

Before an Independent Hearings Panel

The Proposed Waikato District Plan (Stage 1)

IN THE MATTER OF the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF hearing submissions and further submissions on the Proposed
Waikato District Plan (Stage 1):
Topic 25 – Zone Extents

**LEGAL SUBMISSIONS
ON BEHALF OF HAVELOCK VILLAGE LIMITED**

13 May 2021

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MAY IT PLEASE THE COMMISSIONERS

1. OVERVIEW OF HAVELOCK'S CASE

- 1.1 One of the most important resource management issues currently facing Pokeno is how to provide for and manage urban development given clear market demand and projections for growth. Pokeno is ideally located to provide for urban growth, close to Auckland and adjoining major transportation networks.
- 1.2 Regardless of the exact amount of demand, more land needs to be rezoned in Pokeno for residential growth compared to the notified version of the Proposed District Plan (**Proposed Plan**). The Panel is legally required to deliver more housing capacity in order to implement and give effect to the National Policy Statement on Urban Development 2020 (**NPS-UD**) – the most relevant national direction.
- 1.3 The Havelock residential proposal offers a comprehensively master planned residential site in South Pokeno and is ideally located for growth. The expert evidence demonstrates it:
 - (a) Can provide for up to 600 households in a high-quality designed neighbourhood, contiguous with the existing settlement and planned growth areas. Given the topography, it will offer residential sites with high amenity and views not currently accessible in Pokeno;
 - (b) It has direct access to the town centre and key transport routes, providing an opportunity for future connections between Pokeno and the Waikato River;
 - (c) It supports a compact urban form with walking and cycling connections to the town and future public transport. It also includes a new local neighbourhood centre;
 - (d) Retains and enhances the northern face of Transmission Hill (being the backdrop to the existing industrial area). It also provides opportunities for open spaces (Hilltop Park) and the protection and enhancement of Significant Natural Areas (**SNAs**);
 - (e) Achieves an edge to urban Pokeno and significant enhancements as a transition from this edge to the Waikato River and Bluff Road. It also rounds out the town, counterbalancing ongoing expansion to the north, west and east;

- (f) Does not involve versatile soils, or development within an Outstanding Natural landscape, Outstanding Natural Feature or Significant Amenity Landscape;
- (g) Can deliver all necessary on-site infrastructure and servicing and in terms of bulk water and wastewater is integrated with Council's long-term plans;
- (h) Satisfies both the development principles of the Waikato Regional Policy Statement (**RPS**) and contributes to Council meeting its residential capacity targets under the NPS-UD. It also delivers on the NPS-UD policy direction to create well-functioning urban environments and competitive land markets. It also implements part of the Council's growth management strategy for Pokeno.

1.4 In terms of economic benefits, this development proposal represents:

- (a) An increase in household expenditure of \$162.2 million over the next 30 years; and
- (b) A net present value of at least \$350 million over the next 30 years.

1.5 Mr Mead, the Council's independent Section 42A author has critically reviewed the proposal in light of the expert evidence, NPS-UD growth requirements and in terms of the relevant planning documents and recommends rezoning site as sought by HVL subject to some refinements. The Proposal is also generally supported by a range of submitters and key stakeholders including the Waikato Regional Council. Waka Kotahi NZ Transport Agency now has a neutral position on the rezoning.

1.6 While the position on residential capacity and demand assessments for Pokeno has evolved over the course of the Proposed Plan process, generally there is a high level of agreement that additional residential zoned land is required in Pokeno to meet NPS-UD medium term capacity. The only outlier to that view is that of the experts for the existing developer. Although these experts do appropriately acknowledge Pokeno is experiencing growth, they have not however offered an alternative view on the appropriate amount of residential land to be rezoned.

1.7 If the Panel also agrees that Havelock is required to meet NPS-UD requirements, it will need to be satisfied that it is an appropriate location for urban expansion. The merits of the proposal in this regard have been traversed at length in the primary and rebuttal evidence package for Havelock and in particular, Mr Tollemache and Mr Munro. In terms of proposed location, there also appears to be a high level of

expert alignment that Havelock is well located in terms of connections to the existing centre and can appropriately manage effects in terms of its transition from a rural to urban environment.

- 1.8 There are two key remaining issues for determination in terms of Havelock's spatial extent and location:
- (a) Whether sufficient buffer distance has been put in place to manage the proposed residential zone interface with nearby industrial operators or whether additional buffers areas should be added to manage a perceived risk of visual or other potential reverse sensitivity effects;
 - (b) Whether considerable development capacity should be removed to preserve a 2007 rural greenbelt feature (the RL100 development limitation) from previous structure planning processes.
- 1.9 To manage both of these issues, the expert witnesses for Hynds¹ and Pokeno Village Holdings Limited (**PVHL**) are of the view that additional buffer areas should be added to the Havelock proposal and development capacity removed above RL100 on the site. The cumulative impact of these expert recommendations is removal of approximately 300 dwellings from the Havelock proposal – over half the anticipated housing capacity. On the evidence, and as matter of legal principle, neither of those propositions can be justified to manage effects and therefore the Council's imperative to deliver growth must take priority.
- 1.10 With respect to the industrial zone interface, the Havelock Proposal has always sought to appropriately manage any potential reverse sensitivity effects as between its development and the existing industrial area. HVL acknowledges and recognises the existing industrial operators Hynds, Yashili, Winston Nutritional and Synlait and their investment in the Pokeno area.
- 1.11 The combined evidence of Havelock's technical experts is that the Proposed Industry Buffer provides an appropriate setback distance to manage the interface between these activities. In short, Havelock's buffer distance ensures appropriate levels of residential amenity on the proposed sites in terms of any potential noise, lighting or air discharge effects from the industrial area. No surveyed or empirical expert evidence has been provided to the contrary. Where those sites are not directly affected by the industrial activities, no legitimate complaints will arise, let

¹ Hynds Pipe Systems Limited and the Hynds Foundation.

alone the risk of any constraint on the industrial operators' existing activities. The potential for reverse sensitivity effects has been avoided.

- 1.12 If in response to ongoing concerns regarding perceived "visual sensitivity" the Panel considers additional buffer areas are warranted, it will have to satisfy itself that there is an effect unique to Havelock that makes a further extensive buffer area justifiable, over and above, the potential reverse sensitivity effects likely from the existing residential settlement pattern within which those industrial operators currently coexist. Havelock's position is that there is not.
- 1.13 In relation to the RL100 development limitation, HVL's experts consider that the proposal has given proper regard to Transmission Hill as the most prominent feature in the local landscape. The Proposal appropriately recognises the landscape values of that feature through the creation of the Hilltop Park and the establishment of the north facing buffer with significant enhancement planting. This will ensure the prominence of Transmission Hill as a local landmark and provide an appropriate backdrop to the town. More fundamentally, the RL100 limitation is not identified in any planning document as a scheduled landscape or natural feature. In the absence of any such formal statutory protection, a former greenbelt approach to prevent development above RL100 is no longer appropriate or relevant given the need for additional housing in Pokeno and the higher order policy directive to recognise changing amenity expectations under the NPS-UD. In legal terms, given that the RL100 limitation lacks any statutory basis, it must be subservient to the growth requirements of the NPS-UD. Many other similar towns around the country have expanded from flat land into the surrounding hills to provide for growth. Pokeno should be no exception.
- 1.14 Some subsidiary issues have been raised in relation to the detail of stormwater and transport management and are addressed for completeness in Havelock's rebuttal evidence. These are matters of design that can be managed at subsequent consenting phases. Mr Mead agrees. To the extent that the Panel has any further concerns in relation to these matters, Mr Tollemache has proposed additional matters of discretion that could be applied to all subdivision activity in Pokeno should that be considered necessary.
- 1.15 Issues relating to potential cultural effects have been raised through rebuttal evidence filed by Ngāti Te Ata and Ngāti Tamaoho. Given the current timetable sequence, Havelock experts have not had an opportunity to canvas these issues

and respond in evidence to the Panel. HVL experts intend to consider the issues raised in further detail and will provide an update to the Panel at the hearing.

2. HAVELOCK VILLAGE LIMITED – CORPORATE VISION AND EVOLUTION OF HAVELOCK MASTER PLAN

- 2.1 HVL's vision for the site is to create a new high quality residential neighbourhood, adjacent to Pokeno's existing urban area, that could provide for around 600 new homes, as well as a small local neighbourhood centre, a hilltop park and walking and cycling connections.²
- 2.2 HVL is part of a wider association of companies including GMP Pharmaceuticals and TaTa Valley Limited. Collectively the companies have significant land holdings within Pokeno. TaTa Valley Limited is seeking its own special purpose zone for the property adjoining Havelock.
- 2.3 The residential area of Havelock has been located adjacent to the existing Pokeno urban area on Transmission Hill to take advantage of the views, while the rural lifestyle zone is located to the south of the development to ensure an appropriate transition between the urban residential area and the proposed rural based tourist development at TaTa Valley.³
- 2.4 As outlined in Mr Ye's evidence both, he and the companies are committed to the future growth of Pokeno. They have invested significant resources in these developments and are prepared to invest further to provide all the necessary on-site infrastructure and connections to the wider three waters and transport network.⁴

Revised masterplan and proposed Havelock provisions

- 2.5 HVL's original submission sought to rezone the entire site to a standard residential zoning with a small neighbourhood centre. In 2020 HVL engaged Mr Tollemache and Mr Munro to peer review the original submission based on a re-evaluation of the constraints and opportunities, in light of the latest site information and to address the issues raised in submissions.⁵ This master planning exercise involved the culmination of a range of expert technical inputs to ensure a comprehensive master plan response to the site's development opportunities and constraints. The Proposal now involves a combination of Residential (in the northern part of the site) and Rural

² Primary evidence of Karl Ye, paragraph 1.7.

³ Ibid, paragraph 1.6.

⁴ Primary evidence of Karl Ye, paragraph 3.6.

⁵ Primary evidence of Mark Tollemache, paragraphs 2.6-2.8 and primary evidence of Ian Munro, paragraphs 2.4 and 2.5.

Lifestyle Zone (in the southern part of the site adjoining the proposal TaTa Valley Resort Zone). HVL's commitment to expert assessment and engagement throughout this master planning process is commendable and this investment in its development work is ongoing.

2.6 Mr Tollemache's primary evidence outlines the different planning mechanisms proposed to manage develop and achieve the intended outcomes for Havelock.⁶ The general approach is to use the standardised tools and provisions already contained within the Proposed Plan rather than introduce new zones or tools using specific controls where required. The key planning mechanisms for Havelock are:

- (a) Use of the district wide Residential Zone and its rules, standards and assessment criteria;
- (b) Inclusion in the district plan of the Havelock Precinct Plan – Plan A1 of Mr Tollemache's primary evidence Annexure 1, as amended by the revised plan attached as Annexure 1 to his highlights package;
- (c) Identification of relevant overlays within the Havelock Precinct Plan, including the Pokeno Industry Buffer, the Slope-Residential Zone and the Environmental Protection Area;
- (d) Havelock specific subdivision rules, contained within the Residential Chapter of the Proposed Plan, which refer to the overlays and components of the Havelock Precinct Plan;
- (e) Site-specific activity statuses, triggers and assessment criteria are included to ensure the site is developed in the ideal sequence and consent applications consider all the relevant matters.

2.7 This approach has been reviewed and generally endorsed by Mr Mead as part of his recommendation to approve the rezoning of the site. While adopting standardised tools, the framework also allows for additional site specific matters to be added as required to address specific concerns.

2.8 HVL has been involved in a number of different topics throughout the hearings for the Proposed Plan.⁷ This reflects the importance of the process to HVL and its commitment to achieving the best outcomes for the District and, in particular, for Pokeno.

⁶ Primary evidence of Mark Tollemache, paragraphs 4.6-4.32.

⁷ It also filed a submission on Waikato 2070 and appeared at the hearing.

- 2.9 These legal submissions focus on the key outstanding issues, following the exchange of evidence and the Council's section 42A report. A full evaluation of the Havelock proposal and submitter issues is reflected in Havelock's primary and rebuttal evidence and has largely been endorsed by Mr Mead.

