

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 5 –
CHAPTER 13 DEFINITIONS**

18 NOVEMBER 2019

CONTENTS

1. INTRODUCTION.....	1
2. SCOPE OF EVIDENCE	1
3. STATUTORY FRAMEWORK	2
4. NATIONAL PLANNING STANDARD DEFINITIONS	4
5. HAZARDOUS FACILITY.....	5
6. HAZARDOUS SUBSTANCES.....	6
7. HEAVY VEHICLE.....	6
8. IDENTIFIED AREA	7
9. IMPERVIOUS SURFACE	7
10. NOISE SENSITIVE ACTIVITY AND SENSITIVE LAND USE.....	8
11. REVERSE SENSITIVITY	9
12. WORKERS' ACCOMMODATION.....	10

EXECUTIVE SUMMARY

- A. This statement of evidence addresses the further submissions made by Ports of Auckland Limited ("**POAL**") in relation to 'Hearing 5: Chapter 13 Definitions' of the Proposed Waikato District Plan ("**Proposed Plan**").
- B. The definitions of the Proposed Plan play a critical role in determining how the objectives, policies and rules will operate and be implemented, and can make the difference between an activity being "provided for" within a zone, or not.
- C. I have recommended a number of amendments to the definitions of the Proposed Plan to either ensure that POAL's activities are properly provided for, or to address how the provisions of the Proposed Plan should be implemented throughout the district.
- D. To summarise, I generally agree with the recommendations of the section 42A report in respect of the following:
- (i) the inclusion of certain definitions from the Definitions List of the National Planning Standard;
 - (ii) the retention of the definitions of "hazardous substances", "heavy vehicle" and "impervious surface" as notified;
 - (iii) the recommended definition of "identified area"; and
 - (iv) not including a definition of "reverse sensitivity" within the Proposed Plan.
- E. However, my evidence recommends that amendments are made to the definitions of "noise sensitive activity" and "sensitive land use" to make it clear that worker's accommodation is an activity that is anticipated to occur within the Industrial Zone.
- F. Related to this, my evidence also recommends that a definition of "workers' accommodation" be included within the Proposed Plan.

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 5 addresses the submissions and further submissions that have been made on the definitions that are contained within Chapter 13 of the Proposed Plan.

2.2 My evidence relates to POAL's primary submission points¹ and further submission points² as they relate to the definitions of the Proposed Plan. I address the following definitions:

(a) accessory building;

¹ 578.42, 578.43, 578.44, 578.45, 578.47, 578.49, 578.50, 578.51, 578.52, 578.53, 578.54, 578.75, 578.76, 578.79, 578.80.

² FS1087.1, FS1087.22, FS1087.26, FS1087.30.

- (b) building;
- (c) building coverage;
- (d) building platform;
- (e) gross floor area;
- (f) hazardous facility;
- (g) hazardous substances;
- (h) heavy vehicle;
- (i) height;
- (j) height control plane;
- (k) identified area;
- (l) impervious surface;
- (m) industrial activity;
- (n) net site area;
- (o) noise sensitive activities;
- (p) notional boundary;
- (q) reverse sensitivity;
- (r) sensitive land use; and
- (s) worker's accommodation.

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 addition to the above, section 14 (definitions standard) of the National Planning Standards provides the following mandatory direction:

1. Where terms defined in the Definitions List are used in a policy statement of plan, and the terms is used in the same context as the definition, local authorities must use the definition as defined in the Definition List. However, if required, they may define:
 - a. terms that are a subcategory of, or have a narrower application than, a defined term in the Definitions List. Any such definitions must be consistent with the higher level definition in the Definitions List.
 - b. additional terms that do not have the same or equivalent meaning as a term defined in the Definitions List.

3.5 As a result, there is no discretion for a council to choose whether to apply the definitions from the Definitions List. However, a council may define terms or phrases used within a definition to provide a narrower application of a definition where this is needed to manage a specific issue.

3.6 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 first set of National Planning Standards;
- (c) the section 32 reports, dated July 2018; and
- (d) the section 42A report prepared by Ms Coplestone and MS Yardley, dated 5 November 2019.

3.7 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. NATIONAL PLANNING STANDARD DEFINITIONS

Primary submissions (578.42, 578.43, 578.44, 578.45, 578.47, 578.51, 578.52, 578.54, 578.75) and further submissions (FS1087.22) of POAL

4.1 The section 42A report recommends that the Proposed Plan is amended to include the following definitions from the Definitions List of the National Planning Standard:

- (a) accessory building;
- (b) building;
- (c) building coverage;
- (d) building platform;
- (e) gross floor area;
- (f) height;
- (g) height control plane;

- (h) industrial activity;
- (i) net site area; and
- (j) notional boundary.

