

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2019-AKL

I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURAU ROHE

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under section 120 of the Act

BETWEEN WESTON LEA LIMITED

Appellant

AND HAMILTON CITY COUNCIL

Respondent

NOTICE OF APPEAL ON BEHALF OF WESTON LEA LIMITED

Dated: 22 November 2019

Solicitors on Record

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TO: The Registrar
Environment Court
Auckland

1. Weston Lea Limited (**Weston Lea**) appeals parts of a decision made by the Hamilton City Council (**Council**) through its appointed independent hearing panel (**Hearing Panel**) dated 1 November 2019 on Weston Lea's application for land use and subdivision consents to create a residential development, known as Amberfield, including 833 residential lots, two 'super lots' for future residential and commercial development, one commercial lot, and two rural balance lots, located at 337-461 Peacockes Road, Hamilton (**Decision**).
2. Weston Lea is the applicant.
3. Weston Lea received notice of the Decision on 1 November 2019. The Hearing Panel issued an 'Addendum' dated 15 November 2019 that corrects minor mistakes and defects in the Decision pursuant to s.133A of the Resource Management Act 1991 (**RMA** or **Act**).¹
4. Weston Lea has a right to appeal the Decision under s.120 of the RMA. The Decision does not relate to one of those activities excluded by s.120(1A) or (1B) of the RMA.
5. The land affected is:
 - (a) Lots 1 and 2 DPS 81210 (SA66A/99), Lots 3 and 4 DPS 8120 (SA66A/100), Lot 1 DP 36935 (SA5D/1211), Part Lot 6 and Lot 8 DP 34164 (SA4B/788), Lot 5 DP 17475 (SA718/181), Allotment 87, Part Allotments 93 and 94 Te Rapa Parish (SA528/20), Lot 1 DPS 78023 (SA60A/826), and Pt Lot 10 DPS 7724 (SA7D/254).

¹ For the avoidance of doubt, the conditions referred to in this notice refer to the condition numbering in the re-issued Decision (as amended by the Addendum dated 15 November 2019).

PARTS OF THE DECISION APPEALED

6. The parts of the Decision that Weston Lea is appealing are the Hearing Panel's findings:
 - (a) Relating to the potential ecological effects on long-tailed bats and the conditions relating to the management plan liaison group (**MPLG**) (conditions 25 – 32) and ecological management and monitoring (conditions 75 – 144);
 - (b) Relating to the vesting of land for an active recreation reserve and conditions 149 and 150; and
 - (c) Recommending that the consent holder establish an urban design review panel to consider the design and layout of each dwelling/lot and the building design advisory note.

REASONS FOR THE APPEAL

Ecological effects and conditions

General reasons

7. The general reasons for appealing the parts of the Decision relating to ecological effects and the MPLG and ecological management and monitoring conditions are:
 - (a) The Decision incorrectly imposes adaptive management (**AM**) conditions to mitigate the short-term risk of an effect on long-tailed bats while onsite mitigation becomes established. AM was not supported in the expert ecological evidence for Weston Lea, the Council, or the submitters by the close of the Council hearing.
 - (b) The Decision failed to address the expert ecological evidence for Weston Lea and the Council indicating that the short-term risk of an effect (while onsite mitigation becomes established) will most effectively be addressed through an environmental offset designed to support the long-tailed bat population across their Hamilton City home range.

- (c) The Decision failed to have regard to the positive effects of Weston Lea's onsite mitigation in the long-term on long-tailed bats, including the creation of new bat habitat.
 - (d) The Decision did not consider expert evidence on the counterfactual scenario were the proposal not to proceed. Particularly, that no new bat habitat would be established, or key existing habitats (not identified under the District Plan) would not be protected.
 - (e) The Decision wrongly imposes both AM and environmental offset conditions to mitigate the short-term risk of an effect on long-tailed bats. The expert ecological evidence of Weston Lea and the Council supported environmental offset conditions in favour of AM conditions on the basis that:
 - i. An environmental offset would have a direct beneficial effect on the survival of long-tailed bats across their Hamilton home range; and
 - ii. The efficacy of AM was inconclusive, due to the difficulty of establishing clear AM triggers or being able to demonstrate that AM measures would have any meaningful beneficial effect on long-tailed bats within their Hamilton City home range.
 - (f) The conditions are generally uncertain and unenforceable. Numerous conditions are not supported by expert ecological evidence and impose unnecessary and/or ineffective measures to mitigate potential effects on long-tailed bats.
 - (g) The ecological management and monitoring conditions recommended by the Council's s.42A officer at the close of the hearing (and supported by Weston Lea) (**Recommended Ecology Conditions**) are evidentially robust and provide a better ecological outcome for long-tailed bats.
 - (h) The Recommended Ecology Conditions are certain and enforceable.
8. Without limiting the generality of the reasons set out at paragraph 7 above, Weston Lea sets out further specific reasons for appealing the parts of the Decision relating to ecology and the ecological conditions below.

The MPLG and ecological management plans

9. The conditions requiring the establishment of the MPLG, and specifying its membership,² are unlawful and unenforceable as they rely on third party consent.
10. The scope of the MPLG's role set out in conditions 25-32 is unlawful and/or unclear and uncertain:³
 - (a) The function of the MPLG as a community liaison group should not include the preparation of the umbrella 'Ecological Management and Monitoring Plan' (**EMMP**) or the more specific ecological management plans prepared under the EMMP (**sub management plans**);
 - (b) Weston Lea, as the consent holder, must be able to prepare the EMMP and sub management plans in order to give effect to the ecological conditions of consent. It is inappropriate to fetter the consent holder's ability to give effect to its consent by making the preparation of any ecological management plan conditional on the agreement of third parties; and
 - (c) The role of expert members of the MPLG and non-expert members of the MPLG is not clearly defined.
11. The conditions inappropriately enable the involvement of the MPLG in the development and review of the EMMP and sub management plans,⁴ rather than requiring a specified process for the MPLG to comment on the EMMP, and any subsequent review (i.e. amendment) of the EMMP (in contrast to the Recommended Ecology Conditions). This creates unnecessary uncertainty in relation to the timing, content, and certification of the EMMP and sub management plans by the Council.
12. The conditions relating to the certification of the EMMP, and sub management plans, confer an unlawful discretion on the Council to require Weston Lea to incorporate any amendments to the EMMP sought by the MPLG.⁵ The

² Conditions 25 and 26.

³ Decision, at 7.8(d), page 63, conditions 25-32.

⁴ Conditions 25-32, 130 and 135.

⁵ Conditions 103, 110, 118.

conditions should more appropriately require a specified and transparent process for the Council to recommend changes to the EMMP and sub management plans as a result of a peer review by a suitably qualified and experienced ecologist, prior to certification (as provided for in the Recommended Ecology Conditions).

Objective of the EMMP

13. The Decision incorrectly imposes an overall objective for the EMMP of “no net loss of terrestrial biodiversity values.”⁶ There was no evidence before the Hearing Panel for the requirement of “no net loss” for all terrestrial biodiversity values (in particular, for birds, lizards and vegetation).
14. There is no feasibly accurate method that could be implemented to establish “no net loss” for long-tailed bats on the Amberfield site:
 - (a) The Amberfield site is not key habitat for the Hamilton City long-tailed bat population. Rather, river margins, certain gully areas, and treelines on the Amberfield site provide pathways of varying importance to the bats between key ecological habitat areas within the greater Hamilton City home range;
 - (b) Monitoring has indicated that the number of long-tailed bats presently traversing the site is low. The existing low number means that monitoring cannot accurately establish variations in the number of long-tailed bats traversing the Amberfield site; and
 - (c) It is not possible to differentiate between potential impacts on the Hamilton City bat population arising from the Amberfield development and those arising from other land-uses across the Hamilton City home range (including several large infrastructure projects in the surrounding environment, existing urban activities, and future urban activities that are likely to establish within the southern area of Hamilton City within the monitoring period).⁷

⁶ Decision, at 7.8(h), condition 77.

⁷ Condition 123

Potential roost tree removal

15. The numerous conditions relating to potential roost tree removal are ambiguous and uncertain.⁸
16. The Decision does not explain why the Hearing Panel did not accept the Recommended Ecology Conditions relating to potential roost tree removal. This is despite evidence that the one roost identified within the proposed development area was occupied by a transient male bat and such roost sites regularly change due to the roaming behaviour of male bats.
17. The Recommended Ecology Conditions appropriately allow for trees to be removed within the extent of the proposed development area (other than the trees which have been identified through the resource consent application as needing to be retained in some areas of the site). Where tree removal is necessary, Weston Lea is required to comply with a pre-tree felling protocol (certified as part of the EMMP) for any trees which have the potential to contain bat roosts.

Adaptive management

18. The Decision wrongly imposes AM conditions to mitigate the risk of adverse effects on long-tailed bats:
 - (a) AM is not a sufficiently certain way to manage potential effects on long-tailed bats within the Hamilton City home range. The Hearing Panel failed to address the expert ecological evidence that any monitoring regime required for AM would struggle to qualify or quantify adverse effects associated with Amberfield when other factors in southern Hamilton will affect long-tailed bats (including several other large infrastructure projects, existing urban activities, and future urban activities that are likely to establish within the southern area of Hamilton City within the monitoring period).⁹
 - (b) The Decision wrongly concluded that the revised approach (incorporating an environmental offset to address unanticipated or unexpected effects while planting and new habitat becomes

⁸ Conditions 94, 95, 96, 121(a), 122.

⁹ Condition 123.

established) was insufficient to address the risk of short-term adverse effects on long-tailed bats; and

- (c) The environmental offset and AM conditions duplicate one another, as both are intended to mitigate the risk of potential short-term effects on bats while Weston Lea's long-term bat mitigation becomes established.
19. The monitoring strategies included in conditions to implement AM¹⁰ will be unable to qualify or quantify an increase or decline in the bat population on a sufficiently certain evidential basis:
- (a) Any change in activity levels detected on the Amberfield site may simply reflect a change in the way the bats interact within the landscape at this site or elsewhere within their Hamilton City home range, rather than as result of any potential effects of Amberfield; and
 - (b) Some decline in activity is expected over the short to medium term (as bats may avoid the site until buffer vegetation develops) and is mitigated by the environmental offset.
20. A number of the AM measures included in condition 132 are uncertain and potentially unenforceable, in particular:
- (a) It is unclear how Weston Lea could implement further mitigation measures, including planting on public land once it is vested in Council;
 - (b) The extension of lot deferrals in whole (or in part) and the exclusion of certain lots from building¹¹ will not be able to be enforced if title has issued, unless a consent notice has been registered to the title in accordance with s.221 of the RMA; and
 - (c) If it is determined that a consent notice needs to be imposed on individual lots prior to issue of s.224(c) certificate this would effectively transfer consent obligations to future landowners which would be inappropriate.

¹⁰ Conditions 123 and 124.

¹¹ Conditions 132(k) and (l) and condition 133.

Pest control

21. The Decision incorrectly imposed condition 86(b) to require pest control on the Amberfield site for a period of 20 years:¹²
 - (a) Condition 86(b) requires pest control at “known significant roost sites”. No known significant roost sites, such as confirmed maternity roost sites, have been identified within the site;
 - (b) The Decision does not explain why pest control for a period of 20 years is required; and
 - (c) Condition 86(b) is in addition to the environmental offset that supports pest control measures more widely within Southern Hamilton. The Decision failed to address the ecological evidence for Weston Lea and the Council that pest control undertaken pursuant to the environmental offset will be considerably more beneficial for the bat population as it can target significant roosts.
22. The Decision wrongly concluded that a condition should be added to exclude domestic cats and mustelids and imposed condition 140(a):¹³
 - (a) The majority of expert ecological evidence at the Council hearing did not support this measure as an effective mitigation tool;
 - (b) The condition will not provide any material benefit to long-tailed bats because:
 - i. Long-tailed bats primarily use the Amberfield site for foraging and commuting and there are no significant roosts on the site; and
 - ii. To be effective, cats and mustelids need to be controlled on landscape-wide basis (including measures to control feral cats).
23. The Decision wrongly concluded that a condition should be added requiring dogs to be properly controlled, either kept in a fenced area or under effective

¹² Decision, at 7.8(z), page 73, and condition 86(b).

¹³ Decision at 7.8(bb),(cc), page 73 and conditions 140(a) and (b).

control while outside a fenced area (e.g. on a lead), and imposed condition 140(b):¹⁴

- (a) The condition was not supported by any expert ecological evidence at the Hearing; and
- (b) The condition is unnecessary as dogs are not a threat to long-tailed bats.

Vesting of active recreation area

24. The Hearing Panel erred in their findings in relation to the vesting of land for the active recreation area and imposed conditions 149 and 150 which are *ultra vires*:

- (a) The Decision incorrectly concludes that the conditions requiring the vesting of land for a sports park satisfy the tests for consent conditions under s.108AA of the RMA:
 - i. The vesting of land for a 7-hectare active recreation area is not directly connected to an adverse effect of the activity on the environment pursuant to s.108AA(1)(b)(i). The evidence before the Hearing Panel confirmed only 2.7 hectares of land is required to meet the needs of the development;¹⁵ and
 - ii. There is no "rule" in the District Plan requiring the provision of a sports park pursuant to s.108AA(1)(b)(ii). The policy provisions in the District Plan (referred to by Council's s.42A reporting officer and legal counsel for Council, in its capacity as consent authority, and relied on by the Hearing Panel)¹⁶ note the future provision of a sports park in the general location. However, none of these provisions are rules under the District Plan.
- (b) The Hearing Panel's decision to impose conditions 149 and 150 equates to an unlawful taking of land under the RMA. The conditions pre-empt statutory tests which must be satisfied before land can be

¹⁴ Decision at 7.8(bb),(cc), page 73 and conditions 140(a) and (b).

¹⁵ Decision at 7.12(g).

¹⁶ Decision at 8.12(i) and (k).

otherwise designated under a notice of requirement procedure, or compulsorily acquired under the Public Works Act 1981 (including whether such an acquisition is reasonably necessary). It is unlawful for the Council to seek to circumvent these statutory processes by requiring the vesting of land pursuant to a condition of consent.

25. It was inappropriate for the Hearing Panel to impose conditions 149 and 150, as these conditions unfairly and inappropriately affect the valuation of the land for any potential compensation assessment under the Public Works Act 1981. Requiring the land to vest in Council as a single lot will have an impact on the land's value, which will penalise the Applicant at the time of assessment of compensation. This impact is recorded in the Decision where the Hearing Panel notes their concern that the active recreation area conditions may disadvantage the consent holder in any subsequent purchase negotiations.¹⁷

¹⁷ Decision at 7.12(m).

Advisory note relating to building design

26. The Decision was wrong to impose an advisory note relating to building design that recommends that the consent holder establish an urban design review panel to consider the design and layout of each dwelling/lot.¹⁸
- (a) There was no evidence before the Hearing Panel that supported the establishment of an urban design review panel to achieve urban design standards for individual dwellings;
 - (b) While some evidence did suggest additional design guidance might be considered, the Council's s.42A officer noted that these more restrictive standards are not addressed in the District Plan and therefore the Council cannot be involved in design standards for individual dwellings beyond those in the District Plan; and
 - (c) The advisory note does not fairly and reasonably relate to the activity authorised by the consent. The land use and subdivision consents granted to Weston Lea do not authorise the construction of any dwellings.
27. The advisory note is ambiguous and uncertain. As it is framed as a "recommendation" to the consent holder, it is uncertain whether the consent holder is required to comply with the advisory note as if it were a condition of consent.

¹⁸ Decision, at 7.5(e), and advisory note entitled "Building Design."

RELIEF SOUGHT

28. Weston Lea seeks the following relief:

- (a) That the MPLG conditions (conditions 25 – 32) and ecological management and monitoring conditions (conditions 75 – 144) are deleted and replaced with the Recommended Ecology Conditions (specifically, conditions 67 – 123). The Recommended Ecology Conditions are attached to this notice as **annexure “A”**.
- (b) That the conditions requiring the vesting of an active recreation reserve (conditions 149 and 150) are deleted.
- (c) The advisory note relating to building design and the establishment of urban design review panel to consider the design and layout of each dwelling/lot is deleted.
- (d) Such further or other relief as may be necessary to address the issues raised above.
- (e) Costs.

ANNEXURES

29. Weston Lea attaches the following documents to this notice:

- (a) A copy of the Recommended Ecology Conditions, which were supported by Weston Lea, at the first instance hearing (**annexure “A”**).
- (b) A copy of its application (**annexure “B”**).
- (c) A copy of the relevant decision (**annexure “C”**).
- (d) A list of names and addresses of persons to be served with a copy of this notice (**annexure “D”**).

Dated this 22nd day of November 2019



Lucy de Latour

Solicitor on record for Weston Lea Limited

Address for service of Appellant:

Wynn Williams

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Contact person: Kate Woods

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Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant application and the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland.

Annexure “A”: Recommended Ecology Conditions

Recommended Conditions

That pursuant to Sections 104, 104B, and 104D of the Resource Management Act 1991, the Hamilton City Operative District Plan and Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, Council **grants consent** to the subdivision and land use consent applications (11.2018.6695.01 & 10.2018.9853.01) by Weston Lea Limited to:

1. Undertake a fee-simple subdivision; and
2. Undertake the following land use activities associated with a Master Plan development for urban purposes:
 - Walkways and cycleways
 - Earthworks and utility infrastructure within the Waikato Riverbank and Gully Hazard Area
 - Bulk earthworks
 - Fences and wall exceeding permitted height (proposed retaining walls)
 - Construction of subsoil drain outlet within a Significant Natural Area (SNA 54)
 - Pump Stations
 - Stormwater detention, treatment and/or soakage facilities
 - New transport corridors
 - New works not in accordance with the function of Peacocke Road as defined in the District Plan Transport Corridor Hierarchy Plan

Except that, the land use consent does not authorise any land use activities associated with a master plan development for the land within proposed Lots 864 and 865, being the super lots created by the subdivision consent (11.2018.6695.01).

Advice Note:

The superlots, that will contain part of a future suburban centre will require further land use consents as part of the master plan development of the balance of Neighbourhood 6 as shown in the Peacocke Structure Plan Figure 2-3.

The land subject of these consents is legally described as Lots 1 and 2 DPS 81210 (SA66A/99), Lots 3 and 4 DPS 81210 (SA66A/100), Lot 1 DP 36935 (SA5D/1211), Part Lot 6 and Lot 8 DP 34164 (SA4B/788), Lot 5 DP 17475 (SA718/181), Allotment 87, Part Allotments 93 and 94 Te Rapa Parish (SA528/20), Lot 1 DPS 78023 (SA60A/826), and Pt Lot 10 DPS 7724 (SA7D/254) located at 337 – 461 Peacockes Road, Hamilton.

The subdivision and land use consents shall be subject to the following conditions being met at the consent holder's expense.

SUBDIVISION CONDITIONS FOR ALL STAGES

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ECOLOGICAL MANAGEMENT AND MONITORING

67. Measures to avoid, remedy, mitigate and offset the adverse effects of construction and development activities on terrestrial ecology shall be implemented, as prescribed below, for the purpose of restoring indigenous vegetation and enhancing the extent and quality of the habitat for native species within the site.
68. The Consent Holder shall implement the measures in Conditions 69-86 and prepare the Management Plans referred to in Condition 87 and make the monetary payment referred to in Conditions 120-123 to demonstrate compliance with Condition 67.

Planting

69. An area of no less than 18.65 hectares shall be planted for the purpose of mitigating adverse ecological effects of the development and shall be carried out and established in general accordance with:
 - (a) Boffa Miskell Drawing A17134 054 Revision H Gully and Esplanade Reserve Vegetation Strategy 14 February 2019;
 - (b) Boffa Miskell Drawing A17134 083a Indicative Shelterbelt Planting Strategy Plan Rev E 9 April 2019;
 - (c) the species list in Annexure A of the evidence-in-reply of Andrew Blayney dated 1 May 2019;
 - (d) the relevant requirements in Conditions 70 to 76, where for the purpose of conditions 71-74 the term 'Commencement Notice' means a notice provided in writing from the consent holder to the HCC Planning Guidance Unit Manager (or nominee) confirming the consent holder's intention to exercise the consent by way of commencing construction works.
70. For indigenous plants, all plantings shall be eco-sourced (Hamilton Ecological District) plant species appropriate to the locality, and the ecosystem type being restored (i.e. the ecosystem type would have occurred at the locality under natural conditions). These indigenous species shall be represented in appropriate diversity, proportions, cover, and configuration as would be expected for natural examples of the same ecosystem types within the Hamilton Ecological District.
71. The extent of bat habitat shown on Boffa Miskell Drawing A17134 Proposed Early Planting Outside of Earthworks Extent Rev 7 dated 12 August 2019 along the North-East Terrace within Lots 1502 and 1503 shall be established prior to construction works commencing and no later than the first planting season following the provision of a Commencement Notice in accordance with Condition 69(d) and in general accordance with Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 and A17134 078 Addendum Figure 4 NE Terrace Reserve Cross Section 1 & 2 Rev B dated 19 February 2019.
72. The East-West Shelterbelt within Lots 1506 and 1510 shall be retained and enhanced as bat habitat with buffer planting so as to maintain a movement corridor that shelters the bats from the light and wind prior to construction works commencing and no later than the first planting season following the provision of a Commencement Notice in accordance with Condition 69(d) and in general accordance with Boffa Miskell Drawings A17134 083a and 083b & 083c Indicative Shelterbelt Planting Strategy Plan and Shelterbelt Cross Section A and B Rev E 9 April 2019.
73. A 10m width of early planting shall be planted along the Waikato River margin and along the top of the gully to minimise light spill into the river corridor, Hammond Bush and the gully prior to construction works commencing and no later than the first planting season following the provision of a Commencement Notice in accordance with Condition 69(d) and in general accordance with Boffa

Miskell Drawing A17134 Proposed Early Planting Outside of Earthworks Extent Rev 7 dated 12 August 2019.

74. The remaining planting within the gully within Lots 1507, 1509 and 1516 outside of the earthworks extent shall be completed to address the requirements in conditions 69 and 70 and in accordance with the certified Vegetation Management Plan required by Condition 107 no later than the third planting season following the provision of a Commencement Notice in accordance with Condition 69(d), excluding the stormwater management devices and subject to any requirements of the Aquatic Habitat Enhancement Plan (which is a requirement of the Waikato Regional Council resource consent AUTH139498.03.01).
75. The remaining planting required by condition 69 within the earthworks extent shall be completed by the first planting season after the earthworks is completed.
76. Detailed planting plans and planting and maintenance specifications to address the requirements in Conditions 71-73 and 75 shall be prepared and submitted to the HCC Planning Guidance Unit Manager or nominee for certification prior to planting commencing within each respective area. Maintenance specifications shall include weed control and pest plant control necessary to ensure the successful establishment of the plants.
77. The Consent Holder shall maintain the completed ecological mitigation planting required by condition 69 until the following requirements have been met. Confirmation that the requirements have been met shall be determined by a suitably qualified ecologist who shall provide written confirmation of the same to the HCC Planning Guidance Unit Manager or nominee:
 - (a) 4 m height and 80% canopy closure in the vertical plane for the planting comprising the "Buffer planting area located in natural ground not dependent on earthworks" as shown on Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 and the "10m Width of Early Planting" as shown on Boffa Miskell Drawing A17134 Proposed Early Planting Outside of Earthworks Extent Rev 7 Dated 12 August 2019;
 - (b) 4 m height and 90% canopy closure in the vertical plane for the planting comprising the "Tall stature buffer planting" as shown on Boffa Miskell Drawings A17134 083a and 083b & 083c Indicative Shelterbelt Planting Strategy Plan and Shelterbelt Cross Section A and B Rev E 9 April 2019;
 - (c) For the remaining planting, after 5 years achieving a density and diversity of species in accordance with the Vegetation Management Plan. If monitoring shows this has not been achieved, then the maintenance period shall be extended until such time as it is achieved;
 - (d) For the planting required to be undertaken in (c) above, the Consent Holder shall provide advice in writing to the HCC Planning Guidance Unit Manager or nominee from a suitably qualified ecologist to confirm when each stage of planting has been undertaken in accordance with the certified planting plans.
78. The Consent Holder shall submit a Planting Monitoring Report to the Planning Guidance Unit Manager from the first stage of planting and annually thereafter for the duration of the respective maintenance periods described in Condition 77. The report shall include the following information:
 - (a) Success rates, number and location of plants lost and replacement of dead plants;
 - (b) Vertical canopy closure for the North-East Terrace and East-West Shelterbelt buffers and species density and diversity;
 - (c) Animal and weed pest control; and

- (d) Recommendations for changes to the Vegetation Management Plan (if any).

Lighting

79. A bat-sensitive lighting regime shall be designed and implemented along the riverside roads, the roads adjacent to and crossing the southern gully, and the roads crossing the East-West Shelterbelt of the site.
80. The luminaires for the purpose of the bat-sensitive lighting regimes shall be LED type, and lighting subcategory P5 of Table 2.6 of AS/NZS 1158.3.1:2005.
81. Detailed design of the bat-sensitive lighting regime shall be prepared by a suitably qualified expert in collaboration with a suitably experienced bat ecologist. This detailed design shall be submitted to the HCC Planning Guidance Unit Manager or nominee for certification prior to implementation.
82. For all the residential lots within Stages 19, 20, 21, 29 and 30, and Lots 831 – 835 in Stage 25, and Lots 141, 149 – 152, 166, 169 and 170 within Stage 4, and Lot 182 within Stage 15, to minimise the spill of bat-sensitive lighting on known and potential bat habitat, permanent outdoor lighting arrays, including external feature lights, security lights and access wall lights associated with future building platforms must achieve zero upward light spill. Compliance with this condition shall be demonstrated at the building consent stage by a suitably qualified expert and shall be complied with on an ongoing basis to minimize the spill of bat-sensitive lighting on known and potential bat habitat.
83. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered against the Record of Title for all the lots referred to in Condition 82 requiring that permanent outdoor lighting arrays, including external feature lights, security lights and access wall lights must achieve zero upward light spill and that compliance shall be demonstrated at the building consent stage by a suitably qualified expert.

Building Development Deferral

84. Building on Lot 166 shall not occur unless and until a suitably qualified ecologist confirms in a report to the HCC Planning Guidance Manager (or nominee) that the planting comprising the “Tall stature buffer planting” as shown on Boffa Miskell Drawings A17134 083a Plan and 083b & 083c Indicative Shelterbelt Planting Strategy Plan and Shelterbelt Cross Section A and B Rev E dated 9 April 2019 has reached 4 m in height and has achieved a 90% canopy closure in the vertical plane.
85. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered against the Record of Title of Lot 166 advising that construction of any proposed buildings may not occur unless and until the vegetation height and canopy closure requirements set out in condition 84 above have been confirmed in accordance with that condition. If the height and canopy closure requirements set out in condition 84 above are confirmed prior to a certificate being issued for the relevant subdivision stage pursuant to s224(c), a consent notice will not be required.

Lot Staging Deferral

86. Approval of s224(c) for the stages referred to in (a) and (b) below, will not be provided unless and until a suitably qualified ecologist has confirmed in a report to the HCC Planning Guidance Manager (or nominee) that the planting locations specified in (a) and (b) have met the following height and canopy closure performance criteria.
 - (a) For Stages 19 and 20, that the vegetation shown on the certified detailed planting plans

and comprising the “Buffer planting area located in natural ground not dependent on earthworks” as shown on Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 which adjoins the respective stage has reached 4 m in height and has achieved a 80% canopy closure in the vertical plane.

- (b) For Stages 21, 29 and 30 and Lots 831 – 835 in Stage 25, that the vegetation shown on the certified detailed planting plans and comprising the “10m Width of Early Planting” as shown on Boffa Miskell Drawing A17134 040 Proposed Early Planting Outside of Earthworks Extent Rev 7 Dated 12 August 2019 which adjoins the respective stage has reached 4 m in height and has achieved an 80% canopy closure in the vertical plane.

Objective and Content of Management Plans

87. The objective of each Management Plan shall be to demonstrate how, in addition to the planting, lighting, building and lot deferral and offset contribution requirements (in Conditions 69-86 and Conditions 120-123), the Consent Holder will avoid, remedy, mitigate and/or offset adverse effects of construction and development works on each of the terrestrial biodiversity values within the Amberfield site as follows:

- (a) Avifauna, as set out in the Avifauna Management Plan;
- (b) Lizards, as set out in the Lizard Management Plan;
- (c) Indigenous vegetation, as set out in the Vegetation Management Plan; and
- (d) Long-tailed bat, as set out in the Bat Management Plan.

Advice Note: Wetland and freshwater values are addressed in conditions of consent AUTH139498.04.01 from Waikato Regional Council.

88. Each Management Plan shall be prepared by appropriately qualified and experienced ecologists and submitted to the HCC Planning Guidance Manager (or nominee) for certification at least forty (40) working days prior to the commencement of construction works.

89. The Management Plans shall be prepared in collaboration with Hamilton City Council, the Department of Conservation, the Tangata Whenua Working Group (being the Group described in the Amberfield Cultural Impact Assessment dated 10 May 2018) and the Riverlea Environment Society Incorporated. Collaboration with these parties shall take the following form:

- (a) the Consent Holder shall prepare the draft Management Plans for discussion with the parties who shall be given twenty (20) working days to consider and provide written comments on the draft plan(s);
- (b) following receipt of written comments the Consent Holder may amend the draft Management Plans in response to those comments.
- (c) the consent holder shall submit the finalised Management Plans to the HCC Planning Guidance Unit Manager (or nominee), together with the written comments received from the relevant parties.
- (d) The HCC Planning Guidance Unit Manager (or nominee) shall arrange an independent peer review of the Management Plans by a suitably qualified and experienced ecologist at the Consent Holder’s cost, prior to certifying the Management Plans.
- (e) If the peer review in (d) above proposes changes to the Management Plans, the HCC Planning Guidance Unit Manager (or nominee) will advise the consent holder of the proposed changes. The consent holder may amend the Management Plans in response to

the peer review. The amended Management Plans shall be treated as final Management Plans for the purpose of certification by the HCC Planning Guidance Unit Manager (or nominee).

- (f) Certification of the Management Plans will consider whether the matters prescribed in the specific management plan conditions below have been addressed.

Changes to Certified Management Plans

- 90. The Management Plan(s) shall be updated, if necessary, to be consistent with any authorisation from the Director- General of the Department of Conservation under section 53 of the Wildlife Act 1953, if any such authorisation is required.

Advice Note: Authorisations under the Wildlife Act 1953 may be required, separate to the Resource Management Act 1991 process. The purpose of this condition is to ensure consistency between any authorisation and the content of the Management Plans.

- 91. Any changes to the Management Plan(s) shall be prepared by appropriately qualified and experienced ecologists and submitted to the HCC Planning Guidance Manager (or nominee) for certification at least ten (10) working days prior to the changes being given effect to.
- 92. Any changes to the Management Plan(s) shall be prepared after consultation with Hamilton City Council, the Department of Conservation, the Tangata Whenua Working Group (being the Group described in the Amberfield Cultural Impact Assessment dated 10 May 2018) and the Riverlea Environment Society Incorporated. This consultation shall take the following form:
 - (a) the Consent Holder shall prepare a draft updated Management Plan(s) for consultation with the parties who shall be given ten (10) working days to consider and provide written comments on the draft updates;
 - (b) following this consultation period the Consent Holder may amend the draft updated Management Plan(s) and shall provide the Management Plan(s) to be considered for certification, together with the written comments of the consulted parties to the HCC Planning Guidance Unit Manager. The HCC Planning Guidance Unit Manager may arrange an independent peer review of the updates to the Management Plan(s) by a suitably qualified and experienced ecologist at the Consent Holder's cost prior to determining certification of the updated Management Plan(s).

Lizard Management Plan

- 93. Vegetated areas of the site to be removed which are potential lizard habitat shall be identified and incidental capture and translocation measures shall be implemented within these areas in accordance with best practice.
- 94. Lizard habitat within the gully reserve is to be created and/or enhanced by retaining woody debris and natural refugia salvaged from the vegetated areas to be removed from other parts of the site.
- 95. The consent holder shall prepare a Lizard Management Plan which demonstrates how conditions 93 and 94 above will be satisfied by including the following:
 - (a) a description of lizard habitat, lizard species present, legal requirements, disease management, survey timing and recovery and translocation methods, reporting requirements, mitigation commensurate with the number and species of lizards rescued, and incidental kill and harm minimisation protocols;

- (b) a description of the methodology for incidental capture of native lizard species including: handling protocols, relocation protocols, reporting protocols, potential relocation sites, and protocols for dealing with injured or dead lizards encountered during the works;
- (c) a description of the lizard habitat creation and improvement methodology within the gully reserve; including discussion of:
 - i. appropriate plant species to be planted;
 - ii. appropriate location/s for habitat creation or improvement;
 - iii. methods for provision of providing additional refugia, e.g. depositing salvaged logs, wood or debris; and
 - iv. any protection mechanisms (if required) to ensure the relocation site is maintained (e.g. covenants, consent notices etc).

96. The Lizard Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 95 above.

97. The certified Lizard Management Plan shall be implemented for the duration of earthworks for each stage of construction.

Avifauna Management Plan

98. Vegetated areas of the site to be removed shall be inspected for nesting of native birds. If nesting birds are detected, exclusion zones shall be implemented until fledging of chicks is completed.

99. The consent holder shall prepare an Avifauna Management Plan which demonstrates how condition 98 above will be satisfied by including the following:

- (a) a description of the methodology for pre-vegetation clearance nesting bird surveys including consideration of:
 - i. the nesting periods of native birds present onsite; and
 - ii. appropriate timing of vegetation clearance and surveys;
- (b) the details for exclusion zones around nesting birds until fledging of chicks if detected within proposed vegetation clearance areas; and
- (c) protocols for dealing with injured or dead birds encountered during the works.

100. The Avifauna Management Plan shall also provide a description of appropriate plant species and other avifauna habitat enhancement measures for planting of the gully reserve.

101. The Avifauna Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 99 above.

102. The certified Avifauna Management Plan shall be implemented for the duration of earthworks for each stage of construction.

Vegetation Management Plan

103. Vegetated areas of the site to be retained shall be clearly demarcated by a suitably qualified and experienced project ecologist and landscape architect prior to construction works within each construction stage.

104. All large stature trees which are ≥ 15 cm diameter and breast height and that provide or potentially provide roost habitat and buffering of light for long-tailed-bats shall be retained within the gully and esplanade reserve areas shown in the Boffa Miskell Drawings A17134 054 Revision H Gully and Esplanade Reserve Vegetation Strategy 14 February 2019, unless any such trees are recommended for removal by a suitably qualified and experienced arborist due to poor health or presenting danger to the public.
105. The gully reserve shall be planted in accordance with the requirements of condition 74.
106. Vegetation that is planted within the North-Eastern Terrace, East-West Shelterbelt, gully and esplanade reserves shown on the Boffa Miskell Drawing A17134 054 Revision H Gully and Esplanade Reserve Vegetation Strategy 14 February 2019 and the Boffa Miskell Drawing A17134 083a Indicative Shelterbelt Planting Strategy Plan Rev E 9 April 2019 shall be maintained to meet the maintenance requirements of Condition 77.
107. The consent holder shall prepare Vegetation Management Plan which demonstrates how conditions 103 to 106 will be satisfied by including the following:
- (a) processes across the entire site for vegetated areas to be retained being clearly demarcated by a suitably qualified and experienced project ecologist and landscape architect prior to construction works within each construction stage;
 - (b) identification and management of all large stature trees that are ≥ 15 cm diameter and breast height and that provide or potentially provide roost habitat and buffering of light for long-tailed-bats and identification of any such trees that are recommended for removal by a suitably qualified and experienced arborist due to poor health or presenting danger to the public;
 - (c) detailed planting plans and planting and maintenance specifications for the gully reserve, including plant species, densities and habitat design for avifauna, lizards and long-tailed bats which shall be developed in collaboration with ecologists with suitable expertise and experience in these areas and in consideration of the Gully restoration guide: a guide to assist in the ecological restoration of Hamilton's gully system. Wall, K and B.D. Clarkson 2006: Third Revised Edition, Hamilton City Council. Specific planting design measures shall be incorporated into the detailed planting plans to facilitate bat movement over or under the culvert and bridge crossings of the gully reserve;
 - (d) how any planting related requirements of resource consent AUTH139498.04.01 issued by Waikato Regional Council will be met;
 - (e) a vegetation maintenance plan for the North-Eastern Terrace, East-West Shelterbelt, gully and esplanade reserves. The maintenance plan shall include weed control and pest plant and animal control necessary to ensure the successful establishment of the plants and the ongoing replacement of plants that do not survive during the maintenance period.
108. The Vegetation Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 107 above.
109. The certified Vegetation Management Plan shall be implemented for the duration of earthworks for each stage of construction and for the maintenance period described in Condition 77.

Bat Management Plan

Site Development

110. Any actual or potential roost trees shall be identified and monitored for the presence of long-tailed

bats prior to removal. The monitoring and removal of such trees shall be undertaken in accordance with a best practice pre-tree felling protocol.

111. Disturbance associated with land development activities shall be minimised around any active roosts within the site that are discovered where the tree is identified to be removed until such roosts are confirmed to be vacant of bats, as determined by a suitably qualified and experienced bat ecologist using current best practice.
112. 240 artificial roost boxes shall be installed within the site and/or (where prior approval granted from Council), within Hamilton City Council reserves where known high activity of bats occurs and must be maintained by the consent holder for a period of 10 years from the date of their installation.
113. A record of the procedures and actions required by the above Site Development conditions shall be kept by the consent holder and be made available to HCC on request.

Bat Monitoring

114. The consent holder shall carry out ongoing monitoring and reporting of bat activity annually over the long-tailed bat breeding season and peak activity period (1 November to 30 April) for a minimum period of 10 years, comprising:
 - (a) a minimum one season of monitoring prior to construction works commencing;
 - (b) monitoring annually for the duration of the construction works;
 - (c) One season of monitoring following the completion of construction works on the final subdivision stage and additional post-construction monitoring if/as required to ensure that a total of 10 years of monitoring is completed.
115. Monitoring shall be undertaken in accordance with condition 114 for the purposes of providing information on long-tailed bat activity through the site. The key parameters to be monitored shall be light and bat activity which shall be co-ordinated to enable cross-referencing, including:
 - (a) acoustic monitors shall be installed to monitor relative bat activity across the site, targeting retained and restored habitats (East-West Shelterbelt, North-East Terrace, Waikato River margin, gully reserve). Light monitoring shall be undertaken concurrently at these sites by a suitably qualified and experienced lighting specialist to detect any changes in bat activity relative to light levels; and
 - (b) artificial bat roosts shall be inspected for signs of occupancy.

Advice Note: For the avoidance of doubt, the outcomes of the monitoring is not for the purpose of further management interventions.

116. The outcomes of the annual monitoring shall be provided to Council within two months of completion.

Management Plan

117. The consent holder shall prepare a Bat Management Plan which demonstrates how conditions 110 to 115 above will be satisfied and shall include the following Long-tailed bat management procedures and actions:
 - (a) the identification of any actual or potential roost trees and their monitoring before their removal and the preparation of a pre-tree felling protocol following consultation with the Department of Conservation;
 - (b) minimising disturbance associated with land development activities around any active

roosts within the site that are discovered that do not require removal;

- (c) minimising disturbance associated with land development activities around any active roosts within the site that are discovered that require removal until such roosts are confirmed to be vacant of bats, as determined by a suitably qualified and experienced bat ecologist using current best practice;
- (d) the location, design and timing of installation of 240 artificial roost boxes and their maintenance for a period of 10 years;
- (e) ongoing monitoring and reporting of bat activity annually over the long-tailed bat breeding season and peak activity period (1 November to 30 April) for a minimum period of 10 years.

118. The Bat Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 117 above.

119. The certified Bat Management Plan shall be implemented for the duration of earthworks for each stage of construction, for the maintenance periods specified in Condition 77 and the monitoring periods specified in condition 114.

Long-tailed bat population enhancement

120. To address any short-term adverse effects (or risk of such effects) of the proposed development on the long-tailed bat population during the time lag between mitigation actions commencing and becoming established, the consent holder ("Weston Lea Limited") shall make a monetary payment of **\$200,000.00 plus GST (if any)**, ("Amberfield long-tailed bat population Enhancement Fund" or "ABF").

121. The consent holder will deposit the ABF into the Hamilton City Council's solicitor's trust account to be used by Hamilton City Council, in its sole discretion, for the purpose of funding direct actions that are designed to manage, protect and/or enhance the resilience of the long-tailed bat population across the known extent of the home range of long-tailed bats affected by the Amberfield development ("home range area"), including, without limitation, co-ordinated pest control in high-value habitat including roosting sites and high activity areas identified across the home range area.

122. The consent holder will pay the ABF in the following minimum instalments, where for the purpose of (a) to (c) below the term 'Commencement Notice' means a notice provided in writing from the consent holder to the HCC Planning Guidance Unit Manager (or nominee) confirming the consent holder's intention to exercise the consent by way of commencing construction works:

- (a) 25% within 5 working days of the provision of a Commencement Notice;
- (b) 25% within the first 5 years of the provision of a Commencement Notice; and
- (c) the balance within the first 10 years of the provision of a Commencement Notice or prior to the issue of the final s224 stage certificate whichever is the earlier.

123. Once a trust associated with the proposed Waikato Regional Local Indigenous Biodiversity Strategy ("WRLIB trust") has been settled, any part of the ABF which remains unspent or uncommitted under any pre-existing contractual arrangements may be re-directed and paid to WRLIB Trust, to be distributed for the purpose described in condition 121 above.

Advice note:

- (a) *High value habitat means an area where there is evidence of roosting sites, including communal or solitary roosts, which may also include adjacent foraging and commuting*

habitat.

- (b) *A request for proposal is anticipated to set out the requirements for the contractor and the criteria for the proposed programme and would include:*
- (i) *evidence of relevant experience in carrying out animal pest control or bat habitat protection and restoration;*
 - (ii) *provision of detailed design of animal pest control, bat habitat protection and restoration measures and implementation methods;*
 - (iii) *provision of cost breakdown for completion animal pest control, bat habitat protection and restoration measures and their implementation;*
 - (iv) *estimated timing for completion of animal pest control, bat habitat protection and restoration measures; and*
 - (v) *anticipated ecological enhancement outcomes following implementation of the animal pest control, bat habitat protection and restoration measures.*

Annexure “B”: Weston Lea Limited’s Application

(refer to hard copies of application in enclosed folders)

Annexure “C”: Decision of Hearing Panel (appointed by Hamilton City Council)

IN THE MATTER of the Resource Management Act 1991 (RMA or Act)

AND an application to the Hamilton City Council (Council) by Weston Lea Limited for land use and subdivision consents for 840 lots of which 835 lots are for residential purposes, in respect of land described as Lots 1 and 2 DPS 81210 (SA66A/99), Lots 3 and 4 DPS 8120 (SA66A/100), Lot 1 DP 36935 (SA5D/1211), Part Lot 6 and Lot 8 DP 34164 (SA4B/788), Lot 5 DP 17475 (SA718/181), Allotment 87, Part Allotments 93 and 94 Te Rapa Parish (SA528/20), Lot 1 DPS 78023 (SA60A/826), and Pt Lot 10 DPS 7724 (SA7D/254) and located at 337-461 Peacockes Road, Peacocke, Hamilton.

1 INTRODUCTION

1.1 APPLICATION

- a. The applications seek land use and subdivision consents from the Hamilton City Council. The original proposal was to subdivide a total of 867 fee-simple lots from the site, including two 'large lots' for future residential and commercial development, one commercial and two rural balance lots. The subdivision is intended to be completed in stages. The total site subject to the subdivision consent application comprises approximately 139ha of land. Excluding the rural balance lots that will be created west of Peacockes Road and south of Stubbs Road, the site that will be subject to urban development and subdivision comprises approximately 105ha.
- b. Further separate resource consents have been applied for from the Waikato Regional Council concurrently with the applications to Hamilton City Council for enabling activities including earthworks, stream works, a bridge within the subdivision, and stormwater discharges.

- c. The s42A report outlined that following public notification of the proposal amendments were made to the proposal and these are described as follows;

“The proposal is now seeking consent for a total of 840 fee simple lots, comprising 835 residential lots. The residential lot sizes vary from over 700m² down to approximately 400m², and anticipated building heights for dwellings vary from one storey to two storeys. The application states 41 ‘parent lots’ are anticipated for further medium density subdivision in the future bringing the total number of anticipated dwellings to 882 across the site, excluding the future neighbourhood centre. A further 50 to 76 dwellings are anticipated within the future neighbourhood centre, which will also provide for between 5,000m² to 10,000m² of retail or employment uses. The further subdivision of the ‘parent lots’ and development of the neighbourhood centre will be subject to future land use and subdivision consents, and do not form part of the assessment in this report.”

1.2 SITE AND LOCALITY

- a. The s42A report described the site and locality as follows;

“The site subject of the proposed urban development comprises approximately 105 hectares of presently pastoral dairy farming land bordered by Peacockes Road to the west and the Waikato River to the east and north, some 4 kilometres to the south of the Hamilton CBD. The site forms the eastern portion of the Peacockes Structure Plan an approximately 720hectare area identified for future urban development in the District Plan.

The site is elongated in shape in a broadly north-south orientation and aligned along the curving alignment of the deeply incised Waikato River. The topography of the site is generally flat, with the overall slope of the land falling from Peacockes Road towards the Waikato River as a series of pronounced river terraces. A large gully that connects to the Waikato River divides the southern portion of the site creating an island area adjacent to the Waikato River. The area along the Waikato Riverbank is steep in contour and vegetated with largely exotic species, with some small areas of indigenous vegetation (with two areas identified in the District Plan as Significant Natural Areas (SNA Nos. 48 and 54). Small waterways draining the site include ephemeral and intermittent reaches and modified farm drains. The site given its location on rural-urban fringe of the city and opposite Hammond Bush (a key roosting habitat for long-tailed bat) on the eastern side of the Waikato River, is habitat for the nationally critically threatened long-tailed bat

The site is currently rural land used for dairying, with fencing and other structures, farm races, shelterbelts/hedgerows, farm buildings and several dwellings associated with this activity.