Havelock expert witnesses team

- 2.10 An extensive suite of technical evidence was filed with the original submission and this has been updated in HVL's primary evidence to reflect the revised Havelock master plan. Further rebuttal evidence has been provided to respond to submitter issues and Mr Mead's recommendations.

- 2.11 The experts who have provided evidence in support of the Havelock Proposal and will appear at the hearing are:

- (a) Mr Karl Ye - Corporate evidence;
- (b) Mr Ian Munro - Urban Design;
- (c) Mr Adam Thompson - Economics and Property Development;
- (d) Mr Ryan Pitkethley - Infrastructure, including water, wastewater and stormwater;
- (e) Mr Shane Lander - Geotech;
- (f) Mr Leo Hill - Transportation;
- (g) Dr Graham Ussher - Ecology;
- (h) Mr Rob Pryor - Landscape and Visual;
- (i) Mr Jon Styles - Noise evidence;
- (j) Mr Andrew Curtis - Air Quality;
- (k) Mr Bryan Hall - Lighting; and
- (l) Mr Mark Tollemache - Planning.

3. OVERVIEW AND SCOPE OF SUBMISSIONS

- 3.1 These submissions will address the following matters:

- (a) Legal framework and case law principles;

- (b) Need to provide for growth in Pokeno;
- (c) Where to provide for growth in Pokeno;
- (d) Hynds' opposition – reverse sensitivity concerns;
- (e) Restricting development above RL100 – 2008 structure plan considerations;
- (f) Infrastructure;
- (g) Benefits and management of effects;
- (h) Response to s42A rebuttal report;
- (i) Rural Lifestyle – response to Waikato Regional Council; and
- (j) Provisions currently proposed by HVL.

4. LEGAL FRAMEWORK AND CASE LAW PRINCIPLES

- 4.1 The relevant legal framework and statutory tests for evaluating the rezoning submissions were discussed at the pre-hearing conference on 12 March 2021 and HVL's position was outlined in its memorandum of counsel dated 9 March 2021.
- 4.2 In summary, HVL considers that the relevant tests are outlined in Appendix 1 to the Opening Legal Submissions by Counsel for the Waikato District Council, dated 23 September 2019, with the addition of reference to section 31(1)(aa). HVL agrees with and adopts the Minutes and Directions from the Hearing Commissioners, dated 15 March 2021, issued following that pre-hearing conference.
- 4.3 HVL is generally comfortable with the approach adopted by the reporting officer to the relevant statutory tests and legal principles in the s42 report.

Case law principles and the Panel's obligations with respect to implementing higher order planning documents

- 4.4 The Supreme Court in *King Salmon*⁸ makes a number of relevant findings regarding the plan change process, and how higher order documents should be given effect to as part of this process. In *King Salmon*, the Supreme Court described the following principles relevant to plan change applications (emphasis added):

⁸ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593 [*King Salmon*].

- (a) The obligation to give effect to a national policy statement or regional plan simply means to implement;
- (b) That, on the face, is a strong directive, creating a firm obligation on the part of those subject to it;
- (c) A requirement to give effect to a policy that is framed in a specific and unqualified way may, in a practical sense be more prescriptive than a more general policy. There may be policies that are so directive terms that the decision-maker has no option but to implement it;
- (d) Decision-making on plans and plan changes occurs under the relevant plan making sections, not under Part 2;
- (e) The hierarchal nature of RMA plans mean it is generally not necessary to resort to Part 2 or higher order documents to determine appropriate plan provisions unless there is invalidity, uncertainty or incompleteness⁹;
- (f) The primary obligation is to give effect to a higher order document as a whole; and
- (g) More recent higher order planning documents (like a national policy statement) should be given greater weight than older, lower order planning documents (like a regional policy statement) that were prepared before the higher order document was issued. This is because the lower order planning document may not give effect to that higher order document.¹⁰

What this means for the Proposed Plan

4.5 These principles are particularly relevant given:

- (a) The role and importance of the NPS-UD;
- (b) The need to give effect to different parts of the Waikato Regional Policy Statement (**RPS**), in particular the provisions about management of urban growth and management of reverse sensitivity effects;

⁹ Although that principle has not always been followed by High Court – see for example *Royal Forest and Bird Protection Society v Bay of Plenty Regional Council*.

¹⁰ The Supreme Court in *King Salmon* stated at [65] that the Marlborough Regional Policy Statement was "of limited value" as, at the time of the decision, it had not been revised to give effect to the NZCPS. The Supreme Court therefore focused its decision on whether the proposed plan change in question gave effect to the New Zealand Coastal Policy Statement, which was later in time. The fact that a lower order document did not give effect to a latter higher order document could also be an example of "incompleteness" and need See also *Appealing Wanaka Inc v Queenstown Lakes District Council* [2015] NZEnvC 139 at [47], where the Environment Court said that recent higher order documents must be considered when making plans even if the lower order document were fully settled.

- (c) The NPS-UD was issued after the RPS. The RPS must be interpreted and applied in light of the fact that it was not prepared to give effect to the NPS-UD and it cannot be assumed that it does so. If there is any inconsistency or conflict the NPS-UD must be given effect to in preference to the RPS. In the context of Pokeno, therefore the Panel's primary obligation is to enable growth and this must take priority over any outdated regional policy direction to the contrary;
- (d) In addition to the requirement to give effect to the higher order documents, 74(2)(b)(i) requires a local authority when preparing its district plan to have regard to "any management plans and strategies prepared under other Acts". Waikato 2070 is a growth strategy prepared under the Local Government Act 2002 and so the Panel must have regard to it when preparing the Proposed Plan.

4.6 The weight to be assigned to Waikato 2070 will be up to the Panel. HVL's considers that Waikato 2070 should be given significant weight because it:¹¹

- (a) Is the most recent and specific growth management document, incorporating the latest information. Although even the demand projections in Waikato 2070 may now be out of date;
- (b) Involved a full public submission process under the Local Government Act 2002 with hearings to test submitter's views and positions;
- (c) Combines growth planning and infrastructure planning and so is an important guide for how to integrate these two issues, as is required by the NPS-UD.

Relevant planning documents

4.7 Mr Tollemache's primary evidence provides a comprehensive analysis of the proposal against the relevant statutory documents.¹² Where necessary, supplementary analysis is provided within his rebuttal evidence in order to respond to submitter evidence. Mr Mead concurs with this assessment and has not identified any additional statutory documents as part of his assessment. For completeness the relevant documents are:

- (a) NPS-UD;

¹¹ Primary evidence of Mark Tollemache, paragraphs 17.12 - 17.13.

¹² Primary evidence of Mark Tollemache, sections 13, 14, 15 and 16.

- (b) The National Policy Statement on Freshwater Management;
- (c) The RPS;
- (d) The Vision and Strategy for the Waikato River (**Vision and Strategy**);
- (e) The Waikato-Tainui Environmental Management Plan;
- (f) Strategic regional documents, being the Future Proof Growth Strategy 2017 and the Waikato 2070 Growth and Urban Development Strategy; and
- (g) The Proposed Plan policy direction.

5. NEED TO PROVIDE FOR GROWTH IN POKENO

Need to implement the NPS-UD

5.1 The NPS-UD is the dominant planning document in relation to the assessment of the proposal (and other rezoning requests in Pokeno) and is the most relevant national direction.¹³ The Proposed Plan is legally required to implement the NPS-UD, especially the directive provisions to deliver well-functioning urban environments and to provide sufficient development capacity. The Panel's first priority when assessing submissions is to ensure the Proposed Plan implements these directives. All other planning documents and considerations are secondary to that obligation and must be interpreted and applied in light of the NPS-UD.

5.2 The Waikato District is a Tier 1 Local Authority and based on growth projections Pokeno is a Tier 3 urban environment.¹⁴ The purpose and application of the NPS-UD is therefore critical to the Panel's determination of the proposal.

Purpose of the NPS-UD is to open doors not close them

5.3 The purpose of the NPS-UD, and its predecessor the National Policy Statement: Urban Development Capacity 2016, is to:

- (a) Recognise the national significance of urban development;
- (b) Enable and provide for growth; and
- (c) Take a multi-generational approach.

¹³ Pokeno is located outside the coastal environment and so the New Zealand Coastal Policy Statement is not relevant. The National Policy Statement on Freshwater Management and the Vision and Strategy for the Waikato River are less relevant to the Proposal.

¹⁴ Primary evidence of Mark Tollemache, paragraph 10.4.

- 5.4 Mr Tollemache describes how the NPS-UD (and its predecessor) were developed in response to fast-growing urban areas in New Zealand to help address the constraints on development capacity in resource management.¹⁵
- 5.5 The Environment Court closely considered the purpose and application of the NPS:UDC in the decision of *Bunnings Limited v Queenstown Lakes District Council*.¹⁶ The Court emphasised the underlying permissive nature of the NPS:UDC saying it is about enabling development and sets minimum requirements for supply not maximum targets to be met. The NPS:UDC is intended to "open doors" not close them.¹⁷
- 5.6 These statements are equally, if not, more applicable to the NPS-UD.

Key themes and provisions of the NPS-UD

- 5.7 To achieve that overarching purpose, the key themes and requirements of the NPS-UD are:¹⁸
- (a) To achieve well-functioning urban environments through-out New Zealand that enable people to provide for their wellbeing (Objective 1). That is done by, amongst other things, having a variety of homes to meet the needs of different households and having good accessibility to housing, jobs and community services (Policy 1(a) and (c)).
 - (b) Improve housing affordability by supporting competitive land and development markets (Objective 2 and Policy 1(d)).
 - (c) District plans must provide, at least, sufficient capacity to meet expected demand over the short, medium and long term (Policy 2 and Implementation Clauses 3.2-3.7). The Implementation Clauses make clear that these are "bottom-lines".¹⁹ This means they are directive provisions that must be achieved in the district plan and act similar to rules.
 - (d) Importantly, the bottom-lines are not targets or limits. The other parts of the NPS-UD, in particular the provisions regarding diversity of housing and achieving competitive housing markets, show a preference to provide much greater capacity than the minimums in order to achieve those outcomes.

¹⁵ Ibid, paragraph 10.2.

¹⁶ [2019] NZEnvC 59.

¹⁷ Ibid, at [39].

¹⁸ Mr Tollemache also provides his assessment of these themes in his primary evidence, paragraph 10.8-10.23.

¹⁹ See for example the title of Implementation Clause 3.6 "Housing bottom-lines for tier 1 and 2 urban environments".

- (e) Acknowledge that urban environments, including amenity values, develop and change over time (Objective 4). This may involve significant change and those changes are not, of themselves, an adverse effect (Policy 6). The NPS-UD therefore signals that change will happen in urban environments in order to create well-functioning environments and provide additional capacity. This policy theme is consistent with the Environment Court's observations in *Summerset Villages (St Johns) Limited v Auckland Council* that the National Policy Statement on Urban Development Capacity 2016 signals there will be changes in existing amenity values in urban environments and:²⁰

... gives direction to decision-makers to have regard to urban growth outcomes which have previously been under-emphasised in favour of local environmental or amenity considerations.

- (f) This policy direction is particularly relevant in assessing the weight (if any) to be given to historic documents (such as PVHL's 2008 Structure Plan) and amenity values (such as the RL100 and rural backdrop to Pokeno).
- (g) Be responsive to proposals that significantly add to development capacity and contribute to well-functioning urban environments (Objective 6 and Policy 8).²¹

Implementing the NPS-UD in Pokeno

- 5.8 It is clear that Pokeno is in the midst of significant change and growth.²² From a quiet rural village it is turning into a thriving town and Waikato 2070 signals a community expectation of significant future growth. Building consents are the highest they have ever been.²³
- 5.9 This is due to a range of factors including the previous planning and commitment by PVHL and Pokeno's ideal location close to Auckland and its advantage in land and house prices. Increasing house prices in Auckland are likely to further increase the demand for housing in Pokeno.²⁴ It has been one of the main locations for growth within the Waikato District over the last ten years with over 50% of the District's growth, and is expected to be the largest town within north Waikato.²⁵

²⁰ [2019] NZEnvC 173 at [49].

²¹ It is unclear if these provisions apply to submissions on a plan review since Policy 8 and the related implementation clauses expressly refer to "plan changes". But in the event they do apply in this plan review process, Mr Tollemache has assessed the Proposal against this policy at paragraphs 10.9 and 10.19.

