

IN THE MATTER OF

THE RESOURCE MANAGEMENT ACT

AND

IN THE MATTER OF

**PROPOSED PRIVATE PLAN CHANGE 2
TO THE HAMILTON CITY OPERATIVE
DISTRICT PLAN: TE AWA LAKES
PRIVATE PLAN CHANGE**

**STATEMENT OF REBUTTAL EVIDENCE OF LUKE O'DWYER –
STRATEGIC LAND USE PLANNING**

Dated 4 December 2019

INTRODUCTION

1. My name is Luke O'Dwyer.
2. I have the qualifications and relevant experience as set out in my primary evidence dated 14 October 2019.

EXPERT CODE OF CONDUCT

3. I reconfirm that I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Practice Note 2014, and I agree to comply with it.
4. My qualifications as an expert are set out in my primary evidence statement. I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed in this rebuttal evidence.

PURPOSE AND SCOPE OF EVIDENCE

5. This statement of rebuttal evidence addresses the following matters:
 - How PPC 2 gives effect to the Waikato Regional Policy Statement (WRPS);
 - Responds to certain aspects of the evidence presented by Mr Chrisp on behalf of Fonterra in both his primary evidence statement and in his rebuttal evidence.
6. My rebuttal evidence is also informed by the primary evidence of Mr Tremaine on behalf of the Future Proof Partnership, the primary and rebuttal evidence of Mr Arbuthnot for Ports of Auckland Limited (POAL), the primary and rebuttal evidence of Mr Olliver on behalf of the Perry Group, and the rebuttal evidence of Ms Heppelthwaite on behalf of the Waikato Regional Council (WRC) and the New Zealand Transport Agency (NZTA).

PPC2 AND THE WAIKATO REGIONAL POLICY STATEMENT

7. The evidence of Mr Chrisp and the legal submissions on behalf of Fonterra note that my primary evidence indicates that PPC2 is generally consistent with the WRPS.
8. For the avoidance of doubt, Appendix 1 (attached to this this statement) outlines my assessment of how PPC2 addresses the relevant provisions contained in the WRPS and gives effect to it.

RESPONSE TO MARK CHRISP PRIMARY EVIDENCE

9. I am principally concerned with addressing the following matters in Mr Chrisp's primary evidence:
 - The intention of the strategic agreement with respect to the HT2 area
 - Reverse sensitivity
 - Consistency with the relevant provisions of the Hamilton City Operative District Plan
 - Industrial supply and demand
 - Industrial feasibility
 - Comments on establishing new industrial land uses

The 2005 Strategic Agreement on Future Urban Boundaries

10. At paragraph 4.1(d), Mr Chrisp outlines how the future growth area of HT2 was to be transferred to HCC to be developed for industrial purposes. I agree that the HT2 area was identified for the urban growth in Hamilton in the said agreement.
11. However, Mr Chrisp has not correctly identified the entire purpose of the HT2 area as contained in the 2005 Strategic Agreement. In my primary evidence statement, I attached a copy of this agreement as Appendix 1 of my evidence.
12. While the HT2 area was intended for industrial uses, it was not set aside exclusively for that purpose, as indicated in section 6C of the agreement included below:

It is noted that the principle intention of the Growth Cell HT2 is to provide for the continued expansion of the Te Rapa Industrial area, and its eventual integration with the proposed Horotiu Industrial cell within Waikato District. It is however acknowledged that not all land in area HT2 may be suitable for industrial usage. This includes the extension of buffers to protect the Waikato River (and its tributaries) where it adjoins this area.

Reverse sensitivity and the WRPS

13. The planning experts for PPC 2 diverge in relation to how they regard reverse sensitivity, including potential reverse sensitivity.
14. The first category includes planning experts representing the applicant, POAL, NZTA, WRC, HCC (as 42a report writer) and Future Proof.
15. These experts find that that the WRPS provides for flexibility and change within industrial nodes, so long as that change is grounded in evidence and that any affects resulting from the proposed change can satisfy other relevant WRPS provisions.
16. These experts find that PPC 2 satisfies the relevant provisions contained in the WRPS and thus gives effect to it.
17. Mr Olliver and others also broadly agree on the way in which the WRPS addresses reverse sensitivity – that is, the potential for a reverse sensitivity effect is dependent on there being evidence demonstrating that potential effect. Further, potential effects are related to the concept of land use compatibility on sites adjacent to existing industrial land uses.
18. The second category is represented by Mr Chrisp of Fonterra.
19. Mr Chrisp finds that the provisions in the WRPS preclude any change in land use within the industrial nodes because the of the potential for reverse sensitivity effects, even in the absence of technical evidence (such as noise, odour and lighting assessments) demonstrating the potential for those effects to arise.
20. Further, Mr Chrisp forms the view that is enough to determine that PPC does not give effect to WRPS and thus PPC 2 should be declined.

