

BEFORE THE HEARING PANEL

IN THE MATTER OF The Resource Management Act 1991
("the Act")
and

IN THE MATTER OF an Application by Weston Lea Limited for
land use and subdivision consents for the
development of approximately 105
hectares of land at 337 – 461 Peacockes
Road, Hamilton

AND

IN THE MATTER OF a submission on this application by the
Director-General of Conservation.

**STATEMENT OF EVIDENCE OF JOHN ANDREW RIDDELL
FOR THE DIRECTOR-GENERAL OF CONSERVATION
23 April 2019**

Department of Conservation

Private Bag 3072, Hamilton 3240

Counsel Acting: Victoria Tumai

E-mail: vtumai@doc.govt.nz

Phone: 07 838 5687

Submission Number: 59

INDEX

Summary of Evidence	3
A. Introduction	4
Experience	4
Code of Conduct	5
Evidence and information relied on	5
Approach taken in evidence	6
B. The Application	7
C. Policy Guidance	8
Sustainable management	9
Matters of national importance	9
Other matters	10
Principles of Treaty of Waitangi	10
National policy statements	10
Waikato Regional Policy Statement	12
Hamilton District Plan	17
Summary on resource management guidance	23
D. Actual and Potential Effects	24
E. Assessment and Conclusion	28

SUMMARY OF EVIDENCE

1. This is the planning evidence of John Andrew Riddell on the application by Weston Lea Limited for a comprehensive subdivision of land situated between the Waikato River and Peacocke Road.
2. The development proposal is anticipated by, and generally complies with, the Hamilton District Plan's Peacocke Structure Plan provisions.
3. However, the site is also significant habitat for the Nationally Critical long-tailed bats. The overall policy guidance with respect to this long-tailed bat habitat is the avoidance of adverse effects. This is the consistent direction from matter of national importance 6(c) of the Act, from the Waikato Regional Policy Statement, and from the Hamilton District Plan.
4. In my opinion, the important policy question with respect to this proposal is: can a subdivision be designed for the site that is consistent with the intentions for the Peacocke Structure Plan area and that avoids adverse effects on long-tailed bats?
5. The answer to this, in terms of the subdivision layout and after considering the measures intended to avoid adverse effects on long-tailed bats that have been proposed by the applicant, has to be that while this particular subdivision layout is consistent with the intentions for the Peacocke Structure Plan, it could result in moderate to significant adverse effects on long-tailed bats.
6. In my opinion, the subdivision proposal needs a significant redesign in order for it to be consistent with the relevant policy guidance, especially the avoid adverse effects on long-tailed bats policy direction.

A. INTRODUCTION

7. My name is John Andrew Riddell. I have been practising as a resource management planner on a part-time basis since 1989 and a full-time basis since 1993. Until November 1998 I was self-employed, although I did work for Nugent Consultants Limited on a part time basis from 1993 until 1996. Between November 1998 and June 2013 I was employed by the Department of Conservation. I am currently self-employed, operating under the company name CEP Services Matauwhi Limited. I hold the qualification of Bachelor of Resource and Environmental Planning with First Class Honours. I am a member of the New Zealand Planning Institute.

Experience

8. My experience includes providing evidence and advice on the provisions of plans and policy statements provisions,¹ participating in mediation and negotiations over policy statement and plan provisions, and presenting evidence to the Environment Court on matters under appeal.²
9. In terms of resource consents, my experience covers processing consent applications for the Far North District Council, reviewing consent applications for the Department of Conservation, giving evidence on notified applications at council hearings, giving evidence to the Environment Court on applications,³ and preparing resource consent

¹ I have prepared reports on financial contributions that were part of the preparation of the Far North District Plan and the Waitakere City District Plan. I have provided evidence on, and/or provided planning advice for appeal negotiations and mediation on: the Auckland City District Plan - Isthmus section, Far North District Plan, Bay of Islands District Scheme (which included a coastal plan component), Whāngārei District Plan, Kaipara District Plan, Kaikōura District Plan, Northland Regional Policy Statements (there have been two), Regional Water and Soil Plan for Northland, Regional Coastal Plan for Northland, the draft Gisborne Water and Soil Plan, the proposed Auckland Unitary Plan, the Bay of Plenty Coastal Environment Plan, proposed Thames-Coromandel District Plan, several proposed changes to the Whāngārei District Plan, and the proposed Regional Coastal Plan – Subantarctic and Kermadec Islands. I was one of co-authors of the *Sustainable Development Plan for Kororipo-Kerikeri Basin*, October 2005. This was a management plan prepared under the Reserves Act for the combined reserve land at Kororipo-Kerikeri Basin administered by the Department of Conservation and the Far North District Council.

² These include pest management policies in the Regional Policy Statement for Northland, coastal subdivision rules in Far North and Whāngārei Districts, and kauri dieback rules in the proposed Thames-Coromandel District Plan.

³ These include evidence at Environment Court hearings on coastal subdivisions, a tidal power generation proposal (Crest Energy), and the clearance of mangroves at Mangawhai, and at the High Court (by affidavit) in relation to the decision to process an application to construct a dwelling without notification.

applications for a range of activities, including a medical centre, jetties and slipways, discharges from fish processing factories, houses, huts, 1080 and brodifacoum aerial pest control operations, indigenous vegetation clearance, wetland weir structures, water takes, treated wastewater discharges, and earthworks.

10. Much of my resource management work has been in Northland, although it has extended to Auckland, Thames-Coromandel, the Bay of Plenty, Gisborne and Kaikōura; and with this application, Hamilton.
11. The Department of Conservation has asked me to provide planning advice and evidence in relation to the submission by the Director-General of Conservation, on the application by Western Lea Limited for resource consents necessary to subdivide and develop some 105 hectares of land between Peacockes Road and the Waikato River.
12. I was not involved in the initial assessment of the proposal or the drafting of the submission by the Director-General.

Code of Conduct

13. I have read the Code of Conduct for Expert Witnesses produced by the Environment Court (2014) and undertake to follow it for this hearing. My qualifications as an expert are set out above. Other than those matters identified within my evidence as being from other experts, I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

Evidence and information relied on

14. In reaching the opinions I express in this evidence I have relied on the evidence of Ms Pryde, Dr Borkin, and Dr Barea for the Director-General of Conservation, and to an extent, the evidence of Mr Kessels.
15. I have read the application assessment of environmental effects and the additional material from the applicant on ecological,⁴ landscape and

⁴This includes the further information from the applicant received by Hamilton City Council on 17 August 2018, and the Ecological Assessment Addendum dated 20 February 2019.

urban design matters since the application was lodged. I have read the evidence of Mr Serjeant.⁵

16. I have read the Joint Witness Statement of Ecological Witnesses dated February 18, 2019.
17. I have read the report to the Hearing Panel by Ms Cockerell, and Appendix E to that report being an assessment of ecological matters by Mr Kessels.⁶
18. I have viewed the site from Peacockes Road, and from aerial photographs.

