



DOCCM-7179131

28 October 2022

Waipā District Council  
Private Bag 2402  
Te Awamutu 3840

Attention: Proposed Private Plan Change 20

Dear Sir/Madam,

**Proposed Private Plan Change 20 to the Waipā District Plan**

Please find enclosed the submission by the Director-General of Conservation in respect of Proposed Private Plan Change 20. The submission identifies the Director-General's concerns. The purpose of this submission is to ensure the most appropriate provisions are in place to recognise and provide for protection of the nationally critical, threatened long-tailed bat and their significant habitat, as required by section 6(c) of the Resource Management Act 1991 and necessary to give effect to Waikato Regional Policy Statement.

Please contact Jesse Gooding (RMA Planner) in the first instance if you wish to discuss any of the matters raised in this submission [REDACTED] or [REDACTED]

Yours sincerely

**Dion Patterson**

Acting Operations Manager

Waikato District

Department of Conservation *Te Papa Atawhai*  
RMA Shared Services

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**RESOURCE MANAGEMENT ACT 1991**

**SUBMISSION ON PROPOSED PRIVATE PLAN CHANGE 20 TO THE WAIPĀ DISTRICT PLAN**

**TO:** Waipā District Council

**SUBMISSION ON:** Proposed Private Plan Change 20

**NAME:** Penny Nelson  
Director-General of Conservation

**ADDRESS:** Address for service:  
RMA Shared Services  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**STATEMENT OF SUBMISSION BY THE DIRECTOR-GENERAL OF THE  
DEPARTMENT OF CONSERVATION**

The Director-General of Conservation (the **Director-General**) is the administrative head of the Department of Conservation (DOC). DOC's functions are set out in section 6 of the Conservation Act 1987, and relevantly include<sup>1</sup>:

*The functions of the Department are to administer this Act and the enactments specified in Schedule 1, and, subject to this Act and those enactments and to the directions (if any) of the Minister,—*

*(a) to manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that they should be managed by the Department. ...*

*(b) To advocate the conservation of natural and historic resources generally*

Pursuant to clause 6 of the First Schedule of the Resource Management Act 1991 (**RMA**), I, Dion Patterson, Acting Operations Manager, Waikato District, acting upon delegation from the Director-General of the Department of Conservation (Director-General), make the following submission in respect of the Proposed Private Plan Change 20 (**PC20**) to the Waipā District Plan:

1. This submission relates to PC20 in its entirety.
2. The Director-General is particularly concerned to ensure that the Proposed Plan recognises and provides for the Section 6(c) matter of national importance under the RMA which requires:

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<sup>1</sup> "Conservation" is defined in s2 of the Conservation Act as: "The preservation and protection of natural and historic resources for the purpose of maintaining the intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations."

*“the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.”*

3. It is noted by the Director-General that the presence of the Nationally Critical – Threatened long-tailed bat within the PC20 site<sup>2</sup> means section 6(c) is engaged, meaning the protection of the significant habitat of the long-tailed bat becomes a non-optional objective of the plan change.
4. The Director-General understands the Waipā District Council’s Strategic Planning and Policy Committee endorsed the Waikato Regional Bat Strategy in November 2021. This Strategy was prepared on behalf of the Waikato Bat Alliance, a cross-council, multi-organisation group which includes council staff representatives from Waipā District Council, Waikato Regional Council (WRC), Hamilton City Council and Waikato District Council as well as representatives from the Department of Conservation (DOC), Waikato Tainui, Ngā Iwi Tōpū O Waipā, Ngati Wairere and Te Haa o te Whenua o Kirikiriroa.
5. The strategy seeks to align plans, policies and methods for bat habitat protection and restoration through high level strategic collaboration between alliance members. District plan changes are identified as opportunities to resolve issues around bat habitat protection.
6. The provisions of the Proposed Plan that my submission relates to are set out in Attachment 1 to this submission. The decisions sought in this submission are required to ensure that PC20:
  - a. promotes the sustainable management of natural and physical resources in Hamilton City as required by Part 2 of the Resource Management Act 1991 (RMA);
  - b. recognises and provides for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as required by section 6(c) of the RMA
  - c. has particular regard to the other matters in section 7 of the Act, including section 7(d);
  - d. is otherwise consistent with Part 2 of the RMA;
  - e. gives effect to the Waikato Regional Policy Statement (WRPS) as required by section 75(3) of the RMA;
  - f. gives effect to the Vision and Strategy for the Waikato River / Vision and Strategy – Te Ture Whaimana o Te Awa o Waikato (‘Vision and Strategy’);
  - g. gives effect to the National Policy Statement for Urban Development 2020 (NPS-UD);
  - h. gives effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM);
  - i. gives effect to the National Policy Statement for Highly Productive Land 2022 (NPS-HPL); and

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<sup>2</sup> The “PC20 site” referred to here is considered to include the existing, undeveloped Airport Business Zone and the proposed Northern Precinct.

