

**BEFORE AN INDEPENDENT HEARINGS PANEL  
OF THE WAIKATO DISTRICT COUNCIL**

**IN THE MATTER** of the Resource  
Management Act 1991

**AND**

**IN THE MATTER** of the proposed Waikato  
District Plan (Stage 1)  
Hearing 25

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**LEGAL SUBMISSIONS ON BEHALF OF HYNDS PIPE SYSTEMS LIMITED AND THE  
HYNDS FOUNDATION**

**DATED: 13 MAY 2021**

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 **Simpson Grierson**  
Barristers & Solicitors

Bill Loutit / Sarah Mitchell  
Telephone: +64-9-977-5092  
Facsimile: +64-9-307 0331  
Email: bill.loutit@simpsongrierson.com  
DX CX10092  
Private Bag 92518  
Auckland

## MAY IT PLEASE THE COMMISSIONERS:

### 1. INTRODUCTION

1.1 These submissions are made on behalf of Hynds Pipe Systems Limited and the Hynds Foundation (together, **Hynds**) in support of their submission and further submission on the Proposed Waikato District Plan (**Proposed Plan**).

1.2 Hynds has made a significant multi-million dollar investment to establish a regionally significant concrete manufacturing and distribution plant within the strategic industrial node at 9 McDonald Road, Pokeno (**Hynds Factory Site**). The Hynds Factory Site operates 24 hours a day and manufactures critical building supplies. The Hynds Site is zoned Industrial 2 under the Operative Waikato District Plan (**Operative Plan**) and Heavy Industrial under the Proposed Plan.

1.3 These legal submissions compliment Hynds' submissions at previous hearings on the Proposed Plan. They address the parts of Hynds' submission and further submission relevant to the zone extents hearing, specifically the requests that the:

- (a) lower portion of the land at 62 Bluff Road, adjacent to the Hynds Factory Site, be zoned as Heavy Industrial (**Expansion Land**) and that the remainder of 62 Bluff Road retain the notified Rural zoning; and
- (b) rezoning proposals sought in the submissions of Havelock Village Limited (**HVL**) and Steven and Theresa Hopkins (**Hopkins**) be rejected.

1.4 **Appendix 1** of these submissions contains a map to assist the Commissioners that shows the zoning of the Hynds Factory Site and surrounding properties as per the notified version of the Proposed Plan, and identifies the land associated with the various submitters and key transport infrastructure. The map also shows the Expansion Land which Hynds proposes be zoned as Heavy Industrial.

## 2. HYNDS' OPERATIONS

2.1 Hynds Pipe Systems Limited is owned by the Hynds Group, which is a family owned and operated business that specialises in the manufacture and supply of construction materials in New Zealand and Australia. The directors of the Hynds Group have also established the Hynds Foundation, a charitable foundation that is the owner of the land adjoining the Hynds Factory Site, 62 Bluff Road.

2.2 As is explained in the evidence of Mr Hynds, Stuart Property, another Hynds Group entity, purchased the Hynds Factory Site in 2004 with the intent that this site would be the 'North Island hub' for Hynds' operations.<sup>1</sup> In particular, it has been designed and consented to replace or augment the factories in Auckland, Hamilton, Rotorua, Palmerston North and Whanganui. The intent is that it will be Hynds' main manufacturing and distribution site for the North Island.

2.3 In his evidence for Hearing 7 Mr Hynds discussed the difficulty of finding a site suitable for the challenging requirements of a precast concrete manufacturing and distribution facility. He also outlined the extensive search that Hynds undertook for an appropriate site. In summary, Hynds located its business in Pokeno because:

- (a) it is centrally located, and is close to raw material supply as well as the three main markets (Auckland, Hamilton and Tauranga) for Hynds' products;
- (b) it has access to the main State Highways; and
- (c) Hynds was able to acquire a large site on which it would be able to internalise the effects of its operations to the greatest extent possible and on which it would have space to expand in the future.

2.4 Upon purchasing the Hynds Factory Site, Hynds then participated in the Plan Change 24 (**PC24**) process, and a design and consenting process, to provide for the Hynds Factory within a wider heavy industrial zone (the Industrial 2 zone of the Operative Plan).

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1 Evidence of Adrian Hynds (Hearing 7, 9 December 2019) at [4.2].

- 2.5** Furthermore, the provisions of the Operative Plan, and the zoning that was in place, gave Hynds confidence that Pokeno was a location where it could confidently develop a long term base for its business. Specifically:
- (a) the Hynds Factory Site was zoned as Industrial 2;
  - (b) the surrounding sites to the south and west overlooking the site were zoned Aggregate Extraction and Processing (**AEP**), and the land to the north-west was zoned Light Industrial, meaning that sensitive land uses would not locate there; and
  - (c) the requirement for a 500m setback from the AEP zone meant that new dwellings could not be located within 600-900m from the Hynds Factory Site without a resource consent or written approval of the operator of the extraction site.<sup>2</sup>
- 2.6** This 'trifecta' of provisions gave Hynds confidence that sensitive land uses could not locate in proximity to its operations.<sup>3</sup>
- 2.7** Hynds now manufactures a range of pre-cast concrete products at the Hynds Factory Site in an operation which runs 24 hours a day and 7 days a week. Hynds' operations, like many in the Heavy Industrial Zone, are noisy, visually obtrusive, generate dust, and are very brightly lit.
- 2.8** Hynds' investment in Pokeno represents a significant, and ongoing, multi-generational investment. As detailed in Mr Hynds' evidence that was presented to you at Hearing 7,<sup>4</sup> Hynds has invested millions of dollars in the Hynds Factory Site in the expectation it would be in operation for 70 plus years. Hynds has firm plans to continue to develop the Hynds Factory Site in the years ahead and to develop all of its other industrial zoned land off McDonald Road to expand its existing concrete products business and introduce new industrial businesses to Pokeno.
- 2.9** It is clear therefore, that Hynds' operations in Pokeno are a regionally significant activity.

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2 Defined to include sites with AEP zoning, whether or not the land is being used for that purpose.

3 Evidence of Adrian Hynds (Hearing 7, 19 December 2019) at [4.3]; Evidence of Adrian Hynds (17 March 2021) at [3.3]-[3.5].

4 Evidence of Adrian Hynds (Hearing 7, 9 December 2019) at [7.9].

**2.10** The purpose of Hynds' involvement in the hearings on the Proposed Plan, and most significantly this hearing, is to ensure that the Proposed Plan provides adequate protection for activities in the Heavy Industrial Zone so that they can continue to operate, and adapt or grow their operations.

### **3. WITNESSES**

**3.1** Six witnesses have filed evidence on behalf of Hynds in support of its request to rezone the Expansion Land at 62 Bluff Road, and in opposition to HVL and the Hopkins' rezoning requests:

- (a) Mr Adrian Hynds, a director of Hynds and the managing director of Hynds Holdings Limited, which includes the Hynds Foundation. Mr Hynds' evidence describes the reasons why the Hynds Factory Site was selected, the nature of Hynds' operations there, the reasons for Hynds' request to rezone the Expansion Land, and the basis for Hynds' opposition to HVL and the Hopkins' rezoning requests;
- (b) Ms Sarah Nairn and Mr Dharmesh Chhima prepared a joint brief of expert planning evidence. Their evidence undertakes the relevant planning assessments for the rezoning proposals and in particular includes a section 32 evaluation for Hynds' proposed rezoning of the Expansion Land;
- (c) Ms Rachel de Lambert's evidence considers the landscape and visual effects of the rezoning proposals;<sup>5</sup>
- (d) Mr Laurie Cook's evidence addresses the lighting effects of the rezoning proposals;
- (e) Mr Campbell McGregor addresses the stormwater effects of the rezoning proposals; and
- (f) Mr Todd Langwell addresses the traffic effects of the rezoning proposals.

