

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Proposed Waikato District Plan

**SUMMARY STATEMENT OF EVIDENCE OF MARK NICHOLAS
ARBUTHNOT FOR PORTS OF AUCKLAND LIMITED IN RELATION TO
HEARING 9 – BUSINESS AND BUSINESS TOWN CENTRE**

12 FEBRUARY 2020

1. RULE 17.3.1 RD1 – MULTI-UNIT DEVELOPMENT

1.1 POAL has sought to include reverse sensitivity and the protection of noise sensitive activities from the effects of noise generated by industrial activities as matters of discretion to Rule 17.1.13 RD1 (multi-unit development) to ensure that residential intensification does not adversely affect the ongoing development and operation of the strategic industrial node at Horotiu.

1.2 In response, the section 42A rebuttal evidence (at paragraphs 39 to 41) recommends the following additional matter of discretion:

Activity		Council's discretion shall be restricted to the following matters:
RD1	(a) A Multi-Unit development that meets all of the following conditions: (i) ...	(a) Council's discretion is limited to the following matters: (i) ... (x) <u>Design measures to minimise reverse sensitivity effects.</u>

1.3 For the reasons discussed within section 4 of my statement of evidence, I agree with the recommended change.

2. RULE 17.3.5 P1 (HOROTIU ACOUSTIC AREA)

2.1 POAL has also sought the imposition of “no complaints” covenants in favour of POAL in respect of activities that are sensitive to noise within the Horotiu Acoustic Area.

2.2 The purpose of the “no complaints” covenant is limited to the effects that could be lawfully generated by POAL at the time the agreement is entered into. It does not require parties forego any right to participate in any resource consent applications or plan changes, and as such the future rights of individuals under the RMA will remain unaffected.

2.3 The proposed rule is structured such that an applicant who is subject to the Horotiu Acoustic Area provisions has the choice to not provide a “no complaints” covenant, in which case a restricted discretionary resource consent is required, with focused matters of discretion and assessment criteria and the potential for notification.

2.4 The section 42A rebuttal evidence (at paragraphs 77 to 81) recommends that the relief of POAL be rejected for the following reasons:

- (a) The proposed rule requires an affected party to enter into a covenant with Ports of Auckland Limited, but there is no requirement that Ports of Auckland Limited must agree to the covenant (in that situation, the activity would fall be a restricted discretionary activity).
- (b) The covenant is with respect to “...*the effects generated by the lawful operation of the Waikato Freight Hub*”. There is no definition or limit as to what those effects are, which introduces even further uncertainty to the proposed permitted activity rule.

2.5 In response to the issues that have been raised, Ports of Auckland Limited are the proponents of the proposed rule and it is therefore in their interest to enter into a “no complaints” covenant with other parties. Notwithstanding, the rule enables an alternative (restricted discretionary) consenting route to be undertaken where a covenant is not proposed to be entered into.

2.6 I also note that there are other District Plan examples of standards that require “no complaints” covenants to be entered into to achieve a certain activity status. These standards operate in a similar manner to that which is proposed by POAL. For example:

- (a) Rule 14.8.3.1.3 of the Christchurch City Plan, which requires residential units to be subject to a “no complaints” covenant in favour of the Lyttleton Port Company to achieve a restricted discretionary activity status and was subject to an Independent Hearings Panel process (refer to **Attachment 1**).
- (b) Rule D25.6.1(6) of the Auckland Unitary Plan, which requires “activities sensitive to noise” within the City Centre Port Noise Overlay to be subject to a “no complaints” covenant in favour of Ports of Auckland Limited to achieve a permitted activity status and was subject to an Independent Hearings Panel process (refer to **Attachment 2**).

- (c) Rule I214.4.1(A2) of the Auckland Unitary Plan, which requires dwellings within Sub-precinct B of the Wynyard Precinct to be subject to a “no complaints” covenant, or otherwise be subject to a discretionary activity status to enable an assessment of risk sensitivity to be undertaken. This was first confirmed by way of a consent order issued by the Environment Court in respect of Plan Change 4 to the Auckland Council Central Area Plan and was subsequently subject to an Independent Hearings Panel process (refer to **Attachment 3**).
- (d) Rule I201.6.1(1) of the Auckland Unitary Plan, which requires dwellings and visitor accommodation within the Britomart Precinct to be subject to a “no complaints” covenant in favour of Ports of Auckland Limited to achieve a permitted activity status. I understand that this was first established to resolve submissions on Plan Modification 30 to the Auckland Council Central Area Plan and note that the rule was subsequently subject to an Independent Hearings Panel process (refer to **Attachment 4**).
- 2.7 I disagree that limiting the “no complaints” covenant to the effects generated by the lawful operation of the Waikato Freight Hub introduces uncertainty. The effects that can be lawfully generated by the operation of the Waikato Freight Hub can be readily determined through the resource consent that is held by POAL for the activity and the permitted standards of the Proposed Plan.
- 2.8 I also consider such a limitation to be necessary to ensure that parties do not forego any rights to complain in respect of unlawful activities or to participate in future resource consent applications or plan changes.
- 2.9 Having regard to the above matters, and for the reasons set out in my statement of evidence, I remain of the opinion that the proposed “no complaints” covenant rule for the Horotiu Acoustic Area is a valid planning tool that is available to Council, and will achieve the sustainable management purpose of the RMA.