²² Primary evidence of Mark Tollemache, paragraph 10.8.

²³ Primary evidence of Adam Thompson, paragraph 6.4.

²⁴ Rebuttal evidence of Adam Thompson, paragraph 7.3

²⁵ Primary evidence of Mark Tollemache, paragraph 16.2.

- 5.10 The Proposed Plan was notified in 2018 and since then the growth of Pokeno and the demand for dwellings has only increased. In addition, the NPS-UD came into effect in late 2020. The Council has acknowledged these factors in the Framework Report (including with updated population projections) and Dr Davey identifies that additional residential capacity is required with Pokeno.²⁶
- 5.11 It is therefore clear that rezoning more residential capacity than identified in the notified Proposed Plan is necessary in order to meet additional demand and implement the NPS-UD. The key questions for the Panel are how much and where.
- 5.12 The Panel's decisions in relation to Pokeno are particularly important given it is expected to provide for nearly half of the district's growth. There is a strong upward growth trend. Getting the capacity and rezoning right will have long-term impacts on housing supply and affordability. This is one location where the Panel should not be conservative.
- 5.13 Zoning for additional residential capacity in Pokeno will directly contribute to supporting a more competitive land market in Pokeno and therefore implement the NPS-UD. Mr Thompson's evidence is that the current housing market comprises one large developer and fails to deliver an efficient or competitive market.²⁷ Rezoning land for residential development will introduce diversification and make the housing market significantly more competitive.²⁸

Demand and capacity – different calculations

- 5.14 There have been a number of different and evolving assessments of demand and supply by a range of experts, and these are discussed further below. The assessments can become complicated depending on the assumptions related to dwelling demand, existing capacity, the land to be rezoned and the assumptions about how much of the rezoned land will actually be utilised for housing once constraints are taken into account.
- 5.15 The Panel will ultimately need to reach a view on the likely demand (or at least a range) but HVL's position is that exact demand figure is not determinative of whether Havelock is rezoned or not. This is on the basis that rezoning the site implements a number of aspects of the NPS-UD:
- (a) Enables people to live in an area of high demand;

²⁶ Framework Report prepared by Dr Mark Davey, for example at paragraph 7(c)-(e).

²⁷ Primary evidence of Adam Thompson, paragraph 7.22.

²⁸ Ibid, paragraph 7.23.

- (b) Will assist to achieving a well-functioning urban environment through the provision of additional housing in proximity to the town centre;
 - (c) Supports a competitive land and housing market; and
 - (d) Is accessible to jobs and community services within Pokeno.
- 5.16 If the Panel determines that there is insufficient residential capacity provided within the Proposed Plan to meet the medium or long term demand for Pokeno (ie the housing bottom lines) then the Panel must rezone some land to address the shortfall. Depending on the size of the deficit between capacity (in the Operative Plan and the Proposed Plan as notified) then the Panel may be required to rezone Havelock in order to meet the housing bottom lines.
- 5.17 Mr Tollemache's and Mr Thompson's rebuttal evidence summarises the different approaches. There are a range of annual dwelling demand figures:
- (a) 200 dwellings, "baseline" assessment identified by Mr Thompson;
 - (b) 215 dwellings identified by Mr Tollemache based on historic building consent data;
 - (c) 237 dwellings in Dr Davey's Supplementary section 42A Report;
 - (d) 260 dwellings (including the 20% buffer required by the NPS-UD) in Mr Mead's s42A report;
 - (e) 275 dwellings identified by Mr Thompson based on building consent data for 2020;
 - (f) 400-500 dwellings high growth scenario identified by Mr Thompson.
- 5.18 Given there is an ongoing upward trend for building consents, the Panel need to determine whether it is relevant to rely on growth strategies such as Future Proof 2017 which rely on projections that are a third to a quarter of most recent construction activity.

Havelock's position

- 5.19 Mr Tollemache and Mr Thompson have assessed demand and capacity using the following assumptions:²⁹

²⁹ Rebuttal evidence of Adam Thompson, paragraph 3.28. Rebuttal evidence of Mark Tollemache, paragraph 3.28.

- (a) Mr Mead's 260 dwelling demand figures (as a conservative middle figure),
 - (b) Mr Mead's recommended rezonings (including Havelock); and
 - (c) The number of dwellings identified by the actual rezoning submitters.
- 5.20 Mr Tollemache's conclusion is that there is only 9.2 years of supply and this would fail to meet the housing bottom line for the medium term of 10 years.
- 5.21 On this analysis Havelock (and all its 600 dwellings) is required to meet the NPS-UD bottom lines (and in fact requires the Panel to provide even more capacity). In addition:
- (a) If a higher demand figure (or a lower figure for dwellings actually delivered per site) is used the short fall is even more;³⁰
 - (b) Even if the dwelling figure is lower, there is still a need to rezone more land compared to the notified Proposed Plan (which could include Havelock);
 - (c) HVL and its experts consider that even if not required to meet the bottom lines of the NPS-UD, rezoning the site implements a number of other aspects of the NPS-UD.³¹
- 5.22 This assessment is also generally consistent with Dr Davey's supplementary report where he identifies a deficit of live zoned land (that is reasonably expected to be realised) in Pokeno compared to demand.³²
- 5.23 If there is any criticism of Mr Mead's approach it is that he has sought to enable "just enough" housing capacity to meet short and medium term demand, but has not given sufficient weight to the other parts of the NPS-UD about supporting a more competitive housing market.

Position of PVHL

- 5.24 The only experts who seem to offer a contrary view on growth are Mr Colegrave and Mr Scrafton. Mr Colegrave offers no estimate of demand himself while Mr Scrafton considers the number is between the 2017 HBA (used within Future Proof 2017 and only 76 dwellings per annum) and the 2021 Draft HBA (as outlined in Dr Davey's Framework Report).

³⁰ Rebuttal evidence of Adam Thompson, paragraph 4.1.

³¹ Primary evidence of Adam Thompson and Mark Tollemache.

³² Figure 15 at paragraphs 46-41.

- 5.25 Mr Colegrave acknowledges that he is normally supportive of providing additional capacity but warns against over supply by identifying potential adverse effects associated with lack of associated infrastructure provision. Mr Thompson has comprehensively illustrated that Mr Colegrave's oversupply will not eventuate and, even it did, there are a number of benefits that would be realised if there was any over-supply, including better implementing the NPS-UD.
- 5.26 In addition, any evidence or submissions that allege or imply that land should not be live-zoned³³ due to the fact it does not technically meet a certain definition in the NPS-UD (such as not being "infrastructure ready" since it is not formally identified in a long term plan) have misconstrued the purpose of the NPS-UD, adopted an overly technical interpretation of the NPS-UD and are inconsistent with the Environment Court's view that the NPS-UD is enabling and opens doors. The intent of the NPS-UD is that if there is not sufficient infrastructure ready land, then local authorities have to do better to provide that infrastructure and ensure adequate land can be development and brought to the market. It is the responsibility of councils to provide the necessary infrastructure and ensure minimum amounts of land are zoned with appropriate infrastructure provision in place.
- 5.27 To its credit, the District Council has shown (through the Framework Report³⁴ and Waikato 2070) that it is committed to providing the bulk infrastructure necessary to enable medium to long term growth in Pokeno. Sometimes there may not be perfect alignment between live-zoning and infrastructure provision in a long term plan and it is an iterative process. The NPS-UD requires that local authority decisions are integrated with infrastructure planning and funding decisions and respond to proposals that will deliver significant supply.³⁵ The policy theme from the NPS-UD is therefore about **integration**, not requiring absolute certainty that all necessary infrastructure has been identified and included in long term plans, which are prepared every three years. It is unrealistic for councils to be required in every instance to fully plan and fund infrastructure before growth can be approved under RMA plans.
- 5.28 That is especially the case in Pokeno, which is growing at a rapid pace and the Council is committed to managing growth. The Council has signalled that its Long Term Plan (**LTP**) will identify the bulk infrastructure necessary for Havelock and it

³³ Mr Scrafton's rebuttal evidence at paragraph 2.5 states his opinion that live zoned land without adequate infrastructure support cannot be considered as "infrastructure ready" under the NPS-UD and can not be considered as contributing to capacity. The implication could be that such land should not be rezoned.

³⁴ Paragraphs 135-137 and 288-298 and Appendix 5.

³⁵ Objective 6 of the NPS-UD.

will soon meet the definition of infrastructure-ready. Rezoning the land gives the Council the necessary certainty to provide for the infrastructure.

- 5.29 The Council simply must rezone land to provide for more residential capacity since there is an obvious shortfall and that may include land that is not technically "infrastructure ready". The evidence from Dr Davey demonstrates there is the sufficient integration between land use and infrastructure planning.

Future urban zone is not a viable alternative

- 5.30 As identified by Mr Tollemache in his primary evidence and section 32AA report, an alternative approach for Havelock would be to rezone the site as Future Urban instead of a live-zone.³⁶ (Mr Scrafton's primary evidence also discusses how greenfields land in Pokeno should be zoned as Future Urban until a structure plan or similar is completed).
- 5.31 Given the need to rezone additional land in Pokeno for residential development to meet medium term demand, as required by the NPS-UD, it is not a viable alternative to rezone Havelock as only future urban. Live zoned land must be provided now in the district plan to meet those requirements.
- 5.32 There is also no reason why Havelock cannot be live zoned now:
- (a) It is supported by a full suite of technical evidence;
 - (b) The Council has identified that the necessary bulk infrastructure is in place or soon will be;³⁷ and
 - (c) It is consistent with the most relevant council growth management strategy – Waikato 2070.

6. WHERE TO PROVIDE FOR GROWTH IN POKENO

- 6.1 Once the Panel has decided that additional residential capacity needs to be provided, it needs to decide where to provide for that growth within the Waikato district and within Pokeno. The statutory and planning guidance to assist the Panel in identifying the appropriate locations for growth comes from the NPS-UD, the RPS, Future Proof 2017, Waikato 2070 and expert evidence (including urban design evidence).³⁸ The relevant provisions of the planning documents are well explained

³⁶ Primary evidence of Mark Tollemache, paragraph 8.6.

³⁷ Appendix 5 to Framework Report re infrastructure for Havelock in the Appendices as confirmed in primary evidence of Ryan Pitkethley, paragraph 1.6.

³⁸ Dr Davey's Lens 3 from the Framework Report replicates and summarises the same themes and considerations.

and identified in the Framework Plan, the evidence of Mr Tollemache and Mr Munro and the section 42A report.

The NPS-UD

- 6.2 The NPS-UD states that for Tier 3 urban environments like Pokeno, district plans should enable greater density where land is accessible (including by public transport) to a range of commercial activities and community services and where demand is high.³⁹
- 6.3 Havelock is consistent with this policy direction:
- (a) Havelock is accessible to a range of services and employment in the Pokeno Town Centre and especially to the Gateway Business Park.⁴⁰ Havelock is beyond walking distance but is easily accessible by bike or micro-mobility;
 - (b) Importantly access from Havelock is not severed by State Highway 1⁴¹ like other potential greenfields sites in Pokeno East;
 - (c) The public transport system is still developing in Pokeno but the design of Havelock allows for a future bus route through the residential area in the future;⁴²
 - (d) Pokeno as a whole has high demand for housing relative to other locations in the district.⁴³

Future Proof 2017 and Waikato 2070

- 6.4 More specific guidance on where growth should occur in Pokeno is provided by:
- (a) Future Proof 2017; and
 - (b) Waikato 2070.
- 6.5 Havelock is consistent with both these strategy documents:
- (a) Part of Havelock, generally matching the residential zone component, is identified within the indicative urban limits for Pokeno in Future Proof 2017;⁴⁴ and

³⁹ Policy 3(d) of the NPS-UD.

⁴⁰ Primary evidence of Mark Tollemache, paragraph 10.7.

⁴¹ Primary evidence of Mark Tollemache, paragraph 1.15(b).

⁴² Primary evidence of Leo Hills, paragraph 5.29 and primary evidence of Ryan Pitkethley, section 8.

⁴³ Section 42A Framework Report, paragraphs 124 and 173.

⁴⁴ Section 42A report 368.