- j. gives due consideration to the National Policy Statement for Indigenous Biodiversity (NPS-IB), exposure draft, dated June 2022, for the purpose of effectiveness and efficiency, given this National Policy Statement is likely to be in effect before PC20 is operative.
4. I seek the following decisions from the Council:
    - 4.1 That the particular provisions of PC20 that I support, as identified in Attachment 1, are retained.
    - 4.2 That the amendments, additions and deletions to PC20 sought in Attachments 1 are made.
    - 4.3 Any other similar, alternative, additional, or consequential relief which will address the matters outlined in this submission.
  5. I wish to be heard in support of my submission and if others make a similar submission, I will consider presenting a joint case with them at the hearing.

Yours sincerely



Dion Patterson  
Acting Waikato District Operations Manager

Pursuant to delegated authority  
On behalf of  
Penny Nelson  
Director-General of Conservation

Date: 28 October 2022

Note: A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House Whare Kaupapa Atawhai, 18/32 Manners Street, Wellington 6011.

ATTACHMENT 1:

**PROPOSED PRIVATE PLAN CHANGE 20 – AIRPORT NORTHERN PRECINCT EXTENSION  
SUBMISSION BY THE DIRECTOR-GENERAL OF CONSERVATION**

The specific provisions that my submission relates to are set out in Attachment 1. My submissions are set out immediately following these headings, together with the reason and the decision I seek from the Council.

The decision that has been requested may suggest new or revised wording for identified sections of the proposed plan. This wording is intended to be helpful but alternative wording of like effect may be equally acceptable. Text quoted from PC20 and the Waipā District Plan is shown in *Italics*. The wording of decisions sought shows new text as underlined and original text to be deleted as ~~strikethrough~~.

Unless specified in each submission point my reasons for supporting are that the policies are consistent with the purposes and principles of the Resource Management Act 1991 (RMA).

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
Section 10 – Airport Business Zone			
10.2 Resource Management Issues	10.2.5 Protection of the Nationally Critical (threatened) Long-tailed Bat and their habitat	Given the presence of the nationally critical, threatened long-tailed bat and the general significance of the PC20 site overall as habitat (as concluded in the Tonkin & Taylor Ecology Report <sup>3</sup> , and in accordance with WRPS APP5) protection of long-tailed bats and their habitat is a core resource management issue to be recognised and provided for in PC20.	<p>Insert the following or words to the like effect:</p> <p><b>Protection of long-tailed bats and their habitat</b>  <u>10.2.5 Development within the Airport Business Zone has the potential to adversely affect the habitat and survival of the threatened, nationally critical long-tailed bat.</u></p> <p><u>The relevant provisions must recognise and provide for the identification and protection of significant bat habitat, in addition consideration must be given to (but not limited to) the potential impact of lighting effects, noise and habitat loss on long-tailed bats.</u></p>
Policy – Northern Precinct	Policy 10.3.2.2A	The PC20 site, in its entirety, is considered to be significant long-tailed bat habitat. As a matter of national importance, the section 6(c) protection directive is engaged. The appropriate policy to implement Objective 24.1.1 is Policy 24.3.1.1	Delete: proposed policy 10.3.2.2A and reference Policy 24.3.1.1 <i>Maintenance and enhancement of indigenous biodiversity</i> in Section 10 – Airport Business Zone

<sup>3</sup> Tonkin & Taylor Ltd Northern Precinct Expansion - Assessment of Ecological Effects, June 2022, Section 6, paragraph 3