Modified soils and features relating to early Maori cultivation of the area extend across the site. The District Plan identifies one recorded archaeological feature on the site (Borrow Pits s14/176). However, the site investigations undertaken as part of the application has identified eight discrete Maori horticultural soil areas, and at least 12 unrecorded potential borrow pits spread across the site. The former Nukuhau Pa lies just outside the south eastern boundary of the site with several other pa sites opposite on the eastern bank of the Waikato River and others within a 1.5 km radius.

Peacockes Road is the spine road to which the proposed subdivision road network will connect to and provide all access to other parts of the city. From Peacockes Road the key connecting roads to the major arterial road network are Norrie Ave, Bader Street, Waterford Road and Dixon Road.

To the east across the Waikato River from the site is the established residential area of Hillcrest and the predominantly industrial area of Riverlea. To the south of this area is rural lifestyle/large lot residential development located within Waikato District, with the river fronting properties containing large homes that face west with views across to the site.

To the south and west of the site within the Peacockes Structure Plan area the area is still largely rural and in pastoral production with pockets of small rural lifestyle properties. Further to the west is the residential areas of Fitzroy, Melville and Glenview, but are not visible from the site.”

1.3 BACKGROUND: PEACOCKE AREA, DISTRICT PLAN ZONING, OVERLAYS AND OTHER FEATURES

Background

- a. The s42A report outlined the background to the Peacocke area since 1989. The area is comprised of some 740 hectares located at the south-western end of the city and became part of Hamilton City in 1989 with the intent that the area be developed for housing. It is known as the Peacocke Growth Cell. Since that time, it has remained largely undeveloped due to the funding required to ‘open up’ the growth cell for development.

- b. The s42A report noted that “from 1989 to 2007, the Peacocke Growth Cell was zoned Future Urban in the respective District Plan documents to enable interim development that would not comprise the future development of the area for housing development. In 2007 the Council notified a variation to the then Proposed District Plan to introduce the Peacocke Structure Plan to set out a detailed development framework for Peacocke and the infrastructure provisions which aligned with other structure plans for growth cells within the city. The variation went through a protracted public process and finally became operative in May 2012, following the settlement of five appeals. The settled variation provisions changed the zoning from Future Urban to Peacocke Future Urban, the level of detail shown on the Structure Plan been significantly reduced and the introduction of masterplan requirements.
- c. The then Proposed District Plan was made operative in July 2012 shortly after the settlement of the appeals. Following this the Council notified its second-generation district plan which embedded the settled Peacocke Structure Plan with amendments to align the roading network to reflect the proposed Southern Links Transport Network. The zoning of the Peacocke area was changed from Peacocke Future Urban to Peacocke Character Zone. The 2012 Proposed District Plan was made operative on 18th October 2017.”

Southern Links Designation

- d. Southern Links is the future state highway and local arterial road network in the southern part of Hamilton city. Hamilton City Council and the NZ Transport Agency have been working together on the Southern Links project with the intent of ensuring that future state highway routes are well integrated with the local arterial road network, and to allow for planned growth in the city.
- e. The statutory process to designate the Hamilton City Council part of Southern Links was completed on 9 March 2016.
- f. When constructed Southern Links will:
 - (i) Link State Highway 1 from Kahikatea Drive in Hamilton City to Tamahere and the Waikato Expressway in the south
 - (ii) Link State Highway 3 from Hamilton Airport to central and east Hamilton
 - (iii) Establish a key transport network within the Peacocke growth cell
 - (iv) Provide the building blocks for further urban development in the region

Housing Infrastructure Fund

- g. The Housing Infrastructure Fund is a one-off contestable fund.

- h. Councils in high-growth areas were able to apply for funds to bring forward the development of transport and water infrastructure required for new housing. The Fund is part of a wider strategy to increase the supply of houses in high-growth urban centres.
- i. Hamilton City Council has been awarded \$290m for infrastructure in the Peacockes area. Work includes constructing a new bridge over the Waikato River, arterial roads and wastewater and water supply mains.

Peacocke Stage 1 Road Safety Improvements

- j. It was stated in the s42A report that:

Road safety improvements for Bader Street are currently in the detailed design phase and are programmed to be completed by late 2019. These include widening of footpaths to become shared paths, refuge islands and raised platform crossings at the shops. These improvements are in response to the traffic growth associated with the Peacocke Stage 1 area using the Bader Street corridor. The Peacocke Road and Peacocke Road/Waterford Road/Plateau Drive intersection investigation and design is not yet commenced, but safety improvements of some form are planned for construction in 2020.

Peacocke Bio-diversity Management Framework

- k. Again, the s42A report sets out the current position of the Peacocke Bio-diversity Management Framework which is:

A Peacocke Biodiversity Management Framework is being developed for Council by Tonkin & Taylor Ltd in order to inform future strategic planning and decision-making within the Peacocke Structure Plan area. It will outline potential biodiversity opportunities and constraints within the Structure Plan area, provide guidelines on biodiversity offsetting and compensation best practice for developers to apply, and present a range of options for on-site and off-site measures to avoid, remedy or mitigate any significant residual adverse ecological effects associated with development. This framework has not been completed at the time of release of the section 42a report.

[The HCC's expert terrestrial ecologist provided some preliminary offsetting model results to the applicant on a without prejudice basis prior to the relevant expert caucusing. However, following the expert terrestrial ecology caucusing on 18 February 2019, HCC's expert terrestrial ecologist considered there to be insufficient scientific information at this point in time to create a robust biodiversity offsetting model. It was understood by council that this related to the long-tailed bat.]

Peacocke Proposed Plan Changes

- I. Finally, the Council confirmed that there are proposed plan changes intended for the Peacocke area. In the s42a report the report writer states:

The District Plan identifies that the Peacocke Structure Plan provisions will be used to guide future use and development of the area and will be used to inform future District Plan Changes. The planning provisions that have been put in place require masterplans to be approved through the consent process in addition to consent for particular activities. The masterplan approach has been reviewed and Council resolve on 11 October 2018 to approve the preparation of two Plan Changes to the Hamilton City District Plan for the Peacocke Structure Plan to remove the masterplan provisions and provide a more detailed structure plan to achieve the desired planning outcomes for the area. At this stage it is anticipated that these plan changes will be presented to Council later in the year for approval to notify. The proposal to prepare plan changes does not have any status under the RMA for the purpose of processing the current applications.

1.4 APPOINTMENT

- a. We, Bill Wasley (Chair), Loretta Lovell and Richard Knott were appointed by the Council as independent commissioners in terms of section 34A of the Resource Management Act 1991 ("the RMA") to hear the applicant, submitters and the Council's reporting officer and to determine the application. The information available to us prior to the hearing included the application, assessment of environmental effects (AEE) report and other information; the submissions and a report prepared by Council's reporting officer, being the section 42A report, and expert technical evidence.

1.5 BUNDLING PRINCIPLE

- a. The proposal involves District Plan rules that cannot be complied with that have restricted discretionary, discretionary and non-complying activity status.
- b. The principle of bundling applications, a concept developed by the Environment Court, applies in respect of this manner. Where an activity is unable to comply with multiple District Plan provisions of differing activity status, they should be considered at the most onerous activity status and assessed using the more stringent criteria (King & Ors v Auckland City Council; [2000] NZRMA 145). In respect of this application, the status of individual rules that are infringed include both restricted discretionary and discretionary activities.
- c. The section 42A report discussed the matter of activity status as follows;

“The applicant has submitted land use and subdivision applications for resource consent for the activities listed in the tables below. In addition, the applicant has applied for consent for a ‘Master Plan’. In that regard, it is noted that the provisions in the District Plan raise questions concerning the use of “framework plans” and the principles identified in case law regarding the vires of such an approach. Irrespective of this issue, the applicant has sought consent for specific land use activities, subdivision, and a Master Plan, thereby ensuring that all activities requiring resource consent are authorised, should consent be granted.

It is noted that rule 5.3.3.1c) requires the Master Plan to be prepared for the whole neighbourhood according to Volume 2, Appendix 1.2.2.3 of the District Plan. The applicant’s Master Plan covers two whole neighbourhoods (Neighbourhoods 3 & 7) and parts of two other neighbourhoods (being Neighbourhood 6 & 8). The extent of the neighbourhoods covered by the applications is depicted in Figure 2.2 in the applicant’s AEE (pg. 11).

Two submissions raise concern with the fact that the application has not provided detail of the proposed development of the “whole neighbourhood” in the Master Plan as submitted (as required in rule 5.3.3.1c). Given that there is no prescribed “default” activity status in the District Plan for an application which does not include a Master Plan for “the whole neighbourhood”, I have relied on the “default” activity status in s87B(1)(b) of the RMA which provides that the activity must be treated as a Discretionary Activity. In any event the applications have been bundled to be treated as Non-Complying as explained below.

Furthermore, given the clear direction in the case law regarding rules in district plans which purport to enable resource consent for a “plan”¹², in my view it is prudent to applying the most stringent activity status and to ensure that an application is made for specific land use activities. It follows that any consent that may be granted must also specify the specific land use activities which are authorised. Accordingly, in my opinion, an application can be made for a “Master Plan” (and the specific activities within the neighbourhoods identified) which does not include the whole neighbourhood”.

- d. In respect of land use the following rules have been identified to us as being of relevance in our consideration of activity status:

Rule 5.3.3.2d) – Unless otherwise stated a Master Plan for each Neighbourhood Area identified in the Peacocke Character Zone is a Discretionary Activity.

¹ *Queenstown Airport Corporation v Queenstown-Lakes District Council* [2014] NZEnvC 93; *Re Auckland Council* [2016] NZEnvC 56; *Re Auckland Council* [2016] NZEnvC 65.

Rule 5.3.3.1c) - A Master Plan shall be prepared for the whole neighbourhood. Non-compliance with this rule is deemed a Discretionary Activity under s87B(1)(b) of the RMA
 Rule 5.3.3.2b) – The activity status for the preparation of a Master Plan application within the Peacocke Character Zone is Non-Complying if an activity that forms part of the application is identified as a Non-Complying Activity in the Activity Status Table (rule 5.3.3.3).

- e. The activity status of the various activities encompassed in the proposed Master Plan are as follows:

Rule	Activity	Activity Status
Rule 5.3.3.3e)	Single dwelling: first residential unit per site based on concurrent subdivision application	Permitted
Rule 5.3.3.3d)	Ancillary Residential Structures	Permitted
Rule 5.3.3.3bb)	Informal recreation and ancillary buildings	Permitted
Rule 5.3.3.3pp)	Walkways and Cycleways	Discretionary
Rule 5.4.8	Fences and walls exceeding permitted height (proposed retaining walls)	Restricted Discretionary

Rule 5.3.3.1d) – Land Use Consents required under 5.4.13 (Provisions in other Chapters of the District Plan) may be incorporated into the consent process for the Master Plan as Discretionary

- f. Activities. Land Use consent is required for the following activities:

Rule	Activity	Activity Status
Rule 20.3g)	Construction of a subsoil drain which has an outlet within Significant Natural Area 54	Non-Complying
Rule 22.3p)	Earthworks not otherwise identified within Waikato Riverbank and Gully Hazard Area	Discretionary
Rule 22.3qq)	Lifeline Utilities – Stormwater Infrastructure only (at ground level) within Waikato Riverbank and Gully Hazard Area	Non-Complying
Rule 22.3ss)	Lifeline Utilities (below ground level) within Waikato Riverbank and Gully Hazard Area	Non-Complying

Rule 25.2.3a)	Earthworks within a Special Character Zone exceeding maximum permitted volumes in a 12-month period	Restricted Discretionary (in accordance with rule 1.1.8.2a))
Rule 25.7.3nn)	Pump stations	Restricted Discretionary
Rule 25.7.3qq)	Stormwater detention, treatment and/or soakage facilities to service more than 1 site	Restricted Discretionary
Rule 25.13.4.1b)	Development of any land involving more than 3 hectares requiring the preparation of an Integrated Catchment Management Plan	Restricted Discretionary
Rule 25.14.3a)	Any activity required to prepare a simple or broad Integrated Transport Assessment by Rule 25.14.4.3	Restricted Discretionary
Rule 25.14.3b)	New transport corridors	Restricted Discretionary

Subdivision

Rule	Activity	Activity Status
Rule 23.3a(v)	Fee Simple Subdivision within a Hazard Area	Discretionary
Rule 23.3c(v)(c) and 23.6.11(c) & (i)	Fee Simple Subdivision within the Peacocke Character Zone not in compliance with the requirement to provide a transport corridor connection across the Waikato River to join the existing transport network	Non-Complying
Rule 23.3c.xii	Any subdivision of an allotment containing a Significant Natural Area identified in Volume 2, Appendix 9, Schedule 9c	Discretionary
Rule 25.13.3(b) and 25.13.4.1(b)	Creation of more than 40 allotments requiring the preparation of an Integrated Catchment Management Plan	Restricted Discretionary
Rule 25.14.3(a)	Subdivision requiring the preparation of an Integrated Transport Assessment	Restricted Discretionary

National Environmental Standards

- g. The National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations 2011 (NES -CS) – Soil Disturbance exceeding maximum volume under Regulation 8(3) and land use change without a Detailed Site Investigation, are required to be assessed as discretionary activities.
- h. Having considered all relevant matters and noting that, the land use and subdivision applications and associated application for soil disturbance with the change of use of land under the NES-CS are inextricably linked for the purpose of developing the site for urban development, we concluded that the consent applications should be bundled and considered overall as a non-complying Activity.

1.6 NOTIFICATION

- a. The application was publicly notified on 1 September 2018 with the submission period closing on 28 September 2018. There were 82 submissions lodged in respect of the proposal.

1.7 OTHER CONSENTS

Regional Council Consents

- a. We were advised that applications had been lodged with Waikato Regional Council for required consents in relation to the proposal for enabling activities including stream works and earthworks, bridge over the southern gully and stormwater discharges.
- b. Mr Inger in his evidence confirmed that the following consents had been granted on 30 April 2019:
 - (i) Land disturbance – to undertake earthworks in a high-risk erosion area associated with the Amberfield residential subdivision (AUTH139498.01.01);
 - (ii) Discharge – to divert and discharge stormwater to the Waikato River from the Amberfield residential subdivision (AUTH139498.02.01);
 - (iii) Structure – to construct a bridge over a tributary of the Waikato River associated with the Amberfield residential subdivision (AUTH139498.03.01);
 - (iv) Bed disturbance – to disturb and fill in stream beds associated with the Amberfield residential subdivision (AUTH139498.04.01).
- c. Copies of the consent decisions were attached to Mr Inger's supplementary evidence.

[It is noted that these matters are to be determined by the Waikato Regional Council on a non-notified basis and apart from the earthworks, do not form part of the matters to be determined by us in regard to the land use and subdivision consent applications.]

Archaeological Authority

- d. The s42A report noted that Heritage New Zealand had granted an Authority (2019/069) pursuant to section 51 of the Heritage New Zealand Pouhere Taonga Act 2104, on 29 August 2019 for the destruction of 11 recorded archaeological sites associated with the proposal. The authority had been granted for a period of ten years to cover the anticipated timeframe of the development.

Requiring Authority Approval

- e. The proposal includes land which is designated road by HCC as part of the Southern Links designation. The applicant has not obtained written consent from HCC as Requiring Authority, in relation to the designation bordering the western side of the proposed subdivision.

Wildlife Authority

- f. We were advised that the applicant will seek a Wildlife Authority under the Wildlife Act 1953 to potentially disturb long-tailed bats as part of the construction works and an Authority may also be required in respect of lizard management. The requirement for an Authority was raised by Counsel for the Director General of Conservation and it was noted that it was a separate process from any consideration of the applications under the RMA.

1.8 ACTIVITY STATUS

- a. As discussed in section 1.5 of this decision, we have assessed and considered the proposal as a non-complying activity.

1.9 DIRECTIONS

- a. Prior to the hearing directions had been issued by the Hearing Panel Chair (dated 22 February 2019, 7 March 2019, 23 March 2019 and 2 April 2019) relating to the pre-circulation of expert technical evidence and hearing process matters.
- b. During hearing the following directions were issued:
 - (i) 15 May 2019, 24 May 2019 and 7 June 2019 relating to further expert caucusing of Expert Witnesses, adjournment and reconvening;
 - (ii) 28 June 2019 relating to provision of further information, questions and timetabling;
 - (iii) 10 July 2019 relating to panel questions for Applicant expert witness;

- (iv) 2 September 2019 relating to matters raised by Counsel for the Director General of Conservation;
- (v) 4 September 2019 relating to a request by Counsel for RESI to present further submissions in respect of the matters outlined in direction 10 dated 2 September 2019.

1.10 DEFINITIONS

a. In this Decision we use the following terms:

AEE	-	Assessment of Effects on the Environment report
Applicant	-	Weston Lea Limited
City/District Plan	-	Hamilton City Operative District Plan
HCC/Council	-	Hamilton City Council
RMA	-	Resource Management Act 1991 and its amendments
TWWG		Tangata Whenua Working Group

2 HEARING

a. The hearing was conducted on 2, 3, 6, 8, 13, 14, and 16 May and 5 September 2019 in the Hamilton City Council Reception Lounge. Appearances were from:

2.1 APPLICANT

- Mark Peacocke
- Andrew Duncan
- Ben Inger
- Jacobus Mentz
- Rachel De Lambert
- Andrew Blayney
- Georgia Cummings
- Stuart Parsons
- Kieran Millar
- Jonathon Peacocke
- Paul Fletcher
- Ray O’Callaghan
- Anthony Penny
- Warren Gumbley
- Normal Hill

- John Small
- James Fairgray
- David Serjeant

2.2 SUBMITTERS

- Peter Bos
- Carolyn & Neil Edwards
- Graham McBride
- Sara Brown (presented on behalf of WEL Networks Limited)
- Allan Westbrook
- Dianne June
- Selwyn June
- Peter Skilton ((presented on behalf of Johnson Family Trust)
- Justine Young
- Moira Pryde (presented on behalf of the Department of Conservation)
- John Riddell (presented on behalf of the Department of Conservation)
- Kerry Borkin (presented on behalf of the Department of Conservation)
- Laurence Barea (presented on behalf of the Department of Conservation)
- Robin Rawson (presented on behalf of Hamilton City Council – Open Spaces, Facilities & Strategic Infrastructure)
- Mark Roberts (presented on behalf of Hamilton City Council – Open Spaces, Facilities & Strategic Infrastructure)
- Jamie Sirl (presented on behalf of Hamilton City Council – Open Spaces, Facilities & Strategic Infrastructure)
- Andrew Parsons (presented on behalf of Hamilton City Council – Open Spaces, Facilities & Strategic Infrastructure)
- Phil Lang – Counsel (presented on behalf of Riverlea Environment Society Inc)
- Bruce Clarkson (presented on behalf of Riverlea Environment Society Inc)
- Rebecca Stirnemann (presented on behalf of Riverlea Environment Society Inc)
- Allan Pearson & Andrea Graves (presented on behalf of Riverlea Environment Society Inc)
- Martin Thrupp
- Warren Stace
- Andrea Graves
- Anne Ferrier-Watson
- Mary Cave
- Rod Aldridge
- Jo Wrigley & Anna Casey-Cox (presented on behalf of Waikato Environment Centre Trust)
- James Gardner Hopkins – Counsel (presented on behalf of TWWG)
- Sonny Karena (presented on behalf of TWWG)

2.3 COUNCIL

- Marianne Mackintosh – Counsel
- Gillian Cockerell, reporting Planner
- David Mansergh, Landscape/Visual
- Alexandra Simmons, Heritage
- John Brzeski, Geotechnical
- Carmel Managan, NESCS
- Gerardus Kessels, Terrestrial Ecology
- Alasdair Gray, Transportation
- Caleb Clarke, Stormwater and Flood Hazard
- Chris Hardy, Wastewater
- Jackie Colliar, Wastewater Servicing
- Jonathan Brooke, Engineering
- Colin Hattingh, Urban Design
- Sean Stirling, Parks and Open Spaces

2.4 SITE VISIT

- a. We conducted various site visits the first being prior to the hearing. This was conducted by ourselves with a representative of the applicant who was not involved in presenting evidence at the hearing, Mr Steve Bond (applicant's project manager), to outline the various aspects of the proposal, and Mr Fraser McNutt of Hamilton City Council, who drove us over the subject site, in attendance.
- b. Subsequently we undertook site visits in respect of Waiwhakareke Heritage Park; Sandford Park, Hammond Bush and various roads in proximity and leading to the Peacocke area. In respect of this site visit, the applicant's representative as noted above was in attendance together with submitter Ms Graves, who attended the site visit of the Waiwhakareke Heritage Park.

2.5 CLOSURE OF HEARING

- a. We formally closed the hearing on 19 September 2019. We subsequently issued Direction No 12 advising of the hearing closure and that the date by which a decision is to be provided to the Council was extended to 1 November 2019, due to the complexity of the matters we were required to consider.

2.6 PROCEDURAL MATTERS

- a. The following procedural matters were raised during hearing and are addressed.

Council's different roles

- b. In their Opening Submission Counsel for the Applicant has raised concerns about the propriety of HCC acting both as regulatory authority and as a submitter.
- c. Counsel noted in their submission that the Environment Court³ had considered the matter and then went on to say:

*"The Court started from the simple premise that a single entity has unity of intent or purpose. It found in relation to this point that a council, as a single legal entity, must act with integrity and accountability. It ought not assert that it can "split itself" without addressing and avoiding any apparent conflict of interest."*⁴

- d. Having traversed the caselaw relating to the possible conflict of the two roles taken by HCC however, Counsel for the Applicant chose not to seek a determination on this point, preferring to seek that:

"the Panel takes care in its consideration of the Council's s.42A recommendations that conditions of consent should be imposed requiring Weston Lea:

- (i) *to provide land for a sports park; and*
- (ii) *complete development agreement negotiations to the Council's satisfaction under the LGA."*⁵

- e. Counsel for the HCC as submitter agreed that there was a conflict between the Councils regulatory and submitter roles. He noted however that "HCC has managed that conflict appropriately by ensuring an appropriate separation of functions between the Council submitter units and the s42A author."⁶
- f. We have considered this matter and noted the submission of the applicant's Counsel in respect of highlighting the concerns, but also not seeking a determination on the matter, but suggesting that we take care in our consideration of matters, given the conflict.

³ Auckland Council v Auckland Council [2018] NZEnvC 56 (EC), Judges Smith and Kirkpatrick.

⁴ Opening Submission of Applicant at [22]

⁵ Opening Submissions of the Applicant at [25]

⁶ Opening Submissions of HCC Open Spaces Facilities Unit and Strategic Infrastructure Unit (Submitter 65) at [6]

- g. We note the separation that has occurred in respect of the Council as submitter and in its role as the consent authority. Furthermore, we have had access to separate legal advice from Counsel other than the consent authority Counsel.
- h. While acknowledging the points raised by the Court and the applicant's Counsel, we are satisfied that in respect of the matter before us, there has been a separation of roles between the s42A report author and Council as a submitter.
- i. We also acknowledge that this situation does potentially place the s42A report author in a difficult situation, and hopefully there was no undue influence exercised in respect of her discharging that role.

3 SUBMISSIONS AND MAIN ISSUES RAISED

3.1 SUBMISSIONS RECEIVED

- a. Eighty -two submissions were lodged to the applications of which 13 submissions were in full or partial support, 61 were in opposition, 6 were in support in part and oppose in part, and) submissions were neutral.
- b. Those submissions in support as identified in the s42A report, highlighted the following matters:
 - (i) Proximity to our property;
 - (ii) Support development, but roading needs to be improved and appropriate infrastructure in place before development starts.
 - (iii) Support development, but not the name of development. Should be an appropriate Maori name.
 - (iv) Development will provide much needed housing for Hamilton.
 - (v) Support change of land use to residential but need to carefully consider riverside reserve land and quality of housing adjacent.
 - (vi) Tangata Whenua Working Group (41) supports in principle the applications but retains concerns around the proposed installation of the wastewater pipe under the bed of the Waikato River.
 - (vii) Te Ha O Te Whenua O Kirikiriroa (60) supports the proposal given the successful consultation and appropriate mitigation measures regarding iwi issues have been provided for adequately.
 - (viii) Neighbourhood Area 6 suitable location for Suburban Centre but needs to be cohesively planned – Woolworths NZ Ltd ((75).
 - (ix) Heritage NZ (62) supports proposal subject to proposed heritage reserve remaining part of the development and the appropriate on-going management of historic heritage.

- (x) Waipa District Council (63) conditional supports proposal subject to road safety of SH3 maintained during and post construction, particularly the SH3-Dixon Road and Raynes Road intersections.
 - (xi) NZ Transport Agency (70) supports the proposal subject to conditions to address the potential traffic safety and efficiency effects on the state highway network in the area by staging the development with traffic monitoring required prior to further stages proceeding.
 - (xii) Ministry of Education (18) is considering provision for additional school network capacity long term in the Peacocke Area and requests ongoing consultation with applicant and HCC on staging and timing of development to manage the impact on the school network.
 - (xiii) WEL Networks (69) confirms it is able to supply the required electricity reticulation but requires sufficient road berm space to house all utilities and requests early engagement to determine infrastructure requirements and any legal arrangements.
- c. The submissions in opposition raised the following matters:
- (i) Traffic safety and efficiency effects on surrounding road network during construction and post development;
 - (ii) Development not to proceed or to be restricted ahead of planned transport infrastructure (including new bridge);
 - (iii) Inadequate provision for pedestrians and cyclists;
 - (iv) Need for increased ecological buffer along river margin;
 - (v) Inadequate measures to address effects on indigenous fauna (particularly long-tailed bats);
 - (vi) Visual amenity impacts for residents opposite site on eastern side of Waikato River;
 - (vii) Lack of subdivision and building design controls to ensure a high amenity development;
 - (viii) Inadequate open space provision within the development;
 - (ix) Amenity effects during construction;
 - (x) Loss of Maori archaeological sites;
 - (xi) Pollution of waterways, public health and natural hazard risks associated with three waters infrastructure;
 - (xii) Cultural effects associated with interim wastewater pipe under the bed of the Waikato River; and
 - (xiii) Suburban Centre (within Neighbourhood 6 of the Peacocke Structure Plan) has not been cohesively planned with the balance of the neighbourhood area on land outside the application site.

- d. We noted that six submissions partly supported and partly opposed the applications. While development of the land for residential purposes was supported, the aspects of the proposal that are not supported are summarised as follows:
- (i) The name of the development, an appropriate Maori name should be used;
 - (ii) Development should not proceed ahead of provision of key infrastructure;
 - (iii) Roding network needs to be improved before development proceeds to cater for increase traffic;
 - (iv) Development needs to be staged to allow for roading network upgrades;
 - (v) Lack of design standards for duplexes/townhouses;
 - (vi) Road cross sections that do not provide off road shared paths for walking/cycling;
 - (vii) Road improvements that do not safely provide for pedestrians/cyclists and inadequate off-road cycle facilities connecting to the subdivision;
 - (viii) Lack of provision of a sports park;
 - (ix) Option of wastewater discharge from the development to the western inceptor is opposed based on capacity constraints;
 - (x) HCC submission (65) also seeks three waters infrastructure to be sized to service the full catchment and expects a PDA to be entered into to cost share any increase in capacity; disconnection of the interim eastern wastewater option and connection to HCC strategic transfer pump station when operational; internal roads are sized to accommodate the required servicing infrastructure; development to cater for public transport; staging and sequencing of development not to frustrate development of adjacent land; development of commercial centre to align with rate of residential development; road corridors are sized to service catchment and PDA be entered into with HCC to cost share any increase in capacity; Peacockes Road south of the east-west arterial to be of minor arterial standard, conditions of consent to manage traffic safety and efficiency on the surrounding road network; and required approval sought from HCC as Requiring Authority for works that extend within the Southern Links Designation;
 - (xi) Two neutral submissions (29 & 42). One seeks additional planting, more open space areas and provision of a sports park; and the other seeks the addressing of possible sewerage overflows in the network.

4 STATUTORY PROVISIONS CONSIDERED

- a. In considering the application, we have had regard to the matters to be considered as set out in section 104 of the RMA, recognising the status of the activities as we have determined as a non-complying activity. Activity status is discussed in section 1.5 of this decision.

- b. The Resource Management Act 1991 (RMA) sets out the statutory provisions for the assessment and determination of all such applications with s104 providing the primary assessment framework. The provisions are outlined as follows.

4.1 PART 2-RMA

- a. Part 2 states the purpose of the RMA which is

‘ .. to promote the sustainable management of natural and physical resources with sustainable management defined in s 5(2), as

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural wellbeing and for their health and safety while—

- (i) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
- (ii) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

- b. Section 6 sets out *Matters of National Importance*, with matters 6(a), (c), (d), (e), (f) & (h) considered relevant to the applications;

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (i) *the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development:*
- (ii) *the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
- (iii) *the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers:*
- (iv) *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
- (v) *the protection of historic heritage from inappropriate subdivision, use, and development*
- (vi) *the management of significant risks from natural hazards.*

- c. Section 7 sets out *Other Matters*, which we are required to have particular regard to, with the following matters considered relevant to the applications;

- (i) *the efficient use and development of natural and physical resources:*

- (ii) the maintenance and enhancement of amenity values:
 - (iii) maintenance and enhancement of the quality of the environment:
 - (iv) any finite characteristics of natural and physical resources:
- d. Section 8 requires the principles of the Treaty of Waitangi to be taken into account. In our consideration of the applications, s104(1) of the RMA states:
- “When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—*
- (i) *any actual and potential effects on the environment of allowing the*
 - (ii) *activity; and*
 - (iii) *any measure proposed or agreed to by the applicant for the purpose of ensuring positive effects on the environment to offset or compensate for any adverse effects on the environment that will or may result from allowing the activity; and*
 - (iv) *any relevant provisions of—*
 - a. *a national environmental standard:*
 - b. *other regulations:*
 - c. *a national policy statement:*
 - d. *a New Zealand coastal policy statement:*
 - e. *a regional policy statement or proposed regional policy statement:*
 - f. *a plan or proposed plan; and*
 - g. *any other matter the consent authority considers relevant and reasonably necessary to determine the application.*

4.2 SECTION 104

- a. Section 104(B) of the RMA states:

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (i) *may grant or refuse the application; and*
 - (ii) *if it grants the application, may impose conditions under section 108.*
- b. Given the applications are to be considered as non-complying, they are is subject to the threshold tests for non-complying activities as prescribed in s104D of the RMA which states:

Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a noncomplying activity only if it is satisfied that either—

- (i) *the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or*
 - (ii) *the application is for an activity that will not be contrary to the objectives and policies of-*
 - A. *the relevant plan, if there is a plan but no proposed plan in respect of the activity; or*
 - B. *the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or*
 - C. *both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.*
- c. Section 104D is commonly known as the “gateway test” and proposals for non-complying activities must satisfy either clause (a) or (b) of the section and we evaluate the proposal against those tests elsewhere in this decision
- d. The subdivision application is also subject to the provisions of s106 of the RMA as follows;
- [A] consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that-*
- (a) *there is a significant risk from natural hazards; or*
 - (b) *Repealed.*
 - (c) *sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.*
- (1A) For the purpose of subsection (1)(a), an assessment of the risk from natural hazards requires a combined assessment of-*
- (a) *the likelihood of natural hazards occurring (whether individually or in combination); and*
 - (b) *the material damage to land in respect of which the consent is sought, other land, or structures that would result from natural hazards; and*
 - (c) *any likely subsequent use of the land in respect of which the consent is sought that would accelerate, worsen, or result in material damage of the kind referred to in paragraph (b).*
- (2) Conditions under subsection (1) must be—*
- (a) *for the purposes of avoiding, remedying, or mitigating the effects referred to in subsection (1); and*
 - (b) *of a type that could be imposed under section 108.*

5 PRINCIPAL MATTERS IN CONTENTION

- a. Having considered the application, submissions and evidence provided, and being guided by the assessment criteria of the District Plan, we consider that the principal issues of contention are considered in respect of the following:
 - (i) Visual/landscape effects
 - (ii) Heritage and Cultural Effects
 - (iii) Natural Hazard Effects
 - (iv) Hazardous Substances Effects
 - (v) Ecological Effects
 - (vi) Construction Effects
 - (vii) Transportation Effects
 - (viii) Three Waters Infrastructure and Servicing Effects

6 SUMMARY OF EVIDENCE

- a. The following summary is not intended to be a full coverage of all matters raised at the hearing and in submissions. Relevant parts of the evidence presented by the parties are referred to in the Main Findings section of this decision, where it forms a component of the findings by us, in deciding the application.

6.1 APPLICANT

- a. **Mr Robert Makgill**, Counsel for the Applicant, spoke to his written opening legal submissions. He addressed us on some procedural matters including the different roles of the Hamilton City Council at the hearing; role of co-counsel and hot tubbing of ecological evidence.
- b. He noted his concern about the Council both being consent authority and a submitter, and felt it is was quite an unusual situation. He referenced various legal authorities in respect of this matter. He further outlined that he was not seeking a determination on this matter but noted that the panel take care in it's consideration of the s42A recommendations regarding the provision of land for the sports park and development agreement negotiations.
- c. He suggested that the "hot-tub" approach may be appropriate in experts answering questions in respect of their evidence.
- d. Mr Makgill outlined he decision-making framework in respect of the RMA and the key statutory provisions in respect of considering non-complying activities. He also referenced Part 2 provisions and referred to the Davidson decision of the Court of Appeal.

- e. He outlined various matters in respect of long tailed bats and that in the situation where there is competing expert opinion, then an evaluative judgment is required against the relevant facts. He referred to a range of principles that the Environment Court had identified to provide some guidance in this situation.
- f. In respect of sports park, Mr Makgill outlined that in his opinion there was no legal requirement for the applicant to provide a 7ha sports park to either comply with the District Plan provisions or to address any effects of the proposal. He referred to the applicant's evidence on this matter. He did not believe that the applicant should be 'punished or burdened' by the Council's failure to acquire land for the sports park.
- g. He further noted that a condition requiring the provision of the sports park would need to meet the tests of a condition being directly connected to either addressing an adverse effect of the activity on the environment, or an applicable district or regional rule.
- h. Mr Makgill then commented on infrastructure matters and development agreements. He further provided comments on consent conditions and long- term monitoring, wastewater pipe and matters related to tangata whenua.
- i. He concluded noting that the applications satisfied the objectives and policies of the District Plan and by doing so achieves the purpose of the RMA, and that consent should be granted.
- j. **Mr Mark Peacocke** is a director of Weston Lea, the applicant for this resource consent. A member of the Peacocke family who own the land that is the subject of this resource consent application. The land has been in the family for generations as a working farm. That has continued to this day with ongoing investment still to ensure the implementation of best practice methods to avoid water quality issues for the Waikato River.
- k. Mr Peacocke noted that the application was the culmination of over ten years of work which included participation and subsequent appeal of the Peacocke Structure Plan and support of the Councils application for Government Housing Infrastructure Fund funding. He considered that this development provided the Peacocke family with a chance to help contribute to Hamilton's future growth and leave a lasting legacy to the future of the region.
- l. **Mr Duncan** is the lead contract manager for the Amberfield project. Mr Duncan and a team commenced working on the applicant's project in 2017. The critical drivers being:
 - (i) Providing accommodation for a new planned community of all ages – young to old.

- (ii) *Development supply from Amberfield to align with Hamilton Region demand forecasts and demographics.*
- (iii) *Touching the land “gently” by working with the natural topography and respecting landform, natural landscape, ecology and the river.*
- (iv) *Reflecting cultural history and values.*
- (v) *The plan to align with the District Plan for the Peacocke area and in particular a “high-quality urban environment”, “urban design best practice”, and “connected neighbourhoods” that respect and restore “the area’s natural environment”.*
- (vi) *Incorporate sustainability and environmental qualities.*
- (vii) *Making key connections to the City, river and wider facilities by foot, cycle, public transport or private vehicle.*
- (viii) *Planning for a future neighbourhood centre.*
- (ix) *Allowing for medium density demographic demand over the course of the development.*
- (x) *Amberfield to be a first step in achieving the stated Peacocke Structure Plan (2007) Vision: “The vision for the Peacocke area is that it will become a high-quality urban environment that is based on design excellence, social well-being, and environmental responsibility.”*

m. Mr Duncan discussed the actions taken by the Applicant in line with the critical drivers. He concluded that the development would:

- (i) *be a planned community development offering a point of difference – one that reflects the vision and care of a family which has been a part of Hamilton for over 140 years.*
- (ii) *meet the forecasted demand demographics of Hamilton region as part of future development.*
- (iii) *embrace the natural attributes of its land, connect with and open up access to the river and City for all.*
- (iv) *through its master planned design Amberfield would be inclusive of the rich and diverse Maori culture and history, pre-dating European settlement.*
- (v) *provide for the environment and ecology of Amberfield to be recognised and integrated into the design to achieve sustainability values.*
- (vi) *offer open space, both natural and enhanced, within its design to be enjoyed by the resident and wider community.*

n. In his evidence in reply Mr Duncan responded to the evidence of the HCC Infrastructure Unit. The evidence noted that the sports park had been included through master planning for the development and that while not finalised a private developer agreement was currently being negotiated between the Council and the Applicant.

- o. **Mr Inger** is a Senior Planner at Harrison Grierson. Mr Inger set out in his evidence the role of the HCC Operative District Plan and Peacocke Structural Plan have with the Amberfield development. Mr Inger concluded that the ODP and PSP anticipate growth of the City occurring in Peacocke, including the development of the Amberfield site for residential, retail/commercial and open space land uses. In his opinion the approach that has been taken to master planning the site has been appropriate and very robust.
- p. In his supplementary evidence Mr Inger confirmed the Regional Council consents (land disturbance, discharge, structure and bed disturbance) which had been confirmed in April 2019. The Regional Council decisions were attached to his evidence in reply.
- q. **Mr Blayney** was the terrestrial ecology advisor for the application. Mr Blayney noted that there were two previously identified SNA in the development area. The site also contains areas of high value vegetation along the Waikato Riverbank with the remaining vegetation of low or negligible value. The ecological value of the site for herptofauna is low and for avifauna the habitat along the Waikato River has medium to high value, while the rest of the site is low value. [This assessment did not include any analysis or recommendations on the habitat values or potential effects on the long-tailed bat. That was deferred to the bat ecologist witnesses for the applicant]
- r. Mr Blayney responded to submitters and the s42A report and provided recommendations intended to provide further mitigation of potential effects and improved ecological values on the site.
- s. Ultimately, he considered that with the further mitigations the potential level of effects on the vegetation, herptofauna and avifauna ecology on the site was low.
- t. **Ms Cummings** is a terrestrial ecologist and bat specialist. She was part of the team that undertook both desktop analyses and site investigations to determine the applicant's ecological assessment for long-tailed bats.
- u. In her evidence Ms Cummings discussed both the original application and subsequent mitigations. These included:
 - (i) *Restoration and enhancement planting of 18.5 ha of habitat*
 - (ii) *Early planting and delaying building to allow for the time lag for the buffer planting becoming effective*
 - (iii) *Implementation of Condition 91(b) to mitigate for the removal of an identified roost on site and potential removal of undiscovered roosts.*
 - (iv) *Implementation of a monitoring programme and triggering of adaptive management and or offset if required.*

- v. Ms Cummings was of the view that the proposed mitigations would avoid anthropogenic disturbance adversely affecting bats using the Waikato River corridor and facilitate continued dispersal along the E-W shelterbelt.
- w. **Ms Flynn** is a senior ecologist for the applicant. Her expertise is in vegetation ecology, ecological effects assessment and restoration management. Ms Flynn considered in her evidence that:
 - (i) *the proposed development and associated habitat management accords with the Waikato Regional Council's policy provisions for significant ecological features;*
 - (ii) *the protection of key corridors and habitat features, and promotion of accord between landowners, developers and conservation managers to help facilitate landscape-wide habitat networks, is an important benefit of the proposed development.*
 - (iii) *the "mitigation hierarchy" has been appropriately implemented in order to achieve the best ecological outcome, for bats as well as other ecological features.*
- x. Ms Flynn considered during her evidence that the proposed bat habitat enhancement was not experimental and that it would lead to no net loss.
- y. **Ms Lambert** is the landscape architect for the Applicant. She considers that the proposal is well designed in respect of its 'fit' with the natural landscape. The development will retain a form of terracing down toward the River with limited reliance on retaining walls. Key landform features within the site including the knoll landform (with its associated well-established park-like trees) and the southern gully will be retained.
- z. In terms of visual effects, she considers the most affected viewers will be those residents in elevated locations in the established residential area of Riverlea across the river to the east. In her opinion, moderate-low adverse effects will result for these residents.
- aa. Ms De Lambert reviewed the submissions of Riverlea residents. While she appreciated that the residents preferred their current rural outlook. In assessing the scale of effects for these viewers, she considered she took into account the separation distance across the river and the maintenance of a rural outlook to more elevated land in the backdrop of these views. Ms De Lambert considered the width of and well vegetated esplanade reserve on the north-eastern terraces of the site across from Riverlea, and the long signalled urban future of this site and the wider PSPA. She was of the opinion that views across the river to Amberfield for residents of Riverlea will present an attractive outlook with a high proportion of retained and new vegetation, and open space.
- bb. In her evidence in reply Ms De Lambert discussed the evidence of the HCC infrastructure witnesses and potential site for a sports park. Ms De Lambert considers that sufficient provision was made for the park in the application and masterplan.

- cc. **Mr Mentz** led the urban design and master planning work that supported the subdivision and land use application for the applicant. The design approach undertaken was to have a vision and principles that promote responsiveness to the Amberfield site. Leading to a legible and connected environment, diverse living choices and public spaces all serve to celebrate the unique Maori and Peacocke history of the land.
- dd. The 105ha site will have four distinctive neighbourhoods that promote the special features of the site, such as the river, island, gully, knoll, and the terraces. A future neighbourhood centre will offer shops, employment and community activities. There are [833] lots ranging from 400m² to over 700m² which will serve a wide demographic range.
- ee. Mr Mentz acknowledged that based on the intent to further reduce the impact of the proposal on bat habitat the applicant has redesigned the northern terraces. This has resulted in 17 rear lots being created and an overall loss of 27 lots to the overall size of the development.
- ff. Mr Mentz did not consider that any of the submissions or those issues raised in the Council Officer's report gave him cause to change my overall opinion of the application.
- gg. Mr Mentz concluded that the application will result in a neighbourhood with a strong sense of community and identity. It achieves a high standard of urban design that balances many complex technical requirements and responds to the site sensitively.
- hh. **Mr Jonathan Peacocke** is a director of the applicant Weston Lea Limited and a director of the landowner company Adare Company Limited. Mr Peacocke confirmed that apart from Mr Mark Peacocke who is only a director of Weston Lea Limited, the remaining directors are the same between the two companies.
- ii. Adare Company Limited undertakes farming on its land, while Weston Lea Limited is a development company for the land owned by Adare situated within the wider Peacocke Structure Plan Area. Adare Company Limited will transfer land to Weston Lea Limited for the purpose of development at Amberfield at the appropriate time.
- jj. Mr Peacocke noted that there were ongoing obligations proposed by the applicant that will extend beyond the time titles are created under the subdivision consent. Those obligations were reflected in conditions:

101 Prior to the exercise of this consent, The Adare Company Limited shall provide surety in the form of a deed of guarantee in favour of the Council to guarantee the performance of specified conditions of consent by the consent holder. The guarantee shall ensure the performance of all those obligations contained within Conditions 76

to 99 in relation to ensuring the implementation of the Gully and Esplanade Reserve Vegetation Management Plan and the Long-Tailed Bat Management and Monitoring Plan.

- kk. As a director of Adare Company Limited Mr Peacocke confirmed that the company agreed with condition 101 and (with the applicant) would provide a guarantee in favour of the Hamilton City Council for the matters referred to in condition 101.
- ll. **Mr Gumbley** is the applicant's archaeologist. Having undertaken the desktop and field investigations to determine the archaeological values within the Amberfield development area. The investigations revealed 11 discrete Māori horticultural sites distributed across the entirety of the proposed development area.
- mm. Of Maori and horticultural nature there was a total aggregation area of approximately 32 ha. The development will lead to all but approximately 4 percent of the identified archaeological deposits will be destroyed. The remainder will be protected in a reserve. Consultation has been undertaken with iwi and agreement has been reached. Mitigation will take two forms: the detailed archaeological investigation and recording of the archaeological deposits to be destroyed; and the preservation of 1.6 hectares of this archaeology in a future reserve. The reserve will preserve a representative portion of the archaeological features.
- nn. In his evidence in reply Mr Gumbley commented on the evidence and proposed changes by HNZPT representatives Carolyn McAlley and Dr Rachel Camody. He agreed with all of their proposed changes bar the necessity for an "appropriate information sharing platforms".
- oo. Finally, he proposed that any reference to a time period for the completion of a final Archaeological Report following the completion of the subdivision should be deleted from any condition on the basis that it is not achievable, and that Authority 2018/69 already controls the process. This is supported by the amended Condition 63 provided by Mr Serjeant.
- pp. **Mr O'Callahan** is a senior civil engineer. He has advised the applicant on the matters relating to on site engineering and offsite matters relating to roading and other infrastructure.
- qq. Mr O'Callahan concluded in his evidence that the engineering infrastructure solutions proposed for the Amberfield development will provide the required levels of service. I also consider that the engineering solutions developed as part of the Amberfield proposal are sound solutions that meet good industry practice and do not create any notable areas of risk for the receiving environment.

