

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 2 – ALL OF
PLAN MATTERS AND PLAN STRUCTURE**

23 SEPTEMBER 2019

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EXECUTIVE SUMMARY

- A. This statement of evidence addresses the further submission made by Ports of Auckland Limited ("**POAL**") in relation to 'Hearing 2 All of Plan matters and Plan structure' of the Proposed Waikato District Plan ("**Proposed Plan**").
- B. POAL's primary submission (578.30) sought the retention of 'Appendix 1 Acoustic Insulation' of the Proposed Plan as notified.
- C. I agree with the Council's section 42A Planning Report ("**section 42A report**") that the retention of 'Appendix 1 Acoustic Insulation' within the Proposed Plan is necessary to address an effect that is within the ambit of the Resource Management Act 1991 ("**RMA**").
- D. I disagree with Housing New Zealand Corporation's reliance on the Building Act to mitigate the potential reverse sensitivity effects (749.150). The Building Act standards relating to glazing (contained within Clause H1 of the Building Code) address energy efficiency, and not acoustic insulation. Therefore, POAL is unable to rely on this aspect of the Building Code to mitigate potential reverse sensitivity effects (particularly given that there is nothing to prevent the glazing standards of the Building Code from being changed in the future without having any regard to acoustic insulation).
- E. The section of the Building Act that addresses sound insulation is contained within Clause G6 of the Building Code, and relates to inter-tenancy sound insulation (i.e. between apartments), as opposed to acoustic protection from external noise sources. Therefore, POAL is unable to rely on this aspect of the Building Code to address reverse sensitivity effects.
- F. In my opinion, there is a "gap" between the control of building work under the Building Act and the environmental effects that are of concern to POAL. I consider that it is appropriate to use the RMA to continue to manage potential reverse sensitivity effects on the Horotiu

Industrial Park through the imposition of minimum acoustic insulation standards under the Proposed Plan.

- G. Such a method is already employed by the Operative District Plan to address potential reverse sensitivity effects in respect of certain types of building work within the 'Horotiu Acoustic Amenity Overlay', the 'Airport Noise Outer Control Boundary', and within proximity to the 'Tamahere Commercial Area' and the State Highway and strategic road networks. The relief that is sought by POAL (578.30) simply seeks to retain this approach within the Proposed Plan.
- H. The imposition of minimum acoustic standards will appropriately give effect to RPS objective 3.12 and RPS policy 6.1, which require conflicts between land uses to be minimised, including minimising the potential for reverse sensitivity.
- I. Minimum acoustic standards are also necessary to implement Proposed Plan Policy 4.7.11, which requires subdivision, building and development to be designed to minimise reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment.
- J. The Horotiu Industrial Park is identified within the Waikato Regional Policy Statement ("**RPS**") as a "strategic industrial node". Having regard to the significance of the Industrial Park to the Waikato region, it is my opinion that the imposition of minimum acoustic standards on new development within the Horotiu area is the most appropriate way to give effect to the RPS, and implement the policies of the District Plan.
- K. POAL has two primary submission points (578.1 and 578.17) that relate to earthworks and building setbacks to waterways within the Industrial Zone that have been allocated to Hearing 7 and not Hearing 2. These submission points will be addressed within evidence at Hearing 7.

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).

1.3 Of direct relevance to Hearing 2, I prepared evidence on behalf of POAL in relation to Plan Change 17 to the Operative Waikato District Plan (Ngaruawahia and surrounding villages) which culminated in the application of minimum acoustic insulation standards to the land that was proposed to be rezoned under that Plan Change from ‘Rural’ to ‘New Residential’, and ‘Light Industrial’ and ‘Rural’ to a combination of ‘Country Living’, ‘New Residential’, and ‘Business’ through the creation of the ‘Horotiu Acoustic Amenity Overlay’.

1.4 I am familiar with the issue of reverse sensitivity and the use of minimum acoustic insulation standards within District Plans; having also been involved in the hearings of the Proposed Auckland Unitary Plan in respect of the City Centre Port Noise Overlay (which contains a suite of controls pertaining to “no complaints” covenants and minimum acoustic insulation standards to address the reverse sensitivity effects that have the potential to occur as areas in close proximity to the Port of Auckland are developed and redeveloped for activities that are sensitive to the effects of noise).