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p><i>Maintenance and enhancement of indigenous biodiversity.</i> The Director-General considers that any separate policy should focus on the maintenance, restoration and enhancement of functional habitat for bats. The consequential provisions, and identification of significant habitat in planning maps, including the Airport Business Zone Structure Plan and Northern Precinct Map should implement 24.3.1.1, and/or the revised Policy 10.3.2.2A recommended by the Director-General.</p>	<p><del>10.3.2.2A To maintain or enhance significant long-tailed bat habitat values by requiring the preparation and implementation of an Ecological Management Plan as part of development to:</del></p> <ul style="list-style-type: none"> <li><del>• where practicable, support the maintenance or enhancement of long-tailed bat habitat and connectivity between habitats;</del></li> <li><del>• mitigate any loss of long-tailed bat habitat and effects on long-tailed bat ecological values; and</del></li> <li><del>• where any effects on long-tailed bats are unable to be avoided or mitigated, ensure that any more than minor residual effects are offset to achieve no net loss.</del></li> </ul> <p>If a new policy is considered necessary, I request the following or wording to like effect:  <u>10.3.2.2A To achieve maintenance, restoration and enhancement of bat habitat in the Northern Precinct by:</u></p> <ul style="list-style-type: none"> <li>a) <u>Linking core bat habitat with corridors of natural open space</u></li> <li>b) <u>Buffering sensitive sites such as bat habitat and corridors from intensive land use, development and subdivision.</u></li> <li>c) <u>Ensuring habitat for at-risk and threatened indigenous species is maintained, restored and enhanced</u></li> </ul>
Section 24 Indigenous Biodiversity	Implementing Objectives 24.3.1 and 24.3.3	<p>As stated, Policy 24.3.1.1 is considered fit for its purpose which is to implement Objective 24.3.1. The Director-General records that Policy here with her emphasis added in <b>bold</b> to highlight the provisions that are directly relevant in PC20.</p> <p><i>To achieve the maintenance and enhancement of indigenous biodiversity values in the district by ensuring that removal of indigenous vegetation or disturbance of wetland areas only occurs where:</i></p> <p><i>(a) Connectivity to <b>link core habitats along biodiversity corridors</b> is supported; and</i></p>	

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p><i>(b) Sensitive sites remain <b>buffered from intensive land use, development and subdivision</b>; and</i></p> <p><i>(c) <b>Habitat is retained for at risk and threatened indigenous species</b>; and</i></p> <p><i>(d) Customary activities do not adversely affect at risk or threatened indigenous species; and</i></p> <p><i>(e) Consideration has been given to opportunities that contribute to no net loss at a regional scale.</i></p> <p>The prime means of meeting clauses (a), (b) and (c) will be to identify roosting and foraging sites within the PC20 site, schedule them Significant Natural Area (SNA) under Appendix N5 of the Plan and set aside additional areas of land for the movement of bats so that their core habitat remains functional and does not lose its significance.</p> <p>Mapping should occur through a collaborative approach with ecologists and other relevant stakeholders involved in accordance with WRPS Policy ECO-P3.</p> <p>The Director-General notes that there are known roosting sites to the east and west of the of the airport development and records of bat activity throughout adjacent properties, an option to consider is setting aside a corridor/s for the movement of bats through the Northern Precinct to a nearby site.</p> <p>Development may still occur outside of these areas, provided measures to remedy and mitigate are sufficient to manage adverse effects on this habitat. The section 6(c) directive is to be recognised and provided for and there is no other contrary or overriding matter of national importance that will be provided for by the development sought in PC20.</p>	

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p>The Director-General has also identified Objective 24.3.3 – <i>Significant Natural Areas and Bush Stands</i> as being directly relevant to PC20. The policies that implement this objective are 24.3.3.1 and 24.3.3.2, the latter directing Waipā District Council to complete the identification and mapping of additional areas that meet the significant natural area criteria identified in the WRPS. This policy is engaged by PC20 and its implementation is not optional.</p>	
Planning Maps			
		<p>As stated above, it will be necessary to spatially identify and protect all roosting and foraging sites within the PC20 site and set aside additional areas of land for the movement of bats so that their core habitat remains functional and does not lose its significance.</p> <p>Ecological corridors enhanced with planting and adequately buffered from development could for example be zoned reserve and vested in council to ensure their on-going protection.</p> <p>Development may still occur outside of these areas, provided measures to avoid, remedy and mitigate are sufficient to manage adverse effects on this habitat.</p>	<p>Amend Appendix 18 Titanium Park Airport Urban Business Zone Proposed Structure Plan (northern Precinct) Map to show SNA overlay and areas of reserve zoning, set aside as commuting habitat for bats.</p> <p>Amend Planning Map 19 to show bat habitat SNAs within the operative Airport Business Zone and Possible Future Airport Growth Area</p> <p>Amend Planning Map 49 to show bat habitat SNAs within the operative Airport Business Zone and Possible Airport Future Growth Area.</p> <p>Amend Appendix N5 to add the additional SNAs.</p>
Section 10 – Airport Business Zone			



PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
Rules Ecology	10.4.2.14.A	<p>The proposed approach is incongruous with and entirely inadequate to address the section 6(c) matter of national importance and implement WRPS Policies ECO-P1 and ECO-P2. The requirement to implement an Ecological Management Plan (EMP), Bat Management Plan (BMP) and Lighting Management Plan (LMP) defers protection of significant bat habitat to the consent application stage, with no certainty as to how development will avoid, remedy and mitigate adverse ecological effects as is required by the higher order policy instruments and the RMA.</p> <p>There is also limited consideration of integrated management and how PC20 applies the Future Proof Strategy 2022 and no consideration of the Waikato Bat Alliance Strategy.</p> <p>In section 7.4 of the Titanium Park Ltd and Rukuhia Properties Ltd request for a Private Plan Change the author concludes that the policy direction in WRPS Policy 11.2 (updated in September 2022 to ECO-P2) “equates to a no net loss scenario”.<sup>4</sup> This analysis is plainly flawed. ECO-P2 directs a strong preference for the avoidance of adverse effects on significant habitat and its characteristics, including threatened species such as long-tailed bats. Where avoidance is not achieved there is a requirement to follow the effects management hierarchy. A no net less scenario is relevant in giving effect to ECO-P1, which deals with the management of residual adverse effects i.e. effects remaining after measures to avoid, remedy and mitigate have been sequentially exhausted.</p>	<p>That consequential to the above relief, insert wording in Section 10 Airport Business Zone to explain that the rules in 24.4., including 24.4.1 – Activity Status Table, will apply.</p> <p>For activities that will be proposed outside of SNAs or Bat Habitat Corridors, Rule 10.4.2.14A is still required.</p> <p>The Director-General seeks amendments to Rule 10.4.2.14A to ensure the EMP (and BMP, LMP contained therein):</p> <ul style="list-style-type: none"> <li>• Have an objective specified in the PC20 provisions against which its effectiveness can be measured.</li> <li>• Extend beyond roosting sites and manage effects on foraging and commuting sites to protect the functionality of core bat habitat.</li> <li>• The Ecology, Bat and Lighting management plan be prepared by the same suitably qualified ecologist/s to ensure they integrate to achieve the specified objective.</li> <li>• The Ecology, Bat and Lighting management plan be peer reviewed by DOC and WRC ecologists.</li> <li>• Consider roosting tree removal as a last resort but include best practice tree removal protocols and mitigation for any potential trees that have been identified for removal.</li> <li>• Set out how protected, restored or enhanced habitat will link to other areas immediately outside of the PC20 site. It is important that connectivity to the wider landscape is accounted for.</li> </ul>

<sup>4</sup> “POLICY 11.2 – PROTECT SIGNIFICANT INDIGENOUS VEGETATION AND SIGNIFICANT HABITATS OF INDIGENOUS FAUNA

*The policy direction is for the characteristics of the site to not be adversely affected to the extent that the significance of the habitat is reduced. This effectively equates to a no net-loss scenario”*  
Section 7, Page 51 Norther Precinct, Request for Private Plan Change, Harrison Grierson, 2022.

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<p>In <i>Weston Lea Ltd v Director-General of Conservation (ENV-2019-AKL-310)</i> The Environment Court remarked:</p> <p><i>“It therefore comes as a surprise to the Court, in light of the warranted concern held for the future of the Long-tailed Bat, that no commonly identified and generally agreed Bat Protection Area is currently contained in Schedule 9(c)”</i> [in that case of the Hamilton City District Plan]<sup>5</sup>.</p> <p>Given the presence of long-tailed bats at the PC20 site the same problem arises necessitating the spatial identification and protection of the bat’s habitat.</p> <p>Management plans can still be employed to avoid, remedy and mitigate adverse effects once the areas critical for functional habitat have been set aside for protection.</p> <p>The Director-General considers the EMP should:</p> <ul style="list-style-type: none"> <li>• Have an objective specified in the PC20 provision against which its effectiveness can be measured.</li> <li>• Extend beyond roosting sites and manage effects on foraging and commuting sites to protect the functionality of core habitat.</li> <li>• The Ecology, Bat and Lighting management plan should be prepared by the same suitably qualified ecologist/s to ensure they integrate and achieve the desired outcome. The management plans should also be peer reviewed by DOC and WRC ecologists.</li> </ul>	<ul style="list-style-type: none"> <li>• Set on-going monitoring obligations and triggers for a halt to development if it is determined non-trivial effects on threatened species are occurring.</li> <li>• Include pest control measures.</li> <li>• Address the management of residual adverse effects through biodiversity offsetting or compensation proposals, in accordance with best practice.</li> </ul> <p>That all of the above be addressed and set out in the rule itself or as an information requirement so that there is sufficient certainty as to how effects on bat habitat and values will be managed.</p>