- rr. In his evidence in reply Mr O'Callahan responded to comments by submitter Mr McBride and concerns relating to the mixing of water to stormwater from the development, Mr O'Callahan noted that it was an HCC responsibility to review what impact the Amberfield wastewater infrastructure might have on the operation and management of the HCC water treatment plant.
- ss. **Mr Miller** is the freshwater ecologist advising the applicant. Mr Fletcher undertook both desktop and site investigations as part of his assessment.
- tt. He determined that the site contained thirteen watercourses which vary in size, complexity and value. Of those Mr Miller considered that the majority of watercourses consisted of negligible ecological value. However, there are several reaches in some of these watercourses which contain low ecological values, and one reach of one watercourse which I consider has moderate ecological value.
- uu. Mr Miller determined that the effects on freshwater ecology values from the Project included: stream loss; erosion and sedimentation into receiving environments during construction; and discharge of stormwater into receiving environments. He considered that the level of effects on freshwater ecology values ranged from very low to low. Recommended mitigation for adverse effects included perennial and intermittent stream enhancement as well as creating new stream habitat. Other recommended mitigation included developing and implementing best practice erosion and sediment control and stormwater treatment, native fish salvage and relocation and implementing a monitoring plan.
- vv. While DoC had raised concerns about the specificity of any mitigation Mr Miller was of the view that given the low quality of the watercourses currently there was little risk of failure of the mitigations proposed. Further monitoring would be included in the final mitigation plan.
- ww. **Mr Fletcher** is the applicant's geotechnical advisor.'
- xx. His firm; ENGEO undertook the geotechnical assessment of the subject site involving Rotary Core Boreholes, CPT and sCPT testing, test pits and hand auger boreholes. The information from this assessment was used to evaluate the stability of the existing landforms and also to assess the stability of the proposed landforms. Earthworks on site will in Mr Fletcher's view act to cut down terraces and reduce the existing slope gradients between terraces to create a broad gentle slope from west to east.
- yy. On the basis of the investigation undertaken to date, Mr Fletcher considered that the proposed development would generally increase the stability of the site and that the

proposed residential lots would be adequately protected against slope instability in accordance with Section 106 of the Resource Management Act 1991.

zz. Specific design zones have been applied to areas of steeper site contours adjacent to the Waikato River. These areas will be reviewed and revised at detailed engineering design stage, as noted in the Section 42A report prepared by Hamilton City Council.

aaa. **Mr Penny** is a traffic engineer. He described the transportation network proposed for the Amberfield subdivision, as referenced in the integrated transportation assessment (ITA) and discussed the timing and delivery of various upgrades and the new HIF funded bridge over the Waikato River.

bbb. He noted that there was agreement between the experts in the transportation caucusing that the effects on the wider transportation network of traffic generated by the proposed subdivision could be managed by monitoring and implementing mitigation measures as necessary; he considers that this remains the case.⁷

ccc. In relation to transportation conditions discussed in caucusing, he confirmed that he still supported a higher 80 second threshold for the draft monitoring condition threshold for assessing efficiency effects on the SH3 approaches at the Normandy Avenue intersections with Bader Street and Lorne Street rather than the 55 seconds in the draft condition (as supported by Mr Alasdair Gray). He indicated that the higher level (80 seconds) is also supported by Shaun Lion-Cachet (representing NZTA and HCC as submitters).⁸

ddd. He confirmed he supported conditions requiring the production of a construction traffic management plan and a transport network management plan to ensure that adverse traffic effects associated with each stage of development are avoided, remedied or mitigated. ⁹ He concluded that there are no transportation reasons why the applications should not be granted.¹⁰

eee. **Mr Hill** is the applicant's cultural advisor. In that role Mr Hill had engaged with iwi Maori groups affected by the application. He discussed in his evidence the establishment of the TWWG and the series of consultation and engagement meetings held with TWWG from September 2017 through to April 2019.

⁷ Evidence of Anthony Penny, Paragraph 1d.

⁸ Evidence of Anthony Penny, Paragraph 1h.

⁹ Evidence of Anthony Penny, Paragraph 1i.

¹⁰ Evidence of Anthony Penny, Paragraph 1o

- fff. He noted that a Kawenata (partnership document) was signed on 20 February 2019. This formed a significant part of the engagement process, whereby Weston Lea signalled good faith intent to work on long term partnership outcomes with TWWG.
- ggg. Mr Hill confirmed that the key concerns raised by TWWG during consultation included effects on cultural heritage and significant sites, effects on the relationship with the Waikato River and indigenous ecosystem and biodiversity and maintaining the balance of 'mauri' of the holistic wellbeing of the natural environment.
- hhh. Mr Hill discussed the submitters who raised issues relating to the cultural matters, including Waikato Tainui who raised concerns around the proposed installation of the wastewater pipe under the bed of the Waikato River and the proposed bridge over the Waikato River. Mr Hill provided further clarification of the entities and roles within Waikato Tainui in his evidence in reply. He also provided a letter of support for the cultural impact assessment and based on the mitigation therein the support for the Amberfield Development from and by Waikato Tainui.
- iii. In Mr Hills opinion, Weston Lea Limited had undertaken robust and transparent consultation with TWWG in a way that has empowered Waikato Tainui Iwi and hapū to make informed decisions on the proposed Amberfield development. He is satisfied that the cultural issues raised during the consultation process with TWWG has resulted in the adequate mitigation of cultural effects through the proposed resource consent conditions.
- jjj. **Mr Small** is an economist. He has been asked to review the planning evidence of Mr Serjeant and considered several relevant planning documents. In his evidence Mr Small discussed features of the NPS-UDC and District Plan.
- kkk. Mr Small estimates that Hamilton will need 17,538 new dwellings over the next 15 years. He considers the Peacocke area to be highly desirable for housing development. Mr Hill noted that achieving the target density of 16 dwellings/ha, would require some higher density housing in the development. He considered this was a good example of how planning requirements can guide development toward sustainable practices, which offer a variety of living environments and greater choice and is consistent with the NPS-UDC. From a cost perspective:
- (i) the Amberfield development is at least as good as any alternative location for Hamilton's growth and appears superior to the main alternatives; and
 - (ii) provided the cash outlays required to service Amberfield are properly defined (which may be a matter of contention for some works), we need not concern ourselves with these costs since they will be internalised by the residents.

III. Equally Mr Hill considered that there was clear value created by the urban design proposed for previously farmed lands, connectivity with local amenities including the city and airport and the development of community.

mmm. One of the outstanding matters concerns the provision of sports fields. Mr Small outlined the principles in his view that should guide resolution of this matter the economic costs to be avoided. His view of the Council's suggestion that Weston Lea be required to vest 7ha for sports parks as part of the Amberfield development, was that this was an excessive request. Whether it is assessed on a share of land basis or the more accurate level-of-service basis. Rather, once fully developed, Mr Hill suggested that Amberfield would require 1.25 sports fields, which (following agreed practice) he converted to a land area of 2.5ha. This is well below the 7ha requested.

nnn. **Mr Fairgray** is also an economist. His evidence also discusses the sports field issue. He considered much like Mr Small that a 2.48ha to 2.76ha of sports park area would be required across the future Amberfield population, rather than the proposed 7ha.

ooo. Mr Fairgray was of the view that at this stage the scale or necessity for a sports field will be determined based on the ultimate demand set by the future Amberfield population. The size and scope of the proposal by HCC may not be warranted. Further, he noted that a significant proportion of the city's existing sports parks land area is not currently developed as sports fields. Mr Fairgray considered it would be possible that a share of the additional sports park area could potentially be developed to contain additional sports fields if required.

ppp. **Mr Serjeant** an experienced independent planning consultant provided an analysis of the application's key issues as a companion to the evidence of Mr Inger. He confirmed that he agrees with Mr Inger's evidence and conclusions. At the hearing Mr Serjeant spent time working through the proposed conditions with us.

qqq. In relation to the masterplan consents, he confirmed that the master plan consent has been expressed in terms of the land uses that had been identified as needing consent so that should any vires issues with a 'master plan consent' arise, Weston Lea can rely solely on the subdivision and land use consents granted (in recognition that certain provisions under Chapter 5 of the ODP relating to master plans could be applied in a manner held to be ultra vires when considered in the light of the Environment Court decisions in Queenstown and Auckland).

rrr. In relation to the effect of landscape and visual effects, he referred to the fact that the application site is an urban zoned area and it can be expected that the development of the land would be at an urban density. He opined that it would therefore be inappropriate

to assess landscape and visual effects of the development from a rural landscape baseline.¹¹

sss. In relation to effects, he confirms that in his view that effects on historic heritage and effects on the long-tailed bat are both more than minor¹². This informs his overall conclusion in relation to section 104D(1)(a) that the adverse effects of the development are more than minor¹³, although in relation to Section 104D(1)(b), it is his view that the proposed activities are not contrary to the objectives and policies of the ODP.¹⁴

ttt. In relation to the Waikato Regional Policy Statement, he indicated that there remains some tension between the objectives and policies for the built environment and achieving minimum housing targets and other provisions previously referred to regarding the natural character of the Waikato River margin and protecting significant vegetation and habitat. In achieving the provisions on preserving natural values the development falls short on the provisions relating to the built environment and density targets.¹⁵

uuu. He discussed the provision of the sports park and noted:

*In terms of being consistent with the provisions of Chapter 3 and avoiding, remedying and mitigating adverse effects in relation to new demands for active sports parks, Weston Lea must make provision for approximately 2.5ha of sports park, or pay development contributions for that provision. However, it is not Weston Lea's responsibility to provide for and plan a 7ha sports park.*¹⁶

vvv. In relation to Part 2, he considers that there are specific reasons to consider the decision in light of Part 2:

- (i) The inconsistency between the WRPS and the ODP, wherein the WRPS provides a wider menu for the sustainable management of biodiversity than is taken in the ODP as I have set out in paragraph 93(c);
- (ii) The inadequacy of the ODP provisions in relation to the long-tailed bat, to the extent that the Council has not acted to set in place a local indigenous biodiversity strategy (ODP Policy 20.2.1p) that would have provided Weston Lea with a range of alternative options for the sustainable management of the long-tailed bat; and

¹¹ Evidence of David Serjeant, paragraphs 30 and 31

¹² Evidence of David Serjeant, Paragraph 43

¹³ Evidence of David Serjeant, Paragraph 46.

¹⁴ Evidence of David Serjeant, Paragraph 47.

¹⁵ Evidence of David Serjeant, Paragraph 73.

¹⁶ Evidence of David Serjeant, Paragraph 87

- (iii) The provisions of the PSPA that enable urban development and those for the protection of the long-tailed bat are at a sufficient level of conflict that recourse to Part 2 becomes important to the evaluative exercise.¹⁷

www. However, in respect of Part 2, he concludes that:

124. Taking these three matters together, my view is that the proposed development achieves the purpose of section 5 of the RMA by providing for the sustainable management of the natural and physical resources of the Amberfield site and enabling the people and communities of Hamilton to provide for their social, economic and cultural well-being, while avoiding, remedying or mitigating the adverse effect of development on the long-tailed bat. To the extent that there is some uncertainty about the effectiveness of the mitigation in the long term, or that there alternative views about the mitigation in the first instance, my view is that the protection of all significant habitats of the long-tailed bat has been appropriately recognised and provided for in terms of section 6(c).¹⁸

xxx. **Dr Stuart Parsons** a zoologist specialising in bat biology and he stated in his evidence that long tailed bats are listed by the Department of Conservation as Threatened - Nationally Critical, having a high ongoing or predicted decline and being conservation dependent. The bats are widespread in the south of Hamilton, but their numbers are likely low. They are threatened by ongoing habitat clearance and predation by introduced mammals. Despite this, they persist in highly impacted areas including peri-urban environments and plantation forest. He considered that long-tailed bats are relatively flexible in their choice of roosts, having been found in caves, rock outcrops and a variety of native and exotic trees. They are aerial insectivores and generally hunt along the edges of vegetation.

yyy. Dr Parsons noted that little evidence exists on bats use with respect to the Amberfield site prior to investigations as part of this development. Acoustic surveys at adjacent sites such as Hammond Bush and the nearby riparian margin of the Waikato river show them to be an important site for bats. However, Dr Parsons considered that Acoustic surveys of the Amberfield site showed that bat activity over the site ranges from zero to moderate levels. Further he noted that a predictive model of habitat-use by long-tailed bats showed that the majority of Amberfield is unsuitable habitat for long-tailed bats, with the exception of a few areas of mature vegetation.

zzz. Those exceptions were the riparian margins, southern gully and east-west Dr Parsons considered these features to be significant in that they provided an important movement corridor, ensuring connectivity of bats through the broader landscape and periodic feeding opportunities.

¹⁷ Evidence of David Serjeant, Paragraph 123

¹⁸ Evidence of David Serjeant, Paragraph 124

aaaa. In respect to mitigation Dr Parsons stated:

“The mitigation proposed appropriately targets the areas of significance for bats on the site. No high-quality (for bats) indigenous vegetation will be removed, and a large area will be planted to replace low-quality vegetation (including exotics). The riparian margins will be widened and buffered from human disturbance, and other areas enhanced. This will provide an enhanced connection point with key bat habitat across the river at Hammond Bush. The southern gully will be planted using native vegetation providing additional high-quality linkages through the landscape and into the gully system to the west. The east-west shelterbelt will be enhanced and protected, thus providing a higher quality commuting corridor for the bats. Impacts of lighting will be minimised through the use of bat-sensitive lights in public spaces and setback of dwellings from sensitive areas of the riparian margin”

bbbb. Dr Parsons further detailed subsequent mitigation proposals in his evidence in reply including setting out responses to submitter evidence and effectiveness of the adaptive management processes proposed by the Applicant. These responses included:

- (i) *that ambient night-time light levels should not exceed 0.5 lux within the buffered corridors provided for bats. Should 0.5 lux be exceeded, adaptive management measures should be implemented.*
- (ii) *the current acoustic data and radio-telemetry data, combined with the proposed tree-felling protocol, mean that the risk of damaging actual maternity roosts has been appropriately assessed and minimised. The provision of artificial roosts further mitigates the loss of potential roost trees.*
- (iii) *published evidence and reports suggest that long-tailed bats are able to tolerate some level of urbanisation, including while roosting, and moving through the landscape using features other than the Waikato River and gully systems.*
- (iv) *Considers that for the purpose of adaptive management that existing data on bat activity within the site and wider landscape demonstrates:*
 - A. the extent and gravity of immediate risk to bats from initial stages of the development is low;
 - B. the proposed development offers likely benefits to the local bat population from long term habitat protection and enhancement;
 - C. the areas of uncertainty around effects of development primarily relate to lighting effects, and are specific and manageable; and
 - D. specified adaptive management measures are available to directly address risks associated with light spill that are the primary source of uncertainty.

cccc. Further baseline surveys within the footprint and key reference sites will be designed and implemented as part of management plans.

6.2 SUBMITTERS

- a. **Mary Elizabeth Cave** (Submitter 11 opposed to application):
 - (i) *Width of Waikato of riverbank margin insufficient.*
 - (ii) *Ensure protection of trees and wildlife.*
 - (iii) *Concerned about stormwater proposed discharge in extreme rainfall events into open spaces and river.*
 - (iv) *Concerned about freshwater access in Hamilton.*
 - (v) *Considers that the city should be allowed to grow but that it should do it in the right way.*
- b. **Peter Harry Bos** (Submitter 12 opposed to application):
 - (i) *Better description of road needs required.*
 - (ii) *Provides a list of proposals for the roading design.*
 - (iii) *Mr Bos discussed during his submission that there was the need for more land for cycle ways and paths.*
- c. **Alan James Saunders and Suzanne Saunders** (Submitters 26 opposed to application)
 - (i) *Supports the Riverlea submission and asks that the applicant work with RESI.*
- d. **Ministry of Education** (Submitter 18 supported the application)
 - (i) *Support but want to be consulted on school needs for the area.*
- e. **Martin Patrick Thrupp** (Submitter 19 opposed the application)
 - (i) *Presentation provided on the Hammond Bush reserve.*
- f. **Warren Stace** (Submitter 25 opposed the application)
 - (i) *Concern about compliance with the Peacocke Structure Plan. Further better consideration would be required for the bats.*
 - (ii) *Suggests reduction in houses in knoll vicinity or reassessment.*
- g. **Carolyn Joan Edwards and Neil Stanley Edwards** (Submitter 26 opposes the application)
 - (i) *Landowners on Weston Lea road.*
 - (ii) *The proposal is not aligned with the Peacocke Structure Plan.*
 - (iii) *What about wider use by neighbours and subsequent development?*
 - (iv) *Concerned about stormwater, water reticulation, wastewater, traffic, roading, amenities and housing.*

- (v) *During their submissions Mr and Mrs Edwards raised concerns about traffic and suggested that the commissioners undertake a site visit at certain high traffic sites at peak times.*
- h. **Lester Fairfax Finch and Susan Joan Thomason** (Submitter 28 opposed the application)
- (i) *The Hammond bush is a resident/HCC public private partnership and is an example to look to.*
 - (ii) *Proposed a wider forested margin will significantly mitigate noise effects.*
- i. **Dianne and Selwyn June** (Submitter 39 opposed the application)
- (i) *Data on road use is out of date.*
 - (ii) *Limit vehicles to specific routes.*
 - (iii) *Opposed to development until infrastructure in place.*
- j. **Tangata Whenua Working Group** (Submitter 41 supported the application)
- (i) *Presenters were legal counsel Mr Gardiner -Hopkins and member Sonny Karena. The TWWG is made up of members from Ngati Haua, Ngati Tamainupo, Ngati Wairere and Ngati Mahanga*
 - (ii) *The TWWG is supportive of application although at the time of their submissions they were still concerned about the wastewater pipe under the river. Subsequently through discussions with the applicant and its advisors the TWWG is now comfortable that the pipe will be utilised for a short period of time and are confident that the applicant's experts can put it in place and manage any risks of spills.*
 - (iii) *While the TWWG have provided written support in submissions they sought through their legal counsel further consultative roles which we were told were agreed and would be included in the final set of conditions.*
 - (iv) *The TWWG wish to ensure that the various ancestral connections of its members to the land are recognised and provided for to the extent possible as part of this development.*
 - (v) *Mr Karena discussed his advocacy for affordable housing and desire and hope that in the future for the opportunity for hapu members to purchase homes and move back to their ancestral land.*
- k. **Graham Burnley McBride** (Submitter 42 supported the application)
- (i) *Principal Scientists for a Crown Research Institute in water related issues.*
 - (ii) *Concerned about risk of impact of wastewater on drinking water if spillage.*
 - (iii) *Seeks a quantitative risk assessment.*

- l. **Anne Margaret Ferrier-Watson** (Submitter 43 opposes the application)
 - (i) *A member of RESI and part of the group of volunteers that maintain Hamond Park. Ms Ferrier- Watson submitted that the Amberfield development had the opportunity to build by design publicly accessible green space and native habitat like Hammond park for the benefit of the future Amberfield community.*

- m. **Johnson Family Trust** (Submitter 45 opposes the application)
 - (i) *Masterplan does not deal with their land which is in neighbourhood 6.*
 - (ii) *No consultation with them.*
 - (iii) *Wants consents relating to neighbourhood 6 declined or masterplan should be amended to provide for their concerns.*

- n. **Alec Forbes** (Submitter 49 opposed the application)
 - (i) *Mr Forbes suggested that we await Council decisions and planning instruments that are coming later in the year.*
 - (ii) *Seeks a concrete plan for the bats and improved planting.*
 - (iii) *Prefers a tree planting plan to include natives in the planting schedule. Suggested that the planting start now to allow for the time to grow.*

- o. **Chandani Karunathillake** (Submitter 50 opposed the application)
 - (i) *Opposed to the 7metre strip and seeking a wider buffer and repetition of the Hammond bush on the applicant's side.*
 - (ii) *Raised during submission concern that the streetlights will affect Hammond Park.*

- p. **Allan Francis Westbrook** (Submitter 51 opposed the application)
 - (i) *Concerns relating to traffic safety as the development is constructed.*
 - (ii) *During his submission Mr Westbrook submitted that the upgrade of Peacocke Road should occur prior to development.*
 - (iii) *He considers that the bridge should be developed prior as well.*
 - (iv) *Mr Westbrook raised concerns about health and safety and issues of liability*

- q. **Selwyn June** (Submitter 55 opposed the application)
 - (i) *Noted that the roads likely to be used for access by contractors and residents are Bader, Norrie, Waterford, Dixon and Peacocks.*
 - (ii) *These are all suburban streets and not suitable for heavy flows or heavy vehicles; they become one way if residents park on street.*
 - (iii) *There are community facilities and shops along Bader Street and children play on Bader Street and Norrie Street.*

- (iv) *Proposal does not meet Objective 4 of the Hamilton City Council's Transport Activity Action Plan "To ensure that economic, social, cultural and environmental factors are all considered when planning or undertaking any works".*
 - (v) *No additional pedestrian crossings proposed and proposed mitigation minor and would do little to improve safety or slow speeds.*
 - (vi) *Vehicle usage figures are out of date; traffic has increased in the past two years.*
 - (vii) *Application should be declined, and resubmitted when roading infrastructure in place and further updated measurements and projections should be provided to allow assessment of effects and proposed mitigation measures.*
- r. **Cycle Action Waikato** (Submitter 58 opposed and supported the application)
- (i) *The group seeks improvements and better connectivity on current cycle way design to reduce the potential for conflict between cycling and cars.*
 - (ii) *They also oppose the roundabout design at Peacockes road/Waterford road.*
 - (iii) *They seek involvement in the final roading design.*
- s. **Department of Conservation** (Submitter 59 opposed the application)
- (i) *Not sufficient information to assess mitigations*
 - (ii) *Concerns about bat management and strategy.*
- t. **Heritage New Zealand** (Submitter 62 supports the application)
- (iii) *Supported subject to proposed heritage reserve and ongoing management.*
 - (iv) *Waikato regional council policy statement table 10.1 considered to be significant.*
- u. **Glenn Robert Sullivan** (Submitter 64 opposed the application)
- (i) *Remove road along the river.*
 - (ii) *Push houses and streets south.*
 - (iii) *Supports the Riverlea Environmental Society submission.*
- v. **Open Spaces, Facilities and Strategic Infrastructure** (Submitter 65 opposed and supported the application)
- (i) *As per submission on 6 May and as discussed in Sports Park section of this decision.*
- w. **Waikato Environment Centre Trust** (Submitter 66 opposes the application)
- (i) *Opposed to the roading and number of houses proposed.*
 - (ii) *Seeks 100m buffer from the Hammond bush and 50m from the other areas*
 - (iii) *The need to provide further protection for the bat. Opposed to offsite mitigation for the bats.*
 - (iv) *Supports the Riverlea submission.*

- (v) *Provided context on the work of Project Eco of which Go Eco is a member, as is the Council and DoC. Discussed the opportunities for tourism and education including the provision of bat tours. The advocate for sustainable development and absolute protection of indigenous biodiversity through the redesign of the Amberfield Project.*
 - (vi) *Hannah Robinson a volunteer for Project Echo discussed the deployment of bat monitors and the need for community involvement and education at Amberfield reflecting the importance of conservation.*
- x. **Samuel Richard Edwards** (Submitter 67 opposed the application)
- (i) *Concerned that the submission process was too short for the level of information in the application.*
 - (ii) *Too little consideration given to the riparian planting.*
- y. **Andrea Elizabeth Graves** (Submitter 68 opposed the application)
- (i) *Ms Graves is the president of RESI and oversees Pest-Free Riverlea. Ms Graves submission discussed the risks to the bat population of development. She also discussed the implications of development for a nationally critical species at risk of extinction. Reflecting that the bats are a vulnerable species, not adaptable or resilient.*
 - (ii) *Ms Graves raised the issue of combining preferred bat habitat with urbanisation which it is agreed that bats avoid and the uncertainty this creates. She raised concerns about the time needed to allow for plant growth.*
 - (iii) *Ms Graves discussed the pest control processes undertaken in Riverlea and at Hammond bush with many traps set at local properties and in the bush. There is no cat restriction at Riverlea although it was acknowledged that they were a significant risk to bats.*
 - (iv) *Ms Graves noted that bat related walks were well supported by visitors and were an opportunity to build both community and tourism.*
- z. **WEL Networks Limited** (Submitter 69 supported the application)
- (i) *WEL seeks a wider berm width and other matters relating to network infrastructure needs. They also seek early engagement.*
- aa. **Riverlea Environment Society Inc** (Submitter 72 opposed the application)
- (i) *Opposed due to location of roading and residential sections almost immediately adjacent to the riverbank. Poorly aligned with the Peacocke Structure Plan.*
 - (ii) *Adverse effects of the proposal on the bats.*
 - (iii) *The lack of green corridor between mangakotuku gully and Waikato river and inappropriate modification of landforms.*

- (iv) *They want a minimum 125m wide reconstructed bush reserve plus extra buffering for edge effect.*

bb. Tania Macdonald (Submitter 76 opposed the application)

- (i) *Seeking a wider buffer to protect bats and the Hammond bush area.*
- (ii) *Ms MacDonald is a descendent of the hapu of the area and Nukuhau Pa. She is concerned about the loss of archaeological sites. She is concerned about the flora and fauna. She seeks mitigation and protections for the bats.*

cc. Justine Young (Submitter 80 opposed the application)

- (i) *Refers to the Vision and strategy document and conflicts.*
- (ii) *Does not comply with the RMA and does not provide sufficient care for the bats.*

dd. Roderick Aldridge (Submitter 81 opposed the application)

- (i) *Concerned re HCC District Plan 20.2.10 re SNAs and 10% threshold for habitat sustainability.*
- (ii) *He is concerned about the risk to bats and considers the need for a 50m corridor*
- (iii) *Seeks alignment with Peacockes Special Housing Area and placement of infrastructure.*
- (iv) *Seeks a single large reserve versus an multi plan.*

6.3 COUNCIL

- a. **Ms Mackintosh** provided legal submissions for the Council (as regulatory authority) to address specific legal issues which had arisen in the hearing, to provide comments on the draft conditions and to respond to our Direction 10.
 - i. In relation to an assessment under Section 104D, she recognises that Ms Cockerell concluded that the proposal fails the first limb of the Gateway Test (as the proposal would have more than minor effects on long-tailed bats and archaeological deposits), but that it passed the second test as it was not contrary to the objectives and policies of the plan.
 - ii. She noted that Counsel for RESI asserted that the proposal was contrary to the District Plan objectives and policies and fails the second gateway test.
 - iii. Ms Mackintosh confirmed that the second test is not whether the proposal is contrary to one or two objectives or policies but whether it is contrary to the objectives and policies considered on a holistic basis. She suggests that the argument put forward by Counsel for RESI does not do this, and also that it is not correct to suggest that all chapter 20 objectives and policies apply to areas that are not mapped and scheduled.

- iv. She suggested that we may need to have resource to Part 2 as there is doubt whether the District Plan (chapter 20 in particular) can be said to have been “competently prepared” and because those provisions are uncertain and incomplete. She suggested *‘Insofar as the adverse effects on long-tailed bats are concerned, the question for the Hearing Panel to determine is whether, subject to the proposed conditions, those effects are acceptable having regard to Part 2 of the RMA.’*
 - v. Regarding the vires of conditions seeking to vest land in HCC for the purposes of a sports park, she suggests that condition requiring the Applicant to vest 7ha of land in HCC arguably satisfies both Section 108AA criteria as the condition is “directly connected” to an adverse effect on the environment that is generated by the development and the requirement for land to be vested in Council is directly connected to a rule in the District Plan that arises from the requirement to give effect to the objectives and policies of the Peacocke Structure Plan. She notes:

‘In the absence of case law to the contrary, the requirement for a condition to be “directly connected” to an adverse effect of the development does not, on its face, require the adverse effect to be expressly quantified (i.e., a specific area of land). Furthermore, in the context of this application, it is appropriate to consider the overarching purpose of the RMA, being the sustainable management of natural and physical resources. It follows that any suggestion that a proposed condition must be restricted to the requirement for a 2.48 to 2.76ha area of land for a sports park is inefficient, contrary to the provisions of the PSP and is not a sustainable use of natural and physical resources.’
 - vi. She confirmed that the sports park condition was not a financial contribution. The proposed condition expressly provides for the Applicant/consent holder to be compensated for the land in question.
 - vii. Regarding Direction 10 and the relationship between s53 of the Wildlife Act 1953 and proposed condition 90 in the supplementary s42A report, she opines that Counsel for DOC makes assertions which confuses the relationship between the RMA resource consent process and the separate authorisation process under the WLA. She considers proposed Condition 90 to be lawful.
- b. **Ms Cockerell** prepared a power-point presentation which provides an overview of the application and main issues, in addition to her s42A report and her supplementary s42A report.
 - c. Her supplementary s42A report was prepared to:
 - i. To address key matters raised by the applicant and submitters through the pre-circulated evidence and raised at the hearing, and where appropriate how these have been addressed through conditions; and

- ii. To complete the statutory assessment in terms of s104D, s104 and Part 2 of the RMA; and
 - iii. To introduce the revised sets of conditions and identify any conditions where there are differences between the applicant and the reporting team and the reasons for those differences; and
 - iv. To give a recommendation as to whether consent ought to be granted.
- d. In relation to the key matters raised by the applicant's evidence and during the hearing:
- i. Landscape/Visual Effects; she does not support the re-location of the river margin road to behind the first row of houses. From an urban design and CPTED perspective it is preferably for the road to adjoin the river margin reserve. Given the distance between the site and the properties on the eastern side of the river and the residential nature of the development she does not consider there will be any unreasonable noise disturbance.
 - ii. Heritage/Cultural Effects; she has recommended changes to various conditions mainly in response to NZHPT and to respond to the TWWG and CIA. She notes that the planted strip alongside the Waikato is not as wide as requested by Ms McDonald but that it will enable indigenous flora and fauna to become re-established and provide recognition and acknowledgement of what was one take from her tupuna.
 - iii. Natural Hazard Risks; in response to Mr Edwards submission (no.67) she is satisfied based on the expert advice of Mr Clarke that the applicant's flood risk assessment has appropriately taken into account the effects of climate change and recommended conditions of consent will ensure the safe conveyance of overland stormwater flows through the site.
 - iv. Transportation Effects; she discussed the various upgrades proposed and that based on the advice of the transportation experts that the safety and efficiency of the roading network can be appropriately managed to an acceptable level by the recommended conditions and taking into account the proposed safety improvements to be implemented by HCC for the Bader Street area and the Waterford Road/Peacocke Road intersection.
 - v. Infrastructure Effects; the wastewater options have altered/evolved through the life of the application and now relies on the Council completing the northern section of the Transfer Pipeline. She recommends amended conditions such that no s224(c) approval can be obtained until connection to this pipeline is provided by the applicant and it is operational. As the Council has funding and is committed to providing this strategic wastewater infrastructure in the short term, she does not consider there is a risk or uncertainty that the subdivision consent cannot be implemented on the basis of this condition. In relation to Mr McBride's submission (no.42) she has been advised by Mr Jonathon Brooke, HCC Project Engineer, that a quantitative microbial risk assessment is not

necessary. Mr Clarke on behalf of HCC has reviewed the applicant's stormwater design and is of the opinion that it has adequately allowed for extreme rainfall events. She does not support WELs recommended condition to enable the entire distribution line to remain above ground.

- vi. Terrestrial Ecology Effects; with the exception of adverse effects on long-tailed bats, I was satisfied that the adverse effects of the proposal on terrestrial ecology can be satisfactorily addressed. She does not accept the proposition from DoC and RESI experts that the entire proposal is unacceptable unless it is re-designed and includes significant additional buffer planting of the riparian margin and corridor linkages across the site (flyways). In practical terms, this would constitute a decline of the proposed development because requiring a re-design of the scale suggested is in my opinion outside the jurisdiction of the Commissioners. She supports the approach set out in Mr Kessels' evidence which would "front load" measures to address short-term residual effects, and that the short-term residual adverse effects on long-tailed bats will be adequately addressed through the imposition of the proposed Amberfield Bat Fund condition (although recognises that the condition can only be imposed if the applicant agrees).
- vii. Provision of Suburban Centre; she holds the view that the illustrative concepts for the suburban centre do not predetermine the outcomes of any future land use consents that will be required for the development of this area and that the size of the super lots (approx. 6.6ha) can more than adequately accommodate the range of activities anticipated in the suburban centre within the Amberfield site. The development of the "super lots" will require land use consents which will require sufficient design detail and consideration of integration with the balance of Neighbourhood 6. She provides conditions which would preclude the two super lots from the land use consent.
- viii. Provision of Sports Park; she remains of the opinion that the indicative location of the Sports Park or whether this is an appropriate use of the land is not a matter for re-examination through the resource consent process. The provision of the sports park is the requirement of a rule. She notes that the proposed conditions expressly refer to the consent holder being compensated for the land to be vested and that the Public Works Act 1981 compensation provisions will apply; the requirement that the land vest in Council does not therefore constitute a financial contribution.
- ix. Urban Design Matters; she notes that the applicant's Urban Design Report recommends more restrictive standards for housing development than provided for in the District Plan to achieve the overall urban design outcomes the applicant is promoting. As the establishment of a single dwelling on the proposed residential lots are a permitted activity subject to compliance with development standards, she does not consider that we have jurisdiction to

imposed more restrictive standards for this form of development. She is still of the opinion that the proposed subdivision layout will provide for a high- quality urban environment.

- x. Gateway Test (s104D RMA); she responds to the assertion of Mr Riddell, planning expert for the Department of Conservation that the objective and policies in Chapter 20 of the District Plan effectively apply to areas beyond the mapped and scheduled SNA identified in the Plan. She confirms that she disagrees with this proposition. The S104D(1)(b) test against the objectives and policies requires consideration of the objectives and policies in the round and remains of the view subject to the imposition of appropriate conditions that the applications are not contrary to the objectives and policies of the District Plan as a whole.
 - xi. She confirmed that subject to the imposition of the recommended conditions, she was I am satisfied that the proposal meet the requirements of s6, 7 and 8 of the RMA and achieves the purpose of the RMA as set out in s5, and that overall she was satisfied that the adverse effects of the development can be appropriately managed and that resource consent may be granted, subject to the suite of conditions attached to her supplementary s42A report.
- e. **Alexandra Simmons.** Ms Simmons considered the proposal as it related to the removal of archaeological sites. She noted that the AEE acknowledged that the earthworks proposed would have an adverse effect on an estimated 85% of the probable archaeological sites and that the effects are more than minor in terms of RMA section 104D.
- f. The mitigations proposed to remedy the adverse effects were:
- Archaeological site investigation based on the conditions and requirements of an archaeological authority issued under the Heritage New Zealand Pouhere Taonga Act 2014;*
- Creation of a historic heritage reserve containing Māori borrow pits and associated sub-surface deposits. Provisions for the reserve include preparation of a managed plan based on the principles of the ICOMOS New Zealand Charter 2010;*
- The development of interpretive records in conjunction with mana whenua that could include interpretation panels, pou or other installations; and*
- Cultural recognition expressed in place, trail and street naming.*
- g. Ms Simmons also noted that Heritage New Zealand Pouhere Taonga issued a ten-year archaeological authority, no. 2019-069, to Weston Lea Limited on 29 August 2018. It was her view that the establishment of a Historic Reserve and governed by a management plan based on ICOMOS principles provides for the long term preserve of

part of the Amberfield sites archaeological features. The location of the reserve in the subdivision and the involvement of mana whenua in its interpretation and recognition will add to the public good and maintain the relationship of Māori with the site and the Waikato River.

- h. Ms Simmons was ultimately of the view that the archaeological assessment process was thorough and provides sufficient information to address RMA Section 6f matters, the RPS Policy 10.3, 10.3.1 and assessment criteria 10A; as well as relevant HCC Operative Plan and Peacocke Structure Plan Objectives, Policies and Rules. The five submissions that contained archaeological issues have been considered and in Ms Simmons opinion are appropriately addressed by the mitigation measures proposed by the applicant and the recommended conditions that will provide positive archaeological heritage effects.
- i. **Gerardus Kessels.** Mr Kessels holds a Bachelor of Science degree majoring in zoology (completed in 1988) and a Master of Resource and Environmental Planning (completed in 1999), both from Massey University.
- j. Mr Kessels is of the view that if a habitat is regularly utilised by a 'Threatened' or 'At Risk' species as an integral component of that species lifecycle, then that habitat is likely to be of section 6(c) significance. This is regardless of the distributions, relative abundance or viability of the individuals or sub-populations found within the said habitat. In saying that Mr Kessels accepts that:

".. the pasturelands within in Amberfield, which are not directly buffering high value areas (such as shelterbelts and the riparian margin of the Waikato River), are of 'low value'. Given the broad nature of the WRPS criteria, some degree of professional judgement needs to be applied when assessing the site under section 6(c) of the RMA for mobile species where it is unlikely to have absolute certainty of the species' use of these areas."

- k. Mr Kessels remains concerned about the applicability of adaptive management with respect to the long-tailed bats. Specifically, he questioned in his evidence the capacity of adaptive management:

".. because of the inability to "adapt" in the context of a large-scale subdivision (for example, once titles have issued and have been sold to purchasers, there is limited ability to respond to effects identified through adaptive management monitoring). Furthermore, I was concerned that any monitoring regime would struggle to quantify any adverse effects associated with the specific subdivision from other factors affecting bats in

the landscape. The Applicant's experts had not presented sufficient evidence that this could be addressed before development commenced. ¹⁹

- I. Mr Kessels view did not change in that regard and ultimately, he agreed to a revised approach to the management of long tailed bats. That revised approach would deal with the short-term adverse effect (which I describe as a temporary residual effect elsewhere) during the time lag between commencement of development and the planting etc., becoming established. The Revised Approach was described as follows in Mr Kessels Supplementary Statement:

*"The short term or "time lag" adverse effects are proposed to be addressed through a monetary contribution as an offset/compensation to be used to fund direct actions that are designed to manage, protect and/or enhance the resilience of the long-tailed bat population across the known extent of the home range of long-tailed bats affected by the Amberfield development ("home range area"), including, without limitation, co-ordinated pest control in high-value habitat including roosting sites and high activity areas identified across the home range area of the Hamilton South population."*²⁰

- m. Further detail of Mr Kessels evidence is provided in the Ecological section below. However, in summary reflecting on the proposal prior and the revised approach Mr Kessels was of the view that:

*"In simple terms, because we are unable to measure the exact extent of the short-term residual effects on bats and balance these against measurable gains resulting from the targeted pest control/habitat enhancement, this package sits between being an intended offset and compensation package. Regardless of whether this is described as 'offset' or 'compensation', my consideration of the context of the development as a whole, is that, from an ecological effects perspective, I am satisfied that the effects are acceptable based on the recommended ecological conditions."*²¹

- n. **Mr Mansergh**²² provided a review and analysis of applicant's assessment of landscape and visual effects. He confirmed that he agrees with the applicant's LVE assessment that the change in landscape and visual amenity is most likely to affect viewing audiences located within the residential areas to the north of the site (Riverlea). From these locations there will be a loss of visual amenity associated with the current rural outlook. From other locations, the landscape and visual effects will be far less pronounced.

¹⁹ Kessels Supplementary Statement at [23]

²⁰ Kessels Supplementary Statement at [33]

²¹ Kessels Supplementary Statement at [41]

²² Statement of Evidence of Dave Mansergh, 8 March 2019

- o. He considers that it is important to note that any change in existing landscape character and visual amenity associated with the existing rural characteristics of the site must be considered within the context that the urbanisation of Peacocke Structure Plan area is indicated in the district plan and has been flagged by the planning provisions since 1989. As such, the maintenance of rural character within this area cannot be relied upon long term.
- p. He agrees that the changes to the proposed subdivision in response to the ecological submissions are beneficial in both landscape (including natural character) and visual effects terms. He concludes that from the perspective of effects on landscape and visual amenity (only), it is considered that the proposal meets the requirements of the District Plan.
- q. **Mr Brzeski**²³ provided geotechnical evidence and confirmed that it is his opinion that geotechnical constraints for the subdivision have been adequately considered through intrusive investigations, monitoring, assessment and analysis. Whilst more information is required at detailed design stage to it is his opinion that, subject to compliance with his recommended conditions, the Amberfield subdivision works can be undertaken without an adverse effect on Natural Hazards and will result in suitable building platforms for residential development with respect to risk from geohazards. In his opinion, the geotechnical report satisfies the requirements of s106 of the RMA in terms of the identification of (geotechnical) natural hazards and the assessment of their effects on the site and the surrounding area.
- r. **Ms Managan**²⁴ provided a memo regarding the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health. She confirmed that it is likely that HAILs have occurred, and the probability of a human health risk is sufficient enough to conclude that further investigation is warranted. She recommends conditions to ensure the necessary investigation, remediation and/or management is done to ensure effects on the human health of future site users and the environment in general is unlikely.
- s. **Mr Gray**²⁵ provided evidence of traffic engineering and traffic planning and confirmed that consider that the location of the development. closer to the town centre and key destinations, will have a relatively beneficial effect compared to more distant development based on the reduced travel distance and the greater potential to achieve mode shift to higher occupancy vehicles and alternative modes. He considers that,

²³ Statement of Evidence of John Brzeski, 29 March 2019

²⁴ Memo NESCS, Carmel Mangan, 4 March 2019

²⁵ Statement of Evidence of Alastair Gray, 29 March 2019

from a traffic perspective, the adverse effects of the development can be managed to an acceptable level, subject to appropriate conditions as set out in the S42A report.

- t. **Mr Clarke**²⁶ confirmed that in his opinion stormwater constraints for the subdivision have been adequately considered through site investigations, modelling, assessment and analysis. Further information is required at detailed design stage to confirm the recommendations made at Resource Consent stage and to demonstrate adherence to the recommended stormwater conditions.
- u. **Mr Hardy**²⁷ provided evidence about the proposed onsite and off-site wastewater network and **Ms Colliar**²⁸ summarised the wastewater infrastructure considerations and context. HCC have been in dialogue with the Adare Company Ltd (the property owners) since 2015 and have entered into a memorandum of understanding with them, with the HCC expectations in this reflecting known capacity constraints, growth demand in the area, a more stringent regulatory environment, HCC obligations to contribute toward achieving Te Ture Whaimana along with increased community scrutiny and expectations. She discussed existing network constraints and confirms that HCC supports the developers' proposal to convey wastewater from the development to the eastern wastewater network in the Wairere Drive / Crosby Road area as to service the Peacocke area via a pumped discharge to the eastern network is consistent with HCC strategic wastewater infrastructure plans. HCC does not support a wastewater discharge from the development to the western wastewater network as an interim or permanent solution due to the capacity constraints and increased risk of network overflows and the resulting implications to HCC.
- v. **Mr Brooke**²⁹ provided a summary of the multiple engineering assessments. He provided comment on staging, transportation, stormwater, wastewater and water supply. He concurred with the view of the other Council specialists and reviewed and contributed to the draft engineering conditions.
- w. **Mr Hattingh**³⁰ provided an urban design review of the proposed development, including reference to the comments of the Council's Urban Design Advisory Panel. He confirmed that the proposal is well-considered and responds in an appropriate manner to the context and setting - in particular, the existing landform and the Waikato River. The Masterplan seeks to create a relatively compact and integrated community that is

²⁶ Statement of Evidence of Caleb Clarke, 29 March 2019

²⁷ Statement of Evidence of Chris Hardy, 27 March 2019

²⁸ Memo, Jackie Colliar, Wastewater Servicing, 29 March 2019

²⁹ Memo, Jonathan Brooke, Engineering, 2 April 2019

³⁰ Memos, Colin Hattingh, Urban Design, 9 October 2018 and 9 March 2019

centred around the River, a future community or neighbourhood centre and a connected roading and movement network.

- x. He noted that the success of developments such as Hobsonville Point and Greenhill Park (to name a few) has been helped by the drafting and application of additional design guidance and peer review and that in his view the implementation and dependence on District Plan Standards alone will only partly achieve the outcomes sought by the applicants urban design report and he recommends that additional design guidance and peer review be considered (especially for the future medium density housing).
- y. **Mr Stirling**³¹ provided a review of the 7 reserves provided by the development along with their various functions, as well as the proposed network of esplanades and cully corridors (overall area nearly 33ha). He concludes that except for sports park provision, the overall open space provision proposed by the application achieves a high-quality outcome for the future community of the area and is anticipated to deliver on most open space components of the structure plan and that conditions of consent which will ensure that the proposed open spaces are developed and managed appropriately. However, he notes that it is critical to the social wellbeing of future Peacockes and wider Hamilton residents that active recreation areas are provided at an adequate level and that the sports park outlined in the structure plan and discussed in the application must be delivered as part of the subdivision.

6.4 APPLICANT'S RIGHT OF REPLY

- a. Mr Makgill provided the applicant's closing legal submissions:
 - (i) Council and applicant's experts have reached agreement on bulk of evidential matters since adjournment of the hearing and subsequent expert conferencing with some disagreement remaining regarding a small number of conditions.
 - (ii) There is still a significant difference of opinion between the Western Lead and Council ecologists and the Director-General and RESI ecologists.
 - (iii) He confirmed that there is agreement with the TWWG for the temporary wastewater pipe under the Waikato River and changes have been made to the proposed conditions to further recognise the commitment to consultation with the TWWG.
 - (iv) The Panel should have regard to the Te Ture Whaimana o Te Awa o Waikato (Vision and Strategy for the Waikato River) when considering the application under section 104 and 104B (but not under section 104D).

³¹ Memo, Sean Stirling, Parks and Recreation Comments, 29 March 2019

- (v) There is no legal requirement for Western Lea to provide a 7ha sports park, and the applicant therefore seeks the deletion of proposed conditions 127 and 128. Mr Muldowney's interpretation of section 108AA is not supported as taking the 7ha goes beyond the effects of the development. The panel should not pre-empt any other process the Council may go through to obtain the land. Mr Makgill has concerns regarding the lawfulness of the relief sought by Council (as submitter) as it would be a financial reserve contribution by any other name.
- (vi) It is not agreed that there should be a condition on the consent requiring a development agreement between Weston Lea and HCC prior to infrastructure work commencing, as requested by HCC (as submitter) but not included in the proposed conditions. Whilst this agreement will be required in due course it is not needed to make the proposal consentable. Other conditions will ensure that infrastructure will be aligned with the Council's strategic offsite infrastructure.
- (vii) No resource consent is sought in relation to the future suburban centre and it is unclear how the application could pre-empt future decisions on the suburban centre. Development of the two proposed super lots will require resource consent and detail will be required to show how this integrates with the balance of Neighbourhood 6. Case Law dictates the extent that the masterplan can be relied upon for future development proposals. Ms Cockerell has suggested words are added to the resource consent to ensure that it is clear the super lots are excluded from the consented land use activities.
- (viii) Whilst the Council still supported the inclusion of condition 172 requiring private easement boundaries for all down slope properties to convey secondary stormwater flows, he indicates that this is not legally necessary and not considered appropriate by Mr O'Callaghan as it may pose a greater risk to downslope properties than the natural passage of water. Condition 172 should therefore be deleted.
- (ix) Regarding Longtail Bats; the issues between Weston Lea/Council and the submitters have not narrowed. Weston Lea confirms that it is comfortable with the recommended conditions of consent in the supplementary s.42A report (including the further amendments circulated by Ms Cockerell on 3 September 2019), subject to an amendment to the conditions relating to the artificial roost boxes. Mr Makgill provided a full summary of where there is agreement and disagreement between the various parties regarding the mitigation of effects on longtail bat. He also advises that Condition 90 (as amended) which makes reference to s53 of the Wildlife Act 1953, is lawful and can be applied.