- (b) Havelock is identified within Waikato 2070 as a site for urban expansion and development within the next 3-10 years. As noted above Waikato 2070 is the latest and most up to date community-led growth management strategy and should be afforded considerable weight.

RPS development principles

- 6.6 The RPS contemplates that urban growth and expansion will be consistent with Future Proof 2017 and Havelock gives effect to this urban growth strategy.
- 6.7 The RPS also directs (in particular through Policy 6.1) that development occurs in a planned and integrated manner consistent the development principles in section 6A. Mr Tollemache has undertaken a thorough analysis of how Havelock is consistent with these Principles.⁴⁵ This has been reviewed and endorsed by Mr Mead in his section 42A report.
- 6.8 In summary, the residential component of Havelock:
- (a) Is contiguous with the existing urban area and enables a compact urban form;
 - (b) Will not compromise the safe or efficient operation of infrastructure and can be serviced by new infrastructure;
 - (c) Does not impact on any Outstanding Natural Landscape or Feature or any High Class Soils;
 - (d) Does not compromise an extractable mineral resource;
 - (e) Will not result in incompatible land uses; and
 - (f) Considers effects on tangata whenua relationships, values, aspirations, roles and responsibilities with respect to an area (noting there is some in this respect which are addressed later).
- 6.9 Mr Tollemache has also separately assessed the rural residential component of Havelock against the relevant development principles in section 6A and concludes the Rural Lifestyle rezoning is consistent with these principles.

⁴⁵ Primary evidence of Mr Tollemache, paragraph 12.5.

Urban design merits of the proposal and its spatial location in Pokeno

6.10 Mr Munro's has also undertaken urban design assessment of the proposed rezoning. His conclusions are:

- (a) Havelock can function as an extension of Pokeno and integrates well with the town;⁴⁶
- (b) It offers a relatively convenient and close connection with the Pokeno main street (as an indicator of the 'heart' of the town);⁴⁷
- (c) It can accommodate development that retains the existing green hill backdrop to the settlement;⁴⁸
- (d) Historically Pokeno has developed in a predictable manner across the flat land but the next logical step is for the town to expand up the surrounding hills. This a common process in towns through-out New Zealand (including Queenstown, Wanaka, and Mangawhai);⁴⁹
- (e) Havelock (and the eastern part of the Graham Block) are the two most ideal locations for urban expansions of Pokeno;
- (f) State Highway 1 creates a significant severance and urban expansion should occur on the western side of the highway before Pokeno East;
- (a) It is necessary to rezone Havelock in order to round out the town, counterbalance ongoing expansion north, west and east and keep residential land close to the town centre.⁵⁰

6.11 Mr Munro is the only expert who has considered the "bigger picture" of Pokeno in spatial terms and assessed the ideal future urban form of Pokeno and potential sequence of development.

6.12 In summary he considers the revised proposal will:⁵¹

...enable well-connected residential development on the upper 'hill' part of the site close to Pokeno and where there would be an ability to create a neighbourhood that looked and functioned as a part of Pokeno. On the site's lower 'tail' area, a bespoke rural lifestyle cluster area, and substantial bush protection and enhancement, reflects

⁴⁶ Primary evidence of Mr Munro, paragraph 1.6.

⁴⁷ Ibid, paragraph 1.8(a).

⁴⁸ Ibid, paragraph 1.8 (c).

⁴⁹ Primary evidence of Ian Munro, paragraph 1.8 and 4.1.

⁵⁰ Ibid, paragraph 1.8(f).

⁵¹ Ibid para 1.6.

that this cannot be as conveniently connected with Pokeno as the 'hill' area, and does sit in a more characteristically rural visual catchment.

- 6.13 Overall, in planning and urban design terms Havelock is an ideal location for urban expansion in Pokeno.

Is further structure planning required?

- 6.14 A consistent theme in the evidence of PVHL witnesses is that structure planning is an essential prerequisite to rezoning of residential land. In terms of any planning "requirements", Method 6.1.7 of the RPS states that before land is rezoned for urban development that urban development planning mechanism such as town plans or structure plans should be implemented.

- 6.15 Mr Munro's evidence⁵² (endorsed by Mr Tollemache)⁵³ is that a new structure plan for Pokeno is not relevant or necessary to evaluate the merits of the Havelock rezoning or the optimal spatial strategy for the town. In relation to Havelock's rezoning:⁵⁴

- (a) The master planning and urban design assessment took into account the wider context of Pokeno and all relevant growth strategies;
- (b) The technical work to arrive at the refined proposal is of greater technical depth and robustness than is expected for a structure plan;
- (c) The same principles and inputs would be used in a structure planning exercise; and
- (d) The refined proposal would not have materially changed if structure planning had occurred.⁵⁵

- 6.16 HVL (along with the Council and Mr Mead) do not consider that it is always strictly necessary or appropriate to require structure planning for Pokeno as a whole before rezoning land:

- (a) Method 6.1.7 is just that, a method, and not an objective and policy. It therefore has limited weight and must be considered subservient to the relevant objectives and policies. None of those provisions, rightly, refer to a requirement to undertake structure plan in all circumstances;

⁵² Primary evidence of Ian Munro, paragraph 6.2(a)(v).

⁵³ Primary evidence of Mark Tollemache, paragraph 4.13.

⁵⁴ Primary evidence of Ian Munro, paragraph 6.2(a)(v).

⁵⁵ Also see rebuttal evidence of Mr Pitkethley in relation to catchment stormwater planning at paragraphs 3.8-3.27.

- (b) The method is directed at local authorities not at submitters on a plan review. The obligation therefore sits with those local authorities and should not be imposed on submitters. The effect of doing so would be to fundamentally undermine the right of those submitters to submit and seek changes to a district plan;
- (c) Delaying making the necessary zone changes to wait for Council-led structure planning occur would create unacceptable delay, especially given the significant additional residential capacity that needs to be provided to meet the mandatory requirements of the NPS-UD;⁵⁶ and
- (d) It seems the Council does not have the capacity to undertake additional structure planning given it has not undertaken any structure planning of its own since the preparation of the Proposed Plan.⁵⁷

6.17 HVL and its experts see no way that the Proposed Plan can implement the NPS-UD (and comply with its core legal obligations under the RMA) if rezonings are delayed so that further unnecessary structure planning can occur. Ultimately any RPS method must yield to NPS-UD directives to enable growth.

6.18 HVL considers it has provided sufficient technical assessments and provisions to satisfy the requirements of 6A of the RPS, and the outcomes of its evaluation are consistent with a site-specific structure plan process.

7. HYNDS' OPPOSITION – REVERSE SENSITIVITY CONCERNS

Overview of Proposed Industry Buffer and approach to industrial interface management

7.1 The Havelock Proposal has always sought to appropriately manage the interface between proposed residential development and the existing industrial area. HVL acknowledges and recognises the existing industrial operators Hynds, Yashili, Winston Nutritional and Synlait and their investment in the Pokeno area.

7.2 HVL has actively worked to engage with these operators prior to, and during, the PWDP process to ensure that their development proposals are compatible and for the mutual benefit of Pokeno. In developing the buffer mechanism and setback controls, HVL has sought input from multiple technical experts, voluntarily circulated

⁵⁶ Rebuttal evidence of Mark Tollemache, paragraph 3.9.

⁵⁷ Ibid, paragraph 3.6.

its noise modelling information and sought feedback from the industrial operators on a number of occasions.

- 7.3 As it stands, Winston Nutritional supports Havelock's rezoning. HVL and Yashili have reached agreement on all appropriate interface controls as between their respective activities. Yashili also supports Havelock's rezoning.
- 7.4 While previous reverse sensitivity concerns have been raised by Synlait in earlier topic hearings, no further expert evidence in opposition has been provided by Synlait in this rezoning topic. Importantly, Synlait accepted that a buffer mechanism could be an appropriate response as occurs at its own Dunsandel Plant.⁵⁸ No evidence has been filed by Synlait that questions the technical basis of the setback distances proposed by HVL's expert witnesses.
- 7.5 The only industrial operator who remains of the view that potential reverse sensitivity effects will arise is Hynds. Hynds' concerns with respect to potential reverse sensitivity effects appear to have evolved over time. While initially, Hynds appeared concerned with potential constraints on its existing operations with respect to noise, lighting or air discharges, these concerns have not been substantiated on the basis of any technical evidence or onsite measurements.
- 7.6 Hynds' latest, now predominant concern, is described by its experts as significant "visual reverse sensitivity effects".⁵⁹ This appears to be a novel legal issue where apparently future residents on the Havelock site will be so aggrieved by overlooking the industrial area that the inevitable outcome will be complaints to Council that result in constraints being imposed on Hynds' existing buildings, or perhaps future building works. With respect, it's difficult to conceive of that situation arising and the reasons for that are outlined more fully below. It is not a concern shared by Winston Nutritional or Yashili who have their operations adjoining Havelock who both support the rezoning.
- 7.7 Critically, in terms of avoiding or managing actual or perceived reverse sensitivity effects, all parties appear to agree that the proposed buffer mechanism as a planning response is appropriate. The only remaining issue appears to be the appropriate setback distance for that buffer and related planning controls to secure its protection in the plan.

⁵⁸ Legal submissions for Synlait Milk Limited, for Topic 7, dated 15 January 2020

⁵⁹ Rebuttal evidence of Rachel de Lambert for Hynds Pipe Ltd, paragraph 3.9 and Evidence of Dharmesh Chhima and Sarah Nairn for Hynds on Topic 25, paragraph 4.1.

7.8 Essentially, the Panel need to decide whether Havelock's buffer extent which is informed by modelled inputs to provide appropriate residential amenity is sufficient or whether Hynds' proposed buffer extent based on a large setback to seemingly prevent dwellings within the visual catchment of the Gateway Business Park is more appropriate, despite the significant limitations that will have on future growth capacity. HVL's position is that large separation distance cannot be justified on the evidence to manage effects, or in light of the Panel's obligations to provide for residential growth.

The law on reverse sensitivity effects

7.9 The RMA does not contain the term 'reverse sensitivity' or impose any explicit principle or duty to account for this category of effect. This can be compared with other statutory directives that the Panel must implement or give effect to, such as the NPS-UD.

7.10 The Panel will be familiar with the often cited description of the reverse sensitivity concept from the *Affco* decision, which is (emphasis added):⁶⁰

Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises **when an established use is causing adverse environmental impact to nearby land**, and a new, benign activity is proposed for that land. The "sensitivity" is this: if the new use is permitted, **the established use may be required to restrict its operations** or mitigate its effects so as to not adversely affect the new activity.

7.11 A reverse sensitivity effect must therefore include **all** of the following components:

- (a) an existing activity, operating within any relevant planning limits or consent conditions;
- (b) which is causing adverse environmental impact to nearby land;
- (c) an objection to that existing activity being made either to the operator or a Council by a person undertaking a new different activity from that nearby land; and
- (d) as a direct result of that objection, the existing operation being constrained to a scale, intensity or character less than lawfully exists or is consented to exist.

⁶⁰ *Affco New Zealand Ltd v Napier City Council* NZEnvC W082/2004, 4 November 2004 at [29] (*Affco*).

7.12 In *Affco*, the Court also went on to explain that whether one should deal with a reverse sensitivity effect by avoiding it, remedying it or mitigating it, is a question of judgement in each case. The Court said:⁶¹

[i]t will depend on a matrix of issues; for instance, the nature of the effect; its impact on the environment and amenities; how many people are affected by it; whether it is possible to avoid it at all and, if so, at what cost.

7.13 In subsequent cases, the courts have also cautioned against a view that “reverse sensitivity” consequences should necessarily be avoided by constraint on sensitive new activities. The first principle should be that the activity causing the adverse effects should internalise those adverse effects to the greatest degree reasonably possible.⁶²

7.14 Both of these legal principles are relevant factors in this context. As Mr Tollemache explains where national imperatives for growth must be implemented, management of reverse sensitivity, as opposed to blanket avoidance, must be the most appropriate and efficient tool as is the case for all growing urban environments.⁶³ Any approach that seeks to impose extensive development setbacks over third party land due to concerns about perceived visual sensitivities runs contrary to these established legal principles.

