

**BEFORE**

the Hearing Panel appointed by Waipā District Council

**IN THE MATTER**

of the Resource Management Act 1991 (**the Act**)

**AND**

**IN THE MATTER OF**

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

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**STATEMENT OF EVIDENCE OF JESSE QUENTN GOODING ON BEHALF OF  
THE DIRECTOR-GENERAL OF CONSERVATION  
PLANNING  
07 FEBRUARY 2023**

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## 1. INTRODUCTION

- 1.1 My name is Jesse Quentin Gooding. I hold the position of Resource Management Act (the **Act**) Planner at the Department of Conservation (**DOC**).
- 1.2 I hold a Bachelor of Environmental Planning from the University of Waikato. I am an intermediate member of the New Zealand Planning Institute.
- 1.3 I have been employed in several resource management positions in my career. Before working for DOC, I was a Regional Policy Advisor for the Federated Farmers of New Zealand providing planning advice in respect of various plan and policy statement reviews carried out under schedule 1 of the Act. Prior to that, I worked at the Matamata-Piako District Council, assessing applications for subdivision and land use consent.
- 1.4 My experience at the department includes interpreting plans, policy statements and assessing various publicly and limited notified resource consent applications. I have presented planning evidence on behalf of the Director-General of Conservation (**Director-General**) in various council plan and resource consent hearings, most recently in the matter of Hamilton City Council's (**HCC**) Plan Change 5 – Peacocke Structure Plan (**PC5**)<sup>1</sup>.
- 1.5 Through my participation in various planning processes, I have developed a good understanding of resource management 'best practice' including in relation to managing effects on threatened species such as long-tailed bats (**bats**).

## 2. CODE OF CONDUCT

- 2.1 Although this is not an Environment Court Hearing, I confirm 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 practice note when preparing my written statement of evidence and will do so when I give oral evidence before the hearing panel.

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<sup>1</sup> [Hamilton City PC5](#)

2.2 The data, information, facts and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence.

2.3 Unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

### **3. SCOPE**

3.1 I have been asked by the Director-General to provide expert planning evidence in relation to the proposed Private Plan Change 20 – Northern Precinct Extension to the Waipā District Plan (**PC20**).

3.2 I provided some technical advice to assist preparation of the Director-General's submission.

3.3 I understand the Director-General's submission is primarily concerned with:

- a) The ecological significance of the PC20 site;
- b) The ecological impact of PC20 on the nationally critical - threatened long-tailed bat, and;
- c) Whether PC20 recognises and provides for the relevant matters of national importance in Part 2 of the Act and 'gives effect' to the relevant higher order policy framework.

3.4 I attended pre-hearing expert witness caucusing on the Ecology and Bat Habitat topic and signed the joint witness statement (**JWS**) produced in that session.

3.5 In preparing my evidence I have viewed the PC20 site and the proposed compensation site from Raynes Road and from aerial images.

3.6 The full suite of documents I have reviewed in preparation of my evidence is provided in "Annexure 1".

3.7 I have read and rely, in part, on the evidence of Ms Tertia Thurley.

*Approach taken in evidence.*

- 3.8 In this evidence, I briefly summarise provisions from Part 2 of the Act, the Waikato Regional Policy Statement (**WRPS**) and the Operative Waipā District Plan (**WDP**) relating to ecological matters.
- 3.9 My evidence is primarily directed at the management of the actual and potential effects of PC20 on long-tailed bats (**bats**). This emphasis reflects the threatened species status of the bats, the assessment by Ms Thurley that the PC20 site meets the criteria for significance under APP 5, table 28 of the WRPS, and the general policy direction to avoid adverse effects on long-tailed bats and their significant habitat.
- 3.10 Notwithstanding this emphasis, I recognise that there are a wider range of resource management issues that need to be considered in order to ensure that PC20 achieves the purpose of the Act.

#### **4. EXECUTIVE SUMMARY**

- 4.1 PC20 is situated within the home range of the south Hamilton long-tailed bat<sup>2</sup> population (threatened – nationally critical<sup>3</sup>).
- 4.2 This population faces increased fragmentation of its habitat from planned and proposed development.
- 4.3 The PC20 site contains significant habitat for the long-tailed bat.
- 4.4 There is tension between enabling provisions regarding development and the requirement to recognise and provide for section 6(c) and give effect to the WRPS ‘avoid’ and ‘no net loss’ of indigenous biodiversity policies.
- 4.5 This could be resolved by PC20 protecting more habitat within the proposed northern precinct as Bat Habitat Area (**BHA**), maximising opportunities to mitigate and remedy effects on the site and providing more offsite compensation to work towards a no net loss outcome.
- 4.6 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 –

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<sup>2</sup> Thurley EIC., Para [5.3]

<sup>3</sup> Ibid., Para [5.4]

threatened status. Therefore, careful design of the overall effects management approach will be required to achieve a no net loss outcome.

## **5. THE APPLICATION**

5.1 PC20 is described in detail in the s42a report. I agree with and adopt this description, including that the plan change involves an area of approximately 40ha known as the Northern Precinct that is already zoned for Airport Business Zone (ABZ). That PC20 seeks to extend the operative ABZ zoning by a further ~90ha. In so doing PC20 seeks amendments in various sections of the district plan and an updated Northern Precinct Structure Plan.

5.2 After notification and in response to submissions the Applicant has provided an addendum to the rezoning request which assesses the application against NPS-HPL and WRPS Plan Change 1 (WRPS-PC1), updated the proposed Structure Plan in response to submissions, redrafted the proposed provisions in response to submissions and made some further discrete changes to provision that all planning experts agreed to in the Bat Habitat and Ecology JWS.

