurley's evidence concludes that the entire site is significant under the WRPS, apart from areas with buildings.³³ Although Mr Gooding does not oppose rezoning the site, I consider that mapping the entire site as SNA (if that is what he is suggesting) would be in conflict with that outcome;
 - (b) In my opinion, Policy 24.3.3.2 is directed at Waipa District Council ("**WDC**") and WRC rather than private landowners. It refers to 'completing' the identification and mapping of additional areas. I understand the initial mapping of SNAs was led by WDC so by extension completing the mapping would logically be their responsibility; and
 - (c) As I explained in my EIC, the WDP uses a variety of methods for protecting indigenous biodiversity, including SNAs, bush stands and biodiversity corridors.³⁴ The method that is proposed under PC20 for protecting and enhancing indigenous

³¹ Gooding, EIC para. [10.9].

³² Gooding, EIC para. [9.7].

³³ Thurley EIC, para. [9.2].

³⁴ Inger EIC, para. [29].

biodiversity within the PC20 site is identification of BHAs. For the reasons given in my EIC³⁵, I consider that the BHA provisions will be more onerous and will provide better protection for the identified bat habitat than the provisions for SNAs would. I also consider that mapping SNAs and BHAs over the same areas would be unnecessary and inefficient.

Policy 10.3.2.2A

44. Mr Gooding considers that the word “functional” needs to be included in clause (a) of Policy 10.3.2.2A.³⁶ His views on this were recorded in the JWS Ecology and Bat Habitat and I responded to this matter in my EIC.³⁷ Mr Gooding raises the concern that in the absence of this word the BHAs could simply be planted-out reserves with no clear resource management purpose. I find this concern difficult to comprehend given:

- (a) The areas are proposed to be referred to and are to be enhanced as “Bat Habitat Areas”. It is therefore plain and clear that their resource management purpose is for bat habitat;
- (b) Rule 10.4.2.14B(a)(i) is also very clear in requiring that the BMP that must accompany the first resource consent application for the Northern Precinct must include:

“... planting specifications, drawings and an implementation programme for habitat enhancement within Bat Habitat Areas, including a 50m wide bat corridor in general accordance with Figures 1 and 2 in Appendix S10. The implementation programme shall ensure that habitat enhancement occurs as early as practicable.”

- (c) The figures that are referred to in Rule 10.4.2.14B are proposed to be included in Appendix S10 as part of the Airport Business Zone Structure Plan and clearly show the habitat enhancement outcomes required for the corridor part of the BHAs. Appendix S10 also includes the following text which explains the purpose of the BHAs:

“S10.2.5 Development of the Northern Precinct will occur in a way that protects identified Bat Habitat Areas and maintains or enhances long-tailed bat habitat values.”

³⁵ Inger EIC, para. [128].

³⁶ Gooding EIC, para. [10.6].

³⁷ Inger EIC, para. [84].

“S10.3.13 For the Northern Precinct, the areas which are identified as Bat Habitat Areas are to be protected and enhanced as bat habitat. Enhancement of the corridor which forms part of the Bat Habitat Areas will occur in general accordance with Figures 1 and 2. Multi-functional use of the Bat Habitat Areas involving stormwater networks is anticipated and provided for to enable efficient use of the land where the activities do not adversely affect use of the site by long-tailed bats to a more than minor extent.”

45. For these reasons, and the reasons referred to in my EIC, I do not share Mr Goodings' concerns and I continue to support the proposed wording for Policy 10.3.2.2A in the amended provisions.

Other PC20 Provisions

46. Mr Gooding has proposed amended wording for Rule 10.4.2.14B which he considers would make it clearer that the Ecological Management Plan (“EMP”) must be submitted as part of the resource consent application for the first land use or subdivision rather than proposed in conditions.³⁸ I confirm that this is the intent of the rule.
47. Although I consider the current wording adequately addresses this, for the avoidance of any doubt I have proposed minor wording changes to the rule which are similar to Mr Goodings' suggested wording to achieve the additional clarity that he has sought (refer to Annexure 1 of Mr Grala's rebuttal evidence). Mr Gooding confirms in his evidence that he is otherwise in agreement with Rule 10.4.2.14B.
48. Mr Goodings' evidence suggests several changes to the assessment criteria for Northern Precinct ecology matters in Section 21.1.10.18A(a) and (b) of the amended provisions.³⁹ I agree with and have incorporated the changes that Mr Gooding has suggested (refer to Annexure 1 of Mr Grala's rebuttal evidence). On that basis, I understand that Mr Gooding is satisfied with the proposed assessment criteria.
49. Mr Goodings' evidence confirms his agreement to the other amended provisions for PC20, including the lighting rule and the vegetation removal rules.⁴⁰
50. My understanding is that the only provision that is disputed by Mr Gooding (aside from the spatial extent of the BHAs and mapping of SNAs within the PC20 site) is his

³⁸ Gooding EIC, para. [10.16].