Reverse sensitivity in a plan making context – balancing land owner interests

7.15 In the plan making context, the Independent Hearing Panel (**IHP**) appointed to hear the Christchurch Replacement Plan chaired by Judge Hassen also recognised the need to balance competing land owner interests and is worthy of note in this context. The observations made by the IHP related to the potential for reverse sensitivity effects to arise if land adjacent to an existing poultry farm were to be rezoned for residential use. The rezoning was opposed by Tegel as operator of the farm.

7.16 The decision of the IHP acknowledges⁶⁴ that the RMA does not use the term 'reverse sensitivity' and does not express any explicit principle or duty to account for this category of effect. The decision states:

We are mindful of the danger of tacking 'principles' or 'duties' onto the RMA, given its clear purpose and principles and subordinate framework of policy statements and plans for the purpose of decision-making.

⁶¹ *Affco* at [30].

⁶² *Winstone Aggregates v Matamata-Piako DC* (2005) 11 ELRNZ 48.

⁶³ Rebuttal evidence of Mark Tollemache, paragraph 4.20.

⁶⁴ Decision 29 of the IHP, dated 15 July 2016, at [66].

- 7.17 While endorsing the generally accepted *AFFCO* definition outlined above, the IHP made the following points:⁶⁵ (**emphasis added**)

... where this type of effect arises, it is as a result of the operation of the RMA. For instance, the concept of being "required to restrict ... operations or mitigate ... effects" could arise through RMA abatement notices or enforcement action in relation to the duties in ss 16 and/or 17 of the RMA. Alternatively, it could arise through the imposition of more stringent conditions at re-consenting or through plan review.

Given that, we consider it important that we are careful not to make any unjustified assumptions that intervention to manage reverse sensitivity effects is appropriate. This is particularly because such intervention inevitably involves a choice between competing rights and interests. In terms of that balance, the RMA gives some limited recognition to incumbency, particularly in the fact that it specifies existing use rights. However, it does not go so far as to express any principle that, in plan review processes, new activities must be curtailed or restricted so as to protect incumbent or established uses. We would expect such a principle, if intended, to be clearly expressed given the constraints it would impose on the capacity for plans to instigate and assist land use change for greater community wellbeing.

- 7.18 In short, the IHP's decision reflected the need to give some recognition to the established use whilst also recognising the rights of an adjoining landowner. The Panel here will also need to strike the appropriate balance. Critical to informing that balance however is this Panel's legal obligation in terms of providing for growth under the NPS-UD.
- 7.19 As Mr Tollemache explains the RPS acknowledges that potential reverse sensitivity effects should be avoided or minimised. When faced with competing national direction an approach that seeks to minimise or manage reverse sensitivity is more appropriate which is what the Havelock buffer mechanism achieves.

Overview of Hynds' position

- 7.20 The case for Hynds is that a further significant proportion of HVL's site should be sterilised from development on the basis of a perceived visual reverse sensitivity effect. The additional buffer areas sought by Hynds' witnesses will result in a reduction of some 150 lots or one-third of Havelock's development potential. Conversely, the technical evidence of HVL's experts establishes that any genuine cause for potential reverse sensitivity effects such as noise, lighting or air discharges have been avoided or minimised by the proposed Pokeno Industry Buffer and related provisions.⁶⁶

⁶⁵ As above, at [68].

⁶⁶ Refer to the rebuttal evidence of Mark Tollemache, at section 5, which outlines the collective technical evidence HVL experts have provided regarding the potential for direct and how reverse sensitivity effects have been avoided or minimised. See also footnotes J Styles: 71-74, A Curtis: 78 and B King: 81-82.

- 7.21 To the extent that visual reverse sensitivity effects can even arise (which is disputed), the expert evidence of Mr Munro is that future Havelock residents can simply chose to plant or fence those views out.⁶⁷ In reality, if they have any such concerns they probably will chose not to purchase those sites in the first place.
- 7.22 We have been unable to find any case law where the operation of existing industrial activities (or any activity in fact) has been constrained by the introduction of new activity on the basis of alleged visual reverse sensitivity effects. This is not surprising. It is difficult to anticipate a scenario where an existing operation could be required to remove or screen a lawfully established development as a result of a complaint on visual grounds.
- 7.23 The appropriateness of the vista/outlook from the residential dwellings is a matter that potential purchasers can take into account when deciding whether to purchase a property. With respect this is not a choice that needs to be imposed on prospective purchasers where housing supply is in demand. Their housing preferences may be for closer transport links, lower price points or connectively to employment sources or the town centre. As recognised by the NPS-UD, amenity expectations are changing in fast growing urban environments. As decision makers, this Panel's obligation is to deliver a framework for a variety of housing typologies and choices, not restrict them based on subjective concerns over visual outlook or protection of a visual catchment for existing uses.

Are reverse sensitivity effects likely to arise?

- 7.24 In order to assess the likelihood of constraints being imposed on the Hynds' site (or more generally the industrial operators) an understanding of the adverse effects lawfully able to be generated on Havelock's site is required. Critically for legitimate reverse sensitivity effects to arise there must be direct adverse effects from the existing industrial operations on Havelock's land that could give rise to complaint and then a subsequent constraint on those activities (see highlighted portion of paragraph 7.17 above).
- 7.25 Hynds' primary evidence raises concerns about potential noise, lighting, dust, and visual reverse sensitivity effects impacting on its operations.⁶⁸ What Hynds' evidence fails to establish is that any such adverse effects from its operations (or future expansion) are in fact impacting on Havelock's proposed residential lots

⁶⁷ Rebuttal evidence of Ian Munro, paragraph 5.7(g).

⁶⁸ Joint Statement of Evidence in opposition to rezoning proposal, by Dharmesh Chhima and Sarah Naim on Behalf of Hynds Pipe Systems Limited and the Hynds Foundation, Planning, dated 17 March 2021 at [5.4 - 5.5].

beyond that typically considered acceptable for residential amenity. What this means is that the potential for genuine reverse sensitivity effects has been greatly overstated.

- 7.26 Based on the uncontested surveyed expert evidence before the Panel, there are no direct adverse effects from Hynds' site that could give rise to complaints from future residents and consequently, **constraints** on its existing operation or proposed expansion.
- 7.27 In considering whether restrictions on reverse sensitivity grounds are justified, it is not simply a question of whether existing operations may result in complaints being made. There is no authority for the proposition that under the RMA an existing operator is entitled to be relieved from the burden of receiving and/or responding to complaints, particularly if the complaint is founded on reasonable grounds (eg non-compliance).
- 7.28 Where Hynds is operating in compliance with its consents or applicable plan limits and its activities are not directly impacting on the future residential lots, the risk of any complaints giving rise to on-going operational constraints must be negligible if not, non-existent.⁶⁹ We deal with each potential direct effect in turn below.

Potential noise effects

- 7.29 All Havelock residential lots will be located outside of the Pokeno Industry Buffer beyond the modelled 45 db noise contour line. As Mr Styles explains:
- (a) Noise limits of 55 dB L_{Aeq} (day time) and 45 dB L_{Aeq} (night time) are commonly adopted in district plans for residential zones (providing for traditional single-house residential activity) at the interface with business or industrial zones, and rural zones.⁷⁰
 - (b) These noise limits are very common across New Zealand in situations where business or industry zones have an interface with residential or rural zones including in the Auckland Unitary Plan.⁷¹
 - (c) Based on the noise modelling, the land subject to the Pokeno Industry Buffer Overlay represents the appropriate separation distance to manage potential noise conflicts between future noise sensitive activities on the site, and the

⁶⁹ Primary evidence of Jon Styles, paragraphs 6.2-6.4.

⁷⁰ Primary evidence of Jon Styles, paragraph 6.2.

⁷¹ Ibid.

noise effects of existing authorised industrial activities in the Gateway Business Park.⁷²

- (d) The controls proposed by HVL will ensure that future noise sensitive receivers on the Havelock site will be exposed to a level of noise that is no greater than reasonable for residential activity. By ensuring that the noise levels are reasonable, the potential for reverse sensitivity effects on the existing industrial zones will be avoided.⁷³

7.30 Subsequently, in response to suggestions raised by Mr Mead and Mr Hegley, the Havelock provisions have been updated to include provision for additional acoustic insulation and mechanical ventilation in dwellings between the 45db and 40db contour lines to provide for additional residential amenity for these lots.⁷⁴

7.31 No expert noise evidence has been filed by Hynds that challenges the appropriateness of this management approach. As Mr Mead confirms in reverse sensitivity terms, noise effects are the key issue to be appropriately managed.⁷⁵

Air quality – potential dust or odour effects

7.32 In terms of air quality, the only expert evidence before the Panel confirms that Havelock's proposed buffer mechanism will provide a more than adequate separation distance to manage potential reverse sensitivity effects arising from dust or odour emissions from the existing industrial operators.⁷⁶ There is simply no justification for a buffer setback of 500m or more on this basis. Importantly, the compliance point for the industrial operators in terms of any objectionable or offensive air discharges is in fact their site boundaries. To the extent, that there is any residual off-site air discharge effects, the proposed buffer to the residential sites will provide a more than generous separation distance such that any reverse sensitivity effects will be avoided.

7.33 Given these existing operating requirements, any claims of genuine reverse sensitivity effects arising from "plumes of dust or steam"⁷⁷ appear overstated.

⁷² Primary evidence of Jon Styles, paragraph 1.6.

⁷³ Ibid, paragraph 6.4.

⁷⁴ As contained in with provisions attached to rebuttal evidence of Mark Tollemache.

⁷⁵ Section 42A rebuttal report, paragraph 38.

⁷⁶ Primary evidence of Andrew Curtis, paragraph 6.5.

⁷⁷ Joint Statement of Evidence of Dharmesh Chhima and Sarah Nairn for Hynds on Topic 25 at paragraph 5.23.

Lighting effects

- 7.34 Hynds' lighting expert, Mr Cook, considers that future residents on the Havelock site will have views of the lighting within the Hynds' Factory Site and therefore will experience (and potentially complain) about Hynds' operations.⁷⁸ He also refers to an example of a past neighbour complaint to support this. This expert opinion is supplemented by night time images provided by Hynds without reference to site location or reference points from which these images are sourced. The extent of purported glare and light spill effects on HVL's site is not quantified in his evidence.
- 7.35 The only expert evidence before the Panel which is based on site measurements and survey data is that of Mr Bryan King for Havelock. Mr King has undertaken site analysis of the actual light spill from the Gateway Business Park operators on HVL's site. Mr King's methodology involved developing a series of topographical cross-sections that identified those parts of the HVL site, beyond the 45 dba noise contour of the Pokeno Industry Buffer, that would have direct line of sight to the Pokeno Gateway Business Park.⁷⁹ Mr King's measurements show that light spill at the worst case scenario location of visibility and proximity is less than 1/10th of district plan limit for residential amenity. He concludes that that this level will have negligible effects on those residential receivers.⁸⁰
- 7.36 According to Council records, no complaints have been received in relation to operational lighting at Hynds' site, and the only complaint Council records is regarding the illumination of site signage.⁸¹ No investigation or compliance action was initiated as a result of this complaint and no other complaints have been received by Council regarding Hynds' operations (noise, dust, lighting or visual effects) despite that fact that it currently operates within approximately 150m⁸² of its nearest residential neighbours.
- 7.37 Given this, the Panel will have to satisfy itself that there is an effect unique to Havelock that makes an extensive buffer justifiable over and above the potential reverse sensitivity effects likely from that existing residential.
- 7.38 The combined evidence of all Havelock's technical experts is that the Proposed Industry Buffer provides more than sufficient separation between the activities to manage the interface between these activities. In short, the separation distance is

⁷⁸ Evidence of Laurie Cook on Behalf of Hynds Pipe Systems Limited and the Hynds Foundation, Lighting, dated 17 March 2021 at [8.3].

⁷⁹ Rebuttal evidence of Bryan King, Appendix 1, which explains Mr King's methodology.

⁸⁰ Rebuttal evidence of Bryan King, paragraph 5.3.

⁸¹ Rebuttal evidence of Mark Tollemache, paragraph 5.8.

⁸² Rebuttal evidence of Mark Tollemache, paragraph 5.2

such that appropriate residential amenity is provided and there will be no adverse effects from the industrial activities on those residential lots that will give rise to legitimate complaints, let alone the risk of any constraint on the industrial operators' existing activities.

