

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 3 –
STRATEGIC OBJECTIVES**

14 OCTOBER 2019

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EXECUTIVE SUMMARY

- A. This statement of evidence addresses the further submissions made by Ports of Auckland Limited ("**POAL**") in relation to 'Hearing 3 Strategic Objectives' of the Proposed Waikato District Plan ("**Proposed Plan**").
- B. I generally agree with the recommendations of the section 42A report in respect of the strategic directions, objectives and policies that are contained within Section 1.12 and Chapter 4 of the Proposed Plan.
- C. While I agree with the intent of the recommended changes to Policy 4.7.2, I note that the use of the term "regionally significant industry" is not defined by the Proposed Plan. This has the potential to raise interpretation issues and I am of the opinion that the wording of Policy 4.7.2 should either be amended to simply reference "industry", or that a definition for "regionally significant industry" should be proposed.
- D. I disagree with some of the relief that has been sought by Perry Group Limited in its primary submissions, particularly in respect of:
- a. Policy 4.1.3 – Location of development;
 - b. Policy 4.1.6 – Commercial and industrial activities;
 - c. Policy 4.1.8 – Integration and connectivity;
 - d. Policy 4.1.16 – Horotiu; and
 - e. Policy 4.7.11 – Reverse sensitivity.
- E. Where I disagree with the relief that has been sought by Perry Group Limited, I am of the opinion that they are either inconsistent with the Waikato Regional Policy Statement or are unnecessary in the context of the strategic objective and policy framework.

1. INTRODUCTION

1.1 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

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

Code of conduct

1.3 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 3 addresses the submissions and further submissions that have been made on the strategic directions and strategic objectives and policies of the following:

- (a) Section 1.12 Strategic directions and objectives for the district.
- (b) Chapter 4 Urban Environment.
- (c) Chapter 5 Rural Environment.

2.2 My evidence relates to POAL's further submission points (FS1087.2, FS1087.6, FS1087.7, FS1087.9, FS1087.10, FS1087.11, FS1087.12,

FS1087.24, FS1087.32, FS1087.33) as they relate to the above provisions of the Proposed Plan.

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 In preparing this evidence, I have had regard to:

- (a) the manner in which Section 1.12, Chapter 4 and Chapter 5 of the Proposed Plan gives effect to the Waikato Regional Policy Statement ('**RPS**');
- (b) POAL's primary and further submissions, and the primary and further submissions made by other parties;
- (c) the section 32 reports, dated July 2018; and
- (d) the section 42A report, dated 30 September 2019.

3.5 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 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. TOPIC 4: STRATEGIC DIRECTION CHAPTER – DIRECTION AND OBJECTIVES

Further submission of POAL (FS1087.24) in support of the primary submission of Housing New Zealand Corporation (749.92)

- 4.1 POAL made a further submission (FS1087.24) in support of the primary submission of Housing New Zealand Corporation (749.92) ('**HNZC**') which sought the retention of Section 1.12 'Strategic directions and objectives for the district' as notified.
- 4.2 The section 42A report recommends minor changes to Section 1.12 of the Proposed Plan to better clarify the link between the issues in Section 1.4 and the strategic objectives contained within Chapters 4 – 10 of the Proposed Plan.
- 4.3 The recommended changes do not materially alter the content of Section 1.12. Should any further changes be sought in the evidence of other submitters, I will address those changes in rebuttal evidence, if necessary.

5. TOPIC 15: CHAPTER 4: URBAN ENVIRONMENT – 4.1.3 POLICY – LOCATION OF DEVELOPMENT

Further submission of POAL (FS1087.2) in opposition to the primary submission of Perry Group Limited (464.1)

- 5.1 POAL made a further submission in opposition of the primary submission of Perry Group Limited (464.1) ('**Perry Group**'), which sought to amend Policy 4.1.3 of the Proposed Plan to:

- (a) enable development near to towns and villages where infrastructure and services can be efficiently and economically provided (as opposed to within towns and villages); and
- (b) give preference to (as opposed to “locate”) urban growth areas where they are consistent with “*any amended Future Proof documents, the Corridor Plan, and any central government directives on land use*”.