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5 Ms de Lambert's evidence was prepared on behalf of both Hynds and Pokeno Village Holdings Limited.

- 3.2 In addition, Mr Craig Fitzgerald prepared noise evidence in support of Hynds' proposal to rezone the Expansion Land.
- 3.3 Ms de Lambert, and Ms Nairn and Mr Chhima also prepared briefs of rebuttal evidence responding to matters arising from the section 42A report for zone extents in Pokeno prepared by Mr David Mead.
- 3.4 All of the witnesses who have prepared evidence on behalf of Hynds have also filed written summaries of their evidence in accordance with the Commissioners' directions and will address the Commissioners at the hearing.

#### 4. STATUTORY FRAMEWORK FOR ASSESSING REZONING REQUESTS

- 4.1 As set out in Appendix 1 to the Opening Legal Submissions by Counsel for Waikato District Council,<sup>6</sup> the requirements for assessing district plans or plan changes are provided by the Environment Court's interim decision in *Long Bay-Okura Great Park Society Incorporated & Ors v North Shore City Council*,<sup>7</sup> subject to changes made by subsequent amendments to the Resource Management Act 1991 (**RMA**). We agree with this summary and do not repeat it here.
- 4.2 The assessment that is required when making a decision on proposed plan provisions has been broadly summarised by the Environment Court to distil down to an evaluation of which provisions are the most appropriate.<sup>8</sup>
- 4.3 It is submitted that:
- (a) the most appropriate provisions for 62 Bluff Road are Heavy Industrial zoning on the lower portion of the site and Rural zoning for the remainder; and
  - (b) the most appropriate provisions for HVL and the Hopkins' land are for the notified Rural zoning to be retained.

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6 Dated 23 September 2019.

7 *Long Bay-Okura Great Park Society Inc & Ors v North Shore City Council* (Decision No. A 78/2008).

8 For example, see *Royal Forest & Bird Protection Society of NZ v Whakatane District Council* [2017] NZEnvC 051.

## 5. HYNDS' PROPOSED REZONING OF 62 BLUFF ROAD

### Rezoning proposal

- 5.1** 62 Bluff Road is adjacent to the Hynds Factory Site. It was purchased by the Hynds Foundation in 2019 after the hearings process for the Proposed Plan had commenced to create a natural buffer immediately south of the Hynds Factory Site and because the previous owner had advised Hynds it was planning to fill in the gullies and then to sell off the developed land to multiple land owners (potentially enabling sensitive uses like housing to establish in proximity).
- 5.2** In the Operative Plan 62 Bluff Road was zoned as AEP. The notified version of the Proposed Plan zoned 62 Bluff Road as Rural. The previous owner of the property (Grander Investments Limited) lodged a submission seeking Heavy Industrial zoning for the whole site. Both Hynds and the Hynds Foundation's further submissions support that rezoning request.
- 5.3** Hynds has subsequently refined the rezoning sought by Grander Investments Limited. Under that proposal, the Expansion Land would be rezoned Heavy Industrial. The much larger portion of the land would retain its notified Rural zoning. A plan showing Hynds' rezoning request is attached to Mr Hynds' evidence.<sup>9</sup>
- 5.4** The section 42A report recommends that Hynds' rezoning request be accepted.<sup>10</sup>
- 5.5** As the evidence of Mr Hynds sets out,<sup>11</sup> the Expansion Land would be used to expand the existing industrial operations on the Hynds Factory Site, which is currently operating at capacity. Use of the Expansion Land is required to enable Hynds to keep up with both existing demand and foreseeable future demand, to ensure Hynds' competitiveness and to allow Hynds to adapt and evolve to meet market needs.<sup>12</sup>
- 5.6** The upper rural zoned portion of the site is intended to be largely revegetated and developed into a bush and open space sculpture park.<sup>13</sup> The Hynds

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9 Evidence of Adrian Hynds (17 February 2021) at Appendix 1.

10 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [348].

11 Evidence of Adrian Hynds (17 February 2021) at [5.2].

12 Evidence of Adrian Hynds (17 February 2021) at [5.8].

13 Evidence of Adrian Hynds (17 February 2021) at [5.9].

Foundation’s vision is for the land at 62 Bluff Road to be used to further young person education, to promote New Zealand arts, and to provide for the community’s social wellbeing. The use of the lower portion of 62 Bluff Road for industrial activity (and the income that would be generated by that activity) would facilitate the development of the park and visitors centre. The use of the two portions of land are linked in that way and can be seen as part of the same proposal.<sup>14</sup>

**5.7** Hynds’ expert witnesses have undertaken an assessment of the effects of the rezoning of 62 Bluff Road and all concluded that expanding the Heavy Industrial zone is appropriate. In particular:

- (a) the difference in lighting, noise and traffic effects compared to those generated by Hynds’ existing operations are assessed to be “inconsequential”<sup>15</sup>, “negligible”<sup>16</sup> and not “noticeable”<sup>17</sup> respectively;
- (b) Mr McGregor’s conclusion is that the stormwater effects can be appropriately managed and there are no infrastructure constraints that would prevent the Expansion Land being developed<sup>18</sup>; and
- (c) Ms de Lambert’s assessment is that the adverse landscape effects of the proposed rezoning will be low and the visual effects will be low to very low and largely benign. In her opinion the Expansion Land will appear as a small scale, contiguous expansion to the existing industrial area and will make a proportionally small change to the established landscape character of this part of Pokeno<sup>19</sup>.

**5.8** Significantly, the industrial development of the Expansion Land will also enable significant positive landscape value effects arising from Hynds’ revegetation and ecological rehabilitation of the Rural zoned part of 62 Bluff Road.<sup>20</sup>

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14 Evidence of Adrian Hynds (17 February 2021) at [5.14].

15 Evidence of Laurie Cook (17 February 2021) at [6.4]

16 Evidence of Craig Fitzgerald (17 February 2021) at [6.2]

17 Evidence of Todd Langwell (17 February 2021) at [4.10]

18 Evidence of Campbell McGregor (17 February 2021) at [5.13] and [8.5]

19 Evidence of Rachel de Lambert (17 February 2021) at [4.11], [4.13] and [6.3].

20 Evidence of Rachel de Lambert (17 February 2021) at [6.2].



## Hynds' proposed zoning is the most appropriate zoning for 62 Bluff Road

**5.9** Ms Nairn and Mr Chhima carried out an analysis of Hynds' proposed rezoning against the higher order planning documents and in accordance with section 32. They have concluded that it is the most appropriate zoning option for the site because it:

- (a) allows the Expansion Land (which is currently lying fallow and not being put to use) to be developed for industrial use which will in turn generate positive economic and employment outcomes for Pokeno and the Waikato region generally;
- (b) enables a positive environmental outcome in that the development on the Expansion Land will fund the regeneration project on the upper portion of the site;
- (c) protects the upper slopes of 62 Bluff Road from urban or industrial development, which as noted in the evidence of Ms de Lambert, form an important part of Pokeno's rural character;<sup>21</sup> and
- (d) ensures that sensitive activities are not located adjoining the existing Hynds Factory Site.

**5.10** In the section 42A report Mr Mead agreed that Hynds' proposed rezoning is the most appropriate zoning for 62 Bluff Road, noting that:

- (a) it will assist with meeting the objectives of various strategy documents which "note the need to provide further opportunities for industrial activities"<sup>22</sup>; and
- (b) "a change in zoning from Aggregate Extraction to a mix of a small area of Heavy Industry, with the rest of the site retained as Rural, may be overall beneficial to nearby landowners".<sup>23</sup>

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21 Evidence of Rachel de Lambert (17 February 2021) at [4.4].

22 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [316]. See also the evidence of Ms Nairn and Mr Chhima (17 February 2021) at [9.13] to [9.18].