Visual amenity reverse sensitivity effects?

- 7.39 Ms de Lambert is of the opinion that the elevated nature of the Havelock site means that where residential development extends into the visual catchment of the business park, no mitigation can be adequately achieved to deal with the issue of visibility itself or the potential of annoyance from air discharges, light or odour.⁸³ As outlined above, the latter part of this conclusion is not supported by the relevant technical expert evidence.
- 7.40 As signalled earlier, the secondary issue of "visibility" of an existing activity in a reverse sensitivity context is a relatively novel one. Ms de Lambert appears to be concerned that new dwellings on the Havelock site will give rise to significant visual reverse sensitivity effects, constraining existing or future industrial development simply by overlooking that development or existing within the Gateway Business Park's visual catchment.
- 7.41 To counter this perceived risk, Ms de Lambert has proposed the addition of two further significant buffer areas to the Pokeno Industry Buffer, which would result in a material loss in housing capacity across the Havelock site and compromise the feasibility of that development. The rationale for the inclusion of these two additional buffer areas is unclear and appear to be based on a misunderstanding of the exact location and spatial extent of Havelock's proposed buffer location as it relates to that ridgeline.
- 7.42 As explained by Mr Tollemache, the setback distances afforded by the existing buffer mechanism are much greater than Ms de Lambert understands as represented in her rebuttal evidence.⁸⁴ The potential for any Havelock residential sites to overlook the industrial area has therefore been misunderstood and greatly overstated. More fundamentally, even if those sites could overlook the industrial area it is difficult to understand why from a pure "visibility" perspective this raises any concern for the existing industrial operators.

⁸³ Primary evidence of Rachel de Lambert in opposition, paragraph 2.7.

⁸⁴ Highlights package of Mark Tollemache, paragraphs 4.9-4.10.

7.43 As Mr Munro explains:⁸⁵

- (a) HVL's spatial setbacks and landscaping on the hill slope ensures dwellings are set well-back from the proposed heavy industry zone boundary, particularly compared with existing residential land which directly abuts the industrial area and is more visually exposed to those activities;
- (b) The separation distances and relative elevations between Havelock sites and the industrial sites (even if expanded) means that occupants will either be able to look out above the industrial activities or fully fence or screen those activities (including any stacks or cooling towers) with landscaping should they choose to – which they may not as this is often subjective;
- (c) More fundamentally, it is difficult to see how a future occupant's subjective perception of these views will lead to any constraint on Hynds (or any of the industrial operators) existing operations where a complaint to Council regarding the visual appearance of an existing authorised building cannot give rise to any justifiable or lawful reason to curtail, remove or reduce that existing building form. In terms of any future expansion, the permitted building envelope (in terms of both height and bulk) in the industrial area is extensive. There is no legal ability for proximate landowners to participate in site expansion processes where no resource consent process is required. To date, it appears that no such "visual reverse sensitivity" constraints have arisen as a result of the existing residential dwellings that are located in much closer proximity to Hynds' site (or that overlook it) and notably no large buffer mechanism has been sought by Hynds with respect to any other site boundary.⁸⁶

7.44 In the circumstances, it is difficult to see this alleged "visual reverse sensitivity" effect as a legitimate cause for concern let alone a justifiable reason to restrict development and limit growth. With respect, Ms de Lambert's preference for large separation distances on reverse sensitivity grounds cannot be justified on the expert technical evidence and ultimately conflicts with the higher-density, compact and walkable settlements sought by the NPS-UD and RPS.

7.45 As noted earlier, HVL acknowledges the investment of the industrial operators in the area and has always sought to address that through its proposal. Where the technical evidence demonstrates that the interface between those activities can be

⁸⁵ Rebuttal evidence of Ian Munro, which responds to Hynds' evidence on this matter at section 5 of his evidence.

⁸⁶ Rebuttal evidence of Mark Tollemache, paragraph 8.15.

adequately managed, the national direction to provide for growth should be afforded its due priority.

Apparent inconsistency in Hynds' position

- 7.46 It is also important to acknowledge the existing context in which Hynds and the other industrial operators are located. The Gateway Business Park was first located adjacent to an existing (albeit smaller) centre and established residential and rural dwellings. A number of constraints already exist and any reverse sensitivity potential appears to have been appropriately managed for some time.
- 7.47 As Mr Tollemache explains, the closest residential dwellings and zones to the Hynds' site are those on Walter Rodgers Road (within approximately 150m) and Crickett Lane (within approximately 180m).⁸⁷ There are already 35 dwellings in Pokeno on residential or village zoned lots closer to the Hynds' site than the closest extent of residential development proposed by HVL outside of the Pokeno Industry Buffer. Those sites zoned Residential would generally be capable of redevelopment to allow second dwellings, or for integrated residential development (multi-unit housing).⁸⁸ The Business Zones in Pokeno also provide for residential development above ground level as a permitted activity. In short, significant residential development can occur within 70m - 450m of the Hynds' site. The closest residential sites rezoned by PC24 are located approximately 510m to the north-west of the Heavy Industry/Industrial 2 Zone, and are immediately opposite the Light Industry Zone.⁸⁹
- 7.48 Hynds were active proponents of PC 24 being the Pokeno Structure Plan and both Mr Hynds and Ms De Lambert continue to support its approach to the management of potential reverse sensitivity issues.⁹⁰ As explained by Mr Tollemache those provisions provided for range of mixed uses within proximity to the heavy industrial areas including day care centres within 100m of those sites. With respect, this potential mix of permitted land uses appears inconsistent with Hynds' expert view that necessitates a 500 – 800m buffer from the proposed Havelock residential lots based on perceived reverse sensitivity effects.
- 7.49 Over time the Hitchen and Graham blocks have expanded in proximity to the industrial sites with the closest Graham block sites directly adjacent to the light industrial zone and 510m northwest from Hynds' boundary. Although the Graham

⁸⁷ Rebuttal evidence of Mark Tollemache, paragraph 5.2.

⁸⁸ Ibid.

⁸⁹ Ibid, paragraph 5.5.

⁹⁰ Primary evidence of Rachel de Lambert, paragraph 4.5, and primary evidence of Adrian Hynds, paragraph 5.10.

Block was enabled via a later plan change, this residential expansion was not opposed by Hynds.

- 7.50 In terms of its own proposed industrial expansion, Hynds' expert evidence is that if the Havelock residential rezoning proceeds then the two activities can appropriately co-exist.⁹¹ The apparent inconsistencies in Hynds' expert position on these various matters has not been acknowledged.
- 7.51 Havelock's position is that there is no legal effects-based justification for sterilising large developable areas of Havelock's site on the basis of perceived visual sensitivity grounds. Based on Havelock's technical evidence, the Panel can be confident that any potential reverse sensitivity effects have been adequately addressed by the proposed Pokeno Industry Buffer and that interface between the industrial and residential activities can be appropriately managed.

Section 42A Rebuttal Report recommendations

- 7.52 Mr Mead has helpfully clarified his position with respect to reverse sensitivity effects in his s42A rebuttal report. In summary, he considers that the avoidance of reverse sensitivity noise issues should be secured but other reverse sensitivity effects should be mitigated. He does not, however, consider that visual outlook over an industrial activity is a reverse sensitivity effect that needs to be avoided. He considers the relevant issue is that visual interaction heightens potential for sensitivity to other effects like lighting, odours and dust, but a view of an existing factory cannot be taken as an adverse reverse sensitivity in and of itself.⁹²
- 7.53 In terms of the potential for visual reverse sensitivity effects, Mr Mead's views therefore largely align with those of the Havelock experts. The only area of potential area of disagreement appears to be whether any additional buffer area on the Havelock site is required to deal with any concern regarding "visual interaction" giving rise to a heightened potential for sensitivity to other effects like lighting, odours and dust. This is where the expert evidence for Havelock differs. As outlined comprehensively above, the potential for such direct adverse effects to impact the Havelock sites is negligible to nil. The potential for genuine complaints to arise and consequently constraints on the industrial operators is therefore avoided by the proposed buffer. No additional buffer as proposed by Ms de Lambert can be justified in the circumstances.

⁹¹ Planning evidence of Sarah Nairn and Darmesh Chhima in support of expansion of Industry Zone on behalf of Hynds where the experts conclude the expansion is not likely to be impactful.

⁹² Section 42A Rebuttal Report, paragraph 38.

7.54 However, Mr Mead appears to support the additional buffer area proposed by Ms de Lambert known as Area 1 on the South-West corner of the Havelock site based on recent photographs provided by Ms de Lambert.⁹³ As explained by Mr Tollemache this recommendation will need to be revisited prior to hearing as it is based on a misunderstanding of the spatial extent of the buffer location on the Havelock ridgeline, accurate dwelling location relative to the industrial boundaries and landform orientations.⁹⁴ It may be with the benefit of a site visit that any further misunderstanding in this regard can be resolved. To assist the Panel, Mr Tollemache has attached some more accurate photographs to his highlights package.⁹⁵ These will be updated with professional images for the hearing.

8. RESTRICTING DEVELOPMENT ABOVE RL100 – 2008 STRUCTURE PLAN CONSIDERATIONS

8.1 Ms de Lambert for Hynds and PVHL has expressed her preference for the retention of the 2008 Pokeno Structure Plan RL100 development limitation and considers that no development should occur above that height to preserve Pokeno's rural back drop and landscape character.⁹⁶ This concern applies to a number of rezoning proposals including Havelock.

8.2 HVL and its experts carefully considered landscape features as part of the master planning of the site. The Proposal has been comprehensively assessed by Mr Pryor and Mr Munro. From a landscape perspective, the proposal has given proper regard to Transmission Hill as the most prominent landscape feature:⁹⁷

- (a) Transmission Hill and its north / north-east face for the backdrop to Pokeno and are the most visually prominent parts of the Havelock site when viewed from the industrial area, town centre and State Highway 1. Transmission Hill is the most visually prominent part of the site above RL100 and the area where effects need to be managed;
- (b) The Proposal already includes the identification (within the Precinct Plan) of the Hilltop Park on Transmission Hill and provides for a large Environmental Protection Area (**EPA**) on the north face of the ridgeline between the Park

⁹³ Ibid at paragraphs 40-41.

⁹⁴ Highlights Package of Mark Tollemache, paragraph 4.11.

⁹⁵ Refer to Appendix 3 of Mark Tollemache's Highlights Package.

⁹⁶ Rebuttal evidence of Rachel de Lambert for Hynds Pipe Ltd, paragraph 3.9.

⁹⁷ Rebuttal evidence of Mr Pryor, paragraphs 1.1 – 1.4.

and the industrial area. No development will occur in the EPA and it will be significantly enhanced with additional planting;

- (c) In response to recommendations by Mr Mead, further provisions have been introduced in Mr Tollemache's rebuttal evidence to make the Hilltop Park and Transmission Hill more visually predominant. This includes height restrictions and set backs for dwellings near to the Hilltop Park;
- (d) The Hilltop Park, buffer and EPA collectively provide an appropriate landscape and amenity response and manage adverse visual effects from the proposal. The proposed planting will provide significant landscape and natural character enhancements. These measures provide the appropriate landscape recognition;
- (e) This will ensure the prominence of Transmission Hill as a local landmark and provide an appropriate backdrop to the town; and
- (f) Other areas of the Havelock site above RL100 are less visually prominent and do not need to be protected from development.

8.3 From a planning and urban design perspective:⁹⁸

- (a) the RL100 limitation has no statutory planning weight and as a historic greenbelt concept appears to have little remaining benefit in the context of Pokeno's rapid growth;
- (b) It is not contained in any RMA planning document at a national, regional or district level;
- (c) Notably as a landscape feature it has never been scheduled for protection under any operative or proposed plan (ie as an Outstanding Natural Feature, Significant Amenity Landscape, or Outstanding Natural Landscape);
- (d) It is not contained in any growth strategy such as Future Proof 2017 or Waikato 2070. Waikato 2070 expressly shows development of Havelock above RL100;⁹⁹ and
- (e) Not allowing development above RL100 would have significant negative effects by making it difficult to construct Havelock's proposed road layout, removing the neighbourhood centre and removing 150 dwellings. Those

⁹⁸ Rebuttal evidence of Ian Munro, paragraph 4.4.