21. Mr Chrisp notes in paragraphs 5.13, 5.14 and 5.18 that PPC2 does not give effect to the WRPS on the basis that that it will give rise to potential reverse sensitivity effects, and not be able to meet the development principles contained in section 6A of the WRPS.
22. I do not agree with Mr Chrisp on this matter. The WRPS is clear in that relevant policies relating to reverse sensitivity requires new development to avoid or minimise the potential for reverse sensitivity, as outlined in my analysis in Appendix 1.
23. Further, I concur with the supplementary evidence of Ms Heppelthwaite dated 2 December who finds that in relation to reverse sensitivity the policy framework does not require absolute avoidance indicating some (minor) effects can occur (paragraph 3.3).
24. The reality is the cities everywhere have interfaces between zones – this is certainly the case in Hamilton where there are many non-industrial zones and land uses directly adjoining industrial zones. The mere location of different land use zones does not automatically result in land use conflict or reverse sensitivity effects.
25. In any event, PPC2 does minimise the potential for reverse sensitivity effects through a combination of site separation, site planning, and bespoke planning provisions informed by detailed technical evidence which indicate the potential for reverse sensitivity effects are minimised or are avoided.
26. Mr Chrisp's position is one founded on the concept that potential reverse sensitivity effects can arise solely from the creation of new urban development, irrespective of the considerations and analysis undertaken by the applicant and peer reviewed by HCC.
27. I am of the opinion that evidence is necessary to understand if there is a potential for a reverse sensitivity effect.
28. For a potential reverse sensitivity effect to be determined there needs to be some factual basis to rely on, such as the evidence prepared by the applicant. Only then can it be possible to refer to the relevant WRPS

provisions to assess if there are any land use implications or WRPS compliance matters to address.

Consistency with the HCC Operative Plan

29. In paragraphs 5.28 through to 5.38 Mr Chrisp outlines how PPC2 is not consistent with the relevant provisions of the HCC Operative District Plan, particularly in relation to Chapter 12, Te Rapa North Industrial Zone.
30. This is not surprising given that PPC2 seeks to change the zoning across the Te Awa Lakes site from a combination of Te Rapa North Industrial and deferred industrial zoning.
31. As such, the new zones that are sought to be introduced by PPC2 are necessarily inconsistent with the existing zone. A change in zone is necessary to enable the development envisaged in PPC2 and consequently the relevance of the Te Rapa North Industrial Zone is limited.

Industrial land supply

32. A paragraph 7.2 Mr Chrisp conflates the concepts of market availability with the obligations local authorities have under the National Policy Statement-Urban Development Capacity (NPS-UDC).
33. While the NPS-UDC contains a range of policies, the first policy (PA1) requires local authorities to ensure that at any one time there is sufficient housing and business land development capacity. Development capacity is defined in the NPS-UDC as:

Development capacity means in relation to housing and business land, the capacity of land intended for urban development based on: a) the zoning, objectives, policies, rules and overlays that apply to the land, in the relevant proposed and operative regional policy statements, regional plans and district plans; and b) the provision of adequate development infrastructure to support the development of the land.

34. Given the above, the core responsibility for HCC is to ensure that there is sufficient land available which is serviced, or has the ability to serviced.

35. How individual land owners then make land available for sale is a separate concept. HCC cannot compel land owners to bring land that is zoned, serviced, or has the ability to be serviced, to the market.

