IN THE MATTER	of applications pursuant to the Resource Management Act 1991
BETWEEN	**WESTON LEA LIMITED**
AND	**LAND USE AND SUBDIVISION CONSENTS FOR A LARGE-SCALE ESIDENTIAL DEVELOPMENT AND ASSOCIATED LAND USE ACTIVITIES AND SITE WORKS AT PEACOCKE, HAMILTON**
APPLICANT	Weston Lea Limited
CONSENT AUTHORITY	Hamilton City Council

SUPPLEMENTARY S42A REPORT
GILLIAN COCKERELL
Date 16 August 2019

PURPOSE

1. The purpose of the supplementary s42A report is as follows:

   (a) 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

   (b) To complete the statutory assessment in terms of s104D, s104 and Part 2 of the RMA; and

   (c) 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

   (d) To give a recommendation as to whether consent ought to be granted.

2. MATTERS ARISING FROM EVIDENCE AND HEARING

2. The matters which I wish to address since preparing the s42A report from reviewing the pre-circulated evidence and the additional evidence presented at the hearing by the applicant and submitters are under the following headings:

   2.1 Landscape/Visual Effects
   2.2 Heritage/Cultural Effects
   2.3 Natural Hazard Risks
   2.4 Transportation Effects
   2.5 Infrastructure Effects
   2.6 Terrestrial Ecology Effects
   2.7 Provision of Suburban Centre
   2.8 Provision of Sports Park
   2.9 Urban Design Matters
   2.10 Gateway Test (s104D RMA)
   2.11 Conditions
   2.12 Conclusion

3. This supplementary report draws on the specialist advice that contributed to the preparation of the original s42A report as required and also takes into account the following post hearing adjournment evidence and consequential further information received from the applicant as follows:

(a) Lighting Statement of Evidence by Mr Kessner dated 24 May 2019

(b) Response to Commissioners questions on the Lighting Statement of Evidence by Mr Kessner and Ms Cummings dated 24 July 2019

(c) Consequential further Information from applicant dated 12 August including:

(i) Updated staging plan and subdivision plans (now superseded by revised staging plan and subdivision plans received on 15 August 2019)

(ii) Updated planting plans comprising 'Proposed Early Planting Outside of Earthworks Extent' and North Eastern Terrace Concept Plan'

(iii) Offset memorandum from Georgia Cummings

2.1 Landscape/Visual Effects

4. My original assessment of potential landscape and visual effects of the proposed development relied on the expert advice of Mr Mansergh. I considered the adverse effects to be acceptable, based on the proposed layout of the development set out in the masterplan and open space network plans. The development will also be further enhanced over time as the residential sections are landscaped. Apart from the development being in general accordance with these plans no other specific conditions are recommended or considered necessary to address landscape and visual effects.

5. Mr Mansergh has prepared a supplementary statement of evidence in response to matters raised during the hearing and evidence presented by

submitters[1] on landscape and visual effects. This is attached as **Appendix A**.

6. The submitters main concerns relate to loss of visual amenity and privacy, noise and light spill effects. All of the submitters appear to accept that the urban zoning of the site will inevitably result in change to their current rural outlook. To address the associated effects of the change some submitters are requesting a more substantial planted buffer (width and density) along the river margin, and the relocation of the river margin road to behind the first row of houses to mitigate potential noise and light spill effects (street lighting and car headlights).

7. Mr Mansergh acknowledges that the current visual amenity for the submitters will be subject to significant change, but the visibility of the proposed development for submitters does not necessarily correlate to an adverse effect, particularly taking into account the planning context of the site (zoned for urban development for many years). In his opinion, the proposed mitigation to address the ecological effects on long tailed bats being the increased width of the river reserve margin in the north-east part of the site and depth and height of buffer planting, together with increased light management proposed will also help to mitigate the visual and landscape effects of the proposed development by moving lot and dwelling locations further from the viewers on the eastern side of the river, and reduce light spill. He also states that *'the issue associated with seeing the "sea of grey rooves" will diminish over time as trees and gardens are established within each lot, greening up the subdivision.'*

8. I accept Mr Mansergh's assessment and do not consider any additional mitigation measures are required. In particular, I do 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. This road is not a primary road servicing

[1] C Karunathilake (50), K Johnson & L Finch (28), G Sullivan (64), F Maxwell (44)

the development. The main north-south road through the length of the development is set further back into the site. In addition, low level street lighting is to be utilized to address potential effects on the long tailed bats and the height and density of the river margin planting will address any car headlight disturbance. Given the distance between the site and the properties on the eastern side of the river and the residential nature of the development I do not consider there will be any unreasonable noise disturbance.

2.2 Heritage/Cultural Effects

9. The evidence by Ms McAlley and Dr Darmody on behalf of Heritage New Zealand Pouhere Taonga (HNZPT) have requested some changes to the recommended conditions appended to the s42A report in relation to heritage effects. These seek:

   (a) the deletion of the condition relating to the discovery of unrecorded archaeological sites as this is already covered in the issued Archaeological Authority, and there is the potential for conflict;

   (b) the inclusion of HNZPT as a party to be consulted in the preparation of Archaeological Heritage Reserve Management Plan for the Heritage Reserve, and that the Plan include a history of the site and its context within the Amberfield Subdivision and larger Hamilton environs, including appropriate information sharing platforms; and

   (c) inclusion of an advice note that work within the proposed Heritage Reserve will require and HNZPT archaeological authority.

10. The applicant's evidence in reply from Mr Gumbley supports the changes to the conditions requested by HNZPT, except for the inclusion of 'appropriate information sharing platforms', as this cannot effectively or reasonably be managed by the consent holder. I concur with Mr Gumbley and have discussed the requested changes with Ms Simmons who is also

supportive. The changes have been incorporated into the updated suite of recommended conditions.

11. Mr Gumbley has also requested a minor change to the recommended condition requiring Hamilton City Council be provided a copy of the final Archaeological Report (required under the Archaeological Authority) within 40 days after the completion of the final stage of the subdivision. It is accepted that reference to a timeframe for the provision of the report can be deleted. Instead it is proposed that the copy of the report be provided at the same time as it is provided to HNZPT.

12. The Tangata Whenua Working Group (submission 41) spoke in support of the proposal and advised that all fundamental issues identified through the pre-application engagement process with the applicant have been resolved to their satisfaction. The Cultural Impact Assessment (CIA) submitted with the application was prepared at the request of the Tangata Whenua Working Group, contained a number of recommendations. The draft recommended conditions appended to the original s42A report encapsulated the CIA recommendations where they were within the scope of s108, s108AA and s220 of the RMA. The evidence presented on behalf of the submitter at the hearing has requested some further refinement to the conditions for ongoing engagement with the applicant, particularly in relation to the naming of roads, reserves etc, and the preparation of the Archaeological Heritage Reserve Management Plan.

13. The details of the amendments to the conditions to provide for this ongoing engagement were not presented at the hearing but had been discussed with the applicant and were supported[2]. The agreed changes are incorporated in the revised recommended conditions attached to this report (conditions 28(k)(iv), 62, 89, 92, 191, Stage 25 condition 25(f)). These conditions require the applicant to consult with the Tangata

[2] Confirmed verbally at the hearing by legal counsel for the applicant

Whenua Working Group on the Construction Management Plan, Ecological Management Plans, Archaeological Heritage Reserve Management Plan, road and reserve naming, and notification of commencement of construction works. To the extent that the conditions are not within the scope of s108 and s220 of the RMA, they can be imposed under s108AA(1)(a) based on the applicant's agreement.