7 MAIN FINDINGS

- a. The application, submissions and section 42A report and the evidence presented at the hearing identified a range of effects for consideration by us.

7.1 DISTRICT PLAN

- a. The District Plan is the primary planning document provides the policy, objective and rule framework in respect of our consideration of this matter.
- b. The plan was made fully operative in October 2017.

7.2 VISUAL/LANDSCAPE EFFECTS

- a. A number of submitters raised concerns regarding visual/landscape effects, when viewing the site from locations to the east of the River, including the potential impact of car lights on both the amenity of residents and Hammonds Bush.
- b. These matters were addressed by Ms De Lambert in her evidence for the applicant.
- c. Whilst we have sympathy with the submitters, we accept the evidence of Ms De Lambert on this matter. The land has been zoned for some time and it is clear that there will inevitably be a change to the outlook from the Riverlea area.
- d. Given the separation distance across the river, the maintenance of a rural outlook to more elevated land in the backdrop of these views and the width of and well vegetated esplanade reserve on the north-eastern terraces of the site across from Riverlea, we accept that whilst those residents in elevated locations across the river in Riverlea would be those most affected by the proposal, these residents would only experience moderate-low adverse effects.

7.3 HERITAGE AND CULTURAL EFFECTS

- a. Mr Gumbley and Mr Hill presented evidence for the applicant on the archaeological and cultural matters affecting this application. TWWG legal counsel Mr Gardiner Hopkins and representative Mr Karena presented at the hearing in support of the application, subject to amendments to the conditions allowing for further matters agreed with the applicant. While Waikato Tainui initially opposed the application on the basis of concerns about compliance with the Settlement Act and obligations under the Vision and Strategy for the Waikato River and the placement of the wastewater pipe under the riverbed. However, the iwi did not make further presentations to we and subsequently a letter of support from Waikato Tainui was produced by Mr Hill.

- b. We are mindful therefore that while considered a significant issue the applicant has successfully engaged with both iwi and hapu and with Heritage NZ. Both have given their written approval to the application. On that basis we can treat this issue as being resolved.

7.4 PROVISION OF SUBURBAN CENTRE

- a. Mr Skilton appeared as a witness for the Johnson Family Trust who own land immediately adjacent to the application site, in the location of the proposed suburban centre identified on the Peacockes Structure Plan. Mr Skilton confirmed that the Trust opposes the application as part of the trusts land has been shown on the masterplan without consultation with them, as the masterplan would pre-empt decisions on the use of their land, will dictate the pattern of use without considering the whole of neighbourhood 6, does not include sufficient analysis and would not achieve some of the District Plan Objectives and Policies.
- b. A Statement of Evidence was tabled by Mr Philip Brown for Woolworths New Zealand Limited confirming that whilst Woolworths support the application in principle, Mr Brown believes that the whole of Neighbourhood Area 6 should be included in the proposed master plan, or at a minimum it should include the whole of the proposed Suburban Centre to test that the nature and pattern of surrounding development, proposed through the current application, is appropriate.
- c. Mr Mentz³² confirmed that the application does not include a specific design for the neighbourhood centre, but includes two 'super-lots', located on either side of the north-south road, although we note that the conceptual options for the neighbourhood centre shown in the application material (and include in Mr Mentz's presentation to us) extend beyond the two proposed super-lots to include land owned by the Johnson Family Trust. The masterplan does not confirm the location of any future streets through these superblocks, apart from the north-south road which divides them.
- d. With respect to whether the application is able to include 'partial neighbourhoods', we accept the view expressed in the S42A report that 'an application can be made for a "Master Plan" (and the specific activities within the neighbourhoods identified) which does not include the whole neighbourhood.'³³
- e. As the application includes only two super-lots within the area of the proposed neighbourhood centre, rather than any level of greater detail, we are not swayed by Mr Skilton or Mr Brown. Whilst we accept that there would be some merit in coming to

³² Evidence of Kobus Mentz, paragraphs 49 and 50.

³³ S42A Report paragraph 65

comprehensive agreement on the overall layout and form of the proposed neighbourhood centre (and the wider neighbourhood 6 area) including the Johnson Family Trust land, we do not believe that granting the current application would so pre-empt the future use or layout of the neighbourhood centre that such agreement would be precluded at a future date.

7.5 URBAN DESIGN MATTERS

- a. Mr Mentz and Ms De Lambert provided a comprehensive overview of the considerable thought which had been given to the overall design and layout of the proposed subdivision.
- b. Whilst Mr Mentz confirmed that the subdivision is designed to enable compliance with HCCs guidance and rules in the District Plan, he indicated that in several instances more restrictive standards are advised.³⁴
- c. Mr Hattingh indicated that:

While it may not be appropriate or necessary for Council “to be involved in design standards for individual dwellings beyond those that relate to the implementation of the district plan standards” (see S92 response, page 36), the success of developments such as Hobsonville Point and Greenhill Park (to name a few) has been helped by the drafting and application of additional design guidance and peer review.³⁵

In my view, the implementation and dependence on District Plan Standards alone will only partly achieve the outcomes sought and I would recommend that additional design guidance and peer review be considered (especially relevant to the future medium density housing).³⁶

... I would suggest that additional design guidance and peer review be considered (particularly regarding the future medium density housing).³⁷
- d. In respect of this matter, it is our understanding that following the grant of this consent, the majority of dwellings on the land would be a permitted activity under the district plan (subject to compliance with standards and rules). There would therefore not be the ability to apply these additional standards unless they were included as a condition on this development or placed as a covenant on the land by the applicant.
- e. Notwithstanding the clear advice from Mr Mentz and Mr Hattingh, the draft conditions do not include any suggested conditions to cover this matter nor were we alerted to any proposed covenant. We have therefore through an advisory note attached to this

³⁴ Evidence of Kobus Mentz, paragraph 70.

³⁵ Memo of Colin Hattingh, 09 October 2018, Page 10

³⁶ Memo of Colin Hattingh, 09 October 2018, Page 10

³⁷ Memo of Colin Hattingh, 09 October 2018, Page 13

decision, recommended that the applicant establish a review panel to consider the detailed design of dwellings.

7.6 NATURAL HAZARD EFFECTS

- a. The application and supporting documentation had identified the potential natural hazard risks associated with the proposal as land instability, flooding and liquefaction.
- b. In respect of land instability, we note that the proposal is not seeking to modify land within the areas identified in the District Plan as potentially more susceptible to land instability.³⁸ⁱ Relevant plans regarding earthworks have been provided and it is intended any contouring is to be undertaken to reduce the need for retaining walls or extensive cut and fill works.
- (b) We noted that that the slope stability analysis undertaken by the applicant's consultants EnGeo Ltd identified specific areas where development should be avoided and some areas where geotechnical engineering remedial measures will be required to achieve ground conditions that are stable for development. It is further noted that the proposal has sought to avoid areas where the risk of slope instability is high or is unable to be appropriately remediated. Such areas are proposed to be part of the open space areas and any modification of the existing landform avoided.
- c. We noted that the Geotechnical Report and subsequent information provided by the applicant had been peer- reviewed³⁹ and that there had been adequate consideration of slope stability matters and proposed mitigation measures appeared to be appropriate.
- d. In respect of liquefaction hazard we were advised that this had been assessed as "low to moderate". Where areas have been identified as having a 'moderate risk' further investigation and assessment will be required to assess any associated mitigation requirements.
- e. In respect of geotechnical matters, we noted the conclusion reached by Mr Brzeski that in his opinion and subject to compliance with the recommended conditions, that the proposal can be undertaken without an adverse effect in respect of natural hazards.⁴⁰
- f. Potential flood hazard risk had been identified. There is to be no filling within the Waikato River 100- year floodplain, and any effects in respect of a dam break scenario, are considered to be a remote possibility and are considered to be a low likelihood of risk. While Mr Edwards a submitter highlighted concerns that the proposal had not been

³⁸³⁸ S42A report-Pages31,32

³⁹ S42A report- Page 32

⁴⁰ S42A report- Page 33

appropriately designed to take account of climate change and the effects of surface water flows during storm events, , we are satisfied given the expert evidence provided to us that the applicant's flood risk assessment has appropriately taken into account any effects of climate change and that conditions of consent address the movement of overland stormwater flows through the subject site.

- g. We conclude that any natural hazard risks can be appropriately mitigated and that conditions of consent will ensure that any effects are no more than minor.

7.7 HAZARDOUS SUBSTANCES EFFECTS

- a. The National Environmental Standards for Contaminated Soils (NЕСS) regulations requires consideration. Agricultural activities have been undertaken on the subject site for a long period of time and as noted in the s42A report, the land is more likely than not to have been subject to a variety of agricultural or horticultural practices that could have resulted in soil contamination.
- b. We were advised⁴¹ that a Preliminary Site Inspection Investigation (PSI) had been undertaken and reported by a suitably qualified person on behalf of the applicant. The PSI had established that multiple HAILs are known or suspected to have been, or currently are, present in respect of the site. Given the identification of these potentially hazardous activities on-site, further detailed investigation is required to determine if the concentration of contamination in the soil exceeds the applicable human health standard.
- c. The Council's Contaminated Land Officer had recommended a number of conditions to ensure that the necessary investigations (DSI) are undertaken prior to any soil disturbance works commencing on the subject site and that any appropriate remediation / and or management is undertaken to ensure that any effects on human health of future site users and the environment generally is unlikely to occur.
- d. Given the conditions imposed we are satisfied that any effects in respect of the potential health and safety risk arising from any contaminated soils to future occupiers will be negligible.

7.8 ECOLOGICAL EFFECTS: LONGTAILED BATS

The core ecological issue raised during the hearing related to the long- tailed Bat. On this basis we considered and determined the pathway forward for the ecological design of the development as it relates to all flora and fauna, and specifically the long- tailed bat.

⁴¹ S42A report- Page 36

Background

- a. In 2017 the Long-tailed Bat was classified by the Department of Conservation as Threatened – Nationally Critical. Prior to 2017 the Long-tailed Bat was deemed Nationally Vulnerable.
- b. A Nationally Critical species meets the criteria of:
 - (i) Population (irrespective of size of number of subpopulations) with a very high ongoing or predicted decline (>70%)
 - (ii) Predicted decline >70%
- c. The only Threat Classification above Nationally Critical is called Data Deficient. Species in that class are deemed to be possibly extinct.
- d. The Amberfield Development is within the flight path of the Long-tailed Bats in the area. Specific provision was made in the application for the bats which states:

“To manage impacts on long tailed bats specifically:

- *Maintain or establish a vegetated set back from high value habitats and potential commuting corridors (such as the Waikato River) that will maximise the screening of anthropogenic disturbance (such as lighting);*
 - *Retain and enhance the minor gully to provide an alternative commuting corridor that will be protected in perpetuity;*
 - *Avoid lighting where practicable and follow bat sensitive lighting guidelines where lighting is required; and*
 - *Include tall stature native and exotic trees in plantings to provide roost habitat in the long term.*
- e. In total 13.79ha was contemplated for the purpose of planting and buffering.
 - f. A mitigation suite of conditions was originally proposed. However, it was noted in the application that:

It was identified that there are limited opportunities to mitigate the effects on long-tailed bats onsite for the subdivision and urbanisation of the Amberfield site. The context of the site within the wider Peacocke Structure Plan area (and the subsequent urbanisation of this area) severely restricts options for meaningful mitigation. To mitigate for the residual ecological effects an offsite mitigation

strategy is needed. We have recommended a trust be established that will fund conservation activities relevant to the Hamilton south long-tailed bat population (activities to be defined by funding parameters). The purpose of this would be to hold financial contributions from developers in a fund that would be used to mitigate for those effects on long-tailed bats which cannot be managed within the development context in the Peacocke Structure Plan area as a whole. It would seek to ensure a cohesive, long-term approach to long-tailed bat conservation that will have a greater benefit than disparate and project-specific responses across the Peacocke Structure Plan area.

- g. Thereafter conditions were amended over the hearing as evidence was heard and the ecological experts caucused.
- h. Submitters raised a number of concerns. Distilled down they related to two overarching concerns:
 - (i) the design of the development and mitigations as proposed were not sufficiently detailed to determine the efficacy of an adaptive management approach or the likelihood that the approach would protect the long- tailed bats; and
 - (ii) the need for a more robust approach and development design given the threat classification of the Long-tailed bats; and
 - (iii) if the detail was insufficient to undertake an adaptive management approach then the application should be delayed until further information was to hand or declined.
- i. The applicants provided a further set of conditions in response. This mitigation was summarized in Mr. Serjeant's evidence in chief:

In summary, the Amberfield bat mitigation package includes all of the original measures in the AEE (with the exception of the off-site financial contribution) including early riparian enhancement and the southern gully planting, pest control, lighting mitigation, and roost replacement if necessary. To those measures has been added the widening of the northeast terrace and the retention and enhancement of the East-West Shelterbelt, together with a monitoring program and a review clause to address the possibility of unanticipated adverse effects.

- j. The land set aside for the mitigation was increased from the earlier proposal to 18.64ha.
- k. The mitigation was further developed over the hearing with Mr. Serjeant summarized the changes in his evidence in reply. For our purposes they included:

- (i) the Long-Tailed Bat Management and Monitoring Plan would become part of the EMMP reflecting the integrated nature of ecological management required for the site.
 - (ii) establishing the procedures around the preparation of the Long-Tailed Bat Management and Monitoring Plan, including consultation and formal provision for comment by parties.
 - (iii) a new condition relating to the deferral of built development in specific lots so as to allow planting effectively mitigate effects on bat habitat.
 - (iv) bat monitoring and the adaptive management response. Identifying parties to be involved in the monitoring plan and its requirement to integrate into monitoring with the Southern Links programme. Monitoring would be two-yearly to match the Southern Links programme.
- l. Upon the basis that Professor Parsons concluded that there will be no residual effects that required an ecological compensation payment to be made. The payment condition was removed. Rather:
- (i) two lots that were part of the East West Shelterbelt are transferred to, but not vested in Council, for bat habitat purposes. Initially it was proposed that in the event that the bat corridor is no longer used, the land was to be transferred back to the landowner.
 - (ii) a new condition was inserted by the applicant providing a financial guarantee for the costs associated with the performance of the implementation of the Gully and Esplanade Reserve Vegetation Management Plan and the Long-Tailed Bat Management and Monitoring Plan as required under the terms if the consent conditions.
- m. Further clarification was also provided by bat expert Dr Parsons. In his evidence he set out the measures that would be utilized in the adaptive management process and the triggers that would cause those measures to be utilized.
- n. However, following further expert caucusing and subsequent engagement between the applicants and council ecological experts the Applicant's Legal Counsel in their closing submission and Council in revised conditions attached to the s42A report, moved away from an adaptive management regime to a non-adaptive management approach relying instead on an offsite pest control program which would offset short term lag in planting in the mitigation areas at Amberfield ("**Revised Approach**"). That pest control program would be funded through a trust with contributions made by developers including the applicant. The Applicant's Legal Counsel noted with respect to adaptive management under the application:

This approach replaces the adaptive management approach previously proposed by Weston Lea to address the risk of unanticipated or unexpected effects. It is important to note that the adaptive management approach was never relied on by Weston Lea's ecologists to address adverse effects on long-tailed bats. It was proposed as a mechanism to mitigate unanticipated or unexpected effects while planting and new habitat became fully established.

- o. Legal Counsel also provided an overview of the final mitigation proposal offered. This is set out in Schedule 2 attached.

Comment

The Revised Approach

- a. In assessing the Revised Approach adopted by the Applicant and Council, we are mindful that the threat classification of the bats necessitates an approach which is both intuitive and effective. Adaptive management (as opposed to the Revised Approach) maybe, a better mechanism for the long-term iterative management where in situations such as this, uncertainty at the time of granting consent, exists.

- b. However, in determining the detail and scale of adaptive management, we have been guided by both the evidence before it and caselaw. Specifically, we acknowledge that:

*"Adaptive Management is not a "suck it and see", trial and error approach to management, but it is an iterative approach involving explicit testing of the achievement of defined goals. Through feedback to the management process, the management procedures are changed in steps until monitoring shows that the desired outcome is obtained. The monitoring program has to be designed so that there is statistical confidence in the outcome. In adaptive management the goal to be achieved is set, so there is no uncertainty as to the outcome and conditions requiring adaptive management do not lack certainty, but rather they establish a regime which would permit changes, within defined parameters, to the way the outcome is achieved."*⁴²

- c. We also considered the factors identified by the Supreme Court when assessing the appropriateness of an adaptive management regime rather than prohibiting a development until further information becomes available"⁴³. Those factors are:
 - (i) the extent of the environmental risk (including the gravity of the consequences if the risk is realised);

⁴² Newcastle & Hunter Valley Speleological Society Inc v Upper Hunter Shire Council [2010] NSWLEC 48 at [184] referred to in Sounds at Sustain Our Sounds Inc v New Zealand King Salmon Co Ltd at [121]

⁴³ Sustain Our Sounds Inc v New Zealand King Salmon Co Ltd [2014] 1 NZLR 673 at [129]

- (ii) the importance of the activity (which could in some circumstances be an activity it is hoped will protect the environment);
 - (iii) the degree of uncertainty; and
 - (iv) the extent to which an adaptive management approach will sufficiently diminish the risk and the uncertainty.
- d. We consider that if we are to grant the consents, the description of adaptive management and the factors above are all reflective in this case of the need to take a careful approach, allowing for adaptation (given the implications of the loss of long tailed bats to the region and the effect on the population in New Zealand as a whole), should the approach taken, trigger the need. In line with the description in the Newcastle case we consider that a more comprehensive and appropriate framework is required then that proposed by the Applicant prior to, and subsequently the Revised Approach.
- e. With reference to the level and form of prescription required, we further reflected upon the set of indicators provided by the Court⁴⁴:
- (i) there will be good baseline information about the receiving environment;
 - (ii) the conditions provide for effective monitoring of adverse effects using appropriate indicators;
 - (iii) thresholds are set to trigger remedial action before the effects become overly damaging; and
 - (iv) effects that might arise can be remedied before they become irreversible.
- f. During the hearing (and prior to the Revised Approach) the Applicant's evidence and conditions presented were intended to establish the baseline, indicators and triggers to be addressed and in the submitters case to determine their efficacy. In contrast the Revised Approach foresaw offsite (and some onsite) activities in the form of pest control and placement of artificial roosts. These activities would be utilised in the short term while buffer planting developed. Monitoring while undertaken during the construction of the development would not be utilised to identify triggers, rather it would be utilised to ensure compliance with the conditions of consent⁴⁵.
- g. We do not consider that the Revised Approach would be sufficient to mitigate the adverse effects caused by the Amberfield development on long tailed bats. In this instance we are of the view that an iterative approach with careful management over time is a preferred option to the Revised Approach. Nor do we consider that the Applicants proposals were in all parts sufficient. Rather we consider that a measured approach reflective of caselaw and all evidence before us would provide a regime which as much as possible reduced the uncertainty identified to date and allowed for amendment based upon monitoring.

⁴⁴ Sustain Our Sounds Inc v New Zealand King Salmon Co Ltd [2014] at [133]

⁴⁵ Confirmed by Ms Cockerill during questioning

- h. In taking this approach we were also mindful of the requirements of section 108AA. Consent conditions are therefore connected to and reflective of the significance of the adverse effects they are intended to mitigate or avoid.
- i. We provide further detail below.

Management Plans

- a. Management plans have become an integral part of the framework of conditions, particularly in relation to the management of activities requiring further information such as this Application. Mr Serjeant provided for multiple management plans in his Evidence in Chief. Further refinements were provided to those management plans in Mr Serjeants supplementary evidence⁴⁶. This included the Ecological Management and Monitoring Plan with sub plans:
 - (i) Avifauna Management Plan;
 - (ii) Lizard Management Plan;
 - (iii) Gully and Esplanade Reserve Vegetation Management Plan;
 - (iv) Long-Tailed Bat Management and Monitoring Plan.
- b. For the purpose of our decision we are of the view that the EMMP:
 - (i) should have clear objectives including those relating to the long-tailed bat;
 - (ii) provide for a methodology which is clear and reflect the significance of the threat to the long-tailed bat;
 - (iii) provide a level of detail intended to demonstrate how the objectives of the EMMP are to be achieved including those objectives for the benefit of the long-tailed bat; and
 - (iv) Reflect upon and where relevant utilise the experience and conditions set under other comparable projects: The Western Expressway and Southern Links Projects.

Engagement: Establishment of the Management Plan Liaison Group

- a. Submitters presented evidence of the effectiveness of community engagement and the wealth of knowledge that exists based on work to date both at a government level nationally by DoC and locally by RESI and Project ECHO at Hammond Park and in the Hamilton Region. While many submitters preferred the management plans to be before us before a decision was made, many following questioning also alternatively reinforced the value of meaningful community engagement at early stages of plan design and implementation.

⁴⁶ D Serjeant Senior Planner Weston Lea Evidence in chief and Supplementary Evidence

- b. We agree that there is value in understanding the community perspective and in learning from them to develop management plan methodologies and design which can positively impact upon Amberfield. As the submitters identified, there is an opportunity for Amberfield to become an environmentally friendly development focussed on the protection of a significantly threatened species⁴⁷. In Hammond Bush and other sites this narrative has extended to significant community engagement in planting and care and in opportunities for education and tourism through Bat Tours⁴⁸.
- c. However, engagement with the submitter parties and those identified by the Applicant has an additional and important role within the adaptive management framework proposed. A role identified in the BBOP Biodiversity Offset Principles and as articulated in DoC witness Mr Barea's evidence:

*"In areas affected by the project and by the biodiversity offset, the effective participation of stakeholders should be ensured in decision-making about biodiversity offsets, including their evaluation, selection, design, implementation and monitoring."*⁴⁹

- d. On the basis of the evidence before us, we have proposed the establishment of a Management Plan Liaison Group ("**MPLG**") through consent conditions. The MPLG will have a key role in the design of the development management plans and specifically the EMMP and its sub plans. The conditions will also ensure that once the EMMP is in place that at key points during the development that a localised and national perspective is taken both in the interpretation and implications of the monitoring data that is collected for the long- tailed bats. We consider that the MPLG also can have a part to play in the review process to make recommendations to Council with respect to the efficacy of the EMMP and consent conditions and any actions required to protect the long- tailed bats. That role as a liaison group is intended to assist council in its determinative role and is reflective of a similar group established under the Southern Links Project.

Objectives

- e. The conditions of consent must set clear environmental outcomes and objectives⁵⁰. Those objectives must not be too vague so as to be enforceable⁵¹. Reflecting on this, we reviewed the Applicants proposed objectives and the designations and conditions of the Southern Links and Western Expressway projects as they related to the long-tailed bats.

⁴⁷ Graves Hearing Presentation

⁴⁸ Go Eco Hearing Presentation

⁴⁹ Barea evidence at [7.2(f)]

⁵⁰ Auckland Volcanic Cones Society v Transit New Zealand Ltd [2003] NZRMA 54 [EnvC] at [199]

⁵¹ Lower Waitaki Management Society Inc v Canterbury Regional Council at [385]

The Southern Links and Western Expressway projects conditions reinforced an intent to protect and undertake adaptive management (at a time when the long-tailed bats were at a lower threat level). They also reinforced the need for clear objectives including in the case of Southern Links, an overarching objective for the EMMP and sub plans of “no net loss”.

- f. During questions from us the ecological witnesses for Applicant, Council and submitters were asked whether the objectives as proposed were sufficient and whether as with the Southern Links designation conditions, an objective of ‘no net loss’ should be included in the Amberfield EMMP. A number of the witnesses acknowledged that this could be a reasonable objective for the EMMP, particularly given the threat level of the long-tailed bats. Applicant witness Dr Flynn asserted during questioning that as designed the proposal could meet an objective of a “no net loss”.

- g. DoC witness Mr Barea noting in his evidence that as part of biodiversity principles:

“A biodiversity offset should be designed and implemented to achieve in situ, measurable conservation outcomes that can reasonably be expected to result in no net loss and preferably a net gain of biodiversity.”⁵²

- h. We agree and have inserted an overarching objective of “no net loss” into the EMMP objectives consent condition.

Baseline Data and Further Surveys

- i. Consistently submitters raised concerns about the level of baseline data available to determine whether an adaptive management framework would be an appropriate measure⁵³. In contrast the Applicants expert witnesses were confident that the data to date was sufficient, with Dr Parsons stating in his rebuttal evidence that

“As I have previously explained, existing baseline data available is of high quality, and, in my opinion, supports the use of adaptive management as an appropriate means of addressing effects of the proposed development on bats.”⁵⁴

- j. In addition to existing data from surveys on the site and additional data from the Southern Links Project further surveys were contemplated under the Applicants conditions prior to construction. All relating to acoustic measurements. During questioning by us, the Applicant and Submitter experts were asked whether radio surveys would also be helpful

⁵² Barea evidence at [7.2(d)]

⁵³ Stirnemann, Pryde, Clarkson and Barea hearing presentations

⁵⁴ Parsons Rebuttal Evidence at [47]

given the results to date? This proposition was in general supported. With Dr Parsons also stating in his rebuttal evidence that in addition to acoustic surveys:

“The provision of radio-tracking data has further strengthened knowledge of bat ecology and behaviour within the development footprint and wider landscape.”

- k. The suggestion of taking a best practice approach rather than specification of a single form of survey were also supported by the applicant and submitter experts⁵⁵.
- l. We consider that over the life of the Amberfield project (upwards of 20 years) technology will likely develop and that rather than taking a limited approach to information collection utilising only one format that a best practice approach should be taken for all baseline and subsequent monitoring surveys. The intent being to ensure the most robust data collection occurs allowing for a clear, efficient and ongoing understanding of the impact of the Amberfield development upon the long-tailed bats.
- m. In respect to the frequency of surveys the Environment Court in the *Sounds*⁵⁶ case stated:

“.. that it is important for baseline knowledge to be collected on which management plans can build in “an ongoing and cycling process”⁵⁷.

- n. We have considered the options put before us. We have drawn together a clear expectation that surveys will be undertaken in the short to medium term. It would be our expectation that as part of developing the EMMP, its implementation or any review that the timing, need and methods for further surveys would be identified. The MPLG will participate in this process as well. The conditions however provide a starting point.

Proposed mitigations

Planting

- o. The width and breadth of the land area proposed for mitigation has developed from filing of application to completion of hearing. From a smaller proposed area, the land is now aligned with the mitigation area identified under the Peacockes Structure Plan. The land to be planted is now 18.65 ha.
- p. The planting plan proposed for the mitigation area includes:
 - (i) Buffer planting
 - (ii) Meadow

⁵⁵ Questions of Parsons, Cummings, Flynn, Pryde, Stirnemann and Clarkson

⁵⁶ *Sustain our Sounds Inc v The NZ King Salmon Company Ltd* [2014] NZSC 40[17 April 2014] at [115]

⁵⁷ Referred to in *Sounds* case: *Crest Energy Kaipara Ltd v Northland Regional Council* at [226]

- (iii) Gully planting
 - (iv) Corridor links through shelterbelts
- q. Much of the submitter evidence related to the use of natives versus exotics, their importance as roosts and the time lag for tree growth particularly were natives used. RESI witness Dr Stirnemann stated:
- "I also agree with the statement that the effects on long-tailed bats and their habitat begins with clearance, construction and the erection of buildings and the associated infrastructure. I agree that no matter how large or widespread the planting, the effect of habitat loss cannot be fully mitigated until many years have passed. Time is needed to grow a buffer. Unlike the HCC consultant ecologist, I do not believe that offsetting is appropriate. Instead I believe that development should be avoided until an appropriate buffer is in place (as discussed below)."*⁵⁸
- r. Dr Parsons contended in his rebuttal evidence however that:
- "Long-tailed bats are flexible in their use of forest type for roosting, commuting and foraging. There is also a requirement for fast-growing vegetation to provide suitable habitat and buffering in a timely way. The current planting plan takes these factors into account."*
- s. During the hearing and cross examination, the issue of time lag to allow for the buffer growth was discussed with the proposed period in the application of 5 years before construction started in key areas, raised as too short by submitters⁵⁹. Dr Clarkson also for RESI noted:
- "By 20 years a threshold is reached and the early signs of a functioning self regenerating forest become evident. Height growth rates of densely planted stands (one plant per m2) in the early years average a little less than one metre per year, and by year 5 canopy closure plateaus at about 80% (see Figure 3). Data available for stands older than 8 years and up to 15 years shows that canopy closure and height growth varies according to species mix and site conditions."*⁶⁰
- t. The variation of growth based on mix and site was highlighted to us when it attended the site visits. Subsequently, the Applicants experts during questioning by us agreed this timeframe was not sufficient and ultimately revised conditions moving away from a specific timeframe to 80% height canopy and 90% vertical canopy requirements before construction in key areas.

⁵⁸ Stirnemann evidence at [5.7]

⁵⁹ Stirnemann Hearing Presentation

⁶⁰ Clarkson evidence at [6.6]

- u. In respect to the width of the buffer as discussed earlier it was extended beyond the original application and largely now reflects the area proposed and agreed under the Peacocke Structure Plan. In some areas the buffer is over 100m wide.

Roosts

- v. In evidence native trees were referred to as better roosts, however it was contended by submitters that the change of the landscape over time to farmland had led bats to use suboptimal exotics instead⁶¹. The 3 existing trees which were or could act as roosts within the Amberfield site were themselves exotic rather than native. Notwithstanding that the roost trees were not native DoC witness Ms Borkin stated in her evidence that:

*"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."*⁶²

- (c) This was reinforced by DoC witness Moira Pryde who noted that:

*"Three roosts were found on the Amberfield project site (Slide 5) and a maternity roost was found nearby. The north-west shelter belt is likely to have roosts, one significance of the individual trees on the pasture land is unknown as they have not been surveyed. In my experience in South Canterbury, we found several roosts in individual trees in a pastoral landscape."*⁶³

- (d) In contrast the Applicant proposed a felling protocol which was intended to prevent as much as possible the injury or death of any bats when these trees were felled. However, the Applicants experts did not propose protecting the roosting trees either in evidence or during questioning⁶⁴, which the applicant provided evidence may have housed solitary male bats and as defined by Ms Cummings and reiterated by Ms Flynn were; *"unimportant habitat that bats use"*⁶⁵. Rather reliance was placed on artificial roosts as an alternative until planting filled the need left by the felled roosting tree.
- (e) Research relating to artificial roosts and their efficacy were acknowledged to be limited⁶⁶. Artificial roosts however are used in other established bat habitats locally and it was proposed by the applicant witnesses would be appropriate as part of a

⁶¹ Borkin Evidence at [5.7] and Pryde Further Statement of Evidence at [15-16]

⁶² Borkin Evidence at [2.8]

⁶³ Pryde Evidence at [2.11]

⁶⁴ In paneling of Flynn, Cummings and Blayney

⁶⁵ Flynn evidence at [15]

⁶⁶ Cross examination of Cummings

mitigation plan, augmenting planting. With Dr Parsons stating in his evidence:⁶⁷

“In my opinion, the acoustic data and radio-telemetry data, combined with the proposed tree-felling protocol, mean that the risk of damaging actual maternity roosts has been appropriately assessed and minimised. The provision of artificial roosts further mitigates the loss of potential roost trees.”

- (f) Equally DoC witness Ms Pryde stated in her evidence:

“Artificial roosts are a mitigation option and two of the boxes were used as a communal roost in the Hamilton radiotracking project. This shows they are a promising tool in bat management. I still however see artificial roosts as experimental rather than a solution. We do not know if they provide adequate conditions for adult females and juvenile bats to achieve high survival rates to allow the colony to persist.”

- (g) It is proposed that artificial roosts will form part of the offsetting to be provided both on and offsite. Further artificial roosts are proposed onsite as part of monitoring and mitigation.

Access Corridors and planting buffers

- (h) An access corridor has been established utilising existing shelterbelts and the gully system. This corridor will connect with Hammond Park and the Waikato river. Those shelterbelts have been considered in evidence and during the hearing process. Additional protection has been provided for a northern shelterbelt referenced in submitter evidence and lots have been set aside to provide further protection for the east west shelterbelt. The reasoning for the protection was provided by Dr Parsons in his evidence⁶⁸:

“Data presented by the applicant clearly shows the Amberfield site being used as an important movement corridor (between the river and likely the Mangakotukutuku Gully.”

- (i) Council expert Mr Kessels reinforced the importance of the corridors when he stated:

“.. that the design and/or conditions imposed needed to ensure that the adverse effects on bats within high value areas are avoided as far as possible, particularly for flyways so that connectivity with other known high value bat habitats in the

⁶⁷ Parsons Evidence in reply at [34]

⁶⁸ Parsons Evidence in reply at [43]

home range of this population are maintained. I was also aware that there would be a loss of both high and low value bat habitat, and this needs to be avoided as much as possible.

Notwithstanding these points, I consider that total avoidance of these high value habitat areas for bat areas is not required as long as connectivity is maintained, and that habitat lost is replaced or mitigated in some form in the long term.”⁶⁹

- (j) Finally, RESI witness Dr Stirnemann stated with respect to connectivity and the importance of buffering as part of that connection:

“Ecological buffers are protected zones established around sensitive or critical areas and may be used to reduce or minimize the risks of land use disturbance, proximity of infrastructure and other anthropogenic effects. The following areas have been highlighted as critical areas for the long- tailed bat in Hamilton: the margins of the Waikato River (particularly around the Narrows, Hammond Park, Stanford Park, Hamilton Gardens, the Mangakotukutuku gully complex, the Mangaharakeke gully system). Hammond Park is particularly important. The loss of connectivity and/or buffering to these sites is likely to result in the loss of the bat population. To avoid adverse anthropogenic effects a buffer must be wide, thick and high so that key behaviours are not disrupted.”⁷⁰

Hammond Park

- (k) Submitters provided evidence on Hammond Park and its importance to any linked corridor for the bats. Emphasis was placed on not only access but upon protection of Hammond Park from the effects of development on the Amberfield site largely relating to lighting.⁷¹ In their evidence Pearson and Graves also noted the potential of any development on Amberfield to further improve the habitat for the long-tailed bats, stating:

While the ecological health of Hammond bush has greatly improved, especially in the last 20 years due to expansion into adjacent areas as well as weed and pest control, it is too small to be truly sustainable without continuous active management. Hence the addition of a reconstituted Waikato lowland forest across the river at Amberfield would be of immense ecological value as well as protecting an important habitat for the long-tailed bat.”⁷²

⁶⁹ Kessels Supplementary Statement at [27-28]

⁷⁰ Stirnemann Evidence at [8.1]

⁷¹ Graves Submission Hearing Presentation and RESI Pearson and Graves, Clarkson Evidence and Hearing Presentation

⁷² RESI Pearson and Graves Evidence and Hearing Presentation at page 4

Meadows

- (l) While submitters argued that the meadow design would not be effective it was noted by us that such areas were in place in other bat roosting habitats locally including Hammond Park.
- (m) Making a general observation of the habitat plans as a whole Ms Flynn noted in her evidence that:

In my opinion, the proposed development and associated habitat management achieves the protection of significant ecological features envisaged in RPS Policy 11.2, in that it ensures “the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced”, as bat populations and habitats (along with indigenous vegetation remnants) are retained on the site.

Panel View

- (n) We are of the view that a mix of exotics and natives would be effective. We agree that a canopy approach would be a more appropriate assessment mechanism than a less flexible timeframe. The land now set aside for the mitigation is not only largely aligned with the Peacocke Structure Plan it is a significant increase in bat habitat. This is as opposed to the current agricultural pasture which as was noted in the Applicants Opening Submissions, affords no such protection for the current long tailed bat habitat⁷³. The meadow forms part of the Applicants design. As a total and reflecting on the existing landscape we consider that the design meets the stated and proposed objective under the EMMP of improving the bat habitat on the Amberfield site. Habitat that will be provided protection through consent conditions.
- (o) In respect to Hammond Park we recognise the importance of this site both to the bats, other fauna and the wider community. RESI will be represented on the MPLG and will therefore have a role in the development of management plans, their implementation and review. Further, we have included a specific condition to monitor the impact of the activities on Amberfield on Hammond Park thereby ensuring that where there are adverse effects they can be identified, and triggers dealt with as part of adaptive management.
- (p) Two other key areas of consideration and evidence during the hearing related to lighting and pest control.

Lighting

⁷³ Applicant Opening Legal Submissions at [105]

- (q) Lighting and specifically the lighting caused by urbanisation was a significant issue during the hearing. We heard evidence of the negative impact uncontrolled external and internal lighting could have upon the long-tailed bats. We also received evidence from the Applicants lighting expert and in response to questions from us. In his statement Mr Kessner commented that the applicant proposed:
- (i) A bat sensitive street lighting regime will be prepared and submitted to Hamilton City Council for certification prior to implementation of the consent. The proposed lighting design calculations for the perimeter roads around the development show that potential light spill will be very well controlled.¹ In particular, light spill reduces to zero lux at 12.2 meters from the light source (this does not rely on any further screening from buffer planting).
 - (ii) There will be restrictions on the residential lots directly adjacent to the river corridor and the East-West shelterbelt to ensure that any security / spotlights and access wall lights need to conform to best practice specifications for zero upward light spill⁷⁴.
- (r) It was noted in their combined response to our questions that neither Mr Kessner nor Ms Cummings were aware of another development providing specific lighting design for the protection of long tailed bats. The closest was the Southern Links Project which had identified lighting as a component of its monitoring program. Ms Cummings noted that while in its early stages the Southern Links Project had produced valuable lighting data, however Southern Links did not extend to define trigger levels for light spill or to adjust light conditions in response to monitoring outcomes.
- (s) Mr Kessels for the Council during questioning suggested that if we were of a mind to implement a form of adaptive management that one option for a trigger response would be the reconsideration of lighting conditions.
- (t) Equally Dr Parsons observed in his evidence in reply:

“It is my opinion that ambient night-time light levels should not exceed 0.5 lux within the buffered corridors provided for bats. Should 0.5 lux be exceeded adaptive management measures should be implemented.”⁷⁵

- (u) Ultimately both Mr Kessner and Ms Cummings considered that the applicants proposed response to lighting both in the urban setting and through planting was sufficient. In saying that Mr Kessner made the following observation:

⁷⁴ Kessner and Cummings Statement at [7]

⁷⁵ Parsons Evidence in Reply at [13]

“..I do not consider that I am qualified to assess whether the lighting conditions will ensure a threshold of no net loss or improved habitat of the bats is achieved. However, in my opinion, the lighting controls already proposed by Weston Lea will effectively minimise light spill on key bat habitats. I do not recommend any further light controls to be imposed beyond those conditions that are already proposed.”⁷⁶

- (v) Considered as a whole we are of the view that an adaptive management approach to lighting is required with a clear suite of lighting conditions, establishment, monitoring and amendment if required in response to negative triggers. As the Applicants lighting expert, we acknowledge Mr Kessners position that there is a lack of experience in New Zealand to suggest that the approach being taken by the Applicant will meet the intended objective of no net loss or improved bat habitat. It is acknowledged however by Ms Cummings and in research that urbanisation (and the light associated) has a negative effect on bats and Dr Parsons accepts that negative effects should require adaptive management. Careful consideration must therefore be given to the need for incremental change should either the Southern links data and or the Amberfield surveys bear this out.

Pest Control

- (w) We heard significant submitter evidence with respect to the effect of pests upon the native fauna and specifically the long-tailed bat populations and the need therefore for effective pest control. Submitters spoke to not only the impact of common wild predators but also of the domestic cat⁷⁷. Submitter evidence provided greater detail of local experiences with pest control methods and community engagement. Local participation in partnership with council and DoC were seen to have had great effect⁷⁸.
- (x) The importance of pest control was reiterated by Council witness Mr Kessels who stated that *“..recent research shows that pest control can result in significant increases in bat populations where that control takes place (O’Donnell et al 2017).”⁷⁹*
- (y) However, a common theme from the Applicant and Council witnesses was that pest control was not a matter limited by boundaries and that a wider approach was needed. Ms Flynn set out this theme in her evidence:

In my opinion, effective implementation of predator control will require a collective, co-ordinated and large-scale effort between multiple stakeholders.⁸⁰

⁷⁶Kessner and Cummings Statement at [33]

⁷⁷ Andrea Graves Submission 68 Hearing Presentation at page 3

⁷⁸ Waikato Centre Environment Trust Submission 66 Hearing Presentation

⁷⁹ Kessels Supplementary Statement at [62]

⁸⁰ Flynn at [33]

- (z) Mr Kessels on behalf of the Council reinforced this view and the need therefore for the proposed offsite compensation which would be used for offsite and some onsite pest control. Perhaps reflective of the views of Ms Flynn and Mr Kessels that emphasis should be placed on a region wide approach, the Applicant's conditions while providing for pest control, it was not emphasised as significantly as other mitigations. In contrast the Southern Links Project had a strongly worded and long-term pest control condition included in its designation conditions.
- (aa) We take the view that pest control must be a core component of any mitigation intended to meet the objectives of no net loss and for the improvement of bat habitat at Amberfield specifically and more widely within the Peacocke area. While the proposed offset compensation will support wider community approaches to pest control, we consider this should be in parallel with focussed attention on pest control on the Amberfield site as well. Given this, we have reflected upon the Southern Links approach and pest control condition. As has been a consistent theme with our final view on the appropriate balance within the conditions for Amberfield we consider that the Southern Links condition strikes that balance of both focus on pest control on the Amberfield site over the long term and upon monitoring of those activities and of their efficacy.
- (bb) Further conditions have been added to exclude domestic cats and mustelids (stoats, ferrets and rats for example) from lots on the Amberfield Development. While Mr Kessels saw little value in such an approach⁸¹ given the property is not core habitat and the lack of wider strategy or support for such an approach, submitters acknowledged and presented evidence that cats were a significant if not the most significant pest for native fauna including long-tailed bats⁸². We took the view that while it was true that other established developments had not implemented a cat or mustelid ban, this did not in itself warrant not doing so in the case of Amberfield. Further as other developments come on- line, all protected habitat whether core or otherwise will be important, evidence suggests excluding cats, ferrets, stoats and rats helps. We agree.
- (cc) In respect of dogs a condition has been inserted requiring that they are properly controlled either fenced, or on a lead while outside of a property and securely housed at night.

Monitoring and Reporting

- (dd) The level of monitoring to be undertaken changed both in level and in intent between the filing of the application, hearing and ultimately the Revised Approach. Prior to the production of the Revised Approach submitters had commented on the adequacy

⁸¹ Kessels Supplementary Statement of Evidence at 64]

⁸² G Eco Submission Hearing presentation

of monitoring as proposed. Dr Stirnemann stated:

“The monitoring conditions for bats outlined in conditions 92 and 93 are not in sufficient detail given the high potential likelihood of an adverse effect. The monitoring conditions also cover an extremely short period of time given that the effects of the proposed development will continue to occur for at least 30 years. The additional funding for offsetting or within a bond should not cover this cost as suggested in condition 97a.

A high level of certainty should be given as to the effectiveness of the conditions for maintaining the bats flyways and for the effectiveness of the buffer; if not, additional conditions should “kick in” as part of the consent.”⁸³

- (ee) Under an adaptive management process monitoring is essential as is the reporting of results and effects as they arise. Caselaw is also clear that acceptable levels of performance standards (for example for monitoring parameters) must be specified in conditions of consent⁸⁴. Where the nature of the activity makes it difficult to formulate precise well-defined standards, clear, practicable, effective and enforceable standards should be specified in conditions of consent to protect the environment from adverse effects⁸⁵. Given this we have reflected again on all evidence presented to us including the other examples provided from the Western Expressway and Southern Links Projects. The final conditions reflect a higher threshold of monitoring and standards than those proposed in the Applicants application and in the Revised Approach.
- (ff) Reporting will be required at clear stages of the development and that reporting will include advice to the MPLG. It is anticipated that the reporting will be intended to ensure that any issues raised will be escalated as soon as possible with a view to limiting harm to the long-tailed bats and giving the chance for the earliest intervention to provide further or amended responses and to meet the objective of no net loss.

Triggers, Review and Response

- (gg) The Courts have found that adaptive management must identify triggers and mechanisms for their identification. In his evidence Dr Parsons set out a set of proposed triggers for the long-tailed bats. We have accepted these triggers in their final conditions.