5.3 The Applicant has also made additional changes in response to submissions, not related to ecology but in relation to the other expert witness caucusing sessions. These are described in the evidence of planning expert Nick Grala<sup>4</sup> and in the s42a report.

## **6. PLANNING CONTEXT**

6.1 The planning instruments that apply to the PC20 site are well described in the evidence of Ben Inger<sup>5</sup> and Nick Grala<sup>6</sup>, planning experts assisting the Applicant. I do not intend undue repetition of their summary but wish to identify some of the notable planned development in the vicinity of the PC20 site, which is, in the evidence of Ms Thurley, within the home range of the south Hamilton long-tailed bat population.

6.2 The land situated between the PC20 site and the Southern Links

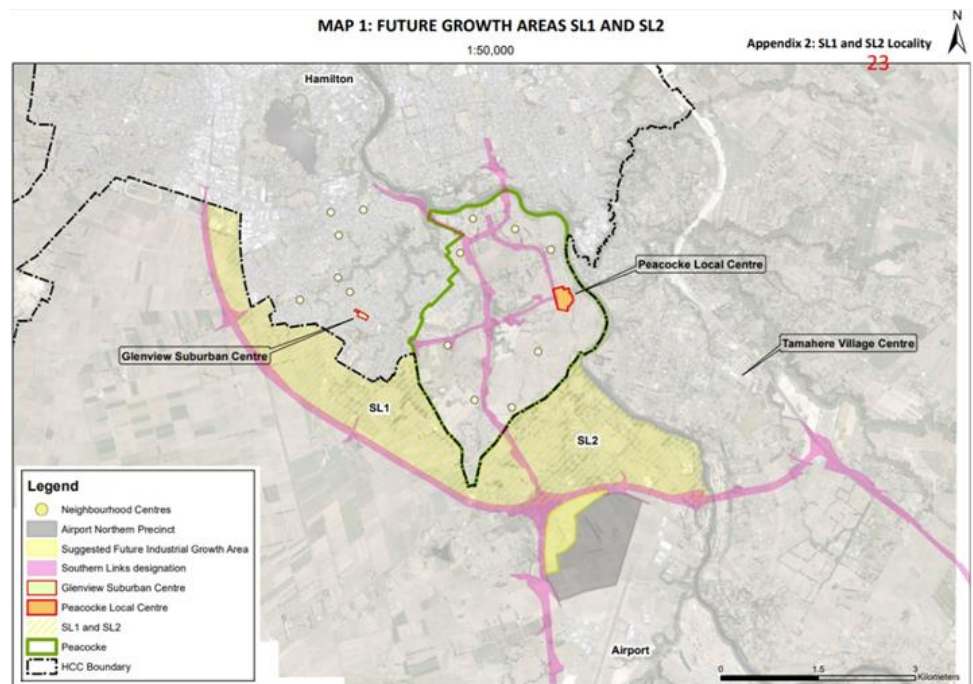
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<sup>5</sup> Inger., EIC

<sup>6</sup> Grala., EIC

designation<sup>7</sup> is zoned industrial. The Southern Links designation is located to the north and west of the PC20 site. The land north of this is zoned rural and within the narrows concept plan area. PC20 site is situated approximately 6km south of the Peacock Structure Plan Area, one of Hamilton City's largest growth cells, where medium and high-density residential development will be enabled under the Peacocke Structure Plan.

6.3 In addition to the planned development enabled in these localities there are a range of non-statutory documents that indicate further development that has not yet reached the district planning stage. An example of this is identified in the draft Ahu Ake Waipā Community Spatial Plan where the area north of the Airport is identified as an 'employment high growth area' and as an 'area under pressure from future development'. The submission to Plan Change 20 from the Hamilton City Council also refers to Future Growth Areas SL1 and SL2 [Figure 1]<sup>8</sup>, with an indication that these may be included in the upcoming Future Proof Development Strategy by the Future Proof Implementation committee.



<sup>7</sup> Designation D156

<sup>8</sup> Submission 23 – Hamilton City Council

Figure 1 Map from Hamilton City Council Submission on Plan Change 20 showing SL1 and SL2 areas being considered for urbanisation.

- 6.4 In my opinion, it is important that PC20 is contextualised by the current and future development to occur in the surrounding environment and within the home range of the affected bats.

## 7. BAT HABITAT VALUES AND SIGNIFICANCE

- 7.1 In the opinion of Ms Thurley, the PC20 site meets the WRPS criteria for significance in terms of criteria 3<sup>9</sup>
- 7.2 Ms Thurley<sup>10</sup> sets out the reasons for this in paragraphs [9.1 – 9.7] of her evidence. Importantly, she identifies the cumulative effects of current and planned land use change occurring in the surrounding environment as a key factor in elevating the importance of the PC20 site. I return to cumulative effects later in my analysis of the WRPS provisions.
- 7.3 I note the applicability of the WRPS significance criteria to the PC20 site was not caucused at the bat Habitat and Ecology session. If there is a difference of opinion between the ecology experts on this matter then that is not for the planning experts to weigh or resolve, except as guided by provisions in the WRPS.
- 7.4 In this regard I find WRPS *ECO-M14 – Assess Significance*<sup>11</sup> particularly helpful. This method details how significant indigenous vegetation and the habitats of significant fauna should be assessed when they have not already been identified by WRC. For ease of reference, I note the provision below (my emphasis in **bold**).

