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 – Hearing 10 Residential Zone

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STATEMENT OF EVIDENCE OF AARON COLLIER FOR PERRY GROUP LIMITED (FURTHER SUBMITTER NUMBER 1313) HEARING 10: RESIDENTIAL ZONE CHAPTER 19 FEBRUARY 2020

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1. Qualifications and Experience

1.1 My full name is Aaron Mark Collier.

1.2 I am a planner and a Director of Collier Consultants Limited, Planning and Resource Management Consultants.

1.3 I set out my relevant qualifications and experience in my Statement of Evidence 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) (Further Submitter No. 1313) 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 Perry Group's submissions and further submissions in relation to the residential zone provisions of the proposed plan contained within Chapter 16: Residential Zone of the Proposed District Plan.

2.2 I have reviewed Perry Group's original submission and also the single submission relevant to Hearing 10 (Ports of Auckland) which was the subject of a further submission by Perry Group. I have also reviewed the Section 42A report for Hearing 10 Residential Zone.

2.3 The nature of Perry Group's submissions on Chapter 16 was focused on ensuring that the plan provisions provided certainty and that subjectivity was removed from provisions to best implement the objectives and policies of the plan. Perry Groups submissions focused on ensuring there are clear and certain development outcomes for the District.

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 Councils 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).
- The Ports of Auckland submission.

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 ensure the language used best reflects that used in the purpose and relevant provisions of the RMA.

4. Reverse Sensitivity

4.1 Paragraph 5.5 of my Statement of Evidence on Hearing 3: Strategic Directions, addressed the issue of reverse sensitivity in some detail, as did Paragraphs 4.2 – 4.9 of my evidence on Hearing 5: Plan definitions. I addressed the Hearings Committee on the matter of a definition of reverse sensitivity as part of Hearing 5.

4.2 Perry Groups further submission (1313-17) on the Ports of Auckland submission (578.29) opposed the introduction of a new rule proposed by the the Ports of Auckland. The rule sought a permitted standard which required a restrictive no complaints covenant on adjacent land in favor of the Ports of Auckland.

4.3 The submission seeks that the covenant be imposed with respect to the Horotiu Residential Zone. The rule seeks the following:

"activities sensitive to noise must be subject to a restrictive no complaints covenant in favour of Ports of Auckland Ltd".

4.4 For the purposes of this rule a restrictive no complaint covenant is defined in the submission as being

> *"a restrictive covenant registered on the title to the property for a binding agreement to covenant in favour of the Horotiu Industrial Park, by the land owner (and binding any successes in title) not to complain as to effects generated by the lawful operation of industrial activities from the park. The restrictive no complain covenant is limited to the effects that could be lawfully generated by industrial activities at the time the agreement covenant is entered in to. This does not require the covenantal to forego any right to lodge submissions in respect of resource consent applications or plan changes in relation to industrial activities (although an industrial restrictive non-complaint covenant may do so)".*

4.5 The submission also sought that the above provision apply to alterations to any buildings within the Horotiu Residential Zone.

4.6 As noted in my earlier evidence for Hearing topic 3 (strategic objectives) and topic 5 (definitions), this "reverse sensitivity" mechanism is not necessary as a provision in the Proposed Plan. The Committee may recall my evidence which related to policy 4.7.11, which Perrys sought be amended to refer to effects being mitigated (consistent with the approach taken under section 5 of the Act in dealing with adverse effects). My evidence also addressed matters raised by the Ports of Auckland in terms of its approach to reverse sensitivity which I consider to be a reverse avoidance approach, rather than one provided for by the Act.

4.7 As noted by Ms. Barrry Piceno (Legal Counsel for Perry Group) in legal submissions on Hearing 3: Strategic Directions (Paras 28&29);

> *Northgate applied to become an industrial business park and was later zoned as "Horotiu Industrial Zone" in Waikato District through Environment Court appeals in 2011. The focus on the proposed plan provision and its overall merits were advocated on the basis it could be suitably placed in this location such that there would be no impact on the amenities of the surrounding living zone community or Horotiu school. The rules set out an assessment to ensure that amenities are at least maintained, and so that effects would be mitigated or avoided (see attached, Court decision).*
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> *It is not only contrary to sustainable management but is contrary to the intention of the Horotiu Industrial Park zone when established for POAL to take this stance in its submissions to the Committee, with only 8 years since the Zone's establishment. POAL as a major landowner within the Park seeks to reverse the planning foundations which justified it being established, by seeking imposition of planning controls to limit surrounding land-uses and cause adverse effects on non- industrial properties around them.*