⁸³ Stirnemann at [6.2-6.3]

⁸⁴ Lower Waitaki River Management Society Inc v Canterbury Regional Council EnvC Christchurch C80/2009 21 September 2009 at [463]

⁸⁵ Royal Forest and Bird Protection Society Inc v Gisborne District Council [2013] NZRMA 336 (EnvCt) at [337] and [87]

- (hh) Following the trigger there is the need to identify a mechanism for review and if required adaptation of management plans and activities to allow for real time responses should the monitoring identify the need. Following review of the Applicants initial conditions Council proposed a review mechanism which was in line with the Southern Links designation and allowed for immediate and wide- ranging review at any time. This condition was opposed by the Applicant and deleted in the conditions presented by Mr Serjeant.
- (ii) We do not agree with Mr Serjeant on this point. A well drafted review condition can be beneficial to all stakeholders including the applicant. It should enable adjustment and adaptation over time. The alternatives could be less desirable for the applicant including the cost and trouble of a full and further application.
- (jj) We have reinserted the Councils condition and added mechanisms for review which allow for action should monitoring trigger the need. The MPLG can recommend and will participate in a review and where there is conflict between the parties the Council can initiate an independent review to assist with their decision making.
- (kk) Dr Parsons set out in his evidence a range of possible responses to triggers. As did Dr Kessels for the Council in response to our questioning. Neither however contemplated the reduction of land lots as a final response. Rather as a first step deferment was contemplated as an adequate measure with Dr Parsons stating in his rebuttal evidence that:

“The indicative construction timeframe (Annexure “B”) provides an interval to monitor and review our impact assessment and adapt mitigation measures as necessary, prior to impact on key bat habitat.”⁸⁶

- (ll) We consider that an essential response for a trigger which drastically and significantly effects the survival of long tailed bats in the Peacocke area caused in whole or part by the Amberfield project must have an equally strong response. Compelling caselaw on this point reinforced our decision in this matter. The Court in *Sounds* (referring to an Australian judgement⁸⁷) stated:

.. the type and level of precautionary measures required depends on the combined effect of the degree of seriousness and irreversibility of the environmental threat and the degree of uncertainty. The more significant and the more uncertain the threat, the greater degree of precaution required.

⁸⁸The Judge also said that prudence would suggest that some margin for error should be retained. One means of ensuring this is through an adaptive

⁸⁶ Parsons Rebuttal Evidence at [12]

⁸⁷ Telstra Corporation Ltd v Hornsby Shire Council [2006] NSWLEC 133, (2006) 146 LGERA 10 at [161]

⁸⁸ Sustain Our Sounds Inc v New Zealand King Salmon Co Ltd [2014] at [117 -118]

management approach, whereby the development is expanded as the extent of uncertainty is reduced." (emphasis added)

(mm) Ultimately the Court in the Sounds case stated that in that instance:

"It is recognised that the precautionary principle may require prohibition of activities. This may be the case, for example where urgent measures are needed to avert imminent potential threats, where the potential damage is likely to be irreversible and where the particularly vulnerable species or ecosystems are concerned."⁸⁹

(nn) We consider that the facts before us are clearly in line with the decisions and comments made by the Courts referred to above. It is essential that as a final line of precaution that the option to further defer lots or if need bar lots from being used is available as an instrument should the circumstances and need require.

(oo) In saying that, such decisions, and changes to Management Plans must only be made for the purpose of enhancing environmental performance, not to reduce it.⁹⁰ As with other responses proposed by Dr Parsons or discussed with Dr Kessels they must be based on clear necessity, backed up by monitoring data and information and also on the basis that uncertainty and risk will be reduced to the bats.

Certainty of Funding

(pp) Counsel for RESI referred to the Mountfield Limited v Queenstown Lakes District Council decision at 262:

We have no evidence to reassure us that the claimed stewardship benefits of the proposal would eventuate, particularly given the lack of detail in what the BMP would require and how that would be funded and maintained in perpetuity. We were left with considerable unease about what had been factored into the proposal, including future land management, and implications for the funding model and the ownership and management structure proposed.

(qq) Equally, the Revised Approach left us with a corresponding uncertainty of implications: the impact of future land management decisions, the effectiveness and quantity of the funding model and ownership structures proposed and the implications for the long-tailed bats. The funding issue must in our view be dealt with and certainty provided. Given this we have retained the financial guarantee offered by the Applicant as part of amended conditions.

⁸⁹ Sustain Our Sounds Inc v New Zealand King Salmon Co Ltd [2014] at [111]

⁹⁰ Lower Waitaki River Management Society Inc v Canterbury Regional Council at [463]

Offsetting

- (rr) A core component of the Revised Approach is an offset mitigation package.
- (ss) Mr Kessels for the Council stated in his Supplementary Statement that “the most appropriate response is to avoid significant adverse effects in the first instance and deal with any remaining residual effects or risk of effects as part of an offset mitigation or compensation package.”⁹¹ He subsequently stated:

“Avoidance presents the least risk to losing biodiversity or conservation values; anything other than avoidance increases the risk that, despite robust remedy, mitigation or offset, unavoided adverse effects run the risk of becoming permanent habitat losses within the landscape.”

- (tt) Conversely DoC witness Mr Barea stated with reference again to the BBOP Biodiversity Offsetting Principles that there were:

*“Limits to what can be offset: There are situations where residual impacts cannot be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected.”*⁹²

- (uu) RESI witness Dr Stirnemann also disagreed with a 10- year offsetting. Stating:

*“I also disagree with the HCC ecologist in regards to the compensation period of 10 years suggested as appropriate for such a high magnitude of effect. Even should an appropriate buffer be in place, it will take at least 20-25+ years to reduce the effects of the proposed development and for native habitat to be fully functional. Any offset period should at the very least cover this period.”*⁹³

- (vv) The Applicant accepted that the construction of the housing development would give rise to environmental effects, particularly in relation to the long-tailed bat and that these effects may not all be mitigated directly through conditions, rather there is the possibility that offsetting will be required. This reflected that the footprint of the housing development may irreversibly change the landscape and the impact upon long tailed bats. This can only be avoided remedied or mitigated on a limited basis and specifically less so in the short term. Consequently, the applicant and Council proposed to address these effects by offsite offset funding for pest control in the short term while mitigations are put in place on site.

⁹¹ Kessels Supplementary Statement at [26]

⁹² Barea evidence at [7.2(b)]

⁹³ Stirnemann Evidence at [5.3]

(ww) The courts have found a clear distinction between offsetting and mitigation stating⁹⁴:

“The usual meaning of “mitigate” is to alleviate, or to abate, or to moderate the severity of something. Offsets do not do that. Rather they offer a positive new effect, one which did not exist before.”

(xx) The Court in that case considered that offsets should be thought of as a positive environment to be taken into account pursuant to s 104(1)(a) and (c) and s 5(2).⁹⁵

(yy) We agree that offsetting will be helpful and will assist in the short term. We agree that a wider approach to the management and care of bats would be of considerable assistance and have accepted the condition as provided by Council and the quantum and timing of funds proposed by Council and agreed to be paid by the Applicant. However, we do not agree that a 10 years is a sufficient timeline. Rather we have determined that the timeline should align with the monitoring conditions of [15] years.

(zz) Further, we do not agree with Mr Kessel’s that adaptive management is not merited under the current circumstances (and in this consent)⁹⁶. Rather we consider an approach which has both offsetting (in the short to medium term) and adaptive measures on site (for the short, medium and long term) is a more appropriate response to the protection of this vulnerable species, on the cusp of extinction. In the case of pest control and Dr Stirnemann’s comment in her evidence, as stated above we prefer both an onsite and longer- term approach, in addition to the offsetting pest control, offsite.

The Preferred Approach

(aaa) The Revised Approach does not provide sufficient certainty or in our minds reflect the necessary caution required to ensure that should the Amberfield Development adversely affect the existence of a significantly threatened species that the triggers will be quickly identified and that mechanisms will be in place to ensure action. Nor in our view does the suggestion that the lack of a final mechanism – the winding back of houses already built validate the removal of the entire adaptive management framework proposed prior to the Revised Approach. If we consider the development and options available holistically, we consider that there is a pathway forward. This is essential should the development proceed while ensuring that the long- tailed bats continue to utilise the area.

⁹⁴ Royal Forest & Bird Protection Society of New Zealand Inc v Buller District Council & Ors at [49]

⁹⁵ Ibid at [72]

⁹⁶ See comment Kessels Supplementary Statement at [23]

- (bbb) Therefore, we propose a holistic approach be taken to the management of long tailed bats on Amberfield and that where possible this approach align with the activities underway or foreshadowed by the evidence before them. On that basis they propose:
- (i) Consent could be granted, but on the revised set of conditions annexed to this decision. The changes principally reflect the adoption of an adaptive management regime for long tailed bats and are modelled on the conditions for such regimes adopted for the Western Expressway and Southern Links consents;
 - (ii) The conditions require a suite of management plans to be drafted providing for engagement and consultation with a liaison group made up of key stakeholders. As with a similar liaison group under the Southern Links Designation Conditions this group would be engaged early in the development of these plans and would have an active voice in their design, monitoring and review;
 - (iii) The plans will be reflective of both the localised conditions of the Amberfield site and of the wider requirements and practices under the Western Expressway and Southern Links conditions. This includes:
 - A. specific obligations for pest control onsite,
 - B. development of robust baseline data during the commencement stages of the development,
 - C. for long term monitoring and reporting requirements over 15 years with the option for extension further through the review process; and
 - D. escalation mechanisms where triggers are identified through reporting; and
 - E. real time options for remedy where those triggers are identified including revised planting, lighting restrictions and if necessary further deferment or cancellation of deferred lots.
- (ccc) All of the onsite conditions and the obligations therein will be backed up by the proffered guarantee provided by Adare Company Limited.
- (ddd) In addition, we agree that wider engagement and action is required for the protection of the long-tailed bats beyond the boundaries of Amberfield. On this basis we have retained the requirement of a payment by way of offset compensation to be applied to a trust to undertake pest control and other activities.

7.9 CONSTRUCTION & CONSTRUCTION TRAFFIC EFFECTS

- a. Submitters have raised concerns regarding effects during construction, including traffic safety and efficiency effects on the surrounding road network during construction and amenity effects. Waipa District Council (submission 63) have specifically noted that their support is conditional on ensuring that the road safety of SH3 maintained during and post construction.

b. These concerns were noted in the s42A report, which also notes that construction will extend over a number of years.

c. Whilst the applicants ITA does not consider the effects of construction Mr Gray recognises that:

*'construction traffic effects will be a sensitive issue for the community. There will be construction traffic for the subdivision as well as for the Peacocke infrastructure programme implementation.'*⁹⁷

d. In light of these concerns the suggested conditions that includes the requirement for the preparation of both a Construction Management Plan (to manage off site effects such noise, dust and silt laden runoff) and a Construction Traffic Management Plan (to manage construction traffic effects).⁹⁸ It is noted that the traffic related construction management conditions were agreed during transport expert caucusing.

e. A specific condition is also imposed that restricts HCVs entering or leaving the subject site on Sundays and public holidays and on other days, HCVs may not enter the subject site prior to 7am or leave after 7pm.

f. The imposition of a condition related to construction noise is also considered appropriate based, based on the standard (NZS 6803:1999 'Acoustics- Construction Noise') in the District Plan.

g. The District Plan also contains accidental discovery protocols agreed with local iwi in respect of discovery of any archaeological feature, artefacts or human remains and these protocols are contained in conditions.

h. We are satisfied with the proposed wording of the CMP and CTMP conditions and believe that with these in place construction effects can be suitably managed.

7.10 TRANSPORTATION EFFECTS

a. A range of potential transportation related effects if the proposal was consented that had been identified which include operational traffic effects; construction traffic; internal road design matters; and Bader Street community impacts. Prior to the hearing caucusing was undertaken by traffic expert witnesses and the signed Joint Witness Statement identifies three traffic related matters these being the outputs of the various traffic modelling, the impacts of traffic at the Bader Street/Normandy Ave/Lorne Street

⁹⁷ Evidence of Alastair Gray, Paragraph 36

⁹⁸ S42A Report Paragraph 152.

intersections, and the requirement for monitoring and mitigation of traffic impacts to an acceptable level.

- b. Several submitters highlighted concerns that the proposal would result in traffic safety effects during the construction phase; that the bridge be constructed before development of the subject site proceeds; concerns about the roundabout design at the Peacockes/Waterford Road intersection; and increase in traffic along Bader Street particularly prior to construction of the bridge.

Operational Traffic

- c. These matters were addressed in the evidence of Mr Gray. He noted that the traffic modelling presented in the application and the concerns raised in submissions in respect of Bader Street, suggested wide ranging conditions from good levels of service to very long delays. He outlined that the Council actively manages the combined intersections to ensure Bader Street is not unduly disadvantaged.
- d. We noted Mr Gray's opinion that traffic modelling in a congested urban environment that includes signals is potentially unreliable, since network priorities can be altered by the road controlling authority. He considered that the models used by the technical experts show the range of potential conditions available and this is outlined by Ms Cockerill in her report¹.
- e. Expert evidence before us from Mr Gray outlined that modelling undertaken by NZTA suggested that the Bader Street/Normandy Ave intersection was operating close to capacity, but with some reserve capacity before efficiency effects become unacceptable.
- f. He agreed based on his own observations and modelling and taking into account network changes likely to affect Bader Street, and noting that there will be a gradual increase in peak traffic as the dwellings in the development are occupied (estimated to be 100-125 dwellings/year starting 2021), that there was reserve capacity at the intersections compared to minimum desirable levels of service and significant relief will be provided when the southern links bridge over the Waikato River is operational around 2023/24. He further noted that there will be adverse traffic effects primarily in respect of the efficiency of Bader Street, but that the management of traffic signals would be able to deal with such effects to some extent by spreading delays over the wider network.
- g. We also note that not all traffic from the proposal when completed, can be accommodated without significant network infrastructure improvements such as the Southern Links arterial link to the bridge over the Waikato River.

- h. Given this situation the transportation expert caucusing that was undertaken resulted in agreement being reached on a framework of conditions to control and manage traffic for the Bader/Normandy/Lorne intersections before it becomes unacceptable. In summary and as outlined in the s42A report, the agreed conditions recommended that no more than 350 lots be developed (s224 certificate issued) unless the required monitoring demonstrates that the specified acceptable level of service criteria is not exceeded, or a solution is implemented to address the acceptable level of service criteria that have been exceeded.
- i. Furthermore, a cap of no more than 500 lots is recommended prior to a solution being implemented and operational to mitigate the adverse effects of development to the satisfaction of the relevant road controlling authorities (NZTA and HCC) on the SH3 Normandy Avenue/Bader Street/Lorne Street intersections.
- j. As noted in the s42A report “the conditions are intended to first establish baseline data for the relevant network, followed by monitoring when the trigger point of 350 lots is reached to determine whether the levels of service are being met (or a solution is implemented to ensure the level of service will be met). If the outcome of the monitoring demonstrates that the level of service can be met, the next “tranche” of lots can be progressed. This monitoring and assessment process will then be repeated annually thereafter for the next proposed trigger point of 500 lots.”
- k. We further note that Mr Gray’s primary considerations that lead to him agreeing with the traffic related suite of conditions agreed through caucusing include;
 - (i) *“Acceptance that, subject to appropriate temporary traffic management, traffic conditions on the routes affected (with a focus on Bader Street) will remain acceptable. These works are designed and should be complete this year. Other works such as at the*
 - (ii) *Peacocke/Waterford intersection are likely to be next year.*
 - (iii) *Construction traffic is most likely to be in the opposite direction to peak demand.*
 - (iv) *The Waikato Expressway will provide some improvement in conditions when it is operational (late 2020/early 2021).*
 - (v) *The proposed Waikato River Bridge should be operational in 2023.*
 - (vi) *Based on the Weston Lea programme (refer attachment A Gannt chart), and a likely 100125 dwellings/year, traffic effects from dwellings would commence around mid-2021, so would be around 225 dwellings occupied by 2023 and 350 dwellings by 2024.*
 - (vii) *As Figure 4 shows, the traffic generation will increase cumulatively as houses are occupied that provides time for monitoring and intervention, should unexpected effects occur.”*

- l. Further evidence from Mr Gray was that it is likely that development will not exceed the 350-dwelling threshold for monitoring and control before the bridge is operational. We also note that the proposed “hard cap” of no more than 500 lots being created before the bridge is operational, does provide certainty and a defined upper limit if unexpected issues arise or there is a delay in the bridge being available for use, that could result in unacceptable effects.

Bader Street Community Impacts

- m. We have considered the potential community impacts for the Bader Street area associated with the increased traffic volumes arising from the proposal. The s42A report noted that Bader Street was identified in the District Plan road hierarchy as a Collector Road, the definition being a transport corridor that performs both a movement and property access function.
- n. Ms Cockerill noted that NZS 4404:2010 Land Development and Subdivision Infrastructure suggested that traffic around 8,000 vehicles/day would be expected for a collector. The current traffic volume on Bader Street is approximately 7,500 vehicles per day (VPD) and we noted that the volume is predicted to increase by some 1000 vpd annually until limited by the monitoring conditions and the recommended 500 lot cap resulting in a possible increase of some 3,500 to 5,000 vpd, prior to the construction of the southern links bridge.
- o. Given the evidence before us, we conclude that the major impact on the Bader Street community is accessibility across Bader Street for pedestrians accessing local shops and community facilities. We were advised that the proposed road safety improvements for Bader Street such as footpath widening to become shared paths; refuge islands and raised platform crossings in proximity to shops, are programmed to be completed by late 2019 and would assist with safe accessibility for pedestrians.
- p. We are satisfied that any potential traffic effects will be appropriately mitigated by the recommended conditions to an acceptable level and will be no more than minor.
- q. Both the Applicant’s and Council’s s42A report traffic experts concur that subject to appropriate conditions which have been agreed that any adverse traffic effects in respect of the proposal can be managed to an acceptable level. We concur with that conclusion. While there will be an increase in traffic in respect of the surrounding road network during the construction period and prior to opening of the new bridge, we are satisfied based on the advice of the traffic experts and their agreement regarding the recommended traffic conditions, that the safety and efficiency of the roading network can be appropriately managed to an acceptable level and also recognising the proposed safety improvements

to be implemented by the Council for the Bader Street area and the Waterford Road/Peacocke Road intersection.

- r. In conclusion, we observe that we did not hear any evidence from the road controlling authorities, and therefore take the view that they were in support of the recommended conditions.

Internal Road Design

- s. The s42A report discusses a number of matters related to the internal design of roads and other infrastructure and passenger transport accessibility. It is considered that these can be adequately addressed through the imposition of conditions and subsequent detailed design. Such plans and specifications will require the approval of the Council. Therefore, it is not considered necessary to discuss these matters further in this decision.

7.11 THREE WATERS INFRASTRUCTURE AND SERVICING EFFECTS

- a. A number of submitters raised issues relating to the 'three waters' including concerns that the development should not proceed ahead of the key infrastructure, that there would be insufficient water supply, that there could be the pollution of waterways, public health and natural hazard risks and that the option of wastewater discharge from the development to the western inceptor is opposed based on capacity constraints.
- b. HCC (as submitter) sought that the three waters infrastructure be sized to service the full catchment and expects a PDA to be entered into to cost share any increase in capacity and the disconnection of the interim eastern wastewater option and connection to HCC strategic transfer pump station when operational.
- c. Mr McBride a submitter, who is a researcher in water related issues, provided evidence to us at the hearing noted his concerns regarding the risk of impact of wastewater on drinking water there is wastewater spillage from the Amberfield site into the Waikato River. He recommends that should consent be granted it should include a condition requiring that a quantitative microbial risk assessment be performed, recognising that if it indicates a possible health risk then a water safety plan should be prepared.
- d. A number of experts provided evidence to us on these matters, for the applicant and Council. The Council's supplementary s42A report provided a good summary of these issue and the current expectations of the Council and the applicant:

25. Instead in the short term, if the applicant decides to proceed in advance of the HIF wastewater infrastructure for Peacocke being operational, a temporary wastewater pipeline would be constructed under the bed of the Waikato River to

Cobham Drive to connect into the Transfer Pipeline at that point. As noted by Mr O'Callaghan this solution relies on Council completing the northern section of the Transfer Pipeline in time for the first stage of Amberfield to gain its 224(c) approval.

26. It now appears to be the applicant's intention to rely on the Council completing the northern section of the Transfer Pipeline. As such, it is my opinion that this approach needs to be reflected in the conditions such that no s224(c) approval can be obtained until connection to this pipeline is provided by the applicant and it is operational. This condition is based around the concept of a condition precedent. As the Council has funding and is committed to providing this strategic wastewater infrastructure in the short term, I do not consider there is a risk or uncertainty that the subdivision consent cannot be implemented on the basis of this condition.

27. I note that this issue was raised in the evidence of Mr Parsons (for HCC as submitter). Mr Parsons included reference to the PDA negotiations between Council and the applicant. On the basis that the first option is no longer proposed and that the proposed condition clearly requires connection to the far eastern interceptor, I do not consider the PDA negotiations, or the finalization of the PDA will be compromised. Mr Parsons also sought that a condition precedent be imposed requiring the applicant to have entered into a PDA to address the range of infrastructure matters relevant to the applications. However, I do not consider that I have scope under the RMA to recommend imposing such a condition. In any event, each of the matters highlighted in Mr Parson's evidence (paragraph 14) are addressed in the proposed set of conditions and none of those conditions preclude the applicant and HCC from entering into a PDA for the purpose of integrating the infrastructure provided by the applicant with the strategic public infrastructure to be delivered by Council.⁹⁹

- e. In relation to the matters raised by Mr McBride, the supplementary s42A report confirmed:

29. I am advised by Mr Jonathon Brooke, HCC Project Engineer, that a quantitative microbial risk assessment is not necessary (refer to memo from Mr Brooke in Appendix D).

30. The Waikato River is an open water source as such HCC in consultation with the Ministry of Health ensures that a range of treatment measures are employed to ensure the contaminants within the river water brought into the Water Treatment Plant are treated to an Aa water quality level prior to potable use. I am advised by Mr Jonathon

⁹⁹ Supplementary S42A Report

Brooke that the perfect storm at the Water Treatment Plant described by Mr McBride will mean that HCC will not be able to supply potable water to the city of Hamilton regardless of Amberfield pump station overflowing or not.¹⁰⁰

- f. Regarding Ms Cave-Palmer's submission that the development should not proceed until additional fresh water supplies are built to ensure there is no negative impact on fresh water supplies to existing Hamilton residents, the s42A report confirms, based on the applicant's assessment using the HCC water supply model, that the site can be provided with a suitable level of service and the proposed development will not adversely impact on the level of service on the existing network¹⁰¹. In response to Ms Cave Palmers request that stormwater disposal and treatment be extended to include extreme rainfall events, to avoid pollution of the Waikato River, Mr Clarke on behalf of HCC had reviewed the Applicant's stormwater design and is of the opinion that it has adequately allowed for extreme rainfall events. The ground conditions of the site provide for high levels and the potential for untreated stormwater flows to directly enter surface water receiving environments, will be low.¹⁰²
- g. Overall, having heard submitters and the relevant expert evidence, and that subject to appropriate conditions, the effects will be no more than minor, we are satisfied that any 'three waters' effects can be addressed.

7.12 SPORTS PARK

- a. The Peacocke Structure Plan contains an indicative location of land for active recreation within the subject site. The applicant has not shown the Sports Park on the subdivision plan on the basis that there has not been an agreed commitment by the Council to purchase the land for the Sports Park and have it vested in Council. The applicant acknowledges that the development of the land will give rise for the need for land of around 2.7ha to be provided to satisfy any requirements for active recreation. What the applicant disagrees with is any proposal through a condition of consent for it to provide land for a 7 ha Sports Park which would serve the subject development and the wider Peacocke area. Furthermore, the applicant is concerned that any condition requiring the land shown as residential lots to be then required for a Sports Park will reduce the 'value of the land and the applicant would be disadvantaged by such an approach.
- b. The s42A reporting officer outlined that it was appropriate given the subject site for a Sports park is identified in the Peacocke Structure Plan, that it was appropriate for the required 7.2 ha Sports Park site to be identified as a single lot to vest as recreation reserve., and that a specific timeframe be imposed on the Council to purchase the land,

¹⁰⁰ Supplementary S42A Report

¹⁰¹ Supplementary S42A Report, Paragraph 32

¹⁰² Supplementary S42A Report, Paragraphs 37 -38

and if not met, then the land be developed for residential purposes as proposed by the applicant.

- c. Counsel for Hamilton City Council (HCC) as submitter and Counsel for HCC as the consent authority were both of the opinion that the proposed course of action proposed by Ms Cockerill was appropriate and that a condition requiring the provision of 7.2 ha of land for a Sports park was viable, and appropriate to impose.
- d. The Applicant acknowledged that the structure plan's indicative notation of an "Active Recreation" area in southern part of the Amberfield subdivision, and the Council's desire for a 7ha sports park to be located in the locality of the notation. We note that the subdivision had been designed so that it could accommodate a future sports park of that area, but that it was contingent on the Council purchasing the land for it.
- e. The applicant's counsel in opening submissions¹⁰³ stated that there was no legal requirement for the applicant to provide a 7ha sports park either to comply with the District Plan provisions or to address the effects of the application. It was further noted that there was no rule under the District Plan that requires an applicant for resource consent to provide an active recreation area close to the indicative locations outlined in the Structure Plan.
- f. Mr Makgill noted that it was expected that Weston Lea's contribution in respect of recreation reserves would be achieved through development contributions or via a development agreement agreed between the parties under the LGA. Furthermore, he outlined, if we were minded to impose the 7ha sports park condition, that the RMA provided that a condition may only be imposed if it is "*directly connected*" to either "*an adverse effect of the activity on the environment*" or "*applicable district or regional rule...*".¹⁰⁴
- g. While it appears that around 2.7ha of land is required to meet the needs of the development, we are requiring that approximately 7 ha be provided which is to meet the requirements of the structure plan and the wider Peacocke area. We have considered the report of Mr Roberts regarding potential locations and we believe that a single 7ha area is appropriate and having a sports park of that size contributes to the efficient and effective use of the physical land resource, and the sustainable management purpose of the RMA.

¹⁰³ Opening Submissions- Counsel- Weston Lea Pages23,24

¹⁰⁴ Section 108AA(1)(a), RMA

- h. We have considered the submission of Ms Mackintosh¹⁰⁵ where she is of the view that the proposed condition requiring the sports park to be provided satisfies both requirements in that it is directly connected to an adverse effect on the environment that is generated by the proposal. The adverse effects are considered to be an increase in community demand for active recreation infrastructure and facilities in a new urbanised location and that demand is connected to the proposed development.
- i. Ms Mackintosh goes on to outline that the proposed condition to require vesting of land for the sports park satisfies section 108AA(1)(b)(ii) in that the *"provisions of Chapter 3 to the PSP, the rules in chapter 5 (Master Plan requirement) and the requirements of Volume 2, Appendix 1.2.2.3 of the District Plan are, in effect, rules of the District Plan."*¹⁰⁶As such, the requirements in 3.4.3.1 in conjunction with the other provisions of the District Plan referred to above, regulate and allow and require the provision of Sports Fields and are equated to a rule. It follows that the condition requiring land to be vested in HCC is valid under section 108AA(1)(b)(ii) being directly connected to a district rule."¹⁰⁷
- j. We have considered the opposing interpretations of the planning instruments and the RMA provisions. We conclude that there is a connection between the proposed development creating an adverse effect through the development providing the opportunity for people to reside in the Amberfield development and creating a demand for active recreation facilities due to an increase in residents in the Peacockes area. Ms Cockerill referenced the evidence of Mr Sirl that concluded where there was sub-optimal provision of active recreation facilities in the Peacocke area, it would adversely impact on the ability of the Council to maintain current levels of service and to provide for sporting codes.
- k. Ms Cockerill¹⁰⁸ also outlined that she considered the provision of the Sports Park given the objective and policies for the Structure Plan area, and the supporting rules and methods including those contained in chapter 3.4.3.1 (Community and Recreation facilities), are essentially a requirement of a rule.
- l. Having considered the legal submissions and evidence on this matter, and on balance, we are of the opinion that we have jurisdiction to impose conditions requiring the provision of a 7ha sports park but also note that Ms Cockerill had recommended that in the event that due to subsequent processes and consideration that the Council does not require the land, then upon Council advice to the consent holder, it could proceed with subdividing the area into residential lots.

¹⁰⁵ Legal Submissions-Counsel HCC as consent authority

¹⁰⁶ S42A report- paragraph 63 and supplementary s42A report para graph 83.

¹⁰⁷ Legal Submissions-Counsel HCC as consent authority-paragraphs 37,38

¹⁰⁸ Supplementary 42A report-para 83

- m. One matter of concern to the applicant notwithstanding the view that it was ultra vires to impose a condition requiring provision of the Sports Park, was that if the sports park area was consented to for residential purposes, then it would disadvantage the applicant in terms of land value and subsequent negotiations as the land had been approved as a sports park and not as residential lots. Whilst this is not directly within our jurisdiction, we would be concerned if this disadvantaged the applicant in any subsequent purchase negotiations.

8 DISTRICT PLAN: OBJECTIVES & POLICIES

- a. We were advised¹⁰⁹ that the relevant objectives and policies regarding consideration of the proposal are outlined in “Chapter 2 – Strategic Framework, Chapter 3 – Structure Plans, Chapter 5 – Special Character Zones, Chapter 15 – Open Space Zones, Chapter 19 – Historic Heritage, Chapter 20 – Natural Environment, Chapter 21 – Waikato River Corridor and Gully Systems, Chapter 22 – Natural Hazards, Chapter 23 - Subdivision and Chapter 25 – City Wide”.
- b. We further noted that the applicant through the AEE and subsequent information provision had provided an assessment of the proposal against the relevant objectives and policies outlined above apart from Chapters 2 and 15. We also note that Ms Cockerill had adopted the applicant’s assessment in her consideration of the proposal against the District Plan objectives and policies.
- c. In considering the District Plan objectives and policies we have also considered Ms Cockerill’s assessment as outlined in her report.¹¹⁰
- d. In respect of Chapter 2 being the Strategic Framework, we adopt her assessment. The proposal gives effect to the strategic objectives through development of the land for residential purposes, noting that previously through the re-zoning process, the subject site and wider Peacocke area had been rezoned for urban purposes and giving effect to the strategic growth documents of the Council and the Waikato generally. The subject site has been identified for urban purposes and therefore the proposal is giving effect to that direction.
- e. We note that Objective 2.2.6 sets out the minimum dwelling targets for Hamilton City to give effect to the National Policy Statement on Urban Development Capacity, and the proposal will assist in achieving this objective.

¹⁰⁹ S42A report- para 195

¹¹⁰ S42A report-paras 194-220

- f. In respect of Objective 2.2.8 regarding restoration, protection and enhancement of the Waikato River and the values of the river, we are satisfied that the proposal is consistent with this objective and associated policies.
- g. We heard from the TWWG and that groups engagement including review and feedback through a Cultural Impact Assessment. Objective 2.2.9 seeks that resource management priorities are developed in partnership with Waikato-Tainui and we are satisfied that a partnership approach is being undertaken, and that the applicant is continuing to work with the group subsequent to any consent being granted.
- h. We are satisfied that cultural heritage values associated with the site are reflected and protected principally through the proposed heritage reserve hence giving effect to Objective 2.2.11 which seeks to ensure that Hamilton's heritage values are reflected in the built environment.
- i. We note that Objective 2.2.12 seeks to protect and enhance natural features, ecosystems and indigenous biodiversity. Given that previous past modification of vegetation has occurred to enable the agricultural use of the land, the subject site's ecological values are limited. We were advised that no scheduled Significant Natural Areas within the site will be adversely affected, although the site is a "significant habitat of indigenous fauna" for Long-Tailed bats. Given this situation, we have focussed on any effects of the proposal on this nationally threatened species from the proposal. This is reflected elsewhere in this decision and in the conditions that we have imposed to address any potential adverse effects on long-tailed bats arising from the proposal.
- j. We observe that the stormwater management techniques proposed are designed to protect water quality and provide improved habitat for aquatic species hence contributing to enhanced ecosystems and natural features.
- k. The proposal adequately provides for land use and development through the masterplan development of the subject site and is integrated with the appropriate provision of infrastructure. Together with consent conditions, this approach achieves the intent of Objectives 2.2.13 and 2.2.14.
- l. In respect of the Structure Plan, we have considered the assessment contained in the applicant's AEE and noted that Ms Cockerill and Mr Hattingh generally concurred that the proposal closely aligns with the objectives and policies of that plan¹¹¹.
- m. However, there is a divergence of views between the applicant and the reporting officer in respect of the need for any development within any identified growth areas to be in

¹¹¹ S42A report-para 205

accordance with the relevant structure plan. The applicant's view is that the proposal is in general accordance and has a high level of consistency with the Structure Plan provisions. We note that the applicant bases this consistency on the assumption that a sports park will be provided but has not shown this on the subdivision plan as there is currently no commitment by the Council to purchase the sports park land.

- n. In Ms Cockerill's opinion the sports park needs to be shown on the subdivision plan to clearly show alignment with the Structure Plan provisions, and that given previous processes, the location of the sports park has already been determined. As discussed elsewhere in this decision (section 9.5) the issue as we understand from the applicant is the Council's lack of commitment to purchase the sports park land at this stage.
- o. Our view is that the sports park needs to be identified on the subdivision plan as discussed in section 9.5 of this decision, and this would ensure that certainty is provided in respect of its size and location, and that it is consistent with the provisions of the Structure Plan. On this basis the proposal would achieve consistency and be in general accord with the Structure Plan, and the relevant policies and objectives of the District Plan in respect of structure plan provisions.
- p. We have considered objectives and policies relating to Natural Open Space Zones and Natural Environments and concur with Ms Cockerill's assessment of the proposal against these matters.
- q. In respect to 'Natural Environment' we note that the proposal avoids the two listed SNA's located within the subject site. We also noted that the existing policy framework for SNAs only applies within the areas scheduled in the District Plan as discussed in the s42A report.
- r. We note that the District Plan also sets out rules and performance standards for a wide range of matters relevant to the land use and subdivision applications. Ms Cockerill in her report¹¹² responds to a range of matters that have been raised by submitters including regarding master planning of Neighbourhood 6, super-lots, assessment criteria and the Urban Design Panel. This information provides helpful clarification.
- s. In our overall consideration of the District Plan objectives and policies and having regard to the proposed conditions of consent, we are of the opinion that the proposal is not contrary to the objectives and policies of the District Plan. This is further supported in our view by the land having been previously identified and zoned for urban purposes.

9 OTHER MATTERS

¹¹² S42A report-section 11.4

9.1 NATIONAL POLICY STATEMENT- URBAN DEVELOPMENT CAPACITY (NPS-UDC)

- a. Of relevance to our consideration of the proposal is the National Policy Statement on Urban Development Capacity. The NPS-UDC recognises the national significance of the urban environment and the need to enable such environments to develop and change, and the provisions of sufficient development capacity to meet the needs of people and communities and future generation in urban environments.
- b. We note that Hamilton City has been defined as a high growth area by the NPS-UDC and all its provisions are therefore applicable to it.
- c. The NPS-UDC recognises the need for urban environments to be able to develop and change to meet the needs of people and community's and the future generations in urban environments. The proposal provides for residential development, infrastructure and public spaces that are designed to function as an integrated and cohesive urban development to meet the needs of an expanding metropolitan urban area, on land intended and already zoned for urban development. Accordingly, we consider the proposal is aligned with the National Policy Statement.
- d. The NPS-UDC placed new requirements on local authorities with a high-growth urban area within their district or region. In the Waikato Region, the NPS-UDC identifies the Future Proof sub-region, comprised of, as a high-growth urban area. The requirements include the need to incorporate minimum targets for sufficient, feasible development capacity for housing in Regional Policy Statements and District Plans by 31 December 2018. The inclusion of such requirements is to be made without using the process in Schedule 1 of the RMA.

9.2 NATIONAL ENVIRONMENTAL STANDARDS

- a. The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 ensure that land affected by contaminants in soil is appropriately assessed and made safe for human use.
- b. If a proposed activity involves any of the following on land that is or has been used or is more than likely to have been used for a hazardous activity or industrial land use (HAIL) then the NESCS regulations apply:
 - (i) removal of fuel storage systems;
 - (ii) associated soil;
 - (iii) soil sampling;

- (iv) soil disturbance;
 - (v) subdivision of land; and
 - (vi) a change in land use.
- c. As a greenfield site that has been used for pastoral farming for many years the land is highly likely to have been to subject to a variety of agricultural practices that could have resulted in soil contamination.
- d. This assumption was confirmed by information gathered as part of a Preliminary Site Investigation (PSI) done and reported by ENGEO on behalf of the applicant (refer Appendix K of the application documents). The PSI has established based on a variety of historical information and site walkover that multiple HAILs are known or suspected to have been, or currently are, present at the site. As discussed in section 7.5 above, given the identification of these potentially hazardous activities on-site, further detailed investigation is required to determine if the concentration of contamination in the soil exceeds the applicable human health standard.
- e. The Council's Contaminated Land Officer has recommended a suite of conditions to ensure the necessary investigation (DSI) is undertaken prior to any soil disturbance works commencing, and remediation and /or management is undertaken to ensure effects on human health of future site users and the environment is generally unlikely.

9.3 WAIKATO REGIONAL POLICY STATEMENT

- a. The Waikato Regional Policy Statement (RPS) provides an overview of the resource management issues in the Waikato region and sets the direction and foundation of the regional and district plans which must give effect to the RPS. The relevant sections of the RPS include section 2 (Vision and Strategy for the Waikato River) section 6 (Built Environment), Heritage (section 10) and Biodiversity (section 10), are of particular relevance.
- b. We note that the District Plan was prepared on the basis of giving effect to the RPS although the document was not finalised until after the District Plan had been.
- c. The Vision and Strategy is the primary direction-setting document for the Waikato River and activities within its catchment that affect it. Under s11 of the River Settlement Act, it is deemed to be part of the Waikato Regional Policy Statement.
- d. The vision for the Waikato River is *"for a future where a healthy Waikato River sustains abundant life and prosperous communities who, in turn, are all responsible for restoring and protecting the health and wellbeing of the Waikato River, and all it embraces, for*

generations to come". Various objectives seek to restore and protect the health and wellbeing of the Waikato River and the relationship of communities with the Waikato River, and seek to achieve a holistic and coordinated approach to management of the resources of the Waikato River, and to avoid adverse cumulative effects.

- e. Waikato Tainui had opposed the proposal raising concerns about compliance with the Settlement Act and obligations under the Vision and Strategy for the Waikato River and placement of the wastewater pipe under the riverbed. As outlined in section 7.3 of this decision Waikato-Tainui did not make further submissions at the hearing and subsequently provided a letter of support.
- f. The proposal seeks to avoid adverse effects on the river with the mitigation proposed by the applicant and proposed consent conditions.
- g. On 19 December 2018 the RPS was updated to incorporate minimum targets for sufficient, feasible development capacity for housing and these were outlined by Ms Cockerill, together with a minimum housing target objective and associated policy.¹ The policy set a density target for Hamilton Greenfield areas such as the Peacocke Structure Plan area, of 16 households per hectare. We were advised² that the proposal in the long term will achieve an average density of 18 households per hectare for the developable area of the subject site.
- h. In respect of heritage, the RPS provides a broad regional level policy direction for the protection, maintenance and enhancement of heritage.
- i. Ways to achieve the above which are identified in Policy 10.3.1 include cultural values assessments, cultural impact assessments, conservation and open space covenants, and accidental discovery protocols. The applicant has undertaken an archaeological assessment which evaluated the heritage qualities of sites and assessed any effects of the development on them. We note that the proposed heritage reserve will provide a representative component of the archaeological landscape across the site.
- j. While the proposal will result in the loss of 11 identified archaeological site, loss of sites is not considered to be necessarily inconsistent with the WRPS. It anticipates that plans and consenting processes will provide for the protection of heritage, but it does not define how this will be achieved. The proposed heritage reserve will for the protection of some heritage and archaeological values.
- k. Ms Cockerill³ outlined that *"only one of the eleven identified archaeological sites is scheduled in the District Plan as a Group 2 Archaeological and Culture Site. Group 2 sites are listed for information purposes only. There are no provisions in the District Plan for the protection of these site. Ms Simmons assessment concludes that 'the primary mitigation*

proposed, systematic archaeological investigation and recording, is an appropriate action to remedy the loss of archaeological information as a result of earthworks”.

- l. Having regard to the mitigation measures proposed by the applicant including the setting aside of land as a heritage reserve which will provide a representative component of the archaeological landscape, we are of the opinion that the heritage management framework of the WRPS will be complied with in respect of development of the site.
- m. In respect of RPS biodiversity matters, we were advised by Mr Kessels in his statement of evidence that he had applied the WRPS criteria for determining ecological significance of the Amberfield site, noting that the Significant Natural Areas identified in the District Plan have not addressed indigenous fauna. Ms Cockerill had also highlighted this matter in her s42A report.
- n. He had considered that the site was of ecological significance with respect to the “WRPS criteria, including pastureland and treeland habitats, and hence section 6(c) of the RMA”⁴.
- o. Equally Doc planner Mr. Riddell noted in his evidence:

“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”.

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.

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.

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.”

- p. The Panel in having considered the relevant assessments of ecology effects and the range of conditions to address such matters including extensive conditions to address the

residual adverse effects on the nationally threatened long-tailed bat, is satisfied that the proposal will not be inconsistent with the WRPS policy approach.

- q. Having reviewed the matters above as a whole we are satisfied that:
- (i) The provision for riparian planting and mitigation along the river will be likely to improve the ecological values of the site which is currently agricultural in nature;
 - (ii) The natural, physical, cultural and heritage resources of the river have been acknowledged, where concerns were raised by tangata whenua and during questions at the hearing the applicant has sought to resolve them through engagement and clarification and where necessary amendment of the conditions to provide further certainty and protections. The applicant has shown a clear desire to engage with key stakeholders including TWWG and Heritage NZ. Those relationships and that oversight are intended to continue throughout the development period;
 - (iii) The application contemplates the matters raised in section 6A. The development of the Peacocke area has been contemplated for some time. Required infrastructure is planned and if required advanced work can be undertaken under the conditions. This includes the utilisation of water in an efficient manner. We also consider that the proposal is compatible with adjacent land uses now and in the future. The Peacocke Structure Plan sets out how development will progress over time in the area.
 - (iv) The cumulative effects of the subdivision are largely known. Where the effects are not clear (long tailed bats) an adaptive management approach was initially proposed and has been reinstated in conditions.
 - (v) As with the cumulative effects, the sufficiency of information relating to the long-tailed bats has been questioned. However, conditions were proposed and are now in place to ensure that baseline information is in place prior to construction.
- r. Having considered the proposal in respect of the relevant RPS provisions we find it is generally consistent with those provisions.

9.4 WAIKATO REGIONAL PLAN

- a. We were advised by Mr Inger that the applicant has sought consents from the Waikato Regional council for earthworks, stream works, bridge over southern gully and stormwater discharges in accordance with the provisions of the Waikato Regional Plan. We understand that no further regional consents are required to implement the proposed development and therefore satisfied that there are no other matters arising from the regional planning documents that require further consideration by us.

9.5 OTHER MATTERS

- a. Section 104(1)(C) provides for us to have regard to any other matter it considers relevant and reasonably necessary to determine the applications.

Council Strategies and Plans

- b. The s42A report noted that the Council had a wide range of strategies and plans in terms of social and economic growth as well as for the supply of services and provision of infrastructure and these are referenced in Section 1.1.2.2 of the District Plan. Such strategies and plans inform and shape the District Plan provisions, which provide the direct planning framework and assessment of land use activities.
- c. We noted that given the technical input from Council staff and other technical experts, that no matters were raised with us in respect of any fundamental issues with Council's strategies and plans that the Council has adopted other than potentially the 'Wastewater Master Plan'. Adherence to recommended conditions requiring wastewater to discharge to the Far Eastern Interceptor will maintain consistency with this Plan.

Waikato-Tainui Environmental Plan

- d. The plan includes objectives and policies that aim to ensure that urban development is well planned and that environmental, cultural, spiritual, and social outcomes are positive. It is designed to enhance Waikato Tainui participation in resource and environmental management and for developers and statutory bodies to gain an understanding as to what the aspirations of Waikato-Tainui as an Iwi Authority are.
- e. The Cultural Impact Assessment (CIA) submitted with the applications considered the proposal against the Waikato-Tainui Environmental Plan and concluded subject to the recommended mitigation measures outlined in the CIA, that there is alignment with the Plan. We noted that the CIA support for the proposed heritage reserve as a cultural values recognition of the identified archaeological sites, which will provide opportunity for interpretative recognition of the ancestral landscape.
- f. It is the applicant's intention to use cultural indigenous place making throughout the development through street naming, use of indigenous plant species, landscape design that reflects cultural perspectives (particularly for the Heritage reserve). The CIA also records TWWG support for the applicant's ecological management plan which includes a range of measures to address effects on indigenous flora and fauna.
- g. Ms Cockerill outlined in her s42A report that the recommendations of the CIA had been incorporated into the recommended conditions where such recommendations are within

the scope of s108, s108AA and s220 of the RMA. We note that some recommendations relating to on-going involvement of mana whenua and tangata whenua partnership outcomes are considered to be outside the scope of conditions which may be imposed on the resource consents.

Registered Interests on Record of Titles

- h. The Record of Titles for the subject site include several registered instruments. The applicant has confirmed that none impact on the proposed development. A drainage easement is redundant and requires resolution under s243(e) RMA from the Council for the removal, and the cancellation of a covenant registered under s240 RMA. The covenant holds several of the parcels of land together and prevents them from being dealt with separately from one another. Some of the parcels are also subject to s241 RMA (amalgamation of allotments). Council consent to the cancellation of the covenant and amalgamation of allotments will be required for new titles to issue.

9.6 SECTION 106 RMA

- a. The provisions of s106 RMA relate to the powers of a consent authority in respect to subdivision of land subject to natural hazards. We have considered the relevant s106(1A) matters and based on the information provided by the applicant and relying on the technical expert assessment on natural hazard risks, we are satisfied this subdivision proposal does not present a significant risk from a natural hazard nor through the subdivision of land, accelerate worsen or result in material damage on other land, structures or the subject site, which cannot be appropriately managed through consent conditions.
- b. From the information provided, we are also satisfied that sufficient provision has been made as part of the subdivision for legal and physical access to all allotments where required.
- c. On the basis of the above, we do not consider there are any grounds to refuse consent under s106 RMA.

9.7 GATEWAY TEST: SECTION 104D, RMA

- a. Section 104D of the RMA states that a consent authority may only grant a resource consent for a non-complying activity, if it is satisfied that either the adverse effects of the activity on the environment (other than any effect to which the affected parties consent has been given) will be minor; or the application is for an activity that will not be contrary to the objectives and policies of the District Plan.