### *WRPS ECO-M14 – Assess Significance*

*Where regional and district plans require an assessment of significant indigenous vegetation and the significant habitats of indigenous fauna that have not been identified by Waikato Regional Council as part of ECO-M12, **the criteria in APP5 shall be used.** The identification of*

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<sup>9</sup> WRPS, APP5, table 28

<sup>10</sup> Ibid., Para [9.1 – 9.7]

<sup>11</sup> The WRPS has been converted into National Planning Standards format in the period since the preparation and lodgement of PC20 plan change request. My evidence uses the planning standards provision references.



*the characteristics of any area will be undertaken prior to any modification of the area or site **and will inform the decision-making process as to whether the proposed activity or modification is appropriate.** 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.*

- 7.5 The method outlines that the criteria in APP5 shall be used. Nowhere in ECO-M14 are ecologists instructed to use alternative criteria or dilute its meaning with the use of qualifiers.
- 7.6 In my opinion the WRPS significance criteria should be read and implemented as written.
- 7.7 For the purposes of the statutory assessment below I am guided by the evidence of Ms Thurley that the PC20 site contains significant habitat for the bats.

## **8. STATUTORY AND POLICY FRAMEWORK**

- 8.1 The statutory considerations relevant to PC20 are outlined in section 7 of the s42a report. In the interests of brevity, I do not repeat that analysis here. Instead, my evidence will address where I disagree with the s42a report and the relevant application documents regarding statutory and policy guidance.
- 8.2 For completeness, I consider PC20 contains all of the necessary information and assessments in terms of Part 2 of Schedule 1 of the Act.
- 8.3 I consider the following higher order statutory provisions to be particularly relevant to PC20.
- a) Part 2 of the Act, including the section 6 matters of national importance
  - b) the relevant National Policy Statements,
  - c) the Waikato River Vision and Strategy (Vision and Strategy),
  - d) the Waikato Regional Policy Statement (WRPS), and;
  - e) the provisions of the Operative Waipā District Plan (WDP) relating to ecological matters.
- 8.4 Firstly, I discuss the relevant functions of district and regional councils

with respect to indigenous biodiversity.

8.5 Section 31 of the Act, and the s42a report set out the functions of district councils. The purpose of these functions, among other matters is for the maintenance of indigenous biological diversity<sup>12</sup>.

8.6 Regional council indigenous biodiversity functions cover the control of the use of land for the maintenance and enhancement of ecosystems in water bodies and coastal water, and importantly the establishment, implementation and review of provisions for maintaining indigenous biological diversity<sup>13</sup>.

8.7 The main way the Waikato Regional Council (WRC) carries out this function is through establishment, implementation and review of objectives, policies and methods in the WRPS.

#### *Matters of National Importance*

8.8 Section 6 of the Act sets out matters of national importance that must be recognised and provided for. These include:

(c) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.*

8.9 This leads to the policy direction on significant the habitat of indigenous fauna in the WRPS Policy and WDP that I discuss later.

#### *Other Matters*

8.10 Section 7 of the Act sets out other matters to which particular regard must be had. Of particular relevance are:

(b) the efficient use and development of natural and physical resources:

(d) intrinsic value of ecosystems:

8.11 Intrinsic values are defined in Section 2 of the Act as:

*“Those aspects of ecosystems and their constituent parts which have value in their own right, including (a) their biological and genetic diversity, and, (b) the*

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<sup>12</sup> Ss31(1)(b)(iii) of the Act

<sup>13</sup> ss30(1)(ga) of the Act

*essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience."*

8.12 These provisions are to be considered alongside other provisions in Part 2 that I have not identified here, including the provision for, and protection of, tangata whenua interests set out in sections 6(e), 7(a) and 8 of the Act.

8.13 Of note is the requirement to 'recognise and provide for' the matters of national importance in section 6. This is not optional, instead it requires action, directing 'actual provision' to be made for each of these matters<sup>14</sup>. This is distinct from the requirement in section 7 to have 'particular regard to' other matters which provides for consideration and (if warranted) disregard of those matters.

8.14 I consider that Part 2 of the Act, through the WRPS directs indigenous biodiversity is protected and provided for in PC20.

#### *National Policy Statements*

8.15 National policy statements provide national direction with respect to specific resource management matters. There are six operative national policy statements, of which the following are directly relevant:

- (a) The National Policy Statement for Freshwater Management 2020 (**NPS-FM**);
- (b) The National Policy Statement for Urban Development 2020 (**NPS-UD**)
- (c) The National Policy Statement for – Highly Productive Land 2022 (**NPS-HPL**)

#### *Vision and Strategy for the Waikato River (Te Ture Whaimana o Te Awa o Waikato)*

8.16 The Vision and Strategy for the Waikato is included in schedule 2 of the Waikato Tainui Raupatu Claims (Waikato River) Settlement Act 2010 (**Settlement Act**)

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<sup>14</sup> In *Bleakley v Environmental Risk Management Authority*, the Court held that the phrase "recognise and provide for" requires actual provision (rather just weighing up with other factors) to be made for specified matters

- 8.17 The Vision and Strategy is the prime direction setting document for the Waikato River.
- 8.18 The overarching objective of the vision and strategy is to restore and protect the health and wellbeing of the Waikato River for future generations. The vision and strategy form a part of the WRPS. Where the provisions of the WRPS and the vision and strategy conflict, the vision and strategy prevail.
- 8.19 The definition of the Waikato River as defined in the Settlement Act includes the Waikato River and its catchment, as well as tributaries, streams and watercourses flowing into the river.
- 8.20 PC20 is within the Waikato River catchment and includes artificially constructed channels which drain to the Waikato River via the Nukuhau Stream and other tributaries. It is apparent, then that activities within the PC20 site have the potential to affect the Waikato River, meaning the objectives of the Vision and Strategy are relevant.