³⁹ Gooding EIC, para. [10.19].

⁴⁰ Gooding, EIC para. [10.20].

preference for Policy 10.3.2.2A(a) to include the word “functional”, which I have responded to.

RESPONSE TO MS ANDREWS’ EVIDENCE

51. Ms Andrews’ confirms her agreement that the provisions in the WRPS that I cited in my EIC (which are included in Annexure 1 of my EIC) are those that are of key relevance to the ecological effects of PC20.⁴¹ She identifies one further provision which is Principal reason ECO-PR2 – Protect significant indigenous vegetation and significant habitats of indigenous fauna, although she defers to the bat ecologists on the matter of whether the PC20 site is significant under the WRPS.⁴²
52. If the PC20 site were found to be significant then I agree with Ms Andrews that ECO-PR2 would be relevant. I did not refer specifically to ECO-PR2 in my EIC but for completeness, I have included it in **Annexure 2** of my rebuttal evidence. I reviewed ECO-PR2 as part of the wider suite of WRPS provisions when I prepared my EIC. I consider the PC20 provisions are consistent with it and with the policies and methods that it refers to.
53. Ms Andrews’ has reserved her view on the ability of the proposed rules to maintain or enhance significant long-tailed bat habitat values in accordance with Policy 10.3.2.2A in the amended provisions for PC20. She considers that this hinges on whether the proposed BHA is sufficient to enable bats to continue to use the site to the same or greater frequency as present and to maintain connectivity to other areas of bat habitat to the extent possible within the boundaries of the plan change.⁴³
54. I note again that the PC20 provisions require no net loss of long-tailed bat habitat values, which will contribute towards achieving the outcomes referred to in Policy 10.3.2.2A (once avoidance and mitigation has occurred). I consider that the Hearing Panel needs to be satisfied that there are mechanisms in the plan change which are appropriate, realistic and within the jurisdiction and ability of parties to manage. However, it is not for this plan change process to determine whether and precisely how the policy (including no net loss) will be achieved. That is reliant on details that the PC20 provisions require to be provided and assessed through resource consents.
55. Notwithstanding this, I disagree with Ms Andrews’ that achieving consistency with Policy 10.3.2.2A will hinge on whether the proposed BHAs are sufficient to enable bats to

⁴¹ Andrews EIC, para. [88].

⁴² Andrews EIC, para. [100].

⁴³ Andrews EIC, para. [95].

continue to use the site to the same or greater frequency as present. It is well understood and acknowledged that bats are less likely to use some areas of the PC20 site that will be developed for industrial uses and associated activities (retail, roads etc). Policy 10.3.2.2A accounts for this by requiring compensation for residual adverse effects which will focus on off-site measures to enhance habitat for bats elsewhere.

56. In response to Ms Andrews' comment about maintaining connectivity to other areas of bat habitat, the rationale for the proposed BHAs is comprehensively addressed in Ms Cummings' EIC which is based on landscape scale consideration of connectivity between key significant bat habitats.
57. Like Mr Gooding, Ms Andrews also identifies that the 'Hub' overlay on the amended Structure Plan extends over the proposed BHA.⁴⁴ She suggests removing the 'Hub' overlay from the BHA to make it clear that the BHA is an area to be protected as bat habitat. As I have explained in my response to Mr Goodings' evidence, an updated version of the Structure Plan which incorporates this change is included in **Annexure 1** of my rebuttal evidence.

RESPONSE TO MR GOVENDER'S EVIDENCE

58. Mr Govender's evidence addresses long-tailed bats and suggests that the planning provisions for the Northern Precinct should follow the principles set out in the decision on PC5 so that an integrated approach is achieved for bat management and habitat in the wider locality.⁴⁵ Mr Govender does not suggest any specific changes to the PC20 provisions so I am unclear as to whether he is satisfied with the provisions or whether he considers further changes to be necessary to achieve an integrated approach. I note that he recorded his agreement in the JWS Ecology and Bat Habitat that the amended version of PC20 is a significant improvement in relation to providing for bats compared to the notified version.

⁴⁴ Andrews EIC, para. [107].

⁴⁵ Govender EIC, para. [77].

59. I have addressed PC5 in my EIC and in my references to the PC5 decision above. I consider the ecology related provisions in PC20 to be generally consistent with PC5 such that it will give effect to policy IM-P1 in the WRPS which requires an 'Integrated approach' and which refers to the benefits of aligning decisions across boundaries. The PC20 provisions also ensure that appropriate regard has been given to s74(2)(c) RMA which refers to the extent to which a district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.

