
UNDER THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF

Clause 6 of the RMA , submission to The Proposed Waikato District Plan
(Hearing 3 topics)

LEGAL SUBMISSIONS IN SUPPORT FOR PERRYS GROUP

Hearing 3 Event: 7 November 2019

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INTRODUCTION

1. I appear on behalf of Perry Group("Perry's"). Perry Group is identified as submitter #464.
2. These submissions cover the parts of the Waikato Proposed District Plan Perrys made submissions on and provide context to Perrys pre-circulated expert evidence from planner Aaron Collier.
3. Perry's interests in the Waikato Proposed District Plan (PDP)relate to substantial landholdings and businesses operating in the Waikato Region and in the Waikato District township of Horotiu specifically.
4. Perry's are landowners at Horotiu West and have a significant interest in the area identified as Residential zone at Horotiu Road Bridge, Washer Road, Kernot Road and State Highway Horotiu.
5. Perry's have submitted on a wide range of matters in the Proposed District Plan, ranging from the Residential Zone, the Rural Zone, Commercial and Aggregate Extraction Overlap provisions.
6. The history of Perry's is outlined in the submission made by Perrys. The wider Perry Group business is owned by a long standing Waikato family, and is one of the most successful, privately owned enterprises in the Waikato, and its various affiliated companies are involved in agricultural manufacturing, importing and distribution, food and export, natural resources, tourism, and property industry.
7. The commercial success of Perry's has enabled it to support the community through a charitable trust established by Brian Perry in 1976. Four decades later, the Trust continues to provide strong partnerships throughout the Waikato region through its philanthropic endeavours.
8. Perry's land at Horotiu is subject to the Hamilton to Auckland Corridor Plan which is an emerging plan developed by Central and Local Government and Iwi. The Plan is in the early stages of development but based on the information to date, the provision of housing and business land will play a key role in the revitalisation of communities along the Corridor (including Horotiu).

PERRY GROUP SUBMISSION

9. The general nature of the Perry submission is that Perry's supports the Proposed District Plan. In particular, Perry's support the proposed residential zoning of land at Horotiu and the Council's comprehensive approach to that zoning.
10. Perry's submission sought a number of amendments and changes to the zone provisions to better promote sustainable management under the RMA, to better achieve the purpose of Part 2 and other provisions of the Act, and to meet the reasonably foreseeable needs of future generations by making growth and further land for residential development at Horotiu and for the wider district.
11. Perry's view is that Horotiu is changing to a more urbanised village so needs efficient local and centre amenities to service its population such as shops and other services. Perry Group also considers that residential and industrial can live suitably together to create a 'live, work, play' lifestyle for Horotiu.
12. Perrys view is that the existing rural residential "countryside living" zoning is not an efficient use of land. The residential zoning at Horotiu is supported by links to Horotiu Village, the Horotiu Primary School, and opportunities to align with the Te Awa Lakes development and commercial and other employment land-uses on nearby land.
13. Perrys also lodged further submissions in relation to a range of matters. Several of the submission points and further submission points from Perrys relate to the merits of rezoning further land for residential purposes at Horotiu West, and these matters will be dealt with through later hearings.
14. Hearing 3 (Strategic Objectives) sets out the strategic directions and objectives for the district for the urban environment and does not deal with location-specific or activity-specific objectives and policies as these will be dealt with in later hearings.
15. In relation to Hearing 3, I address several proposed changes and amendments which are outlined in the Staff Section 42A report.

STATUTORY CONSIDERATIONS

17. The statutory tests for a district plan were recently summarised by the High Court in *Gack v Auckland Council* [2019] NZHC 1603 as follows:

"[29] the statutory considerations when considering the contents of the District Plan are set out in the relevant version of the RMA at ss 31, 32, and 72-77D. In summary, those requirements include whether the District Plan provisions:

Are designed to accord with and assist the Council to carry out its functions, to achieve the purposes of the RMA (ss 31, 72, 74.1)

Are in accordance with any regulations, including national and environmental standards (s 74(1))

Give effect to any national policy statement or the New Zealand Coastal Policy Statement (NZCPS) (s75(3))

Give effect to the RPS (s75(3)(c))

Are not inconsistent with an operative regional plan for any matter specified in s 30(1) (s 75(4)) and have regard to any proposed regional plan on any matter of regional significance (s 74(2)(a)(ii))

Have regard to any relevant management plans and strategies under other Acts and to any relevant entry in the New Zealand Heritage list to the extent their content has a bearing on the resource management issues of the region (s74(2)(b)(i))."

