

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 3

**STATEMENT OF EVIDENCE OF AARON COLLIER
FOR PERRY GROUP LIMITED (SUBMITTER 464)
HEARING 3: STRATEGIC OBJECTIVES
17 OCTOBER 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 have a Masters' degree with Honours and a Post Graduate Diploma in Resources and Environmental Planning from the University of Waikato. I am a full member of the New Zealand Planning Institute (NZPI) and am an accredited Planning Commissioner.

1.4 I have 24 years' experience working as a Local Authority and Consultant Planner. My predominant experience has been in the area of plan policy development and land use planning. I have prepared numerous private and Council Plan Changes. I have provided planning evidence and advice in relation to a number of second generation District Plans, including those for the Taupo, Tauranga, Rotorua, Thames-Coromandel and Western Bay of Plenty Districts and the Auckland Unitary Plan. I was heavily involved in Council hearings and subsequent appeal processes for a number of these Plans.

1.5 I regularly present evidence as an expert planning witness at Council hearings the Environment Court, High Court and Boards of Enquiry.

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

1.7 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.

1.8 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 Hearing 3 relates to strategic directions of the plan, in particular:

- Section 1.12 Strategic directions and objectives for the district;
- Section 4 Urban Environment;
- Section 5 Rural Environment.

- 2.2 My rebuttal evidence relates to Perry Group's submission points and further submission points 464.1 and 464.7 and responds to a number of matters, raised in the primary evidence of Ports of Auckland, Horticulture NZ and Havelock Village Limited.
- 2.3 I have reviewed Perry Group's original submissions and also those submissions which were the subject of further submissions by Perry Group. I have also reviewed the Section 42A report on Hearing 3. I note that a number of suggested changes have been identified to the Strategic Objective provisions in the Council's s.42A report which I generally agree with. In relation to Perry Group's submission, a number of these changes either accept Perry Group's submissions or suggest that matters raised are best addressed through other Plan provisions still to be heard by the Commissioners.
- 2.4 I did not file any evidence in response to the Reporting Officer's s.42A report on Hearing 3 as Perry Group is generally in support of its recommendations. I have however reviewed the Council's s.42A report and recommendations in the context of this rebuttal evidence to submitters evidence as filed, and where appropriate I have commented on the s.42A report in this context.
- 2.5 This evidence responds to the evidence of Lynette Wharfe (Further Submitter No. FS1168, Horticulture NZ), Mark Tollemache (Further Submitter No. 1377 by Havelock Village Ltd), and Mark Arbuthnot (Further Submitter No. FS1087 by Ports of Auckland). I have also made reference to the Evidence of Ken Tremaine on behalf of Futureproof (Submitter No. 606 by the Futureproof Implementation Committee).

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).

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.

3.4 It is critical that the provisions of the Plan are carefully worded, and that appropriate language is used. A number of Perry Group's submissions seek relief to that ensure the language used best reflects that used in the purpose and relevant provisions of the RMA.

4. The evidence of Mark Tollemache on behalf of Havelock Village Limited

4.1 In Paragraph 5.1 of his evidence, Mr Tollemache identifies that Perry Group seeks to amend Policy 4.1.3 of the Proposed Plan to:

- (a) Enable development near to towns and villages where infrastructure and services
- (b) Give preference to urban growth areas where they are consistent with any amended future proof documents, the corridor plan, and any Central Government directives on land use.

4.2 Perry's submission on Policy 4.1.3 is to amend the policy as follows:

Policy 4.1.3 Location of Development

- (c) *Subdivision and development of a residential, commercial and industrial nature is to occur within **or near** towns and villages where infrastructure and services can be efficiently and economically provided.*
- (d) *Locate **Give preference to** urban growth areas ~~only~~ where they are consistent with the Future Proof Strategy Planning for Growth 2017, **any amended Future Proof documents, the Corridor Plan, and any central government directives on land use.***

4.3 Like Mr Tollemache, I was concerned with Policy 4.1.3(b) in terms of how it makes reference only to Future Proof 2017, which was primarily only a cursory update to Future Proof Strategy completed to update review of the settlement patterns, based on new census population data.

