

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato District Plan

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

3 FEBRUARY 2020

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EXECUTIVE SUMMARY

- A. This statement of evidence addresses the submissions and further submissions made by Ports of Auckland Limited ("**POAL**") in relation to 'Hearing 10: Residential Zone' of the Proposed Waikato District Plan ("**Proposed Plan**").
- B. POAL's submissions sought:
- (a) provision for retirement villages within the Residential Zone as a restricted discretionary activity (as opposed to a permitted activity) to enable reverse sensitivity effects to be taken into consideration;
 - (b) the inclusion of reverse sensitivity effects and the protection of noise sensitive activities from the effects of noise from industrial activities as matters of discretion to Rule 16.1.3 RD1 (multi-unit development);
 - (c) the inclusion of "no complaints" covenants to Rule 16.3.10 P1 (Horotiu Acoustic Area); and
 - (d) the inclusion of reverse sensitivity effects as a matter of discretion to Rule 16.4.1 RD1 (subdivision – general) and Rule 16.4.4 RD1 (subdivision – multi-unit development).

Retirement villages activity status

- C. In my opinion, the subjective nature of complaints, combined with the fact that POAL's inland freight hub is unable to internalise all of its effects (which are wider than just noise), is such that there is potential for reverse sensitivity effects to arise from the establishment of retirement villages as a permitted activity within the Residential Zone. This could in turn constrain the ability of POAL to service the region's freight needs in an efficient manner and compromise their investment at Horotiu.

- D. Such issues have the potential to arise for other industrial users within the Horotiu Industrial Park, which is identified as a strategic industrial node. Future Proof recognises that residential development in the Horotiu area needs to be carefully considered due to the presence of Industry. In my opinion, there is a risk that enabling residential intensification without consideration of reverse sensitivity effects will constrain industrial activity at Horotiu.
- E. Having regard to the above intended outcomes of Future Proof, Objective 3.12(g), Policy 6.1 and Method 6.1.2 of the WRPS, and Policy 4.7.11 of the Proposed Plan, I consider it necessary to ensure that retirement village activities are required to take reverse sensitivity effects into consideration.
- F. I consider that this is best achieved through a restricted discretionary activity status. It is not sufficient to rely on permitted standards, as Rule 16.1.2 P3 would not prevent retirement village apartment typologies taking their primary outlook towards or across industrial-zoned land and activities. Such an outcome would not implement Policy 4.7.11 of the Proposed Plan in respect of the potential reverse sensitivity effects or give effect to the higher order provisions of the WRPS.

Reverse sensitivity effects

- G. POAL has sought to include reverse sensitivity and the protection of noise sensitive activities from the effects of noise generated by industrial activities as matters of discretion to Rule 16.1.13 RD1 (multi-unit development) to ensure that residential intensification does not adversely affect the ongoing development and operation of the strategic industrial node at Horotiu.
- H. Having regard to the intended outcomes of Objective 3.12(g), Policy 6.1 and Method 6.1.2 of the WRPS, and Policy 4.7.11 of the Proposed Plan, I consider it necessary for the matters of discretion for Rule 16.1.13 RD1 (multi-unit development) to explicitly include consideration of reverse sensitivity effects.

- I. I also disagree with the recommendation of the section 42A report to amend Rule 16.1.3 RD1 (multi-unit development) to remove the standards, including the requirement to comply with the Land Use Effects rules and Land Use Building rules for the Residential Zone, not least because it will result in the Horotiu Acoustic Area rules having no effect.
- J. In my opinion, the recommended change does not appropriately give effect to the WRPS and does not implement the Objectives and Policies of the Proposed Plan in respect of reverse sensitivity and the economic growth of the district's industry.

Horotiu Acoustic Area

- K. POAL has also sought the imposition of "no complaints" covenants in favour of POAL in respect of new buildings and the alteration of existing buildings within the Horotiu Acoustic Area.
- L. The purpose of the "no complaints" covenant is limited to the noise 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.
- M. The proposed rule is structured such that an applicant who is subject to the Horotiu Acoustic Area provisions has the choice to not provide a "no complaints" covenant, in which case a restricted discretionary resource consent is required, with focused matters of discretion and assessment criteria and the potential for notification.
- N. My evidence sets out in detail why I consider the proposed "no complaints" covenant rule to represent an efficient and effective way to prevent reverse sensitivity issues from arising, particularly given that acoustic insulation measures do not address the external noise environment, and the subjectivity of noise complaints.

1. INTRODUCTION

- 1.2 My full name is Mark Nicholas Arbuthnot. I am a Director at Bentley & Co. Limited ("**Bentley & Co.**"), an independent planning consultancy practice based in Auckland.

Qualifications and experience

- 1.3 My qualifications and experience are set out within my statement of evidence dated 16 September 2019 (Hearing 1 – Chapter 1 Introduction).

