

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato District Plan

**SUPPLEMENTARY STATEMENT OF EVIDENCE OF MARK NICHOLAS
ARBUTHNOT FOR PORTS OF AUCKLAND LIMITED IN RELATION TO
HEARING 10 – RESIDENTIAL**

25 FEBRUARY 2020

1. INTRODUCTION

- 1.1 I have prepared this supplementary statement of evidence in response to the late statement of evidence that has been filed by Mr Collier on behalf of Perry Group Limited (“**Perry Group**”) in respect of Hearing 10 – Residential.

2. REVERSE SENSITIVITY

- 2.1 With reference to the processes undertaken to establish the Horotiu Industrial Zone provisions under the Operative District Plan in 2011, Mr Collier states (at paragraph 4.8) that: (emphasis added)

[4.8] **In my view there was an expectation that the industrial zone would be able to maintain the amenity of the surrounding zone (countryside living).** However a number of submissions from the Ports Of Auckland have sought changes to the zone, including those seeking to carve out the Ports of Auckland land from those District wide noise standards. The Ports of Auckland seek to increase the nighttime noise limit. This suggests a change in approach by the Ports of Auckland in terms of impacts on the surrounding community, which in my opinion is unjustified.

- 2.2 While the maintenance of the amenity values of the surrounding Country Living Zone may have been a relevant consideration in the creation of the Horotiu Industrial Zone in 2011, the evidence of Mr Collier does not acknowledge that the Proposed District Plan seeks to rezone all of this land to “Residential” (including Perry Group’s landholdings), or that the New Residential Zone and Living Zone within Horotiu Village is also proposed to be rezoned “Residential”.
- 2.3 Appended to this evidence as **Attachment 1** is an annotated Zone Map illustrating the extent of the proposed zoning changes within Horotiu Village.
- 2.4 As set out within *Table 1* below, the effect of the rezoning is to significantly increase the residential intensification opportunity within Horotiu Village (with particular reference to the provision for “multi-unit” residential development and retirement villages).

Table 1: Zone comparison of residential intensification opportunity

Zone	Residential development opportunity
Country Living (Operative District Plan)	<ul style="list-style-type: none"> • One dwelling per site. • One “dependent person’s” dwelling per site. • Minimum net site area = 2,500m². • Minimum allotment size = 5,000m².
New Residential Living (Operative District Plan)	<ul style="list-style-type: none"> • One dwelling per site. • One “dependent person’s” dwelling per site. • Minimum allotment size = 450m². • “Comprehensive residential development” = discretionary activity.
Residential (Proposed District Plan – as recommended by section 42A report)	<ul style="list-style-type: none"> • Up to two units per site. • One “minor dwelling” per site. • Minimum allotment size = 450m². • Retirement villages = permitted (no constraint on density; minimum net site area of 3ha). • Multi-unit development = restricted discretionary activity (no constraint on density; no minimum net site area).

2.5 It is clear that the planning environment for Horotiu Village is proposed to move on from that which existed in 2011; and is one that Perry Group benefits from through the rezoning of their landholdings from “Country Living” to “Residential”, and the corresponding a tenfold uplift in development opportunity.

2.6 In my opinion, it is entirely reasonable and justifiable for industrial operators within the Horotiu Industrial Park to seek to protect themselves from the potential reverse sensitivity effects that may arise from the intensification that is enabled under the Proposed District Plan.

2.7 If Mr Collier’s evidence was to be applied consistently, the alternative would be to constrain the residential development opportunity within Horotiu Village to that which existed in 2011, including the rezoning of Perry Group’s landholdings from “Residential” to “Country Living”.