4.4 Future Proof 2017 Settlement Pattern Peer Review completed by Peter Winder dated May 2017 states (under material not reviewed) that:

4. The reviewer has not been provided with:

- *analysis that underpins the assessment of development capacity*
- *information about the adequacy of existing infrastructure to support the forecast growth*

- *information about the costs of development, or the cost or proposed sequencing and timing of any additional infrastructure required to service the forecast growth*
- *consideration of the relative merits or feasibility of alternative development patterns*
- *assessment of the capacity of the transport system to deal with the levels of forecast growth, or the costs of developing the transport system to meet the needs of the forecast population*
- *analysis of the existing development capacity and likely uptake of rural residential/lifestyle settlement across the rural areas of the three local authorities*
- *analysis of the potential for changes in the forecast demographic structure of the population of the area to drive significant changes in demand for different types of housing – including multi-unit retirement type developments, apartments, or other higher density housing*
- *analysis of the cost or commercial viability of developing sections at the densities that are used to drive the local area estimates of development capacity. In the absence of this sort of information the peer review is limited in terms of what it can conclude.*

4.5 The report by Peter Windner noted under its findings on page 3 that in terms of forecasting projections and uncertainty:

Findings Projections, Forecasts and Uncertainty

6. Forecasting the future is inherently difficult. The future is uncertain. Whilst we can be confident that much of what will be around in twenty years' time already exists (people have been born, buildings and roads have been built, etc.) there is a great deal that can change over that period of time. The more complex the system that you are trying to forecast, the less likely it is that you can reliably predict the future.

Forecasting future patterns of economic activity, of where people will live and work, of where houses will be built, and what sort of dwellings might be built, requires the ability to forecast the behaviour of people and of complex economic and political systems. In this context, most forecasters will readily admit that it is unlikely that their forecasts will be correct.

7. One of the key refinements in the approach adopted by the Future Proof partners for this review of their strategy is the use of multiple population projections that reflect different rates of growth and different assumptions about the future. These projections represent an envelope of future possibility. By adopting this approach, it becomes less important whether any one forecast is reliable. Rather, it is important that the envelope of the future possibility that is projected reflects the likely range of what the future could look like. If the strategy copes well with the likely future range of activity, then it is a robust strategy.

8. Adopting a range-based projection framework is a significant improvement to the Future Proof framework. It provides deeper insights into what the future may look like and the ability of the growth strategy to deal with different futures. This is an important and helpful enhancement of the Future Proof Growth Strategy.

9. Cameron and Cochrane note that: "The projections of total and age and sex-specific populations were prepared using the standard cohort component model and using data

from Statistics New Zealand. However, projections of net migration were derived using age and sex specific net migration rates, a significant departure from the method employed by Statistics New Zealand. Three population projection scenarios (a low-variant, a medium-variant, and a high-variant) were generated, using different (but related) assumptions about future fertility, mortality (survivorship), and net migration. Family and household, and labour force, projections were then derived from both population projection scenarios, by applying assumptions about living arrangement type rates and labour force participation rates respectively.

In addition, the family and household projections explicitly account for the proportion of the population living in non-private dwellings, which is a departure from previous family and household projections, including those prepared by Statistics New Zealand.”

10. Cameron and Cochrane note that “these projections should be viewed as one possible future, based on known assumptions about future fertility, mortality and net migration, and should not be interpreted as forecasts of the future population distribution. However, the projection assumptions are based on a continuation of previous population trends that can reasonably be expected to continue into the future.”

- 4.6 Perry Group’s submission sought that the Proposed Plans strategic policy be broadened to ensure that the Proposed Plan recognises and allows responsiveness and appropriate effects-based flexibility. Future Proofs’ own reports recognise their settlement plan is based on “one possible future”. In my experience, District Plans often extend beyond the 10-year life of a plan for numerous reasons. The District Plan therefore needs to be able to respond to updated evidence or policy on environmental effects such as climate change or three waters matters. Changes in Central Government policy, or significant urban growth, market and housing and infrastructure challenges, along with changes as identified in other Local and Central Government documents will also occur. Perry Group’s submission suggested change has therefore added reference to any amended Future Proof documents, the Corridor Plan and any Central Government directives on land use.
- 4.7 I agree with Mr Tollemache’s comments that Future Proof 2017 includes limits to growth on the maps included and such limits to growth could be referenced as restrictions on the appropriate growth of a settlement. I note my concerns that Future Proof reports may become outdated or lag behind other policy changes within the lifetime of a District Plan.
- 4.8 I agree with both Mr Matheson and Mr Tollemache that it is may be unnecessary to identify Future Proof which is a statutory document prepared under the Local Government Act 2002 within the District Plan as a RMA policy document, but if other statutory documents or policies are to be identified, in my opinion this should not be limited to Future Proof 2017.
- 4.9 Should the Committee be mindful of including reference to Future Proof 2017, then I recommend they accept the above amendments which I have suggested to Policy 4.1.3.