14. Ms Tania McDonald (submission 76) spoke of the loss of her ancestral lands associated with the Nukuhau Pā that included the application site as part of the government confiscation of Maori lands in the 1860's. The loss of this land saw the destruction of indigenous habitat of flora and fauna and food sources important to her tupuna. I acknowledge that this public hearing process has enabled Ms McDonald to express the profound effect this loss of land had on her tupuna.

15. The relief requested by Ms McDonald is for a riverbank reserve to be set aside and planted in native forest for the length of development along the Waikato River of 120 -125 metres in width. The applicant's proposed mitigation is for a planted strip of land adjacent to the Waikato River to vest in Council as reserve. The width of this reserve is not as wide as that requested by Ms McDonald, but it will enable indigenous habitat of flora and fauna to become re-established and together with the proposed Heritage reserve provides recognition and acknowledgement of that which was once taken from her tupuna. I am satisfied that the proposed mitigation planting will address the concerns of Ms McDonald.

2.3 Natural Hazard Risks

16. Mr Edwards (submission 67) raised concerns that the proposed development has not been adequately designed to account for climate change and the effects of surface water flows through storm events. I am 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.

2.4 Transportation Effects

17. Section 4.2 of the s42A report outlined that the proposed subdivision plans show an approximate 18 metre width of the Southern Links designation extending into the Amberfield site as road to vest. A further approximately 7.5 metres of the designation will extend over a number of proposed residential lots with frontage and access to Peacockes Road. The alignment for Peacockes Road minor arterial that supported the Southern Links designation does not necessarily require the whole 18m for the carriageway and berms. The designation width was to allow for cut and fill slopes for the road which may become unnecessary as the Amberfield earthworks have raised the ground levels adjacent to the road to be closer to the expected road levels for the arterial. It is usual for a requiring authority to minimise the extent of designation following completion of the works where the land is no longer required.

18. I have recommended a condition precedent requiring the applicant to obtain the unconditional written approval of the requiring authority in accordance with s176(1)(b) of the RMA prior to implementing both the land use and subdivision applications should consent be granted. This is not opposed by the applicant.

19. I note that both Mr O'Callaghan and Mr Penny in their evidence in chief[3] have confirmed that if Peacockes Road has not already been upgraded to a minor arterial standard by the Requiring Authority, the applicant will upgrade the section north of the East-West Arterial to a collector road standard on the same alignment and eastern kerb position and levels as the final design for the minor arterial. This is reflected in the proposed changes to conditions appended to Mr Sergeant's evidence. This

[3] Paragraph 130 of Mr O'Callaghan's EIC and paragraph 164 of Mr Penny's EIC

addresses the uncertainty I raised on this matter[4] and the change to the conditions are supported.

20. I note that alignment of the upgraded Peacockes Road is likely to result in surplus land shown as road to vest on the applicant's subdivision plans, as no longer being required. Mr O'Callaghan states in his evidence in chief at paragraph 130, that the common boundary of the subdivision would move accordingly, and any extra width simply incorporated into the final s223 approval. I assume Mr O'Callaghan means that the surplus land would be incorporated into the adjoining residential lots. It cannot be assumed that this would be in general accordance and such an action may require a s127 application for change of conditions.

21. Mr Gray has prepared a supplementary statement of evidence which responds to transportation matters raised by the applicant and submitters at the hearing and recommends some changes to conditions accordingly. This is attached as **Appendix B**. Mr Gray has clearly explained his position in response to the applicant's transportation evidence and the concerns raised by submitters. I rely on his expert opinion in this regard and do not repeat his findings here. In summary, Mr Gray remains of the view that from a traffic perspective, subject to appropriate conditions, the adverse effects of the development can be managed to an acceptable level. This is the same opinion reached by the applicant's transportation expert.

22. The recommended transportation conditions reflect the draft conditions agreed by the transportation experts at caucusing and appended to the Joint Witness Statement of the Transportation Experts dated 28 February 2019[5]. The transportation experts included representatives on behalf of HCC and NZTA as road controlling authorities. These experts did not provide evidence at the hearing in support of the submissions by these two parties. It is therefore assumed these submitters are satisfied the

[4] Paragraphs 58 & 59 of the s42A report
[5] Refer to Attachment A of Mr Gray's Statement of Evidence as Appendix F to the s42A report

recommended transportation conditions address any concerns they may have from a transportation effects perspective. I note no expert transportation evidence was provided on behalf of any other submitters.

23. It is acknowledged that there will be a noticeable increase of traffic on the surrounding road network during the construction period of the development and prior to the opening of the new bridge across the Waikato River, particularly given the implementation of the Peacocke Infrastructure programme occurring at the same time. I am however satisfied 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. These improvements works are to be commenced within the next few months.

2.5 Infrastructure Effects

Wastewater

24. The applicant's Wastewater Disposal Report submitted with the AEE (Appendix L) considered two options for the disposal of wastewater from the development to the Council's bulk wastewater system: 1. discharge to the Far Eastern Interceptor at Crosby Road (north-east Hamilton) and, 2. to the Western Interceptor (at Lorne Street Pump Station). The option of connecting to the Western Interceptor was assessed as an interim option. The alignment of the wastewater trunk rising main for the Eastern Option to the Far Eastern Interceptor at Crosby Road is shown as part of the applicant's Preliminary Engineering Drawings (Plan 141842-WW500 in Appendix W).

25. The s42A report outlined the reasons for not supporting the western option and recommends that should consent be granted that the development proceed based on the eastern option only. The applicant's

evidence in chief from Mr O'Callaghan confirms that the interim western option is no longer being pursued[6]. 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[7].

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

[6] Paragraph 89 of Mr O'Callaghan's EIC
[7] Paragraph 84 of Mr O'Callaghan's EIC

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.

28. Mr McBride (submission 42) requests a condition be imposed on the applications requiring a quantitate microbial risk assessment as part of the detailed design for the primary sewerage pump station, given the location above the City's Water Treatment Plant to ensure drinking water related health risks do not arise.

29. The Regional Infrastructure Technical Specifications (RITS) outlines the storage requirements for all new pump stations within Hamilton City. The aim of new pump station design's is to minimise the potential for an overflow. Ms Colliar (paragraph 26, Appendix G(c) of the Section 42A report) has explained the recent compliance environment Hamilton City Council (HCC) faces in terms of managing wastewater network overflows. The pump station design will be assessed at the detailed engineering design stage against the RITS specifications. I am advised by Mr Jonathon Brooke, HCC Project Engineer, that a quantitate 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 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.

<u>Water Supply</u>

31. Mr O'Callaghan has sought some minor clarification changes to the wording of the water main service connections to the site[8]. These are supported.

32. Ms Cave-Palmer (submission 11) sought that the Amberfield 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. I refer the Commissioners to paragraph 189 of the s42A report, which 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 network.

Stormwater

33. Mr Edwards (submission 26) confirmed support for the recommended conditions requiring the applicant to convey the primary and secondary flows from all adjacent sub-catchments currently draining through the site, and that consultation should be undertaken with the owners of 71 & 84 Weston Lea Drive in this regard, and any necessary easements are provided to convey the stormwater flows.