*Waikato Regional Policy Statement*

- 8.21 As the Panel will be aware, the requirement in respect of PC20 is that it will “give effect” to the WRPS, noting that the Plan is to have regard to any proposed change to the WRPS, such as WRPS-P1 (s74(2A)). The WRPS provides a framework for promoting the sustainable management of the Waikato Region’s natural and physical resources by identifying issues and outlining objectives, policies and methods for addressing these issues.
- 8.22 I am unclear why the s42a report has only assessed PC20 against the WRPS-PC1 provisions that have been amended to align the WRPS with the NPS-UD. There are a range of additional provisions relevant to PC20, including but not limited to those contained in the Ecosystems and Indigenous Biodiversity topic that the Applicant and submitters have identified.
- 8.23 The WRPS Plan Change 1 (WRPS-PC1) was notified on 18 October 2022, which was during the submission period of PC20. There were several submission points on PC20 that identified that no assessment against WRPS-PC1 had occurred. WRPS-PC1 includes the Hamilton

Airport as a Strategic Industrial Node, allocating land for industrial use over a prescribed time period.

8.24 WRPS-PC1 also adopts the Updated Future Proof industrial land allocation within Table 35. The Applicant has provided an addendum to their application, assessing it against WRPS-PC1. Mr Grala describes this assessment in his evidence, including that PC20 is not fully aligned to WRPS-PC1 as it brings forward approximately 36ha from the 2031-2051 timeframe<sup>15</sup>.

8.25 Examples of the enabling objectives and policies relevant to PC20 include UFD-01 (Built Environment) and UFD-P11 as identified by Mr Grala<sup>16</sup>.

8.26 As noted above WRPS includes the Vision and Strategy for the Waikato River. The integrated management overview, land and freshwater domain, ecosystems and indigenous biodiversity topic and urban form and development topic in the WRPS also contain provisions which are relevant to the ecological effects of PC20. I summarise them below.

8.27 The objective for the ecosystems and indigenous biodiversity topic in the WRPS is ECO-O1 (Ecological integrity and indigenous biodiversity):

*“The full range of ecosystem types, their extent and indigenous biodiversity that those ecosystems can support exist in a healthy and functional state.”*

8.28 There are three policies and 17 methods which relate to the objective.

8.29 The first of the three policies is *Policy ECO-P1 (Maintain or enhance indigenous biodiversity)*. In my opinion this is largely an aspirational policy, especially when compared to the more directive Policy ECO—P2. Nevertheless, the policy is important where ecosystems have been depleted and fragmented and where maintaining indigenous biodiversity will require enhancement and restoration, all matters that are engaged by PC20. This policy is recorded below:

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<sup>15</sup> Grala EIC., Para [59]

<sup>16</sup> Grala EIC., Para [112]

### 8.30 ECO-P1 – Maintain or enhance indigenous biodiversity

*Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:*

- 1. working towards achieving no net loss of indigenous biodiversity at a regional scale;*
- 2. the continued functioning of ecological processes; the re-creation and restoration of habitats and connectivity between habitats;*
- 4. supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;*
- 5. providing ecosystem services;*
- 6. the health and wellbeing of the Waikato River and its catchment;*
- 7. contribution to natural character and amenity values;*
- 8. tangata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;*
- 9. managing the density, range and viability of indigenous flora and fauna;  
and*
- 10. the consideration and application of biodiversity offsets*

8.31 Methods ECO-M1 and ECO-M11 guide implementation of ECO-P1. They are all relevant to PC20, with ECO-M3, for example, outlining a useful checklist for adverse effects on indigenous biodiversity to be recognised in regional and district plans:

*Regional and district plans shall recognise that adverse effects on indigenous biodiversity within*

*terrestrial, freshwater and coastal environments are cumulative and may include:*

- 1. fragmentation and isolation of indigenous ecosystems and habitats;*
- 2. reduction in the extent and quality of indigenous ecosystems and habitats;*

3. *loss of corridors or connections linking indigenous ecosystems and habitat fragments or between ecosystems and habitats;*
4. *the loss of ecological sequences;*
5. *loss or disruption to migratory pathways in water, land or air;*
6. *effects of changes to hydrological flows, water levels, and water quality on ecosystems;*
7. *loss of buffering of indigenous ecosystems;*
8. *loss of ecosystem services;*
9. *loss, damage or disruption to ecological processes, functions and ecological integrity;*
10. *changes resulting in an increased threat from animal and plant pests;*
11. *effects which contribute to a cumulative loss or degradation of indigenous habitats and ecosystems;*
12. *noise, visual and physical disturbance on indigenous species, particularly within the coastal environment; and*
13. *loss of habitat that supports or provides a key life-cycle function for indigenous species listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists.*

8.32 The balance of ecological evidence indicates that many of these will be engaged by the PC20 rezoning request, with the qualifier that these effects are cumulative, a particularly important point when considering the existing environment in and around the northern precinct.

8.33 As stated in section 6<sup>17</sup> of my evidence the northern precinct is bounded by the southern links designation to the north and west. It is located 6km south of Hamilton City's largest growth cell, with medium and high-density urbanisation to be enabled through the Peacocke Structure Plan, and it represents an extension of the operative Airport Business Zoning and Airport Business Structure Plan. There are also other sites zoned for industrial, retail or large lot residential development nearby, for examples the Meridian 37 site.