5. Statement of Evidence by Lynette Wharfe for Horticulture NZ

5.1 Perry Group sought amendments to Policy 4.7.11 as follows:

4.7.11 Policy – Reverse sensitivity

Reverse sensitivity effects can be mitigated in many circumstances (for example, through consent conditions or land covenants).

(a) Development and subdivision design minimizes reverse sensitivity effects arising from current uses on adjacent sites, adjacent activities, or the wider environment; and

(b) Avoid, ~~minimise~~ or appropriately mitigate potential reverse sensitivity effects of locating new dwellings in the vicinity of an intensive farming, extraction industry or industrial activity.

5.2 The above amendments are opposed by Horticulture NZ who seek that the policy remains as an avoidance policy.

5.3 Paragraph 16.16 of the evidence of Lynette Wharfe identifies that the Section 42A report rejects submissions that seek to amend 4.7.11(b) to “manage” rather than avoid, and notes that the s.42A report adds an additional provision (where effects cannot be avoided they shall be “minimized”) where avoidance is not practical. The reason for Perry Group’s submission on the policy was to ensure that the wording of the Policy is aligned with the effects-based approach under Section 5 of the Act which requires avoidance, remedying, or mitigating of adverse effects. The Act itself makes no reference to “managing” or “minimizing” effects as suggested in paragraph 3.70 of the s.42A report. There is also no stepped approach under s.5 in term of adverse effects as the option of avoidance or mitigation are in my view on an equal footing.

5.4 In my view, the Policy should be amended to acknowledge that reverse sensitivity effects can be mitigated in many circumstances. I would therefore recommend that the Committee use caution in only adopting an avoidance approach as it will result in a lack of flexibility and unintended consequences.

5.5 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. I am aware that the draft NPS HPL includes a policy on reverse sensitivity effects on highly productive land as noted on Para 16.13 of the evidence of Lynette Wharfe. However, as this NPS is still in a draft format, it would be premature for the Panel in its decision-making role to adopt an approach of incorporating reference or weighting to draft documents.

5.6 Paragraph 16.7 of the evidence of Lynette Wharfe seeks that Clause b) of policy 4.7.11 be amended to include specific reference to farming and horticulture. Inclusion of a list of these further land uses in the policy is in my view unnecessary. The policy does not need to list all rural land as having potential to be affected from current uses on adjacent sites (by incorporating reference to wide ranging activities such as “farming” and horticulture). The policy as notified incorporated those uses where

there is a clear track record of reverse sensitivity arising, such as intensive farming, extraction industries or industrial activities. In my view the policy can be simplified to refer to “sensitive activities”. I therefore recommend the following change to the policy:

4.7.11 Policy – Reverse sensitivity

Reverse sensitivity effects can be mitigated in many circumstances (for example, through consent conditions or land covenants).

(a) Development and subdivision design minimizes reverse sensitivity effects arising from current uses on adjacent sites, adjacent activities, or the wider environment; and

(b) Avoid, ~~minimise~~ **or appropriately mitigate** potential reverse sensitivity effects of locating new dwellings in the vicinity of ~~an intensive farming, extraction industry or industrial activity~~ **sensitive land uses**

5.7 I agree with the s.42A reports conclusions that reference to a list of specific activities is not necessary and can be replaced by inclusion of reference to ‘sensitive land uses’. This in my view this would better reflect the concerns raised by the evidence of Lynette Wharfe that reverse sensitivity effects do not just relate to urban activities and can relate to a very wide range of land use.

5.8 I agree with the evidence of Lynette Wharfe in paragraph 16.16 which criticizes the approach that the potential for reverse sensitivity effects be minimised where avoidance is “not practical”. I consider that the Policy should best reflect those provisions in the Act, which is the option to avoid or mitigate

5.9 I therefore continue to support the amendments to Policy 4.7.11 as suggested in the original submission by Perry Group, but with the amendments noted above.