34. Mr O'Callaghan sought some minor change to the conditions to clarify that the applicant is only responsible for conveying the existing primary flows of adjacent sub-catchments, in addition to the maximum probable development secondary flows[9]. These changes are supported.

35. Mr O'Callaghan's EIC[10] does not accept Mr Clarke's position that private stormwater systems on lots should be designed for a design event greater than the NZ Building Code, and that secondary flow from modest rainfall events after the primary systems have reached capacity will be insignificant and would not create an undue problem for downstream

[8] Paragraphs 132 & 133 of Mr O'Callaghan's EIC
[9] Paragraph 142 of Mr O'Callaghan's EIC
[10] Paragraphs 134 to 140 of Mr O'Callaghan's EIC

properties. Consequently, Mr O'Callaghan sought the deletion of conditions 141 as proposed in the recommended conditions appended to the s42A report. This condition requires private easements to be provided for all down slope properties to convey secondary stormwater flows from upstream properties to either road reserves or to joint access lots.

36. Mr Clarke has prepared a supplementary statement of evidence in response to this matter. This is attached as **Appendix C.** The condition referred to relates to the management of stormwater from upslope properties to avoid nuisance of secondary overflows for the 100 year peak design storm on lower slope properties as required by the Regional Infrastructure Technical Specifications (RITS). In the case of this proposal there are some 25 upper slope lots (primarily within the north-east area of the site) where easements on lower slope lots are likely to be required. Mr Clarke calculates that secondary stormwater flows for a 100 year event have the potential to cause a nuisance to down slope properties taking into account topography and other ground features. It is therefore recommended that this condition remain to ensure secondary stormwater flows onto lower slope properties are directed to land covered and protected for this purpose by easement.

37. Ms Cave-Palmer (submission 11) requested that the stormwater disposal and treatment be extended to include extreme rainfall events, to avoid pollution of the Waikato River. The stormwater design for the development is primarily to ground with a design capacity of 10 year for private soakage and 2 year for public soakage (roads), with discharge to the Waikato River generally in storms beyond the 1 in 2 year event. Secondary flows up to the 100 year ARI event are designed to be managed within the road reserves.

38. 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. The ground conditions of the site provide for high levels

of infiltration and ground soakage for stormwater runoff. Within a residential development, roads are likely to generate the highest potential source of contaminants from the deposition of heavy metals and hydrocarbons. The proposed stormwater regime for the roads proposes the treatment of first flush flows through bio-retention systems prior to entering natural ground water or surface water systems generally up to the 2 year event. Hence the potential for untreated stormwater flows to directly enter surface water receiving environments will be low. This view is also supported in the s42A report for the regional consents which addresses the application for the discharge of stormwater to the Waikato River.

Other Services

39. The evidence by Ms Brown on behalf of WEL Networks (submission 69) seeks some minor changes to the Services conditions in relation to the provision of electricity reticulation and for the relocation of the WEL 11kV electricity distribution line[11]. Some minor editing of the services conditions is proposed in response. However, the applicant intends to underground the existing 11kV distribution line servicing the Riverlea area which traverses the site, and this is the Council's preference from an amenity perspective, accepting that there will need to be an above ground termination structure for the continuation of the line across the Waikato River. I do not support the proposed changes from WEL to recommended condition 109 to enable the entire distribution line to remain above ground.

40. Ms Brown also sought the inclusion of an additional condition to ensure the street berms widths comply with the Location of Services in Street diagram in the Council's former Development Manual.[12] The manual referred to is now obsolete and HCC currently operates under the RITS (refer Mr Brooke's memo in **Appendix D**). There is a similar diagram in

[11] Paragraph 4.5 of Ms Brown's EIC
[12] Paragraph 4.7 of Ms Brown's EIC

the RITS and a catch all condition has been recommended that all engineering works shall be in accordance with these specifications. A specific condition relating to service corridor widths within road corridors is not considered necessary.

2.6 Terrestrial Ecology Effects

41. As outlined in my original s42A report 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. My opinion has not changed and I do not intend to revisit those other matters and focus on the outstanding issues associated with the long-tailed bat.

42. Mr Kessels has prepared a supplementary statement of evidence attached as **Appendix E**. I do not propose to summarise or restate his position, but discuss the key matters arising from his evidence, that are relevant to my overall conclusion on the potential adverse effects on long-tail bats.

Long-tailed bats

43. The question of adverse effects on long-tailed bats was highlighted in my original s42A report as a particular concern. This issue was traversed in some detail during the hearing and was the subject of four expert caucusing sessions in total. I attended the entire hearing and was present to hear the evidence and submissions on behalf of submitters as well as the applicant.

44. Based on the evidence presented at the hearing and the outcomes of the caucusing, there remains a difference in the opinions of the experts for Doc and RESI when compared to that of the applicant and, to a lesser extent, Council's ecological expert Mr Kessels. I have considered the evidence on behalf of DoC and RESI and it has not caused me to revise or change my original assessment. I accept and prefer the evidence of Mr Kessels as regards the effects of the development on long-tailed bats and

the avoidance, mitigation and intended offset measures to address those effects.

45. I do 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.

46. Mr Kessels' supplementary evidence discusses the proposed mitigation and avoidance measures, including the design of the Amberfield development. Attached to Mr Kessels' supplementary evidence is a table which provides his assessment of the application against the list of effects on bats which were identified at the expert caucusing. This includes consideration of the current (updated) proposed avoidance, remediated and mitigation measures to address those effects (as proposed by the applicant) and his opinion on the adequacy of those measures. Mr Kessels also provides a response to the submitter experts' view on the efficacy of the measures. I accept and rely on his expert opinion as to the efficacy of these measures to ensure the potential adverse effects are appropriately addressed such that I consider the effects are acceptable and can be managed through the recommended consent conditions.

47. I rely on the expert lighting evidence of Mr Kessner and, in particular, the indicative light spill illustrations which were provided by the applicant in its response to the commissioner questions in Direction 9. This demonstrates that the potential lighting effects from both street lighting and adjacent housing development will be negligible. This will be further mitigated by the deferred staging of development adjacent to the River margin and gully until buffer planting is established to an appropriate level of density and height, as well as controls on exterior lighting of

adjacent residential development (which is to be implemented through consent notices as provided for in the proposed conditions).

Short-term residual effects on long-tailed bats

48. In my original s42A report I relied on the expert advice of Mr Kessels who was generally comfortable with the proposed avoidance and mitigation proposals from the applicant. However, Mr Kessels considered there to be an outstanding temporary (or short-term) residual effect during the time lag between commencement of the activities and when the mitigation planting becomes sufficiently established.

49. At that time, I proposed a draft "placeholder" condition for an offset/compensation payment. However, I was not in a position to include a quantum because that required expert input to prepare a methodology/formula to determine the amount. Furthermore, imposing such a condition would require the agreement of the applicant.

50. During the hearing, the applicant's experts promoted the concept of "adaptive management" to address the short-term residual effects – or the risk of such effects. However, no evidence was presented which demonstrated to me how that would work in practical terms, particularly in the context of a large scale residential subdivision. I understand and am aware of the use of adaptive management approaches being applied in relation to large-scale, complex infrastructure or marine developments (e.g., mining, aquaculture). However, those types of developments involve a single entity as consent holder for the duration of the project/activity. That is not the case with subdivision and associated land uses (particularly in an urban setting) whereby once titles are issued (s224 RMA) the ability for the applicant to implement adaptive management measures is effectively defeated.