Code of conduct

- 1.4 I confirm I have read the Code of Conduct for Expert Witnesses 2014 contained in the Environment Court Practice Note and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

2. SCOPE OF EVIDENCE

- 2.1 Hearing 10 addresses the submissions and further submissions that have been made on the Residential Zone provisions of the Proposed Plan.
- 2.2 My evidence relates to POAL's primary¹ and further² submission points that have been allocated to Hearing 10 of the Proposed Plan.
- 2.3 POAL's submissions sought:
- (a) provision for retirement villages within the Residential Zone as a restricted discretionary activity (as opposed to a permitted

¹ 578.27; 578.28; 578.29; 578.82, 578.83.

² 1087.4; 1087.8.

activity) to enable reverse sensitivity effects to be taken into consideration;

- (b) the inclusion of reverse sensitivity effects and the protection of noise sensitive activities from the effects of noise from industrial activities as matters of discretion to Rule 16.1.3 RD1 (multi-unit development);
- (c) the inclusion of “no complaints” covenants to Rule 16.3.10 P1 (Horotiu Acoustic Area); and
- (d) the inclusion of reverse sensitivity effects as a matter of discretion to Rule 16.4.1 RD1 (subdivision – general) and Rule 16.4.4 RD1 (subdivision – multi-unit development).

3. STATUTORY FRAMEWORK

3.1 The provisions that are the subject of this hearing are district plan provisions. The purpose of a district plan is set out in section 72 of the RMA. It is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA.

3.2 Section 75(1) of the RMA requires that a district plan must state:

- (a) the objectives for the district; and
- (b) the policies to implement the objectives; and
- (c) the rules (if any) to implement the policies.

3.3 Additionally, section 75(3) of the RMA requires that a district plan must give effect to:

- (a) any national policy statement; and
- (b) any New Zealand coastal policy statement; and
- (ba) a national planning standard;
- (c) any regional policy statement.

3.4 For the purposes of carrying out its functions under the RMA and achieving the objectives and policies of the plan, section 76(1) of the RMA enables a territorial authority to include rules in a district plan.

3.5 In preparing this evidence, I have had regard to:

- (a) POAL's primary and further submissions, and the primary and further submissions made by other parties;
- (b) the section 32 reports, dated July 2018;
- (c) the evidence prepared by Mr Kirk on behalf of Ports of Auckland Limited for Hearing 7 – Industry, dated 6 December 2019;
- (d) the evidence prepared by Mr Day on behalf of Ports of Auckland Limited for Hearing 7 – Industry, dated 6 December 2019;
- (e) my statements of evidence on behalf of Ports of Auckland Limited for Hearing 7 – Industry and Hearing 9 – Business and Business Town Centre, dated 6 December 2019 and 27 January 2020 respectively; and
- (f) the section 42A report prepared by Mr Matheson and Ms Allwood, dated 20 January 2020.

3.6 I have had regard to section 32 of the RMA, which requires an evaluation of the objectives and policies and rules of the Proposed Plan that are relevant to POAL's primary and further submissions. I have also had regard to section 32AA of the RMA, which requires a further evaluation for any changes that have been proposed since the original evaluation report under section 32 of the RMA was completed.

4. RULE 16.1.2 P3 – RETIREMENT VILLAGES

Primary submission of POAL (578.27)

- 4.1 In its primary submission (578.27), POAL sought that the activity status of retirement villages be amended from permitted to restricted discretionary, as follows:

Activity	Council's discretion shall be restricted to the following matters:
<p><u>RD2</u> <u>A new retirement village or alterations to an existing retirement village that meets all of the following conditions:</u></p> <p><u>(a) The Land Use – Effects rules in Rule 16.2, except that the following rules do not apply:</u></p> <p><u>(i) Rule 16.2.7 (Signs);</u></p> <p><u>(b) The Land Use – Buildings rules in Rule 16.3, except the following rules do not apply:</u></p> <p><u>(i) Rule 16.3.1 (Dwelling);</u></p> <p><u>(ii) Rule 16.3.3 (Building Height);</u></p> <p><u>(iii) Rule 16.3.7 (Living Court);</u></p> <p><u>(iv) Rule 16.3.8 (Service Court)</u></p> <p><u>(c) The site or combination of sites where the retirement village is proposed to be located has a minimum net site area of 3ha;</u></p> <p><u>(d) The site is either serviced by or within 400m walking distance of public transport;</u></p> <p><u>(e) The site is connected to public water and wastewater infrastructure;</u></p> <p><u>(f) Minimum living court or balcony area and dimensions:</u></p> <p><u>(i) Apartment – 10m² area with minimum dimension horizontal and vertical of 2.5m;</u></p> <p><u>(ii) Studio unit or 1-bedroom unit –</u></p>	<p><u>(a) Density of the development;</u></p> <p><u>(b) Adequacy of the information provided to address matters specified, and outcomes sought, within Sections 3, 4, 5 and 6 of Appendix XX (Multi-unit Design Guideline)</u></p> <p><u>(c) Avoidance or mitigation of natural hazards</u></p> <p><u>(d) Geotechnical suitability for building</u></p> <p><u>(e) Amenity values and streetscapes.</u></p> <p><u>(f) Avoidance of reverse sensitivity effects on industrial activities</u></p> <p><u>(g) Protection of noise sensitive activities from the effects of noise generated by industrial activities.</u></p>