6. The Evidence of Mark Arbuthnot on behalf of the Ports of Auckland

6.1 The evidence of Mr Arbuthnot disagrees with some of the relief that has been sought by Perry Group’s primary submission with respect to:

- Policy 4.1.3 – Location of development;
- Policy 4.1.6 – Commercial and industrial activities;
- Policy 4.1.8 – Integration and connectivity;
- Policy 4.1.16 – Horotiu; and
- Policy 4.7.11 – Reverse Sensitivity.

6.2 Mr Arbuthnot is suggesting that the amendments sought by Perry Group are enabling development on land that has not been zoned for urban development, and that this would not give effect to Policy 6.14 of the RPS which requires new urban development to occur within the urban limits indicated on Map 6.2 of the RPS.

- 6.3 I disagree with Mr Arbuthnot's suggestion in paragraph 5.3 of his evidence. In my view, the Policy does not enable development on land that has not been zoned for urban development, but rather provides a framework for the future consideration of growth adjacent to or near to existing towns and villages, and also alongside the rail corridor, as outlined in the Section 42A Report.
- 6.4 Perry Group's amendments to Policy 4.1.3 are "signalling" type policies which identify where preference should be given to future development. In my opinion the Plan should signal where development may occur, and this should not just be restricted to dealing with zoned land. This is important in the context of high growth areas as they are likely to receive future private plan changes or Council may initiate its own. I consider that Policy guidance and direction is therefore useful on this matter.
- 6.5 I agree with paragraph 5.4 of Mr Arbuthnot's evidence that urban development occurring in areas that are not identified for future development would first need to go through the necessary District Plan and Structure Plan processes that are required by the RPS. This is the normal and accepted approach.
- 6.6 Mr Arbuthnot also considers in paragraph 5.5 of his evidence that Section 75(3) of the RMA does not enable the District Plan to give effect to non-statutory documents such as the reference to future proof documents, the Corridor Plan, and any Central Government directives on land use which are identified in 4.1.3(b) of the Policy.
- 6.7 I disagree with this approach as it is normal practice for plans to make reference to non-statutory policies and processes which provide direction and guidance. For example, in the Bay of Plenty the Tauranga City and Western Bay of Plenty District Plans all acknowledge and recognise settlement patterns as outlined in the SmartGrowth strategy. This also applies to higher order planning documents such as the Bay of Plenty Regional Policy Statement.
- 6.8 Mr Tremaine's evidence (on behalf of the futureproof submission) signals the importance and significance of Future Proof settlement pattern. Mr Tremaine also highlights pending changes to the RPS to implement the 2017 Future Proof strategy and the pending updated Future Proof Strategy in 2020, along with the outcomes of other strategic processes such as the Hamilton to Auckland Corridor Plan. This recognises the limitations to Future Proofs current review, as stated in it own reports.¹ It is my view that these processes and documents should therefore be reflected in Policy 4.1.3 of the Proposed Plan.²
- 6.9 In paragraph 11.4 Mr Arbuthnot agrees with the recommended change to Policy 7.4.11 and supports the approach of a requirement to minimise reverse sensitivity effects which he considers gives effect to Objective 3.12(g), Policy 4.4(f), and implementation method 6.1.2 of the RPS.

¹ http://futureproof.org.nz/assets/FutureProof/Documents/9-settlement-pattern-peer-review_peter-winder_180517.pdf

² Paragraphs 3.9, 3.11, and 5.6 of the Statement of Evidence of Kenneth Tremaine on behalf of the Future Proof Implementation Committee dated 14 October 2019

- 6.10 As noted earlier in paragraph 5.3 of my evidence, where I have responded to the evidence of Lynette Wharfe, I do not consider that there is a hierarchy of avoidance or a stepped approach in terms of potential reverse sensitivity effects. In my view the Act makes no mention of minimising the potential for reverse sensitivity effects where avoidance is not practical, but rather provides the option of either avoidance or mitigation of effects as appropriate.
- 6.11 As per 5.6 of my rebuttal evidence above, I consider that Policy 4.7.11(b) should be amended to refer to “*avoid, minimise, or appropriately mitigate potential reverse sensitivity effects of locating new dwellings in the vicinity of sensitive activities*”, and that this is appropriate.
- 6.12 As stated in 5.7 of my evidence I note that I agree with the Section 42A Report that there is no need to specify the range and nature of activities but rather to refer to those activities as being sensitive ones.



Aaron Collier
Planner
18 October 2019