5.2 The section 42A report recommends that the submission of Perry Group is rejected for the following reasons:¹

Three submissions seek that Policy 4.1.3(a) be amended to provide for growth *adjacent to* or *near to* existing towns and villages, and also alongside the rail corridor. The location of areas anticipated to be needed to accommodate growth within the lifetime of the plan have been zoned for that purpose in the PWDP. The future location of urban growth will need to be considered at a later stage and as discussed previously should be introduced through the variation or plan change process. Accordingly, no change is recommended in response to these submissions.

- 5.3 I agree with the conclusions of the section 42A report in respect of this matter. In my opinion, the enablement of development on land that has not been zoned for urban development 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.
- 5.4 Policy 6.14(g) of the RPS requires alternative industrial and residential land release patterns to be promoted through district plan and structure plan processes to demonstrate consistency with the principles of the Future Proof land use pattern. In my opinion, the relief sought by Perry Group has the potential to enable urban development to occur in areas that are not identified for future urban development without first going through the necessary district plan and structure plan processes that are required by the RPS.
- 5.5 I am also of the opinion that section 75(3) of the RMA does not enable a district plan to give effect to non-statutory documents such as the

¹ Para. 113 of the section 42A report.

“Corridor Plan”, and that the term “any central government directives on land use” is ambiguous. I therefore do not consider it appropriate to amend Policy 4.1.3 of the Proposed Plan in the manner sought by Perry Group.

6. TOPIC 18: CHAPTER 4: URBAN ENVIRONMENT – 4.1.6 POLICY – COMMERCIAL AND INDUSTRIAL ACTIVITIES

Further submission of POAL (FS1087.5) in opposition of the primary submission of Perry Group Limited (464.2)

6.1 POAL made a further submission (FS1087.5) in opposition to the primary submission of Perry Group (464.2), which sought to amend Policy 4.1.6 of the Proposed Plan to encourage linkages and connections between commercial, industrial, and residential activities.

6.2 The section 42A report recommends that the submission of Perry Group is rejected for the following reasons:²

Submission 464.2 (Perry Group Limited) seeks that the policy encourage linkages between the various zones. As noted above the purpose of the policy is to direct the location of commercial and industrial activities. The heading of the policy is recommended to state that it is about location to assist with clarity. Other policies in Chapter 4 address linkages within urban areas.

6.3 I agree with the conclusions of the section 42A report and do not consider the relief sought by Perry Group to be relevant to the purpose of Policy 4.1.6 of the Proposed Plan, which is concerned with ensuring that commercial and industrial development is provided for within certain zones, and directs industry to be located in Industrial Zones and identified industrial strategic growth nodes.

6.4 I otherwise agree with the recommended changes to Policy 4.1.6 and consider that they clarify its intent and purpose.

²

Para. 142 of the section 42A report.

7. TOPIC 20: CHAPTER 4: URBAN ENVIRONMENT – 4.1.8 POLICY – INTEGRATION AND CONNECTIVITY

Further submission of POAL (FS1087.6) in opposition to the primary submission of Perry Group Limited (464.3)

- 7.1 POAL made a submission (FS1087.6) in opposition to the primary submission of Perry Group (464.3) which sought to add a new point to Policy 4.1.8 of the Proposed Plan to “encourage greater connectivity and integration between commercial, industrial, and residential activities”.
- 7.2 The section 42A report recommends (at paragraph 160) that the relief sought by Perry Group be rejected on the basis that “connectivity” is contained within Objective 4.1.7(a) and does not need to be repeated in the policy.
- 7.3 I agree with the section 42A report in this regard. Objective 4.1.7(a) describes the state that is to be achieved, which is for development within the identified zones to be attractive, connected and reflective of the character of towns.
- 7.4 Policy 4.1.8 states the resource management approach that is to be taken to implement the objective. The policy seeks to “ensure efficient integration within and between new developments and existing areas” through several methods. For these reasons, I am of the opinion that the additional criterion sought by Perry Group is unnecessary.

Further submission of POAL (FS1087.32) in support of the primary submission of KiwiRail Holdings Limited (986.13)

- 7.5 POAL made a further submission (FS1087.32) in support of the primary submission of KiwiRail Holdings Limited (986.13) (**‘KiwiRail’**), which sought an addition to Policy 4.1.8 to require development to avoid or manage reverse sensitivity effects on the strategic transport infrastructure networks.