	<p><u>12.5m² area with minimum dimension horizontal and vertical of 2.5m; or</u></p> <p><u>(iii) 2 or more bedroomed unit – 15m² area with minimum dimension horizontal and vertical of 2.5m;</u></p> <p><u>(g) Minimum service court is either:</u></p> <p><u>(i) Apartment – Communal outdoor space (i.e. no individual service courts required); or</u></p> <p><u>(ii) All other units – 10m² for each unit;</u></p> <p><u>(f) Building height does not exceed 8m, except for 15% of the total building coverage, where buildings may be up to 10m high.</u></p>	
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4.2 The stated reasons for POAL's submission were as follows:

The Proposed Plan provides the opportunity to establish retirement villages within the 'Residential' Zone at a density greater than 'standard' forms of residential activity. POAL is concerned that the residential intensification that would be enabled has the potential to adversely affect the efficient operation of the Horotiu Industrial Park and is therefore opposed to 'Retirement villages' being provided for as a permitted activity.

Should Council wish to retain the 'Retirement villages' rule, then critical to ensuring that the strategic industrial node at Horotiu is not adversely affected will be to include consideration of reverse sensitivity effects. This can be achieved by requiring new retirement village activities to obtain resource consent as a Restricted Discretionary Activity, which will enable reverse sensitivity matters to be assessed.

Furthermore, POAL is concerned that traffic generation will not be controlled by the Proposed Plan. Retirement village activities at an unlimited density from a site with a minimum area of 3ha have the potential to generate traffic effects, and these should be controlled and assessed accordingly.

A Restricted Discretionary Activity status is also considered to be appropriate given the fact that there would be no constraint on density, which has the potential to significantly alter the amenity values of the receiving 'Residential' Zone.

Such an approach would be consistent with the approach taken by the Proposed Plan to 'Multi-unit' development. In this context, the density and built form outcomes for 'Multi-unit' development are arguably less than that which is enabled for 'Retirement villages' as a permitted activity, but are subject to a resource consent process.

4.3 The section 42A report (at paragraphs 396 and 397) recommends that the submission of POAL be rejected for the following reasons:

- (a) The provisions of the industrial zones where they adjoin a residential zone (such as replication of the Residential Zone daylight standard) address residential amenity regardless of whether it is a single residential dwelling, multi-unit residential complex or a retirement village.
- (b) The purpose of the Residential Zone is to provide housing capacity and to accommodate an ageing population (thereby giving effect to the National Policy Statement on Urban Development Capacity), and retirement villages should be enabled as much as possible.
- (c) With a minimum 3ha activity condition, any retirement village will be developed by major players in this sector (such as Rymans) and they will look to choose sites that are attractive to potential residents (as well as investors and shareholders).

4.4 I disagree with the conclusions of the section 42A report in respect of this matter. Taking each of the points raised by the section 42A report in turn:

Reliance on Industrial Zone provisions to manage reverse sensitivity effects

4.5 As discussed with my statement of evidence for Hearing 9 (Business and Business Town Centre), the nature of POAL's operations at the Horotiu Industrial Park is such that they are unable to reasonably internalise all of its effects within its site boundaries. For example:

- (a) Noise levels from the Waikato Freight Hub activity have the potential to exceed the notified night-time noise limits of the Proposed Plan.³

³ Statement of evidence of Christopher William Day for Ports of Auckland Limited in relation to Hearing 7 – Industrial and Heavy Industrial Zone.

- (b) The height of the container stacking (21 metres) and multiple lighting columns (25 metres) means that such structures will be visible from beyond the boundaries of the freight hub.
- (c) The 24 hour/7 days per week operation requires the site to be illuminated at night to a level that ensures the safety of workers and will result in increased truck and rail movements.

4.6 My evidence for Hearing 9 also discusses that:

- (a) 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; and
- (b) while not of the same scale as the Fergusson Container Terminal, the Waikato Freight Hub will 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.

4.7 In my opinion, the subjective nature of complaints, combined with the fact that the freight hub is unable to internalise all of its effects (which are wider than just noise), is such that there is potential for reverse sensitivity effects to arise from the establishment of retirement villages as a permitted activity within the Residential Zone. 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.