Code of conduct

1.5 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 2 addresses Plan Structure, 'All of Plan', and other miscellaneous high-level submission points.
- 2.2 My evidence relates to POAL's primary submission (578.30) sought the retention of 'Appendix 1 Acoustic Insulation' of the Proposed Plan as notified. This is the only submission point of POAL to be allocated to Hearing 2.
- 2.3 POAL has two primary submission points (578.1 and 578.17) that relate to earthworks and building setbacks to waterways within the Industrial Zone that have been allocated to Hearing 7 and not Hearing 2. These submission points will be addressed within evidence at Hearing 7.

3. STATUTORY FRAMEWORK

- 3.1 'Appendix 1 Acoustic Insulation' of the Proposed Plan is a district plan provision. 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
- (c) any regional policy statement.

3.4 Section 76(1) of the RMA provides that a territorial authority may, for the purpose of –

- (a) carrying out its functions under this Act; and
- (b) achieving the objectives and policies of the plan,-

include rules in a district plan.

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

- (a) the manner in which 'Appendix 1 Acoustic Insulation' of the Proposed Plan gives effect to the RPS;
- (b) the manner in which 'Appendix 1 Acoustic Insulation' of the Proposed Plan implements the policies of the District Plan;
- (c) POAL's primary and further submissions, and the primary and further submissions made by other parties;
- (d) the section 32 reports, dated July 2018; and
- (e) the section 42A report, dated 9 September 2019.

3.6 I have had regard to section 32 of the RMA, which requires an evaluation of the objectives, policies and rules of the Proposed District Plan that are relevant to POAL's primary and 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 5: PLAN CONTENT – NOISE PROVISIONS

Primary submission of POAL (578.30)

- 4.1 In its primary submission (578.30), POAL sought that ‘Appendix 1: Acoustic Insulation’ be retained as notified. POAL’s reason for the submission was that:

POAL supports Appendix 1 (Acoustic Insulation) and considers that it will (in combination with the amendments that are sought to Rule 16.3.10) appropriately avoid, remedy to mitigate the potential reverse sensitivity effects on the Horotiu Industrial Park.

- 4.2 The section 42A report has “accepted in part” POAL’s submission:¹

The support from Ports of Auckland Ltd [578.30] for the Appendix 1 provisions is noted. Conversely, Housing New Zealand [749.150] submits that Appendix 1 should be deleted and acoustic matters dealt with through the Building Consent process. My view is that Appendix 1 should remain as it addresses noise received at residences and other sensitive premises which is a landuse effect squarely within the ambit of the PWDP.

- 4.3 I agree with the conclusions of the section 42A report in respect of this matter. The primary submission of Housing New Zealand Corporation (“HNZC”) (749.150) seeks “*the deletion of the acoustic insulation document from the Proposed WDC along with all references of the document/appendix in any rule or policy approach*”. The stated reasons for the submission are:

Housing New Zealand opposes the inclusion of Acoustic Insulation document in the Proposed WDC. Housing New Zealand opposes any policy or rule which would require development proposals to comply with the standards in the Proposed WDP. These matters should be addressed in a building consent.

In any such case, if the standards are sought, then they should be written out as specific rules with the appropriate activity zone in the relevant section of the Proposed WDP. Nonetheless, the document should be treated as non-statutory documents to inform design and development and not be included in the Proposed WDC.

¹ Para. 307; Section 42 A Hearing Report – Hearing 2: Plan Structure and All of Plan; 9 September 2019.

- 4.4 I note that 'Appendix 1: Acoustic Insulation' is not a new provision (it exists within the Operative Waikato District Plan) and is cross-referenced within the Proposed Plan as a rule for the construction, addition to or alteration of a building for a noise-sensitive activity within the 'Horotiu Acoustic Area'² and the other applicable Areas³ within the Proposed Plan.
- 4.5 I agree with the section 42A report that 'Appendix 1: Acoustic Insulation' addresses an effect that is within the ambit of the RMA, and in my opinion, the Building Act cannot be relied upon to mitigate the potential reverse sensitivity effects on the Horotiu Industrial Park.
- 4.6 The only acoustic insulation requirements of the Building Act are contained within Clause G6 of the Building Code and relate to inter-tenancy sound insulation (i.e. between apartments), as opposed to relating to sound insulation from external noise sources.
- 4.7 Any requirements in respect of glazing are contained within Clause H1 of the Building Code, which relates to energy efficiency. Clause H1 of the Building Code does not require double glazing to be installed in every instance. The use of a standard 12mm double glazed unit is the most practical way to achieve compliance with the energy efficiency requirements of Clause H1 of the Building Code, however it is possible to make trade-offs to enable the limited use of single glazing.⁴
- 4.8 Therefore, the Building Act does not contain any standards that directly address acoustic insulation from external noise sources. As a result, it is appropriate to regulate this effect on the environment under the RMA through the retention of the minimum acoustic insulation standards within the Proposed Plan, as sought by POAL.