⁹⁹ Refer to Waikato 2070, pages 29 and 30.

costs have not been acknowledged. There is little urban design justification for the ongoing reference to RL100.

- 8.4 The origins of RL100 are as part of the PVHL Structure Plan prepared in 2008 for the rezoning of its land. At that point in time, over thirteen years ago, RL100 may have made sense with a village concept. But Pokeno is no longer a village. It is a fast growing town largely due to PVHL's vision. The concept of RL100 and artificially limiting growth is therefore outdated.¹⁰⁰
- 8.5 In any event the Aggregate Extraction Zone in the Operative District Plan would likely have had a significant impact on the perceived landscape values of land above RL100 on the ridgeline above the Havelock site. This fact has not been acknowledged.
- 8.6 In legal terms, given that RL100 lacks any statutory basis, it must be subservient to the growth requirements of the NPS-UD and RPS and the need to have regard to the growth management strategies prepared under the Local Government Act. The NPS-UD gives clear direction that amenity values are expected to change in urban environments. Policy 8 of the NPS-UD states that changing amenity values should not be considered an adverse effect.
- 8.7 In short, as a matter of law, visual amenity preferences with respect to rural amenity should yield to the NPS-UD directive to meet housing bottom lines.
- 8.8 Capping development at RL100 and pushing development to East Pokeno is not desirable or appropriate and would also be contrary to a compact urban form (as anticipated by the NPS-UD, the RPS and the Proposed Plan).

9. INFRASTRUCTURE

- 9.1 The NPS-UD, the RPS and the Proposed Plan all contain a similar theme that urban development should be integrated and co-ordinated with the provision of infrastructure.
- 9.2 The Council, through Dr Davey's Framework Report, has identified a series of upgrades to bulk water and wastewater to occur over the short to medium term.¹⁰¹ The Council's intention is for those upgrades to be included within the upcoming Long Term Plan process to secure the necessary funding. HVL commends the Council's approach as it provides submitters and the Panel clarity about what

¹⁰⁰ Rebuttal evidence of Mr Munro, paragraph 4.4(d).

¹⁰¹ Framework Report: Hearing 25: Zone Extents, prepared by Mark Davey (dated 19 January 2021), Appendix 5 .

infrastructure is planned to be available to whom and when. The Council has based its planning and assessment on the growth cells within Waikato 2070.¹⁰² This demonstrates the value of Waikato 2070 as a mechanism to integrate land use and infrastructure and another reason why the Panel should give that document considerable weight.

- 9.3 Dr Davey identifies the Council's forward planning for bulk water and wastewater supply in Pokeno includes provision to Havelock. HVL has committed to delivering the necessary connections¹⁰³ at the appropriate time.¹⁰⁴
- 9.4 Mr Pitkethley has undertaken his own independent assessment of the Council's plans, including consulting with relevant Council officers and Watercare staff. His expert opinion aligns with the Council.¹⁰⁵
- 9.5 As a result, there is appropriate integration with the planned provision of bulk infrastructure and land use.

Stormwater

- 9.6 The proposed stormwater strategy for Havelock is outlined in detail in the primary and rebuttal evidence of Mr Pitkethley. The key conclusion from his evidence is that stormwater from Havelock once it is developed will be less than existing flows from the undeveloped rural land (ie it will be attenuated to 80% of the existing flows). This approach is technically feasible and consistent with best practice for stormwater management.¹⁰⁶
- 9.7 Also consistent with standard practice, further engineering details will be provided at subdivision and resource consent stage. Further assessments of potential effects will be undertaken at that time and stormwater design adjusted as required.
- 9.8 Mr Pitkethley has responded to the stormwater evidence from PVHL and Hynds in his rebuttal evidence. In addition to the above points, he confirms that:¹⁰⁷
- (a) The management of stormwater at Havelock does not require completion of incomplete stormwater infrastructure associated with downstream sites identified by Mr McGregor. This is on the basis that the existing "incomplete" situation manages the current stormwater flow from the Havelock site. As

¹⁰² Ibid, paragraph 132.

¹⁰³ Ibid, Appendix 5.

¹⁰⁴ Primary evidence of Mr Ye, paragraph 3.13.

¹⁰⁵ Primary evidence of Ryan Pitkethley, paragraph 1.6.

¹⁰⁶ Rebuttal evidence of Ryan Pitkethley, paragraphs 3.10-3.12.

¹⁰⁷ Rebuttal evidence of Ryan Pitkethley, paragraphs 3.8-3.27 and 3.39.

the developed Havelock site will have less stormwater flow (approximated 80%) it can be accommodated within the existing downstream stormwater infrastructure.

- (b) There is no need to undertake new or revised catchment management planning prior to the rezoning of Havelock being approved. The assessment and approach for stormwater at Havelock is not likely to change since it already matches best practice.

9.9 This evidence is consistent with Mr Mead's view, which is that any incomplete stormwater infrastructure can be assessed at the time of resource consent.¹⁰⁸ Mr McGregor also acknowledges that it is common for such matters to be resolved at resource consent stage.¹⁰⁹ There is no reason to depart from that approach for Havelock.

Local transport network

9.10 HVL provides two opportunities for direct road connections to Pokeno, in particular the establishment of a connection via Yashili Drive along with a new internal road network that HVL will construct at its own cost.

9.11 Mr Hills has provided an Integrated Transport Assessment of the Havelock proposal including assessment of potential impacts on the traffic network. His main conclusions are:¹¹⁰

- (a) There is an appropriate level of connectivity from Havelock to the surrounding area including direct routes to the town centre, future rail station, community facilities such as the school and employment areas (Gateway Business Park);
- (b) The Proposal can provide walking and cycling facilities throughout to suitably the site to accommodate residents and to connect the site to Pokeno;
- (c) The key local intersections currently operate well, featuring minimal delay conditions; and
- (d) No discernible changes to the operation of the key local intersections are experienced as a result of the Havelock proposal and the TVL resort facility.

¹⁰⁸ Section 42A Report, paragraph 377.

¹⁰⁹ Rebuttal evidence of Campbell McGregor evidence for Hynds Pipe at paragraph 4.14

¹¹⁰ Primary evidence of Leo Hills, paragraph 1.5.

- 9.12 Some of Mr Hill's modelling parameters were questioned in evidence from Mr Langwell and Mr McKenzie on behalf of Hynds and Yashili respectively. Mr Hills has responded in his rebuttal evidence to confirm his assessment took into account traffic from TaTa Valley, that there is no additional conflict with industrial traffic and that the predicted traffic volumes can be accommodated within the local network.¹¹¹
- 9.13 In response to this evidence Mr Hills and Mr Tollemache have proposed further assessment matters on three local intersections to provide further comfort that effects will be assessed at a later point of time, notwithstanding Mr Hills conclusions.¹¹² These are outlined in the revised provisions attached to Mr Tollemache's rebuttal evidence.¹¹³ This includes a requirement to assess the design and effects related to the intersection of the proposed new collector road and Yashili Drive. These also address points raised by Mr Mead.¹¹⁴
- 9.14 The final design of the collector road is a matter that can be dealt with at consenting. Additional discretions have been added to the provisions to ensure that the design and effects of the connection are fully assessed at the time of subdivision. In any event, there are also alternative design options.¹¹⁵ This can be dealt with at the appropriate time.

Wider transport network

- 9.15 Mr Hills rightly acknowledges that when all the proposed rezonings within Pokeno are taken into account, there may be cumulative impacts on the wider transport network and some upgrades will be required.¹¹⁶ These are cumulative effects from a number of different rezonings and so it is inequitable and technically challenging to assign responsibility for those upgrades to any one rezoning proposal (including Havelock).
- 9.16 The most appropriate and efficient approach is for the Council to take responsibility for those upgrades, identify the timing and design of the upgrades, fund them through the Long Term Plan and require developers to contribute to the upgrades through development contributions and / or targeted rates.¹¹⁷ This is the same approach the Council is using in relation to bulk wastewater and water supply.

¹¹¹ Rebuttal evidence of Leo Hills, paragraphs 4.2 and 4.3..

¹¹² Rebuttal evidence of Leo Hills, paragraphs 4.7 and 4.8 and rebuttal evidence of Mark Tollemache, paragraph 1.11.

¹¹³ Although Appendix 3 of Mark Tollemache's Highlights Package contains the most up to date Havelock provisions.

¹¹⁴ Section 42A, Appendix 2, recommended amendments to Havelock Provisions

¹¹⁵ Rebuttal evidence of Leo Hills, paragraph 6.4.

¹¹⁶ Primary evidence of Leo Hills, paragraph 1.6.

¹¹⁷ See also primary evidence of Mr Hills, paragraph 1.6.

9.17 This is also consistent with the Environment Court's comments in *LandCo Mt Wellington v Auckland City Council* that cumulative effects on the wider transport network (beyond the local network) is the responsibility of the roading authority and should not preclude rezoning of individual sites.¹¹⁸

9.18 If the Panel has any residual concerns about these potential cumulative effects, Mr Tollemache¹¹⁹ and Mr Hills have offered a potential solution in their rebuttal evidence. This is to include a new discretion for all subdivision in Pokeno of over 25 lots to require those developments to consider the cumulative effects:

(xii) For subdivision in Pokeno proposing 25 lots or greater, the safety design for vehicles, pedestrians and cyclists, road network safety and efficiency (particularly at peak traffic times), and contributing to improvements to the road network

9.19 HVL and its experts consider that this Pokeno-wide additional matter of discretion would resolve any residual concerns the Panel or other transport experts may have about wider transport effects in Pokeno.

10. BENEFITS AND MANAGEMENT OF EFFECTS

10.1 Consistent with the Panel's directions, HVL has provided a full suite of technical evidence to support its requested rezoning of Havelock. That evidence has been reviewed by Mr Mead in his capacity as an independent expert. He substantially agrees with the assessments of HVL's experts about the nature and level of effects.

10.2 These submissions have focused on the key outstanding issues raised by opposing submitters and their experts, but to assist the Panel this section summarises HVL's other evidence about the benefits of Havelock and how potential adverse effects of the proposed rezoning will be managed

Benefits and positive effects

10.3 Havelock will provide a number of significant benefits that have not been challenged:

- (a) Approximately 600 new dwellings;
- (b) New open space in the form of the Hilltop Park;
- (c) Enhancement to the watercourses and streams and margins;¹²⁰

¹¹⁸ ENV-2006-AKL-000917.

¹¹⁹ Rebuttal evidence of Mark Tollemache, paragraphs 3.18 and 3.19.

¹²⁰ Primary evidence of Rob Pryor, paragraph 1.12(a).

- (d) Enhancement of the steep backdrop to Pokeno;¹²¹
- (e) Extensive framework of planting including riparian and specimen trees in streets and open space areas, which will improve the character and amenity of the area;¹²²
- (f) Wider ecological benefits from the combination of protection of SNAs and enhancement steps contemplated by the EPA overlay;¹²³
- (g) Public access along the green network through pedestrian paths and open space linkages that will create a high quality interface throughout the area;¹²⁴
- (h) New connections to the Waikato River, including direct connections from Pokeno that will not require people to use State Highway 1;¹²⁵
- (i) Additional employment of 170 FTE during constructions and 40-70 FTE per annum in the proposed retail floorspace;¹²⁶
- (j) An increase in household expenditure of \$162.2 million over the next 30 years;¹²⁷
- (k) Overall Havelock has a net present value of at least \$350 million over the next 30 years.¹²⁸

10.4 In addition, the Rural Lifestyle component of Havelock will have a number of specific benefits:

- (a) Diversity of housing choice by providing rural lifestyle dwellings as an alternative to the more standard residential development in the rest of Pokeno;
- (b) Protection and significant enhancement of indigenous vegetation; and
- (c) Preventing urban development spilling over the hill by locking in a rural residential development pattern, including extensive EPAs.

¹²¹ Ibid, paragraph 1.12(b).

¹²² Ibid, paragraph 1.12 (c).

¹²³ Primary evidence of Dr Ussher, paragraph 1.10.

¹²⁴ Primary evidence of Rob Pryor, paragraph 1.12 (e).

¹²⁵ Refer primary evidence of Leo Hills, paragraph 4.6 and primary evidence of Ian Munro, paragraph 5.2(c).