4.8 Such issues have the potential to arise for other industrial users within the Horotiu Industrial Park, which is identified as a strategic industrial node. Of relevance, Future Proof advises that:⁴ (emphasis added)

Most areas have sufficient capacity for the decade in either a UoW Low or Medium growth scenario. In both scenarios, there would be insufficient capacity in Pokeno which would be

⁴ Pg. 94; FutureProof Strategy November 2017.

addressed when a Structure Plan is completed. **With regards to Horotiu this Village will be a large industrial hub so careful consideration needs to be taken when deciding where the residential demand is located.**

- 4.9 In respect of the above, Future Proof recognises that residential development in the Horotiu area needs to be carefully considered. In my opinion, there is a risk that enabling residential intensification without consideration of reverse sensitivity effects will constrain industrial activity at Horotiu.
- 4.10 The issue of land use compatibility and reverse sensitivity is addressed by Objective 3.12(g) of the WRPS, which seeks to ensure that development of the built environment occurs in an integrated, sustainable and planned manner so as to minimise land use conflicts, including minimising potential for reverse sensitivity.
- 4.11 Policy 6.1 of the WRPS requires development to occur in a planned and co-ordinated manner, that has regard to the existing built environment:

Policy 6.1 Planned and co-ordinated subdivision, use and development

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

- a) has regard to the principles in section 6A;
- b) recognises and addresses potential cumulative effects of subdivision, use and development;
- c) is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and
- d) has regard to the existing built environment.

- 4.12 In respect of managing the potential reverse sensitivity effects, Method 6.1.2 of the WRPS provides the following direction: (emphasis added)

6.1.2 Reverse sensitivity

Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. **In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land**

uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.

- 4.13 Objective 3.12(g) of the WRPS does not require land use conflicts and reverse sensitivity effects to be avoided. That said, I am of the opinion that the term “minimise” requires more than the effects to be simply avoided, remedied or mitigated, and is directive to the extent that it requires territorial authorities to undertake affirmative action to ensure that the provisions of the district plan achieve this outcome.
- 4.14 When implementing this objective in the context of the Proposed Plan, it is my opinion that Policy 6.1 and Method 6.1.2 of the WRPS require the local authority to consider how the provisions discourage the establishment of new sensitive activities from locating near existing and planned activities (such as industry) that could generate effects beyond the boundaries of their sites.
- 4.15 The overall ‘urban outcome’ of the Proposed Plan in respect of reverse sensitivity (as proposed to be amended by Council) is set out within Policy 4.7.11, as follows:
- (a) Development and subdivision design (including use of topographical and other methods) minimises the potential for reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment.
 - (b) Avoid potential reverse sensitivity effects of locating new sensitive land uses in the vicinity of intensive farming, extraction industry or industrial activity and strategic infrastructure. Minimised the potential for reverse sensitivity effects where avoidance is not practicable.
- 4.16 Having regard to the above intended outcomes of Future Proof, the WRPS, and the Proposed Plan, I consider it necessary to ensure that retirement villages (which are not subject to density controls on sites greater than 3ha in area) are required to take reverse sensitivity effects into consideration. I consider that this is best achieved through a

restricted discretionary activity status, and that it is not sufficient to simply rely on permitted standards.

Purpose of the Residential Zone to provide housing capacity and to accommodate an ageing population

- 4.17 The Proposed Plan does not provide a stated purpose for the Residential Zone.
- 4.18 Objective 4.2.16 – Housing options seeks that:
- (a) A wide range of housing options occurs in the Residential Zones of Huntly, Ngaruawahia, Pokeno, Raglan, Te Kauwhata and Tuakau.
 - (b) Residential zoned land near the Business Town Centre Zone and close to transport networks is used for higher density residential living with access to public transport and alternative modes of transport.
- 4.19 Specific retirement villages, Objective 4.2.16 is implemented by Policy 4.2.19 – Retirement villages, which seek to (amongst other things) integrate with local services and facilities, including public transport, and connect to alternative transport modes to Village, Residential or Business Zones.
- 4.20 With reference to the above Objective and Policy, the Proposed Plan does not seek to enable a wide range of housing options within *all* Residential-zoned land, and only enables higher density residential living and retirement villages within Residential-zoned land that has *access to public transport and alternative modes of transport*.
- 4.21 While Objective 4.2.20 of the Proposed Plan seeks to ensure that residential activities remain the dominant activity in the Residential Zone, there is no corresponding objective or policy that requires *“retirement villages to be enabled as much as possible”* as suggested by the section 42A report (at paragraph 367).

- 4.22 Similarly, I do not consider Objective 4.2.16 and Policy 4.2.19 of the Proposed Plan to be so directive that they would derogate from the overall requirement under Policy 4.7.11 to minimise the potential for reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment generally, and to avoid potential reverse sensitivity effects on industrial activity, or minimise such effects where avoidance is not practicable.
- 4.23 Notwithstanding, I also consider it necessary to have regard to Objective 4.6.1 and Objective 4.6.12 of the Proposed Plan (as proposed to be amended by Council) in respect of reverse sensitivity and the economic growth of the district's industry.
- 4.24 In my opinion, the Proposed Plan recognises that there are Residential-zoned areas within the district that may not be suitable for retirement villages. I am also of the opinion that Objective 3.12(g), Policy 6.1 and Method 6.1.2 of the WRPS, and Policy 4.7.11 of the Proposed Plan are such that it is necessary to have regard to reverse sensitivity effects. In this context, I do not consider Rule 16.1.2 P3 in respect of retirement villages to be appropriate.