- b. The RMA only requires that one of the threshold tests be met before consent can be granted for a non-complying activity. Both limbs of the test do not have to be satisfied.
- c. We have considered the evidence of both Mr Serjeant and Ms Cockerill on this matter and generally concur with the conclusions reached by them that the proposal fails to meet the test in s104D(1)(a) in that in some circumstances, the proposal will have adverse effects on the environment that are greater than minor. Actual and potential adverse effects include effects on archaeological features given that the subject site will be extensively modified by earthworks and such effects cannot be directly mitigated and will be more than minor; and potential effects in respect of long-tailed bats.
- d. We are of the view which is also supported by Ms Cockerill and Mr Serjeant that there are adverse effects that are more than minor, and therefore the application fails the test in respect of s104D(1)(a) and therefore consider that part (a) of the threshold tests under Section 104D cannot be met.
- e. Given this conclusion, it is necessary to consider the other threshold test that the activity will not be contrary to the relevant objectives and policies of the District Plan.
- f. We concur with the conclusion reached by Ms Cockerill¹¹³ that that the policy framework contained in Chapter 20 Natural Environments, relates to scheduled Significant Natural Areas in the District Plan and does not apply to areas beyond the mapped and identified SNA, which was a proposition advanced by Mr Riddell, planning witness for the Director General of Conservation.
- g. The District Plan objectives and policies are discussed elsewhere in the decision, and we have concluded on balance, that the proposal does not offend the policies and objectives of the plan.
- h. We consider that the proposal passes the test in respect of s104D(1)(b), noting that only one limb requires to be satisfied and can be considered on its merits under section 104 and Part 2 of the RMA.

10 PART 2: RESOURCE MANAGEMENT ACT 1991

10.1 PART 2 RMA: APPLICATION OF CASELAW: (RJ DAVIDSON FAMILY TRUST V MARLBOROUGH DISTRICT COUNCIL¹¹⁴)

¹¹³ Supplementary s42A report-paragraphs 89-94

¹¹⁴ [2018] NZCA 316

- a. Recent caselaw requires consideration of the application of Part 2 of the Act to the determination of this application.
- b. The Davidson case concerned a resource consent application to authorise a mussel farm in the Marlborough Sounds. The application was declined both by the Council and then by the Environment Court on appeal, essentially on the grounds that it was inconsistent with the provisions of the Marlborough Sounds Resource Management Plan (Sounds Plan) and the National Coastal Policy Statement (NZCPS).
- c. For documents or applications not affected by the NZCPS, the Court in Davidson considered that the significance of Part 2 in deciding an application would be influenced by how the relevant instrument had been prepared. Significantly, the Court held that¹¹⁵:

“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.”

- d. In such cases, reference to Part 2 would not add any further to the decision and “could not justify an outcome contrary to the thrust of the policies”¹¹⁶. However, if it appears that the plan “has not been prepared in a manner that appropriately reflects the provisions of pt 2”, then the consent authority would be required to “give emphasis to pt 2” in its decision. Davidson will therefore require consent authorities to come to an evaluative judgment as to whether or not part 2 is to be applied, seemingly with a presumption that it should be in marginal cases. The Court summarised this process as follows¹¹⁷:

If a plan ... has been competently prepared under the Act it may be that in many cases the consent authority will feel assured in taking the view that there is no need to refer to pt 2 because doing so would not add anything to the evaluative exercise. Absent such assurance, or if in doubt, it will be appropriate and necessary to do so. That is the implication of the words “subject to Part 2” in s 104(1), the statement of the Act’s purpose in s 5, and the mandatory, albeit general, language of ss 6, 7 and 8.

- e. Counsel for the Applicant referred to Davidson in his opening submission, stating¹¹⁸:

¹¹⁵ Ibid at [74]

¹¹⁶ Ibid at [74]

¹¹⁷ Ibid at [75]

¹¹⁸ Opening Legal Submission for Applicant at [57]

The decision as to whether consent is granted or not ultimately turns on whether a proposal satisfies the sustainable management purpose of the RMA. In Davidson Family Trust the Court of Appeal found that whether an application for consent achieves the Act's purpose should normally be evident on the face of the relevant planning documents. This is because a "plan that has been prepared having regard to Part 2 and with a coherent set of policies designed to achieve clear environmental outcomes", should not require a decision-maker to revisit whether an application for consent achieves the requirements set out under of Part 2 of the Act. 119

- f. Conversely, Counsel for RESI, having also quoted the above paragraph stated in their submissions that he did not agree with Applicants counsels subsequent¹²⁰:

"..submission at paragraph 77 of opening submissions that "the panel should accordingly adopt a broad-brush approach when considering whether the activity is contrary to the objectives and policies in the District Plan." That is not supported by the authorities. In the present case, the objectives and policies for ecological protection can be implemented while also considering and implementing the objectives and policies for residential development at Peacocke.

- g. The co-existing sets of policies lead logically to a consideration whether the proposed residential development of the Applicant's site can be undertaken in a way that recognises and applies both sets of objectives and policies. It is the position of RESI that this can be achieved, but not through the Applicant's current proposal. This development can and should contain greater provision for protection of the habitat of long tailed bats, in order to be a proposal that is not contrary to the objectives and policies when considered holistically."
- h. The question is therefore whether the plan is sufficient for the purpose of this application. We have on this point considered both the evidence of Mr Serjeant and Ms Cockerill in the Councils s42A report. Both acknowledge and accept that with respect to the long-tailed bats the plan is not sufficient. Both accept that on this basis we should consider Part 2 as part of our overall consideration of the application. We agree.

10.2 SECTION 5 - PURPOSE

- a. Section 5 details the purpose of the Act which is to achieve sustainable management. Sustainable management is defined as '*.... means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people*

¹¹⁹ Opening Legal Submission for Applicant at [57]

¹²⁰ Opening Legal Submissions for Riverlea Environment Society Inc (Submission 72) at [29]

and communities to provide for their social, economic, and cultural well-being and for their health and safety while - ...'.

- b. When considering the resource consents sought, we are required to apply s 104. Section 104 is expressly stated to be subject to part 2 of the RMA. Part 2, which comprises ss 5, 6, 7 and 8, sets out the purpose and principles of the RMA.
- c. This means that when deciding whether or not to grant the resource consent applications it is necessary for us to determine whether or not the granting of those applications would achieve the purpose of the Act.
- d. The purpose of the RMA is to promote sustainable management of natural and physical resources. As we have already found, the application before us would give rise to both adverse and positive effects. The Board must determine whether the potential adverse effects are minor and, if not, whether those effects can be avoided or mitigated through the conditions and/or by way of offset.
- e. To inform our considerations under s 5 we are obliged to consider the provisions of ss 6, 7 and 8 of the RMA which are important provisions. After considering these provisions sequentially the Board will return to the overall judgment that is required under s 5. Many of the matters relevant to ss 6-8 have been discussed earlier, but for the sake of completeness we will briefly revisit those matters.
- f. A key matter of national importance the removal of significant indigenous vegetation and the loss of the significant habitat of indigenous fauna has been considered as part of our decision. Fauna, the long- tailed bats will be affected by the development. However, a significant amount of land has been set aside for additional habitat which will be established under the mitigation, habitat that will be protected through the consent conditions. Further we have strengthened and confirmed a range of mitigation measures for the long- tailed bats which will be both monitored and if identified, negative effects responded to. The responses will include if necessary, the further deferment or if need the exclusion of deferred lots with the clear objectives of no net loss and improved bat habitat.
- g. With respect to the archaeological sites at Amberfield, notwithstanding that many sites will be destroyed, the applicant has extensively consulted with the tangata whenua and has gained their support for a purpose built and protected reserve which is intended to highlight the cultural significance of the area. The Applicant's approach of engaging and working with the TWWG has recognised the role of iwi and hapu as kaitiaki which we also acknowledge as part of our s7 considerations and as acknowledgement of a partnership

perspective under s8. The TWWG will have an ongoing role in the Amberfield development not just in the cultural aspects but in the ecological and others.

- h. Again, while natural physical resources will be lost and changed as the land transitions from agricultural to residential it is acknowledged that significant planting and provision will be given to improving the amenity values of the land along the river. The size of the mitigation through buffer and gully planting will not please all across the river who may prefer pasture to housing, however this must be balanced against the efficient use of the land at Amberfield and all of the Peacocke area which will assist with an acknowledged shortage of housing in the Hamilton area.
- i. We therefore consider on balance and on the basis of the evidence before us, that the application promotes the sustainable management of natural and physical resources and having regard to the conditions of consent imposed.

10.3 SECTION 6 - MATTERS OF NATIONAL IMPORTANCE

- a. This section of the RMA outlines matters of national importance that should be recognised and provided for. Most are relevant to the Application.
- b. It is therefore necessary to consider both the adverse and positive effects of the proposed development. If the development proceeds the landscape will be permanently altered, as will vegetation and habitat of indigenous fauna and the relationship between Māori and the land and waahi tapu will change. However public access that is not currently provided for will be assured through the development as will a significant level of buffer planting and protections that are not currently required of the owners of the site currently.
- c. Naturally we are concerned about the removal of significant indigenous vegetation and the loss of the significant habitat of indigenous fauna. The development will affect the terrestrial and the indigenous biodiversity of the surrounding area. Fauna, and the long-tailed bats will be affected by the development. These matters were addressed in some depth when terrestrial and ecological mitigations were considered. The effects upon the long- tailed bats specifically cannot be avoided.
- d. However, a range of measures have been proposed to remedy or mitigate the adverse effects of the Application. Where this is not possible the adverse effects (i.e. in the short term 10 years initial stage) the Applicant have attempted to counterbalance by offsetting through funding for improved pest control offsite.

- e. The Application contemplates greater planting and biodiversity and public access then is available now on the site as a working farm. When compared to Hammond Park and referencing the work of RESI, Waikato Environment Centre Trust and Project Echo, the opportunity to draw community engagement and public support for a similar design in the buffer zone and the gully on Amberfield is obvious and could be a significant positive effect of the development. It would also provide recreational opportunities for such things as bat walks, swimming and other river side activities.
- f. It is accepted by us that the Amberfield site and neighbouring pa are of significance to iwi and hapu. Amberfield is located within the rohe of the iwi and hapu represented in the TWG who supports the development. Many archaeological sites will be destroyed by the construction on the land. However, it is acknowledged that the tangata whenua have determined that the mitigations proposed by the Applicant and the featuring of a single archaeological site on the land are sufficient to draw their support of the Application.

10.4 SECTION 7 - OTHER MATTERS

- a. Section 7 outlines various matters that decision makers shall have regard to achieve the purpose of the RMA.
- b. Kaitiakitanga under s 7(a) provides for “the exercise of guardianship by the tāngata whenua” and they undertake this in accordance with their tikanga Māori and the ethic of stewardship in terms of s 7(aa). The Courts have held that ‘kaitiakitanga’ requires tāngata whenua be provided with the chance or opportunity to exercise guardianship. We are satisfied that arrangements entered into between the Applicant and affected iwi and hapu will give effect to the aspirations of tāngata whenua via kaitiakitanga.
- c. Three other matters of relevance include “the efficient use and development of natural and physical resources,” “the maintenance and enhancement of amenity values,” “maintenance and enhancement of the quality of the environment”.
- d. We are required to consider whether the Application will achieve the efficient use and development of natural and physical resources by better utilising available resources. We heard that housing need in Hamilton is significant. Usable land for housing close to services is a finite resource and the Applicant has over the preceding decade sought to ensure the effective development of this resource within the Peacocke area in a more efficient manner than it is possible in the absence of the Applicants engagement with local and national governments. The Applicant also seeks to facilitate a more productive use of land which is another finite resource.

- e. While some existing amenity and intrinsic values of ecosystems would be lost, others will be created. These include the amenity value of the buffer and gully areas and the positive effects that would arise from the mitigation package. In particular the environment would benefit from extensive planting and predator control, from the proposed mitigation.
- f. The question of whether the change of land use from agricultural farming to urban housing will be an enhancement of the quality of the environment is likely to be subjective as between the Applicant, potential new homeowners and submitters. We make the comment though again that current owners are not required to implement the mitigations contemplated under the Application. These mitigations will lead to greater riparian and buffer planting alongside the river. This is counterbalanced by the short to medium term effects of construction and the ultimate increase in population and human activity on the land.
- g. We conclude that appropriate regard has been had to s7 matters.

10.5 SECTION 8 - TREATY OF WAITANGI

- a. This section requires those involved in exercising RMA functions and powers relating to managing the use, development and protection of natural and physical resources shall take into account, the principles of the Treaty of Waitangi. These principles include active protection, good faith, consultation, communication and a spirit of partnership.
- b. When considering these matters the applications for resource consent, we have taken into account the principles of the Treaty of Waitangi. It believes that these principles have been properly reflected by the hearing process and by the Applicant itself. There has been an active process of consultation between the Applicant and the tāngata whenua, with applicant experts directly engaged and providing information to allow the TWWG to develop an informed view of the application and its effects on the waāhi tapu and taonga of the iwi. Conditions allowing for further and future engagement have been agreed and we consider that the parties are working towards an enduring relationship acknowledging the tāngata whenua and their connection to the land at Amberfield.
- c. On the basis of the evidence before us, we consider that the application takes account of s8 RMA matters.

11 LAPSE PERIOD OF CONSENTS

- a. We noted that the Applicant has sought an eight-year lapse period for the consents given the extensive nature of the proposed development and that it will be undertaken in

stages. S125 of the RMA provides a default period of five years for the development to be given effect to unless otherwise specified in the consents.

- b. In accordance with s125(2) a subdivision consent is given effect to when a survey plan in respect of a subdivision has been submitted to the territorial authority under s223 but shall thereafter lapse if the survey plan is not deposited in accordance with s224. That is, within three years of the territorial authority approving the survey plan under s223.
- c. Having considered the Applicant's request, an extension of three years in total over the normal timeframe for seeking s223 survey plan approval for all stages of the subdivision is considered reasonable, given the scale of the development and that giving effect to the subdivision will involve monitoring relating to traffic and terrestrial ecology matters and agreements with the Council on matters relating to roading and infrastructure. These obligations and requirements may take longer than the normal subdivision certification periods.
- d. We are of the opinion that the extension of time is not excessive and in the circumstances is considered reasonable.
- e. In respect of the land use consent the five- year lapse period will apply. It is anticipated that the land use consents will be commenced and substantially given effect to within the five-year lapse period. At any stage the Applicant can apply to extend the lapse period if circumstances warrant such an application.

12 CONCLUSION

- a. We have considered all matters placed before us including all application documentation, evidence, submissions and subsequent statements made by the various parties at the hearing and the section 42A report and associated reports from Council staff, together with the relevant RMA and District Plan provisions.
- b. Overall, we consider the proposal meets the purpose and principles of the RMA being Part 2 matters and the policies and objectives of the District Plan. It enables the applicant through the provision of housing in Hamilton, to provide for the social and economic well-being of people who will reside in Amberfield. The single point of contention is the long-tailed bat and the effect of this development on this threatened species and native fauna and as a matter therefore of national importance under section 6. It is with this in mind that further consideration and conditions were required.
- c. Most of the adverse effects on the environment can be adequately mitigated, avoided or remedied as proposed by the applicant. Again, the sole distinction are the proposed

mitigations for the long- tailed bats proposed both by the Applicant and subsequently by the Council.

- d. We have provided conditions which reflect the significance and threat risk to the long-tailed bats. Those conditions, based upon evidence presented to us and caselaw, principally adopt an adaptive management regime for long- tailed bats and are modelled on the conditions provided over the course of the hearing and for such regimes adopted for the Western Expressway and Southern Links consents.
- e. The conditions include a Management Plan Liaison Group which will have the opportunity to directly and effectively engage with the applicant and council in the development of the management plans which will drive the Development. Reflecting on the submitter evidence presented at the hearing and the work of Go Eco and others at Hammond and Sandford Park we consider that this group will be well equipped with the knowledge and experience to develop, implement and review the plans which will directly determine the retention of long tailed bats on the Amberfield site.
- f. In addition, the establishment of a wider offsetting regime and trust is accepted to allow for activities which will enhance not only the Amberfield development but the wider area as pest control and artificial roosts are put in place.
- g. In conclusion, we consider that subject to the conditions particularly those relating to the EMMP and long- tailed bats, it is appropriate to grant consent to the proposal subject to conditions and including the conditions determined by us.

13 DECISION

- a. That pursuant to Sections 104, 104B, and 104D of the Resource Management Act 1991, the Hamilton City Operative District Plan and Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011, the Hamilton City Council grants consent to the subdivision and land use consent applications (11.2018.6695.01 & 10.2018.9853.01) of Weston Lea Limited to:
 - (i) Undertake a fee-simple subdivision; and
 - (ii) Undertake the following land use activities associated with a Master Plan development for urban purposes:
 - A. Walkways and cycleways
 - B. Earthworks and utility infrastructure within the Waikato Riverbank and Gully Hazard Area
 - C. Bulk earthworks
 - D. Fences and wall exceeding permitted height (proposed retaining walls)

- E. Construction of subsoil drain outlet within a Significant Natural Area (SNA 54)
 - F. Pump Stations
 - G. Stormwater detention, treatment and/or soakage facilities
 - H. New transport corridors
 - I. New works not in accordance with the function of Peacocke Road as defined in the District Plan Transport Corridor Hierarchy Plan
- (iii) Except that, the land use consent does not authorise any land use activities associated with a master plan development for the land within proposed Lots 864 and 865, being the super lots created by the subdivision consent (11.2018.6695.01).

Advice Note:

The super-lots, that will contain part of a future suburban centre will require further land use consents as part of the master plan development of the balance of Neighbourhood 6 as shown in the Peacocke Structure Plan Figure 2-3.

- b. The land subject of these consents is legally described as Lots 1 and 2 DPS 81210 (SA66A/99), Lots 3 and 4 DPS 81210 (SA66A/100), Lot 1 DP 36935 (SA5D/1211), Part Lot 6 and Lot 8 DP 34164 (SA4B/788), Lot 5 DP 17475 (SA718/181), Allotment 87, Part Allotments 93 and 94 Te Rapa Parish (SA528/20), Lot 1 DPS 78023 (SA60A/826), and Pt Lot 10 DPS 7724 (SA7D/254) located at 337 – 461 Peacockes Road, Hamilton.
- c. The subdivision and land use consents shall be subject to the following conditions as contained in Schedule 1, being met at the consent holder's expense.

The reasons for this decision are detailed in the preceding discussion but can be summarised as follows:

- d. That the proposal is in general accordance with the matters outlined in Part 2 of the Act and will contribute to the sustainable management of natural and physical resources. It provides for the economic and social well-being of the applicant, future residents of Amberfield and the wider community through the provision of land for housing in the Hamilton area. While there will be effects upon the natural environment and the habitat of the long- tailed bat, the proposal and through the conditions imposed can adequately avoid, mitigate or remedy those effects. Further the proposal acknowledges the cultural and heritage importance of the Amberfield site and the river adjacent to it. The TWWG supports the proposal and will have an ongoing role as the development progresses. Heritage NZ has also confirmed its approval of the proposal.

- e. That the proposal on balance, generally accords with the District Plan objectives and policies. There are potential adverse effects on the visual amenity and character of the area that can be mitigated, as required by the objectives and policies of the District Plan in respect of the proposal and having regard to its location. The implementation of the Ecological Management and Monitoring Plan and the buffer and gully planting will facilitate landscape amenity values and with the addition of the amended conditions provide greater protection and enhancement of the natural features, ecosystems and indigenous biodiversity.
- f. The proposal adequately provides for land use and development through the masterplan development of the subject site and is integrated with the appropriate provision of infrastructure. Further stormwater management techniques proposed are designed to protect water quality and provide improved habitat for aquatic species hence contributing to enhanced ecosystems and natural features.
- g. The District Plan sets out rules and performance standards for a wide range of matters relevant to the land use and subdivision applications and the proposal on balance, in not inconsistent with those requirements.
- h. The proposal is consistent with the purpose and principles of the Resource Management Act 1991.



William Wasley
Commissioner Panel Chair



Richard Knott
Commissioner



Loretta Lovell
Commissioner

Date: 1 November 2019

As amended by the 'Addendum' dated 15 November 2019

Schedule 1: Consent Conditions

SUBDIVISION CONDITIONS FOR ALL STAGES

FEES AND CHARGES

1. Pursuant to section 36 Resource Management Act 1991, the following fees and charges be paid:
 - (a) Payment of an additional Development Group Fee for auditing the conditions set out in this consent. The fee will be charged on a time-cost recovery basis in accordance with Hamilton City Council's Schedule of Fees and Charges, with adjustments coming into effect at the beginning of each financial year.
 - (b) All GST requirements with regard to the transferring of assets to Council (e.g. reserves, roads, sewers) being complied with by the completion of the form titled 'GST Requirement/Asset Register and Tax Invoice'.
 - (c) Payment of additional Environmental Health Unit fees for assessing consented reporting will be charged on a time-cost recovery basis in accordance with Hamilton City Council's Schedule of Fees and Charges, with adjustments coming into effect at the beginning of each financial year. The fees will be levied at the completion of the consent review process and will be payable to the Environmental Health Unit upon notification that compliance has been achieved.
 - (d) Payment of Planning Guidance overhead charges on a time – cost recovery basis for auditing and confirming compliance with the conditions of each stage of the consent.

Requiring Authority Approval

2. No activities authorised by the subdivision consent within the Southern Links Designation (A106), shall commence unless and until unconditional approval has been obtained from the requiring authority (HCC as road controlling authority) for activities within the Southern Links Designation (A106).

Advice note: Condition 2 addresses section 176(1)(b)(ii) of the RMA which restricts subdivision of land, in relation to land that is subject to a designation, that would prevent or hinder a public work or project or work to which the designation relates.

Waikato Regional Council Consents

3. No activities authorised by this consent may commence unless and until all relevant Waikato Regional Council consents have been obtained. Copies of these consents shall be provided to the Planning Guidance Unit Manager at least one month prior to construction activities commencing.

Application Information and Plans

4. The subdivision shall be in general accordance with the information submitted with the application on 18 May 2018, except as amended by the further information and plans received on 17 August 2018, and the additional information and plans received 22 February 2019 and 27 March 2019, and updated subdivision plans and further information received on 12 and 15 August 2019, and the following conditions.

Staging of Development

5. Each stage shall be established in an independent manner, addressing the consequences of land subdivision works without detriment to the environment, and adequately addressing the following network utility demands in a stand-alone and self-sustaining manner, including:
 - (a) Provision of a transport network (which is identified as part of the Transport Network Management Plan) that provides for the safe, efficient movement of all modes of transportation and connects to an existing legal formed road;
 - (b) Provision of a water supply system that meets public health standards for potable water and provides sufficient capacity for fire-fighting purposes;
 - (c) Provision of a stormwater system which will mitigate, remedy, or avoiding any adverse effects from stormwater runoff or changes to groundwater levels which may cause stormwater runoff effects;
 - (d) Provision of a wastewater system which will meet public health standards and will avoid, or appropriately mitigate, any adverse effects associated with wastewater discharge; and
 - (e) Provisions of reserves that provide for the amenity of the local population within the stages shown on Harrison Grierson Drawing 141842-1046 Rev 10.
6. The matters set out above shall be satisfied if the development is implemented in the sequence required by the plan and schedule on Harrison Grierson Drawing 141842 – 1046 Rev 10 including the servicing requirements shown in the schedule on the Drawing or equivalent infrastructure is operational. Combined and out of sequence staging is permitted provided that the matters set out in Condition 5 are met, and all applicable conditions for the relevant stage(s) are met.

Advice note: Out of sequence staging will need to comply with the requirements of the lot deferral staging condition 139 should the consent holder intend to proceed with the stages listed in this condition out of sequence.

Peacocke Road Upgrade

7. Prior to s224(c) approval for the first stage the consent holder shall provide a shared path between the development and the existing urban area on Peacocke Road, in general accordance with Figure 20 in the Integrated Traffic Assessment dated May 2018.

8. Condition 7 above shall be satisfied if an equivalent shared path facility is provided by the road controlling authority.
9. The consent holder shall upgrade the length of Peacockes Road adjacent to the site to collector road standard with transitions at either end of the site to tie into the existing road over the lengths shown on the drawing prepared by Traffic Design Group reference 13646_C11B Rev 0 dated 9 May 2018. The collector road upgrades may be staged and shall be in accordance with the following requirements:
 - (a) The upgrade of Peacockes Road for Stages 1 – 6, 14 and 18-21 shall be in general accordance with the 'Initial Access Intersection – Peacockes Road' shown on the drawing prepared by Traffic Design Group reference 13646N5B dated 9 May 2018 and included in the Integrated Transport Assessment submitted in Appendix I of the application.
 - (b) For subsequent stages, Peacockes Road must be upgraded to collector road standard from the Entrance for each stage (as shown on Harrison Grierson Drawing 141842-1046 Rev 10) to the north as far as the nearest section of Peacockes Road that has been previously upgraded, including the intersection on Peacockes Road for each Entrance and a transition to the south of the Entrance to tie into the existing road.
 - (c) The collector road upgrade shall include a 9m wide carriageway with kerb and channel, stormwater facilities, bus stops (if required) and lighting on both sides and with kerbside parking and a 3m wide shared path within a 7m wide berm on the eastern side and undergrounding of the existing overhead electricity lines. Stormwater infrastructure on the western side may include a temporary swale rather than permanent stormwater infrastructure.
 - (d) The Consent Holder shall consult HCC to ensure that the collector road is constructed with the eastern kerb line and adjacent parking and shared path having appropriate vertical and horizontal alignment as the future minor arterial road design.
10. Condition 9 shall be satisfied in regard to any sections of Peacockes Road where:
 - (a) HCC has previously upgraded the same length of Peacockes Road to either a collector road or minor arterial road standard; or
 - (b) HCC and the consent holder both agree that the consent holder will upgrade the same length of Peacockes Road to a minor arterial standard.

Traffic Monitoring

11. Prior to construction works commencing, the consent holder shall, in consultation with HCC, NZTA and Waipa District Council (as road controlling authorities), prepare a Traffic Monitoring Plan, except that a Traffic Monitoring Plan shall not be required if the construction works commence after the Hamilton Ring Road extension and the bridge from Wairere Drive across the Waikato River to Peacocke are open to traffic.

12. The purpose of the Traffic Monitoring Plan is to set out a methodology for measurement of road safety, accessibility and efficiency effects as they relate to sensitive sections of the road network. The results of the monitoring will be used to determine whether the effects of the development on network level of service remain acceptable (as defined in condition 13(g)) or trigger intervention.
13. The Traffic Monitoring Plan shall include but not be limited to:
 - (a) Conditions for road safety and traffic flows including turning movements for:
 - (i) SH3 Normandy Avenue/Bader Street/Lorne Street intersections (NZTA and HCC as road controlling authorities);
 - (ii) Bader Street corridor, comprising Bader Street, Norrie Street and Peacockes Road (HCC as road controlling authority);
 - (iii) SH3 Ohaupo Road/Raynes Road/Peacockes Road intersection combination (NZTA, HCC and Waipa DC as road controlling authorities).
 - (iv) Normandy Avenue / Odette Street Intersection.
 - (b) Baseline conditions for accessibility for SH3 Normandy Avenue/Bader Street/Lorne Street intersections (NZTA and HCC as road controlling authorities) and the Bader Street corridor (HCC as road controlling authority);
 - (c) Baseline conditions for efficiency for SH3 Normandy Avenue/Bader Street/Lorne Street intersections (NZTA and HCC as road controlling authorities);
 - (d) For each year, land development and infrastructure progress and timing for the Amberfield Development, including number of lots serviced.
 - (e) For each year, the number of 224c certificates issued, building consents issued, building code of compliance certificates for Amberfield and for Peacocke Structure Plan Area (information to be made available by HCC).
 - (f) Methodologies for traffic monitoring and reporting:
 - (i) The results of baseline and annual traffic monitoring shall be reported to HCC Planning Guidance Manager within two weeks of their completion.
 - (ii) The efficiency monitoring shall measure the average delay per vehicle during the worst 30-minute period on the:
 - A. Normandy Ave northern approach to the Lorne Street intersection
 - B. Normandy Ave southern approach to the Bader Street intersection
 - C. Lorne Street approach to the Normandy Avenue intersection
 - D. Bader Street approach to the Normandy Avenue intersection
 - (iii) The days and periods for monitoring efficiency shall include:
 - A. The period from 7am - 9am
 - B. At least two mid-weekdays excluding holidays and school holiday periods.
 - (iv) The safety monitoring shall cover all of the intersections tabulated in (13(g) below) for all day.

- (g) Safety, accessibility and efficiency criteria for the relevant intersections and road corridor as set out in Table 1 below. The levels of service for those intersections and road corridor must not exceed the minimum performance criteria in the table unless otherwise agreed in writing between the consent holder and the relevant road controlling authorities.

Table 1: Minimum Performance Criteria for safety, accessibility and efficiency

Criterion and measure	Bader/ Normandy/ Lorne	Bader Street Corridor	Peacockes/ Raynes /SH3 Intersection	Normandy/ Odette Intersection
Safety				
<i>Collective Risk (High Risk Intersection and High- Risk Road Manual)</i>	<i>Low</i>	<i>N / A</i>	<i>High (currently 4 serious crashes in the last 5 years, no fatal)</i>	<i>Low</i>
<i>Injury crash rate (NZTA EEM Crash Prediction)</i>	<i>No Increase from baseline, specific crash rate 0.36, expected crash rate 3.22</i>	<i>No Increase from baseline, specific crash rate 0.93, expected crash rate 3.61</i>	<i>No Increase from baseline, specific crash rate 1.76, expected crash rate 1.80</i>	<i>No Increase from baseline, specific crash rate 0.18, expected crash rate 0.83</i>
<i>Pedestrian and or cyclist crashes</i>	<i>Zero DSI</i>	<i>Zero DSI</i>	<i>Zero DSI</i>	<i>Zero DSI</i>
Accessibility				
<i>Pedestrian crossing (Ave Delay per pedestrian)</i>	<i>One traffic signal cycle</i>	<i>30sec</i>	<i>N/A</i>	<i>N/A</i>
<i>Pedestrian Crossing Facilities</i>	<i>Pedestrian phase</i>	<i>400m intervals</i>	<i>N/A</i>	<i>N/A</i>
Efficiency				
<i>Average Delay/vehicle</i>				
<i>State Highway</i>	<i>80 seconds</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
<i>Local Roads</i>	<i>80 seconds</i>	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>

14. The Traffic Monitoring Plan shall be submitted for certification to the HCC Planning Guidance Unit Manager or nominee and shall include all relevant matters required by condition 13 and demonstrate how the requirements of the relevant road controlling authorities have been addressed. No earthworks or construction activities shall

commence until the Traffic Monitoring Plan has been certified by the HCC Planning Guidance Unit Manager or nominee.

15. The consent holder shall carry out traffic monitoring as detailed in the certified Traffic Monitoring Plan and provide the results to the HCC Planning Guidance Unit Manager prior to the commencement of any earthworks or construction activities to establish baseline traffic conditions in accordance with the certified Traffic Monitoring Plan.
16. Development beyond 350 lots (s224c certificate issued) may only proceed if:
 - (a) Monitoring by the consent holder or relevant road controlling authority in accordance with the certified Traffic Monitoring Plan shows that minimum performance level of service criteria (in Condition 13(g)) have not been exceeded; or
 - (b) A solution has been implemented to mitigate the adverse effects of development to the satisfaction of the relevant road controlling authorities on the intersection or corridor where the minimum performance level of service criteria (in Condition 13(g)) has been exceeded; or
 - (c) Approved in writing by the relevant road controlling authorities where mitigation is committed (design commenced and implementation funding certain) for completion within 12 months of issue of s224c certificates (nominal period for subdivision to be occupied and generate traffic); or the Hamilton Ring Road extension and the bridge from Wairere Drive across the Waikato River to Peacocke are open to traffic.
17. Within three months of 224c certificates being issued for 350 lots, the consent-holder shall undertake monitoring in accordance with the certified monitoring plan and report the results of the monitoring to the Planning Guidance Unit Manager or nominee. The consent holder shall thereafter undertake and report the monitoring in accordance with the certified monitoring plan, on an annual basis until all subdivision stages are completed, or until the Hamilton Ring Road extension and the bridge from Wairere Drive across the Waikato River to Peacocke are open to traffic (whichever comes first).
18. Development beyond 500 lots for residential development (application for s224c certificates issued) may not proceed prior to a solution being implemented and operational to mitigate the adverse effects of development to the satisfaction of the relevant road controlling authorities on the SH3 Normandy Avenue/Bader Street/Lorne Street intersections (NZTA and HCC as road controlling authorities).
19. Development beyond 500 lots may proceed irrespective of condition 18 above once the Hamilton Ring Road extension and the bridge from Wairere Drive across the Waikato River to Peacocke are open to traffic.
20. Monitoring will no longer be required once the subdivision has been completed or the bridge from Wairere Drive across the river to Peacocke is open to traffic.

Transport Network Management Plan

21. As part of the detailed design for each subdivision stage, the consent holder shall prepare and submit a Transport Network Management Plan (TNMP), to be certified by the HCC General Manager Development or nominee. TNMPs may be submitted for individual or multiple subdivision stages.
22. The purpose of the TNMP is to describe proposed procedures, requirements and standards necessary for achieving the objective of the TNMP as it relates to the effects of and opportunities for connectivity related to the development and to ensure adverse effects on the transport network, including the roads within the Peacocke Structure Plan area and connecting intersections with State Highway 3 and Raynes Road, associated with the subdivision development shall be avoided or otherwise remedied or mitigated.
23. The TNMP shall include (but not be limited to):
 - (a) A Design Philosophy Statement that establishes the standards, philosophies and references for construction final design outcomes required to achieve the objective of the TNMP. This shall include an intersection design philosophy for Peacockes Road that considers consistency of intersection design taking into account road and intersection management and operation.
 - (b) The localised traffic impacts on Peacockes Road together with accompanying mitigation measures required as a direct or indirect result of road closures, diversions, new intersection arrangements and other measures needed to accommodate the development, including options for an emergency/alternative access;
 - (c) The provision of cycle infrastructure on Peacockes Road and the design of cycle features and whether they are consistent with Austroads Guide to Road Design, Part 6a: Pedestrian and Cycle Paths and the NZTA Pedestrian Planning and Design Guide (2009);
 - (d) The provision of pedestrian infrastructure on Peacockes Road and whether the design of pedestrian infrastructure is consistent with Austroads Guide to Road Design, Part 6a: Pedestrian and Cycle Paths and the NZTA Pedestrian Planning and Design Guide (2009);
 - (e) Consideration of staged bus service infrastructure features on Peacockes Road such as, but not limited to:
 - (i) Bus stopping facilities;
 - (ii) Passenger waiting facilities and shelters with bus information as part of the final road design; and
 - (iii) Bus priority measures at all non-signalised, controlled intersections
 - (f) Pedestrian and cyclist connections on Peacockes Road linking to pedestrian and cycle networks within the Amberfield site.

24. The detailed engineering design plans for each subdivision stage shall give effect to the requirements of the certified TNMP.

PRE- CONSTRUCTION CONDITIONS: COMMUNICATION

Management Plan Liaison Group

25. Within twelve (12) months of commencement of this consent, the consent holder shall, after consultation with the Council, establish a Management Plan Liaison Group (“**MPLG**”) for the Amberfield Development.
26. The membership of the MPLG shall include two (2) representative(s) of:
- (a) The consent holder;
 - (b) The HCC;
 - (c) The Department of Conservation (“DoC”)
 - (d) Riverlea Environment Society Incorporated;
 - (e) Tangata Whenua Working Group (“TWWG”); and
 - (f) Upon establishment, two representatives of the Amberfield resident’s association or such other group established for the purposes of representing the interests of Amberfield residents and community.
27. The purpose of the MPLG shall include but not be limited to:
- (a) Participate in the development, monitoring and review the Ecological Management and Monitoring Plan (EMMP) and sub plans;
 - (b) Provide a means for receiving regular updates on Project progress including updates and monitoring data and information;
 - (c) Enable opportunities for any concerns and issues of DoC, tangata whenua or the community to be reported to and responded to by the consent holder and/or HCC (where relevant), including observations and issues affecting the long-tailed bats that may need to be addressed as part of the EMMP and sub plans;
 - (d) Enable the consent holder and HCC to be informed of any existing or proposed ecological enhancement or restoration on private property to inform the development of the EMMP.
28. The MPLG shall meet not less than every six (6) months until the management plans are certified and then at least once annually once the baseline surveys and monitoring have commenced for the long-tailed bats or Construction Works have commenced until the end of the Monitoring period, or as otherwise agreed. Should a majority of MPLG members decline or not respond to an invitation to meet, the consent holder is not required to hold that meeting.
29. Once the Management Plans have been certified, the bat baseline surveys, and other

mitigations and monitoring have commenced, the consent holder will provide an update to the MPLG on Project progression and monitoring as required under specific conditions or at least every six (6) months and or as otherwise agreed.

30. The Council shall provide a venue for meetings of the MPLG, invite all MPLG members to the meeting, and take and disseminate meeting minutes.
31. The purposes, membership and roles of the MPLG as set out in the Conditions shall be reviewed every five (5) years or as required by the Council in consultation with the MPLG members and the Consent Holder.
32. The reasonable costs associated with the attendance and participation of MPLG members shall be paid by the Consent Holder.

Construction Management

33. Earthworks, enabling works and any other construction activities shall be actively managed to avoid or otherwise remedy or mitigate any off-site nuisance effects caused by dust, debris, silt laden runoff, noise and vibration matters.
34. Earthworks, enabling works and any other construction activities shall be carried out in a manner which is consistent with the Ecological Management and Monitoring conditions of this consent (including matters specified in the Ecological Management and Monitoring Plan (refer to conditions 75 to 136).
35. To demonstrate compliance with conditions 33 and 34 above, prior to the commencement of earthworks or construction activities onsite (excluding site investigations and enabling works) the Consent Holder shall submit a Construction Management Plan (CMP) to the Strategic Development Unit Manager or nominee for certification. CMPs may be submitted for individual or multiple stages of construction works. The objective of the CMP is to establish procedures to manage and control any potential off- site nuisance or adverse effects as described in conditions 33 and 34 above.
36. The CMP shall include but not be limited to:
 - (a) Details of the works, intended construction timetable (including construction staging) and hours of operation (refer to conditions 59 and 60);
 - (b) Quality assurance/quality control including but not limited to;
 - (i) Contact details of the person in charge of construction works, or other persons responsible for implementing this Plan;
 - (ii) staff and contractors' responsibilities;
 - (iii) training requirements for employees, sub-contractors and visitors;
 - (iv) environmental incident and emergency management (including the procedures required under regional consent conditions);
 - (v) communication procedures;

- (vi) complaints management;
 - (vii) compliance monitoring;
 - (viii) environmental reporting;
 - (ix) corrective action;
 - (x) construction lighting;
- (c) Methods to control dust, debris on roads and silt laden runoff during construction;
 - (d) Erosion and sediment control measures to avoid adverse offsite effects arising from the subdivision construction works;
 - (e) Methods to clean and inspect all machinery to be used to reduce the risk of the spread of weeds and diseases (such as Myrtle Rust), and ensure all seed and/or plant matter has been removed from all machinery and documented in accordance with the document titled 'KEEP IT CLEAN – Machinery hygiene guidelines and logbook to prevent the spread of pests and weeds' (June 2013);
 - (f) Measures for the protection of treatment and soakage systems during earthworks periods to ensure sedimentation does not reduce device effectiveness;
 - (g) Existing network utilities;
 - (h) Traffic Management;
 - (i) General methods to mitigate and manage construction noise in order to comply with the noise limits set out in condition 58 below;
 - (j) Identification of any special construction activities (including any pile driving and concrete pours) that may require specific mitigation measures in order to comply with the noise limits;
 - (k) the methods to engage with stakeholders, including:
 - (i) how the community will be kept informed of progress with works including;
 - (ii) proposed hours of operation outside normal working hours;
 - (iii) construction personnel contact details;
 - (iv) identifying stakeholders such as landowners, road users, local community, iwi (including the Tangata Whenua Working Group (being the Group described in the Amberfield Cultural Impact Assessment dated 10 May 2018), regulatory authorities, industry, network utility operators, road maintenance contractors, emergency services;
 - (v) Invitations to the Tangata Whenua Working Group (being the Group that is described in the Amberfield Cultural Impact Assessment dated 10 May 2018) to attend hui to provide an update on construction not less than once every six months during any phase of construction.
 - (vi) responding to queries and complaints;
 - (l) any necessary health and safety requirements.

37. The consent holder shall implement the certified CMP until the completion of construction works.

Advice Note: Any changes to the CMP shall be confirmed in writing by the Consent Holder following consultation with Hamilton City Strategic Development Unit Manager (or nominee) before implementation.

'Earthworks' means the disturbance of the land surface by moving, removing, placing or replacing soil or earth, by excavation, cutting or filling, but excludes cultivation of land for farming purposes.

'Enabling Works' means the following and similar activities; demolition and/or removal of existing buildings and structures, fencing, tree felling (except as subject to specific conditions of this consent) and removal of any associated underground or above ground services.

'Construction staging' refers to the extent of works undertaken at any one time and may differ from the subdivision staging shown in the approved subdivision plans.

38. Prior to the commencement of each subsequent stage of construction that is not covered by an earlier CMP, the Consent Holder shall provide an updated CMP that meets the requirements of conditions 34 to 36 above for certification by the Strategic Development Unit Manager (or nominee).

Construction Traffic Management Plan

39. A Construction Traffic Management Plan (CTMP), shall be prepared by a suitably qualified and experienced person in accordance with the NZTA Code of Practice for Temporary Traffic Management. CTMPs may be submitted for individual or multiple stages of construction works. The CTMP shall be submitted to the HCC General Manager Development or nominee, for certification that the CTMP satisfies the requirements of condition 42 no later than twenty (20) working days prior to the commencement of any stage of Construction Works. Construction of any relevant stage of the development shall not commence until the Consent Holder has received the HCC General Manager Development or nominee's written certification of the CTMP for that stage of works.
40. When requesting certification of a CTMP, the Consent Holder shall provide the HCC General Manager Development or nominee with evidence that consultation has been undertaken with the New Zealand Transport Agency and Hamilton City Council and Waipa District Council as road controlling authorities whose roads are affected by the development's construction traffic, including details of the outcomes of the consultation in relation to any effects on their road network and measures proposed to manage such effects.
41. Where the HCC General Manager Development or nominee has implemented processes and/or convened a group to coordinate construction traffic management

planning, monitoring of road conditions and implementation of mitigation works, the Consent Holder shall:

- (a) Participate in the construction traffic management planning coordination processes.
 - (b) Arrange for a suitably qualified and experienced person to attend meetings when convened.
 - (c) Take all reasonable measures in response to the consultation outcomes with the relevant road controlling authority.
42. The CTMP shall describe the measures which must be carried out to avoid, remedy or mitigate the local and network wide construction traffic effects of the development. In particular (but not limited to), the CTMP shall describe the following as they are applicable to each construction stage for the subdivision and/or the upgrade of Peacockes Road:
- (a) Measures to maintain pedestrian, cycling and vehicle access to roads and property to defined and approved levels of service. The CTMP shall identify notification thresholds and processes for communicating with affected parties and shall consider whether there are specific user needs that require specific responses.
 - (b) Measures to maintain access for emergency vehicles, and methods to ensure that emergency service providers are regularly informed of the timing and sequencing of works, road closures and alternative routes.
 - (c) How service providers are to be regularly informed of the timing and sequencing of works, any road closures and alternative routes.
 - (d) The timing and sequencing of any road closures that will be required and the nature and duration of any traffic management measures that will result, including any temporary restrictions, detours or diversions.
 - (e) Measures to ensure safe access to the development site.
 - (f) Measures to monitor the performance of the intersections and road corridor listed in condition 13(g) against the thresholds for safety, accessibility and efficiency used by development-related construction traffic, and the procedures to be followed where intervention is necessary in order to remain within the minimum performance criteria.
 - (g) Management and sequencing of construction works to avoid, remedy or mitigate traffic-related adverse effects.
 - (h) Routes to be used and times for heavy haulage (and roads and times to be specifically avoided) for development-related Heavy Commercial Vehicles (HCVs) for shifting bulk materials (such as earth fill or pavement materials or water) (Bulk HCVs) and temporary traffic management controls in accordance with the Code of Practice for Temporary Traffic Management.
 - (i) Assessment and monitoring of road conditions and response should severe and

sudden deficiencies arise directly associated with development-related HCVs.

43. The certified CTMP shall be implemented throughout the period of the construction works.

Earthworks

44. Sediment and erosion control measures shall be implemented to avoid where practicable, or otherwise minimise any sediment leaving the site and entering any waterway. Measures may include: the erection of silt fences, stabilisation of entranceways, cut off drains as necessary. These sediment control measures should be erected and maintained on site for the duration of the works. Note: refer to Waikato Regional Council's "Erosion & Sediment Control, Guidelines for Soil Disturbing Activities" refer to <http://www.waikatoregion.govt.nz>
45. Earthworks shall not obstruct or divert any stormwater overland flow path or result in changed stormwater drainage patterns on adjacent land in different ownership.
46. Construction activity shall be conducted in such a manner which will not create a dust nuisance. A dust nuisance will occur if:
 - (a) There is visible evidence of suspended solids in the air beyond the site boundary; and/or
 - (b) There is visible evidence of suspended solids traceable from a dust source settling on the ground, building or structure of a neighbouring site or water.
47. A water sprinkler cart or similar must be available on-site during earthworks to mitigate any dust nuisance (when necessary).
48. The Consent holder shall engage a Chartered Professional Engineer, experienced in the field of geotechnical engineering, to observe and examine the earthworks required for the development to certify that the testing and works have been completed in accordance with the recommendations of the Engeo Technical Investigation Report dated 16 May 2018 submitted with the application and the further information prepared by Engeo dated 17 August 2018.
49. The consent holder shall provide an assessment of available measures for the preservation of soil capacity in accordance with Section 8.5.11 - Compacted soil remediation, in the Waikato Regional Stormwater Guideline. Upon the completion of bulk earthworks final curve numbers are to be estimated taking into account compaction on the site and remediation techniques to confirm the sizing of soakage devices.
50. On completion of earthworks for each stage the geo-professional shall submit a report to the developer and HCC attesting to compliance with the earthworks specifications, inspections carried out, documentation on the testing of the soils for compaction and an assessment of the results. The report shall be accompanied a statement of professional opinion as set in schedule 2A of NZS 4404.