23 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [316].

5.11 The evidence of Sir William Birch on behalf of the Hopkins' suggests that retaining the notified Rural zoning is more appropriate for 62 Bluff Road, as any expansion of Hynds' operations may reduce buffer distances between the Hopkins' property (which lies to the south-east) and Hynds.<sup>24</sup>

5.12 Ms Nairn and Mr Chhima considered whether the rezoning proposed by Hynds would lead to inadequate separation between incompatible land uses and concluded that it would not, given the buffer that will be provided by Hynds' rural land at 10 Bluff Road, together with the remainder of the 62 Bluff Road site. They note that:<sup>25</sup>

*The land is separated from surrounding dwellings by the 10 Bluff Road site and the remaining Rural zoned portion of the Subject Site. All of this land is owned by Hynds. This separation will ensure that the amenity of surrounding dwellings is maintained. This is confirmed in the lighting, noise and landscape/visual evidence prepared on behalf of Hynds and is further discussed in Section 11 below. It is also noted that the AEP zone applied to the Subject Site in the OWDP will have (or should have) created an expectation that the Subject Site will be quarried. The proposed Heavy Industrial zone will be less impactful on surrounding sites than if the site was used in accordance with the existing AEP zone.*

5.13 Ms Nairn and Mr Chhima also considered that applying the Heavy Industrial zone to the Expansion Land is preferable to, and more appropriate than, retaining the Rural zone over the whole site as "such a zoning will preclude the positive economic and employment outcomes generated by development on the lower portion of the site. It would also preclude the enhancement works on the upper portion of the site as these works are contingent on the development on the lower portion of the site for their funding. In essence, retaining the Rural zone over the whole site will most likely result in the land lying fallow as it has done for a number of years."<sup>26</sup> That is not an efficient use of land.

5.14 It is submitted therefore that Hynds' proposed rezoning of 62 Bluff Road is the most appropriate zoning for the land. As noted in Ms Nairn and Mr Chhima's evidence, it:

- (a) gives effect to the objectives and policies of the Waikato Regional Policy Statement (**WRPS**);
- (b) is consistent with the relevant growth strategies to which the Commissioners must have regard; and

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24 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [315].

25 Evidence of Sarah Nairn and Dharmesh Chhima (17 February 2021) at [10.1].

26 Evidence of Sarah Nairn and Dharmesh Chhima (17 February 2021) at [12.3].

- (c) is the most appropriate, efficient and effective method for achieving the policies of the Proposed Plan.

## **6. HVL'S REZONING PROPOSAL**

- 6.1** HVL has proposed a significant residential redevelopment to the south of the existing Pokeno township by rezoning land which is currently zoned as AEP and Rural in the Operative Plan (and Rural in the Proposed Plan) for a mix of urban and rural-residential style development. The urban development (550 units<sup>27</sup>) will be located on the hillslopes above the strategic industrial node at Pokeno, including Hynds' Factory Site. HVL has revised the proposal several times during the lead up to this hearing, with Hynds' expert witnesses necessarily having to respond to the revisions during the course of the evidence exchange process, often under tight timeframes.
- 6.2** Hynds opposes HVL's rezoning proposal because of the potential for reverse sensitivity, stormwater, traffic and landscape and visual effects. In short, HVL's proposed provisions are not the most appropriate for this site.

### **Stormwater effects of HVL's rezoning proposal**

- 6.3** Mr McGregor's evidence sets out a number of concerns as to how the stormwater effects of HVL's proposal will be managed. Given that the majority of HVL's land is located upstream of the existing Pokeno township and catchment, there is a risk that if stormwater is not managed appropriately, existing flooding may increase, both in extent and frequency.
- 6.4** Further information has been provided during the course of the evidence process to address some of the information gaps identified by Mr McGregor in his evidence in chief. In addition, HVL is now proposing to reduce the flow rates from the HVL site to 80% of predevelopment flow rates. As noted by Mr McGregor this represents a change in thinking and acknowledges the potential stormwater management risks he has identified.<sup>28</sup>

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27 Evidence of Ian Munro (17 February 2021) at [4.3].  
28 Evidence Summary of Campbell McGregor (12 May 2021) at [2.10].

**6.5** Mr McGregor’s position remains that a catchment-wide assessment, including calculation and analysis of the proposed stormwater management plan, with hydrological modelling, should be undertaken as part of, or in advance of, HVL’s rezoning.<sup>29</sup> In his opinion allowing deferral of hydrological modelling often leads to piecemeal approaches at resource consent stage rather than considering the wider catchment. Catchment-wide modelling will give confidence that HVL’s anticipated outcomes are achievable and will allow for the planning of mitigation measures to manage any adverse effects.

**6.6** In addition, Mr McGregor’s opinion is that there are a number of existing stormwater infrastructure constraints in the catchment that need to be resolved before HVL’s rezoning is approved. These include:

- (a) the completion of infrastructure works required under PC24 to ensure the safe conveyance of stormwater flows and flood waters;
- (b) the completion of Pipeline A for the conveyance of stormwater flows from both the Synlait and HVL landholdings; and
- (c) confirmation of a viable secondary flow path through the Synlait site to Pipeline A and McDonald Road.

**6.7** Resolution of these issues in advance of rezoning is a necessary part of the catchment-wide approach supported by Mr McGregor. As noted in Ms Nairn and Mr Chhima’s evidence, the issues identified by Mr McGregor cannot merely be resolved at the time of resource consent. Instead they “bring into question the adequacy of the stormwater infrastructure to service the HVL proposal and not compound the existing stormwater issues within the catchment” and as such need to be addressed prior to HVL’s rezoning proposal being approved.<sup>30</sup> Ms Nairn and Mr Chhima’s expert opinion is that it would be “poor planning practice to give the impression that the land could be developed by applying the Residential zone without the knowledge that the land could be serviced and not exacerbate any existing stormwater issues”.<sup>31</sup>

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29 Evidence Summary of Campbell McGregor (12 May 2021) at [2.15].

30 Evidence of Campbell McGregor (17 March 2021) at [5.66].

31 Evidence of Campbell McGregor (17 March 2021) at [5.66].

## Visual and landscape effects of HVL's rezoning proposal

- 6.8** Ms de Lambert has undertaken a landscape and visual assessment of the HVL proposal on behalf of Hynds.
- 6.9** Ms de Lambert's evidence reflects on the structure planning process that was undertaken as a part of PC24 and the identification of RL100 as a key urban containment principle, with the expansion of urban residential activities into the hill backdrop deemed to be inappropriate.<sup>32</sup> As a result of Pokeno's hill backdrops not being developed, they form a prominent part of the rural backdrop to Pokeno Village.<sup>33</sup> Ms de Lambert's expert opinion is that protecting Pokeno's rural backdrop, including land above RL100, from development is vital "to maintain the vision for Pokeno identified through the structure planning process, as identified above, to visually and physically contain the village".<sup>34</sup>
- 6.10** Ms de Lambert's evidence of 12 May 2021 responds to Mr Munro's comments in his rebuttal evidence that he does not consider the RL100 constraint to be relevant. As noted by Ms de Lambert, the setting aside of the RL100 line is an important growth principle for Pokeno that should not be cast aside at the next phase of Pokeno's growth because it is inconvenient to landowners.
- 6.11** In respect of several of the rezoning proposals, including HVL's, Ms de Lambert concludes that:<sup>35</sup>

*The physical attributes of the sites(s) including their steep topography, the erosion of the higher hill slope and ridgeline rural backdrop and the uncontained nature of greenfield urban sprawl leads much of these sites to be unsuitable for residential expansion. The rezoning of the rural and AEP land for residential development will, in my opinion, result in the loss of the important, distinctive rural backdrop to Pokeno.*

- 6.12** It is submitted that HVL's proposal will have landscape and visual effects that have not been adequately addressed. This is relevant to the question of the appropriateness of the proposed provisions.