Retirement villages will be developed by major players and will choose sites that are attractive to potential residents

- 4.25 I disagree with the section 42A report's suggestion (at paragraph 397) that retirement villages will not be developed in locations where reverse sensitivity effects may occur because "*...any retirement village will be developed by major players in this sector (such as Ryman's) and they will look to choose sites that are attractive to potential residents (as well as investors and shareholders)*". Such a statement does not recognise that the Proposed Plan contains no rules that would otherwise prevent retirement village developments locating adjacent to industrial-zoned land and activities.
- 4.26 I also note that Ryman Healthcare's Edmund Hillary Village in Auckland comprises four storey apartment development directly adjacent to

industrial zoned and occupied land (refer to Figure 1 and Figure 2 below).

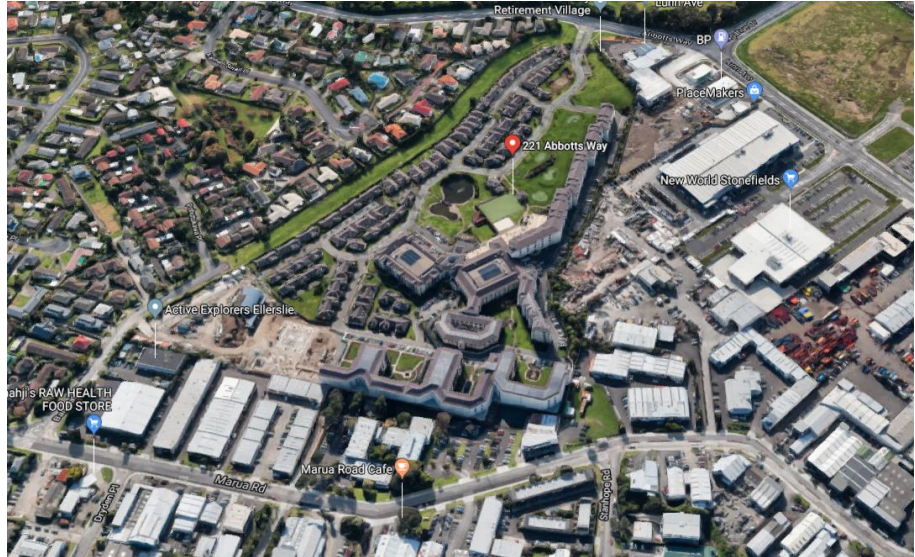


Figure 1: Aerial Photograph illustrating construction of Ryman apartments circa 2013 (Source Google Maps)



Figure 2: Aerial photograph Ryman Healthcare Sir Edmund Hillary Village taken January 2020 (Source Google Earth)

- 4.27 My concern is that the permitted standards of the Proposed Plan in respect of retirement villages (Rule 16.1.2 P3) would not prevent retirement village apartment typologies taking their primary outlook towards or across industrial-zoned land and activities. In my opinion,

such an outcome would not implement Policy 4.7.11 of the Proposed Plan in respect of the potential reverse sensitivity effects or give effect to the higher order provisions of the WRPS.

Section 32AA analysis

- 4.28 Having regard to all of the above matters, and with reference to section 32AA of the RMA, providing for retirement villages within the Residential Zone as a restricted discretionary activity (with reverse sensitivity effects included as a matter of discretion) will achieve the sustainable management purpose of the RMA as it will:
- (a) provide clarity to developers that they need to avoid potential reverse sensitivity effects on industrial activity, or minimise such effects where avoidance is not practicable;
 - (b) negate the need for a “buffer area” to be established to discourage retirement villages from being developed or intensified in proximity to industrial areas (and thus avoiding the need to compromise efficient use and development of the area); and
 - (c) overall, it will protect industrial activities from reverse sensitivity effects, while providing a clear and effective regime.
- 4.29 I consider that the proposed rule will appropriately give effect to Objective 3.12(g) of the WRPS, and Objective 4.6.1 and Objective 4.6.12 of the Proposed Plan (as proposed to be amended by Council) in respect of reverse sensitivity and the economic growth of the district’s industry.
- 4.30 I do not consider that there are any other reasonably practicable options to prevent reverse sensitivity issues from arising in respect of the interface of such development with industrial activities.
- 4.31 In my opinion, providing for retirement villages within the Residential Zone as a restricted discretionary activity (with reverse sensitivity effects included as a matter of discretion) represents an efficient and

effective way to minimise reverse sensitivity issues from arising, particularly given the subjectivity of complaints.

- 4.32 While providing for retirement villages within the Residential Zone as a restricted discretionary activity (with reverse sensitivity effects included as a matter of discretion) will impose additional costs on applicants in terms of the resource consent process, in my opinion the benefits of the rule and the efficiencies to the consenting process (in terms of providing for a restricted discretionary activity process) will outweigh these costs.