Industrial feasibility and timing of development

36. Mr Chrisp at paragraphs 8.6 through to 8.12 outlines his analysis of the feasibility of industrial land being developed at the PPC 2 site. He also relies on the evidence of Mr Martin to indicate that industrial development may in fact be feasible.
37. Mr Chrisp refers to existing HCC ODP plan provisions that indicate land in Te Rapa North is not programmed for development until at least 2041, although he notes those dates were formulated based on infrastructure availability and the sequencing of other industrial development in Hamilton.
38. While this is not disputed, neither is it relevant in the context of the land at the Te Awa Lakes site being feasible for industrial development – they are simply different matters and the evidence in relation to industrial feasibility suggests the Te Awa Lakes site is unlikely to be able to fulfil its zoned purpose.
39. Both Mr Udale for the Perry Group and Mr Anderson for HCC have comprehensively addressed the analysis on the feasibility of industrial development prepared for Fonterra and dispute the approach taken by Mr Martin with respect to industrial land feasibility.
40. I rely on the evidence of Mr Anderson who finds that Mr Martin's analysis would not result in an acceptable development margin, and that his findings of the land being not feasible for industrial development for up to 15 years (and potentially longer) remain.

Could industrial development locate in areas where there are sensitive receivers?

41. Mr Chrisp at paragraph 2.15 puts forward a hypothetical example of the difficulties Fonterra would confront if it were to try and establish its existing factory within 325m of an existing residential area in Hamilton. He states

that such an approach would be contrary to sound resource management practice.

42. I dispute this analysis for the following reasons:
- Sound resource management practice relies upon on objective, careful analysis of the facts in relation to a specific proposal;
 - Comparing PPC2 to a hypothetical situation is unhelpful for decision makers evaluating PPC2. In this instance, the characteristics of PPC2 (and its effects), its location, and how it relates to its surroundings are known and have been thoroughly assessed – in Mr Chrisp’s example, they are not known and the scenario cannot be meaningful compared to PPC2;
 - There is an actual recent case of a large scale industrial / infrastructure project establishing within proximity to an existing sensitive receiving environment in Hamilton.
43. This last point relates to the Ruakura Inland Port project. This was a project declared to be Nationally Significant and was considered by a specially convened Board of Inquiry in 2014.
44. The Ruakura project was the subject of very detailed analysis including lighting, glare, noise and visual assessments that carefully examined the effects of the proposal on a number of residential properties.
- During that process the Board assessed the movement of trains servicing the Port within 200m of the nearest sensitive receivers of an established rural residential enclave. Additionally, parts of the Port proposal would result in it being located within close proximity to nationally significant electricity transmission infrastructure subject to the National Policy Statement on Electricity Transmission.
45. The Board did not just simply rule out the possibility of land use change in a manner being promoted by Mr Chrisp. It took a different approach and carefully analysed the evidence in relation to the proposal and found that it could be approved as it would address the WRPS (then proposed) based on the facts presented to it and on the plan provisions that would enable it to co-exist with other nearby residential properties.

RESPONSE MARK CHRISP ON SUPPLEMENTARY EVIDENCE

46. The supplementary evidence of Mr Chrisp dated 27 November 2019 raised my assessment of the residential components of the Te Awa Lakes proposal when the Perry Group sought Special Housing Area (SHA) status in 2017/2018.

SHA Assessment of June 2018

47. At paragraph 2.5 of Mr Chrisp's rebuttal evidence he refers to an assessment I undertook of the residential components of the Te Awa Lakes project when the Perry Group sought SHA status for the site.

48. Mr Chrisp quotes from my report to Hamilton City Council dated 26 June 2018. That report concluded that the proposed SHA was inconsistent with Council's current strategic land use planning.

49. The SHA assessment was undertaken in the context of the Council's SHA policy, and the enabling provisions of the Housing Accords and Special Housing Areas Act (HAASHA) 2013.

50. That is a very different assessment and process when compared to the type of assessment required of a plan change under the Resource Management Act 1991.

51. That assessment was based on the following factors:

- The SHA was for residential development only and not the adventure park and tourism components
- It was based on the material available to me at the time, which is different to the information available to nearly 18 months later.
- The effect of the SHA was that it would not result in a change in zone. The effect of the SHA status would not result in the need for a plan change. Rather, it would introduce another status, enabled under separate legislation, that would in effect result in the ability for the Perry Group to apply for qualifying resource consent applications for residential land that would need to be assessed under HAASHA on land that would retain its industrial land use zoning.

- My report was not the subject of a detailed analysis of the WRPS nor did it involve expert witness caucusing.