3. RULE 17.1.3 RD1 – MULTI-UNIT DEVELOPMENT

- 3.1 For completeness, I note that the section 42A rebuttal evidence (at paragraphs 82 to 86) recommends that the Panel considers deleting the standards that apply to multi-unit development (Rule 17.1.3 RD1). This matter was not addressed in the section 42A report and there do not appear to be any submissions seeking this outcome.
- 3.2 The recommendation of the section 42A rebuttal evidence would have the effect of removing the requirement to comply with the Land Use Effects rules and Land Use Building rules for the Business Zone.
- 3.3 I disagree with this recommendation, not least because it will result in the Horotiu Acoustic Area rules having no effect. In my opinion, the recommended change does not appropriately give effect to the WRPS and does not implement the Objectives and Policies of the Proposed Plan in respect of reverse sensitivity and the economic growth of the district's industry.
- 3.4 I consider the section 32AA analysis undertaken by the section 42A report rebuttal evidence to be inadequate, particularly in respect of:
- (a) whether the provisions are the most appropriate way to achieve the objectives of the Proposed Plan, including those relating to reverse sensitivity and the economic growth of the district's industry; and
 - (b) the benefits and costs of the environmental, economic, social and cultural effects that are anticipated, including the opportunities for:
 - (i) economic growth that is anticipated to be provided or reduced;
 - (ii) employment that is anticipated to be provided or reduced.

Mark Nicholas Arbuthnot

12 February 2020

Attachment 1

Chapter 14 Residential » 14.8 Rules - Residential Banks Peninsula Zone » 14.8.3 Area-specific rules - Residential Banks Peninsula Zone » 14.8.3.1 Area-specific activities » 14.8.3.1.3 Area-specific restricted discretionary activities

14.8.3.1.3 Area-specific restricted discretionary activities

- a. The activities listed below are restricted discretionary activities.
- b. Discretion to grant or decline consent and impose conditions is restricted to the matters of discretion set out in Rule 14.15.5, or as specified, as set out in the following table:

	Activity/area	The Council's discretion shall be limited to the following matters
RD1	<ol style="list-style-type: none"> a. Extension to an existing habitable space or the erection of a new habitable space associated with an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space exceeds 40m² within a 10 year continuous period with a no complaints covenant, provided that the works meet Rule 14.8.3.2.1. b. Any application arising from this rule shall not be publicly notified and shall be limited notified only to Lyttelton Port Company (absent its written approval). 	<ol style="list-style-type: none"> a. Lyttelton Port Influences Overlay - Rule 14.15.14
RD2	<ol style="list-style-type: none"> a. Replacement residential unit for an existing residential unit in the Lyttelton Port Influences Overlay where the combined gross floor area of the habitable space exceeds the combined gross floor area of the habitable space contained in the previous residential unit by more than 40m² within a 10 year continuous period with a no complaints covenant, provided that the works meet Rule 14.8.3.2.1. b. Any application arising from this rule shall not be publicly notified and shall be limited notified only to Lyttelton Port Company (absent its written approval). 	
RD3	<ol style="list-style-type: none"> a. Within the Lyttelton Character Area Overlay; <ol style="list-style-type: none"> i. external alterations or additions to, or demolition of existing buildings on a site, except for the demolition of accessory buildings; and/or ii. the erection of a building and accessory buildings, except for new buildings within the Lyttelton Port Influences Overlay Area; and/or iii. the relocation of a building onto the site. 	<ol style="list-style-type: none"> a. Character Area Overlay – Rule 14.15.23
RD4	<ol style="list-style-type: none"> a. Within the Akaroa Character Area Overlay; <ol style="list-style-type: none"> i. external alterations or additions to, or demolition of existing buildings on a site, except for the demolition of accessory buildings; and/or ii. the erection of a building and accessory buildings; and/or iii. the relocation of a building onto the site. 	<ol style="list-style-type: none"> a. Character Area Overlay – Rule 14.15.23
RD5	Residential units in the Lyttelton Character Area Overlay that do not meet Rule 14.8.3.2.2 – Site density	<ol style="list-style-type: none"> a. Site density and site coverage - Rule 14.15.2
RD6	Buildings in the Lyttelton Character Area Overlay that do not meet Rule 14.8.3.2.3 – Site coverage	
RD7	Activities in the Akaroa Character Area Overlay that do not meet Rule 14.8.3.2.6 – Landscaping	<ol style="list-style-type: none"> a. Street scene – road boundary building setback, fencing and planting – Rule 14.15.17