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<sup>17</sup> Gooding EIC., Section 6

- 8.34 All of these land uses are regarded by Ms Thurley as being within the home range of the south Hamilton bat population, all of them will enable creation of the bats “least preferred habitat”<sup>18</sup>. The adverse effects referred to in ECO-M2, particularly in clauses 1, 7 and 13 are therefore cumulative and any management response introduced into the WDP through PC20 will need to take account of this, acknowledging that the PC20 site does not exist in a vacuum, but is part of an increasingly fragmented ecological network.
- 8.35 Policy ECO-P2 (Protect significant indigenous vegetation and significant habitat of indigenous fauna) applies to areas which are ‘significant’. It requires significant habitats of indigenous fauna to be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that significance of the habitat is reduced. As stated, the entirety of the PC20 site is classified as significant under the WRPS, in the evidence of Ms Thurley.
- 8.36 In respect of indigenous biodiversity, the RPS indicates a clear preference for avoidance of adverse effects on significant natural areas and the characteristics that make that area “significant”. In my opinion it is plainly intended that one such “characteristic” would be the threatened fauna that utilise the habitat.
- 8.37 Methods ECO-M13 – ECOM17 are relevant to policy ECO-P2. In this instance, ECO-M13 is instructive.

*ECO-M13 – Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna*

*Regional and district plans shall (excluding activities pursuant to ECO-M4):*

*1. protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;*

*2. require that activities avoid the loss or degradation of areas of significant indigenous vegetation;*

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<sup>18</sup> Thurley EIC., Para [7.8 (a) – (c)]



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

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

*5. ensure that remediation, mitigation or offsetting as first priority relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or off-site methods). Methods may include the following:*

- a. replace like-for like habitats or ecosystems (including being of at least equivalent size or ecological value);*
- b. involve the re-creation of habitat;*
- c. develop or enhance areas of alternative habitat supporting including similar ecology/significance; or*
- d. involve legal and physical protection of existing habitat*

*6. recognise that remediation, mitigation and offsetting may not be appropriate where the effects indigenous biodiversity is rare, at risk, threatened or irreplaceable; and*

*7. have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant habits of indigenous fauna where no reasonably practicable alternative location exists.*

8.38 ECO-M13 directs application of the effects management hierarchy, reiterating the preference for on-site avoidance of adverse effects, followed by mitigation and remediation where that option has been exhausted. Where adverse effects are unable to be avoided, remedied or mitigated and residual effects remain, the method directs offsetting to achieve no net loss. Appropriate aspects of an offsetting approach are suggested in sub clauses a – d, these are not exhaustive.

8.39 ECO-M13 contains two important qualifiers in clauses 6 and 7:

*6. recognise that remediation, mitigation and offsetting may **not be appropriate** where the indigenous biodiversity is rare, at risk, **threatened or irreplaceable**; and*

*7. 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 reasonably practicable alternative location exists.*

8.40 In my opinion these need to be carefully weighed before acceptance of residual effects management in order to ensure PC20 is giving effect to Policy ECO-P2 and recognising and providing for the section 6(c) matter.

8.41 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.

8.42 Regarding clause 7, my understanding of the term functional necessity (or functional need) in the RMA context is that it means<sup>19</sup>:

*“the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.”*

8.43 In that regard, a business park could occur anywhere. In my opinion the Applicant cannot demonstrate a functional necessity for the rezoning request and subsequent industrial and retail activities.

8.44 Notwithstanding this, should the Panel find residual effects management appropriate in this instance it should note that while the WRPS makes continual reference to offsetting, it does not define it. That said, any residual effects management under the WRPS is directed to achieve “no net loss”, the term is defined as follows:

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<sup>19</sup> Auckland Council Practice and Guidance note – what is functional need?

**No net loss** – Means no reasonably measurable overall reduction in the type, extent, long-term viability and functioning of indigenous biodiversity. When the term is applied in a policy context it has regard to the overall contribution of regulatory and non-regulatory methods as contained in local indigenous biodiversity strategies. It does not create a no adverse effects regime.

8.45 Biodiversity offsetting is not proposed by the Applicant. The Applicant's ecology experts have ruled offsetting out as not viable.

8.46 Various methods to address residual effects are provided for in PC20 but in the expert ecology evidence presented by the applicant they all amount to compensation with no certainty that they can achieve no net less.

8.47 In regard to whether the directive policies, such as ECO-P2, are given effect by PC20 I consider there is a need to reconcile the WRPS policies and methods that support greenfield development with the policies and methods setting out a strong preference for avoiding adverse effects on the significant habitat of indigenous fauna. In addition, there is a need for surety that residual effects management proposed will achieve no net loss.

8.48 As it stands PC20, in my opinion, does not resolve this tension. The specific area of my concern is regarding the proposed extent and design of the BHAs, and the residual effects management proffered. In my opinion, the provisions themselves generally accord with sound drafting.

8.49 I consider reconciling these policy directives requires consideration of the Structure Plan design and proposed compensation to ensure adverse effects on the significant habitat of indigenous fauna can be avoided. Further, there is a clear need to determine how and under what circumstances mitigation, remediation, offsetting or compensation should be applied. My evidence will go on to do this by considering what changes are needed.

## **9. WAIPĀ DISTRICT PLAN**

### *Section 24 - Indigenous Biodiversity*

9.1 The district wide objective for indigenous biodiversity is 24.3.1 is to maintain and enhance the existing level of biodiversity within the District.