2.8 Mr Collier (at paragraph 5.1) is also of the opinion that the “no complaints” covenant rule is unnecessary. My evidence for Hearing 9 and Hearing 10 sets out in detail why I consider the “no complaints” covenant rule to be necessary, and while I do not intend to repeat that evidence here, I am of the opinion that:

- (a) when provided as part of a comprehensive package (which sets maximum limits for the noise generator, and internal acoustic insulation levels for the noise receiver), “no complaints” covenants play an important role in managing reverse sensitivity effects on an existing activity that is unable to

reasonably internalise all of its effects within its site boundaries,
and which is of significance to the regional economy;

- (b) including a rule in the Proposed District Plan of this type:
 - (i) avoids the subjective nature of complaints that otherwise have the potential to result in reverse sensitivity effects; and
 - (ii) provides clarity to persons within Horotiu Village that are benefitting from the intensification opportunity introduced by the Proposed District Plan that they are located within proximity to a strategic industrial node, in an area where existing noise levels are elevated;
- (c) while POAL holds a resource consent for its freight hub activities at the Horotiu Industrial Park and is able to generate a certain level of noise by virtue of the rules of the Proposed District Plan, this does not prevent activities that are sensitive to the effects of this activity from establishing within the Horotiu Acoustic Area and pursuing complaints; and
- (d) the proposed rule will appropriately give effect to the WRPS and implement the Objectives and Policies of the Proposed District Plan.

2.9 Mr Collier (at paragraph 5.2) is of the opinion that as Council would not be a party to the covenant, there is no need for the District Plan to include reference to any such process. In my opinion, having regard to the policies of the WRPS and the Proposed District Plan in respect of reverse sensitivity, the proposed “no complaints” covenant rule for the Horotiu Acoustic Area is a valid planning tool that is available to Council; representing an efficient and effective way to minimise reverse sensitivity issues from arising from the residential intensification that is proposed to be enabled within Horotiu Village.

2.10 Furthermore, my summary statement for Hearing 9 provides examples of other District Plan rules that similarly impose “no complaints” covenants between third parties (unrelated to Council) as part of a permitted activity standard.

- 2.11 In Mr Collier's opinion the "no complaints" covenant rule is unlikely to be effective or efficient because "...*Ports of Auckland's activities are clearly visible and discernable [sic], and a covenant is not require [sic] to inform future owners of obvious activities occurring on Industrial land and their effects*".¹
- 2.12 As discussed within my evidence for Hearing 9, despite achieving compliance with the rules of the Auckland Unitary Plan – Operative in Part, from time to time the operation of the Fergusson Container Terminal at the Port of Auckland receives complaints from residential properties up to 2 to 3 kilometres away in respect of noise, lighting and the height of the container stacking.
- 2.13 While POAL's Waikato Freight Hub is not of the same scale as the Fergusson Container Terminal, it will still handle a greater volume of containers than the Port of Napier, Port of Otago and CentrePort, and represents a considerable level of investment by POAL. The subjective nature of complaints, combined with the fact that the freight hub is unable to internalise all its effects, is such that the intensification that is proposed to be enabled within Horotiu Village has the potential to result in reverse sensitivity effects. This could in turn constrain the ability of POAL to service the region's freight needs in an efficient manner and compromise their investments at Horotiu.
- 2.14 Mr Collier goes on to state that where covenants "...*are imposed the covenanter is likely to use them to restrict participation in genuine compliance issues*".²
- 2.15 The proposed "no complaints" covenant rule does not prevent parties from participation in genuine compliance issues. The covenant is limited to the effects that could be lawfully generated by POAL at the time the agreement is entered into. It does not require parties forego any right to participate in any resource consent applications or plan changes and as such the future rights of individuals under the RMA will remain unaffected.

¹ At paragraph 5.3; criterion 3.

² At paragraph 5.3; criterion 4.

2.16 Mr Collier also states that an assessment of the effectiveness and costs of the proposed rule has not been undertaken as required by section 32 of the RMA.³

2.17 I refer to paragraphs 5.23 to 5.27 of my primary statement of evidence for Hearing 9, which provides an assessment of the proposed rule with reference to section 32AA of the RMA.