<sup>5</sup> Weston Lea Ltd v Director-General of Conservation (ENV-2019-AKL-310). Interim Decision. Paragraph 40

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
		<ul style="list-style-type: none"> <li>• Consider roosting tree removal as a last resort but include best practice tree removal protocols and mitigation for any potential trees that have been identified for removal.</li> <li>• Set out how protected, restored or enhanced habitat will link to other areas immediately outside of the PC20 site. It is important that connectivity to the wider landscape is accounted for.</li> <li>• Set on-going monitoring obligations and triggers for a halt to development if it is determined non-trivial effects on threatened species are occurring.</li> <li>• Include pest control measures</li> <li>• Address the management of residual adverse effects through biodiversity offsetting or compensation proposals.</li> </ul> <p>The management of residual adverse effects must only occur after sequential exhaustion of all levels of the effects management hierarchy. Furthermore, biodiversity offsetting and compensation must be in accordance with sound principles that will need to be set out in the PC20 provisions.</p>	

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
Ecology Rules	Lighting provisions	<p>Bespoke provisions, including performance standards are required for the management of lighting effects on bats.</p> <p>The spatial extent of the “lighting management plan area”, 20m buffer and deferment of lighting effects management to the LMP are considered insufficient to avoid, remedy or mitigate potential lighting effects on bats.</p>	<p>Insert the following or wording to like effect:</p> <p><u>Bespoke provisions to manage lighting effects on bats across the proposed Airport Business Zone. Performance standards should include, at minimum, a requirement that light (lux) levels will not exceed 0.1 lux at the boundary of any area set aside for bat protection, including any such SNAs and/or corridor, as recommended in the Eurobats Guidelines for consideration of bat in lighting projects<sup>6</sup>.</u></p> <p><u>Performance standards should manage colour temperature, directing that fixed lighting in the Airport Business Zone will be white and not exceed 2700 kelvins with as little blue light as possible.</u></p> <p><u>All lighting should emit zero upward light, be installed with the light emitting surface directly down and be mounted as low as practical.</u></p> <p>The D-G requests other lighting effects mitigation such as low-reflectance surfaces, light trespass from windows, luminous intensity, luminance, screening from vehicle headlights, and flicker also be addressed in provisions.</p>

<sup>6</sup> Voigt CC, Azam C, Dekker J, Ferguson J, Fritze M, Gazaryan S, Hölker F, Jones G, Leader N, Lewanzik D, Limpens HJGA, Mathews F, Rydell J, Schofield H, Spoelstra K, Zagmajster M. 2018. Guidelines for consideration of bats in lighting projects. EUROBATS Publication Series No. 8. UNEP/EUROBATS Secretariat, Bonn, Germany, 62 pp  
[https://www.eurobats.org/sites/default/files/documents/publications/publication\\_series/WEB\\_EUROBATS\\_08\\_ENGL\\_NVK\\_19092018.pdf](https://www.eurobats.org/sites/default/files/documents/publications/publication_series/WEB_EUROBATS_08_ENGL_NVK_19092018.pdf)

PC REF	PLAN PROVISION	POSITION AND REASON	RELIEF SOUGHT
Ecology Rules	Biodiversity Offsetting and Biodiversity Compensation	<p>The principles for biodiversity offsetting and biodiversity compensation in Appendices 3 and 4 of the NPSIB exposure draft are reflective of the Business and Biodiversity Offsets Programme (BBOP)<sup>7</sup>, similar guidance for aquatic ecosystems in the NPS-FM 2020 and the Local Government Biodiversity Offsetting Guidance document<sup>8</sup>.</p> <p>As the management plan approach proposed in PC20 may require the management of significant residual effects inclusion of biodiversity offsetting and compensation guidance is considered necessary.</p> <p>If financial contributions are necessary to fund any biodiversity offsetting or compensation this should be clearly signalled through a transparent planning framework, in PC20 provisions, as required under section 77E of the RMA.</p>	Insert a method to ensure proposals for biodiversity offsetting and biodiversity compensation are in accordance with appropriate criteria, such as the principles in appendices 3 and 4 of the NPSIB exposure draft.

<sup>7</sup> Business and Biodiversity Offsets Programme (BBOP). 2012. Standard on Biodiversity Offsets. BBOP, Washington, D.C.

<sup>8</sup> Maseyk, F., Ussher, G., Kessels, G., Christensen, M., Brown, M. 2018. Biodiversity Offsetting under the Resource Management Act: A guidance document. Prepared for the Biodiversity Working Group on behalf of the BioManagers Group