This leads to policies 24.3.1.1 – 24.3.1.10.

- 9.2 Notably Policy 24.3.1.1, while predominantly directed at indigenous vegetation and wetland areas it does contain useful direction on connectivity to link core habitats, buffering of sensitive sites, and retaining habitat for threatened species contributing towards no net loss of indigenous biodiversity.
- 9.3 There are additional objectives and policies addressing vegetation removal within biodiversity corridors, SNAs and bush stands.
- 9.4 The objective and policies relating to biodiversity corridors relate to the corridors identified On Planning Map 49. They “discourage” the removal of indigenous species removal of indigenous vegetation and disturbance of wetlands, promote the importance of maintaining connectivity along the corridors and encourage permanent protection in the biodiversity corridors. These are relevant to the Applicant’s proposed compensation site, particularly if there is a position in future to advance its protection under the WDP.
- 9.5 In my opinion some of the SNA objectives and policies are relevant to PC20. Namely Objective 24.3.3.1:

*To protect the ecological sustainability, indigenous biodiversity values and characteristics of significant natural areas including wetlands, and bush stands by ensuring that:*

- (a) *The removal of indigenous vegetation or habitat of indigenous species is discouraged and:*
  - a. *Only occurs in sustainable quantities in significant natural areas of local significance; and*
  - b. *Only occurs unlimited circumstances with internationally, nationally or regionally significant natural areas and bush stands*
- (b) *The health and functioning of significant natural areas including wetlands, and bush stands is maintained through appropriate land use practices.*

- 9.6 And, Policy 24.3.3.2 – Identification of additional significant natural areas

*Complete the identification and mapping of additional areas that meet the significant natural area criteria identified in the Regional Policy Statement, including wetlands that are identified by the Regional Council as significant*

- 9.7 If the evidence of Ms Thurley is preferred Policy 24.3.3.2 is directive, with identification and mapping of a significant natural area on the PC20 site required. One of the expert planners assisting the Applicant, Mr Inger<sup>20</sup>, notes there are no rules in Section 24 which restrict the removal of indigenous vegetation within the district outside of the mapped biodiversity corridors, SNAs, bush-stands or elsewhere in the district outside of the mapped areas. I agree with Mr Inger and consider this is an unfortunate oversight. While not to be addressed at the district wide scale, PC20 can and should respond to this with appropriate policies and rules applying within the northern precinct.

## **10. PC20 PROVISIONS**

### *Resource Management Issue*

- 10.1 The amended provisions include a new Section 10.2.3A which refers to the potential for development within the Northern Precinct to adversely affect bat habitat. The issue also refers to the need to recognise and provide for the protection of identified areas of bat habitat.
- 10.2 This amendment was agreed to by all planners in the JWS for Ecology and Bat Habitat. Further, I wish to record that the issue statement is consistent with the Director-General's submission,<sup>21</sup> with the wording "recognise and provide for" being aligned with the section 6(c) matter of national importance, signalling the need for PC20 to identify and protect the significant habitat present and apply directive provisions in response.

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<sup>20</sup> Inger EIC., Para [32]

<sup>21</sup> Department of Conservation (should be Director-General of Conservation) submission point 20.1, Waipa District Council summary of submissions by submitter

*Policy*

10.3 As notified Policy 10.3.2.2A, directed the preparation and implementation of an Ecological Management Plan (**EMP**) as part of development within the PC20 site. The stated purpose of the EMP was to support maintenance and enhancement of long-tailed bat habitat and connectivity between habitats “where practicable”. The Policy seeks to implement Objective 24.3.1.

10.4 In response to submissions the Policy has been re-drafted as follows:

*10.3.2.2A To maintain or enhance significant long-tailed bat habitat values by:*

*(a) providing Bat Habitat Areas for long-tailed bats within the Northern Precinct; (b) controlling the location of buildings adjacent to Bat Habitat Areas;*

*(c) minimising light spill into Bat Habitat Areas;*

*(d) requiring the preparation and implementation of an Ecological Management Plan as part of development to:*

*i. avoid more than minor adverse effects on long-tailed bat habitat values within Bat Habitat Areas; and where practicable, support the maintenance or enhancement of long-tailed bat habitat and connectivity between habitats;*

*ii. avoid or mitigate any more than minor loss of long-tailed bat habitat and adverse effects on long-tailed bat ecological habitat values outside of Bat Habitat Areas; and*

*iii. where any effects on long-tailed bats habitat values are unable to be avoided or mitigated, ensure that any more than minor residual effects are offset or compensated to achieve no net loss.*

10.5 The substantive changes are expressed in clauses (a) – (d) and subclauses i – iii. These changes and the reasons for them are well described in the EIC of Mr Inger. As recorded in the JWS I generally agree with the proposed wording with one exception, as follows:

*“To maintain or enhance significant long-tailed bat habitat values by:*

- a. Providing functional Bat Habitat Areas for long-tailed bats within the Northern Precinct.”*

10.6 I support insertion of the term “functional” into the Policy for the following reasons:

- a) To promote the design of BHAs that will actually be utilised by the bats, thereby maintaining and enhancing indigenous biodiversity on the site as directed by the higher order planning framework. As it stands the policy does not provide for the core purpose of identifying and protecting the BHA, namely that it serves as habitat. If it is not functional for use by bats then it is simply a planted-out reserve, situated in the middle of a business park for no clear resource management purpose. In my opinion this would be an inefficient use of land and sub-optimal outcome. Ms Thurley indicates there are aspects of the proposed BHA that do not instil confidence that it will be functional for bats. Inclusion of the term functional would be reflective of an improved design for the BHAs in the structure plan to address the issues identified by Ms Thurley and it would support the implementation of this design at the consenting stage.
- b) To give effect to the higher statutory and policy framework that prefers avoidance of adverse effects for the significant habitat of indigenous fauna. Meaning the test for whether a level of avoidance is achieved is whether bats will continue to use the site by way of the BHAs.

