

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

IN THE MATTER of the Resource
Management Act 1991

AND

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

**JOINT STATEMENT OF REBUTTAL EVIDENCE BY DHARMESH CHHIMA AND
SARAH NAIRN OF THE SURVEYING COMPANY ON BEHALF OF HYNDS PIPE
SYSTEMS LIMITED AND THE HYNDS FOUNDATION**

PLANNING

4 May 2021

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1. INTRODUCTION

- 1.1** This evidence has been prepared by Dharmesh Chhima and Sarah Nairn. We are both Senior Planners at The Surveying Company.
- 1.2** We have outlined our qualifications, experience and commitment to comply with the Environment Court Expert Witness Code of Conduct in our evidence in chief.
- 1.3** We provided evidence on behalf of Hynds Pipe Systems Limited and the Hynds Foundation (together, **Hynds**) supporting the application of the Heavy Industry zone to the lower portion of the property at 62 Bluff Road, Pokeno. We also provided evidence on behalf of Hynds in opposition to the Havelock Village Limited (**HVL**) rezoning proposal and the Hopkins' rezoning proposal.
- 1.4** We have read the further 'Zone Extents Pokeno' s42A report dated 14 April 2021 prepared by David Mead for the Waikato District Council.

2. SCOPE OF EVIDENCE

- 2.1** This evidence addresses matters raised in the s42A report, namely the:
- (a) Heavy Industrial zone recommended for Hynds' 62 Bluff Road site; and
 - (b) The reporting officer's analysis and recommendations on the HVL proposal (including the proposed amendments).
- 2.2** This evidence also sets out our suggested alternative amendments to the HVL proposal. We consider that these amendments will create a more robust framework for the management of reverse sensitivity effects.

3. HEAVY INDUSTRIAL ZONE – 62 BLUFF ROAD

- 3.1** Paragraph 348 of the s42A report recommends that the lower portion of the property at 62 Bluff Road (which is owned by Hynds and adjoins the existing Hynds Factory Site) is rezoned from Rural to Heavy Industry, as sought by Hynds in the evidence in chief filed on its behalf. We support this recommendation as it will allow a small expansion of the existing Hynds operation and will re-inforce the Strategic Industrial Growth Node at Pokeno. We

refer to our evidence in chief which sets out in greater detail the reasons why we consider that this is the most appropriate zoning for this site.

4. COUNCIL RECOMMENDED AMENDMENTS TO THE HVL PROPOSAL

4.1 Our view is that the HVL proposal (as set out in its evidence) has the potential to result in significant visual, traffic, stormwater and reverse sensitivity effects. As such, we consider that the HVL proposal should be rejected. We refer to the reasons set out in our evidence in chief, together with the evidence in chief prepared by Mr Hynds, Ms de Lambert, Mr Langwell, Mr McGregor and Mr Cook on behalf of Hynds.

4.2 In particular, we note the issues that were raised in Mr Langwell and Mr McGregor's evidence about the lack of information and analysis as to how the traffic and stormwater effects of the HVL proposal will be addressed, and why it is imperative that this work is undertaken now, in advance of any rezoning of HVL's land for residential uses. For example:

(a) At paragraph 4.14 Mr Langwell notes:

"I am not aware of any specifics as to what upgrades are proposed by HVL to address the additional flows, the increase in safety risks and how these will be delivered. This may well require staging of development and monitoring of effects. In my opinion this information needs to be provided before the effects of the rezoning proposal can be fully assessed"

(b) At paragraph 9.3 Mr McGregor states;

"While I consider there are likely to be technically feasible solutions from a stormwater perspective, there are several matters that in my opinion should be addressed prior to the rezoning proposed by HVL and the Hopkins' proceeding. These items (with only (c) applicable to the Hopkins' proposed rezoning) are:

(a) Completion of infrastructure works required under the previous plan change (PC24) to ensure the safe conveyance of stormwater flows and flood waters;

(b) Completion of Pipeline A including vesting of these assets and construction of appropriate inletting structures for the conveyance of stormwater flows from both the Synlait and HVL landholdings;

(c) Calculation and analysis of the proposed stormwater management plan, including hydrological modelling to ensure the anticipated

outcomes are achievable. This should include all storm events up to the 1 in 100-year storm event including allowance for climate change for all catchments impacted by the proposed rezoning; and

(d) Confirmation of a viable secondary flow path through the Synlait site to Pipeline A and McDonald Road”

4.3 Given the above statements, we consider that the information required to support the HVL proposal has not been provided. Furthermore, we do not agree with Mr Mead’s conclusion in the s42A report that these matters can be appropriately addressed at the resource consent stage because a number of the above matters are outside of the HVL resource consent process – they are for the Waikato District Council and/or private parties to action. In our view, the lack of detail that has been provided by HVL and the deficiencies in the existing infrastructure creates a complicated situation which necessitates a ‘higher bar’ than might otherwise be required for rezoning proposals.