51. As such, I support the approach set out in Mr Kessels' evidence which would "front load" measures to address short-term residual effects, rather than relying on an adaptive management process. In that regard,

discussions with the applicant's ecologist team during the adjournment allowed Mr Kessels to explain his rationale for addressing the short-term residual effects. I understand, based on the letter and consequential information provided to Council on 12 August 2019, that the applicant agrees in principle with the concept originally proposed in Mr Kessels' evidence in chief and the original s42A.

52. The consequential information included a memo from Boffa Miskell setting out a proposed methodology for determining the appropriate quantum for the intended offset fund which replaces the adaptive management approach set out in the applicant's evidence. Mr Kessels has reviewed that memo and, as explained in his supplementary evidence, this was validated against a Biodiversity Accounting model ("BDO model"). While this model has its limitations, Mr Kessels considers it to be sufficient to test the methodology in the Boffa Miskell memo. The outcomes of that testing has satisfied Mr Kessels that the Boffa Miskell memo methodology will provide a suitable quantum, provided that accurate pest management contractor costs are applied.

53. On that basis, in reliance on the evidence of Mr Kessels, I am satisfied that the short-term residual adverse effects on long-tailed bates will be adequately addressed through the imposition of the proposed Amberfield Bat Fund condition. The quantum in the proposed condition is based on the formula in the Boffa Miskell memo but with an adjustment of the contractor costs.

54. I am aware that such a condition can only be imposed if the applicant agrees. As at the date of finalizing this report, I understand that the applicant agrees in principle to the draft condition framework. However, I am not able to confirm whether the applicant agrees to the quantum at this point in time. I expect that counsel for the applicant will confirm the applicant's position on this matter at the reconvened hearing.

2.7 Provision of Suburban Centre

55. Section 4.3 of the s42A report discusses the activity status of the land use and subdivision applications under the District Plan. Overall, I considered the applications require consent as a Non-Complying Activity. This status is not in dispute by any parties to these proceedings. In paragraph 64, I raised the issue of uncertainty regarding the activity status of the proposal for a masterplan which did not include a full neighbourhood as required by rule 5.3.3.1c). Mr Skilton in his evidence on behalf of the Johnson Family Trust (submission 45) disagrees with my position that the uncertainty of the activity status defaults to the activity status in s87B(1)(b) of the RMA, being Discretionary Activity.

56. Mr Skilton's position is that applying the process to determine activity status under rule 1.1.8.1 of the District Plan, the activity status for not providing a Master Plan for a whole neighbourhood is a non-complying activity. In my opinion, the activity status is not straightforward, particularly given that a Master Plan is not in itself an activity and there remains the question of the vires of a framework plan approach for determining requirements for resource consent. Irrespective, of the applicable activity status, I have applied the 'bundling' principle and treated both the land use and subdivision applications as non-complying activities.

57. Section 4.1 of the s42A report provides an overview of the application. Paragraph 39 identifies that the neighbourhood centre does not form part of the applications and will be subject to future land use and subdivision consents. Clearly, no land use consents have been sought for any activities within Neighbourhood 6 that would be deemed to comprise a suburban centre (such as Public library, school, commercial, retail and community uses, and higher density residential development), as described in the Peacocke Structure Plan.

58. Section 11.4 of the s42A report referred to the Urban Design Report appended to the applicant's AEE (Appendix D) which explained that the part of the site within Neighbourhood 6 identified for a suburban centre

is defined by two "super blocks" and the concept layouts (three provided) are illustrative only. The two "super blocks" are shown as two "super lots" on the subdivision plans (lots 864 & 865) and are bisected by the north-south road through the development. As part of the pre-application discussions with Council, it was accepted that the ability to comprehensively masterplan the suburban centre at this time with any level of certainty as to required retail composition, form and scale would be difficult for a development timeframe that will be some years away.

59. I still hold the view that the illustrative concepts provided by the applicant for the suburban centre within the Amberfield site which shows an indicative roading layout for the Neighbourhood 6 suburban centre on the west side of Peacocke Road, does not predetermine the outcomes of any future land use consents that will be required for the development of this area. I am also satisfied 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, including the footprint of the concept plan for the Suburban Centre (Fig 3.4.3a in the Peacocke Structure Plan) as shown on the plan tabled by Mr Sergeant at the hearing.

60. The development of the "super lots" will require land use consents under the provisions of the District Plan. As part of any application, sufficient design detail and consideration of integration with the balance of Neighbourhood 6 identified in the Peacocke Structure Plan on the western side of Peacocke Road (particularly for the suburban centre) would be required. I acknowledge that without having provided a resolution for the land use consent and recommended conditions with the s42A report that there remains a level of uncertainty for the submitters[13] that this would in fact be the case.

[13] Johnson Family Trust (45) and Woolworths NZ Ltd (75)

61. I have drafted a recommended land use consent resolution for the Commissioners that precludes the two “super lots” from the application for the land use activities covered by the consent and associated Master Plan. In my opinion the future development of the “super lots” for suburban centre activities under the current provisions of the District Plan would fall to be a Non-Complying Activity in the absence of a Master Plan. I understand that this is the certainty that Mr Skilton is seeking in his evidence. The alternative relief sought by Mr Skilton to exclude part or all of Neighbourhood 6 from the applicant’s site, would require a significant re-design of the proposal and in my opinion beyond the scope of the Commissioners jurisdiction. This option would require a decline of the application. For the reasons discussed above I do not support this relief.

62. For completeness, I wish to respond to Commissioner Knott’s question to the applicant’s planning witness Mr Inger on how the neighbourhood boundaries of the Peacocke Structure Plan were determined. I am advised by Council staff of the City Planning Unit that the location of the neighbourhoods including Neighbourhood 6 was determined through the appeal mediation process to the Peacocke Structure Plan Variation introduced in 2007 to the then Proposed District Plan of which The Johnson Family Trust and Adare Ltd were parties to. Through mediation it was resolved that the Urban Design experts for Adare Ltd would prepare an alternative structure plan which set the neighbourhoods. I am advised that the neighbourhoods were established based on topography, major infrastructure and key land uses. The final configuration of these neighbourhoods was confirmed through a consent order.

2.8 Provision of Sports Park

63. I refer the Commissioners to my s42A assessment of the applications against the Structure Plan Objectives and Policies in Chapter 3 of the District Plan, which identifies a clear policy direction for development to

be in general accordance with the relevant Structure Plan[14]. The applicant's AEE assessment contends the proposal is in general accordance and has a high level of consistency with the Peacocke Structure Plan (PSP). This was questioned through the Council's s92 request as the indicative location for a Sports Park on the PSP is shown as residential lots in the applications. The applicant's response is that consistency is based on the assumption that the Sports Park is provided, however the applicant is reluctant to show the Sports Park on the subdivision plans on the basis that there is no firm commitment from the Council as the future asset owner to purchase and vest the land in Council. The response also appeared to require the Council in its RMA decision making role to be satisfied that the taking of the land for Sports Park in the indicative location shown on the PSP is the most appropriate use of the land.