10.7 Nevertheless, If the concerns raised by Ms Thurley regarding the lack of functionality are addressed by further amendments to the Structure Plan through this process, then the need for this change to the policy would fall away and, in my opinion, the policy could progress as drafted by the Applicant.

#### *Structure Plan*

10.8 The Applicant proposes to retain 4.9ha of the site (including some of the area already zoned ABZ) based on existing vegetation features. This

comprises two BHAs and includes a 50m wide corridor which ends within the industrial area at an “Amenity Hub” (Hub). The Hub<sup>22</sup> appears to enable a concentration of retail and supporting amenities for the business park. In my opinion the purpose of the Hub has not been adequately explained by the Applicant. Overlaying the BHA as proposed, it is not clear that the Hub will be compatible with the intended purpose of the BHA, being the continued use of the area by bats.

- 10.9 In my view there is a risk that rules addressing the wider structure plan and it's interface with the BHA such as the lighting permitted activity standards (10.4.2.14A), building setback (10.4.2.3A) and vegetation removal (10.4.2.14C and 104.2.14D) may be incompatible with the intended use of the Hub. In lieu of adequate information on the intended use of the Hub I consider it should be relocated entirely outside of the BHAs.
- 10.10 In paragraph [10.2 (a) – (b)] of her evidence Ms Thurley points to several deficiencies in the proposed design of the BHAs. She cites the width of the corridor being insufficient, the bisection of the BHA with roads, the surrounding area being industrial and the potential impact of noise.
- 10.11 In the evidence of Ms Thurley none of these issues are effectively managed by the Structure Plan/BHA design. I consider the appropriate response to be a significant redesign of the BHA to set aside a higher quantum of land for protection and to allow for a wider corridor. If this is not feasible, then the approach to achieving no net loss, as directed by the WRPS, through residual effects management, would need to be strengthened.

*Ecological Management Plan Rule*

- 10.12 The JWS Ecology and Bat Habitat records that I support amendments to Rule10.4.2.1B so that the Ecology Management Plan (**EMP**) implements a specified outcome.
- 10.13 Rule 10.4.2.14B in the amended provisions requires the development of an EMP for the entire Northern Precinct at the earlier of the first land use or subdivision consent (excluding boundary adjustments) application.

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<sup>22</sup> Grala EIC., Para [36]



The EMP is required to include a Bat Management Plan (**BMP**) as a sub-plan of the overall EMP. The information that the BMP must address includes planting specifications and an implementation programme, details of how light spill will be managed where roads cross BHAs, identification of all confirmed or potential bat roost trees and consideration of whether they can be retained based on defined criteria, tree removal protocols and monitoring details. It also must detail offset or compensation measures to contribute to a no net loss outcome where 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.

- 10.14 The EMP rule, in effect, requires the consent application to take an adaptive management approach in addressing adverse and residual effects on bats. At the plan making stage, it is not possible to know exactly how an area will be developed, and therefore the extent to which the anticipated effects will arise. The task of the District Plan is therefore to include sufficient measures and triggers so that effects that are appropriately controlled, proportional to the extent and magnitude of those effects – either through rules, permitted activity standards or through conditions imposed at the time of consent.
- 10.15 Having considered the matter of including a specified outcome in the rule further and in light of the issues outlined in [10.16] above I no longer seek that amendment. I do, however, recommend one other discrete change, acknowledging my agreement to the rest of the proposed drafting recorded in the Bat and Ecology JWS.
- 10.16 I consider it would be reasonable and helpful at the consenting stage for the rule to require the EMP and BMP be submitted with the application rather than proposed in conditions and deferred until implementation of the consent. This will allow the Waipā District Council to fully assess the effects of the proposal before consent is granted. In my view this is an appropriate requirement in the context of the vulnerability of the bats. It is also ‘good practice’. This may already be the intent of the rule, but the proposed drafting leaves the matter unclear. I propose:

*10.4.2.14B The first land use consent application or the first subdivision consent application (excluding boundary adjustments) for the Northern Precinct must contain an ecological Management*

*Plan at the time of lodgement with Waipā District Council...*[No further amendments are sought].

#### *Assessment Criteria*

- 10.17 The JWS Ecology and Bat Habitat records that there was no specific discussion of amended assessment criteria.
- 10.18 In my opinion there are some wording changes that would strengthen them. The current drafting uses ‘optional’ language that is, in my opinion, inappropriate for managing effects on a threatened species. For instance, 21.1.10.18A(a) “...*this **may** include legal protection and enhancement of Bat Habitat Areas*” and (b) “*Where transport corridors are proposed to cross Bat Habitat Areas they **should** take the shortest route practicable (provided that is the route most likely to minimise impacts)*”.
- 10.19 In my view discretionary language such as ‘may’ and ‘should’ needs to be replaced with tighter language such as must, will or shall. Moreover, substantive and measurable contributions toward a no net loss outcome need to be required ahead of measures that rely on monetary compensation where the ultimate use of that money often can’t be shown to contribute to a no net loss outcome. I set out my preferred changes below:
- a. *The extent to which the proposal avoids, remedies or mitigates the effects of development on Bat Habitat Areas and other habitat values within the Northern Precinct. This ~~may~~ must include legal protection and enhancement of Bat Habitat Areas, protection of confirmed or potential bat roost trees outside Bat Habitat Areas (subject to the recommendations in the assessment required by Rule 10.4.2.14B(a)(iii)), pest control and measures to minimise light spill into Bat Habitat Areas.*
  - b. *The extent to which transport corridors are located and designed to avoid or minimise effects of roadside lights and vehicle headlights on nearby Bat Habitat Areas and the bat population within those areas. Where transport corridors are proposed to cross Bat Habitat Areas they ~~should~~ must take the shortest route practicable (provided that is the route most likely to minimise impacts), be aligned and designed to minimise the number of*