No complaints covenant

in relation to the Lyttelton Port Influences Overlay Area, means a covenant which is:

- a. registered against the title/s of the land upon which the proposal is situated; and
- b. entered into by the resource consent applicant, in favour of the Lyttelton Port Company Limited, to the effect that no owner or occupier or successor in title of the covenanted land shall object to, complain about, bring or contribute to any proceedings under any statute or otherwise oppose any relevant adverse environmental effects (for example noise, dust, traffic, vibration, glare or odour) resulting from any lawfully established port activities.

Ports of Auckland Limited
Submission number 578
Further Submission number FS1087

Proposed Waikato District Plan
Summary statement - Mark Arbuthnot

Attachment 2

D25.6. Standards

The following standards apply to activities sensitive to noise within the City Centre Port Noise Overlay.

D25.6.1. Noise

- (1) Activities sensitive to noise must be designed and/or insulated so that the internal noise levels (using the corrections of Table D25.6.1.2 to the noise at the façade of the affected rooms) do not exceed internal noise levels specified in Table D25.6.1.1.

Table D25.6.1.1 Maximum internal noise level

Land use/rooms	Maximum internal noise level
Bedrooms and sleeping areas	35dB L_{Aeq} at all times
Habitable rooms (except bedrooms and sleeping areas) and classrooms in an educational facility	40dB L_{Aeq} at all times

- (2) These levels must be met assuming that the noise on all façades of the building arising from port noise are those shown for that location on the City Centre Port Noise Overlay and the spectrum corrections of Table D25.6.1.2 apply to the overlay noise level.

Table D25.6.1.2 Octave band centre frequency

	Octave band centre frequency dB						
	63	125	250	500	1000	2000	4000
Incident sound pressure level (dB)	+4	+1	-1	-4	-6	-7	-8

- (3) The noise insulation requirements set out in D25.6.1(2) above apply in addition to any other noise insulation requirements in other rules.
- (4) Where windows or doors have to be shut to meet the levels in Table D25.6.1.1, those rooms must, as a minimum:
- be constructed to ensure compliance with the noise limits in Table D25.6.1.1; and
 - for residential dwellings be mechanically ventilated and/or cooled to achieve either:
 - an internal temperature no greater than 25 degrees celsius based on external design conditions of dry bulb 25.1 degrees celsius and wet bulb 20.1 degrees celsius; or

Note 1

Mechanical cooling must be provided for all habitable rooms (excluding bedrooms) provided that at least one mechanical cooling system must service every level of a dwelling that contains a habitable room (including bedrooms).

 - a high volume of outdoor air supply to all habitable rooms with an outdoor air supply rate of no less than:
 - six air changes per hour (ACH) for rooms with less than 30 per cent of the façade area glazed; or

- 15 air changes per hour (ACH) for rooms with greater than 30 per cent of the façade area glazed; or
 - three air changes per hour for rooms with facades only facing south (between 120 degrees and 240 degrees) or where the glazing in the façade is not subject to any direct sunlight.
- (c) for all other noise sensitive spaces provide mechanical cooling to achieve an internal temperature no greater than 25 degrees celsius based on external design conditions of dry bulb 25.1 degrees celsius and wet bulb 20.1 degrees celsius; and
- (d) provide relief for equivalent volumes of spill air; and
- (e) be individually controllable across the range of airflows and temperatures by the building occupants in the case of each system; and
- (f) have a mechanical ventilation and/or a cooling system that generates a noise level no greater than L_{Aeq} 35 dB when measured 1m from the diffuser at the minimum air flows required to achieve the design temperatures and air flows in Standard D25.6.1(4)(b)(i) and (ii) above.
- (5) Noise levels must be measured in accordance with the New Zealand Standard on Acoustics - Measurement of environmental sound (NZS 6801: 2008) and assessed in accordance with the New Zealand Standard on Acoustics - environmental noise (NZS 6802: 2008).

- (6) Activities sensitive to noise must be subject to a restrictive no-complaint covenant in favour of Ports of Auckland Limited.

Purpose: to avoid the potential for reverse sensitivity effects on the Port of Auckland.