64. I maintain my view as expressed in the s42A report 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 indicative location for 'Active Recreation' on the PSP has already been considered and determined through an extensive public RMA process as outlined in Section 3.1 of the s42A report. Mr Stirling in his memo attached as Appendix I to the s42A provided further commentary on this process and the work undertaken to inform the indicative location. Mr Sirl's evidence on behalf of the Council as submitter has also explained the work that was undertaken[15].

65. As further background of the plan change process for the PSP, a series of Peacocke Structure Plan Maps is attached in **Appendix F**. These show that an indicative active recreation area has been identified on the Amberfield site from when Variation 14 – Peacocke Structure Plan was first publicly notified in 2007, as a delineated area to accommodate 6 playing fields.

[14] Paragraphs 206 & 207 of s42A report
[15] Paragraphs 52 – 59 of Mr Sirl's EIC

This delineation of the active recreation reserve was not opposed through submissions to the Variation by the Adare Company Ltd (owner of the application site) and remained on the Council's Decisions Version of the Peacocke Structure Plan Map. There were five appeals to the Council decisions on Variation 14.

66. The Adare Company Ltd was an appellant but their appeal did not seek any change to the delineation of the active recreation area on the Amberfield site. Another appellant sought that the detail of the Structure Plan be shown in a more simplified and diagrammatic form. This appeal and others provided scope for the detail on the Structure Plan Map to be removed and the introduction of the master plan requirements. Through the appeal mediation process extensive work was undertaken by Council, the appellants and Urban Design Consultants (Common Ground) acting on behalf of the Adare Company Ltd to settle the detail of the Peacocke Structure Plan. The amendments to the detail included the removal of the boundaries identifying specific areas required for the proposed active recreation areas and replacing them with symbols identifying just the location. The appeals were settled by Consent Order in May 2012. The 2012 appeals version of the Peacocke Structure Plan in **Appendix F** shows the active recreation area on the Amberfield site with a triangle shape symbol in the same general location as the previously delineated active recreation area.

67. The settled Peacocke Structure Plan was included in the Proposed District Plan notified in November 2012 with some amendments to align the roading network to reflect the proposed Southern Links Transport Network. The submissions to the Peacocke Structure Plan in the Proposed District Plan primarily related to the roading network. There were no submissions to the indicative location of the active recreation areas. Their location as notified was confirmed in the now Operative District Plan and remains consistent with the locations first promulgated in 2007 through Variation 14.

68. Mr Sergeant's evidence confirms that the application subdivision plans show approximately 110 residential lots in the sports park site area, but the roading layout does not preclude the provision of the sports park if required. Given that this part of the application site will not be developed for some time Mr Sergeant asserts that Council can secure funding and propose a firm offer for the land[16].

69. Mr Sirl's evidence outlines the pre-application consultation that occurred with the applicant regarding the provision of the sports park and refers to an email received from the applicant advising that the applications to be lodged would not include vesting of the sports park on the basis that 'HCC have discussed the sports park requirement but not formalized an acquisition process'. Mr Sirl goes to explain that Council have in the recent past acquired land for sport parks identified in structure plans for greenfield areas through negotiation with landowners, with land vesting as part of subdivision applications. This process is anticipated in the District Plan as set out in the Explanation to Objective 3.3.7 and the associated policies for the provision of public open spaces within structure plan areas, which states *'Public open space is usually indicative on Structure Plan maps, and exact sizes and locations will be determined at the time of subdivision consent'*. In my view this process ideally provides flexibility to work with an applicant at a time when there is more certainty as to the layout and roading infrastructure of the future urbanization of the land.

70. Mr Sirl's evidence refers to recent work commissioned by the Parks and Open Spaces Unit of Council to provide more certainty of the public open space size and location requirements for the PSP area. The Xyst report commissioned in October 2018, assessed the land area requirements for sport parks in the PSP area. Mr Rawson, the author of the Xyst report presented evidence on the report findings on behalf of Council as submitter, which concluded that 1.2 hectares of sports park per 1000

[16] Paragraph 87 – 89 of Mr Sergeant's EIC

population is a relevant benchmark for initial planning to retain the existing adequate level of sports field provision for the City.[17]

71. This analysis does not appear to be in dispute in the EIC of Mr Small and Mr Fairgray. However, Mr Fairgray considers there is the potential to supply higher quality fields that would enable a greater number of usage hours and reduce the area of land required. As such the land area requirements identified by the Council is likely to represent a higher bound estimate of the sports fields area required to maintain the existing level of service across future households. He also notes that if the upper estimate of 20,00 future population for Peacocke is lower, the required sports fields area will be correspondingly lower.[18]

72. Mr Sirl accepted the Xyst report findings which recommends as a starting point 24 hectares of land based on the projected population of 20,000. Mr Sirl also considered the impact of a significant reduction in projected population yield and using the 2013 Census household average of 2.7 residents, a 29% reduction indicates that approximately 19 hectares would be required.[19] In response to Mr Fairgray's position that there is potential to increase the usage of the City's existing network of sports parks, Mr Sirl advises that these facilities also need to accommodate the demands from the city's intensification and infill development, and notes that approximately 50% of Hamilton City's population growth is currently occurring within the existing urban area. Mr Sirl also states that to assume the existing sports field network can accommodate all or some of the needs of Peacocke fails to consider the impact of distribution and accessibility on participation and use of facilities.

73. A Peacocke Active Sports Park Location Assessment Report dated April 2019, was prepared by the Council's City Planning Unit to assess the area for the most suitable sites to accommodate active sports fields. Mr

[17] Paragraph 16 of Mr Rawson's EIC
[18] Paragraph 74 of Mr Fairgray's EIC
[19] Paragraphs 72 – 75 of Mr Sirl's EIC

Roberts, a senior planner for the Council's City Planning Unit presented evidence on behalf of Council as submitter on the findings of the report. The report concluded that on the basis that two parks are required, that the sites currently identified in the PSP are the preferred sites based on their ability to accommodate large scale sport parks, location to the planned transportation network and distribution within the wider Peacocke area, with the northern site best suited for the establishment of a larger active sports facility based on its size and closer proximity to the major transport network. [20] Mr Fairgray's evidence in reply challenges the methodology of Mr Robert's assessment. In particular the use of a limited number of ratings for each site and according each the same importance.

74. Mr Roberts' Location Assessment Report in my opinion is a high-level assessment to identify the most suitable sites to accommodate active sports fields based on topography and area requirements, and then against some urban design criteria (identified through the PSP policies to be important) to determine the best locations. The assessment identifies the indicative location on the Amberfield site in the PSP as one of the most suitable of the identified potential sites.

75. Mr Sirl's assessment of the minimum land area requirement for an active sports park within the Amberfield site is based on the Xyst report findings which as a guide is approximately 7 hectares. He also advised that Council is progressing a Notice of Requirement for the northern site in the PSP supported by the Peacocke Active Sports Park Location Assessment Report referred to above. The area of the northern sports park will be approximately 14 hectares resulting in a total of 21 hectares of sports park land in Peacocke, which Mr Sirl considers is a conservative but appropriate level of land allocation for sports parks. Even if there was a significant reduction in population yield Mr Sirl remains of the view that

[20] Section 4 of Peacocke Active Sports Parks Location Assessment Report appended to Mr Roberts EIC

there is a need for two sports parks in Peacocke, due to the feasibility of accommodating for example a 19 hectare sports park in a single location.