2.18 In his conclusion, Mr Collier provides his opinion (at paragraph 6.2) that:

[6.2] Ports of Auckland as an Industrial developer and landowner appears to be using the Plan review process to seek to constrain other land uses as a means of avoid [sic] the costs and responsibility of managing the adverse effects generated from its activities. It is my opinion this is poor planning practice, and will shift the burden onto Councils and surrounding landowners to absorb those adverse effects and cause landuse conflicts in the future.

2.19 The “no complaints” covenant rule does not “...*seek to constrain other land uses as a means of [avoiding] the costs and responsibility of managing adverse effects generated from its activities*” as suggested by Mr Collier. I note specifically that:

- (a) It forms part of a comprehensive package of rules that impose constraints on industrial activities operating within the Light Industry Zone and internal acoustic insulation levels for noise receivers within neighbouring zones.
- (b) It does not restrict the ability of landowners to achieve the residential intensification opportunity that is enabled under the Proposed District Plan.
- (c) Beyond requiring a covenant to be entered into, it does not impose any additional standards for compliance within the Residential Zone.
- (d) It is limited to the effects that could be lawfully generated by POAL at the time the agreement is entered into.
- (e) POAL is still required to operate in accordance with the conditions of its resource consent and ensure that any future development either achieves compliance with the provisions of

³ At paragraph 5.3; criterion 5.

the Proposed District Plan or has the necessary resource consents.

- (f) It does not require parties forego any right to participate in any resource consent applications or plan changes and as such the future rights of individuals under the RMA will remain unaffected.

2.20 As discussed within my evidence for Hearing 9, while the proposed “no complaints” covenant rule will impose some additional costs on applicants and POAL in terms of legal fees, in my opinion the benefits of the rule and the efficiencies to the consenting process (in terms of reducing the need for and cost of litigation) will outweigh these costs.

2.21 Mr Collier goes on to state (at paragraph 6.3) that: (emphasis added)

[6.3] Ports of Auckland no doubt were advised at the time it purchased /leased land within the industrial zone, of the Plan objectives, policies and rules for the Northgate site. As a new industrial zone, these provisions reflect Part 2 and current higher standards expected for industrial zones. These provisions were approved by the Environment Court in 2011. **As such, in my planning opinion I do not support any change to the industrial provisions as approved by the Court in 2011 unless these are made more stringent (to mitigate and avoid effects), and not less stringent.**

2.22 The fact of the matter is that the Resource Management Act is not static instrument. As acknowledged by the NPS:UDC:⁴

...Urban environments often have high rates of population and economic growth. Reflecting this, they are dynamic, and are constantly changing to reflect the needs of their communities. This constant change can have both positive and negative impacts: well-functioning urban areas maximise the positives and minimise the negatives.

2.23 The Proposed District Plan needs to be responsive to the changing demands of society. In the context of ensuring that sufficient housing land development capacity is provided within the district, Council has proposed to introduce a “Residential” zone that provides greater opportunity for intensification than under the Operative District Plan.

2.24 This intensification cannot be at the cost of industrial activity within the Horotiu strategic industrial node. In providing for residential intensification within Horotiu Village, Objective 3.12(g), Policy 4.4(f), and

⁴ Preamble; National Policy Statement on Urban Development Capacity 2016.

implementation method 6.1.2 of the WRPS requires reverse sensitivity effects to be minimised. In the same vein, Policy 4.7.11 of the Proposed District Plan (as proposed to be amended by Council) requires:

- (a) development and subdivision design minimise the potential for reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment; and
- (b) potential reverse sensitivity effects of locating new sensitive land uses in the vicinity of intensive farming, extraction industry or industrial activity and regionally significant infrastructure is avoided, or minimised where avoidance is not practicable.

2.25 In my opinion, the proposed “no complaints” covenant rule appropriately gives effect to the WRPS and implements the Objectives and Policies of the Proposed District Plan. I consider the rule to represent an efficient and effective way to minimise reverse sensitivity issues from arising from the residential intensification that is proposed to be enabled within Horotiu Village.

Mark Nicholas Arbuthnot

25 February 2020

Attachment 1



Proposed Waikato District Plan (Stage 1)

Horotiu 26.1