Approach taken in evidence

19. In this evidence, I briefly summarise the District Plan objectives and policies relevant to this proposed development within the Peacocke Structure Plan area. As a prime concern of the Director-General is the ecological impacts of the proposed development, I also set out in some detail the provisions from Part 2 of the Act, the Waikato Regional Policy Statement (“Regional Policy Statement”) and the Hamilton District Plan (“District Plan”) relating to ecological matters.
20. My evidence is primarily directed at the management of the actual and potential effects of the proposed development on long-tailed bats. This emphasis reflects the threatened species status of long-tailed bats, the general assessment that the ecological value of the site for long-tailed bats is very high, the potential for significant adverse effects on long-tailed bats with this proposal, the assessment that the site meets the criteria for “significance” set out in the Regional Policy Statement,⁷ and the general policy direction to avoid adverse effects on long-tailed bats.
21. Notwithstanding this emphasis, I recognise that there are a wider range of resource management issues that need to be considered in order to

⁵ I will report at the time of the hearing of this evidence on which other statements of evidence I have read between then and the lodging of this evidence, and whether that has caused me to change any of the statements I make in this evidence.

⁶ I have not read the other Appendices to the section 42A report. The conclusions of these other reports are summarised by Ms Cockerell in her report, and generally traverse matters somewhat peripheral to the focus of this evidence.

⁷ See paragraphs 45 and 47 of the evidence of Mr Kessels, and paragraphs 6.5 and 6.6 of Ms Pryde’s evidence.

ensure that the application achieves the purpose of the Act. I consider that, other than in relation to long-tailed bats, the proposal is in accordance with overall policy guidance, and that the adverse effects are generally less than minor.

22. The planning evidence by the applicant and the consent authority is more wide-ranging than my evidence; because they need to address a wider range of resource management matters than I address in this statement.⁸
23. My order of discussion in this evidence is:
 - (a) the application and the structure plan,
 - (b) policy guidance,
 - (c) actual and potential ecological effects, and
 - (d) assessment and conclusion.

B. THE APPLICATION

24. The application is for subdivision, land use and discharge consents necessary to undertake a comprehensive residential and commercial (retail and medium-intensity residential) development⁹ on some 105 hectares of land¹⁰ adjacent to the Waikato River and on the south eastern edge of Hamilton. It is a non-complying activity.
25. This type of development is anticipated in the District Plan as the site is within the Peacocke Structure Plan area. It is well described in the application documents and in Ms Cockerell's report and in Mr Serjeant's evidence.
26. A range of residential lot types are provided for, ranging from single lot residential development to medium density apartment development. It aims to provide 835 fee simple residential units across the site.

⁸ Other adverse effects of the proposal are generally assessed as minor or less than minor.

⁹ This application identifies two large lots where commercial retail development and medium density housing will be developed. The development of this area will be subject to future application to the City Council.

¹⁰ The total area of land subject to this application is 139 ha when two balance lots are included.

27. The development is seeking the establishment of a community, thus it includes a shopping centre focal point, and a range of different reserves.
28. The proposal follows design guidelines set out in the District Plan for the Peacocke Structure Plan area, as is set out in the application, and confirmed in the report prepared under section 42A of the Act.
29. In many ways this proposal is a straight forward application of the District Plan provisions, its non-complying activity status notwithstanding. There is one major complication, however, arising because of the presence of long-tailed bats. As is clear from later sections of my evidence, the Structure Plan development guidelines do not recognise and anticipate the need for measures to protect long-tailed bats.
30. In my opinion, this has significant implications for the layout and design detail for this proposed comprehensive development.

C. POLICY GUIDANCE

31. Appendix A of the application sets out objectives and policies from the District Plan and from the Regional Policy Statement in some detail.
32. In this section I draw on some of the objectives and policies identified in that appendix and identify further policy guidance from the Regional Policy Statement.¹¹ First I briefly review nationally applying matters.
33. It is clear from the application assessment of environmental effects and from the ecological assessments by the applicant, the City Council's experts and by other parties that adverse effects of the proposal are in the minor or less than minor range except for adverse ecological effects, which are assessed as more than minor and potentially significant with respect to effects on long-tailed bats; and for historic heritage effects.¹²
34. My review is detailed with respect to policy guidance on dealing with adverse ecological effects, and in summary form with respect to other effects.

¹¹ I recognise that Ms Cockerell and Mr Serjeant have also provided policy analysis. In many ways this compliments their analysis. There is much common ground in our respective analyses.

¹² I do not discuss historic heritage effects further.

35. This review of policy guidance is relevant in terms of the second leg of the non-complying activity gateway test, and, if it passes that gateway test, in terms of the assessment of the application under section 104 of the Act.

Sustainable management of natural and physical resources

36. Part 2 of the Act sets out the purpose and principles of the Act.
37. The purpose of the Act is to promote the sustainable management of natural and physical resources.
38. Sustainable management is defined in section 5(2) of the Act. In essence, it sets out four objectives that must be contemporaneously achieved when managing of the use, development, and protection of natural and physical resources. These four objectives, in summary, are:
- enabling people and communities to provide for their well-being, and health and safety;
 - safeguarding the potential of natural and physical resources meeting the reasonably foreseeable needs of future generations;
 - safeguarding the life-supporting capacity of air, water, soil and ecosystems;
 - avoiding, remedying or mitigating adverse effects.
39. The rest of Part 2 of the Act, national policy statements, the Regional Policy Statement, and the District Plan set out how the sustainable management purpose of the Act is to be achieved in this location.

Matters of national importance

40. 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:¹³

41. This leads to the significant natural area policy direction in Regional Policy Statement and District Plan that I discuss later.

Other matter

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

- (b) the efficient use and development of natural and physical resources:
- (d) intrinsic value of ecosystems:

Principles of Treaty of Waitangi

43. Section 8 of the Act requires decision makers to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)

National policy statements

44. National policy statements provide national guidance with respect to specific resource management matters. There are five operative national policy statements, of which the National Policy Statement on Urban Development Capacity 2016 is directly relevant to this application.¹⁴

45. The following overarching statement is made at the beginning of this national policy statement:

National Significance

This national policy statement is about recognising the national significance of:

- a) urban environments and the need to enable such environments to develop and change; and
- b) providing sufficient development capacity to meet the needs of people and communities and future generations in urban environments.