76. Mr Small's evidence on who should pay for the 7 hectares of sports park within the Amberfield site has assumed that the applicant is required to meet this cost when the land requirement well exceeds the demand generated by the likely population yield associated with the proposed development. He estimates the population yield would generate a land area of 2.5 hectares which is well below the 7 hectares sought by Council. Mr Fairgray also calculates a range of 2.48 to 2.76 hectares of land to serve the future Amberfield population sports fields demand. In Mr Small's opinion there is no economic basis for requiring the Amberfield development to bear the full costs of sports park land beyond the demand of the development. He however acknowledges that the fragmented provision of sports park land based on individual development demand is inefficient and would not deliver useable and practical areas for winter sports fields. This view is not disputed in Mr Sergeant's evidence[21] and in Mr Fairgray's evidence[22] in reply. Mr Small's evidence then addresses the timing of acquiring and developing the land for sports park and observes that deferring park development to coincide with population demand is more efficient and cost effective.[23]

77. The delivery of active sports parks is critical to community wellbeing as well as meeting the recreational needs of the future Peacocke community. Mr Sirl outlines in his evidence why it is important to acquire land for sports parks in the early stages of greenfield development areas. Deferral of suitable land without significant modification reduces the certainty and likelihood of the Council being able to provide this infrastructure given the large land area requirements and in the case of Peacocke the limited site suitability options. If there was a sub-optimal provision of sports parks in Peacocke, Mr Sirl states this would adversely

[21] Paragraph 86 of Mr Sergeant's EIC
[22] Paragraph 10 of Mr Fairgray's EIR
[23] Paragraphs 46 – 57 of Mr Small's EIC

impact on the Council's ability to maintain the current level of service for winter fields and to provide for other sporting codes. Mr Sirl also outlines the approved funding for land purchase and development of parks in Peacocke in the 2018-28 Long Term Plan. The bulk of funding for land purchase for two sports parks is in 2020/21 and 2027/28 financial years, with the funding for the development of the first sports park is 2022/23 with basic development for informal recreation, and field and building infrastructure in 2026/27.

78. Mr Sirl acknowledges that the provision of a 7ha area of land for a sports park is required to cater for demands of an area greater than the Weston Lea applications, and therefore accepts that compensation for the purchase of the area of land is required[24]. The compensation process is separate to this RMA process, and in my opinion is not relevant to the Commissioners determination. Nor is there a requirement for the applicant and Council to have reached an agreement on compensation prior to a decision on the applications being made. The Council has advised the applicant and this hearing process of its requirement for sports park land within the Amberfield site, and this is not inconsistent with the provisions of the PSP. The current Long Term Plan has planned funding for the purchase and development of such land to coincide with the anticipated rate of urban development and associated demand. The costs are intended to be re-covered through development contributions.

79. In summary, the requirement for the provision of an active recreation area on the Amberfield site has been through two District Plan review processes and was not opposed by the land owner who was a submitter to these proceedings. The active recreation area on the Amberfield site is consistent with the indicative location shown on the PSP and the PSP Social Wellbeing objectives and policies[25]. The provision of the sports park is mitigating a social, cultural and health wellbeing effect generated

[24] Paragraph 96 of Mr Sirl's EIC
[25] Objective 3.4.1.11 & Policies 3.4.1.11a, b & c

in part by the proposed development. This is acknowledged by the applicant's expert evidence discussed above.

80. The evidence also accepts that the land areas required for a sports park based on the likely population yield associated with the proposed development is well short of the minimum area of 7 hectares required and accept that based on individual development demand cannot effectively and efficiently deliver wider Peacocke demand facilities. Mr Sirl's evidence confirms that the applicant will be compensated for the required 7 hectares. The compensation process is a separate statutory process to this RMA decision making process. I do not accept the position set out in Mr Sergeant evidence in reply[26] that the Council needs to make a firm offer to purchase the land to enable the sports park to be provided as part of the consented subdivision plans. The District Plan expressly states that the exact size and location of indicative public open space shown on Structure Plans will be determined at the time of subdivision consent. For greenfield areas this enables a collaborative approach with a developer to ensure the size and location of the active recreation areas are appropriate and can respond to the desired form and layout of the future urban development. I accept that the Council does have the option of securing the sports park through the designation process under the RMA but question whether this is an efficient use of time and resources when it can be secured now through this subdivision application. I note that both processes would require an agreement on the compensation to be paid for the land.

81. As discussed in paragraph 211 of the s42A, to achieve consistency with the Structure Plan objectives and policies it is recommended that the residential lots that are identified as being located on the required Sports Park area be shown as a single lot to vest as recreation reserve. This requirement would be implemented through condition 127 (see **attached**). In the event that Council does not require the land (for

[26] Paragraph 119 of Mr Sergeant's EIR

example, if the current plan change process to review the Peacockes Structure Plan demonstrates that an alternative location is the most appropriate), I have recommended an alternative position in the draft conditions which would enable the consent holder to proceed with subdivision into residential lots if Council advises the consent holder that it does not intend to proceed with the acquisition. I understand, based on the legal submissions for Council as submitter that this approach would not be opposed by Council as submitter[27].

82. Furthermore, I note 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. In that regard, I do not consider the requirement that the land vest in Council constitutes a financial contribution.

83. Counsel for the applicant made legal submissions which argued that there is no rule in the district plan which requires land for a sports park. However, in the context of the objective and policies for the PSP area and the supporting rules and methods – in particular chapter 3.4.3.1 Community and Recreation Facilities – I consider the provisions of the Sports Park is essentially a requirement of a rule (albeit that the provisions in question are not in the format of a rule table but rather are a component of a structure plan to give effect to the objectives and policies and are included in the detailed information requirements for development within the PSP).

2.9 Urban Design Matters

84. The s42A report commented on the applicant's Urban Design Report recommendations for more restrictive standards for housing development than what is in the District Plan to achieve the overall urban design outcomes the applicant is promoting[28]. I suggested the applicant

[27] Paragraphs 57-60 HCC Legal Counsel Opening Submissions & Paragraph 98 of Mr Sirl's EIC
[28] Paragraph 264 of the s42A report

clarify at the hearing how the more restrictive standards as outlined in the Urban Design Report[29] were intended to be implemented.

85. The response provided in the evidence in chief of Mr Mentz[30] is that development of detailed urban design guidance is inappropriate at this early stage but would be provided at a later stage by the applicant before sales agreements are formulated. Mr Mentz also noted the applicant is willing to liaise with Council on the guidance. It is still remains uncertain how the urban design guidance will be enforced. One mechanism is through private covenants on the property titles which would be reliant on the applicant to enforce.

86. As noted in the s42A report the establishment of a single dwelling on the proposed residential lots are a permitted activity subject to compliance with the relevant development standards for the Peacocke Special Character Zone. The additional more restrictive standards advised by Mr Mentz over and above the District Plan standards for residential development are supported. However, given that the development of the lots for a single dwelling is permitted I do not consider the Commissioners have jurisdiction to imposed more restrictive standards for this form of development given that the proposed residential development of the lots does not require resource consent and is not therefore part of the subject applications.

87. Nonetheless I am still of the opinion that the proposed subdivision layout will provide for a high quality urban environment for the reasons outlined in the s42A report[31].