5. RULE 16.1.3 RD1 – MULTI-UNIT DEVELOPMENT

Primary submission of POAL (578.28)

- 5.1 In its primary submission (578.28), POAL sought to include reverse sensitivity and the protection of noise sensitive activities from the effects of noise generated by industrial activities as matters of discretion to Rule 16.1.3 RD1 (multi-unit development), as follows:

Activity		Council's discretion shall be restricted to the following matters:
RD1	A Multi-Unit development that meets all of the following conditions: ...	(a) <u>(k) Avoidance of reverse sensitivity effects on industrial activities;</u> <u>(l) Protection of noise sensitive activities from the effects of noise generated by industrial activities.</u>

- 5.2 The reasons stated by POAL for the relief relate to the fact that Future Proof recognises that residential development in the Horotiu area needs to be carefully considered and that there is a risk that significant residential intensification of the type enabled by Rule 16.1.3 RD1 could implicate the efficient operation of the Horotiu Industrial Park.
- 5.3 POAL's relief is recommended by the section 42A report (at paragraph 267) to be rejected on the basis that:

[267] ...It is noted that the Residential Zone at Horotiu is separated from the Industrial Park by the North Island Main

Trunk Railway and what used to be State Highway No.1.
 Accordingly, I cannot see how reverse sensitivity would arise...

- 5.4 Section 4 of my evidence has set out in detail the nature of the reverse sensitivity effects that have the potential to arise at Horotiu, as well as the framework of Future Proof, the WRPS, and the Proposed Plan in respect of reverse sensitivity issues. I do not intend to repeat that analysis, except to confirm my opinion that Objective 3.12(g), Policy 6.1 and Method 6.1.2 of the WRPS, and Policy 4.7.11 of the Proposed Plan are such that it is necessary to have regard to reverse sensitivity effects when considering multi-unit development.
- 5.5 Having regard to the above intended outcomes of the Proposed Plan, I consider it necessary for the matters of discretion for Rule 16.1.3 RD1 (multi-unit development) to explicitly include consideration of reverse sensitivity effects. While POAL's submission is focussed on the effects on industrial activities, I note that the policy framework of the Proposed Plan is not so limited, and therefore consider the following amendments to the matters of discretion to be appropriate:

Activity		Council's discretion shall be restricted to the following matters:
RD1	A Multi-Unit development that meets all of the following conditions: ...	(a) (f) Amenity values for occupants and neighbours in respect of outlook, privacy, <u>protection from external</u> noise <u>sources</u> , light spill, access to sunlight, living court orientation, site design and layout; ... (k) <u>Design measures to minimise reverse sensitivity effects.</u>

- 5.6 With reference to section 32AA of the RMA, I am of the opinion that the amendments to Rule 16.1.3 RD1:

- (a) is the most appropriate way to achieve Objective 3.12 of the WRPS in respect of minimising land use conflicts, including minimising potential for reverse sensitivity;
- (b) is the most appropriate way to achieve Objective 4.5.30, Objective 4.6.1 and Objective 4.6.12 of the Proposed Plan in

respect of reverse sensitivity and the economic growth of the district's industry;

- (c) is an efficient and effective way of achieving the above objectives as it does not alter the overall activity status of multi-unit developments within the Residential Zone and does not place unnecessarily onerous additional assessment requirements on applicants; and
- (d) will better enable opportunities for economic growth and employment.

5.7 I note that the section 42A report recommends (at paragraph 255) that Rule 16.1.3 RD1 (multi-unit development) is amended to remove the standards, and to remove the requirement to comply with the Land Use Effects rules and Land Use Building rules for the Residential Zone.

5.8 I disagree with this recommendation, not least because it will result in the Horotiu Acoustic Area rules having no effect. In my opinion, the recommended change does not appropriately give effect to the WRPS and does not implement the Objectives and Policies of the Proposed Plan in respect of reverse sensitivity and the economic growth of the district's industry.

5.9 I consider the section 32AA analysis undertaken by the section 42A report (at paragraph 300 to 305) to be inadequate, particularly in respect of:

- (a) whether the provisions are the most appropriate way to achieve the objectives of the Proposed Plan, including those relating to reverse sensitivity and the economic growth of the district's industry; and
- (b) the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated, including the opportunities for:

- (i) economic growth that is anticipated to be provided or reduced;
- (ii) employment that is anticipated to be provided or reduced.

6. RULE 16.3.10 P1 (HOROTIU ACOUSTIC AREA)

Primary submission of POAL (578.29)

- 6.1 The primary submission of POAL (578.29) has sought the imposition of “no complaints” covenants in favour of POAL in respect of new buildings and the alteration of existing buildings within the Horotiu Acoustic Area.
- 6.2 The submission of POAL is recommended by the section 42A report (at paragraph 350) to be rejected on the basis that *“The matter set out in the submission could form the basis of conditions on a resource consent application”*.
- 6.3 My statement of evidence for Hearing 9 (Business and Business Town Centre) sets out in detail why I consider that “no complaints” covenants, in combination with acoustic insulation, are the most effective way to enable a permitted activity status (or other enabling status) for sensitive activities, while ensuring that POAL is protected from reverse sensitivity effects.
- 6.4 I rely on that evidence (and do not intend to repeat it here) to support the following change to Rule 16.3.10:

P1	Construction, addition to or alteration of a building for a noise-sensitive activity within the Horotiu Acoustic Area shall be designed and constructed to achieve the internal design sound level specified in Appendix 1 (Acoustic Insulation) - Table 11.
P2	<p><u>Activities sensitive to noise must be subject to a restrictive no-complaint covenant in favour of Ports of Auckland Limited.</u></p> <p><u>For the purposes of this rule a 'restrictive non-complaint covenant' is defined as a restrictive covenant registered on the Title to the property or a binding agreement to covenant, in favour of Ports of Auckland Limited, by the landowner (and binding any successors in title) not to complain as to effects generated by the lawful operation of Waikato Freight Hub. The restrictive no-complaint covenant is limited to the</u></p>

	<u>effects that could be lawfully generated by the Waikato Freight Hub at the time the agreement to covenant is entered into. This does not require the covenantor to forego any right to lodge submissions in respect of resource consent applications or plan changes in relation to industrial activities (although an individual restrictive non-complaint covenant may do so).</u>
RD1	<p>a) Construction, addition to or alteration of a building that does not comply with Rule 16.3.10 P4.</p> <p>b) Council's discretion shall be restricted to the following matters:</p> <ul style="list-style-type: none"> (i) On-site amenity values; (ii) Noise levels received at the notional boundary of the building; (iii) Timing and duration of noise received at the notional boundary of the building; (iv) Potential for reverse sensitivity effects.

6.5 For the reasons set out within my statement of evidence for Hearing 9, and with reference to section 32AA of the RMA, I am of the opinion that the proposed “no complaints” covenant rule will achieve the sustainable management purpose of the RMA as it will:

- (a) provide clarity to developers and future purchasers that they are located within proximity to the Horotiu strategic industrial node, in an area where existing noise levels are elevated;
- (b) reduce the need for litigation, thereby reducing the time and costs associated with obtaining or participating in a resource consent, and increasing certainty as to process for all parties concerned;
- (c) negate the need for a “buffer area” to be established to discourage “noise-sensitive activities” from being developed or intensified in this location (and thus avoiding the need to compromise efficient use and development of the area); and
- (d) overall, it will protect POAL from reverse sensitivity effects, while providing a clear and effective regime that provides developers with appropriate flexibility.

6.6 I also rely on my statement of evidence for Hearing 9 to conclude that:

- (a) The proposed rule will appropriately give effect to Objective 3.12(g) of the WRPS, and Objective 4.5.30, Objective 4.6.1, Objective 4.6.10 and Objective 4.6.12 of the Proposed Plan (as proposed in evidence by Council).
- (b) There are no other reasonably practicable options to prevent reverse sensitivity issues from arising in respect of the existing noise environment within the Horotiu Acoustic Area.
- (c) The proposed “no complaints” covenant rule represents an efficient and effective way to prevent reverse sensitivity issues from arising, particularly given that acoustic insulation measures do not address the external noise environment, and the subjectivity of noise complaints.
- (d) While the proposed “no complaints” covenant rule will impose some additional costs on applicants and POAL in terms of legal fees, 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.

7. **RULE 16.4.1 RD1 (SUBDIVISION – GENERAL) AND RULE 16.4.4 RD1 (SUBDIVISION – MULTI-UNIT DEVELOPMENT)**

Primary submissions of POAL (578.82 and 578.83)

- 7.1 In its primary submissions (578.82 and 578.83), POAL sought the inclusion of reverse sensitivity effects as a matter of discretion to Rule 16.4.1 RD1 (subdivision – general) and Rule 16.4.4 RD1 (subdivision – multi-unit development), as follows:

16.4.1 Subdivision – General

RD1	<ul style="list-style-type: none"> (a) ... (b) Council’s discretion shall be restricted to the following matters: <ul style="list-style-type: none"> i. Subdivision layout; ii. Shape of lots and variation in lot sizes; iii. Ability of lots to accommodate a practical building platform including geotechnical stability for building;
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	<ul style="list-style-type: none"> iv. Likely location of future buildings and their potential effects on the environment; v. Avoidance or mitigation of natural hazards; vi. Amenity values and streetscape landscaping; vii. Consistency with the matters contained within Appendix 3.1 (Residential Subdivision Guidelines) viii. Vehicle and pedestrian networks; ix. Consistency with any relevant structure plan or master plan including the provision of neighbourhood parks, reserves and neighbourhood centres; and x. Provision of infrastructure. xi. <u>Avoidance of reverse sensitivity effects on industrial activities;</u>
D1	Subdivision that does not comply with a condition in Rule 16.4.1 RD1.