¹³ There are other matters of national importance which could be relevant to the overall proposal, notably public access (6d), Māori values (6e), and historic heritage (6f). However these are not directly relevant to ecological effects, and in my opinion are adequately recognised and provided for in the application.

¹⁴ A national policy statement on indigenous biodiversity is under preparation. Section 104 of the Act, Consideration of applications, requires regard to be had to operative national policy statements, not draft or proposed ones. I do not consider the draft national policy statement on indigenous biodiversity further.

46. The national policy statement then sets out eight objectives and supporting policies, including policies specific to a high growth urban area such as Hamilton.¹⁵

47. In essence the national policy statement seeks:

Objective OA2 Urban environments that have sufficient opportunities for the development of housing and business land to meet demand, and which provide choices that will meet the needs of people and communities and future generations or a range of dwelling types and locations, working environments and places to locate businesses.

48. and

Objective OC1 Planning decisions, practices and methods that enable urban development which provides for the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium and long-term.

49. Most of the policies are directed to local authorities in their plan development role. There are two policies that, in my opinion, are specifically relevant to decisions on resource consent applications:

PA3: When making planning decisions that affect the way and the rate at which development capacity is provided, decision-makers shall provide for the social, economic, cultural and environmental wellbeing of people and communities and future generations, whilst having particular regard to:

- a) Providing for choices that will meet the needs of people and communities and future generations for a range of dwelling types and locations, working environments and places to locate businesses;
- b) Promoting the efficient use of urban land and development infrastructure and other infrastructure; and
- c) Limiting as much as possible adverse impacts on the competitive operation of land and development markets.

PA4: When considering the effects of urban development, decision-makers shall take into account:

- a) The benefits that urban development will provide with respect to the ability for people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing; and

¹⁵ For more on the National Policy Statement on Urban Development Capacity 2016 see paragraphs 228, 229, 239 and 240 of Ms Cockerell's report.

- b) The benefits and costs of urban development at a national, inter-regionals, regional and district scale, as well as the local effects.
50. One point to note is that these two quoted policies reinforce the need to consider the nature of the social, economic, cultural and environmental well-being being provided for.

Waikato Regional Policy Statement

51. Plans are required to give effect to the relevant regional policy statement. However, for resource consent applications, regard is to be had to the regional policy statement, among other resource management documents.
52. The Regional Policy Statement was made operative on 20 May 2016 and was updated on 19 December 2018 as required by the National Policy Statement on Urban Development Capacity 2016.
53. Objective 3.27 of the Regional Policy Statement sets out minimum housing targets for Hamilton City, and for Waipa and Waikato Districts.
54. More detail on urban development intentions is provided in the section 6 of the Regional Policy Statement, titled “Built Development”. This section sets out policies and methods intended to ensure subdivision, use and development of the built environment occurs in a planned and coordinated manner.¹⁶ Methods include growth strategies, urban development planning, information requirements for applications, and aligning infrastructure and land use planning.
55. Policy 6.13 concerns collaboration of governance over future proof areas. This concerns the implementation of a Future Proof Growth Strategy of 2009. New urban development (among other things) will occur within the future proof areas.
56. This includes the Peacocke Area,¹⁷ which under policy 6.14 is intended to be developed to a density of 16 houses per hectare.
57. Section 6A of the Regional Policy Statement sets out general development principles. These are generally reflected in the District Plan

¹⁶ To paraphrase policy 6.1 of the Regional Policy Statement.

¹⁷ This is also shown on the Future Proof map in section 16C of the Regional Policy Statement.

policies for the Peacocke Structure Plan area, although the following one is not well covered:

6A Development principles

New development should

- k) promote positive indigenous biodiversity outcomes and protect significant indigenous vegetation and significant habitats of indigenous fauna. Development which can enhance ecological integrity, such as by improving the maintenance, enhancement or development of ecological corridors, should be encouraged;

- 58. Section 2 of the Regional Policy Statement sets out provisions related to the protection of the Waikato River. Parallel provisions are included in the District Plan. I agree with the description and analysis of Ms Cockerell and Mr Serjeant on these particular provisions.
- 59. The policy direction with respect to urban development and the Waikato River are not the only necessary considerations from the Regional Policy Statement. Chapter 11 sets out policies and methods for indigenous biodiversity.
- 60. There are three relevant indigenous biodiversity policies, each with supporting methods identified to implement the policy.
- 61. Policy 11.1 is a policy applying to all indigenous biodiversity across the region, including significant indigenous biodiversity (significant natural areas).¹⁸
- 62. The policy states:

Policy 11.1 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:

- a) working towards achieving no net loss of indigenous biodiversity at the regional scale;
- b) the continued functioning of ecological processes;
- c) the re-creation and restoration of habitats and connectivity between habitats;

¹⁸ Using “significant” as short-hand for the indigenous biodiversity to which section 6(c) of the Act applies to. Section 6(c) states “The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.” Such areas are commonly referred to as significant natural areas.

- d) supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant indigenous vegetation and significant habitats of indigenous fauna;
 - e) providing ecosystem services
 - f) the health and wellbeing of the Waikato River and its catchment;
 - g) contribution to natural character and amenity values;
 - h) tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;
 - i) managing the density, range and viability of indigenous flora and fauna; and
 - j) the consideration and application of biodiversity offsets.
63. Methods identified to implement this policy include maintaining or enhancing indigenous biodiversity, adverse effects on indigenous biodiversity, recognising activities that have minor adverse effects on indigenous biodiversity, and information gathering including a biodiversity inventory and threatened species information.
64. These methods are generally reflected in the District Plan indigenous biodiversity policies, discussed later.
65. Method 11.1.2 does provide a useful checklist for assessing actual and potential adverse effects on indigenous biodiversity:

Method 11.1.2 Adverse effects on indigenous biodiversity
Regional and district plans shall recognise that adverse effects on indigenous biodiversity within terrestrial, freshwater and coastal environments are cumulative and may include:

- a) fragmentation and isolation of indigenous ecosystems and habitats;
- b) reduction in the extent and quality of indigenous ecosystems and habitats;
- c) loss of corridors or connections linking indigenous ecosystems and habitat fragments or between ecosystems and habitats;
- d) the loss of ecological sequences;
- e) loss or disruption to migratory pathways in water, land or air;
- f) effects of changes to hydrological flows, water levels, and water quality on ecosystems;
- g) loss of buffering of indigenous ecosystems;
- h) loss of ecosystem services;
- i) loss, damage or disruption to ecological processes, functions and ecological integrity;

- j) changes resulting in an increased threat from animal and plant pests;
- k) effects which contribute to a cumulative loss or degradation of indigenous habitats and ecosystems;
- l) noise, visual and physical disturbance on indigenous species, particularly within the coastal environment;
- m) loss of habitat that supports or provides a key life-cycle function for indigenous species listed in as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists.