² Rule 16.3.10 (P1) of the Proposed Plan.

³ Waikato Regional Airport, Te Kowhai Airfield, Waikato Gun Club, Horotiu Acoustic Area, and Stated building setbacks from Huntly Power Station.

⁴ Form WCC 051 Compliance guidance documentation NZ Building Code Clause H1; Wellington City Council; September 2010.

- 4.9 A more comprehensive approach is required that is specific to the receiving noise environment of a particular property. It is my opinion that the RMA is the most appropriate mechanism to address the potential reverse sensitivity effects that have the potential to be generated by noise-sensitive activities within Horotiu.

Waikato Regional Policy Statement

- 4.10 Under the provisions of the Waikato Regional Policy Statement (“**RPS**”), the Horotiu Industrial Park is identified as a ‘strategic industrial node’, meaning that new industrial development within the Waikato region is directed to the Horotiu area (as well as several other identified locations at Rotokauri, Ruakura, Te Rapa North, Hamilton Airport, Huntly and Rotowaro, and Hautapu). As such, the Horotiu Industrial Park is of significance to the economic and social wellbeing of the Waikato region.
- 4.11 It is in this context that ‘Appendix 1: Acoustic Insulation’ needs to be considered as it applies to the ‘Horotiu Acoustic Area’. The “built environment” section of the RPS is of direct relevance to ‘Appendix 1: Acoustic Insulation’, objective 3.12 of which states:

3.12 Built environment

Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:

- ...
 g) minimising land use conflicts, including minimising potential for reverse sensitivity;
 ...

- 4.12 This objective is to be achieved by RPS policy 6.1, which states:

Policy 6.1 Planned and co-ordinated subdivision, use and development

Subdivision, use and development of the built environment, including transport, occurs in a planned and co-ordinated manner which:

- a) has regard to the principles in section 6A;
 b) recognises and addresses potential cumulative effects of subdivision, use and development;

- c) is based on sufficient information to allow assessment of the potential long-term effects of subdivision, use and development; and
- d) has regard to the existing built environment.

4.13 The “implementation methods” for RPS policy 6.1 in respect of reverse sensitivity are as follows:

6.1.2 Reverse sensitivity

Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, 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.

4.14 Related to this, the “development principles” that are contained within section 6A of the RPS advises that new development should “not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure”.

4.15 Having regard to the above objective, policy, and implementation method, the RPS provides clear direction that the Proposed Plan should “minimise” any potential reverse sensitivity effects that have the potential to occur on the Horotiu Industrial Park. In my opinion, the RPS requires the Proposed Plan to take affirmative action to ensure that the development of noise-sensitive activities within the ‘Horotiu Acoustic Area’ is undertaken in a manner that minimises conflicts with the Horotiu Industrial Park.

Proposed Waikato District Plan

4.16 The following objectives and policies of the Proposed Waikato District Plan are considered to be directly relevant to ‘Appendix 1: Acoustic Insulation’ as it applies to POAL’s inland freight hub activities at Horotiu:

4.1.7 Objective – Character of towns

- (a) Development in the Residential, Village, Industrial and Business zones is attractive, connected and reflects the existing character of towns.

...

4.1.16 Policy – Horotiu

- (a) Horotiu is developed to ensure:
 - (i) Future residential areas are connected to the existing village;
 - (ii) Future residential development does not impact on the existing local road network;
 - (iii) Reverse sensitivity effects from the strategic transport infrastructure networks are avoided or minimised;
 - (iv) The strategic industrial node is protected by having an acoustic overlay on neighbouring sensitive land uses;
 - (v) Future roads, parks, pedestrian and cycle networks are developed in accordance with the Horotiu section of the Ngaaruawaahia, Hopuhopu, Taupiri, Horotiu, Te Kowhai & Glen Massey Structure Plan.

...