2.10 Gateway Test (s104D RMA)

88. Section 9.0 of the s42A report provided my conclusion on whether or not the application passed either of the gateway tests under s104D(1) of the

[29] Section 5.9 of the Urban Design Report
[30] Paragraphs 122 – 124 of Mr Mentz's EIC
[31] Paragraph 263 of the s42A report

RMA. I concluded that the applications fail the test in s104D(1)(a) as the adverse effects of the activity on the environment will be more than minor. However, based on the assessment of the relevant District Plan objectives and policies when considered in the round I concluded the applications would not be contrary to these objectives and policies and therefore met the gateway test under s104D(1)(b). On this basis the applications are able to be considered and determined under s104(1) and s104B. This same conclusion is reached by the applicant's planning expert Mr Sergeant. My position on the gateway test remains unchanged.

89. The assessment under s104D(1)(b) was based on my application of the District Plan policy framework in Chapter 20 Natural Environments. That is, this policy framework in terms of the subject applications relates to the scheduled Significant Natural Areas (SNA) in the District Plan. This position is also supported by the applicant's planning expert Mr Sergeant[32].

90. Mr Riddell, planning expert for the Department of Conservation (DoC) on the other hand asserts 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[33]. I disagree with Mr Riddell's proposition for the reasons set out as follows.

91. Chapter 20 of the District Plan clearly identifies in its purpose statement that the chapter "relates to Significant Natural Areas". Under the heading "Significant Natural Areas", chapter 20.1c) expressly states that:

> […] The sites are identified on the Planning Maps and are listed in Schedule 9C: significant Natural Areas in Volume 2, Appendix 9…

92. While 20.1e) refers to Significant Natural Areas as including "iv. Other areas that contribute to indigenous biodiversity" that is predicated on the "other areas" being incorporated in the scheduled sites. It follows that

[32] Paragraphs 9 to 13 of Mr Sergeant's rebuttal evidence

[33] Paragraphs 73 to 115, in particular paragraphs 103 to 111 of Mr Riddell's EIC

the objective and policies apply to those mapped and scheduled areas. In my opinion it is irrelevant that SNA is not defined in the Definitions Chapter of the Plan. The definition and identification of those sites is established through the narrative in Chapter 20, the scheduling of the areas in Schedule 9C, and their identification on the planning maps. This is further supported by the rule table 20.3 which concerned "activities within a SNA, Schedule 9C (Volume 2, Appendix 9).

93. To suggest that all the objectives and policies in Chapter 20 apply to areas which are not identified, mapped and scheduled is, in my opinion, fundamentally incorrect. In that regard, I acknowledge that some policies in Chapter 20 have application to the Amberfield site in the sense that the site is a "corridor" or "connection" to the mapped SNAs adjacent to the site which serve as a habitat for long tailed bats. As such, there is a degree of application and relevance of those policies. I do not however, except Mr Riddell's proposition that all the policies in Chapter 20 are relevant and that *'it could be said that the indigenous biodiversity adverse effects are contrary to these policies. If so, then the application must fail as neither leg of the non-complying "gateway" is met*[34]*.'*

94. However, as explained in the original s42A report, due to the technical report which informed the promulgation of Chapter 20 as relating to flora and not both flora and fauna, there is a degree of incompleteness and/or uncertainty regarding the mapped SNA and therefore the application of the objectives and policies in the District Plan. I explained in the original s42A report that I did not place significant weight on those policies for that reason – although I did treat the same as providing guidance to the assessment of the proposal.

95. I understand from the written legal submissions provided at the hearing that legal counsel for DoC acknowledges that the chapter applies to sites which are identified and scheduled in the District Plan and that a plan

[34] Paragraph 155 of Mr Riddell's EIC

change is necessary to provide for the application of the objectives and policies in Chapter 20. I agree with counsel for DoC that a plan change would be needed to include the Amberfield site as an SNA for the purposes of Chapter 20. In my opinion the proposition that the requirement to "avoid" goes beyond mapped areas would lead to significant uncertainties for any development in the city and cannot be correct. For the reasons explained in the original s42A report, and submissions from legal counsel for the applicant, the uncertainty regarding the planning framework as it applies to long tailed bat is addressed through recourse to the Waikato Regional Policy Statement (WRPS) which is less onerous than the "avoid" language in the District Plan, and Part 2 of the RMA. This is supported by recent case law which counsel for Council will address in submissions.

96. I note that Mr Sergeant in his rebuttal evidence[35] states that the provisions in Chapter 20 can only be applied to the site's mapped SNA 54 and the small section of SNA 48 on the northwest boundary of the site. I do not concur with this position. The provisions in Chapter 20 apply to all mapped and scheduled SNA in the District Plan. In this regard it is appropriate to have regard to the effects of the applications on SNA beyond the site boundaries, this includes SNA 49 (Hammond Bush). I agree with the written legal submissions provided by legal counsel for the Riverlea Environment Society Incorporated that the policies are not limited to the effects of activities taking place within SNAs themselves, but may also apply to activities that effect SNAs[36].

97. Mr Skilton, planning expert for the Johnson Family Trust disagrees with my assessment in relation to the objectives and policies of the Peacocke Character Zone, where I concur and adopt the applicant's assessment. In Mr Skilton's opinion the extent and location of the suburban centre identified in the master plan is contrary to three of the four policies for

[35] Paragraph 13 of Mr Sergeant's rebuttal evidence
[36] Paragraph 15 of legal submissions for Riverlea Environment Society Incorporated

the Peacocke Character Zone. On this basis, Mr Skilton is of the opinion that the proposal does not pass the threshold test of s104D[37].

98. I do not concur with Mr Skilton's view. The applications are not seeking land use consent for the suburban centre. In addition, I am satisfied 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, including the footprint of the concept plan for the Suburban Centre (Fig 3.4.3a in the Peacocke Structure Plan) where within the subject site. Furthermore, the conceptual development options for the suburban centre outlined in the applicant's Urban Design Report does not in any way pre-determine or restrict the development of the suburban centre on both sides of Peacocke Road as identified in the Peacocke Structure Plan.

99. The s104D(1)(b) test against the objectives and policies of the District Plan requires consideration of whether the proposal would be contrary to the objectives and policies as a whole (or "in the round"), with some carrying more weight than others. A failure to adhere to one or two policies does not of itself mean a proposal fails this gateway test. One must apply the test against the overall purpose of the objectives and policies. I therefore remain 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.

2.11 Recommended Conditions

<u>Waikato Regional Consent Conditions</u>

100. The s42A report noted that separate resource consents had been applied for from the Waikato Regional Council concurrently with the applications to Hamilton City Council for enabling activities including earthwork,

[37] Paragraphs 4.1.4 and 4.1.5 of Mr Skilton's EIC

stream works, bridge over southern gully and stormwater discharges. At the time decisions on the regional consents had not been made.

101. Mr Inger's evidence in chief at paragraph 100, stated that in his opinion the conditions imposed on the HCC resource consents should not duplicate the conditions imposed on the WRC consents, as this would be unnecessarily and administratively inefficient. He went on to state that the conditions suggested in the s42A report should be reviewed once the regional consents have been issued.

102. Mr Inger's supplementary evidence provided a copy of the granted WRC consents, but made no comments or assessment of any unnecessary duplication or inconsistency between the conditions of the WRC consents and those recommended in the s42A report.