66. In my opinion, policy 11.1 is an aspirational policy, especially when considered alongside the more focused policy 11.2:

Policy 11.2 Protect significant indigenous vegetation and significant habitats of indigenous fauna
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.

67. Section 11A of the indigenous biodiversity chapter sets out criteria for determining significance of indigenous biodiversity.

68. Where indigenous biodiversity is assessed as being “significant” in accordance with these criteria,¹⁹ the following method applies:

Method 11.2.2 Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna
Regional and district plans shall (excluding activities pursuant to 11.1.4).²⁰

- a) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b) 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;
- c) require that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated;
- d) where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (b) or (c),

¹⁹Whether the assessment is undertaken by the Regional Council under method 11.2.1 or by another party under method 11.2.3. These criteria are applied in the evidence of Mr Kessels (paragraphs 45 and 47) and in the evidence of Ms Pryde (paragraphs 6.5 and 6.6). Both conclude the “significance” criteria are met for the Amberfield site, primarily because of the use of the area by long-tailed bats.

²⁰Method 11.1.4 is a method titled “Recognition of activities having minor adverse effects on indigenous biodiversity”. In my opinion, the activities described in this method are not relevant to the Weston Lea application.

- more than minor residual adverse effects shall be offset to achieve no net loss; and
- e) ensure that remediation, mitigation or offsetting as a 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:
 - i) replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
 - ii) involve the re-creation of habitat;
 - iii) develop or enhance areas of alternative habitat supporting similar ecology/significance; or
 - iv) involve the legal and physical protection of existing habitat;
 - f) recognise that remediation, mitigation and offsetting may not be appropriate where indigenous biodiversity is rare, at risk, threatened or irreplaceable; and
 - g) 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 alternative location exists.
69. The prime policy guidance from the Regional Policy Statement on indigenous biodiversity is that, for significant natural areas,²¹ there is a strong preference for avoiding adverse effects on the characteristics that make that area “significant”.
70. The policies and methods, especially clauses c) to g) of Method 11.2.2 do provide for circumstances where adverse effects cannot be avoided essentially by setting out the mitigation hierarchy associated with biodiversity offsetting.²² This includes achieving a no net loss result, and recognition, at clause f, that remediation, mitigation and offsetting may not be appropriate where rare, at risk, threatened or irreplaceable species are involved.
71. With this application, there is a need to reconcile the Regional Policy Statement policies and methods that support this greenfield development and the policies and methods setting out a strong preference for avoiding adverse effects on significant natural areas.

²¹ Note that the term “significant natural area” is used in two senses. In the District Plan the initial letters are capitalised, making “Significant Natural Area”, referring to an area that is mapped and included in a schedule to the District Plan. When the term is in lower case, “significant natural area”, it is referring to any area that meets the “significance” criteria in the Regional Policy Statement. “Significant Natural Area” is a sub-set of “significant natural area”.

²² The mitigation hierarchy and biodiversity offsetting is discussed at length in section 14 of the evidence of Dr Barea.

72. I consider that reconciling this policy guidance requires careful consideration of the extent to which the layout of the proposed subdivision can be revised to ensure adverse effects on significant natural areas can, by preference, be avoided; and of the question of whether it is appropriate, given the nationally critical threat status of long-tailed bats, to provide for remediation, mitigation and/or offsetting at all.

Hamilton District Plan

73. Clearly the District Plan anticipates that greenfield development will occur on this site. It is part of area covered by the Peacocke Structure Plan, one of five structure plan areas on the periphery of Hamilton City identified in the District Plan.

74. The objectives and policies in the District Plan that are relevant to this application are identified in detail in Appendix A of the application. I briefly summarise the policy direction relating to development within a structure plan area, and then review the indigenous biodiversity policies which are also applicable.

75. There is an over-arching objective, objective 2.2.6, in section 2 of the District Plan, which sets out the provision for future urban development in Hamilton City. This is in specific response to the National Policy Statement on Urban Development Capacity 2016.

76. The first objective in section 3.3 Objectives and Policies: Structure Plans in the District Plan is:

Objective 3.3.1

Optimised, long-term, positive environmental, economic, social and cultural effects of greenfield development.

77. The policies under this objective give a flavour of how the objective will be achieved and what is generally expected of greenfield development within a structure plan area:

Policy 3.3.1a

Development should be in general accordance with the relevant Structure Plan.

Policy 3.3.1b

Development of Structure Plan areas should aim to achieve:

- i. An overall residential density of 16 dwellings per hectare (excluding transport corridors).

Policy 3.3.1c

The design of the development should provide population densities that support safe, efficient passenger transport and opportunities for walking and cycling.

Policy 3.3.1d

Interim land use and development including low density residential development should not compromise the integrity and viability of the land use pattern for the relevant Structure Plan.

78. There follows a series of objectives and policies to further guide the design and layout of greenfield development within a Structure Plan area.
79. This includes integrating with city infrastructure (transport and three waters), having compatible buildings and activities, responding to land suitability, and having a range of public open spaces.
80. There are some references to ecological protection in these general Structure Plan objectives and policies.
81. For example policy 3.3.3b iv refers to safeguarding and enhancing the natural functioning and ecological health of freshwater bodies and areas of indigenous vegetation and habitats. And policy 3.3.6a sets out the intention to minimise the loss of significant vegetation.
82. However, notwithstanding this, the ecological protection policy guidance in the Structure Plan chapter is, in my opinion, very sketchy.
83. Section 3.4 of the District Plan sets out specific design requirements for any greenfield development within the Peacocke Structure Plan area.
84. The first point made in this section is
 - 3.4a The Peacocke area is a 720 ha area of rural land to the southeast of the Glenview suburb of Hamilton City. This land was incorporated into the City from neighbouring Waipa District Council in 1989 *for the express purpose of providing for the City's future urban growth* [emphasis added]
85. Five principles are identified as being behind the vision and objectives and policies specific to the Peacocke Structure Plan area.
86. These are set out under the headings contextual design, concentration, accessibility and connectivity, legibility and identity and innovation.

87. The “concentration” principle is relevant to the consideration of the ecological effects associated with the proposed subdivision:

Concentration: Ensure that future development is undertaken at an appropriate density and intensity of use that preserves and restores the ecological integrity of the area while improving the quality of life for residents, facilitating a vital economy, and promoting the efficient use of land and community assets.