4.2 The national planning standard prevents lists of inclusions or exclusions from being created to these definitions. Instead, the section 42A report identifies that the rules of the Proposed Plan will need to be reviewed to address the relevant submission points on these definitions.

4.3 I accept the conclusions of the section 42A report in this regard and will address any specific relief sought by POAL in its submission points on the definition of “building” and “height” where necessary at Hearing 7 (Industrial and Industrial Heavy Zones).

5. HAZARDOUS FACILITY

Primary submission of POAL (578.48)

5.1 In its primary submission (578.48), POAL sought the following amendments to the definition of “hazardous facility”.

Hazardous facility

Means activities involving hazardous substances and premises at which these substances are used, stored or disposed of. Storage includes vehicles for their transport located at a facility for more than short periods of time, and excludes:

- fuel in mobile plant, motor vehicles, boats and small engines; and
- the temporary storage, handling and distribution of national or international cargo.

5.2 The stated reasons for POAL’s submission were as follows:

POAL’s inland port operations are such they store hazardous substances within plant and machinery on the site. This needs to be recognised within the definition of ‘hazardous facility’.

Hazardous substances will also travel through the freight hub regularly as part of containerised cargo, break bulk and bulk cargo. Maximum dwell times for such cargo is almost always less than 1 week (and usually no more than a few days).

There will be significant cost and operational implications for POAL if the above matters are not excluded from the hazardous facilities definition. This means that the objectives and policies in the Plan relating to hazardous substances in the inland freight hub environment will not be appropriately achieved, bearing in mind the significant costs to POAL, if the transit of cargo through the freight hub were to result in the [activity] being considered a hazardous facility.

- 5.3 I understand that this submission point has been allocated to Hearing 8 (Hazardous substances and contaminated land). I will address POAL's submission in detail at that hearing, however in summary, it is necessary to ensure that cargo is excluded from the definition as significant inefficiencies would result if POAL were required to apply for resource consent every time a shipment of cargo arrives at its inland freight hub facility that exceeds the permitted thresholds for hazardous substances.

6. HAZARDOUS SUBSTANCES

Primary submission of POAL (578.49)

- 6.1 The primary submission of POAL (578.49) sought the retention of the definition of "hazardous substances" as notified. While not specifically addressed, no changes are proposed to this definition by the section 42A report.

7. HEAVY VEHICLE

Primary submission of POAL (578.50)

- 7.1 The primary submission of POAL (578.50) sought the retention of the definition of "heavy vehicle" as notified on the basis that it provided useful clarification in respect of the application of the transportation rules of the Proposed Plan. The relief of POAL has been accepted by the section 42A report.

8. IDENTIFIED AREA

Further submission of POAL (FS1087.30) in support of the primary submission of Waikato Regional Council (81.247)

- 8.1 POAL made a further submission (FS1087.30) in support of the primary submission of Waikato Regional Council (81.247), which seeks to define the term “identified area” on the basis that it will provide useful clarification as to the interpretation of the infrastructure and infrastructure objectives, policies and rules.
- 8.2 The section 42A report (at paragraph 1172) recommends that the submission of Waikato Regional Council is accepted, and has proposed the following definition:

Identified Area

Means the following areas and items identified within this plan:

- a. Urban Expansion Area
- b. Significant Natural Area
- c. Outstanding Natural Feature
- d. Outstanding Natural Landscape
- e. Significant Amenity Landscape
- f. Outstanding Natural Character
- g. High Natural Character
- h. Heritage Precinct
- i. Heritage Items
- j. Maaori Sites of Significance
- k. Maaori Areas of Significance
- l. Notable Trees

- 8.3 I agree with the recommended definition and consider that it appropriately references the “identified areas” within the introduction to Chapter 14 (Infrastructure and Energy) of the Proposed Plan.

9. IMPERVIOUS SURFACE

Primary submission of POAL (578.53)

- 9.1 The primary submission of POAL (578.53) sought the retention of “impervious surface” is retained as notified. The relief of POAL has been accepted by the section 42A report.