4.8 In my view there was an expectation that the industrial zone would be able to maintain the amenity of the surrounding zone (countryside living). However a number of submissions from the Ports Of Auckland have sought changes to the zone, including those seeking to carve out the Ports of Auckland land from those District wide noise standards. The Ports of Auckland seek to increase the nighttime noise limit. This suggests a change in approach by the Ports of Auckland in terms of impacts on the surrounding community, which in my opinion is unjustified.

5 S.42A Report

5.1 I agree with the assessment of Mr Matheson & Ms. Allwood that the Ports of Auckland's submission introduces a standard that is *not required if compliance with the permitted activity rule is achieved in the Industrial Zone*. I therefore agree that the standard is unnecessary.

5.2 It is unclear how any restrictive no complaints covenant should be imposed on a record of title of land if it were a land use control. As the Commissioners will be aware, Councils have the ability to impose covenants under s.108(2)(d) in respect of a resource consent condition relating to the use of land. However if the standard is a land use control and a resource consent process is not triggered (under the submission as lodged by the Ports of Auckland), then I am not sure how the covenant would be imposed. The Ports of Auckland submission is clear in that it sought that the Council add a permitted activity rule to Rule 16.3.10. I do not believe this approach to be practical, achievable, or workable. The only way a covenant could be achieved would be for a landowner to voluntarily impose a covenant on their land prior to undertaking any activities (including permitted activities). This process would not

include the Council. On that basis I see no need for the Council to include reference to any such process as a standard in their District Plan.

5.3 My experience with reverse sensitivity effects covenants leads me to also conclude that any such covenant is unlikely to be either effective or an efficient method under the Proposed Plan for the following reasons:

1. Such a covenant would not enable the Ports of Auckland to renounce any responsibilities under their proposed zoning and duty under s.5 or s 17 of the Act to avoid, remedy or mitigate adverse effects or avoid nuisance effects. As noted in my earlier evidence for Hearing 3: Strategic Directions, Part 2 of the Act is concerned with avoiding or mitigating adverse effects.

2. If adverse effects are created by the Ports of Auckland a covenant will not stop affected persons from complaining, nor compliance action from being undertaken.

3. The Ports of Auckland's activities are clearly visible and discernable, and a covenant is not require to inform future owners of obvious activities occurring on Industrial land and their effects.

4. Such covenants are restrictive. Where they are imposed the covenanter is likely to use them to restrict participation in genuine compliance issues.

5. No assessment of effectiveness and costs of this provision has been undertaken as required by s.32 of the Act. The Act only envisages covenants being imposed with respect to land use consents and even then, these must be to avoid, remedy or mitigate adverse effects. As with consent notices, covenants must be in favor of Council, and not a third party.

6. As noted above the Council would not be a part to any such covenant.

6 Conclusions

6.1 It is my opinion that the Ports of Auckland, like any other land- owner, have a duty to mitigate or avoid adverse effects and internalise adverse effects within their site. If the Ports of Auckland cannot achieve compliance with the standards that apply in the industrial zone then a resource consent would be triggered and appropriate controls, limitations, or restrictions could be imposed to deal with adverse effects.

6.2 Ports of Auckland as an Industrial developer and landowner appears to be using the Plan review process to seek to constrain other land uses as a means of avoid the costs and responsibility of managing the adverse effects generated from its activities. It is my opinion this is poor planning practice, and will shift the burden onto Councils and surrounding landowners to absorb those adverse effects and cause landuse conflicts in the future.

6.3 Ports of Auckland no doubt were advised at the time it purchased /leased land within the industrial zone, of the Plan objectives, policies and rules for the Northgate site. As a new industrial zone, these provisions reflect Part 2 and current higher standards expected for industrial zones. These provisions were approved by the Environment Court in 2011. As such, in my planning opinion I do not support any change to the industrial provisions as approved by the Court in 2011 unless these are made more stringent (to mitigate and avoid effects), and not less stringent.

Aaron Collier
Planner
19 February 2020