51. The earthworks, excavation and backfill, are to provide lots suitable for residential development. The standard of compaction of fill material is to meet the specification set out in NZS4431. A method to confirm the compaction achieved is also detailed in NZS4431.
52. Earthworks specification and associated standard detail drawings shall be provided as part of the detailed engineering design information that is required to be submitted to the Strategic Development Unit Manager (or nominee) in accordance with Condition 205.
53. The “Specific Design Zone” shown on the drawing ‘Geotechnical Constraints Plan – Proposed Contours’ prepared by Engeo dated 29 March 2018 Rev 1 and included in the Engeo Technical Investigation Report dated 16 May 2018 shall be reviewed and revised at detailed engineering design stage.
54. Any site development works within the “Specific Design Zone” shall address the Key Geotechnical Constraints as detailed in section 14.2 of the Engeo Technical Investigation Report dated 16 May 2018.
55. All vehicle entrances shall be stabilised, and a clean dust free surface created to ensure that silt and sediment is not tracked on to public roads. Where appropriate wheel wash or wash down facilities shall be provided at all proposed vehicle entrances.
56. All areas of bare earth shall be re-vegetated or re-grassed as soon as practicably possible and within three calendar months following the completion of earthworks. If this cannot be achieved the area shall be temporarily covered by a surface suitable to protect against soil erosion until such time as re-vegetation or re-grassing can occur.
57. Any disturbance of SNA 54 shall be confined to construction of one subsoil drain and outlet structure which shall be in general accordance with the location shown on the Harrison Grierson ‘River/Gully Hazard, and Significant Natural Areas’ Drawing 141842-9052 Rev 1. All works shall be confined to the minimum extent required to install the drain. Immediately after the drain and outlet structure has been installed, any vegetation disturbance shall be revegetated with a variety of suitable, locally sourced indigenous plant species in accordance with the requirements in Conditions 79(c) and 80. Maintenance of the revegetated area, including replacement plantings and weed control, shall be undertaken for a period of no less than three years after planting or until such time that a minimum indigenous plant species ground cover of no less than 80% is achieved. Confirmation that this percentage of ground cover has been met shall be determined by a suitably qualified ecologist who shall provide written confirmation of the same to the HCC Planning Guidance Unit Manager or nominee.

Construction Noise

58. All construction work (including earthworks), shall be designed and conducted to ensure that construction noise received at any other site in a residential zone does not

exceed the noise limits in Table 2. In the event that any sound level measurements are required they shall be measured and assessed in accordance with the provisions of NZS 6803:1999 Acoustics – Construction Noise.

Table 2: Construction Noise Limits

<i>Time period</i>	<i>Monday to Friday</i>		<i>Saturdays</i>		<i>Sundays and Public Holidays</i>	
	<i>Leq (dBA)</i>	<i>Lmax (dBA)</i>	<i>Leq (dBA)</i>	<i>Lmax (dBA)</i>	<i>Leq (dBA)</i>	<i>Lmax (dBA)</i>
<i>06:30am to 07:30am</i>	55	75	45	75	45	75
<i>07:30am to 06:00pm</i>	70	85	70	85	55	85
<i>06:00pm to 08:00pm</i>	65	80	45	75	45	75
<i>08:00pm to 06:30am</i>	45	75				

Note: Lower noise limits (shaded) mean that some construction work may not be able to take place during the corresponding time frames, which includes all times on Sundays and public holidays.

Construction Traffic

59. No construction-related Bulk HCV traffic may enter or leave the site on Sundays; or on public holidays or after 4.00 pm on working days prior to long weekends.
60. Construction-related Bulk HCVs may only enter or leave the site between 7.00am – 7.00pm.

Contaminated Soils

61. All construction and other land development activities authorised by this consent shall be carried out in a manner which is consistent with and/or complies with the National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS) Regulations 2011.
62. A suitably qualified and experienced practitioner (SQEP) with contaminated land expertise shall investigate the suitability of the land/piece(s) of land (POL(s)) for the

proposed development in accordance with the requirements of the RMA ((NЕСS) Regulations 2011. The purpose of the investigation is to ensure that development works satisfy the requirements of the NESCS.

63. Prior to any soil disturbance works commencing, the consent holder shall arrange a pre- commencement meeting in relation to the soil contamination investigation. In attendance shall be: A SQEP, HCC Contaminated Land Officer and Compliance Monitoring Officer, the relevant contractors, sub-contractors and works site supervisory staff who are carrying out any works associated with the NESCS part of the project.
64. A Detailed Site Investigation (DSI) shall be completed in accordance with the recommendations of the Preliminary Site Investigation (PSI) Report prepared by Engeo, dated 14 May 2018. The DSI objectives and subsequent design strategy shall ensure adequate soil quality data is collected so the information is appropriate, and representative of any exposure risk posed by activities or industries described in the HAIL. The investigation shall define and delineate the extent of contamination, with an acceptable level of confidence, to determine the applicable standards in the NESCS Regulations. The investigation shall be reported on in accordance with the current edition of Contaminated Land Management Guidelines No.1 - Reporting on Contaminated Sites in New Zealand, Wellington, Ministry for the Environment. The Report shall be provided to Council's Environmental Health Manager (or nominee) for approval in a certification capacity prior to any earthworks associated with each stage of the subdivision being carried out.
65. If the results of the DSI indicate that the soil contamination exceeds the applicable standards a Remedial Action Plan (RAP) shall be prepared and implemented. The RAP shall be prepared in accordance with the current edition of the Contaminated Land Management Guidelines No.1 - Reporting on Contaminated Sites in New Zealand, Wellington, Ministry for the Environment. The Plan shall be provided to Council's Environmental Health Manager (or nominee) for approval in a certification capacity prior to any remediation works associated with each stage of the subdivision being carried out.
66. If any remediation is required, validation sampling shall be undertaken and a Site Validation Report (SVR) shall be prepared after the remediation has been completed to demonstrate that the site is suitable for the intended land use. The report shall be prepared in accordance with the current edition of the Contaminated Land Management Guidelines No.1 - Reporting on Contaminated Sites in New Zealand, Wellington. The report shall be provided to Council's Environmental Health Manager (or nominee) as soon as practicable after remediation of the site has been completed. Council must be notified of any proposed variations to the RAP and any alternative methods or measures shall be proven to be consistent with the objective of the approved RAP prior to their implementation.
67. In the event remedial works are carried out, a Site Validation Report (SVR) shall be prepared that confirms the remediation targets stated in the approved RAP have been

achieved. The SVR must adequately demonstrate that no unacceptable risk to human health or the environment remains at the completion of any remedial works and that the piece of land is suitable for the intended use. The report shall include confirmation that all the consenting requirements have been met and compliance approved before development of any POL(s) can occur. A copy of the SVR must be provided to Council's Environmental Health Manager (or nominee) for approval in a certification capacity as soon as practicable after remediation of the POL(s) is completed.

68. Any soil exceeding the applicable NESCS standard shall be removed under controlled conditions to a licensed waste facility or landfill for disposal in accordance with the requirements of the RAP, the disposal site and the relevant authority. Receipts of transport and disposal shall be included in the Site Validation Report.
69. If the results of the DSI indicates soil disturbance is required to be managed, a Site Management Plan (SMP) shall be prepared that targets the actual onsite conditions relating to human health exposure, and the actual offsite removal issues relating to appropriate transport and disposal. The SMP shall include the relevant human health-related controls to ensure minimal exposure via the applicable pathways for the duration of the soil disturbance works. The SMP shall include appropriate contingency measures for any previously unidentified contamination being discovered, and an acceptable method and timing for works completion reporting. A copy of the SMP shall be provided to Council's Environmental Health Manager. Any alternative methods or measures shall be proven to be consistent with the objective of the approved SMP prior to their implementation.

Advice Note:

The DSI and any RAP, SVR or SMP that may be required as an outcome of the findings of the DSI may either be prepared for the entire site or for specific stages of the subdivision, provided that the reports must be completed and certified in accordance with the requirements of these conditions for each stage.

Archaeological Management and Monitoring

70. The Consent Holder shall ensure that representatives of the Tangata Whenua Working Group (being the Group described in the Amberfield Cultural Impact Assessment dated 10 May 2018), Nga Mana Toopu o Kirikiriroa, Te Ha o Te Whenua o Kirikiriroa and Waikato Tainui are notified within one month of the proposed commencement of construction works.
71. At least one month prior to the commencement of construction works the Consent Holder shall provide the Archaeological Sites Management Plan and Research Strategy prepared in compliance with Heritage NZ Authority 2019/069 to the HCC Planning Guidance Unit Manager.
72. The Consent Holder shall submit a copy of the Annual Archaeological Report required under Heritage NZ Authority 2019/069 annually to the HCC Planning Guidance Unit Manager in order to assist Council in monitoring effects.

73. The Consent Holder shall upon completion submit a digital copy of the Final Archaeological Report required under Heritage NZ Authority 2019/069 to the HCC Planning Guidance Unit Manager.
74. Earthworks shall be carried out in accordance with the Archaeological Site Management Plan prepared by W Gumbley Ltd dated 2 July 2018, or any updated Archaeological Site Management Plan which has been approved by Heritage New Zealand Pouhere Taonga. A copy of any updated Archaeological Site Management Plan shall be provided to the HCC Planning Guidance Unit Manager within 10 working days of approval of the change by Heritage New Zealand Pouhere Taonga.

ECOLOGICAL MANAGEMENT AND MONITORING

75. Any adverse effects on terrestrial ecology, shall be avoided, remedied or mitigated through the implementation of an EMMP as detailed below.
76. The EMMP shall be prepared by appropriately qualified and experienced ecologists and submitted to the HCC Planning Guidance Unit Manager for certification at least forty (40) working days prior to the commencement of Construction Works. The EMMP shall include performance measures, actions, methods, and monitoring programmes designed to achieve the objectives specified below.

Objective and Content of EMMP

77. The objective of the EMMP shall be to demonstrate how the Consent Holder intends to achieve no net loss of terrestrial biodiversity values. It shall provide details through the identified sub management plans below on how monitoring, management and mitigation of the significant adverse effects of construction activities and future land uses is to be undertaken, including but not limited to effects on:
 - (a) Avifauna, with the aim of enhancing the extent and quality of habitat for native species within the gully and the margins of the Waikato River within the site as set out in the "Avifauna Management Plan";
 - (b) Lizards, with the aim of enhancing the extent and quality of habitat for native species within the gully and the margins of the Waikato River within the site as set out in the "Lizard Management Plan";
 - (c) Indigenous vegetation values, with the aim of restoring indigenous vegetation to the gullies and margins of the Waikato River within the site, as set out in the "Vegetation Management Plan";
 - (d) Long-tailed bat, with the aim of minimizing and avoiding impacts on long tailed bats and their habitat using best practice techniques and mitigating and compensating for the direct loss of foraging, flyway habitat and any potential roosts using best practice techniques, as set out in the "Long-Tailed Bat Management and Monitoring Plan"; and
 - (e) Biosecurity management to minimise the spread and invasion of pathogens,

plant pests and animal pests prior and during construction.

Note: Wetland and freshwater values are addressed in conditions of consent from Waikato Regional Council.

Actions and Methods for the EMMP and Sub Management Plans

78. The EMMP and all sub management plans under it shall include as relevant:
- (a) Identification of areas and timeframes for establishment of advance monitoring, restoration / mitigation works and planting, as far as practicable ahead of construction activities;
 - (b) Provision for the engagement of suitably qualified and experienced ecologists to develop appropriate procedures to manage effects on long-tailed bats, avifauna, and lizards, where habitats are affected;
 - (c) The nature of any weed and / or pest control considered appropriate (timing, extent and location) in enhancement / mitigation planting areas;
 - (d) The nature and extent of stock proof or other protective fencing (if required) that is to be established around the boundaries of restoration / mitigation planting areas;
 - (e) Procedures and protocols for managing Threatened and At-Risk species in case they are discovered; and
 - (f) All other matters identified or contemplated under the EMMP conditions for inclusion in the management plans.

Planting

79. An area of no less than 18.65 hectares shall be planted for the purpose of mitigating adverse ecological effects of the development and shall be carried out and established in general accordance with:
- (a) Boffa Miskell Drawing A17134 054 Revision H Gully and Esplanade Reserve Vegetation Strategy 14 February 2019;
 - (b) Boffa Miskell Drawing A17134 083a Indicative Shelterbelt Planting Strategy Plan Rev E 9 April 2019;
 - (c) the species list in Annexure A of the evidence-in-reply of Andrew Blayney dated 1 May 2019;
 - (d) the relevant requirements in Conditions 80 to 86, where for the purpose of conditions 81-84 the term 'Commencement Notice' means a notice provided in writing from the consent holder to the HCC Planning Guidance Unit Manager (or nominee) confirming the consent holder's intention to exercise the consent by way of commencing construction works.

80. For indigenous plants, all plantings shall be eco-sourced (Hamilton Ecological District) plant species appropriate to the locality, and the ecosystem type being restored (i.e. the ecosystem type would have occurred at the locality under natural conditions). These indigenous species shall be represented in appropriate diversity, proportions, cover, and configuration as would be expected for natural examples of the same ecosystem types within the Hamilton Ecological District.
81. The extent of bat habitat shown on Boffa Miskell Drawing A17134 Proposed Early Planting Outside of Earthworks Extent Rev 7 dated 12 August 2019 along the North-East Terrace within Lots 1502 and 1503 shall be established prior to construction works commencing and no later than the first planting season following the provision of a Commencement Notice in accordance with Condition 79(d) and in general accordance with Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 and A17134 078 Addendum Figure NE Terrace Reserve Cross Sections 1 & 2 Rev B dated 19 February 2019.
82. The East-West Shelterbelt within Lots 1506 and 1510 shall be retained and enhanced as bat habitat with buffer planting so as to maintain a movement corridor that shelters the bats from the light and wind prior to construction works commencing and no later than the first planting season following the provision of a Commencement Notice in accordance with Condition 79(d) and in general accordance with Boffa Miskell Drawings A17134 083a and 083b & 083c Indicative Shelterbelt Planting Strategy Plan and Shelterbelt Cross Section A and B Rev E 9 April 2019.
83. A 10m width of early planting shall be planted along the Waikato River margin and along the top of the gully to minimise light spill into the river corridor, Hammond Bush and the gully prior to construction works commencing and no later than the first planting season following the provision of a Commencement Notice in accordance with Condition 79(d) and in general accordance with Boffa Miskell Drawing A17134 Proposed Early Planting Outside of Earthworks Extent Rev 7 dated 12 August 2019.
84. The remaining planting within the gully within Lots 1507, 1509 and 1516 outside of the earthworks extent shall be completed to address the requirements in conditions 79 and 80 and in accordance with the certified Vegetation Management Plan required by Condition 116 no later than the third planting season following the provision of a Commencement Notice in accordance with Condition 79(d), excluding the stormwater management devices and subject to any requirements of the Aquatic Habitat Enhancement Plan (which is a requirement of the Waikato Regional Council resource consent AUTH139498.03.01).
85. The remaining planting required by condition 79 within the earthwork's extent shall be completed by the first planting season after the earthworks is completed.
86. Detailed planting plans and planting and maintenance specifications to address the requirements in Conditions 81-83 and 85 shall be prepared and submitted to the HCC Planning Guidance Unit Manager or nominee for certification prior to planting commencing within each respective area. Maintenance specifications shall include

- (a) Weed control necessary to ensure the successful establishment of the plants.
 - (b) Animal Pest Control, undertaken for a period of twenty (20) years, at known significant roost sites. Any measures implemented must be determined by an Animal Pest Control specialist. The duration or nature of Animal Pest Control in accordance with this condition can be altered should monitoring of the Animal Pest Control allow alternative Animal Pest Control approaches to be trialled and/or following a Review. Any alteration to the duration or nature of Animal Pest Control shall necessitate a review of the EMMP in accordance with conditions 127 to 131.
87. The Consent Holder shall maintain the completed ecological mitigation planting required by condition 79 until the following requirements have been met. Confirmation that the requirements have been met shall be determined by a suitably qualified ecologist who shall provide written confirmation of the same to the HCC Planning Guidance Unit Manager or nominee:
- (a) 4 m height and 80% canopy closure in the vertical plane for the planting comprising the “Buffer planting area located in natural ground not dependent on earthworks” as shown on Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 and the “10m Width of Early Planting” as shown on Boffa Miskell Drawing A17134 Proposed Early Planting Outside of Earthworks Extent Rev 7 Dated 12 August 2019;
 - (b) 4 m height and 90% canopy closure in the vertical plane for the planting comprising the “Tall stature buffer planting” as shown on Boffa Miskell Drawings A17134 083a and 083b & 083c Shelterbelt Planting Strategy Plan and Shelterbelt Cross Section A and B Rev E 9 April 2019;
 - (c) For the remaining planting, after 5 years achieving a density and diversity of species in accordance with the Vegetation Management Plan. If monitoring shows this has not been achieved, then the maintenance period shall be extended until such time as it is achieved;
 - (d) For the planting required to be undertaken in (c) above, the Consent Holder shall provide advice in writing to the HCC Planning Guidance Unit Manager or nominee from a suitably qualified ecologist to confirm when each stage of planting has been undertaken in accordance with the certified planting plans
 - (e) The confirmation referred to in (d) shall be provided to the MPLG who can choose within twenty [20] working days of receipt to provide recommendations on extension of the maintenance period to the HCC Planning Guidance Unit Manager or nominee. The HCC Planning Guidance Unit Manager or nominee shall in addition to the monitoring and confirmation, take the recommendation into account when making a decision whether to extend the maintenance period.
88. The Consent Holder shall submit a Planting Monitoring Report to the Planning Guidance Unit Manager and Management Plan Liaison Group from the first stage of planting and

annually thereafter for the duration of the respective maintenance periods described in Condition 87. The report shall include the following information:

- (a) Success rates, number and location of plants lost and replacement of dead plants;
- (b) Vertical canopy closure for the North-East Terrace and East-West Shelterbelt buffers and species density and diversity;
- (c) Animal and weed pest control; and
- (d) Recommendations for changes to the Vegetation Management Plan (if any).

Lighting

- 89. A bat-sensitive lighting regime shall be designed and implemented along the riverside roads, the roads adjacent to and crossing the southern gully, and the roads crossing the East-West Shelterbelt of the site.
- 90. The luminaires for the purpose of the bat-sensitive lighting regimes shall be LED type, and lighting subcategory P5 of Table 2.6 of AS/NZS 1158.3.1:2005.
- 91. Detailed design of the bat-sensitive lighting regime shall be prepared by a suitably qualified expert in collaboration with a suitably experienced bat ecologist. This detailed design shall be submitted to the HCC Planning Guidance Unit Manager or nominee for certification prior to implementation.
- 92. For all the residential lots within Stages 19, 20, 21, 29 and 30, and Lots 831 – 835 in Stage 25, and Lots 141, 149 – 152, 166, 169 and 170 within Stage 4, and Lot 182 within Stage 15, to minimise the spill of bat-sensitive lighting on known and potential bat habitat, permanent outdoor lighting arrays, including external feature lights, security lights and access wall lights associated with future building platforms must achieve zero upward light spill. Compliance with this condition shall be demonstrated at the building consent stage by a suitably qualified expert and shall be complied with on an ongoing basis to minimize the spill of bat-sensitive lighting on known and potential bat habitat.
- 93. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered against the Record of Title for all the lots referred to in Condition 92 requiring that permanent outdoor lighting arrays, including external feature lights, security lights and access wall lights must achieve zero upward light spill and that compliance shall be demonstrated at the building consent stage by a suitably qualified expert.

Site Development

- 94. Construction activities shall be carried out in accordance with the Long-Tailed Bat Management and Monitoring Plan to meet the objectives of the EMMP and ensure that bat roost removal and/or habitat loss is avoided where possible.

95. Activities on the site shall be carried out to ensure that potential bat roost removal is avoided or if required, removed due to sickness or danger to the public. Potential bat roost removal shall comply with the specific standards for roost tree identification and monitoring of roost trees before their removal.
96. Long-tailed bat management shall include, but not be limited to, the following procedure and actions:
- (a) Implementation of measures to avoid, and monitor roost removal and habitat loss, including a methodology determined by a suitably qualified bat ecologist for:
 - i. the identification of any actual or potential roost trees and their monitoring before their removal and the preparation of a pre-tree felling protocol following consultation with the Department of Conservation and MPLG;
 - ii. minimising disturbance associated with land development activities around active roosts within the site that do not require removal.
 - (b) If any roost trees are identified, details of the provision of alternative roosting sites (including suitable indigenous or exotic trees for roost habitat, their ongoing management to enhance their roosting potential (for example, encouraging cavity formation or providing artificial bat houses), with artificial roosts installed as far in advance of land development and prior to removal of any roost trees as possible;
 - (c) Implementation of measures to minimise disturbance from construction activities within the vicinity of any active roosts that are discovered until such roosts are confirmed to be vacant of bats, as determined by a suitably qualified bat ecologist using current best practice.
97. A record of the above procedures and actions shall be kept and be made available to HCC and the MPLG at the next MPLG meeting or on request.

Lizard Management Plan

98. A Lizard Management Plan shall be prepared that includes as a minimum: a description of lizard habitat, lizard species present, legal requirements, personnel and disease management, timing survey and recovery and translocation methods, reporting requirements, mitigation commensurate with the number and species of lizards rescued, and incidental kill and harm minimisation protocols.
99. Vegetated areas of the site to be removed which are potential lizard habitat shall be identified and incidental capture and translocation measures shall be implemented within these areas in accordance with best practice.
100. Lizard habitat within the gully reserve is to be created and/or enhanced by retaining woody debris and natural refugia salvaged from the vegetated areas to be removed

from other parts of the site.

101. The Lizard Management Plan shall include, but not be limited to, the following:
- (a) A description of methodology for incidental capture of native lizard species including but not limited to; handling protocols, relocation protocols, reporting protocols, potential relocation sites, and protocols for dealing with injured or dead lizards encountered during the works.
 - (b) A description of the lizard habitat creation and improvement methodology; including discussion of:
 - i. appropriate plant species to be planted;
 - ii. appropriate location/s for habitat creation or improvement;
 - iii. methods for provision of providing additional refugia, e.g. depositing salvaged logs, wood or debris;
 - iv. any protection mechanisms (if required) to ensure the relocation site is maintained (e.g.) covenants, consent notices etc; and
 - v. any weed and pest management to ensure the created and/or improved lizard habitat site/s are maintained as appropriate habitat;
 - vi. be updated to achieve consistency with any authorisation given by the Director- General of the Department of Conservation under section 53 of the Wildlife Act 1953 if any such authorisation is required.
102. The Lizard Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 101 above.
103. The Lizard Management Plan shall be provided to the MPLG which may make recommendations in response twenty [20] working days prior to certification. The HCC Planning Guidance Unit Manager (or nominee) shall consider the MPLG recommendations and may should they choose, refer the management plan back to the Consent Holder with required amendments. The Consent Holder shall be required to amend the management plant to incorporate those amendments and shall resubmit the management plan for certification.
104. The certified Lizard Management Plan shall be implemented for the duration of earthworks for each stage of construction.

Avifauna Management

105. An Avifauna Management Plan shall be prepared that includes as a minimum: pre-construction surveys, nest and roost searches prior to vegetation clearance (with restrictions possible based on findings), pre-drainage checks for ponds to avoid any

damage to dabchick nests, and incidental kill and harm minimisation protocols.

106. Vegetated areas of the site to be removed shall be inspected for nesting of native birds. If nesting birds are detected, exclusion zones shall be implemented until fledging of chicks is completed.
107. The Avifauna Management Plan shall include, but not be limited to, the following:
 - (a) a description of methodology for pre-vegetation clearance nesting bird surveys including a discussion of;
 - i. the nesting periods of native birds present onsite; and
 - ii. appropriate timing of vegetation clearance and surveys;
 - (b) the details for exclusion zones around nesting birds until fledging of chicks if detected within proposed vegetation clearance areas;
 - (c) protocols for dealing with injured or dead birds encountered during the works; and
 - (d) be updated to achieve consistency with any authorisation given by the Director- General of the Department of Conservation under section 53 of the Wildlife Act 1953 if any such authorisation is required.
108. The Avifauna Management Plan shall also provide a description of appropriate plant species and other avifauna habitat enhancement measures for planting of the gully reserve.
109. The Avifauna Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 107 above.
110. The Avifauna Management Plan shall be provided to the MPLG which may make recommendations in response twenty [20] working days prior to certification. The HCC Planning Guidance Unit Manager (or nominee) shall consider the MPLG recommendations and may should they choose, refer the management plan back to the Consent Holder with required amendments. The Consent Holder shall be required to amend the management plant to incorporate those amendments and shall resubmit the management plan for certification.
111. The certified Avifauna Management Plan shall be implemented for the duration of earthworks for each stage of construction.

Vegetation Management Plan

112. Vegetated areas of the site to be retained shall be clearly demarcated by a suitably qualified and experienced project ecologist and landscape architect prior to construction works within each construction stage.

113. All large stature trees which are ≥ 15 cm diameter and breast height and that provide or potentially provide roost habitat and buffering of light for long-tailed-bats shall be retained within the gully and esplanade reserve areas shown in the Boffa Miskell Drawings A17134 054 Revision H Gully and Esplanade Reserve Vegetation Strategy 14 February 2019, unless any such trees are recommended for removal by a suitably qualified and experienced arborist due to poor health or presenting danger to the public.
114. The gully reserve shall be planted in accordance with the requirements of condition 84.
115. Vegetation that is planted within the North-Eastern Terrace, East-West Shelterbelt, gully and esplanade reserves shown on the Boffa Miskell Drawing A17134 054 Revision H Gully and Esplanade Reserve Vegetation Strategy 14 February 2019 and the Boffa Miskell Drawing A17134 083a Indicative Shelterbelt Planting Strategy Plan Rev E 9 April 2019 shall be maintained to meet the maintenance requirements of Condition 87.
116. The consent holder shall prepare Vegetation Management Plan which demonstrates how conditions 113 to 116 will be satisfied by including the following:
- (a) processes across the entire site for vegetated areas to be retained being clearly demarcated by a suitably qualified and experienced project ecologist and landscape architect prior to construction works within each construction stage;
 - (b) identification and management of all large stature trees that are ≥ 15 cm diameter and breast height and that provide or potentially provide roost habitat and buffering of light for long-tailed-bats and identification of any such trees that are recommended for removal by a suitably qualified and experienced arborist due to poor health or presenting danger to the public;
 - (c) detailed planting plans and planting and maintenance specifications for the gully reserve, including plant species, densities and habitat design for avifauna, lizards and long-tailed bats which shall be developed in collaboration with ecologists with suitable expertise and experience in these areas and in consideration of the Gully restoration guide: a guide to assist in the ecological restoration of Hamilton's gully system. Wall, K and B.D. Clarkson 2006: Third Revised Edition, Hamilton City Council. Specific planting design measures shall be incorporated into the detailed planting plans to facilitate bat movement over or under the culvert and bridge crossings of the gully reserve;
 - (d) how any planting related requirements of resource consent AUTH139498.04.01 issued by Waikato Regional Council will be met;
 - (e) a vegetation maintenance plan for the North-Eastern Terrace, East-West Shelterbelt, gully and esplanade reserves. The maintenance plan shall include weed control and pest plant and animal control necessary to ensure the successful establishment of the plants and the ongoing replacement of plants that do not survive during the maintenance period.

117. The Vegetation Management Plan submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification shall include all relevant matters addressed in condition 116 above.
118. The Vegetation Management Plan shall be provided to the MPLG which may make recommendations in response twenty [20] working days prior to certification. The HCC Planning Guidance Unit Manager (or nominee) shall consider the MPLG recommendations and may should they choose, refer the management plan back to the Consent Holder with required amendments. The Consent Holder shall be required to amend the management plan to incorporate those amendments and shall resubmit the management plan for certification.
119. The certified Vegetation Management Plan shall be implemented for the duration of earthworks for each stage of construction and for the maintenance period described in Condition 87.

Long-Tailed Bat Management and Monitoring Plan

120. The Long-Tailed Bat Management and Monitoring Plan shall be developed by a suitably qualified bat ecologist after consultation with the MPLG and a nominated Southern Links Project Ecologist. The objective of this consultation is to enable the MPLG to meet its purposes and to enable the monitoring to integrate into Southern Links bat monitoring as per the Southern Links EMMP, and contribute to a wider understanding of how development across the Peacocke area is potentially affecting the long-tailed bat colony.
121. The Long-Tailed Bat Management and Monitoring Plan shall include, but not be limited to, the following:
 - (a) Details of measures to avoid, minimise and monitor roost removal and habitat loss (including specific minimum standards determined by a suitably qualified bat ecologist for roost tree identification and monitoring of roost trees for the purpose of avoiding their removal where at all possible, recognising the limitations for determining roost tree occupancy in some situations), as well as habitat replacement and enhancement;
 - (b) Details of the provision of alternative roosting sites (including suitable indigenous or exotic trees for roost habitat, their ongoing management to enhance their roosting potential (for example, encouraging cavity formation or providing artificial bat houses), with artificial roosts installed as far in advance of construction as possible;
 - (c) Details of measures to minimise habitat fragmentation and alteration to bat movement (e.g. creating possible bat crossing points; reducing the effect of road lighting through the lighting condition at conditions 89 to 93);
 - (d) The establishment of buffer zones and hop overs along the identified fly route in advance of construction (where feasible), during and after construction to encourage bat avoidance of urban areas and roads in Amberfield and

maintaining important bat flyway navigational references, if deemed appropriate by a suitably qualified bat ecologist;

- (e) Details of measures to minimise disturbance from construction activities within the vicinity of any active roosts that are discovered until such roosts are confirmed to be vacant of bats, as determined by a suitably qualified bat ecologist using current best practice;
- (f) Details of ongoing monitoring and reporting of bat activity, including the establishment of adequate baseline survey and post construction monitoring to identify and assess changes in bat activity and behavioural patterns that may occur as a result of construction at all locations where bats are detected. The specific priority objectives of monitoring shall include:
 - i. determining changes in activity levels relative to increased anthropogenic disturbance adjacent to key habitats (NE Terrace bat reserve, Waikato River corridor, East-West Shelterbelt and southern gully) that will be retained and enhanced on site.
 - ii. Determining the effects of lighting and roads on the movement of bats and what other key potential barriers are to movement;
 - iii. Monitoring to gauge the effectiveness of the Animal Pest Control required by condition 86((b)) and
 - iv. Identification, protection and ongoing monitoring of key habitats (e.g. maternal roosting sites and foraging sites); and
 - v. The further monitoring parameters set out at conditions 123 to 126.

122. The specific priority objectives of monitoring shall also include specific minimum standards as determined by a suitably qualified bat ecologist for minimising disturbance associated with construction activities around active roosts within the footprint of the Development, that do not require removal. This includes the preparation of a pre-tree felling protocol following consultation with the Department of Conservation. The purpose of the pre-tree felling protocol shall be to avoid the injury or mortality of roosting long-tailed bats.

Monitoring Parameters

123. Best practice monitoring including but not limited to bio acoustic monitoring shall be carried out over the long-tailed bat breeding season and peak activity period as follows:
- (a) Pre- construction baseline distribution surveys to assess bat distribution and behaviour within areas of potential bat habitat on the Amberfield site. A minimum of two surveys shall be undertaken during the months of November to April inclusive. Surveys shall be conducted in each monitoring season thereafter prior to construction commencing.
 - (b) The consent holder shall ensure that not less than two monitoring seasons are

completed prior to construction commencing, and

- (c) thereafter to be carried out at not less than 5 yearly intervals concluding at 15 years or as determined during a review under conditions 127 to 131 and shall ensure adequate site coverage incorporating all potential roosting, commuting and foraging habitats as well as suitable control sites so as to monitor and identify any changes in bat activity that result from onsite and off-site changes.

124. Monitoring strategies shall include but not be limited to:

- (a) Acoustic monitors will be installed to monitor relative bat activity across the site, targeting sensitive locations (E-W shelterbelt, Waikato River margin), control sites (e.g., along the Waikato River margin to the southeast of the development) and in representative locations across the site, to detect changes in frequency and pattern of usage.
- (b) Comparative monitoring will be undertaken in Hammond Bush to detect behavioural changes in this population at that location and tolerance thresholds for the purposes of condition 132(f).
- (c) Baseline data will include surveys undertaken to date, pre- earthworks and pre-construction surveys. Data collected onsite will also be compared with that collected from control sites that are unaffected by anthropogenic activity (e.g. Pukemokemoke Reserve, Pirongia) and in accordance with condition 123(a).
- (d) Detailed survey design (frequency and timing of sampling, duration, specific sample locations, sample size, statistical analyses, etc) will be developed as part of the Long-Tailed Bat Monitoring and Management Plan, by qualified bat ecologists with input from a biostatistician.
- (e) Sampling will be coordinated and cross-referenced with Southern Links monitoring and construction works, to provide a landscape-wide context for interpretation of data.
- (f) Specific trials of bat responses to lighting arrays will be conducted using ABM and hand-held monitors once lighting infrastructure is installed. Activity across grassed open sites in the vicinity of houses will also be assessed pre- and post-occupancy.
- (g) Artificial bat roosts will be periodically inspected for signs of occupancy.
- (h) Trigger values will be determined via statistical analysis of pre-works sample data.

125. The outcomes of the monitoring shall be provided to Council and the MPLG within two months of completion. Upon reviewing and or in response to the monitoring information and outcomes, the Council may should it choose, initiate a review or the MPLG may recommend that the Council initiate a review, of the Long- Tailed Bat Management and Monitoring Plan. That review shall be undertaken under conditions 127 to 131.

126. Adaptive management of the development shall be integrated into the Long -Tailed

Bat Management and Monitoring Plan to ensure regular feedback and allow management plans to adapt to any changing conditions found during monitoring. Adaptive management may include additional on-site mitigation measures including those referred to in conditions 132 to 133.

Review of Management Plans

127. The EMMP and sub management plans referred to in the Ecological Management and Monitoring conditions above may be reviewed by the Hamilton City Council at any-time.
128. The purpose of any review shall be to identify whether any changes to management procedures contained within the management plan are required in accordance with but not limited to the objectives of the EMMP and sub management plans, the outcomes of monitoring and best management practices.
129. In addition, building development on the Stages and lots referred to in conditions 137 to 138 and 139 below shall be deferred until a review of monitoring results has been completed in consultation with the MPLG and approved by Council's Planning Unit Guidance Manager.
130. Reviews will occur either upon the initiation of:
 - (a) The Consent Holder; or
 - (b) Council; or
 - (c) by Council following a recommendation by the MPLG; or
 - (d) Every five (5) years from the date of consent.
131. In undertaking a review, the Council shall consider:
 - (a) The survey and monitoring data produced to date;
 - (b) Any potential or actual adverse effects identified by the data and activities of the sub- division;
 - (c) Any direction from the Director-General of the Department of Conservation under section 53 of the Wildlife Act 1953, if such authorization is required.

Adaptive Management of Long- Tailed Bat

132. Where the objectives of the EMMP have not been met with respect to Long tailed bats or any adverse effects or activities are identified by the Monitoring or in the Review requiring mitigation and therefore amendment of the Management Plan(s), adaptive management measures shall be implemented. Those measures may include but not exclusively be limited to the following actions:
 - (a) Modification to street lighting arrays;
 - (b) Modification to species assemblage and/ or plant densities in vegetated

buffers;

- (c) Installation of temporary physical barriers (e.g., brush hedging or similar) to supplement vegetated buffers;
- (d) Modification to proposed residential berm screen planting;
- (e) Addition of further screen planting between lots;
- (f) Following development of initial house lots in Stage 1, ambient light levels will be measured at distance intervals to assess the likely cumulative effect of increased ambient light on Hammond Bush. Exceedance of tolerance thresholds as outlined by condition 124(b), or if exceedance is assessed as likely, will trigger a requirement for permanent outdoor lighting arrays, including security/spotlights and access wall lights, to conform to best practice specifications for zero upward light spill.
- (g) Reduction of upward light spill. It should be noted that the design specifications for outdoor lighting outlined above will be required from the outset in deferred lots.
- (h) Increased density of street trees (currently proposed at ~12 – 15 m intervals) to further intercept and attenuate ambient light from houses on western terraces facing Hammond Park;
- (i) Installation of further artificial bat roosts;
- (j) Adaptation of planting and long-term management specifications within buffered corridors to provide for a long-term transition to habitat dominated by native forest species, and of forest restoration plans to ensure favourable habitat for prey invertebrate species is provided; and
- (k) Extension of lot deferrals in whole or part beyond the anticipated timeframe if monitoring identifies the need and or adverse effects are identified and or vegetated buffers are not sufficiently well-developed; or
- (l) exclusion of lots from building if monitoring identifies the need and or adverse effects are identified necessitating this response.

133. Any recommendation to extend the deferral of or exclude lots shall require:

- (a) The clear identification of lots:
 - i. to be released from deferral;
 - ii. to be deferred further and the extension timeframe(s) for the deferral; or
 - iii. any lots to be excluded from building permanently (if required); and
- (b) reasons for recommendations.

Amendment of Management Plans in Response to Adaptive Management

134. Any changes to the Management Plan(s) shall be prepared by appropriately qualified

and experienced ecologists and submitted to the HCC Planning Guidance Unit Manager (or nominee) for certification at least ten (10) working days prior to the changes being given effect to.

135. Any changes to the Management Plan(s) shall be prepared after consultation with the MPLG. This consultation shall take the following form:
- (a) the consent holder shall prepare a draft updated Management Plan(s) for consultation with the parties who shall be given thirty (30) working days to consider and provide written comments on the draft updates;
 - (b) following this consultation period, the consent holder may amend the draft updated Management Plan(s) and shall provide the Management Plan(s) to be considered for certification, together with the written comments of the Management Plan Liaison Group to the HCC Planning Guidance Unit Manager. Prior to determining certification of the updated Management Plan(s) the HCC Planning Guidance Unit Manager:
 - i. shall where there are conflicting recommendations with respect to lot deferral under conditions 132((k) or 132((l) and 133 arrange an independent peer review of the updates to the Management Plan(s) by a suitably qualified and experienced ecologist
 - ii. may arrange an independent peer review of the updates to the Management Plan(s) by a suitably qualified and experienced ecologist for any other matter the HCC Planning Guidance Unit Manager may determine warrants review.
136. The peer reviews will be completed at the Consent Holder's cost.

Building Development Deferral

137. Building on Lot 166 shall not occur unless and until a review has been completed in accordance with conditions 127 to 133 above and a suitably qualified ecologist confirms in a report to the HCC Planning Guidance Unit Manager (or nominee) that the planting comprising the "Tall stature buffer planting" as shown on Boffa Miskell Drawings A17134 083a Plan and 083b & 083c Indicative Shelterbelt Planting Strategy Plan and Shelterbelt Cross Section A and B Rev E dated 9 April 2019 has reached 4 m in height and has achieved a 90% canopy closure in the vertical plane.
138. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered against the Record of Title of Lot 166 advising that construction of any proposed buildings may not occur unless and until the vegetation height and canopy closure requirements set out in condition 137 above have been confirmed in accordance with that condition. If the height and canopy closure requirements set out in condition 137 above are confirmed prior to a certificate being issued for the relevant subdivision stage pursuant to s224(c), a consent notice will not be required.

Lot Staging Deferral

139. Approval of s224(c) for the stages referred to in (a) and (b) below, will not be provided

unless and until a review has been completed in accordance with condition 127 to 133 above and a suitably qualified ecologist has confirmed in a report to the HCC Planning Guidance Manager (or nominee) that the planting locations specified in (a) and (b) have met the following height and canopy closure performance criteria.

- (a) For Stages 19 and 20, that the vegetation shown on the certified detailed planting plans and comprising the “Buffer planting area located in natural ground not dependent on earthworks” as shown on Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 which adjoins the respective stage has reached 4 m in height and has achieved a 80% canopy closure in the vertical plane.
- (b) For Stages 21, 29 and 30 and Lots 831 – 835 in Stage 25, that the vegetation shown on the certified detailed planting plans and comprising the “10m Width of Early Planting” as shown on Boffa Miskell Drawing A17134 040 Proposed Early Planting Outside of Earthworks Extent Rev 7 Dated 12 August 2019 which adjoins the respective stage has reached 4 m in height and has achieved an 80% canopy closure in the vertical plane.

Further Protections

- 140. The Council will secure the conditions below by way of a Consent Notice issued under Section 221 of the Act, to be registered against the titles of the affected allotment. The costs of preparing, checking and executing the Notice shall be met by the consent holder.
 - (a) No cats or mustelids which have the potential to be long tailed bat predators shall be introduced or kept on all lots.
 - (b) Any dog kept or introduced to the Amberfield site must be kept within a dog-proof fenced area and be under effective control at all times when outside of the fenced area, e.g. on a lead. At night any dog must be kept inside or securely and safely housed.

Long-tailed bat population enhancement

- 141. To help to address any short-term adverse effects (or risk of such effects) of the proposed development on the long-tailed bat population during the time lag between mitigation actions commencing and becoming established, the consent holder (“Weston Lea Limited”) shall make a monetary payment of \$200,000.00 plus GST (if any), (“Amberfield long-tailed bat population Enhancement Fund” or “ABF”).
- 142. The consent holder will deposit the ABF into the Hamilton City Council’s solicitor’s trust account to be used by Hamilton City Council, in its sole discretion, for the purpose of funding direct actions that are designed to manage, protect and/or enhance the resilience of the long-tailed bat population across the known extent of the home range of long-tailed bats affected by the Amberfield development (“home range area”), including, without limitation, co-ordinated pest control in high-value habitat including

roosting sites and high activity areas identified across the home range area for a period of not less than fifteen (15) years.

143. The consent holder will pay the ABF in the following minimum instalments, where for the purpose of (a) to (c) below the term 'Commencement Notice' means a notice provided in writing from the consent holder to the HCC Planning Guidance Unit Manager (or nominee) confirming the consent holder's intention to exercise the consent by way of commencing construction works:
- (a) 25% within 5 working days of the provision of a Commencement Notice;
 - (b) 25% within the first 5 years of the provision of a Commencement Notice; and
 - (c) the balance within the first 10 years of the provision of a Commencement Notice or prior to the issue of the final s224 stage certificate whichever is the earlier.
144. Once a trust associated with the proposed Waikato Regional Local Indigenous Biodiversity Strategy ("WRLIB trust") has been settled, any part of the ABF which remains unspent or uncommitted under any pre-existing contractual arrangements may be re-directed and paid to WRLIB Trust, to be distributed for the purpose described in condition 142 above.

Advice note:

- (a) *High value habitat means an area where there is evidence of roosting sites, including communal or solitary roosts, which may also include adjacent foraging and commuting habitat.*
- (b) *A request for proposal is anticipated to set out the requirements for the contractor and the criteria for the proposed programme and would include:*
 - i. evidence of relevant experience in carrying out animal pest control or bat habitat protection and restoration;*
 - ii. provision of detailed design of animal pest control, bat habitat protection and restoration measures and implementation methods;*
 - iii. provision of cost breakdown for completion animal pest control, bat habitat protection and restoration measures and their implementation;*
 - iv. estimated timing for completion of animal pest control, bat habitat protection and restoration measures; and*
 - v. anticipated ecological enhancement outcomes following implementation of the animal pest control, bat habitat protection and restoration measures.*

Guarantee

145. Prior to the exercise of this consent, The Adare Company Limited shall provide surety

in the form of a deed of guarantee in favour of the Council to guarantee the performance of specified conditions of consent by the consent holder. The guarantee shall ensure the performance of all those obligations contained within conditions 75 to 136 in relation to ensuring the implementation of the Vegetation Management Plan and the Long-Tailed Bat Management and Monitoring Plan.

LANDSCAPING TREATMENT OF RECREATION AND AMENITY RESERVE

146. Final detailed landscape plans for open space reserves 1 to 7 and 11 in “Amberfield Open Space Framework Peacocke, Hamilton” by Boffa Miskell Ltd dated 28 February 2019 shall be submitted for approval in a technical certification capacity by the Manager Parks and Recreation Unit (or nominee) at the same time as the application for Detailed Engineering Design Plan certification for the relevant subdivision stage. The Plans shall be generally consistent with the content of the “Amberfield Open Space Framework Peacocke, Hamilton” by Boffa Miskell Ltd dated 28 February 2019, except that the detailed landscape plan for the Archaeological Reserve (open space reserve 11) shall not be inconsistent with the certified Archaeological Heritage Reserve Management Plan (refer to specific staging condition Stage 25 - 5(e) below), and shall be amended as required until stamped ‘Accepted’ by the Manager Parks and Recreation (or nominee). No hard or hard or soft landscaping works shall commence on site until the plans are accepted.
147. The landscaping works shall be implemented in accordance with the Accepted Reserve Plans as part of the subdivision works for the applicable subdivision stage.
148. The design, construction and maintenance of all landscaping and planting shall be in accordance with Section 7 of the Waikato Regional Infrastructure Technical Specifications

ACTIVE RECREATION RESERVE

149. The residential lots and area of roading shown on the attached plan (Schedule 3), comprising an area of approximately 7 hectares, shall be shown on the survey plan as a single lot to vest in Council as recreation reserve. Compensation will be calculated and paid in accordance with the Public Works Act 1981.
150. If prior to Council and the consent holder agreeing the amount of compensation, or Council referring the matter of the amount of compensation payable to the Land Valuation Tribunal to determine, Council advises the consent holder that it is satisfied that a suitable alternative location for the sports park has been identified, condition 149 above shall not apply and the survey plan for lodgement at section 223 for the stage(s) within which the land is contained shall be in general accordance with Harrison Grierson Drawing 141842 – 1046 Rev 10.