*existing trees that are required to be removed, ensure lighting is designed to maintain the role and function of the Bat Habitat Area and be designed to enable bats to continue to access the remaining Bat Habitat Areas.*

- c. *The extent to which the proposal addresses more than minor residual adverse effects to achieve no net loss for long-tailed bat habitat values through off-site measures. This ~~may~~ must include legal protection of bat habitat, provision of new and enhanced bat habitat, and pest control. It may include the provision of a monetary payment or land to be used for measures such as habitat enhancement or pest control if further measures are needed to achieve no net loss.*

#### *Other provisions*

- 10.20 As recorded in the Bat Habitat and Ecology JWS I agree with the other provisions as proposed (or otherwise amended in the JWS and agreed by all the planning experts), including the lighting permitted activity rule, and the vegetation removal rules.

### **11. PRELIMINARY COMPENSATION APPROACH**

- 11.1 The evidence of Ms Thurley indicates the proposed compensation, while appropriately located and a positive step, cannot secure a no net loss outcome, given the quantum of land offered in response to that sterilised for use by the bats.

- 11.2 Further, Ms Thurley is of the opinion that the proposed BHAs do not amount to effective onsite avoidance, remediation or mitigation, as required. In the evidence of Ms Cummings and Mr Markham residual effects are required as the overall ecological effect on bats will be “very high”<sup>23</sup>.

- 11.3 Clearly, offsite compensation will be required to address the residual effects anticipated under PC20. In the evidence of Ms Thurley, the proffered 16 ha set aside for protection both on and offsite will not be sufficient to achieve no net loss of bat habitat values in the face of the

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<sup>23</sup> Cummings EIC., Para [16]  
Markham EIC., Para [55]

bats potentially losing access to the full 130 ha site.

11.4 In my view, while commendable and a step in the right direction the 11 ha commitment will need to be substantially increased in order to provide security that the no net loss outcome that is anticipated by the higher order planning framework can be achieved.

## **12. CONCLUSION**

12.1 PC20 is situated within the home range of the south Hamilton long-tailed bat population (nationally critical – threatened). This population faces increased fragmentation of its habitat from planned and proposed development.

12.2 The PC20 site contains significant habitat for the long-tailed bat.

12.3 There is a tension between enabling provisions regarding development and the requirement to recognise and provide for section 6(c) and give effect to the WRPS ‘avoid’ and ‘no net loss’ of indigenous biodiversity policies.

12.4 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.

12.5 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.



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Jesse Gooding

07/03/2023

## **ANNEXURE 1 TO EIC OF J Q GOODING**

In preparing my evidence, I have read and considered the following documents:

1. Private Plan Change 20 – Airport Northern Precinct Extension
  - a. Appendix 08 – Ecology Report
  - b. Appendix 16 – Proposed WDP Zoning Map
  - c. Appendix 17 Cultural Impact Assessment
  - d. Appendix 18 – Structure Plan
  - e. Appendix 19 – Proposed WDP Provision Changes
  - f. Appendix 20 – Section 32 Evaluation
  - g. PPC20 Addendum WRPS-PC1 / NPS-HPL assessment
2. The Waipa District Council summary of submissions and further submissions
3. Commissioner Minute 1 – 4
4. The Waipa District Council section 42a report and attachments
5. Joint Witness Statements:
  - a. Bat Habitat and Ecology
  - b. Economics and Retailing
  - c. Transport and Planning
  - d. Transport and Planning (2)
6. The Applicant EIC:
  - a. Mark Morgan EIC
  - b. William Yates EIC
  - c. Nigel Richards EIC
  - d. Scott King EIC
  - e. Cameron Inder EIC
  - f. Joshua Markham EIC
  - g. Georgia Cummings EIC
  - h. John McKensey EIC
  - i. Ben Inger EIC
  - j. Norman Hill EIC
  - k. Nick Grala EIC
7. Director-General of Conservation EIC
  - a. Tertia Thurley EIC
8. Statutory Documents and Decisions
  - a. Resource Management Act 1991
  - b. National Policy Statement on Urban Development 2020
  - c. National Policy Statement for Freshwater Management 2020

- d. National Policy Statement for Highly Productive Land 2022
- e. National Policy Statement for Indigenous Biodiversity Exposure Draft June 2022
- f. Waikato Regional Policy Statement: Te Tauākī Kaupapahere Te-Rohe O Waikato 2016 [updated with National Planning Standards provision references] (RPS);
- g. Operative Waipa District Plan
- h. Environmental Defence Society v The New Zealand King Salmon Co Ltd decision
- i. Bleakley v Environmental Risk Management Authority decision
- j. Puke Coal Limited, Par Society Incorporated, Roger Howlett V Waikato Regional Council,
- k. Waikato District Council, Ludger Hinse, Peter William Davie, [2014] NZEnvC 223
- l. Hamilton City Council Plan Change 5 – Hearing Panel Decision