10. NOISE SENSITIVE ACTIVITY AND SENSITIVE LAND USE

Primary submissions of POAL (578.76 and 578.79)

- 10.1 In its primary submissions (578.76 and 578.79) POAL sought a minor amendment to the definition of “noise sensitive activity” and “sensitive land use” to ensure that it does not incorporate worker’s accommodation which is necessarily required to be located on land where noisy activities are likely to occur, as follows:

Noise sensitive activity

Means the following:

- (a) building used for residential activities, including boarding establishments, rest homes, retirement villages, papakaainga housing development, in-house aged care facilities, travellers’ accommodation, and other buildings used for residential accommodation but excluding camping grounds and worker’s accommodation;
- (b) marae and mare complex;
- (c) hospital;
- (d) teaching areas and sleeping rooms in an education facility.

...

Sensitive land use

Means an education facility including a childcare facility, waananga and koohanga reo, a residential activity excluding worker’s accommodation, papakaainga building, rest home, retirement village, traveller’s accommodation, home stay, health facility or hospital.

- 10.2 The section 42A report (at paragraph 549) recommends that the submission points of POAL be rejected on the basis that the extent to which worker’s accommodation is provided for within the Industrial Zone will be given consideration at Hearing 7 (Industrial and Industrial Heavy Zones) and it is therefore premature to make a recommendation in respect of this matter.
- 10.3 In my opinion, the amendments are necessary to make it clear that worker’s accommodation is an activity that is anticipated to occur within the Industrial Zone. It is reasonable to exclude worker’s accommodation from these definitions as such forms of

accommodation are for the use of people who are engaged in the activity occurring on the site and who are familiar with (and not sensitive to) the effects of the activity to which it supports.

11. REVERSE SENSITIVITY

Further submissions of POAL (FS1087.1 and FS1087.26) in support of the primary submission of Horticulture New Zealand (419.133) and Fonterra Limited (797.21)

11.1 POAL made further submissions (FS1087.1 and FS1087.26) in support of the primary submission of Horticulture New Zealand (419.133) and Fonterra Limited (797.21), which sought to introduce a definition for “reverse sensitivity”.

11.2 The section 42A report (at paragraph 571) recommends that the submission of Horticulture New Zealand and Fonterra Limited be rejected for the following reasons:

The authors of the Recommendations on Submissions Report for the Planning Standards record in detail in that report, the difficulties at the present time with providing a definition of ‘reverse sensitivity’, given that case law is still evolving and that the NPS for Renewable Electricity Generation is currently in conflict with case law on the ‘existing environment’. The Ministry for the Environment concluded that it was not appropriate to define this term in the Planning Standards at the present time, and thus the draft definition for ‘reverse sensitivity’ was not retained. I am swayed by the recommendation in that report, and therefore recommend that a definition of ‘reverse sensitivity’ is not included in the Proposed Plan.

11.3 I note that the Operative Waikato Regional Policy Statement (“**WRPS**”) already defines reverse sensitivity as follows:

Reverse sensitivity – is the vulnerability of a lawfully established activity to a new activity or land use. It arises when a lawfully established activity causes potential, actual or perceived adverse environmental effects on the new activity, to a point where the new activity may seek to restrict the operation or require mitigation of the effects of the established activity.

11.4 While I agree with the submitters that it would be useful to have a definition in respect of “reverse sensitivity” within the Proposed Plan, I do not consider it necessary to repeat the WRPS definition in the Plan.

I have reservations with attempting to further define “reverse sensitivity” beyond the WRPS definition, as this may have unintended consequences on the way the Proposed Plan is to be interpreted and administered (and may implicate the manner in which the WRPS is given effect to by the Proposed Plan). Therefore, on balance, I agree with the conclusions of the section 42A report and consider that it is more appropriate to define reverse sensitivity effects on a case by case basis at the resource consent stage.

12. WORKERS’ ACCOMMODATION

Primary submission of POAL (578.80)

- 12.1 The primary submission of POAL (578.80) sought that the following definition of “workers’ accommodation” be added to the Proposed Plan.

Workers’ accommodation

A dwelling for people whose duties require them to live on-site, and in the rural zones for people who work on the site or in the surrounding rural area.

Includes:

- a) accommodation for rangers;
- b) artists in residence;
- c) farm managers and workers; and
- d) staff.

- 12.2 The section 42A report seeks to defer the submission to Hearing 7 (Industrial and Industrial Heavy Zones). For the reasons discussed at 10.1 to 10.3 above, I am of the opinion that it is appropriate to provide for such activities within the Proposed Plan.

Mark Nicholas Arbuthnot

18 November 2019