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32 Evidence of Rachel de Lambert (17 March 2021) at [2.2].

33 Evidence of Rachel de Lambert (17 March 2021) at [4.5].

34 Evidence of Rachel de Lambert (17 March 2021) at [6.3].

35 Evidence of Rachel de Lambert (17 March 2021) at [10.3].

## Traffic effects of HVL's rezoning proposal

**6.13** Mr Todd Langwell has considered the traffic effects of HVL's proposed rezoning.

**6.14** Most significantly, Mr Langwell has identified a number of adverse effects on McDonald Road as a result of vehicle movements associated with the proposed Havelock Village. These include:<sup>36</sup>

- (a) the potential for unsafe heavy vehicle manoeuvres when turning due to increased traffic flows (given that heavy vehicles turn more slowly and require greater gaps in traffic);
- (b) the potential for unsafe vehicle manoeuvres as vehicles attempt to overtake turning heavy vehicles;
- (c) conflicts between increased pedestrian and cycling activity on McDonald Road and existing heavy vehicle movements (and increased vehicle movements in general); and
- (d) safety risks at the level rail crossing on McDonald Road.

**6.15** Those effects could be magnified if, as Mr Langwell suggests, the traffic assessment carried out by Mr Leo Hills on behalf of HVL has underestimated the volumes of traffic (including pedestrian and cyclist activity) from the proposed Havelock Village that will make use of McDonald Road.<sup>37</sup>

**6.16** As a result Mr Langwell concludes that, before HVL's rezoning proposal can be approved, the effects of future residential trips utilising McDonald Road need to be managed in order to ensure that present and future industrial traffic demands can be accommodated and continued to be managed safely.<sup>38</sup> If the Commissioners decide to approve HVL's rezoning proposal, Mr Langwell supports the recommendation in the section 42A report to include a provision in the Proposed Plan that requires further assessment of trip generation associated with residential zoned land and its effects on the McDonald Road corridor.<sup>39</sup>

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36 Evidence of Todd Langwell (17 March 2021) at [4.22].

37 Evidence of Todd Langwell (17 March 2021) at [4.11].

38 Evidence of Todd Langwell (17 March 2021) at [4.23].

39 Evidence Summary of Todd Langwell (12 May 2021) at [2.8].

**6.17** Mr Langwell supports the use of Cole Road and Bluff Road to connect the HVL site to Pioneer Road and State Highway 1, in order to reduce the loads on McDonald Road and other parts of the local road network in Pokeno.<sup>40</sup> However, upgrading those roads will not necessarily be straightforward. Importantly, part of the existing formation of Cole Road is located outside of the road reserve and within Hynds' property at 62 Bluff Road.<sup>41</sup> Mr Hynds' evidence sets out his concerns with the use of Cole Road for this purpose.<sup>42</sup> Mr Langwell concludes that it is not clear on the information that has been provided by HVL that an upgrade to the required standard would be possible.<sup>43</sup>

**6.18** As with the adverse stormwater effects identified above, these are matters that need to be resolved prior to the HVL rezoning proposal being approved. As Ms Nairn and Mr Chhima point out "if they cannot be adequately addressed, it will call into question the scale, extent and appropriateness of the HVL proposal".<sup>44</sup>

### **Reverse sensitivity effects of HVL's rezoning proposal**

**6.19** The term reverse sensitivity is used to refer to the effects of the establishment of sensitive activities on other activities in their vicinity, particularly where the establishment of the new sensitive activities may lead to restraints or demands against the carrying on of those other existing activities.<sup>45</sup>

**6.20** A long line of case law has established the relevance of reverse sensitivity as an effect on the environment under the RMA.<sup>46</sup> The potential effect of reverse sensitivity, from a proposed new use on an existing use, is an effect on the environment in terms of sections 31 and 32, and therefore is relevant to the assessment of rezoning proposals.

**6.21** There are a number of effects that can give rise to reverse sensitivity concerns, including noise, vibration, lighting, dust, visual amenity and traffic effects.<sup>47</sup> The

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40 Evidence of Todd Langwell (17 March 2021) at [4.26].

41 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.63].

42 Evidence of Adrian Hynds (17 March 2021) at [4.13].

43 Evidence Summary of Todd Langwell (12 May 2021) at [2.11].

44 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.62].

45 K Palmer (ed) *Environmental and Resource Management Law Online* (online edition) at [3.15]. See also *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205 (NZEnvC) at 206 and *Affco New Zealand Ltd v Napier City Council* NZEnvC W082/2004, 4 November 2004 at [29].

46 DA Nolan QC (ed) *Environmental and Resource Management Law Online* (online edition) at [13.31].

47 Derek Nolan and Kristen Gunnell *Reverse sensitivity and "no complaints" covenants* (2007) 7 BRMB 50. See also *Queenstown Airport Corporation Ltd v Queenstown Lakes District Council* [2013] NZEnvC 14 at [638] and *Joyce Building Ltd v North Shore City Council* [2004] NZRMA 535 (NZEnvC) at [35] regarding the relevance of visual effects as a contributor to reverse sensitivity effects.

Courts have been clear that an assessment of reverse sensitivity should consider all of the possible causes of reverse sensitivity effects – and not just focus on addressing reverse sensitivity effects associated with noise as HVL have done. For example, the High Court in *Tasti Products Ltd* held that the Council had erred in consenting a mixed-use development adjoining industrial land because it had not considered potential reverse sensitivity effects, other than noise, in any detailed way.<sup>48</sup>

**6.22** Expert evidence filed on behalf of Hynds identifies the potential causes of reverse sensitivity effects in respect of HVL’s rezoning proposal:

- (a) Mr Cook’s evidence explains that lighting on the Hynds Factory Site could have light spill, glare and sky glow effects which will be obtrusive for adjacent properties, and concludes that “Residents living on the hill behind the buffer proposed by HVL, and on parts of the land owned by the Hopkins, will still have views of the lighting within the Hynds Factory Site and therefore, in my opinion, will experience (and potentially complain about) Hynds’ operations, even though Hynds is complying with the Operative and Proposed Plan requirements and the conditions of its resource consent”;<sup>49</sup> and
- (b) the visual amenity effects of a heavy industrial operation like Hynds’. Ms de Lambert’s evidence details how a number of dwellings in the proposed Havelock Village “would have direct views over the industrial zoned land including the 22ha Hynds industrial site with no potential for Hynds to screen or otherwise buffer itself from such residential overlooking”.<sup>50</sup> Ms de Lambert concludes that residents of the proposed Havelock Village who overlook the Hynds Factory Site will “become sensitive to the nature of their neighbouring activities. Complaints will undoubtedly result and at any time future consents are sought or expansion proposed opposition from the residential neighbours will inevitably follow”.<sup>51</sup>

**6.23** Of the evidence filed on behalf of HVL, the evidence of Mr John Styles acknowledges noise as a potential cause of reverse sensitivity effects, and the

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48 *Tasti Products Ltd v Auckland Council* [2017] NZRMA 22 (HC) at [66].  
49 Evidence of Mr Laurie Cook (17 March 2021) at [8.3].  
50 Evidence of Rachel de Lambert (17 March 2021) at [5.17].  
51 Evidence of Rachel de Lambert (17 March 2021) at [5.18].



evidence of Mr Andrew Curtis notes in passing that dust and/or odour generated can result in reverse sensitivity effects on a residential environment if there is not an adequate separation.<sup>52</sup> Ms Nairn and Mr Chhima's evidence for Hynds explains their doubts as to whether HVL's proposed provisions will be effective in managing reverse sensitivity effects, including those associated with noise and emissions to air given the lack of certainty in the proposed buffer provisions.<sup>53</sup>