16.4.4 Subdivision - Multi-unit development

RD1	<ul style="list-style-type: none"> (a) (b) Council's discretion shall be restricted to the following matters: <ul style="list-style-type: none"> i. Subdivision layout including common boundary and party walls for the Multi-unit development; ii. Provision of common areas for shared spaces, access and services; iii. Provision of infrastructure to individual residential units; iv. Avoidance or mitigation of natural hazards; v. Geotechnical suitability of site for buildings; vi. Amenity values and streetscape; vii. Consistency with the matters contained, and outcomes sought, in Appendix 3.4 (Multi-Unit Development Guideline) viii. Consistency with any relevant structure plan or master plan, including the provision of neighbourhood parks, reserves and neighbourhood centres; ix. Vehicle, pedestrian and cycle networks; x. Safety, function and efficiency of road network and any internal roads or accessways. xi. <u>Avoidance of reverse sensitivity effects on industrial activities;</u>
D1	Subdivision that does not comply with Rule 16.4.4 RD1.

7.2 The relief sought by POAL is recommended to be rejected by the section 42A report (at paragraph 608) for the following reasons:

[608] The submissions from Ports of Auckland Limited [578.82] and KiwiRail Holdings Limited [986.88] seek that reverse sensitivity be included. However, the matter of reverse sensitivity is a matter that should have been addressed at the time of zoning land and the inclusion of provisions in the respective zones with respect to activities to address reverse sensitivity. In my opinion, this matter does not need to be included at subdivision.

7.3 I note that the section 42A report does not recommend any provisions to address reverse sensitivity within the Residential Zone for multi-unit

development and retirement villages. It is therefore unclear as to how reverse sensitivity issues will be addressed by the Proposed Plan in respect of these activities.

7.4 For the reasons that are discussed in section 4 and section 5 of this statement of evidence, I am of the opinion that that Objective 3.12(g), Policy 6.1 and Method 6.1.2 of the WRPS, and Policy 4.7.11 of the Proposed Plan are such that it is necessary to have regard to reverse sensitivity effects when considering subdivision.

7.5 I also note that Policy 4.7.11 of the Proposed Plan is not limited in its application to industrial activities, and that the requirement of the WRPS is to “minimise” reverse sensitivity effects (as opposed to avoid them altogether). Therefore, I support the following amendments to Rule 16.4.1 RD1 (subdivision – general) and Rule 16.4.4 RD1 (subdivision – multi-unit development):

16.4.1 Subdivision – General

RD1	(c) ... (d) Council’s discretion shall be restricted to the following matters: <ul style="list-style-type: none"> i. Subdivision layout; ii. Shape of lots and variation in lot sizes; iii. Ability of lots to accommodate a practical building platform including geotechnical stability for building; iv. Likely location of future buildings and their potential effects on the environment; v. Avoidance or mitigation of natural hazards; vi. Amenity values and streetscape landscaping; vii. Consistency with the matters contained within Appendix 3.1 (Residential Subdivision Guidelines) viii. Vehicle and pedestrian networks; ix. Consistency with any relevant structure plan or master plan including the provision of neighbourhood parks, reserves and neighbourhood centres; and x. Provision of infrastructure. xi. <u>Minimisation of reverse sensitivity effects.</u>
D1	Subdivision that does not comply with a condition in Rule 16.4.1 RD1.

16.4.4 Subdivision - Multi-unit development

RD1	(c) (d) Council’s discretion shall be restricted to the following matters: <ul style="list-style-type: none"> i. Subdivision layout including common boundary and party walls for the Multi-unit development;
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	<ul style="list-style-type: none"> ii. Provision of common areas for shared spaces, access and services; iii. Provision of infrastructure to individual residential units; iv. Avoidance or mitigation of natural hazards; v. Geotechnical suitability of site for buildings; vi. Amenity values and streetscape; vii. Consistency with the matters contained, and outcomes sought, in Appendix 3.4 (Multi-Unit Development Guideline) viii. Consistency with any relevant structure plan or master plan, including the provision of neighbourhood parks, reserves and neighbourhood centres; ix. Vehicle, pedestrian and cycle networks; x. Safety, function and efficiency of road network and any internal roads or accessways. xi. <u>Minimisation of reverse sensitivity effects.</u>
D1	Subdivision that does not comply with Rule 16.4.4 RD1.

7.6 With reference to section 32AA of the RMA, I am of the opinion that the amendments to Rule 16.4.1 RD1 (subdivision – general) and Rule 16.4.4 RD1 (subdivision – multi-unit development):

- (a) is the most appropriate way to achieve Objective 3.12 of the WRPS in respect of minimising land use conflicts, including minimising potential for reverse sensitivity;
- (b) is the most appropriate way to achieve Objective 4.5.30, Objective 4.6.1 and Objective 4.6.12 of the Proposed Plan in respect of reverse sensitivity and the economic growth of the district's industry;
- (c) is an efficient and effective way of achieving the above objectives as it does not alter the overall activity status of multi-unit developments within the Residential Zone and does not place unnecessarily onerous additional assessment requirements on applicants; and
- (d) will better enable opportunities for economic growth and employment.

Mark Nicholas Arbuthnot

3 February 2020