88. The Vision for the Peacocke Structure Plan area reflects the Principles.
89. Section 3.4.1 of the District Plan sets out objectives and policies for the structure plan area. The beginning of this section is:

3.4.1 Objectives and Policies

When consent is required for subdivision and/or development within the Peacocke Structure Plan area, the proposal must be in accordance with the objectives and policies below and any general objectives and policies for Structure Plan areas (refer to 3.3).

90. The objectives and policies are grouped under three headings: Peacocke Natural System, Peacocke Built Environment, and Peacocke Social Wellbeing.
91. The objectives and policies are given in Appendix A of the application.
92. The Peacocke Natural System objectives and policies are, in my opinion, primarily concerned with riparian protection, providing ecological and open space links, providing for public access and limiting earthworks on slopes.
93. It includes the following objective

Objective 3.4.1.1

Protect and enhance significant natural areas.²³

94. In my opinion, it is necessary to refer to the objectives and policies in chapter 20, Natural Environments, of the District Plan to understand the full implications of how this objective may be achieved.²⁴ This is because there are habitats and features on the site that meet the Regional Policy Statement criteria for “significance” that are not mapped in the District

²³ Note this is reference to “significant natural area” is all lower case in the District Plan.

²⁴ I provide this analysis later in this statement.

Plan as “Significant Natural Areas”;²⁵ and because the natural system policies in Peacocke Structure Plan do not directly address ecological effects. Rather the policies are concerned with the management of stormwater, the density of development, and riparian and buffer areas; all of which are indirectly and incompletely addressing actual and potential ecological effects.

95. The Peacocke Built Environment objectives and policies cover integrated movement routes, linking higher density development with social and natural amenity, having a mix of land uses, a public edge to the river, having distinct urban areas, neighbourhood centres, and future proofing the area.
96. In my opinion, these matters have been considered in the design of the proposed subdivision, although, as will be apparent later, the design does not properly address the protection of ecological values.
97. The final group of objectives and policies are under the heading “Peacocke Cultural Environment”. The two objectives concern protection of historic and culturally significant sites, and protecting rural views. These considerations also influence the design of the subdivision.
98. The Peacocke Structure Plan chapter then discusses structure plan components in section 3.4.2 of the District Plan.
99. These cover Natural Character Areas, shown on figure 2-3 Peacocke Structure Plan, Character Areas and Neighbourhoods.²⁶ Three natural character areas are identified: terrace area, gully area and hill area. These are all present on the Amberfield site.
100. The rest of the Peacock Structure Plan area sets out further design matters relating to the built environment and subdivision layout: community and recreation facilities, neighbourhoods, commercial/community nodes,²⁷ and the transport network.

²⁵ There are two mapped Significant Natural Areas on the Amberfield site. In addition, the site has been identified as “not significant” by Mr Kessels and by Ms Pryde.

²⁶ Maps showing overall development layouts for each structure plan area are found in Appendix 2 to the District Plan.

²⁷ Including at 3.4.3.3a)iii providing for apartment style development within and beside suburban centres.

101. Once again, in my opinion, these matters have been considered in developing the subdivision proposal.²⁸
102. In terms of the matters to be considered under section 104 of the Act, regard must be had to other relevant objectives and policies in the District Plan, not just the objectives and policies set out specifically for the Peacocke Structure Plan area.
103. Chapter 20 of the District Plan is titled “Natural Environments”.
104. There is one objective of direct relevance:
- Objective 20.2.1
Significant Natural Areas are protected, maintained, restored and enhanced.
105. The term “Significant Natural Areas”²⁹ is not defined in the District Plan, although policy 20.2.1b records that areas of indigenous vegetation, biodiversity and habitats of indigenous fauna shall be scheduled as Significant Natural Areas. I consider that this means the term “Significant Natural Areas” in the policies is referring to those scheduled sites only.
106. This creates an awkwardness between this objective and policies following it, because many of the policies apply to indigenous biodiversity and significant natural areas more generally. Others of the policies are explicitly confined to Significant Natural Areas.
107. On this point, I disagree with Mr Serjeant's opinion that all the policies under objective 20.2.1 are confined to the mapped and scheduled Significant Natural Areas.³⁰ I consider that the policies should be read as they are written, and not with an implicit statement added to each policy that it only applies within Significant Natural Areas.³¹
108. There are two scheduled Significant Natural Areas on the Weston Lea property. However, the ecological evidence of Mr Kessels and Ms Pryde

²⁸ One deviation from the Structure Plan is that the Structure Plan does not anticipate this development proceeding in advance of the development of the western third of the Structure Plan area. I do not consider this change in timing to be of great concern.

²⁹ “Significant Natural Areas” are effectively the subset of significant natural areas that have been scheduled in the District Plan.

³⁰ See paragraphs 100(c) to (g) of Mr Serjeant's evidence,

³¹ I assume that it must have been a deliberate decision to limit some of the policies to Significant Natural Areas, while others of these policies, on the ordinary meaning of the words, apply more generally.

is that the site meets the Regional Policy Statement's criteria for significance, because of the use of the site by bats for flying, roosting and feeding.³²

109. The District Plan sets out a comprehensive “avoid adverse effects” policy regime where indigenous ecosystems and habitats are concerned. The policies most relevant to the consideration of the ecological effects of this application are, in my opinion:

Policy 20.2.1d

Adverse effects of development on the City's Significant Natural Areas shall be avoided.

Policy 20.2.1e

The reduction, fragmentation and isolation of indigenous ecosystems and habitats shall be avoided.

Policy 20.2.1f

The loss or disruption of corridors or connections linking indigenous ecosystems and habitat fragments shall be avoided.

Policy 20.2.1i

The loss or disruption of protective buffering of indigenous ecosystems shall be avoided.

Policy 20.2.1k

The loss, damage or disruption to ecological processes, functions and ecological integrity shall be avoided.

Policy 20.2.1n

The loss of habitat that supports indigenous species classified as at risk or threatened shall be avoided.

110. The policy direction with respect to indigenous ecosystems and habitats, including significant natural areas, and with respect to threatened and at-risk species is very clear: adverse effects shall be avoided.
111. This sets up the fundamental tension within this proposal; the tension between development as anticipated under the structure plan provisions and the avoid adverse effects directive with respect to indigenous flora and fauna.
112. Chapter 21 of the District Plan is on the Waikato River Corridor and Gully Systems.

³² See paragraphs 45 and 47 of the evidence of Mr Kessels, and paragraphs 6.5 and 6.6 of Ms Pryde's evidence.