### *Analysis against relevant case law principles*

**6.24** It is clear that a proposed plan which does not appropriately address reverse sensitivity effects will not achieve the integrated management or the effective use and development of the land.<sup>54</sup> As such, territorial authorities are justified in making rules which regulate reverse sensitivity effects.<sup>55</sup> The Environment Court has accepted that it is not enough for people to be made aware of a potential nuisance before they make the decision to purchase any particular parcel of land; a territorial authority has a duty to ensure that reverse sensitivity effects are avoided, remedied or mitigated.<sup>56</sup>

**6.25** While the RMA, and its focus on the avoiding, remedying and mitigating adverse environmental effects, means that land owners are expected to internalise the effects of their land use, the Courts have recognised that for some valuable and important activities total internalisation of adverse effects is neither required nor reasonable.<sup>57</sup>

**6.26** While the starting point for the management of reverse sensitivity effects is an expectation that activities should internalise their effects unless it is shown, on a case by case basis, that they cannot reasonably do so,<sup>58</sup> three key points emerge from the relevant case law:

- (a) while adverse effects are to be internalised as far as reasonably possible (or unless it is shown that that cannot be achieved), and having done all that is reasonably achievable, the RMA does not

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52 Evidence of Andrew Curtis (17 February 2021) at [6.2].

53 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.27] and [5.28].

54 See for example: *CJ McMillan Ltd v Waimakariri District Council* NZEnvC C87/98 11 August 1998;

55 Derek Nolan and Kristen Gunnell *Reverse sensitivity and "no complaints" covenants* (2007) 7 BRMB 50. See *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205 (NZEnvC).

56 B Matheson (ed) *Environmental and Resource Management Law Online* (online edition) at [10.21]

57 Derek Nolan and Kristen Gunnell *Reverse sensitivity and "no complaints" covenants* (2007) 7 BRMB 50.

58 *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 (NZEnvC) at [7].

impose a requirement that total internalisation of effects must be achieved. Instead the main concern is to ensure that adverse effects beyond the boundary are not unreasonable, that is, are not offensive, objectionable, or significant and with reference to the context of the environment beyond the boundary;<sup>59</sup>

- (b) constraints on neighbouring land uses are appropriate where there is a long standing activity which cannot internalise all of its adverse effects, and the continued presence of the activity in the area is of national, regional or local importance;<sup>60</sup> and
- (c) the greater the probability and impact of effects from the emitting site boundary the more likely it is that controls on adjoining sites will be appropriate to manage reverse sensitivity effects.<sup>61</sup>

**6.27** In terms of how those matters apply to Hynds:

- (a) to the extent that Hynds' operations have adverse effects, it has internalised them to the extent practicable. The expert evidence of Mr Cook in respect of lighting effects<sup>62</sup> and Mr Fitzgerald in respect of noise effects<sup>63</sup> is that Hynds is complying with its resource consents and all relevant standards in both the Proposed Plan and the Operative Plan. Mr Hynds' evidence explains that when Hynds designed the plant layout it deliberately located the noisier, dustier and more visually intrusive activities in the southern part of the Hynds Factory Site, adjoining the AEP zone and Synlait, to minimise the effects on Pokeno village<sup>64</sup>;
- (b) importantly, however, Hynds cannot internalise the effects of its operations to the extent that they will not be experienced by future residents who look down onto its operations. As Ms de Lambert discusses in her evidence, Hynds cannot screen or otherwise buffer itself from overlooking by the eastern and some north facing

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59 *Waikato Environmental Protection Society Inc v Waikato Regional Council* [2008] NZRMA 431 (NZEnvC) at [185]-[187] as summarised in Thompson Reuters *Resource Management* (online edition) at A31.05(2).

60 Thompson Reuters *Resource Management* (online edition) at A3.04(2).

61 *Winstone Aggregates v Matamata-Piako District Council* (2005) 11 ELRNZ 48 (EnvC) at [12] cited in *Golden Bay Cement Ltd v Whangarei District Council* EnvC A15/2005 3 February 2005 at [36].

62 Evidence of Laurie Cook (17 February 2021) at [6.4].

63 Evidence of Craig Fitzgerald (17 February 2021) at [5.2].

64 Evidence of Adrian Hynds (17 March 2021) at [4.6].

components of the proposed Havelock Village,<sup>65</sup> and the “elevated nature of the Havelock Village site means that where residential development extends into the visual catchment, no mitigation can be adequately achieved to deal with the issue of visibility itself or the potential of annoyance from air discharges, lights, or odour all of which can be reasonably anticipated to be associated with legally consented heavy industrial activities”<sup>66</sup>;

- (c) as set out above Hynds’ operations are long-established, and regionally significant; and
- (d) as Ms de Lambert and Mr Cook explain, in their expert opinion, if HVL’s proposal is accepted complaints from future residents will undoubtedly result.<sup>67</sup>

**6.28** That Hynds’ neighbours will make complaints about, and seek restrictions or changes to, Hynds’ operations is more than just a hypothetical possibility. Hynds has previously received complaints directly from residents of the dwelling located at 10 Bluff Road,<sup>68</sup> despite that dwelling being set back some 576m from Hynds’ operations.<sup>69</sup> Hynds attempted to deal with the issues raised, but in the end decided to purchase the site to finally resolve the issue.

**6.29** HVL asserts that the Council does not have any records of complaints received regarding Hynds’ operations. However, if this is the case this is not a testament to the lack of potential for reverse sensitivity effects as HVL’s witnesses suggest. Instead, it can be explained by the fact that there are very few residential properties that currently overlook Hynds’ operations. As has been canvassed previously, this is one of the reasons why Hynds chose this site. That will no longer be the case if HVL’s rezoning proposal is accepted.

**6.30** The Courts have also noted that, when assessing reverse sensitivity effects, a relevant consideration is the effect that the proposed development might have on the future development of the existing land use. This is particularly relevant given Hynds’ stated plans to further develop their site.

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65 Evidence of Rachel de Lambert (17 March 2021) at [5.17].

66 Evidence of Rachel de Lambert (17 March 2021) at [5.21].

67 Evidence of Laurie Cook (17 February 2021) at [5.3] and [6.2]; Evidence of Rachel de Lambert (17 March 2021) at [5.18].

68 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.14]

69 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.20].

**6.31** For example, in *Strata Title Admin Body Corporate 176156* the Council had refused a resource consent application for a residential development in a business zone. One of the opponents of the development, Z Energy Limited, was concerned that residential development beside its site would limit its ability to develop/re-develop the site in the future.<sup>70</sup> Z Energy, and the fish processing factory that also adjoined the site, were responsible for noise, light spill, traffic movements (in particular, truck movements) and odour effects.<sup>71</sup> The Court:

- (a) accepted that there was a real possibility for applications to be made to allow for the future development of the businesses on the adjoining sites (particularly the adjoining Z Energy station) and that “the presence of legally authorised residential activities would affect the way in which a consent authority would assess any future applications from local businesses for discretionary consent applications”;<sup>72</sup>
- (b) noted that residential development would likely mean that any future development of the adjoining business land would be accompanied by restrictions and additional costs that the adjoining businesses had not anticipated when they established in that locality, and that could disadvantage them relative to competitors who are established on business land without the same constraints imposed by neighbouring residential land uses;<sup>73</sup> and
- (c) concluded that “there is a real likelihood of reverse sensitivity issues arising if the proposal is approved and the residential use of the units is legitimised”.<sup>74</sup>

**6.32** As in *Strata Title Admin Body Corporate 176156*, there is a real likelihood that Hynds will seek resource consents to enable the further growth of its business, and it is almost certain that, if HVL’s proposed rezoning proceeds, the presence of legally authorised residential activities would affect the assessment of resource consent applications made by Hynds. Ms Nairn and Mr Chhima give