- 7.6 The section 42A report (at paragraph 160) recommends that the relief sought by KiwiRail is rejected on the basis that reverse sensitivity issues are addressed elsewhere within the strategic policies for the urban environment.
- 7.7 I agree with the conclusions of the section 42A report and note that in the context of POAL's inland freight hub activities at Horotiu, reverse sensitivity effects on the strategic infrastructure networks are addressed by Policy 4.1.16, while wider reverse sensitivity effects on industrial activities are addressed by Policy 4.7.11.

8. TOPIC 28: CHAPTER 4: URBAN ENVIRONMENT – 4.1.16 POLICY – HOROTIU

Further submission of POAL (FS1087.7) in opposition to the primary submission of Perry Group Limited (464.4)

- 8.1 POAL made a further submission in opposition (FS1087.7) in opposition to the primary submission of Perry Group (464.4), which seeks to:
- (a) enable future residential development to occur “near” to Horotiu village;
 - (b) amend the requirement for future residential development not to impact on the local road network to a requirement for the impacts to be minimised;
 - (c) recognise the benefit of the proximity of Horotiu to Hamilton for future residential development;
 - (d) replace the requirement to avoid or minimise reverse sensitivity effects on the strategic transport infrastructure network with a requirement to mitigate the effects of amenity from the strategic transport infrastructure network; and
 - (e) caveat the need to protect the strategic industrial need by requiring the importance of current and future residential activities to be recognised.

8.2 The section 42A report recommends (at paragraph 238) that item (b) above is accepted on the basis that it is not the intent to create an “avoid-type” policy in respect of the effects on the road network, and recommends the following change:

4.1.16 Policy – Horotiu

(a) Horotiu is developed to ensure:

...

(ii) ~~Future~~ Residential development ~~does not~~ minimises the impact on the existing road network.

8.3 I agree with the use of the word “minimise” and consider the amendment to be consistent with the intent of the RPS (which does not require such effects to be “avoided”).

8.4 While not explicitly stated, the balance of the relief sought by Perry Group is not recommended to be accepted by the section 42A report. I agree with this outcome, and consider that:

- (a) for the reasons that have been discussed at paragraphs 5.3 and 5.5 above, it is not appropriate for Policy 4.1.16 of the Proposed Plan to enable future residential development to occur on land that has not been zoned for urban development;
- (b) amending Policy 4.1.16 to recognise the benefit of the proximity of Horotiu to Hamilton for future residential development would suggest that Horotiu is suitable for further intensification beyond that which is already provided for under the provisions of the Proposed Plan;
- (c) amending Policy 4.1.16(a)(iii) to replace the requirement to avoid or minimise reverse sensitivity effects on the strategic transport infrastructure network with a requirement to mitigate the effects of amenity from the strategic transport infrastructure network does not give effect to:
 - (i) Objective 3.12(e) of the RPS, which recognises and protects the value and long-term benefits of regionally

significant infrastructure (which includes significant transport corridors); and

(ii) Policy 6.6 of the RPS, which protects the effectiveness and efficiency of existing and planned regionally significant infrastructure.

(d) amending Policy 4.1.16(a)(iv) to caveat the need to protect the strategic industrial with a need to recognise the importance of current and future residential activities is inconsistent with the implementation methods that are contained at section 6.1.2 of the RPS, which requires that:

...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.

8.5 For these reasons, I do not support the relief that has been sought by Perry Group in respect of these matters.

Further submission of POAL (FS1087.11) in support of the primary submission of Hamilton City Council (535.18)

8.6 POAL made a further submission (FS1087.11) in support of the primary submission of Hamilton City Council (535.18), which sought to ensure that:

(a) cross boundary impacts are included, particularly involving infrastructure, physical and social impacts on Hamilton; and

(b) land around existing industrial nodes is safeguarded for future industrial use.

8.7 The section 42A report (at paragraph 236) recommends that the relief sought by Hamilton City Council be rejected on the basis that the land that is proposed to be zoned for Residential purposes is currently zoned Country Living in the operative Waikato District Plan, and will have

minimal if any adverse effect of the future development of Horotiu as an industrial node.