4.4 However, if the Panel was minded to accept the HVL proposal we consider that the amendments recommended in the s42A report are not the most appropriate, efficient or effective means of managing reverse sensitivity effects. The reasons for this are summarised below:

(a) It is not clear where the policy proposed in paragraph 347 of the s42A report will be inserted in Chapter 16, as this chapter does not have any objectives or policies – only rules. This policy is set out below:

“Subdivision and development shall minimise the potential for reverse sensitivity effects to arise on the Havelock Precinct’s eastern boundary with Heavy and Industrial Zoned land through a combination of physical separation, lot orientation, landscape treatment and building design”

(b) It is also noted that the above policy is not given effect to by the proposed rules, as new buildings in the Residential zone do not require a resource consent and therefore, there is no ability to control building design. In addition, the above policy implies that controls will only be put in place along the eastern boundary of the precinct but yet the proposed amendments to the subdivision provisions relate to the whole precinct;

(c) Whilst we support a review of the extent of the proposed Pokeno Industry Buffer (**Buffer**), as recommended in Section 13.4 of the s42A

report, we consider that this review needs to be undertaken as part of this hearings process so that there is clarity for all parties as to the scale and extent of the Buffer. Furthermore, we do not see how it is possible to extend the Buffer after earthworks (refer to paragraph 329 of the s42A report) as an extension of the Buffer on the planning maps would require a plan change and we consider it very unlikely that either HVL or the Council would initiate a plan change for the purpose of extending the Buffer;

- (d) The inclusion of an additional matter for discretion in the subdivision provisions requiring the consideration of contours, lot size/orientation and landscaping is not workable or effective because there is very little scope on a 450m² site to create a building platform which will avoid direct views from future dwellings over the heavy industrial land. We also note that landscaping and visual interaction relate to site development, they are not matters for a subdivision consent;
- (e) Unless the policy recommended for Chapter 16 is meant to be included in Chapter 4, there are no policies identifying that reverse sensitivity is an issue at the interface between the HVL proposal and the heavy industrial land; and
- (f) Retaining the proposed discretionary activity status for dwellings in the Buffer does not make it explicit that dwellings are not expected in this location, especially in the absence of clear objectives and policies.

4.5 Overall, we support the intent of the ‘belt and braces’ approach set out in the s42A report, but having examined the detail of the proposed amendments we prefer an approach which adopts a clear policy direction coupled with decisive rules which are easily implemented.

5. AMENDMENTS SOUGHT BY HYNDS

5.1 Given the concerns set out in our evidence in chief and the issues raised above in relation to the s42A report, we remain of the view that the HVL proposal (in its various forms) is not the most appropriate, effective or efficient set of planning provisions. However, if the Panel were minded to approve HVL’s proposal, the most pragmatic and effective means of addressing reverse sensitivity issues is

to amend the extent of the Buffer to avoid residential development which has clear views overlooking the Heavy Industrial land at Pokeno. To determine this, we undertook a further site visit on Friday 23 April 2021 with Rachel de Lambert from Boffa Miskell. Ms de Lambert subsequently prepared the plan below which is included in her rebuttal evidence on behalf of Hynds and Pokeno Village Holdings Limited (**Boffa Miskell Plan**):