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70 *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125 at [107].  
71 *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125 at [100], [113] and [115].  
72 *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125 at [118].  
73 *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125 at [118].  
74 *Strata Title Admin Body Corporate 176156 v Auckland Council* [2015] NZEnvC 125 at [122].

a hypothetical example of a proposal to create additional outdoor storage areas for concrete products around the Hynds Factory Site as follows:<sup>75</sup>

*Under the notified version of the PWDP, [the activity] would require a restricted discretionary consent if standards are not complied with and the consent could be difficult to obtain if the Council felt that the outdoor areas were going to have an adverse effect on the visual amenity of surrounding residents (noting that visual amenity is one of the listed matters of discretion). If an application were notified there is a potential for residents to lodge submissions that object to the consent being granted on the basis of the likely visual and amenity effects they would experience.*

- 6.33** It is not hard to imagine how Hynds would be disadvantaged compared to its competitors, both domestic and internationally, if it was unable to amend or expand its operations or develop its business (including obtaining the necessary resource consents) because of the constraints that would necessarily arise as a result of residential activities establishing on the hills overlooking its plant. Mr Hynds' evidence explains the changes that have been made to the design of Hynds' plant over time to respond to changing market conditions, and the importance to Hynds' business of being able to adapt its on-site operations in this way. A good example is Hynds' decision to expand its concrete manufacturing halls over another 4.54 hectares so that it could make 12.5 tonne sections of pipe for Watercare's Central Interceptor tunnel project instead of those products being purchased by the contractor from overseas.<sup>76</sup>

*Appropriateness of the buffer proposed by HVL*

- 6.34** HVL has proposed the Pokeno Heavy Industry Buffer (**HVL Buffer**) as a means of addressing reverse sensitivity concerns. However, the HVL Buffer is inadequate because it does not prevent dwellings from establishing in the parts of HVL's site that overlooks Hynds' operations. The HVL Buffer follows the 45dBa noise contour and therefore does not address reverse sensitivity effects associated with lighting and visual amenity, which as outlined above, need to be addressed in order for there to have been proper consideration of the reverse sensitivity effects of HVL's proposed rezoning.
- 6.35** In addition, Ms Nairn and Mr Chhima's evidence outlines the issues with the provisions that relate to the HVL Buffer. In their opinion the provisions do not

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75 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.25].  
76 Evidence of Adrian Hynds (17 March 2021) at [3.8].

give clear direction or achieve the desired purpose. This is addressed later in these submissions.

### **The HVL rezoning proposal is not the most appropriate**

**6.36** In his section 32AA assessment Mr Mead agrees with HVL's analysis as to the overall benefit of their proposed rezoning,<sup>77</sup> and that the HVL rezoning request is the most appropriate way of achieving the objectives of the WRPS and Proposed Plan.<sup>78</sup>

**6.37** However, it is submitted that HVL's rezoning request and proposed provisions are not the most appropriate. In summary, and as outlined at paragraph 5.47 of the evidence of Ms Nairn and Mr Chhima, HVL's rezoning proposal:

- (a) prioritises new residential growth above the needs of existing heavy industrial activities because it does not address the reverse sensitivity effects of HVL's rezoning proposal;
- (b) has not been provided in sufficient detail to allow its effects to be adequately assessed, particularly in respect of the visual, stormwater landscape and traffic effects of the proposed rezoning; and
- (c) is not consistent with the relevant statutory tests as it does not give effect to the provisions of the WRPS or achieve the objectives of the Proposed Plan.

**6.38** On this last point, I note that Policy 6A(o) of the WRPS provides 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" (emphasis added). As Ms Nairn and Mr Chhima have commented, Policy 6A is to be applied when considering how land is to be zoned.<sup>79</sup> It is not given effect to by HVL's rezoning proposal.

**6.39** Policy 4.4(f) of the WRPS provides that "the continued operation and development of regionally significant industry and primary production activities by avoiding or minimising the potential for reverse sensitivity" (emphasis added).

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<sup>77</sup> David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [350].

<sup>78</sup> David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [357].

<sup>79</sup> Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.41].

While Policy 4.4 does allow for potential reverse sensitivity effects to be minimised rather than avoided, as Ms Nairn and Mr Chhima explain in their evidence, in these circumstances avoiding reverse sensitivity effects is the most appropriate approach, and the best way to give effect to this policy.<sup>80</sup> As Ms Nairn and Mr Chhima conclude, “if ‘avoidance’ is not applied in this instance, we struggle to think of a more appropriate circumstance where it would be”.<sup>81</sup> Mr Mead comments in the section 42A report that an avoidance approach would be appropriate for “persistent, significant effects” like noise but is not warranted here.<sup>82</sup> It is submitted that a heavy industrial operation like Hynds’ operation, which is noisy, visually obtrusive, brightly lit and operated 24/7, will have persistent effects that justify an avoidance approach. With respect to Mr Mead’s criteria of “significant”, it is worth noting that reverse sensitivity effects arise when industrial activities are being lawfully operated (and so may not be generating effects that are significant).

- 6.40** Policy 4.7.11(b) of the Proposed Plan is clear that in respect of industrial activities, potential reverse sensitivity effects are to be avoided, and minimised where avoidance is not practicable. As explained in Ms Nairn and Mr Chhima’s evidence and as set out above, HVL’s proposed rezoning does not avoid reverse sensitivity effects, although practicable options (such as extending the buffer) are available to try to do so. For this reason HVL’s provisions are not the most appropriate way to achieve this policy.
- 6.41** Finally, reliance is placed by Mr Tollemache for HVL and by Mr Mead on the identification of HVL’s land for future residential use in Waikato 2070. It is submitted that pursuant to section 74(2) of the RMA the Commissioners are only required to *have regard* to this document. It does not have the same status as the WRPS, which is required to be *given effect to*. As noted above HVL’s proposal will not give effect to the provisions of the WRPS addressing reverse sensitivity.
- 6.42** It is important to note that Waikato 2070 is not an RMA document, and has not been the subject of any planning analysis. That is the purpose of this Proposed Plan hearing process – to determine whether residential zoning of this land meets the statutory tests and is the most appropriate zoning pursuant to the RMA. Ms Nairn and Mr Chhima’s evidence addresses this point further, listing

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80 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.42].

81 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.42].

82 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [338].

the full range of matters that need to be considered in this process that were not given detailed consideration as part of the development of Waikato 2070.<sup>83</sup>

- 6.43** Therefore, the HVL's rezoning proposal does not meet the long established statutory tests, as set out in *Long Bay*<sup>84</sup> and subsequent cases. It should not be approved.

#### **Response to the section 42A report recommendation**

- 6.44** As I have noted above the section 42A report recommends that the HVL rezoning proposal is approved,<sup>85</sup> subject to amendments regarding the HVL Buffer.<sup>86</sup>

- 6.45** Ms de Lambert and Ms Nairn and Mr Chhima's rebuttal evidence responds to the conclusions reached in the section 42A report. These submissions will not repeat that evidence. Instead, responses are provided to some of the matters raised in the section 42A report.

- 6.46** The first is that Mr Mead appears to cite the existing Residential and Village zoned land to the east of the Hynds site as a basis for rejecting Hynds' reverse sensitivity concerns regarding the HVL rezoning proposal, given the proximity of existing residential land uses to Hynds' operations.<sup>87</sup> This issue was also raised in Mr Munro and Mr Tollemache's rebuttal evidence on behalf of HVL.

- 6.47** With respect, this misses the key issue – that unlike the dwellings to the east of Hynds' site, the dwellings on HVL's land will be elevated above, and look down into, the Hynds Factory Site. Ms de Lambert's evidence explains that the ability to mitigate potential effects and reduce or avoid adverse landscape and visual reverse sensitivity outcomes is much more difficult where there is an elevated overlooking condition such as that which exists in the south of Pokeno. This is because elevated views give a much greater ability to observe the nature and scale of a heavy industrial operation. It is also because legally consented aspects of heavy industry, such as air discharges, would be very much in the

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83 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [5.7].

