

Before the Waikato District Council Hearings Commissioners

IN THE MATTER

of the Resource Management Act 1991

AND

IN THE MATTER

of the Proposed Waikato District Plan – Strategic
Objectives: Hearing 5

**STATEMENT OF EVIDENCE OF AARON COLLIER
FOR PERRY GROUP LIMITED (SUBMITTER 464)
HEARING 5: CHAPTER 13 DEFINITIONS
14 November 2019**

1. Qualifications and Experience

1.1 My full name is Aaron Mark Collier.

1.2 I am a planner at Aurecon New Zealand Limited.

1.3 I set out my relevant qualifications and experience in my earlier Statement of Evidence dated 17 October 2019 for Hearing 3: Strategic Objectives

1.4 I confirm I have read the "Code of Conduct for Expert Witnesses" contained in the Environment Court Consolidated Practice Note 2011.

1.5 In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

1.6 I was asked by Perry Group Limited (Perry Group) (Submitter No. 464) in September 2019 to assist with their submissions and subsequent further submissions on the proposed District Plan.

1.7 I have assisted Perry Group with their Te Awa Lakes Plan Change and the Special Housing Area projects since 2017.

2. Scope of Evidence

2.1 My evidence relates to the Perry Group further submission points FS1313.29 and FS13113.28 in relation to the definition of 'sensitive landuse' and 'reverse sensitivity', contained in the definitions Chapter of the Proposed Plan.

2.2 I have reviewed the Perry Group original and further submissions and also those submissions which were the subject of a further submission by Perry Group. I have also reviewed the s.42A report for Hearing 5. I note that a number of suggested changes have been identified to the two definitions in the Council's s.42A report.

2.3 I agree with the Council's reporting planner that the definition of reverse sensitivity is unnecessary and should be removed from the Plan. However, I do not agree with the proposed changes to the definition of sensitive land use, as I consider that a number of the changes proposed are unnecessary as they replicate activities which are already contained within the definition.

3. Statutory Considerations

3.1 The purpose of a District Plan, and key provisions of the RMA relevant to those matters, has been adequately addressed in detail in previous legal submissions, and in the Council's s.42A report and I will not repeat that here. In summary, 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.”

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

- The submissions and further submissions made by Perry Group;
- The background section 32 reports which require evaluation of the objectives, policies and methods of the proposed plan;
- How the proposed plan provisions best give effect to the Regional Policy Statement (RPS).
- Other submissions

3.3 I have also had regard to section 32AA of the RMA, which requires further evaluation for any changes that have been proposed since the original evaluation report was undertaken in accordance with Section 32 of the RMA.

4. Reverse Sensitivity

4.1 As noted in paragraph 5.5 of my Statement of Evidence on Hearing 3: Strategic Directions, reverse sensitivity as a concept is not defined by the RMA itself, nor is it a specific matter which must be addressed under the Act.

4.2 I am aware that the draft NPS HPL includes a policy on reverse sensitivity effects (in relation to highly productive land). As noted in paragraph 5.6 of my Hearing 3 evidence, I was concerned about the approach being adopted by the Council policy framework under Policy 4.7.11 in relation to how the Plan was to consider and address reverse sensitivity. This included a hierarchy of avoidance and the unintended outcomes of this.

4.3 The definition of reverse sensitivity effects is not yet accepted as part of the national planning standards. The concept is one which has developed through caselaw on heavy industrial uses and other activities that could not contain effects within their boundaries (for example ports and poultry farms). It does not reflect provisions in

the RMA around effects such Section 17 and 104 which require mitigate and avoidance of effects. My view as a Planner is that the reliance on the term reverse sensitivity creates considerable uncertainty and should not be a means to excuse operators from managing effects of their own activities in a sustainable manner consistent with RMA obligations.

4.4 My preference is that plans should focus at a policy level on provisions which requires the potential for conflict and amenity considerations to be considered, with such matters then being reflected in plan methods through appropriate assessment criteria for particular activities or classification of activities.

4.5 I therefore agree with the staff recommendation to delete the definition of reverse sensitivity.

4.6 The Perry Group submission on residential landuse sought that the definition of the plan be adopted as notified. There are a range of further submissions seeking the addition of a number of activities to this definition. The Plan's definition of residential activity is broad. The following definition is incorporated:

Activity	Definition
Residential Activity (Proposed Plan)	Means the use of land and buildings by people for living accommodation in a household unit, where the occupants will generally refer to the site as their home and permanent address. For the purpose of this definition, includes emergency and refuge accommodation, or accommodation for supervision staff and residents, where residents are subject to care or supervision (e.g. homes for people with disabilities). Residential activity includes home detention (as defined in the Criminal Justice Act 1985), but not prisons or other places where residents are subject to detention.
Residential Activity (Planning Standards)	Means the use of land and building(s) for people's living accommodation.

4.7 Various submissions to the definition of sensitive land use seek to incorporate matters such as "visitor" and "student" accommodation. In my opinion such changes are unnecessary as visitor and student accommodation already fall to be considered as accommodation under the definition. In my view, these further words add nothing to the definition and are repetitive.

4.8 Ports of Auckland also seek an exclusion for workers accommodation in the Industrial Zone, with the effect that this would make such accommodation a permitted activity. In my view, if accommodation is to be identified as a sensitive

activity, such identification is irrelevant in terms of zone boundaries as the Plan recognises the location of sensitive activities relative to activities which generate adverse effects, and which need to be managed.

- 4.9 In the context of zoning the Ports of Auckland submission is somewhat misaligned given that it is seeking recognition that an activity which would be considered to be sensitive outside an Industrial Zone is not sensitive within an Industrial Zone.
- 4.10 The New Zealand Transport Agency seek that places of assembly and student accommodation should be included in the definition, as both are activities which can be sensitive to noise. Reference to student accommodation is already addressed in the definition as “accommodation”. I do not agree that places of assembly are activities can or should be characterized in the Plan as sensitive to noise. Usually in my experience those activities are generators of noise and general activity. Limits on noise are also imposed based on zone boundaries and are required to be met by activities (for example, activities which are carried out within an Industrial Zone which may be adjoining a Residential Zone).
- 4.11 In my opinion, the onus is on activities which may generate adverse effects to avoid, remedy or mitigate those effects as a preference to imposing requirements on activities in surrounding zones and unnecessarily restricting these activities. In the context of places of assembly, the Proposed Plan defines this as *meaning land and / or buildings used principally for the public or private assembly of people for recreation activities, cultural activities, or entertainment activities.*
- 4.12 It is my view that these activities should not be unreasonably constrained by being incorporated in the definition of sensitive activities, as many of these activities are not by their nature sensitive. For example, a shooting club, a water park, a speedway track, a sports park, or an outdoor recreation facility. Places of assembly are different to permanent accommodation and residential activities, as is the range in nature of effects that they are likely to acceptably receive.



Aaron Collier
Planner
14 November 2019