

BEFORE INDEPENDENT HEARING COMMISSIONERS
APPOINTED BY THE HAMILTON CITY COUNCIL

IN THE MATTER of the Resource Management t Act 1991 (the Act)

AND

IN THE MATTER of an application for subdivision and land use consent for
the Amberfield development

BETWEEN Weston Lea Limited

AND Hamilton City Council

Memorandum of Counsel for the Director-General of Conservation

Dated: 21 June 2019

Submission Number: 59

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MAY IT PLEASE THE COUNCIL HEARING COMMISSIONERS:

1. Counsel for the Director-General of Conservation (the **Director-General**) has considered the Joint Statement of the Ecology Witnesses (**JWS**) dated June 10-11, 2019.
2. The purpose of this Memorandum is to seek clarification, through the Hearing Panel, on the avoidance and mitigation measures proposed by the applicant given the outcome of the JWS.
3. As indicated in Counsel's legal submissions for the Director-General¹:

*[2] It is the potential effects on long-tailed bats arising from the proposed Amberfield Subdivision Development (the **Proposal**), particularly effects from vegetation clearance and light disturbance, that is at the heart of the Director-General's Submission.*

[5] It is because of the 'Nationally Critical' status of the long-tailed bat and the potential effects of the Proposal, as currently designed, on this population of the long-tailed bats that the relief sought by the Director-General is to oppose the Proposal'

4. Counsel is mindful the Hearing Panel may issue further directions prior to the hearing reconvening on 16 July 2019, that the Officer's Report will be available from 1 July 2019, and that the applicant may be looking to file further evidence/information in light of the JWS.
5. In preparing for the hearing it would be helpful for the Director-General to understand now what is or will be proposed in terms of avoidance and mitigation measures to address adverse effects on long-tailed bats.
6. It is noted that in his evidence-in-reply Dr Parsons proposed an adaptive management approach to addressing adverse effects on long-tailed bats. This approach was confirmed in Annexure C of the 'Reply of Weston Lea Limited's Experts to Questions of Submitters; Expert' dated 5 June 2019.

¹ Dated 13 May 2019

7. As set out in Counsel's Memorandum dated 7 June 2019, adaptive management requires good baseline information about the receiving environment, that conditions provide for effective monitoring of adverse effects using appropriate indicators, thresholds are set to trigger remediation action before the effects become overly damaging, and effects that might arise be remedied before they become irreversible.
8. Appendix 1 of the JWS discusses adaptive management. Experts for the applicant acknowledge that measures have moved to upfront changes in site design, immediate responses to effects and data collection through monitoring. The applicant's experts also state: *If reversibility of the development (infrastructure, buildings, physical modifications to landscape) is a fundamental or intrinsic component of adaptive management then adaptive management by definition is not a feasible management for the subdivision'.*
9. There are other aspects of the JWS, such as a potential extension to the East-West Shelter belt, wider buffer widths and lighting encumbrances, there are likely to be others, that may now alter the evidence and proposed conditions put forward by the applicant (and potentially adopted in the Officer's Report).
10. As indicated in Counsel's submissions, the Director-General's position is to oppose the grant of any resource consents unless the Proposal is redesigned to adequately address effects on long-tailed bats, draft management plans are provided prior to any decision on the applications and are supported by suitable consent conditions.
11. Having clarity around what is or will be proposed by the applicant on measures to avoid and mitigate adverse effects on long-tailed bats will assist Counsel with obtaining instructions from the Director-General's delegate prior to appearing at the hearing. Of course, the Officer's Report will also assist with this task.
12. Counsel therefore seeks, through the Hearing Panel, clarity, or confirmation if possible, on the current measures proposed by the applicant to avoid and mitigate adverse effects of the Proposal on long-tailed bats.
13. Finally, just in terms of availability of experts for hearing, I can confirm Dr Barea and Ms Pryde are available on both the 16th and 19th of July. Dr Borkin returns from Australia on 15th July and will then travel to Hamilton (from Taupo) the morning of 16th July. Counsel

therefore inquires whether it is possible for a late morning start on 16th July assuming the hearing proceeds on this date. Dr Borkin indicates she can arrive by 11 am.

14. Counsel thanks the Hearing Panel for considering this Memorandum and for any assistance the Panel are able to provide on the matters covered.

Dated 21 June 2019



Victoria Tumai

Counsel for the Director-General of Conservation