113. The objectives and policies from this chapter are not identified or discussed in Appendix A of the application.
114. Notwithstanding this, the matters traversed in the objectives and policies for chapter 21 are, in my opinion, also traversed in the Peacocke Structure Plan and the natural environments objectives and policies discussed above.
115. The section 23 objective and policies on Subdivision also cover matters in a general way that are covered in more detail in the Peacocke Structure Plan and the Natural Environment objectives and policies.³³

Summary on resource management guidance

116. In my opinion the main guidance required from the provisions of Part 2 of the Act and from the relevant policy statements and plans is guidance on the tension between the site being identified for future urban development within the Peacocke Structure Plan area, and the indigenous biodiversity values on and surrounding the site, especially those associated with long-tailed bats.
117. There is considerable policy guidance on the appropriate design of the subdivision and development. The proposal, by and large, follows that guidance.
118. I consider, however, that there is a significant issue with the layout of the subdivision and the level of protection of indigenous biodiversity values.
119. The type of protection needed for biodiversity values arises from:
- the definition of “sustainable management” including future generation's reasonably foreseeable needs and protection of the life supporting capacity of ecosystems;
 - the matter of national importance to recognise and provide for the protection of significant natural areas;
 - the Regional Policy Statement's “significance” criteria, and the preference for avoiding adverse effects on indigenous biodiversity; and

³³ The chapter 23 objectives and policies are listed in Appendix A of the application.

- the “avoid adverse effects” directive in the District Plan.

120. In my opinion, the important policy question with respect to this proposal is: Can a subdivision be designed for the site that is consistent with the intentions for the Peacocke Structure Plan area and that avoids adverse effects on long-tailed bats.

D. ACTUAL AND POTENTIAL EFFECTS

121. The information accompanying the application, the report by Ms Cockerell, and the evidence of Mr Serjeant set out actual and potential adverse and positive effects of the proposal, and their assessment of the magnitude of those adverse effects.

122. Ms Cockerell's report analyses adverse effects based on expert reports on landscape/visual effects, heritage effects, geotechnical effects, contaminated soils, ecological effects, transportation effects, three waters infrastructure, and urban design. Mr Serjeant provides a similar overview.

123. I agree with the assessment that adverse effects of the proposal will, with two exceptions, be no more than minor. This is a reflection of the zoning intentions for the site, and the way the applicant has responded to the design guidance for the Peacocke Structure Plan area.

124. The two exceptions are historic heritage effects and ecological effects.

125. Historic heritage effects are assessed as being more than minor. I consider that there are measures proposed to address those historic heritage effects (which are mainly the loss of archaeological sites) that are acceptable in the context of the avoiding, remedying and mitigating adverse effects. These measures are reflected in the proposed consent conditions.

126. However, ecological effects require further consideration.

127. It is the actual and potential adverse effects on nationally critical long-tailed bats that is of greatest concern. This is because the site is significant habitat of indigenous fauna because of the extensive use of

the site by long-tailed bats for roosting and foraging and as a linkage to other roosting and/or foraging areas.³⁴

128. This conclusion is reached despite Mr Kessels, Ms Pryde and Dr Borkin all recording that the bat survey work on the site to date is inadequate.
129. Actual and potential adverse effects on long-tailed bats are discussed in the evidence of Ms Pryde and of Dr Borkin.
130. For example, Ms Pryde identifies a range of effects in her evidence:

7.2 The potential adverse effects on bats will be

- a) disturbance, direct deaths, injury, displacement through felling of roost trees during the construction of the subdivision
- b) loss and fragmentation of feeding habitat and shelter within the subdivision
- c) potential loss of critical present and future roosts leading to significant adverse effects which may threaten the viability of the Hamilton population of bats
- d) increased noise and the introduction of permanent lighting in the subdivision impacting on the feeding, foraging, drinking and commuting of bates (Hale et al. 2015, Russo et al. 2017)
- e) impacts of construction (noise, lighting, vibration) on feeding
- f) impacts of increased traffic on bats including avoidance and possible deaths.
- g) increase of urban predators e.g. cats

131. In terms of the timing of construction effects, I note that Ms Pryde's assessment is that, notwithstanding the acoustic survey was not comprehensive,³⁵ it showed "very high levels of bat activity in the northern parts of Amberfield and high activity in the southern part".³⁶
132. The applicant is proposing that the development proceed in stages. The first stages are in the northern parts of Amberfield.

³⁴ See paragraphs 45 and 47 in Mr Kessel's evidence, and paragraphs 6.5 and 6.6 in Ms Pryde's evidence.

³⁵ Paragraph 6.2 and 6.4 of her evidence.

³⁶ Quote from paragraph 6.1 of her evidence.

133. Dr Borkin discusses potential adverse effects on long-tailed bats arising from roading networks and traffic, lighting, noise, and population-level effects due to tree felling. She also notes information deficiencies relating to the use of the Amberfield site by long-tailed bats. Inadequate monitoring is a common factor in these information deficiencies.
134. Both Ms Pryde and Dr Borkin discuss measures that could reduce the degree of adverse effect, such as no removal of potential roost trees, extending the 100 metre buffer to the east-west shelter belt, acceptable lighting levels including along roads.
135. Dr Borkin discusses potential residual adverse effects and how they may be managed and concludes that, given the uncertainty over whether mitigation and offsetting compensation measures would be adequate that

82. Consequently, even with the mitigation proposed there may still be significant adverse effects on long-tailed bats.

136. Ms Pryde states

2.9 In my opinion based on the evidence I present, the adverse effects of the proposed Amberfield subdivision are likely to be significant, and to a large degree irreversible for the Hamilton long-tailed bat population, particularly if roost trees are felled.

137. Mr Kessels makes similar points with regard to the types of potential adverse effects on long-tailed bats,³⁷ and concludes, at paragraph 71 of his evidence, that with mitigation being applied, the overall level of adverse effects on long-tailed bats is likely to be very high. Further, at paragraph 95 of his evidence, he states that until onsite planting becomes effective (he suggests this would a period of 10 to 25 years)³⁸ adverse effects on long-tailed bats could be significant.

³⁷ See paragraphs 59 to 64 of his evidence, for example.

³⁸ Evidence by Ms Pryde suggests that it could take much longer than 25 years for a tree to become effective as a bat roost, see paragraphs 5.4 and 5.6 of her evidence, and her assessment at paragraph 2.10 that it will take at least 50 years for planted habitat to become viable.