ENGINEERING DESIGN/WORKS

151. All engineering works associated with all stages of the subdivision shall satisfy the standards and requirements as specified in the following conditions.
152. All engineering works shall be subject to a works clearance process and must be approved by Council prior to section 224c certification and prior to vesting in Council of any relevant infrastructure assets.

SERVICES

153. Telecommunications reticulation (including ducting for computer media), and underground electrical supply reticulation, shall be provided to all lots.
154. Reticulated gas services shall be provided to all lots, where this service is available.
155. The consent holder shall obtain a works clearance from each network operator for electricity, telephone and, where applicable, gas services. All network connections to all lots shall occur prior to the issue of certification under Section 224c of the RMA.
156. The consent holder shall provide a works clearance (for network connections), as obtained from each network Utility Operator, at the time of submitting its Works Clearance application.
157. The consent holder shall procure the relocation and place underground the existing overhead 11kV electricity distribution line located within the site within each stage so that they are contained within road reserve, with the exception of the existing overhead 11kV electricity distribution line servicing the Riverlea area which may remain above ground from the road reserve/esplanade reserve (Lot 1502) and across the Waikato River.
158. The location and design of the proposed WEL Networks Ltd 11kv terminal structure shall be submitted with the engineering design plans for certification, together with the outcomes of consultation with WEL Networks and HCC. Any required easements shall be shown on the survey plan and duly granted and reserved.

Advice Note:

Any cost and/or work associated with connecting to the network utility service shall be a matter that is to be negotiated and completed between the Consent Holder and the relevant service providers. The consent authority has no direct or indirect involvement in the assessment or approval of any of the works or costs associated with connecting to a network utility service, in particular, electricity, telecommunications reticulation and where applicable, gas.

ROAD CONSTRUCTION

159. All works within the public road corridor shall be managed by a contractor operating under a current CAR (Corridor Access Request), made through the www.beforeudig.co.nz website and appropriate traffic management.

160. On completion of site works any roadside damage shall be repaired and the kerb, berm and footpath be reinstated to match the surroundings. The reinstatement work shall not be carried out until all service trenching in the footpath has been completed and shall include the reinstatement of all trenches.

STREET LIGHTING

161. Overhead lighting shall be installed along all public roads constructed as part of the development. Overhead lighting shall be designed to comply with AS/NZS 1158 and the Waikato Regional Infrastructure Technical Specifications (RITS). Luminaires shall be of the LED type, and lighting subcategory P5 of Table 2.6 of AS/NZS 1158.3.1:2005 shall be adopted for the localities referenced in Condition 89 in relation to bat sensitive lighting. The consent holder shall carry out at no cost to Council an energy audit of the design as prescribed in AS/NZS 1158.

ROAD SAFETY AUDITS

162. The consent holder shall arrange, at no cost to Council, for an independent detailed design road safety audit (in accordance with the NZTA Road Safety Audit Procedures for Projects Guideline May 2013) to be carried out on the proposed roading design for the respective subdivision stage and submitted to the General Manager, HCC Development (or nominee) for approval in a technical certification capacity. The audit team shall not be appointed without certification by the General Manager, HCC Development (or nominee) in relation to the audit team suitability and relevant experience. The audit decision tracking shall clearly distinguish between the developer “client” role and the Council’s final decision-making role as the road controlling authority.
163. Any serious and significant audit findings arising from the detailed design road safety audit shall be resolved to the agreement of the General Manager, HCC Development (or nominee) for the respective subdivision stage prior to changes being implemented (as determined by the outcomes of the road safety audit) and construction commencing.
164. The consent holder shall arrange, at no cost to Council, for an independent post-construction road safety audit (in accordance with the NZTA Road Safety Audit Procedures for Projects Guideline May 2013) to be carried out on the roading for the respective subdivision stage. The safety audit shall be submitted to the General Manager, HCC Development (or nominee) for approval in a technical certification capacity. The audit team shall not be appointed without certification by the General Manager, HCC Development (or nominee) in relation to the audit team suitability and relevant experience. The audit decision tracking shall clearly distinguish between the developer “client” role and the Council’s final decision-making role as the road controlling authority. Any serious and significant audit findings arising from the post construction road safety audit shall be resolved to the agreement of the General Manager, HCC Development (or nominee) prior to changes being implemented and Council accepting responsibility for this facility and issuing of S224c certification for

the respective subdivision stage.

STRUCTURES

165. Specific Engineer Design of the bridge and culvert crossing of the gully shall be peer reviewed prior to engineering design plan lodgement.
166. The footing and walls of proposed retaining walls supporting the road corridor shall be within the road corridor.
167. The footing and walls of proposed retaining walls supporting lots adjoining road corridor, shall be within the lot boundary.
168. The consent holder shall consult with utility operators prior to detailed design to ensure that adequate space is provided for above ground utility structures without compromising access functions.

STREET LANDSCAPING

169. Landscape plans for the road reserves shall be prepared in general accordance with the *"Amberfield Open Space Framework Peacocke, Hamilton"* by Boffa Miskell Ltd dated 28 February 2019, except that light screen planting shall be established within the road reserve (Lots 2002, 2019 and 2020) as shown on Boffa Miskell Drawings A17134 081 Addendum Figure 3 North Eastern Terrace Concept Plan Rev B dated 8 August 2019 and A17134 078 Addendum Figure 4 NE Terrace Reserve Cross Sections 1 & 2 Rev B dated 19 February 2019, and be submitted for approval in a technical certification capacity by the Manager Parks and Recreation Unit (or nominee) at the same time as the application for Engineering Works Approval. The landscape plans shall be amended as required until stamped 'Accepted' by the Manager Parks and Recreation Unit (or nominee). No hard or hard or soft landscaping works shall commence on site until the plans are certified.
170. The landscaping shall be implemented in accordance with the certified landscape plans and to the satisfaction of the Manager Parks and Recreation (or nominee) prior to vesting.
171. The design, construction and maintenance of all landscaping and planting shall be in accordance with Section 7 of the Waikato Regional Infrastructure Technical Specifications.

VEHICLE CROSSINGS

172. A vehicle crossing location for each residential lot shall be shown on the engineering plan and constructed to the applicable standard in accordance with the Regional Infrastructure Technical Specifications, Drawing D3.3.5.

Advice Note:

When identifying the location of the vehicle crossings consideration should be given to the future position of the dwelling to maximise solar orientation.

SHARED PATHS

- 173. All shared walking and cycling paths within the site shall have a minimum width of 3 metres.
- 174. Fencing shall be provided along the length of the Pedestrian Access Lots 1504 & 1505 and limited to a height of 1.2m high for approximately 10m from each end of the accessway in accordance with the Regional Infrastructure Technical Specifications, Drawing D3.8.10.

WATER SUPPLY

- 175. A 250mmØ and a 150mmØ water main shall be extended along Peacockes Road from the existing reticulation supply to the northern entrance to the site to service the site in accordance with the “Water Supply Report” by Jacobs dated 7th May 2018.
- 176. A 250mmØ water main shall be extended along the section of Peacockes Road from the northern entrance to the site to the southern end of the site.
- 177. Conditions 175 and 176 shall be satisfied if the relevant section of water main has been constructed by HCC as part of HCC’s Peacockes Road arterial and minor arterial roading upgrade works.
- 178. Each residential lot must be provided with a separate water supply connection, with no private water supply pipes passing between one lot and another (except where provided for by way of an easement).
- 179. The development shall be provided a fire hydrant system to ensure that sufficient water supply is available for firefighting and fire protection. The design of the water network shall conform to the Code of Practice for Fire Fighting Water Supplies (SNZ PAS4509)

WASTEWATER

- 180. The consent holder must discharge wastewater from the site into the Far Eastern Interceptor at Crosby Road. Connections to Hamilton City Council’s wastewater network for the purpose of discharging wastewater from the site may not occur unless and until the reticulated wastewater network has been extended from the Far Eastern Interceptor to the site.

Advice note: Other approvals for works

The installation of network infrastructure within land which is not owned by the consent holder will necessarily require agreement from the relevant landowner. While resource consent may be obtained for certain activities to occur on a particular site, where there

is need for specified infrastructure connections to be provided as part of the development which affects land not owned by the consent holder and/or applicant, approval from the relevant land owner must be obtained to complete the works and/or connections.

181. The wastewater rising main described in condition 180 above shall be in place and operational prior to s224c RMA approval for the first subdivision stage.
182. Each residential lot shall be provided with a separate wastewater connection, with no private wastewater pipes passing between one lot and another (except where provided for by way of an easement).
183. If the consent holder has used an interim pipeline beneath the Waikato River as part of meeting condition 180 the interim pipeline is to be disconnected, purged, cleaned and abandoned as soon as practicably possible after the HCC full Transfer pumping station and Transfer pipeline are operational.

STORMWATER

184. Stormwater secondary flow paths and ponding areas shall be shown on the engineering plans. The flow paths shall provide for a storm having a 100-year ARI.
185. Flow paths are to be clear of any identified or anticipated building platform and shall accommodate the rainfall runoff in excess of the stormwater reticulation design capacity.
186. Stormwater runoff from the site shall be treated and managed in accordance with the Waikato Regional Infrastructure Technical Specifications and the Sub-Catchment Management Plan submitted with the application, except insofar as the information in the Sub-Catchment Management Plan is superseded by the further information dated 17 August 2018, 7 December 2018, 15 October 2019, and the updated preliminary engineering drawings by Harrison Grierson, February 2019.
187. The location for the proposed stormwater communal devices for each stage shall be in general accordance with the Harrison Grierson plan 141842-1046 Rev 10. The sizing of the stormwater communal devices shall be confirmed at the time of Detailed Engineering Design Plan certification taking into account the required stormwater treatment, attenuation, velocities, maintenance and vehicle access.
188. The Raingardens for pre-treatment located within the road reserve will require specific consideration of the following matters at the detailed engineering design stage so that the risks of bypass and operational issues with such small devices are managed:
 - (a) Ensuring sufficient space remains within the corridor without compromising access, transport, parking, utility services, property and asset servicing and landscape functions

- (b) operation and maintenance requirements
 - (c) suitable sampling points for monitoring
 - (d) appropriate media specification and permeability rates
 - (e) suitable mulch and plant design
189. The consent holder shall demonstrate that all centralised stormwater devices are designed to treat public road runoff and private pervious areas during engineering plan certification stage. Where it is impractical to provide adequate capacity within centralised devices, additional at source public raingardens disposing to soakage where possible, are to be provided to treat the equivalent remainder of road and run on catchment. Any changes to the post development flow assessment will need to be addressed by further mitigation.
190. The consent holder shall undertake soakage testing at the location of proposed public soakage devices at the proposed design depths, with results provided with the detailed engineering design plans to confirm sizing of devices.
191. The consent holder shall undertake an assessment of flows that will be discharged to the outfalls and design erosion protection to suit with results provided with the detailed engineering design plans.
192. The consent holder shall provide infrastructure to convey primary flows from the existing development scenario from all adjacent sub-catchments currently draining through the site boundaries. The consent holder shall provide infrastructure to convey secondary flows from the maximum probable development scenario from all adjacent sub-catchments currently draining through the site boundaries. This information must be detailed at engineering plan approval stage, with relevant easements in gross demarcated.
193. Prior to 223 survey plan certification for the first stage, the consent holder shall undertake consultation with landowners of 71 & 84 Weston Lea Drive in order to determine existing conveyance of primary and secondary flows upstream of proposed site boundaries. Where applicable, private easements or easements in gross as a right to convey stormwater shall be provided for existing upstream flows beyond the site boundaries.
194. Whenever a residential lot slopes away from a road, one of the following requirements shall be met:
- (a) An appropriately sized overland flow path easement shall be shown on the s223 survey plan for the downslope residential lot in order to convey secondary flows from the upstream residential lots to a road reserve or Jointly Owned Access lot; or
 - (b) Identification on the detailed engineering plans required to be submitted by condition 207 of those residential lots where a stormwater soakage system, dealing with impervious surface runoff from the lot, is able to be placed to drain

the secondary flow from the soakage system directly to a road reserve or Jointly Owned Access lot; or

- (c) Identification on the detailed engineering plans required to be submitted by condition 205 of those residential lots where a stormwater soakage system shall be sized to provide a 50-year Annual Return Interval (ARI) level of service to drain as much impervious surface runoff as can reasonably be collected from the lot.

Except where three or more properties falling away from the road discharge to a single downslope property then 194a) will apply.

Advice note: Due to the particular constraints of the subject site, this condition is required to allow for a reduced earthworks strategy to be adopted. The capacity of the secondary overland flow volumes and accessibility (foot access) for ongoing maintenance are relevant to determining what is an appropriately sized overland flow path easement.

- 195. The consent holder shall undertake an assessment of post-development overland flow paths at detailed engineering design plan certification stage. Calculations detailing flow depths and velocity are required. Any overland flow depths exceeding the attributes associated with the low risk hazard category in HCC's citywide flood hazard report dated 29 October 2012 will require modified flow-paths to be provided.
- 196. A landscaping plan for all the stormwater management systems prepared in accordance with the requirements of the Waikato Regional Infrastructure Technical Specifications shall be submitted (at the time of detailed engineering design plans) with gardening and five-year maintenance specifications for review and acceptance in a technical certification capacity by the HCC General Manager Development (or nominee).
- 197. The Consent holder shall submit an updated "Water Efficiency Measures" component of the Sub-Catchment Integrated Catchment Management Plan, to the satisfaction of HCC General Manager Development (or nominee), to reflect any changes to outcomes identified through the detailed engineering design plan acceptance stage. The final stamped accepted specific Water Efficiency Measure Plan is to inform the owner of each residential lot of the accepted Water Efficiency Measure appropriate for this area.
- 198. Pursuant to Section 221 of the Resource Management Act 1991, a consent notice shall be registered against the Computer Freehold Register of all residential lots advising that the on-lot stormwater system and water efficiency measure certified as part of the detailed engineering design stage shall be installed at the building consent stage and maintained on an ongoing basis.
- 199. An Operations and Maintenance Plan (OMP) for the stormwater management system, which demonstrates how the standards/outcomes/conditions set out above shall be achieved, shall be prepared by a suitably qualified expert in urban stormwater

management and submitted with the engineering plans for approval in a technical certification capacity by the HCC General Manager Development (or nominee).

200. The OMP shall provide for the operational, maintenance, planting and monitoring measures associated with the stormwater discharge and shall include (but not be limited to) the following:
- (a) Design parameters
 - (b) A monitoring programme and any adaptive management required to address downstream water quality
 - (c) Measures to minimise public safety risks
 - (d) Measures to minimise operational and maintenance safety risks
 - (e) Measures to minimise operational expenses
 - (f) The information to be provided on as built plans for the device(s) at the completion of construction
 - (g) Asset operation details and likely operational costs
 - (h) Detail how the stormwater management system will be successfully transitioned and established during the Land Development Phase until the end of the defects liability period at the final stage of the development.
 - (i) Transition /Phasing Plan detailing:
 - (i) The construction phase and the staging of the development and how the Planted Stormwater System will be constructed to ensure that the plants will be able to thrive based on the various volume of stormwater generated by the various stages.
 - (ii) The inspection and associated cleaning regime for the Planted Stormwater System, and associated sediment control.
 - (iii) Provide details on how the Temporary stormwater controls will be integrated with the Planted Stormwater System to ensure the Planted Stormwater System is not affected by sediment generated from the various stages of development.
201. The OMP approved in a technical certification capacity at engineering plan approval stage shall be updated and submitted for approval in a technical certification capacity by HCC General Manager Development (or nominee), at the time of works clearance. The plan shall include (but not be limited to) the following: As built plans and data sheets for the devices in accordance with HCC Specifications and inspections and monitoring results and any adaptive management.
202. The maintenance and operation of the stormwater management system shall be carried out in accordance with the Waikato Regional Infrastructure Technical Specifications and the certified OMP.

GENERAL ENGINEERING REQUIREMENTS

203. All engineering works shall be designed and built in accordance with the Waikato

Regional Infrastructure Technical Specifications and current best practice. Innovative engineering solutions reflecting the special characteristics of the development will be considered.

204. The consent holder shall consult with utility operators prior to detailed design to ensure that adequate space is provided for above ground utility structures without compromising road access functions.
205. Plans for the engineering works, including the works required within the site for each subdivision stage and for public road upgrades (including shared path) along Peacockes Road, the rising main to the Far Eastern Interceptor, and the bulk water main shall be submitted to the Strategic Development Unit Manager (or nominee) for certification, and shall include plans, cross-sections, long-sections and associated details for roading, pavement, water, wastewater and stormwater infrastructure, updated water efficiency measures, right of way formations, vehicle crossing locations, the TNMP, and other relevant items. The plans shall be amended as required until stamped 'accepted' by Strategic Development Unit. The plans may be submitted for stages of construction. No work shall commence on site until plans are accepted, with stamped copies being held on site during the works. All works shall be carried in accordance with the certified plans.
206. The consent holder shall retain the services of a suitably qualified person (generally a professional land surveyor, engineer or planner) to oversee the construction of any infrastructure required for the development. This person shall be responsible for ensuring adherence to approved construction plans, quality systems, and project completion requirements. The name and contact details of this person shall be nominated on all engineering plans.
207. Full as-built plans and asset data for all roading and water and drainage reticulation works shall be submitted for 224c clearance.

DEFECT LIABILITY

208. The Consent Holder shall comply with the following defects liability periods for the construction, operation and maintenance of infrastructure assets which are to be vested in Council. During the Defects Liability Period, maintenance of the Infrastructure Assets shall be the responsibility of the consent holder.
209. A defect liability period of 24 months for all planted treatment and detention devices (on-road rain gardens, centralised planted stormwater device and stormwater storage) and 12 months for all other infrastructure assets vested in Council as per the Waikato Regional Infrastructure Technical Specifications from the date of issue of the section 224(c) Certificate ("Defects Liability Period").
210. If during the Defects Liability Period Council considers that any remedial works need to be carried out in respect of the Infrastructure Assets, the consent holder shall undertake at its own cost such remedial works to the satisfaction of Council.

Engineering plans for remedial works shall be submitted to and accepted by Council prior to construction.

REVIEW

211. Under section 128 of the RMA the conditions of this consent may be reviewed by the HCC Planning Guidance Unit Manager at the consent holder's cost two years after the commencement of the consent and thereafter at annual intervals to deal with any adverse effect on the environment which may arise or potentially arise from the exercise of this consent and which it is appropriate to deal with at a later stage, in particular adverse effects on the long-tailed bat.
212. The right of review under condition 211 is in addition to the Review requirements under Conditions 127-131.

SURVEY PLAN APPROVAL (S223) CONDITIONS – ALL STAGES

213. Before the Council will approve a survey plan pursuant to s223 of the RMA for the stages shown on Harrison Grierson Drawing 141842 – 1046 Scheme Plan Staging Plan Rev 10 and the accompanying scheme plans received on 15 August 2019, the following conditions shall be satisfied:
- (a) The stage survey plan shall be in general accordance with the respective stage shown on Harrison Grierson Drawing 141842 – 1046 Scheme Plan Staging Plan Rev 10 and the specific s223 conditions set out below for the respective stage in addition to any relevant general conditions for all stages that are required to be met prior to the s223 survey plan certification, except where required to be amended to comply with condition 149 to provide for the recreation reserve.
 - (b) The consent holder shall undertake consultation with the Tangata Whenua Working Group (being the Group that is described in the Amberfield Cultural Impact Assessment dated 10 May 2018) and Te Ha o Te Whenua o Kirikiriroa on the names of the roads and reserves to vest in Council prior to seeking Council approval for the road and reserve name(s) in accordance with the Hamilton City Council Naming of Roads, Open Spaces and Council Facilities Policy. The approved road names are on be shown on the stage survey plan.
 - (c) Easements in favour of HCC shall be created where any public wastewater, water supply and stormwater infrastructure are required to be constructed outside of vested public roads or reserves for a temporary period due to the staging of the subdivision. In those situations, the services shall be laid, and easements created in locations where public roads or reserves are intended to be vested as part of the subsequent subdivision stages.

Advice Note:

When subsequent subdivision stages are completed and these temporary easements are longer required due to the vesting of public roads or reserves, the consent holder will need to apply to HCC for the revocation of the temporary easements.

214. Lots 2014 and 2037 shall be shown on the Survey Plans to vest in Hamilton City Council as road at the relevant subdivision stage based on the timing of the Peacockes Road upgrade requirements set out in condition 9. This condition will not apply if HCC has previously upgraded and vested the same or greater length of Peacockes Road.
215. Lots 1100, 1101, 1102 and 1103 shall be shown on the Survey Plans to vest in Hamilton City Council as utility lots at the relevant subdivision stage based on the timing of the pump station requirements set out in condition 6.
216. Each stormwater communal device shall be shown on the Survey Plans as a separate allotment to vest in Hamilton City Council as Stormwater Reserve at the relevant subdivision stage based on the timing of the basin requirements set out in condition 6 and condition 187.

SURVEY PLAN APPROVAL (S223) CONDITIONS – INDIVIDUAL STAGES

217. Before the Council will issue a certificate pursuant to s223 of the RMA for the respective stage below, the following requirements for the applicable stage shall be shown on the survey plan.

Advice Note:

Some stages do not have any specific requirements.

SECTION 224(C) COMPLIANCE CONDITIONS

218. Before the Council will issue a certificate pursuant to s224(c) of the RMA for the respective stage below, the consent holder shall demonstrate compliance with the general conditions above as they are applicable to the stage being developed.

STAGE 1

Survey Plan Approval (s223) Conditions:

- (1)(a) Lot 2000 shall vest in the Hamilton City Council as road.
- (1)(b) Lots 1500 and 1501 shall vest in in the Hamilton City Council as Local Purpose (Amenity) Reserve.
- (1)(c) Lot 1502 shall vest in Hamilton City Council as Local Purpose (Esplanade) Reserve.
- (1)(d) Lot 1506 shall vest in in the Hamilton City Council as Recreation Reserve.
- (1)(e) Lot 1505 shall vest in the Hamilton City Council as Local Purpose Reserve (Pedestrian Accessway)
- (1)(f) Lot 1250 (legal access) be held as to eight undivided one eighth shares by the owners of Lots 31 to 38 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (1)(g) The right of way and services easement 'A' be shown on the survey plan and be duly granted and reserved.

- (1)(h) An encumbrance in favour of Hamilton City Council shall be registered on the title for Lot 25 that records that Lot 25 will not be further subdivided or used for residential purposes. The encumbrance shall be prepared by the Council's lawyers at cost of the consent holder.
- (1)(i) The existing drainage right easement on RT SA528/20 be cancelled pursuant to s243(e) of the RMA as authorised under this subdivision consent.

STAGE 2

Survey Plan Approval (S223) Conditions:

- (2)(a) Lot 2001 shall vest in Hamilton City Council as road.

STAGE 4

Survey Plan Approval (s223) Conditions:

- (4)(a) Lot 2002 shall vest in Hamilton City Council as road.
- (4)(b) Lot 1503 shall vest in Hamilton City Council as Local Purpose (Esplanade) Reserve.
- (4)(c) Lot 1510 shall in Hamilton City Council as Local Purpose (Ecological) Reserve.
- (4)(d) Lot 1251 hereon (legal access) be held as to four undivided one quarter shares by the owners of Lots 149 to 152 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (4)(e) Lot 1252 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 174 and 175 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (4)(f) Lot 1253 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 170 and 171 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (4)(g) The right of way and services easements 'B', 'C' & 'D' be shown on the survey plan and be duly granted and reserved.
- (4)(h) All future buildings on Lot 149 shall not exceed a height of RL 47.13 metres for the purpose of maintaining the public view and river outlook to the south from the adjacent recreation reserve.
- (4)(i) Pursuant to Section 221 of the Resource Management act 1991, a consent notice shall be registered against the Computer Freehold Register of proposed Lot 149 advising that all buildings on the lot shall not exceed a height of RL 47.13 metres for the purpose of maintaining the public view and river outlook to the south from the adjacent recreation reserve.

Advice Note: At the time of granting of this consent this height limit is approximately 9 metres above finished ground level enabling a two-storey dwelling with a pitched roof.

STAGE 5

Survey Plan Approval (s223) Conditions:

- (5)(a) Lot 2003 shall vest in Hamilton City Council as road.

STAGE 6

Survey Plan Approval (s223) Conditions:

- (6)(a) Lot 2004 shall vest in Hamilton City Council as road.
- (6)(b) Lots 1508 and 1509 shall vest in Hamilton City Council as Recreation Reserve.
- (6)(c) Lot 1518 shall vest in Hamilton City Council as Local Purpose (Esplanade) Reserve.

STAGE 7

Survey Plan Approval (s223) Conditions except as modified by condition 149:

- (7)(a) Lot 2005 shall vest in Hamilton City Council as road.
- (7)(c) Lot 1255 hereon (legal access) be held as to three undivided one third shares by the owners of Lots 806 to 808 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (7)(d) Lot 1256 hereon (legal access) be held as to three undivided one third shares by the owners of Lots 818 to 820 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (7)(e) Lot 1257 hereon (legal access) be held as to nine undivided one ninth shares by the owners of Lots 821 to 824 and 831 to 835 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (7)(f) The right of way and services easements 'F', 'G' & 'H' be shown on the survey plan and be duly granted and reserved.

STAGE 8

Survey Plan Approval (s223) Conditions except as modified by condition 149:

- (8)(a) Lots 2006 and 2007 shall vest in Hamilton City Council as road.
- (8)(b) Lots 1507 shall vest in in the Hamilton City Council as Recreation Reserve.

STAGE 9

Survey Plan Approval (s223) Conditions except as modified by condition 149:

- (9)(a) Lot 2008 shall vest in Hamilton City Council as road.

STAGE 10

Survey Plan Approval (s223) Conditions except as modified by condition 149:

- (10)(a) Lots 2009 and 2010 shall vest in Hamilton City Council as road.

STAGE 11

Survey Plan Approval (s223) Conditions except as modified by condition 149:

- (11)(a) Lot 2011 shall vest in Hamilton City Council as road.

STAGE 12**Survey Plan Approval (s223) Conditions except as modified by condition 149:**

- (12)(a) Lot 2012 shall vest in Hamilton City Council as road.

STAGE 13**Survey Plan Approval (s223) Conditions:**

- (13)(a) Lot 2013 shall vest in Hamilton City Council as road.

STAGE 14**Survey Plan Approval (s223) Conditions:**

- (14)(a) Lot 2014 shall vest in Hamilton City Council as road, if not already previously vested.

STAGE 15**Survey Plan Approval (s223) Conditions:**

- (15)(a) Lot 2015 shall vest in Hamilton City Council as road.

STAGE 17**Survey Plan Approval (s223) Conditions:**

- (17)(a) Lot 2016 shall vest in Hamilton City Council as road.

STAGE 18**Survey Plan Approval (s223) Conditions:**

- (18)(1) Lots 2017 and 2018 shall vest in Hamilton City Council as road.

STAGE 19**Survey Plan Approval (s223) Conditions:**

- (19)(a) Lot 2019 shall vest in the Hamilton City Council as road.
- (19)(b) Lot 1504 shall be vested in Hamilton City Council as Local Purpose Reserve (Pedestrian Accessway).
- (19)(c) Lot 1258 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 73 and 74 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(d) Lot 1259 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 69 and 70 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.

- (19)(e) Lot 1260 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 65 and 66 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(f) Lot 1261 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 59 and 60 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(g) Lot 1262 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 55 and 56 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(h) Lot 1263 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 51 and 52 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(i) Lot 1264 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 47 and 48 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(j) Lot 1265 hereon (legal access) be held as to two undivided one-half shares by the owners of Lots 43 and 44 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.
- (19)(k) The right of way and services easements 'I', 'J', 'K', 'L', 'M', 'N', 'O' & 'P' be shown on the survey plan and be duly granted and reserved.

STAGE 20

Survey Plan Approval (s223) Conditions:

- (20)(a) Lot 2020 shall vest in the Hamilton City Council as road.

STAGE 21

Survey Plan Approval (s223) Conditions:

- (21)(a) Lots 2021 and 2022 shall vest in the Hamilton City Council as road.

STAGE 22

Survey Plan Approval (s223) Conditions:

- (22)(a) Lots 2023, 2024 and 2038 shall vest in the Hamilton City Council as road.

STAGE 23

Survey Plan Approval (s223) Conditions:

- (23)(a) Lot 2025 shall vest in the Hamilton City Council as road.

STAGE 24

Survey Plan Approval (s223) Conditions:

(24)(a) Lots 2026, 2027, 2028 and 2029 shall vest in the Hamilton City Council as road.

(24)(b) Lot 1516 shall vest in in the Hamilton City Council as Recreation Reserve.

STAGE 25

Survey Plan Approval (s223) Conditions:

(25)(a) Lot 2030 shall vest in the Hamilton City Council as road.

(25)(b) Lot 1512 shall vest in Hamilton City Council as Local Purpose (Esplanade) Reserve.

(25)(c) Lot 1513 shall vest in in the Hamilton City Council as Historic Reserve.

(25)(d) Prior to vesting Lot 1513 (Historic Reserve), the consent holder shall submit to the HCC Planning Guidance Unit Manager an Archaeological Heritage Reserve Management Plan (AHRMP) for certification. The objective of the AHRMP is to set out how the archaeological site in the reserve will be managed in the future using ICOMOS conservation principles so that the Heritage Reserve does not suffer damage due to landscape works and use. The AHRMP shall include, but not be limited, to:

- (i) The history of the site and its context within the Amberfield subdivision and the larger Hamilton environs from a cultural, archaeological and historic perspective and identification of the values that are to be conserved;
- (ii) The management and maintenance goals, policies and actions identified to protect the site in perpetuity;
- (iii) What controls will be put in place to manage access to the site;
- (iv) Site interpretation and cultural recognition; and
- (v) Who will be notified, and the remedial action undertaken in the event of damage.

(25)(e) The Consent Holder shall consult and obtain feedback from Hamilton City Council Parks and Recreation Unit Manager (or nominee), Nga Mana Toopu o Kirikiriroa, Te Ha o Te Whenua o Kirikiriroa, Waikato Tainui, The Tangata Whenua Working Group (being the Group described in the Amberfield Cultural Impact Assessment dated 10 May 2018) and Heritage New Zealand Pouhere Taonga on the detail in the AHRMP prior to submitting the document to the HCC Planning Guidance Unit Manager. Evidence of the outcomes of this consultation and all feedback received shall be provided within the AHRMP.

STAGE 26

Survey Plan Approval (s223) Conditions:

(26)(a) Lot 2031 shall vest in the Hamilton City Council as road.

(26)(b) Lot 1511 shall vest in in the Hamilton City Council as Recreation Reserve.

(26)(c) Lot 1254 hereon (legal access) be held as to two undivided one half shares by the owners of Lots 390 to 391 hereon as tenants in common in the said shares and that individual certificates of title be issued in accordance therewith.

(26)(d) The right of way and services easement 'E' be shown on the survey plan and be duly granted and reserved.

STAGE 27

Survey Plan Approval (s223) Conditions:

- (27)(a) Lot 2032 shall vest in the Hamilton City Council as road.
- (27)(b) Lot 1515 shall vest in in the Hamilton City Council as Recreation Reserve.
- (27)(c) Lot 1514 shall vest in Hamilton City Council as Local Purpose (Esplanade) Reserve.

STAGE 28

Survey Plan Approval (s223) Conditions:

- (28)(a) Lots 2033 and 2034 shall vest in the Hamilton City Council as road.

STAGE 29

Survey Plan Approval (s223) Conditions:

- (29)(a) Lot 2035 shall vest in the Hamilton City Council as road.

STAGE 30

Survey Plan Approval (s223) Conditions:

- (30)(a) Lot 2036 shall vest in the Hamilton City Council as road.

LAPSING OF SUBDIVISION CONSENT

Under section 125 of the RMA, the subdivision consent lapses eight years after the commencement of the consent unless:

- a) A survey plan is submitted to Council for approval under section 223 of the RMA before the consent lapses, and that plan is deposited within three years of the approval date in accordance with section 224 of the RMA. For the avoidance of doubt, the survey plan for the final stage must be submitted to Council for approval under section 223 of the RMA prior to the lapse of consent and the subsequent section 224 RMA certification for the final and all stages must be deposited within three years of that approval date; or an application under section 125 of the RMA is made to the council before the consent lapses (eight years) to extend the period after which the consent lapses and the council grants an extension.

Advice Note: The commencement date of the consent is determined in accordance with s116 of the RMA.

REVOCATION OF COVENANT

That pursuant to sections 240(5) and 241(3) of the Resource Management Act 1991, Hamilton City Council hereby cancels Covenant Instrument B416556 as it relates to Lot 1 DPS 78023 (SA60A/826) and Allotment 87 and Part Allotments 93-94 of the Parish of Te Rapa (SA528/20).

Note: A request at the time of s223 certification for the first stage of the subdivision is required to be made at the Consent Holders expense to Council's Solicitors, Tompkins Wake to have Covenant

Instrument B416556 removed from Record of Titles SA60A/826 and SA528/20 in accordance with the requirements of section 240(5) of the Resource Management Act 1991.

REVOCATION OF AMALGAMATION OF ALLOTMENTS

Record of Title SA66A/99

That pursuant to Section 241(3), Resource Management Act 1991, Council cancels the amalgamation conditions holding Lots 1-2 DPS 81210 as held within Record of Title SA66A/99.

Record of Title SA66A/100

That pursuant to Section 241(3), Resource Management Act 1991, Council cancels the amalgamation conditions holding Lots 3-4 DPS 81210 as held within Record of Title SA66A/100.

REVOCATION OF EASEMENTS

Pursuant to section 243(e) Resource Management Act 1991, Hamilton City Council, the local authority hereby consents to the surrender of the drainage rights easement created by conveyance 236231 (R235/556) insofar as it affects the land contained in Part Allotment 93 – 94 Parish of Te Rapa (Record of Title SA 528/20).

LAND USE CONDITIONS

REQUIRING AUTHORITY APPROVAL

1. No activities authorised by this land use consent within the Southern Links Designation (A106), may commence unless and until unconditional approval has been obtained from the requiring authority (HCC as road controlling authority) for activities within the Southern Links Designation (A106).

Advice note: Condition 1 addresses section 176(1)(b)(i) of the RMA which restricts the use of land that is subject to a designation, that would prevent or hinder a public work or project or work to which the designation relates.

ADVISORY NOTES

PLANNING GUIDANCE - GENERAL

Compliance with the conditions of this resource consent does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.

In particular the potential need for archaeological authority pursuant to the Heritage New Zealand Pouhere Taonga Act for works within the proposed Historic Reserve

Any reports or plans to be submitted, in fulfilment of conditions of this consent, must be addressed to the HCC Planning Guidance Unit Manager.

Street numbering will be determined at time of 223 Certification approval and will be in accordance with the Australian/New Zealand Standard AS/NZS 4819:2011 Rural and urban addressing and must be adhered to.

If this property is on-sold to a new owner(s) please ensure that a copy of this resource consent is forwarded to the new owner(s).

BUILDING

All building works should be in compliance with the Building Act 2004.

STRATEGIC DEVELOPMENT UNIT

The onus rests with the consent holder to demonstrate that completed works meet Council requirements and accepted engineering standards. Therefore, developers should employ suitably qualified and experienced contractors and maintain records of the quality control process.

All operations affecting in-service Hamilton City Council water, wastewater or stormwater pipelines are to be carried out by Hamilton City Council staff (City Delivery Unit (CDU)) unless specific approval is given as outlined in the Waikato Regional Infrastructure Technical Specifications.

Undertaking of any works resulting in storm water discharge, earthworks and site development will need to comply with the relevant requirements of the Waikato Regional Council and any associated resource consents.

That Consent Holder is required to obtain and arrange for any easements required to accommodate and maintain the proposed Stormwater and Wastewater solutions.

That the Consent Holder shall obtain all Building Consents required constructing all proposed retaining walls and structures.

A full set of as built plans and a register of all assets to be transferred to Council (reserves, roads, water, wastewater and stormwater infrastructure) shall be submitted to Strategic Development Unit at the completion of works (ref Hamilton City Council form GST Requirement/Asset Register and Tax Invoice and Data Spreadsheets).

BUILDING DESIGN

The consent holder's urban designer, Mr Mentz, identified several instances where more restrictive standards regarding the design of buildings/site would result in improved built outcomes. We recommend that prior to the construction of any dwellings on the site, the consent holder establish an urban design review panel to consider the design and layout

of each dwelling/lot. It is suggested that the membership of this design review panel be discussed and agreed with the Council's urban design specialist.

Schedule 2: Summary of effects and avoidance, remedy, and mitigation strategies for Amberfield development

Potential Effect	Avoidance/remedy/mitigation [shaded to reflect colours in Figure 1]	Effects Addressed [shaded to reflect colours in Figure 1]
- Physical removal of bat habitat (2.6 ha of vegetation (patches of mainly exotic trees and shrubs). One tree confirmed as a bat roost; other trees are <u>potential</u> bat roosts. - Potential aversion by bats associated with landscape change from pasture to urban environment. - Loss of connectivity through the site requiring bats to take alternative routes to reach distant habitat across their home range. - Indirect increase in mortality (increased predator densities resulting from the development).	Avoidance: - Key habitat features retained as far as practicable¹. - Setbacks and lot deferrals of development from key habitats. - Lighting design and specific restrictions to limit light spill. - Tree felling protocols to ensure no roosts are felled while occupied by bats. The above measures are outlined in paragraphs 50 – 70 Ms. Cummings' EIC.	- Avoidance of the E-W shelterbelt maintains key connective link for commuting bats. (paragraph 62 of Ms. Cummings EIC). - The setback of the development from the river margin between (37.8 – 100+ m) avoids the potential for light spill from the development to impact bats using the river corridor. (Figures 3 and 4 in Annexure "A" of Ms. Cummings' EIC, and paragraph 9 and Annexures "A" and "B" in the Statement in Answer to Questions of the Hearing Panel Raised in Direction No. 9 dated 24 July 2019). - Bat sensitive lighting will limit light spill into adjacent habitats. (paragraphs 65 – 65 of Ms. Cummings' EIC, paragraph 13 in Mr Kessner's EIC, and Annexures "A" and "B" in the Statement in Answer to Questions of the Hearing Panel Raised in Direction No. 9 dated 24 July 2019). - Lot deferrals further limit the potential for light spill into adjacent habitats while buffer planting establishes. (paragraph 68 of Ms. Cummings' EIC and Condition 84 - Appendix G of HCC's Council's Supplementary Section 42A Report).
	"Lag Phase" Offset: Short term (<10 years): Contribution towards off-site pest control targeting core habitats within the population's home range (not limited to the Amberfield site)² Offset contribution proposed by My Kessels in his was agreed based after conversations with the HCC expert during the adjournment and post- caucusing. Refer to the memo from Boffa Miskell dated 22 July 2019, and paragraphs 32 – 52 of Mr. Kessels' EIR.	Pest control will offset potential avoidance of the site while planted habitat matures and becomes functional. (Boffa Miskell memo dated 22 July 2019 and Condition 120 – Appendix G of HCC's Council's Supplementary Section 42A Report).
	Medium term mitigation (>5 years): Artificial bat roosts with predator exclusion mechanisms. Installation of artificial roosts was proposed in paragraph 56 of Ms. Cummings' EIR and in the joint witness statement (JWS) dated 14 June 2019.	Artificial roosts will provide alternative roost habitat while the restoration plantings mature. Predator exclusion mechanisms on the artificial roosts will provide immediate protection for vulnerable roosting bats. (paragraphs 52 and 56 of Ms. Cummings' EIR, and the JWS dated 14 May 2019).

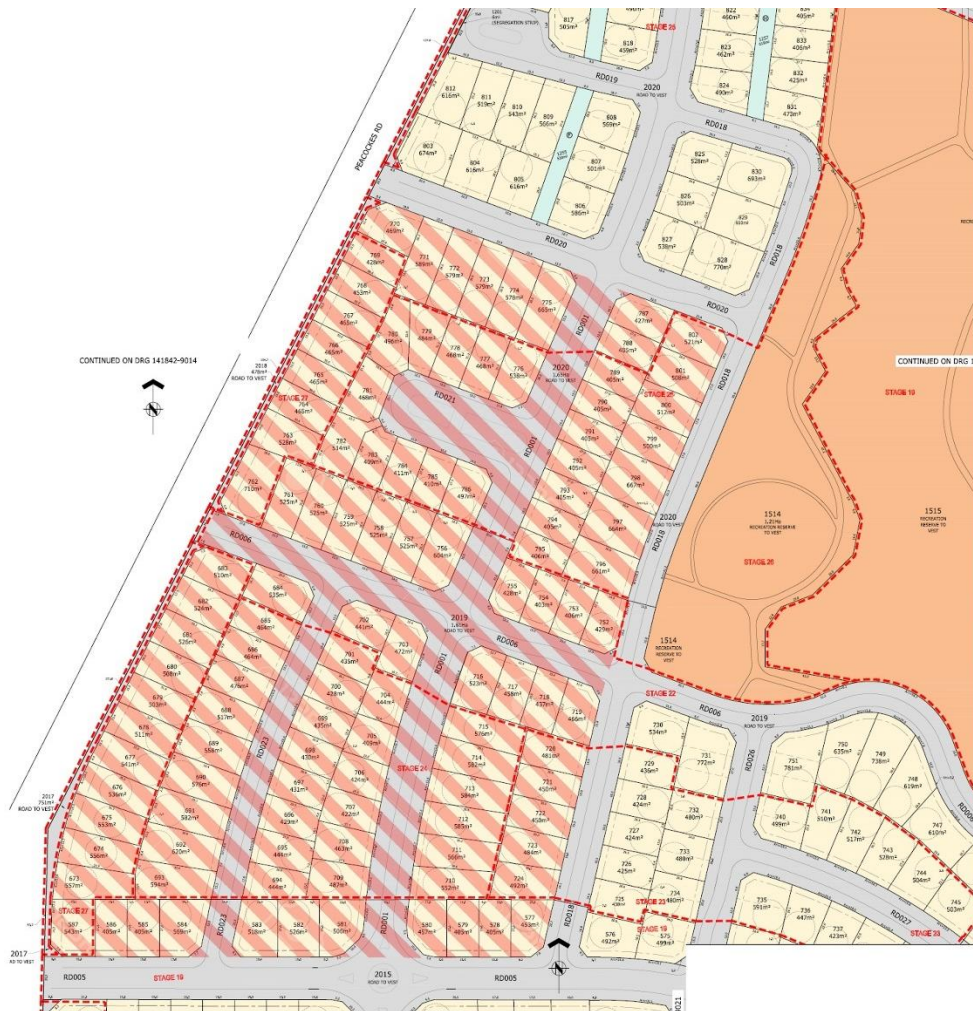
• Direct mortality (tree felling and vehicle collisions). The above potential effects were agreed in the JWS dated 14 May 2019.	Medium - long term mitigation (10 – 25+ years): • 18.5 ha of native restoration in sites with highest habitat potential, including: - Restoration of the southern gully which will provide an alternative commuting corridor in the medium to long-term³. - Creation of high-quality foraging habitat in the NE terrace and the southern gully to mitigate for potential reduction in energy efficiency associated with individual bats using alternative commuting routes. • Early planting in strategic areas will reduce time lag between the development commencing and the restoration plantings maturing. • Vegetation will be designed at road crossings to facilitate bat movement over the road crossings or under the bridge (Condition 107(c)). The above mitigation measures are outlined in paragraphs 50 – 70 Ms. Cummings’ EIC.	• Within 10 years, buffer plantings will reach a height and density where it will create an effective physical barrier that will block light from the development impacting on adjacent habitats. (paragraphs 60 and 73 of Ms. Cumming’s IEC and the Boffa Miskell memo dated 22 July 2019). • Buffer planting will provide a physical barrier between the adjacent habitat and the roads, minimising potential vehicle collisions. (page 10 of the JWS dated 14 June 2019). • After 10 years, the restoration planting be of a stature where bats will utilise it for foraging and commuting. The site will contain more extensive, well-connected bat habitat than that present pre-development. The value of the replacement habitat will continue to increase over time. (paragraph 51 in Ms. Cummings’ EIR). • The native restoration will mature and provide natural roost habitat in 25+ years. At this stage, the structure and diversity of the restoration planting will be of considerably higher quality than exotic trees and pastureland removed. This habitat value will continue to increase over time. (Section 3.2.3 in the Boffa Miskell Ecological Assessment Addendum dated 20 February 2019); paragraphs 92 and 95(e) in Ms. Cummings’ EIC).
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¹ With the exception of road crossings and 0.019 ha of vegetation temporarily removed (and replanted to service a stormwater outlet).

² We consider that coordinated, large-scale predator control targeting core habitats such as confirmed maternity roost sites will be considerably more beneficial for the bat population compared to small scale pest control in retained habitat on the site (refer to Paragraph 33 in Dr Sarah Flynn’s evidence). This consideration is why the offset is proposed instead of on-site pest control.

³ We note that the value of the southern gully as commuting habitat is dependent on the area outside of the Amberfield site being planted (as indicated in the PSP – Figure 2-1: Peacocks Structure Plan – Land Use).

SCHEDULE 3 LAND REQUIRED TO VEST AS RECREATION RESERVE



The relevant residential lots and roads include:

- Residential lots 577-587, 673-724, & 752-802 (115 lots)
- Part of Road Reserves RD001, RD006, RD023, and Road Reserve RD021.

Annexure “D”: List of names and addresses for service

<i>Name</i>	<i>Address</i>	<i>Email address</i>
Hamilton City Council (as consent authority)	C/- Marianne Mackintosh, Tompkins Wake, PO Box 258, Hamilton 3240	Marianne.Mackintosh@tompkinswake.co.nz
Maureen Faye Ulrich and Tonci Ulrich	702 Peacockes Road, RD 2, Hamilton 3282	maureenurlich@gmail.com
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Te Haa o Te Whenua O Kirikiriroa (C/- Rawiri Bidois)	C/- Rawiri Bidois, 781B Bruntwood Road, RD 3, Hamilton 3283	rawiribidois@gmail.com
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