4.7.1 Objective – Subdivision and Land Use Integration

- (a) Subdivision layout and design facilitates the land use outcomes sought for the residential, business, industrial, reserve and specific purpose zones.

...

4.7.11 Policy – Reverse sensitivity

- (a) Development and subdivision design minimises reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment; and
- (b) Avoid potential reverse sensitivity effects of locating new dwellings in the vicinity of an intensive farming, extraction industry or industrial activity.

4.17 Having regard to the above objectives and policies, the Proposed Plan provides clear direction that where “sensitive land uses” are to be enabled within the vicinity of existing industrial activities (such as the Horotiu Industrial Park), such activities are required to be located and designed in a manner that minimises the potential reverse sensitivity effects on nearby land uses.

Primary submission of Waikato District Health Board (923.104)

- 4.18 The section 42A report also accepts the submission of the Waikato District Health Board (923.104) and recommends that additional standards be imposed within 'Appendix 1: Acoustic Insulation' in relation to mechanical ventilation.
- 4.19 For completeness, I can confirm that POAL accepts the additional standards. While this matter is beyond my expertise, I note that they are not dissimilar to the mechanical ventilation requirements that are contained within Chapter D24 'Aircraft Noise Overlay' and Chapter D25 'City Centre Port Noise Overlay' of the Auckland Unitary Plan (Operative in part), which address reverse sensitivity effects.

5. SECTION 32 AND 32AA ANALYSIS

- 5.1 In terms of section 32 of the RMA, "noise-sensitive activities" (as defined by the Proposed Plan) are provided for as a permitted activity within the 'Country Living', 'Residential', and 'Business' zones, and can therefore be established "as of right" within Horotiu.
- 5.2 The relief that is sought by POAL (578.30) will retain this permitted activity status (and the efficiencies and cost savings associated with a permitted activity status), while at the same time provide certainty to industrial activities that are located within proximity to the Horotiu Industrial Park that the ongoing lawful operation and establishment of industrial activities within this regionally significant industrial node will not be constrained. Therefore, it is my opinion that the retention of 'Appendix 1: Acoustic Insulation' is the most appropriate way to achieve the sustainable management purpose of the RMA.
- 5.3 Without the retention of 'Appendix 1: Acoustic Insulation', activities that are sensitive to the effects of noise have the potential to establish in a manner that would restrict the rights of the lawful operation of the Horotiu Industrial Park in a "more than minor" way. Therefore, the only other method to address reverse sensitivity effects on the Horotiu

Industrial Park would be to require new buildings, and extensions to existing buildings within the Horotiu area to obtain resource consent as a discretionary activity.

- 5.4 While this would enable industrial activities within the Horotiu Industrial Park to seek acoustic insulation through submissions and appeals on resource consent applications, it would not represent an efficient and effective process for the parties involved.
- 5.5 The requirements of 'Appendix 1: Acoustic Insulation' are not intended to apply retrospectively to (or place any new constraints on) existing sensitive activities located within the overlay area, and will only apply when such activities are developed or redeveloped within the overlay area. Therefore, while the retention of 'Appendix 1: Acoustic Insulation' has the potential to impose additional costs on any new development within the overlay area, the benefits of the acoustic insulation controls to both residents and to existing industrial activities within the Horotiu Industrial Park, including the economic growth and employment that is anticipated to be provided by the Industrial Park, are considered to be significant.
- 5.6 The objective of POAL's submission is to recognise the significance of the Horotiu Industrial Park to the Waikato region, and to ensure that its ongoing operation and development will not be adversely affected by the intensification that will be enabled within Horotiu by the Proposed Plan. In this context, the retention of 'Appendix 1: Acoustic Insulation' is considered to be justified.
- 5.7 With reference to section 75(3) of the RMA, I consider that 'Appendix 1: Acoustic Insulation' will appropriately give effect to RPS objective 3.12 and RPS policy 6.1.
- 5.8 With reference to section 76(1) of the RMA, I consider that 'Appendix 1: Acoustic Insulation' will achieve Policy 4.7.11 of the Proposed Plan, which requires subdivision, building and development to be designed to minimise reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment.

Ports of Auckland Limited
Submission number 578
Further Submission number FS1087

Proposed Waikato District Plan
Primary evidence - Mark Arbuthnot

5.9 For all of the above reasons, I support the retention of 'Appendix 1: Acoustic Insulation' within the Proposed Plan.

Mark Nicholas Arbuthnot

23 September 2019