138. Uncertainty over the efficacy of measures proposed by the applicant is noted in the evidence of Ms Pryde, Dr Borkin, Dr Barea and Mr Kessels.³⁹
139. The applicant's ecological experts have reduced their assessment of overall adverse effects on long-tailed bats from an initial very high assessment in May 2018 terrestrial ecological assessment, to moderate in the addendum ecological assessment of February 2018, following further amendments to the proposed layout, including the protection of the east-west shelter belt:
- The effects assessment on long-tailed bats has shifted from **Very High** in the original Assessment of Effects to a **Moderate** level of effect. This shift reflects the additional habitat creation on the NE Terrace which will provide certainty around the avoidance of light spill into Hammond Bush and the Waikato River. It also reflects the maintenance of connectivity through the site via the retention and enhancement of the E-W shelterbelt which was the key outstanding impact. Further to the above, the advice from the lighting specialist has provided more certainty that the setbacks and buffer originally proposed will be adequate to avoid light spill from road corridors into adjacent habitats.⁴⁰
140. I note that this assessment of the overall level of effects by the applicant's ecologists is not supported by the Council's ecologist or the bat experts giving evidence for the Director-General of Conservation.
141. Overall, I consider that there are likely to be at least moderate and probably significant adverse effects on long-tailed bats, the applicant's proposed measures notwithstanding.⁴¹
142. I discuss whether these adverse effects could (or should) be addressed by biodiversity offsetting and/or compensation in the next section of this

³⁹ For example, see paragraphs 8.4, 8.5 and 8.9 of Ms Pryde's evidence; paragraphs 23, 28 and 81 of Dr Borkin's evidence; paragraphs 17.2 and 17.3 of Dr Barea's evidence; and paragraph 87 of Mr Kessel's evidence.

⁴⁰ Page 16 of Amberfield Ecological Assessment Addendum, Boffa Miskell, 20 February 2019. Elsewhere in the Addendum, Boffa Miskell assess off-site light spill as having less than minor adverse effects, and that offsite impacts have been avoided, section 3.1.4. The magnitude of the adverse effects on the Hamilton long-tailed bat population is assessed, in section 3.3.2 of the Addendum, as low. The moderate level of overall effect is then met by considering the combination of ecological value (very high) and low magnitude of effect, see section 3.3.3 of the Addendum. Further, Mr Serjeant, at paragraph 100(i) suggests that the measures proposed the applicant would result in the avoidance of adverse effects on the long-tailed bat habitat on the eastern side of the river.

⁴¹ See paragraphs 130 to 134 of this evidence. Dr Barea reaches a significant adverse effects conclusion at his paragraph 17.4.

evidence, along with commentary on the recommended consent conditions relating to long-tailed bats.

143. These potential adverse effects are cumulative on the adverse effects on long-tailed bats of other development around the southern outskirts of Hamilton.⁴² This consideration is not a matter that can be directly addressed with this application, but does confirm the need for a wider strategic approach – within the Peacocke Structure Plan area and more widely – over the management of development to protect long-tailed bats.
144. I consider that the other potential ecological effects on avifauna and lizards are able to be addressed with the preparation and following of specific management plans, although draft management plans should be produced and discussed prior to any decision on the application.⁴³
145. There will, in my opinion, be positive effects from the proposed gully and esplanade reserve vegetation management, subject to this being adapted to ensure that the change in vegetation type and the timing of planting being managed to ensure there is no disruption to its use by long-tailed bats.⁴⁴

E. ASSESSMENT AND CONCLUSION

146. Section 104 of the Act sets out the matters to be considered with this application. Essentially the requirement is, subject to Part 2 of the Act, that regard is to be had to actual and potential effects and to the policy guidance from relevant policy statements and plans.
147. With respect to part 2 of the Act, matters of national importance are to be recognised and provided for and particular regard to be had to other matters.
148. The Court of Appeal has recently commented on the consideration of Part 2 of the Act and on having regard to policies:

⁴² See, for example, paragraph 6.7 of the evidence of Ms Pryde.

⁴³ See paragraphs 17.5, 20.1 and 20.2 of Dr Barea's evidence. I agree with Dr Barea on the desirability of draft management plans being available at the hearing of an application.

⁴⁴ For the sorts of actions this requires see paragraphs 8.2 to 8.9 and 9.5 of the evidence of Ms Pryde, and paragraphs 21.1 to 21.4 of the evidence of Dr Barea.

[74] It may be, of course, that a fair appraisal of the policies means the appropriate response to an application is obvious, it effectively presents itself. Other cases will be more difficult. If it is clear that a plan has been prepared having regard to pt 2 and with a coherent set of policies designed to achieve clear environmental outcomes, the result of a genuine process that has regard to those policies in accordance with s 104(1) should be to implement those policies in evaluating a resource consent application. Reference to pt 2 in such a case would likely not add anything. It could not justify an outcome contrary to the thrust of the policies. Equally, if it appears the plan has not been prepared in a manner that appropriately reflects the provisions of pt 2, that will be a case where the consent authority will be required to give emphasis to pt 2.⁴⁵

149. Overall the subdivision is a non-complying activity. Non-complying activities are required to pass at least one of two 'gateway' tests before it is possible for the consent authority to consider granting consent to the proposal. The two "gateway" tests are:
- the adverse effects of the activity will be minor; and/or
 - the application is for an activity that will not be contrary to the objectives and policies of the District Plan.⁴⁶
150. It is common ground that the proposal does not meet the first threshold test relating to adverse effects because adverse historic heritage effects and adverse effects on long-tailed bats are more than minor.
151. Whether the second "gateway" test is met or not is more nuanced and finely balanced, in my opinion.
152. It is only the District Plan objectives and policies that are considered in this particular exercise. I have discussed the relevant objectives and policies above at paragraphs 68 to 110.
153. It is clear that the proposal is consistent with the District Plan's objectives and policies, except for the indigenous biodiversity policies.
154. In particular, the biodiversity policies set a strong avoid adverse effects policy regime in terms of the reduction, fragmentation and isolation of

⁴⁵ RJ Davidson Family Trust v Marlborough District Council, CA97/2017, [2018] NZCA 316, decision issued 21 August 2018. I consider that in this case the last sentence of the quoted passage applies because of the inadequate recognition of long-tailed bats (a section 6(c) of the Act issue) in the District Plan's Peacocke Structure Plan provisions.

⁴⁶ See section 104D of the Act.

indigenous ecosystems and habitats; the loss or disruption of corridors or connections linking indigenous ecosystems and habitat fragments; the loss or disruption of protective buffering of indigenous ecosystems; the loss, damage or disruption to ecological processes, functions and ecological integrity; and the loss of habitat that supports indigenous species classified as at risk or threatened.⁴⁷

155. My review of actual and potential adverse effects of the proposal confirms that this unambiguous policy direction is not met. Indeed it could be said that the indigenous biodiversity adverse effects are contrary to these policies. If so, then the application must fail as neither leg of the non-complying activity “gateway” is met.
156. For completeness, I will continue my assessment on the assumption that it is considered that the “not contrary to objectives and policies” gateway is passed.
157. The application then falls to be considered on its merits, with the considerations set out in section 104 of the Act.
158. This includes, in my opinion, consideration of Part 2 of the Act, and having regard to the Waikato Regional Policy Statement, because of the lack of clear recognition in the Peacocke Structure Plan of long-tailed bat habitat, and because of the awkwardness of generally applying policies under objective 20.2.1 of the District Plan.
159. The directly relevant Part 2 matters with respect to long-tailed bats being section 5(2)(b) of the Act, concerning the life-supporting capacity of ecosystems, and recognising and providing for the matter of national importance stated in section 6(c) of the Act as:
 - (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.
160. Having particular regard to the intrinsic values of long-tailed bats is also a consideration from Part 2 of the Act; as is the efficient use of the natural and physical resources, including for housing.