18. In relation to the consideration of the purpose of the RMA and the implications of the Supreme Court's decision of *King Salmon v Environmental Defence Society* the language used in development of policies of a District Plan should be drafted with clarity and precision, but it is submitted care must be taken policies are not so prescriptive that the effects based intent of the RMA is overridden and the Plan lacks flexibility. The policies of a District Plan need to give effect to the protective element of sustainable management, but also the Plan policies need to reflect the plan to be a living document that can respond to changing environmental challenges and community needs over the period of the Plan's life. If a District Plan policies are comprehensive and well drafted with Part 2 matters addressed, there should be no need to refer back to Part 2 of the RMA to interpret or apply these principles at the time of resource consents being applied for.¹

¹ unless there is invalidity, incompleteness or uncertainty in the Plan.

19. One of the priorities for Perry's in terms of the Plan's strategic objectives is ensuring that the plan appropriately recognises future updates to the settlement pattern review under Future Proof, and the Central Government initiative around the Corridor Plan.
20. The evidence of Mr Tollemarche on behalf of Havelock Village Limited and Mr Collier, Perry's planning witness, address this matter. Perry's submission on Policy 4.1.3 was to amend the policy to require that 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, and for preference to be given to urban growth areas 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.
21. As Mr Collier notes in para. 4.3 of his evidence, there was concern about how the Plan only refers to Future Proof 2017, which was primarily only an update to the Future Proof Strategy based on new census population data. Perry Group's submission is that the strategic policy needs to be brought in to ensure that the proposed plan allows responsiveness and appropriate effects-based flexibility.
22. Future Proof's own reports recognise that the settlement plan is based on one possible future. As noted by Mr Collier, the District Plan therefore needs to be able to respond to updated evidence or policy as appropriate.

REVERSE SENSITIVITY

23. Perry's sought amendments to Policy 4.7.11 to allow for reverse sensitivity effects to be mitigated, which is consistent with the approach taken under Section 5 of the Act in dealing with adverse effects.
24. Mr Tremaine's evidence (on behalf of Future Proof) provides a valuable overview of the importance and significance of the Future Proof settlement pattern. Mr Tremaine also highlights the future likely changes which may occur in the strategic context which recognise limitations of Future Proof's current 2017 review.
25. Mr Collier's evidence addresses matters raised by the Ports of Auckland in terms of its approach to reverse sensitivity. The approach that is being adopted by the Ports of Auckland is a reverse avoidance approach, rather than that provided for by the Act which enables mitigation.

26. It is noted that the Proposed District Plan recognises the District has a strong focus on primary production activities, but it is also focussed on growing its tourism and protection of amenity.
27. Heavy Industry users such as the POAL should not be enabled or supported through District Plan policies to create adverse environmental effects beyond its boundaries that will not only affect local communities but also limit attractiveness of the District for tourism.
28. 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).
29. 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.
30. Perry’s agrees with point 238 of the Section 42A report in that the wording of Policy 4.1.1.6(A)(ii) should not be read as if it were an avoid policy, as an avoid policy has the concept of there being no adverse effects.

OTHER MATTERS

31. Perry’s supported NZTA’s submission in relation to Section 1.12.1 (strategic directions) to include a new clause (g) acknowledging the Hamilton to Auckland Corridor Plan. Although it is recommended that this not be included (para 56 of the Section 42A report), Perry Group has no concerns with reference to the Corridor Plan being included, as plans often refer to documents other than those which it is required to give effect to under Section 75.
32. Perry’s sought an amendment to Policy 4.1.6 which encourages linkages and connections between commercial, industrial and residential activities. Para. 1.2 of the Section 42A report rejects the suggestion that this policy linkage is required on the basis that other

policies in Chapter 4 address linkages within urban areas. Perry Group has not yet seen these suggested amendments to policies in Chapter 4; however, Perry Group does not wish to fill the plan with repetitive policies, and it may be that this policy is better located in Chapter 4.