103. Apart from the applicant's suggested change to the Archaeological conditions which are reflective of those in the WRC consents, from my review of the WRC conditions I do consider there is any unnecessary duplication or inconsistency with the recommended conditions for the HCC resource consents.

<u>HCC Consent Conditions</u>

104. A suite of recommended subdivision conditions was appended as Attachment 4 to the s42A report. In my report I indicated that given the extensive number of recommended conditions that there was likely to be further iterations through the hearing process. Also, as part of the s42A report I had not provided a recommended suite of land use conditions as there was likely to be considerable duplication with the subdivision conditions.

105. Mr Sergeant's evidence in chief states there are very few matters of disagreement with the conclusions of the s42A report but proposed some changes to the recommended conditions based on the applicant's expert evidence. He appended a track change version of the condition set to his

evidence as Annexure C. This was subsequently updated with another track change version attached as Annexure A to his evidence in rely. The key changes related to the Peacocke Road Upgrade, Traffic Monitoring, Construction Traffic Management Plan, Archaeology, Ecology, Sports Park and Engineering conditions.

106. These changes are largely accepted except for the Ecology, Sports Park and stormwater engineering conditions. The reasons for agreement and disagreement have been addressed in this updated s42A report. As anticipated by the Commissioners, I have worked with the applicant's planners (Mr Sergeant and Mr Inger) during the hearing adjournment on an updated suite of conditions to minimise the extent of differences between us. This has also enabled further work to improve the certainty and clarity of the conditions. The most significant changes are to the ecology conditions as has been discussed in Section 2.6 above. It is my understanding that the only remaining areas of disagreement between us relate to the provision of the Sports Park and the requirement for easements for secondary flows over down slope lots.

107. My updated suite of recommended conditions is attached as **Appendix G,** and I have highlighted the conditions in red underlined text that are not supported by the applicant and deletion is sought. It is anticipated that the applicant will also present an update of the recommended conditions as part of the applicant's right of reply. I expect this update may contain further refinement to some of the conditions, but I am not anticipating any material changes to the intent of the conditions.

108. Recommended condition 4 is a general accordance condition based on the information and plans submitted to support the application. Given the extent of information and the revision of plans that have occurred through the consenting process it may be helpful particularly for monitoring purposes to include a list of the reports and plans that are pertinent to the implementation of the suite of conditions. This can be provided to the Commissioners if considered desirable.

109. I have given more thought to the land use conditions to the address the effects of the land use activities requiring consent as set out in section 4.3 of the s42A report. These relate to earthworks, walkways/cycleways, stormwater infrastructure, retaining walls and new transport corridors. These works are integral to giving effect to the concurrent subdivision application and I am satisfied that the recommended subdivision conditions address the effects of all these activities and will be required to be complied with as part of the s223 and s224 RMA process. That is, there will be no enduring environmental effects beyond the issuing of titles that cannot be addressed by the recommended consent notice conditions and through the use of a bond mechanism (if required) where for example, ongoing planting maintenance and bat monitoring may extend beyond the final s224 certification. This mechanism is provided for under s222 of the RMA, where Council may issue a completion certificate under s224 subject to the consent holder entering into a bond binding the consent holder to carry out and complete the works. Section 1.8.5 of the HCC Regional Infrastructure Specifications sets out a process for accepting a bond for uncompleted works.

110. I have therefore only recommended one land use condition relating to Requiring Authority Approval for land use activities within the Southern Links Designation to address the applicant's obligations under s176(1)(b)(i) of the RMA, prior to commencing works.

111. Legal Counsel for applicant had proposed a guarantee condition which would bind any enduring land use consent conditions to the current land owner 'The Adare Company Limited' so that the obligations did not fall down on future property owners of the site as it was subdivided. This was proffered based on the applicant's proposed ecological management and monitoring approach which was to extend over a number of years. For the reasons discussed above I do not consider such a condition is required.

CONCLUSION

112. Having reviewed the additional technical evidence which was pre-circulated, and considered the evidence and submissions presented through the hearing process, as well as the consequential information provided by the applicant during the adjournment, I have not been swayed to change or amend my principal conclusions presented in my s42A report.

113. In practice, it is considered that when assessing resource consent applications, consenting authorities should keep Part 2 in the back of their minds in their consideration of an application against plan provisions. Recent case law[38] has confirmed whether that is necessary in all circumstances will depend on the nature and context of the statutory documents in question. As discussed in the s42A report, given the District Plan and the WRPS pre-date this case law line of authority, and that there is both incompleteness and uncertainty in regard to the District Plan biodiversity objectives and policies, I consider that recourse to Part 2 is appropriate.

114. Section 5 in Part 2 identifies the purpose of the RMA as being the sustainable management of natural and physical resources. This requires an overall broad judgement to be made as to whether, on balance, the adverse effects are of such significance that consent should be refused. This consideration needs to be made in the context that the RMA does not necessarily require that all environmental effects be avoided, remedied or mitigated in relation to a particular proposal. Rather, the consideration requires a measured approach, whereby the overall benefit of the proposal is assessed and weighed against any adverse effects that it might create. In other words, some level of environmental effect may be considered acceptable in the context of the proposal where the bulk of the actual and potential adverse effects on the environment have been appropriately avoided, remedied or mitigated.

[38] RJ Davidson Trust v Marlborough District Council (2018) NZCA 316

115. The matters of national importance in Section 6 are subordinate to the primary purpose of the promotion of sustainable management. The same comment applies to the consideration of Section 7 and 8. In the context of this proposal the matters of national importance which need to be recognised and provided for are:

> *(a) 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:*
>
> *(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:*
>
> *(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:*
>
> *(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:*
>
> *(f) the protection of historic heritage from inappropriate subdivision, use, and development:*
>
> *(h) the management of significant risks from natural hazards.*

116. Generally, the proposal and applicant's technical assessments have had regard to these matters and actual and potential effects can in my opinion be adequately addressed through the regional consents and with the imposition of appropriate conditions on the subdivision application.

117. With regard to section 6(c) matters and the question of adverse effects on long-tailed bats, I prefer the evidence of Mr Kessels and Mr Parsons as to the significance of the entire site of the development. That is, it is appropriate to assign levels of significance at a more detailed scale than that of the criteria in the WRPS for determining whether an area is a SNA. Both experts consider that the pasturelands within in Amberfield site that are not directly buffering high value areas, while still of ecological significance, are of 'low value' in terms of bat habitat. Areas of high ecological value are the vegetated margins of the Waikato River, the two mapped SNA areas, the shelterbelts running east-west and north south

across the site. It follows that, subject to conditions which protect and enhance the high value areas for long-tailed bat habitat, the proposal meets the requirements of section 6(c).

118. Overall, subject to the imposition of the recommended conditions, I am satisfied that the proposal meets the requirements of sections 6, 7 and 8 of the RMA and achieves the purpose of the RMA as set out in section 5.

119. In conclusion, my assessment of the proposal as set out in the original s42A report has not materially changed. However, that report highlighted the outstanding issue of how the short-term residual effects on long-tailed bats would be addressed. That concern has now been resolved through the development of an intended offset response and other additional mitigation which has been proffered since I wrote my original s42A report.

120. The rationale for the intended offset approach has been discussed above and is supported by the evidence of Mr Kessels. In short, the proposed condition requires the consent holder to make a monetary contribution 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.

Recommendation

121. For the reasons explained above, I am 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 this report.

Gillian Cockerell
16 August 2019