Dated this 4 December 2019

Luke O'Dwyer

RPS Provision	PPC2 consistency with the relevant RPS provisions
<p>the Node provides the opportunity to enable the development of a cluster of dairy related industrial activities of at least regional significance. The land allocations for the post 2021 and 2041 period provide the opportunity to reinforce the significance and benefits of these activities by providing additional land to enable their expansion around the Te Rapa Dairy Factory. Depending upon the rate of uptake, it is possible that the release of the later stages of land might need to occur earlier</p>	<p>Not relevant</p>
<p>d) other industrial development should only occur within the Urban Limits indicated on Map 6.2 (section 6C), unless there is a need for the industry to locate in the rural area in close proximity to the primary product source. Industrial development in urban areas other than the strategic industrial nodes in Table 6-2 (section 6D) shall be provided for as appropriate in district plans;</p> <p>e) new industrial development outside the strategic industrial nodes or outside the allocation limits set out in Table 6-2 shall not be of a scale or location where the development undermines the role of any strategic industrial node as set out in Table 6-2;</p> <p>f) new industrial development outside the strategic industrial nodes must avoid, remedy or mitigate adverse effects on the arterial function of the road network, and on other infrastructure;</p>	<p>I concur with the findings of Mr Eccles in his WRPS analysis of how PPC 2 addresses explanation for table 6D as outlined below:</p>
<p>g) where alternative industrial and residential land release patterns are promoted through district plan and structure plan processes, justification shall be provided to demonstrate consistency with the principles of the Future Proof land use pattern; and</p> <p>Implementation methods 6.14.3 Criteria for alternative land release</p> <p>District plans and structure plans can only consider an alternative residential or industrial land release, or an alternative timing of that land release, than that indicated in Tables 6-1 and 6-2 in section 6D provided that:</p> <p>a) to do so will maintain or enhance the safe and efficient function of existing or planned infrastructure when compared to the release provided for within Tables 6-1 and 6-2;</p>	<p>I concur with the analysis of Mr Eccles where he finds the alternative land release put forward by PPC 2 will maintain the safe and efficient function of existing or planned infrastructure when compared to the release provided for in Tables 6-1 and 6-2. The performance of the network has been confirmed by a number of relevant traffic experts and specific additional planning provisions have been included to ensure the ongoing efficient functioning of the transport network resulting from development enabled by PPC 2.</p>
<p>b) the total allocation identified in Table 6-2 for any one strategic industrial node should generally not be exceeded or an alternative timing of industrial land release allowed, unless justified through robust and comprehensive evidence (including but not limited to,</p>	<p>Total industrial land allocation in the Te Rapa North strategic node will not be exceeded. Robust and comprehensive evidence has been provided to support the proposed change in land use.</p>

RPS Provision planning, economic and infrastructural/servicing evidence);	PPC2 consistency with the relevant RPS provisions
<p>c) enough zoned land within the greenfield area or industrial node is available or could be made available in a timely and affordable manner; and making the land available will maintain the benefits of regionally significant committed infrastructure investments made to support other greenfield areas or industrial nodes; and</p> <p>d) the effects of the change are consistent with the development principles set out in Section 6A.</p>	<p>Sufficiently zoned greenfield and industrial land will remain available because of PPC 2.</p>
<p>Explanation of Method 6.14.3</p> <p>Method 6.14.1 recognises that although the Strategy has determined a settlement pattern for the Future Proof area, the detail of urban limit lines and future commercial and industrial development locations down to property level need to be determined through district plan processes. The method also recognises that district plan provisions, such as rules, need to ensure development is managed in accordance with Policy 6.14.</p>	<p>Addressed above.</p>
<p>Method 6.14.2 recognises that to achieve the Future Proof land use pattern, enough land needs to be zoned for development and that appropriate provisions need to be made for servicing this development.</p> <p>Method 6.14.3 provides for some flexibility in the staged release of residential and industrial land while ensuring that the relevant growth management principles established in the Future Proof growth strategy are not compromised. The method provides an opportunity for district plans and structure plans to refine Table 6-2. The importance of Table 6-2 to the efficient integration of land use and infrastructure in the Future Proof sub-region is such that alternative land release is only expected to occur where comprehensive and robust evidence has been provided to satisfy the criteria in Method 6.14.3.</p>	<p>PPC2 is consistent with this explanation.</p>