33. Perry's sought amendments to Policy 4.1.16 (Horotiu) as outlined in para. 243 of the Section 42A report which have been accepted along with amendments to Policy 4.76 relating to the co-ordination between servicing and development. The amended policy accepted in the Section 42A report does not restrict the provision of infrastructure solely to public agencies consistent with Perry's relief as sought.
34. Perrys largely support the Waikato Proposed District Plan review ("PDP") and do not seek to change the high level objectives and policies that the Council is promoting other than in regard to the stance taken on urban growth through rezoning, and protection of heavy industrial uses where this is at the cost of the surrounding community such as related amenity expectations, and where a prioritisation of heavy industrial uses will affect environmental enhancement or protection, or limit other economic opportunities such as tourism.
35. Perrys support the general policy direction seeking to protect the existing townships of the Waikato, by application of a regulated approach to growth outside the townships. Perrys also support Council's Plan Provisions which seek to retain and improve the efficiency and amenity of its residential and employment zoned urban areas (industrial and commercial).
36. However, Perrys submit the PDP needs to accommodate a range of uses outside of the defined townships, if areas suitable for such purpose and nearby such towns are available and if those uses can be determined as a sustainable management of resources consistent with Part 2 of the Act².

PLANNING EVIDENCE

13. The following expert witness will be called to provide evidence on behalf of Perrys submission on Waikato District Plan Hearing 3 topics, Mr. Aaron Collier, planner from Aurecon Group.
14. Mr. Collier generally support the staff hearings report prepared by Mr. Matheson.

² Resource Management Act 1991

15. However, Mr Collier confirms that his opinions in relation to the objectives and policies on reverse sensitivity are unaltered.
15. The reference in s74(2)(b)(i) of the Act for a Territorial Authority “to have regard to” “any *management plans or strategies prepared under other Acts*” when preparing a District Plan must be considered. There is the Council’s overriding functions under s31 and duties under s32. There are also the stricter requirements under s75(3) and (4) of what a District Plan must give effect to, which includes the Regional Policy Statement.
16. Non-RMA documents “dealing with resource management issues of the district” have been relied on by the Courts or had a bearing where such matters have not been addressed appropriately under RMA statutory documents (e.g. LGA strategy documents on funding issues). This is applicable where the urban growth issues and strategy originally covered in the HUG and Future Proof have now lagged changing growth trends and demands. This means the Plan should enable a strategic but flexible approach to urban growth (and density) in the Waikato District including reference to non- RMA statutory documents if relevant.
17. The Council’s Planners approach suggests the Panel should give the Future Proof and HUG strategy documents equal weight to the RPS in preparation of its District Plan. However, these two strategies are both non-RMA foundation documents (relied on for section 32 purposes) to address urban growth matters in the RPS. It is therefore submitted this approach is backward and circular. To adopt this weighting misapplies the purposes of s74, ignores the Plan hierarchy required under s75, and is inconsistent with the statutory processes set out under Schedule 1 of the RMA which Councils are required to follow.
18. It is submitted there are no legal grounds to support the approach taken to recommend rejection of Perrys submission.
 - a. In undertaking the functions under the RMA, the Council must act in accordance with Part Two of the Act. In terms of section 5 requirements, it sets out the purpose of the RMA which is to promote the sustainable management of the physical and natural resources. The existing land around Horotiu West, and the established community and infrastructure in this locality, are resources that already relate to an agglomeration of residential and supporting community activities in this locality before Northgate Industrial Park was zoned.

b. It is appropriate for the Council to seek to consolidate and improve the business activities provided for in this locality, and for the Council to consider the existing approved and future likely uses. The Council must assess what is the most appropriate zoning that meets the needs of the community and is the most appropriate fit for the land. This is not defined by fragmented land titles or ownership.

APPROPRIATE PLANNING STATUS

29. The RMA, in considering plan changes, should allocate a zoning and plan provisions as appropriate to applied activities, with the least stringent planning status possible whilst achieving RMA objectives of sustainable management.
30. As stated in Environmental Defence Society Incorporated v. Rodney District Council (A117/2009) paragraph 12 *“the better or most appropriate controls under section 32 of the Act should be the minimum necessary to achieve the outcomes of the Act and the proposed plan”*.

CONCLUSION

31. In undertaking the functions under the RMA, the Council must act in accordance with Part 2 of the Act. In terms of section 5 requirements, it sets out the purpose of the RMA which is to promote the sustainable management of the physical and natural resources. The existing land around Horotiu West, and the established community and infrastructure in this locality, are resources that already relate to urban uses and are part of mixed communities, along with primary production and industrial uses.
32. The District Plan should allow this mixed range of uses to continue with growth enabled, and with a focus on mitigation and containment of adverse environment effects within sites, so that reverse sensitivity conflict issues with residential properties, tourism and recreational uses in the District, and cultural values, are avoided.

Signed by Kate Barry-Piceno



As Legal Counsel on behalf of:

Perrys Group

Date: 25 October 2019