

LEGAL SUBMISIONS ON BEHALF OF HAVELOCK VILLAGE LIMITED

SUPPLEMENTARY CASE LAW REFERENCES

16 JUNE 2021

1. ADDITIONAL REVERSE SENSITIVITY CASE LAW REFERENCES

- 1.1 Significant weight should be placed on the relevant expert evaluation of effects due to the objective assessment of effects within their field of expertise. Effects must be objectively appraised and subjective heightened sensitivity is not cause for decline of consent. *Norsho Bulc Ltd v Auckland Council* [2017] NZEnvC 109 on heightened sensitivity:

[62] Without in any way doubting the sincerity of the concerns held by Society members or the significance they attach to these concerns, we place considerable weight on the agreement between independent expert witnesses on the level of effects on lifestyle amenity likely to be experienced by members of the Society from the operation of the proposed fill. In doing so, we acknowledge that some local people will be more sensitive to the low level of offsite effects generated by the proposed fill operation than others. This heightened sensitivity is not of itself sufficient cause for us to decline consent.

- 1.2 The RMA is not intended to protect existing operators from any and all complaints. Complaints need to be justified to be regarded as an adverse reverse sensitivity effect and not vexatious or frivolous *Winstone Aggregates v Matamata-Piako* DC (2004) 11 ELRNZ 48:

[4] Whether one should deal with an adverse effect by avoiding it, remedying it or mitigating it is a question of judgement in each case. It 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. In some circumstances remedy or mitigation may suffice. In others they will not, and avoidance will be the appropriate option. Dealing with reverse sensitivity as an adverse effect poses another issue. The reactions of people to a real or perceived emitted effect can vary widely, often being conditioned by their background. Some may stoically endure it, not notice or place weight on it, while others may complain vociferously. Those subjective, sometimes even irrational, responses cannot be accurately predicted, save that it may be assumed that if there is anything to complain about, sooner or later somebody almost certainly will do so. We recognise the *corrosive* effect that continued complaints at a high level can have on a company's continued confidence, in operating in an area. That said, we do not accept that unjustified complaints need have, or be regarded as, an adverse reverse sensitivity effect. Such complaints can and should be recognised for what they are. Whether complaints are justifiable in any given circumstance can turn on a mix of considerations, including the general environment, existing use rights, compliance with applicable consent conditions and perceptions of whether the best practical option has been adopted.

[emphasis added]