⁴⁷ See policies 20.2.1e, 20.2.1f, 20.2.1i, 20.2.1k and 20.2.1n of the District Plan.

161. The Regional Policy Statement, which the District Plan has to give effect to, sets out criteria to establish “significance” in terms of section 6(c) of the Act. The policy direction with respect to natural areas meeting the criteria for significance is generally an avoid adverse effects regime, qualifies with the use of the mitigation hierarchy at times.
162. However, the Regional Policy Statement does set, in policy 11.2, a policy direction that the significance of habitat shall not be reduced.⁴⁸
163. Method 11.2.2 of the Regional Policy Statement sets out a preference for avoidance over remediation or mitigation. The method does, though, work its way through the mitigation hierarchy described in the evidence of Dr Barea.⁴⁹ It does include the following clause:
- 11.2.2.f) recognise that remediation, mitigation and offsetting may not be appropriate where indigenous biodiversity is rare, at risk, threatened or irreplaceable.
164. I consider that this particular piece of policy guidance as important to the consideration of section 104(ab) of the Act, and a reason why it should not apply in this case.⁵⁰
165. In my opinion the prime policy consideration is: can a subdivision be designed for the site that is consistent with the intentions for the Peacocke Structure Plan area and that avoids adverse effects on long-tailed bats.
166. The answer to this, in terms of the subdivision layout and after considering the measures intended to avoid adverse effects on long-tailed bats that have been proposed by the applicant, has to be that while this particular subdivision layout is consistent with the intentions for the Peacocke Structure Plan, it could result in moderate to significant adverse effects on nationally critical long-tailed bats.
167. Four questions arise from this:
- is there potential for a revised subdivision layout that would avoid adverse effects on long-tailed bats;

⁴⁸ The policy sets out the intent that significant natural areas “are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.”

⁴⁹ See section 14 of his evidence.

⁵⁰ See also section 18 of Dr Barea’s evidence, where he reaches the same conclusion.

- should adverse effects on long-tailed bats be remedied or mitigated; and
- is this an instance where remediation, mitigation, biodiversity offsetting and/or compensation should apply; and
- can these matters be addressed by the recommended consent conditions.

168. Turning to the first question, there are a number of measures identified in the evidence of Ms Pryde and Dr Borkin which could be implemented to avoid adverse effects on long-tailed bats. These are:

- a 100 metre buffer on either side of the east-west shelter belt, and along the riparian margin and in gullies;
- ensuring that light levels are reduced to no more than 0.1 lux within the riparian margin, the east-west shelter belt and in vegetated gullies, including along roads and paths traversing these features;
- the retention of all potential roost trees on the site (although this does not preclude replacing those trees with suitable indigenous species planted alongside, once those planted trees have grown to a height that suitable for roosting), and it is likely to require delaying the removal of weed species;
- providing vegetative linkages between these isolated potential roost trees;
- pest control (this would need to be in perpetuity, and seek to control at least mustelids, possums, rats and cats); and
- ensuring that these long-tailed bat protection measures are compatible with existing wider measures and actions and provide linkages to further potential corridors for long-tailed bats.

169. These measures should be supported by more extensive bat surveys to help inform design details, and by long term monitoring.

170. Two provisos apply to these measures. First many of the measures proposed are experimental; whilst it is clear that measures are needed to seek to avoid adverse effects on long-tailed bats, there is a risk that these measures will not be sufficient. This is not, in my opinion, a sound reason for not including these measures in a re-design of the subdivision.
171. The second proviso is that, notwithstanding these site-specific measures, there needs to be a strategy for protecting long-tailed bats that applies on this property and across the wider area. For example, linkages such as the east-west shelter belt (with the buffers) needs to continue to the west to connect with the Mangakotukutuku Gully.⁵¹ This cannot be directly addressed with this application, although there is an opportunity to address it within all of the Peacocke Structure Plan area at least with the upcoming review of the Peacocke Structure Plan provisions.
172. With regard to the second question, it is my opinion that this is not a situation where mitigation, remediation, or offsetting is appropriate, compared to avoiding adverse effects on long-tailed bats.⁵²
173. I consider that the policy direction from the Regional Policy Statement and the District Plan is clear that there will be circumstances where avoidance is preferable to mitigation, remediation or offsetting. Long-tailed bats are classified as nationally critical, the most stringent classification provided for in the threat classification system. This provides a robust reason as to why avoidance is preferable.
174. In my opinion the recommended consent conditions with regard to the protection of (the habitat of) long-tailed bats are seriously deficient and not in accord with sound resource management. This is because the bat-related consent conditions by and large result in information important to inform a decision on the application being deferred until after the decision is granted.

⁵¹ A potential linking corridor is shown on Figure 1, Context Map, in the Boffa Miskell Ecological Assessment Addendum of 20 February 2019.

⁵² I note that Dr Barea reaches the same conclusion, see section 18 of his evidence.

175. For example, recommended conditions 88 and 89 seek that bat roost removal is either avoided or otherwise minimised. Minimum standards for roost tree identification or for prior monitoring is not stated, notwithstanding that these have to be met under recommended condition 89.
176. Another example of significant uncertainty arising with a recommended consent condition is recommended condition 90, which, among other things, requires the implementation of measures to avoid, remedy or mitigate roost removal and habitat loss and the implementation of measures to minimise disturbance from construction activities without the measures being identified. This makes it very difficult to be satisfied that the consent condition will achieve what it purports to set out to achieve.
177. A final example of the uncertainty with these recommended consent conditions is recommended condition 97. There is discussion in the evidence of Mr Kessels about how the level of potential residual adverse effects is difficult to calculate, yet this consent conditions depends on that calculation to be an effective condition.⁵³
178. In my opinion, the subdivision proposal needs a significant redesign in order for it to be consistent with the relevant policy guidance, especially the avoid adverse effects on long-tailed bats policy direction.



Andrew Riddell
23 April 2019

⁵³ See paragraphs 78 to 89 of his evidence. I note that the applicant is also opposed to this condition, albeit for different reasons.