84 *Long Bay-Okura Great Park Society Inc v North Shore City Council* (Decision No. 478/2008).

85 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [399].

86 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [399] and [400].

87 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [324]



forefront of people's views and likely to exacerbate the perception of adverse effects.<sup>88</sup>

**6.48** The second point is that at paragraph 328 Mr Mead notes that the number of dwellings that may have a direct line of sight to Hynds is not identified in the HVL evidence nor the evidence from Hynds, and that it may be that not all dwellings on the western portion of the HVL site will overlook the Hynds site. With respect, it is not for Hynds to calculate the number of dwellings in the proposed Havelock Village that will overlook Hynds' operations. As the submitter seeking the rezoning, it is for HVL to satisfy you that the relevant statutory tests have been met. The fact that it is not possible to, from HVL's evidence, determine the number of dwellings that will overlook Hynds' operations goes to HVL's failure to address all of the causes of reverse sensitivity effects from its rezoning proposal and therefore to meet the relevant statutory tests that would allow for its proposal to be approved. No landscape evidence has been provided addressing the nature of the views from HVL's site, nor have any visual simulations or montages of HVL's proposed development have been provided. While it is acknowledged that line of sight assessments were included in HVL's rebuttal evidence of 3 May 2021, Hynds' experts are still working through that analysis and the validity of the assumptions used. Mr Cook has included some preliminary comments in his evidence of 12 May 2021 and these matters will be addressed further at the hearing by Mr Cook, Ms Nairn and Mr Chhima.

**6.49** Mr Mead is "not convinced that concerns over visual amenity and outlook over the Synlait and Hynds sites by future residents constitutes a 'significant reverse sensitivity effect'".<sup>89</sup> However, in coming to that conclusion he does not discuss Ms de Lambert's evidence which addresses this in detail. It is also not consistent with the case law referred to above which confirms that visual amenity effects can be the cause of reverse sensitivity effects.

**6.50** Mr Mead concludes in respect of Mr McGregor's evidence that the issues he has identified are not "show stoppers" and instead can be addressed at the subdivision stage because they relate to how the HVL land should be developed for housing, rather than whether HVL's land could be developed.<sup>90</sup> However, Mr McGregor explains why in his opinion the issues he has identified, including the

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88 Evidence Summary of Rachel de Lambert (12 May 2021) at [3.2]

89 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [338].

90 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [377].

need for catchment-wide modelling, should be rectified now in advance of rezoning.

**6.51** In respect of traffic effects, Mr Mead also concludes that the issues identified by Mr Langwell and other experts can be addressed at the subdivision stage.<sup>91</sup> However, as for the stormwater effects, the issues raised by Mr Langwell are sufficiently significant that they do need to be addressed as part of the rezoning process to be able to properly assess whether HVL's rezoning is appropriate.

**6.52** We appreciate the difficult task that the section 42A report authors have had, and that there was a large volume of evidence that needed to be reviewed within relatively short timeframes from a large number of submitters. However, given the scale of the HVL rezoning proposal, and the significant effects that it could have on other submitters (including Hynds) it is submitted that the issues with the section 42A analysis above mean that its recommendation should not be the starting point for your assessment of the HVL rezoning proposal.

## **7. HVL REZONING PROPOSAL – ALTERNATIVE RELIEF SOUGHT**

**7.1** Hynds' position is that HVL's rezoning proposal should not be accepted, on the basis of its effects, the further assessment work that is required, and the very real threat that it poses to Hynds' regionally significant operations. HVL's provisions are not the most appropriate.

**7.2** Without resiling from that, to assist the Commissioners in the event you are minded to approve HVL's proposal, Hynds' experts have worked hard to develop a set of provisions that would better address their concerns, compared to those proposed by HVL and the section 42A report.

**7.3** Ms Nairn and Mr Chhima's rebuttal evidence sets out how the provisions associated with the HVL Buffer could be amended to ensure it *better* addresses reverse sensitivity effects. HVL's rebuttal evidence accepts one of those recommendations – non complying activity status for buildings for sensitive land uses within the HVL Buffer. This change is welcome and it is certainly the most appropriate activity status if the rezoning proposal were to be approved.

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91 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [381].

- 7.4** However, as noted in Ms Nairn and Mr Chhima’s rebuttal evidence, if the Commissioners are minded to accept HVL’s rezoning proposal, in their opinion further changes to the HVL Buffer are required, including an extension of the HVL Buffer and Environmental Protection Area to cover the additional areas shown in the plan attached to Ms de Lambert’s rebuttal evidence, where dwellings would have direct views of Hynds’ Factory Site. In Mr Mead’s rebuttal section 42A report he recommends that the HVL Buffer be expanded to include one of the two areas identified for inclusion in Ms de Lambert’s rebuttal evidence.<sup>92</sup> It is submitted that all of the areas suggested by Ms de Lambert need to be included in the HVL Buffer, for the reasons explained in Ms de Lambert’s rebuttal.
- 7.5** In addition Hynds seeks Reserve zoning for the land underlying the buffer. In his response to Ms Nairn and Mr Chhima’s suggestion that the Reserve zone would be a more appropriate zoning for land within the buffer, Mr Tollemache suggests that such an approach could result in the Council being required to purchase the land within the buffer (as well as elsewhere in the Waikato District).<sup>93</sup> However, the Environment Court confirmed in *Golf 2012 Limited v Thames-Coromandel District Council* that in some cases it can be appropriate to apply an ‘Open Space zone’ to privately owned land if that was the most appropriate set of planning provisions for the land.<sup>94</sup> It is not the case that the Council would be required to purchase the land within the buffer simply because it was zoned as Reserve.
- 7.6** In that same decision, now Chief Environment Court Judge Kirkpatrick noted that there needed to be more than just an argument that in principle “private land should not be zoned for public purposes without the owner’s agreement”.<sup>95</sup> As set out above, in the event that you do not accept Hynds’ primary relief seeking that the HVL rezoning proposal be rejected, it is my submission that the Reserve zone would be a more appropriate set of planning provisions for land within the buffer than the Residential zone. HVL will still have reasonable use of its land pursuant to section 85 of the RMA because the majority of the site will still be available for a substantial residential development (for which the reverse sensitivity issues are resolved by the adjacent Reserve zoned land). This is addressed further in Ms Nairn and Mr Chhima’s evidence.<sup>96</sup>

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92 David Mead *Zone Extents Pokeno section 42A Report Rebuttal Evidence* (10 May 2021) at [41].  
93 Rebuttal Evidence of Mark Tollemache (3 May 2021) at [5.45].  
94 *Golf 2012 Limited v Thames-Coromandel District Council* [2019] NZEnvC 112 at [141].  
95 *Golf 2012 Limited v Thames-Coromandel District Council* [2019] NZEnvC 112 at [149].  
96 Rebuttal Evidence of Ms Nairn and Mr Chhima (4 May 2021) at [5.7].

**7.7** If Residential zoning is to be retained, it is submitted that amendments to the policies and rules are needed to require that reverse sensitivity effects on the adjoining industrial land are avoided and to require the creation of the buffer shown on the planning maps. As the provisions are currently drafted sufficient certainty is not provided that reverse sensitivity effects will be addressed, that the buffer will be created, and that dwellings will not be located within it.

## **8. THE HOPKINS' REZONING PROPOSAL**

**8.1** The Hopkins seek the rezoning of their property at 67 Pioneer Road from Rural to Village Zone. Hynds' further submission opposed the Hopkins' rezoning request.