¹²⁶ Primary evidence of Adam Thompson, paragraph 1.4(w).

¹²⁷ Ibid, paragraph

¹²⁸ Ibid, paragraph 1.4(bb).

Framework for management of effects

10.5 HVL acknowledges that the rezoning and development of the Havelock site has the potential to cause some adverse effects. These have been identified and assessed by its experts and managed by a range of mechanisms:¹²⁹

- (a) The design of the proposal itself avoids and manages effects, including through use of Precinct Plan and identification of a number of spatial layers with that Precinct Plan;
- (b) Key methods to manage effects within the proposal include the Pokeno Heavy Noise Industry Buffer, the Slope Residential Overlay, the EPAs and the indicative road network;
- (c) The general Residential and Rural Lifestyle provisions will manage effects of subdivision and development alongside Havelock specific rules to manage the particular resource management issues of the site.

Landscape and visual effects

10.6 Mr Pryor has assessed the potential landscape and visual character effects of the Proposal and its visual integration with Pokeno. His key findings are:

- (a) While rezoning the site will result in a significant visual change from the current open and development state to one with built characteristics¹³⁰ that change occurs in the context of a highly modified rural environment adjacent to the existing urban area of Pokeno and the industrial area. The site and the surrounding landscape therefore has the capacity to visually absorb and accommodate the landscape and visual effects enabled by the Proposal;¹³¹
- (b) The site has a number of natural landscape elements that will assist to integrate and screen future development from the surrounding environment. This includes the containing spurs intervening landforms and on and off site vegetation patterns;¹³²
- (c) Development of the site will not visual compromise any outstanding or significant landscape or features. The site and surrounding area contain a

¹²⁹ Primary evidence of Mark Tollemache, paragraph 13.2(c).

¹³⁰ Primary evidence of Rob Pryor, paragraphs 1.4.

¹³¹ Ibid, paragraphs 1.4 and 1.6.

¹³² Ibid, paragraph 1.7.

degree of rural character but does not have high rural character values and are not high in landscape quality at a district level;¹³³

- (d) The rezoning of the site provides an opportunity for well-designed and planned urban development as an expansion of Pokeno. Development enabled by the proposed rezoning can be visually accommodated within the landscape without adversely affecting the character, aesthetic value and integrity of the surrounding rural and urban environment;¹³⁴
- (e) The Precinct Plan proposes a large area of EPA, which with planting will provide a landscape context appropriate to Transmission Hill for this new neighbourhood of Pokeno. Any potential adverse landscape and visual effects on the environment will be acceptable within the surrounding landscape context Integration.¹³⁵

Ecology effects

- 10.7 Dr Ussher has assessed the ecological values of the site and the accuracy of the boundaries of the Significant Natural Areas on the site. He concludes that 90% of the site is manged pasture with low ecological value. The remaining 10% contains moderate to high values in gully stream / wetland systems and native vegetation.¹³⁶
- 10.8 The Proposal protects and enhances biodiversity through:
- (a) Retaining the existing SNAs identified on the site in the notified Proposed Plan (subject to boundary adjustments identified by Dr Ussher);
 - (b) Identifying and mapping new SNAs; and
 - (c) Including an EPA overlay with requirements for enhancement planting.
- 10.9 These provisions will work alongside relevant regional plan and national environment standards to protect and restore the important environmental features of the site.
- 10.10 Dr Ussher's conclusion is that the HVL provisions will protect and facilitate the restoration of most of the existing biodiversity or ecology values on the site, and will provide wider ecological improvements.¹³⁷

¹³³ Ibid, paragraph 1.8 and 1.13.

¹³⁴ Ibid, paragraph 1.17.

¹³⁵ Ibid.

¹³⁶ Primary evidence of Dr Ussher 1.4.

¹³⁷ Ibid paragraph 1.10.

Geotechnical effects

- 10.11 Mr Lander has assessed the geotechnical conditions of the site and identified parts of the site with potential constraints.¹³⁸ Those areas are identified on the Precinct Plan as subject to the Slope Residential Overlay.¹³⁹
- 10.12 This control, plus standard geotechnical investigations and engineering measures will ensure all geotechnical risks are managed. Mr Lander concludes that geotechnical conditions at Havelock are similar to other parts of Pokeno such as the Graham Block, which are being successfully developed now, and overall the site is suitable for residential development.¹⁴⁰

Cultural effects

- 10.13 The Havelock site does not contain any scheduled Maaori sites or areas of significance under the Proposed Plan or the equivalent of that overlay within the Operative Plan. In fact, a large part of the site is zoned as Aggregate Extraction within the Operative Plan and was anticipated to be quarried.
- 10.14 HVL is aware of an orally recorded but, not located, Pā. As part of preparing its submission HVL engaged Clough and Associates to undertake an archaeological assessment.¹⁴¹ That assessment is attached to the original submission by HVL, and includes material from the original Winstone archaeological report prepared for the quarry which included field investigations by Ian Lawler.
- 10.15 Based on that assessment HVL understood the only potential cultural heritage site of interest was a Pā site. The assessment, and ongoing consultation with Mana Whenua, identified Transmission Hill as possible locations for Te Wheoro's Pā and signal station, and that the SNA on the southern escarpment could contain burials within the bush covered slope.¹⁴² The exact location of the Pā and signal station cannot be determined and could in fact be located completely offsite from Havelock.¹⁴³
- 10.16 Notwithstanding that uncertainty, the assumed location of the Pā has been included within the Hilltop Park and will be protected from any development through that overlay. The SNA along the Potter Road ridge is being retained in the Proposal and as Mr Tollemache explains it is highly unlikely that any residential development or

¹³⁸ Primary evidence of Mr Lander, paragraph 1.5.

¹³⁹ Ibid, section 7.

¹⁴⁰ Ibid, paragraph 8.3 and 8.4.

¹⁴¹ Clough & Associates Ltd (2018) Archaeological Assessment.

¹⁴² Primary evidence of Mr Tollemache, paragraph 7.6.

¹⁴³ Ibid, page 33.

significant disturbance could occur there.¹⁴⁴ This also addresses oral traditions that koiwi may be present in areas of original indigenous forest.

10.17 The rebuttal evidence of Mr Flavell of Ngāti Te Ata and Lucie Rutherford of Ngāti Tamaoho discuss potential effects (including cultural effects) related to the Proposal¹⁴⁵ including development on Transmission Hill and removal of native vegetation.

10.18 Due to the sequence of evidence exchange, with rebuttal evidence being lodged on 3 May, HVL's experts have not had the opportunity to meaningfully consider and formally respond to that rebuttal. HVL and its experts will consider the issues raised further and provide a response at the hearing.

10.19 As an initial point, however, the Proposal does retain and add to the notified SNA that protects the existing native bush¹⁴⁶ and will restore and enhance waterways, riparian vegetation and existing vegetation through the EPA. These features will be enhanced not compromised. Significant enhancements to the natural environment are also proposed. These improvements could not be achieved by retaining the site as rural.

10.20 As outlined by Mr Ye, HVL has been consulting with local iwi groups in relation to the Havelock Proposal. That consultation has included the establishment of a Project Steering Group, which has enabled HVL to establish an active dialogue with all interested groups.¹⁴⁷ HVL is committed to ongoing discussions to address the matters raised.

11. RESPONSE TO REBUTTAL EVIDENCE OF MR MEAD

11.1 In his s42 rebuttal report, Mr Mead maintains his recommendation that Havelock should be rezoned to Residential and Rural Lifestyle Zones, despite the evidence in opposition filed by various submitters. However, he recommends some further refinements to the Havelock Precinct Plan and specific provisions. HVL's position on those further amendments is as follows:

- (a) Mr Mead's most substantive recommendation relates to the extension of the Pokeno Industry Buffer to include Ms de Lambert's proposed Area 1 on Transmission Hill. HVL's experts do not support this recommendation for the

¹⁴⁴ Primary evidence of Mr Tollemache, paragraph 7.6.

¹⁴⁵ Rebuttal evidence of Karl Flavell, paragraphs 2.5 and 3.2.

¹⁴⁶ Primary evidence of Graham Ussher, paragraphs 5.8-5.9.

¹⁴⁷ Primary evidence of Karl Ye, para 7.1-7.2.

reasons outlined in paragraph 7.49 above.¹⁴⁸ As outlined in Mr Tollemache's highlights package, HVL accepts the minor amendment to the subdivision standards¹⁴⁹ to secure the establishment of the EPA related to the Buffer.

- (b) HVL does not agree with Mr Mead's revised matter of discretion to address "visual sensitivity" concerns.¹⁵⁰ To address any potential concerns it has proposed a modified and simplified criterion which refers to design of earthworks, lot orientation and landscape treatment.
- (c) Mr Mead has suggested that further consideration be given to restricting development on "Potters Hill", on the basis it is a prominent hill top above RL100.¹⁵¹ Potters Hill is not identified on the Havelock Precinct Plan but was referred to in some of the historic concept plans. It is located partly within the site and partly outside. The highest point is located within the Potter Road and is outside the site. As a result it is not being rezoned and will be retained as rural.
- (d) As noted above HVL is committed to further discussions with all tangata whenau (including Ngāti Te Ata and Ngāti Tamaoho).
- (e) HVL accepts the additional matter of discretion in relation to prevent future development within EPAs in the Rural Lifestyle Zone.

12. RURAL LIFESTYLE – RESPONSE TO WAIKATO REGIONAL COUNCIL

- 12.1 The Rural Lifestyle component of Havelock is supported by Mr Mead but has been opposed by Waikato Regional Council. Ms Foley, on behalf of the Regional Council, considers that this part of the site should be retained as rural because the "ridgeline, with its significant vegetation, is a natural boundary" and so there is no need to use the Rural Lifestyle zoning in order to prevent development spilling over the hill.
- 12.2 Rezoning this part of the site gives a number of benefits, including provisions of additional dwellings, employment and economic benefits and restoration, improved access to the Waikato River for the public and enhancement of degraded streams and areas of vegetation. Ms Foley has not identified any adverse effects from the rezoning.

¹⁴⁸ Section 42A rebuttal report, paragraph 41.

¹⁴⁹ Rule 16.4.18 rd1(a)(iii) as amended at paragraph 52 of the Section 42A rebuttal report.

¹⁵⁰ Ibid, paragraph 50.

¹⁵¹ Ibid, paragraph 56.

- 12.3 The significant vegetation that Ms Foley has identified is located within the middle of the site and demarcates the Rural Lifestyle part of Havelock from the Residential. It is also protected by an SNA overlay. However, the Havelock proposal is more appropriate since it will allow the benefits to be achieved and ensures there is a development pattern of rural residential that has large areas of protected EPA.
- 12.4 Overall, the benefits of rezoning the site to Rural Lifestyle outweigh the costs.

13. PROVISIONS CURRENTLY PROPOSED BY HVL

- 13.1 In response to matters and suggested amendments raised in the Council's s42A report, the provisions proposed by HVL have been amended. A copy of the provisions now sought by HVL are attached to Mr Tollemache's highlights package as Annexure 2.
- 13.2 For completeness we record that HVL originally requested amendment of the Residential Zone provisions to provide for aggregate extraction activities, for the purpose of road supply for the Havelock Village development or development on adjacent sites as a Restricted Discretionary Activity.¹⁵² Mr Mead does not support this amendment and HVL is no longer pursuing this submission point.

14. CONCLUSION

- 14.1 The Havelock Proposal is supported by a range of high quality technical and expert assessments. The Proposal has been independently reviewed by Mr Mead who also recommends the site be rezoned.
- 14.2 The rezoning implements the NPS-UD and is consistent with the RPS and relevant growth strategies. Potential adverse effects have been avoided or managed, including by the Precinct Plan and the Havelock specific provisions. The site will obviously experience change as part of the rezoning to urban from rural but that is appropriately managed by design of the Proposal and the associated provisions and is acceptable given the surrounding context.

¹⁵² HVL submission point 862.30.

14.3 HVL consider the rezoning is the most appropriate planning outcome for the site and respectfully requests that the Panel recommend approving its rezoning request.

DATED: 13 May 2021

V S Evitt / M G Gribben
Counsel for Havelock Village Limited