Ben Inger

10 March 2023

ANNEXURE 1 – AMENDED AIRPORT BUSINESS ZONE STRUCTURE PLAN

Note: This updated version of the Structure Plan supersedes the version in Annexure 1 of Ben Inger's EIC



- Legend**
- | | | | | |
|-----------------------------|-----------------------|----------------------|----------------------------------|--|
| Road/Access Stopped | Indicative Road | Special Amenity Area | Indicative Primary Road | Southern Links - Designation Extent |
| Access Point/Gateway | Airport Business Zone | Stormwater Disposal | Indicative Secondary Road | Airport Business Zone - Northern Precinct Extent |
| Landscaping | Central Precinct | Landscape Open Space | Potential Future Connection Road | Rural Landscaping |
| Building Setback | Southern Precinct | Retail Area | Northern Precinct Hub | Vehicle Access Restriction |
| Cycleway/Walkway Connection | Stage 1 Development | Bat Habitat Area | | |

Airport Business Zone Structure Plan
Appendix S10



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ANNEXURE 2 – WRPS ECO-PR2

ECO-PR2 – Protect significant indigenous vegetation and significant habitats of indigenous fauna

ECO-P2 addresses the requirements of s6(c) of the Resource Management Act to protect areas of significant indigenous vegetation and significant habitat of indigenous fauna in terrestrial, freshwater, coastal and marine environments. The policy and methods recognise that protection of these areas requires that the areas and the characteristics that deem them to be significant are identified, that identification should be carried out in a consistent manner across the region, and that protection will be achieved through both regulatory and non-regulatory methods. Protection of significant sites need not prevent their use where activities will not materially compromise the characteristics or values which deemed the site significant. The enhancement of ecosystem types as identified in ECO-P1 also applies to significant indigenous vegetation and significant habitats of indigenous fauna in ECO-P2.

The intention is for areas of significant indigenous vegetation and significant habitat of indigenous fauna to be identified either at a regional scale by Waikato Regional Council (significant natural areas project), or as a consequence of managing activities through regional and district plans (ECO-M13). It is important that regional and district plan provisions provide for the identification of additional areas, including those not identified in ECO-M12 which are difficult to detect at the regional scale due to limitations in technology. Figure 4 in APP6 summarises the respective roles and responsibilities. The identification of significant indigenous vegetation and significant habitats of indigenous fauna by the Regional Council has been undertaken in accordance with Table 28 criteria in APP5, through district-scale vegetation mapping, assessment and review of sites, fauna and vegetation studies, scientific research, primarily as a desktop analysis to which varying degrees of confidence are assigned. Before information is included in regional or district plans further verification and validation may be required to confirm whether the identified areas meet the criteria for significance in APP5. ECO-

M13 reflects a more directive approach to achieving no net loss for areas of significant indigenous biodiversity than ECO-M3. This is consistent with s6(c) of the Resource Management Act which requires protection of such biodiversity. The Method seeks avoidance of adverse effects as the most effective means of protecting areas of significant indigenous vegetation and significant habitat of indigenous fauna. It recognises that some loss of or damage to those areas may be unavoidable and in those cases remediation and mitigation is required. Where adverse effects remain after avoidance, remediation and mitigation then more than minor adverse effects are required to be offset. Any loss can be documented and tracked to assist with monitoring the state of the resource.

When applying ECO M13, the expectation is that proposals should reasonably demonstrate that no net loss has been achieved using methodology that is appropriate and commensurate to the scale and intensity of the adverse effects. The application of biodiversity offsetting will be determined on a case by case basis through the decision-making processes. ECO-

M13(7) requires that plans shall have regard to the necessity for certain activities to locate in areas of significant indigenous biodiversity where the presence of another resource leads to a functional need for the activity to locate there. Clause (7) does not provide activities with an exemption from the other clauses within ECO-M13, it is another matter to be considered through the decision-making process as appropriate. ECO-

M14 requires use of the criteria in APP5 to achieve consistency across the region when assessing significance. An area will be considered significant if it meets one or more of the eleven criteria in APP5.

During the process of identifying areas of significant indigenous vegetation and significant habitat of indigenous fauna, Waikato Regional Council will have the opportunity to identify general threats to the biodiversity at those sites. This information will not be a detailed threat analysis of every site, but ECO-M15 signals that the information will be provided to relevant agencies and landowners so that it can be used to direct management of these sites. Information should be managed so that it does not compromise the protection of populations of threatened species.

Map 24 has been inserted as a result of Environment Court decision *Opoutere Ratepayers and Residents Association v Waikato Regional Council* [2015] NZEnvC 126, which found, after rigorous testing through the Environment Court hearing process, that the area shown is a significant natural ecosystem and site of biological importance. The area identified in Map 24 should not be considered as being of greater significance or importance than other areas in the region that have been identified through the process set out under ECO-P2 and the associated methods.