Note 1

For the purposes of this rule a 'restrictive non-complaint covenant' is defined as a restrictive covenant registered on the Title to the property or a binding agreement to covenant, in favour of Ports of Auckland Limited, by the landowner (and binding any successors in title) not to complain as to effects generated by the lawful operation of the port. The restrictive no-complaint covenant is limited to the effects that could be lawfully generated by the port activities at the time the agreement to covenant is entered into. This does not require the covenantor to forego any right to lodge submissions in respect of resource consent applications or plan changes in relation to port activities (although an individual restrictive non-complaint covenant may do so). Details of the existence of covenant documents may be obtained from Ports of Auckland Limited, its solicitors, or in the case of registered covenants by searching the Title to the relevant property.

Ports of Auckland Limited
Submission number 578
Further Submission number FS1087

Proposed Waikato District Plan
Summary statement - Mark Arbuthnot

Attachment 3

Table I214.4.1. Activity table – Land use

Activity		Sub-precinct A and Sub-precinct B	Sub-precinct C	Sub-precinct D	Sub-precinct E and Sub-precinct G	Sub-precinct F	Coastal marine area [rcp]
(A1)	Dwellings or visitor accommodation #	P	NC	RD*	RD*	NC*	NA
(A2)	Dwellings in the areas identified on Precinct plan 7, as being subject to a no-complaint covenant where no such covenant has been entered into #	Sub-precinct A NA Sub-precinct B D	D	D	D	NC* D	NA
(A3)	Workers accommodation #	P	Areas 1 and 3 - RD* South of Area 3 - P	RD*	RD*	RD*	Areas 4 - 6 RD* Outside of Areas 4 - 6 P
(A4)	Offices accessory to marine and port activities and marine retail located on another site within Sub-precinct C or on land fronting Beaumont Street identified on Precinct plan 7, as 'areas where ground level activity is limited to marine and port industry and marine retail only' #	NA	C	C	C	NA	NA
(A5)	Artworks	P	P	P	P	P	P
(A6)	Community facilities #	P	NC	RD*	RD*	NC*	NC* D
(A7)	Education facilities #	P	NC	RD*	RD*	NC*	NC* D
(A8)	Entertainment facilities, except within lawfully established buildings on Halsey Street extension wharf #	P	NC	RD*	RD*	NC*	NC* D
(A9)	Entertainment facilities, food and beverage up to 100m2 gross floor area and ancillary office activities on the Halsey Street extension wharf within lawfully established buildings	NA	NA	NA	NA	NA	P
(A10)	An event and associated buildings and structures that: i. attracts no more than 1000 people at any one time; and ii. occupies a venue for a maximum cumulative duration of not more than 5 days inclusive of the time required for the establishment and	NA	Areas 1 and 3 - P South of Area 3 - NA	P	P	NC	Area 5 - NC Area 6 - P Area 4 - RD

Attachment 4

I201.6.1. Dwellings and visitor accommodation

Purpose: to avoid the potential for reverse sensitivity effects on the Port of Auckland.

- (1) Dwellings and visitor accommodation must be subject to a restrictive non-complaint covenant* in favour of the Ports of Auckland.
- (2) For the purposes of this rule a 'restrictive non-complaint covenant' is defined as a restrictive covenant registered on the Title to the property or a binding agreement to covenant, in favour of Ports of Auckland Limited, by the landowner (and binding any successors in title) not to complain as to effects generated by the lawful operation of the port. The restrictive non-complaint covenant is limited to the effects that could be lawfully generated by the port activities at the time the agreement to covenant is entered into. This does not require the covenantor to forego any right to lodge submissions in respect of resource consent applications or plan changes in relation to port activities (although an individual restrictive non-complaint covenant may do so). Details of the existence of covenant documents may be obtained from Ports of Auckland Limited, its solicitors, or in the case of registered covenants by searching the Title to the relevant property.

I201.6.2. Building height

Purpose: manage the height of buildings to achieve Policies I201.3(1), (2), (3), (7), (8), (9) and (14) of the Britomart Precinct.

- (1) Buildings must not exceed the heights specified on Britomart Precinct: Precinct plan 1
- (2) The Britomart station ventilation stacks may exceed the maximum building height specified on Britomart Precinct: Precinct plan 1 provided that they do not exceed 10m above the roof to the storey immediately below.
- (3) A single lift machine room or over-run within the 50m height area shown on Britomart Precinct: Precinct plan 1 may exceed the maximum building height provided that:
 - (a) the height of the projection does not exceed 5.4m above the maximum permitted height; and
 - (b) the area of the projection does not exceed a floor area equal to 10 per cent of the area of the roof to the storey immediately below.
- (4) Seafarers' Height Controls as specified on Britomart Precinct: Precinct plan 1
A building on the Seafarers site is composed of two elements, each with the maximum permitted height as follows:
 - (a) a larger element located at the eastern end of the site with an east-west footprint dimension two thirds of the east-west dimension of the site area (or up to a maximum of five metres either side of this dimension) and no taller than 55.24m above mean street level (AMSL); and