**8.2** Mr Mead's recommendation in the section 42A report is that the Hopkins' rezoning request is rejected.<sup>97</sup> The expert evidence filed on behalf of Hynds supports that conclusion:

(a) the evidence of Ms Nairn and Mr Chhima is that the rezoning of the Hopkins' property is likely to create many of the same reverse sensitivity effects as the HVL rezoning proposal,<sup>98</sup> particularly on the western part of the site which looks towards the Hynds Factory Site;<sup>99</sup> and

(b) Mr McGregor's opinion is that more detailed hydrological modelling needs to be undertaken to "ensure the proposed mitigation achieves the desired outcomes in terms of peak flow and volume control of all design storms up to the 1 in 100-year event"<sup>100</sup> prior to the rezoning being approved.

**8.3** In light of these issues, the Hopkins' proposed rezoning is not the most appropriate zoning for the land and should not be accepted.

**8.4** However, and without resiling from that position, if the Commissioners were minded to approve the Hopkins' rezoning request, given the potential for reverse sensitivity effects, Hynds seeks that provisions be included to ensure future lots

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97 David Mead *Zone Extents Pokeno section 42A Report* (14 April 2021) at [398].

98 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [6.2].

99 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [6.4].

100 Evidence of Campbell McGregor (17 March 2021) at [5.34].

are not located on the northern face of the site looking towards Hynds. This is addressed further in Ms Nairn and Mr Chhima's evidence, which notes that that solution would give greater development potential than the Hopkins currently enjoy under the Operative Plan.<sup>101</sup>

## **9. CONCLUSION**

- 9.1** Hynds' operations are unashamedly heavy industrial in nature. One of the reasons why Hynds has located itself in Pokeno is because it believed that the strategic industrial node created by PC24 would provide a site free from the same constraints arising from urbanisation around its production sites that had caused it to start looking for a new home for its operations.
- 9.2** Hynds is therefore involved in these hearings to protect its multi-million dollar and multi-generational investment in Pokeno from the complaints and restrictions that will inevitably follow residential development locating not only in close proximity to its operations, but directly overlooking them.
- 9.3** The evidence presented to you on behalf of Hynds explains why the changes sought in the Hopkins and HVL submissions (as amended by their evidence) are not the most appropriate planning provisions. As such, Hynds seeks that you decline both rezoning proposals.
- 9.4** Hynds also seeks that you approve its proposal to rezone part of 62 Bluff Road as Heavy Industrial. That rezoning will enable the development of the remainder of 62 Bluff Road as a high-value natural and educational resource. As the expert evidence presented on behalf of Hynds makes clear: the adverse effects of this rezoning proposal are inconsequential or low, the positive landscape value effects are significant, and this rezoning will provide Hynds with scarce Heavy Industrial zoned land on which it can expand its operations. Therefore, Hynds'

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101 Evidence of Sarah Nairn and Dharmesh Chhima (17 March 2021) at [6.4].

rezoning proposal for 62 Bluff Road represents the most appropriate planning provisions for that land.

**DATED** at Auckland this 13<sup>th</sup> day of May 2021

A handwritten signature in blue ink, appearing to be 'WSL' followed by a stylized flourish.

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Bill Loutit / Sarah Mitchell  
Counsel for Hynds Pipe Systems Limited  
and the Hynds Foundation

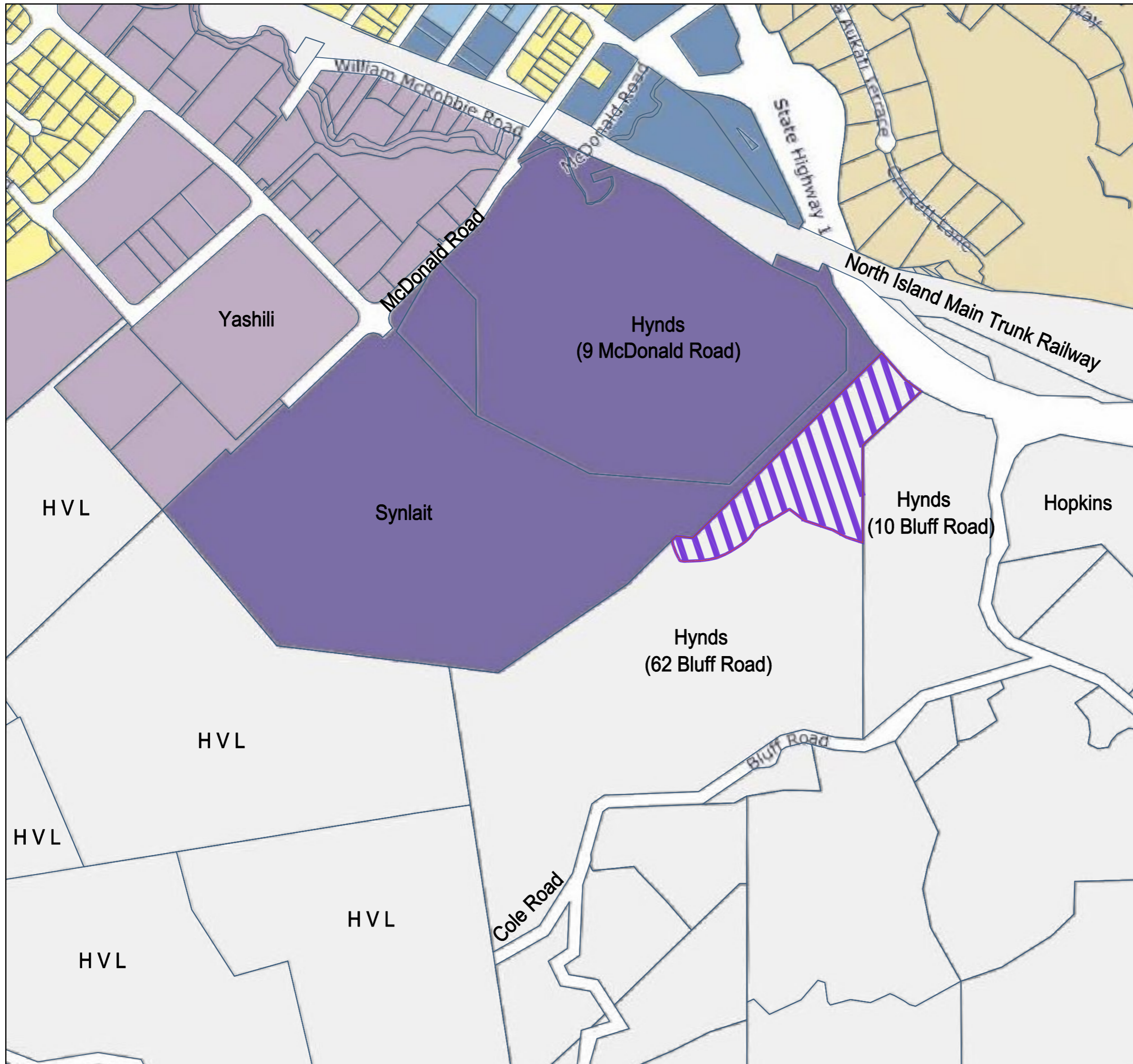
## Appendix 1: Reference map



HYNDS PROPOSED  
HEAVY INDUSTRIAL ZONE

**PWDP ZONE**

- Residential
- Rangitahi Peninsula
- Village
- Country Living
- Rural
- Business
- Business Town Centre
- Business Tamahere
- Industrial
- Heavy Industrial
- Reserve



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C		
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	Name	Date
Surveyed	Alex White	02/20
Designed		
Drawn	French	10/20
Checked		
Approved		
Job Title		

## REFERENCE PLAN

Client  
**HYNDS GROUP**

Drawing <b>J549-REFERENCE PLAN</b>	
Cad Ref. File	Council Ref: S
Scale (A3 Original) 1:6000	Amendment C