- 8.8 POAL is satisfied with the recommended changes to Policy 4.1.16 and does not wish to pursue submission point FS1087.11 further. However, POAL does not wish to withdraw this further submission point at this stage. This is to ensure POAL has scope should any changes be pursued by other submitters.

9. TOPIC 33: CHAPTER 4: URBAN ENVIRONMENT – 4.7.2 POLICY – SUBDIVISION LOCATION AND DESIGN

Further submission of POAL (FS1087.12) in support of the primary submission of Lakeside Developments 2017 Limited (579.66)

- 9.1 POAL made a further submission (FS1087.12) in support of the primary submission of Lakeside Developments 2017 Limited (579.66) ('**Lakeside**') which supported the objectives and policies contained within 'Chapter 4 Urban Environment' as notified.
- 9.2 In response to the primary submission of Genesis Energy Limited (924.45), the section 42A report (at paragraph 293) recommends the following amendment to Policy 4.7.2(a)(i):

4.7.2 Policy – Subdivision location and design

(a) Ensure subdivision, is located and designed to:

- (i) Be sympathetic to the natural and physical qualities and characteristics of the surrounding environment **including the urban/rural interface and reverse sensitivity effects from on the strategic transport infrastructure networks and regionally significant industry;**

...

- 9.3 While I agree with the intent of the above recommended changes, the term "regionally significant industry" is not defined by the Proposed Plan; nor am I able to find a submission seeking this term to be defined. The use of the term "regional significant industry" has the potential to raise interpretation issues, and in my opinion, the wording of Policy

4.7.2(a)(i) should be either amended to reference “industry”, or a definition for “regionally significant industry” should be proposed.

9.4 If a definition of “regionally significant industry” is to be proposed, I am of the opinion that POAL’s inland freight hub operations will be of significance to economy of the Waikato region and should be included within the definition. I will address this matter further, if required, at Hearing 5 ‘Definitions’.

10. TOPIC 37: URBAN ENVIRONMENT – 4.7.6 POLICY – CO-ORDINATION BETWEEN SERVICING AND DEVELOPMENT AND SUBDIVISION

Further submission of POAL (FS1087.9) in opposition to the primary submission of Perry Group Limited (464.6)

10.1 POAL made a further submission (FS1087.9) in opposition to the primary submission of Perry Group (464.6), which sought amendments to reflect alternative methods to provide infrastructure.

10.2 POAL is satisfied with the recommended changes to Policy 4.7.6 and does not wish to pursue submission point FS1087.9 further. However, POAL does not wish to withdraw this further submission point at this stage. This is to ensure POAL has scope should any changes be pursued by other submitters.

11. TOPIC 42: CHAPTER 4: URBAN ENVIRONMENT – 4.7.11 POLICY – REVERSE SENSITIVITY

Further submissions of POAL (FS1087.10 and FS1087.33) in opposition to the primary submission of Perry Group Limited (464.7) and in support of the primary submission of KiwiRail Holdings Limited (986.24)

11.1 POAL made a further submission in opposition to the primary submission of Perry Group (464.7) which seeks to amend the

requirement to avoid or minimise potential reverse sensitivity effects with a requirement to avoid or “appropriately mitigate” such effects.

- 11.2 POAL also made a further submission in support of the primary submission of KiwiRail, which sought certain amendments to Policy 4.7.11 to require development of “noise-sensitive” activities to be designed to avoid or mitigate reverse sensitivity effects on transport networks.
- 11.3 In response to the relief sought by the submissions (and others), the section 42A report (at paragraph 374) has recommended the following changes to Policy 4.7.11:

4.7.11 Policy – Reverse sensitivity

- (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; and
- (b) Avoid potential reverse sensitivity effects of locating new dwelling sensitive land uses in the vicinity of an intensive farming, extraction industry or industrial activity and strategic infrastructure. Minimise the potential for reverse sensitivity effects where avoidance is not practicable.

- 11.4 I agree with the recommended changes to Policy 4.7.11. The requirement to minimise reverse sensitivity effects gives effect to Objective 3.12(g), Policy 4.4(f), and implementation method 6.1.2 of the RPS.

Mark Nicholas Arbuthnot

14 October 2019