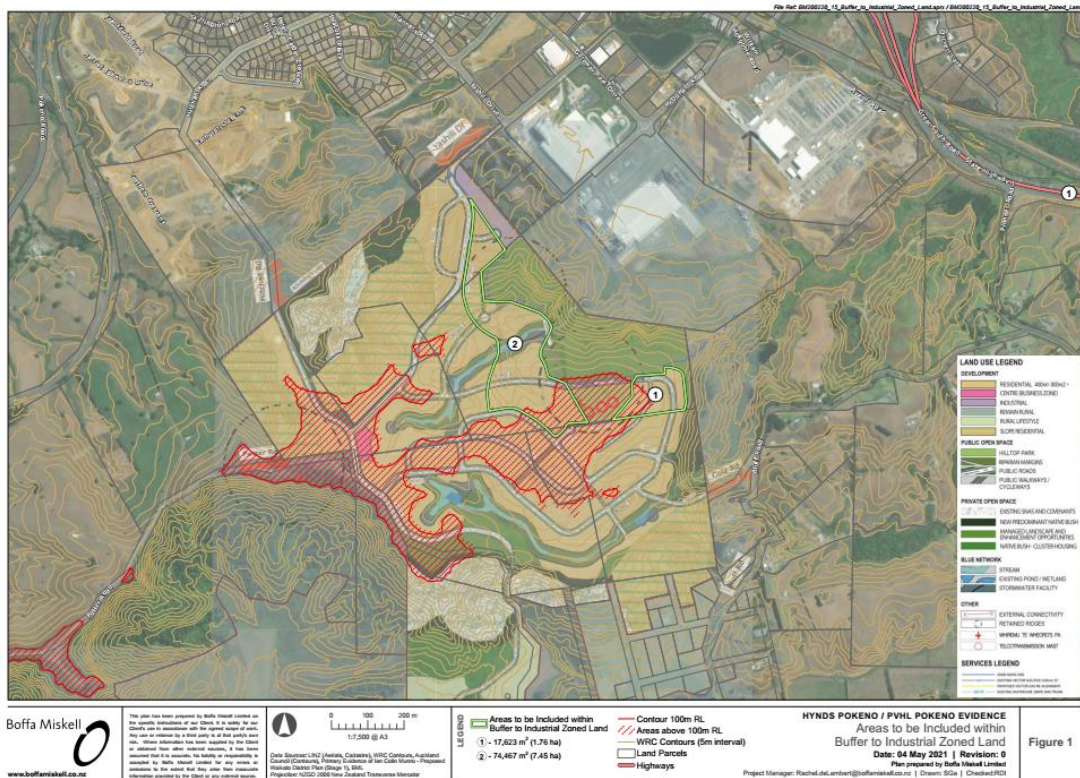


Figure 1 Boffa Miskell Plan showing the two additional areas to be included in the Buffer

- 5.2** The above plan shows the two areas where we consider that the Buffer (and the EPA area) should be extended given that dwellings in these locations will have direct views of the Heavy Industrial zone. The graphic supplement by Ms de Lambert that is attached to her rebuttal evidence illustrates these views. We recognise that this buffer is over a long distance when compared to residential sites to the north (across State Highway 1) but we consider that this is necessary given the elevation of the HVL land which is significantly higher than the industrial activities.
- 5.3** HVL will no doubt be concerned that these areas are substantial and will impact on the viability of their project. We accept that that is the case. However, we also note that even if the yield was reduced by 150 dwellings there would still be

450 dwellings proposed which is a substantial development relative to the Pokeno township. We note 450 dwellings is only slightly less than half of the 942 dwellings that existed in Pokeno at the time of the 2018 census.¹ In our opinion, the extended buffer is a more appropriate and efficient planning outcome for this land than allowing dwellings to be established on a hill directly overlooking regionally important heavy industrial activities.

5.4 We note that the amended plan set out above has been prepared to the “best of our abilities” given that we do not have a right of access to the HVL land. We have not identified the specific number of homes affected as we would need access to HVL’s detailed design data for that. As a general comment we feel that the HVL proposal should have provided a complete set of photos, visual imagery and details of exactly where and how their development would sit on the upper hillslopes and how it would relate to the adjoining industrial development. This information would have better enabled the Panel (and affected submitters) to assess the effects of HVL’s proposal and the appropriateness of the provisions that have been proposed.

5.5 Having determined the required extent of the Buffer, it is then necessary to determine the planning provisions which will best give effect to that Buffer. In our view, there are two options for this. The first option (and our preference) is to zone the Hilltop Park, the existing buffer proposed by HVL and all land “identified to be included within the Buffer” on the Boffa Miskell Plan as Reserve. In addition, the Environmental Protection Area (**EPA**) should also apply to the extended Buffer area (as already suggested by HVL). The Reserve zone will provide a clear direction to all parties as to the intended use of this land (both the Hilltop Park and the Buffer). It also avoids the need for the inclusion of provisions in the Residential zone which ensure buildings are not developed within the Buffer, and that the Buffer is considered at the time of assessing subdivision applications etc. In fact the only rule required in the Residential zone would be the extended noise buffer sought in the evidence of Mr Hegley on behalf of Yashili and supported in the s42A report.

5.6 We consider that the option of applying the Reserve zone is not only clear and direct for all parties at the present time, it is also an ‘enduring’ solution as it will prevent people ‘nibbling at the edges’ of the Buffer in say, 10 year’s time when

¹ Stats NZ 2018 Place Summaries: Pōkeno <<https://www.stats.govt.nz/tools/2018-census-place-summaries/pokeno>>.

this hearing is in the distant past and the HVL development is in its latter stages. We believe 'nibbling at the edges' is a possibility if the Residential zone is applied as people will see it as residential land and will apply for a consent to locate a new dwelling there and offer mitigation measures to attempt to address reverse sensitivity issues. The evidence in chief filed by Hynds explains why we do not think mitigation measures would be sufficient to avoid reverse sensitivity effects.

- 5.7** We are aware of the obligations under the RMA to enable the reasonable use of private land and that HVL could put forward the view that applying the Reserve zone does not allow such use to occur. We have considered this and have concluded that reasonable use is enabled given that there will still be provision for hundreds of houses within Residential zoned areas plus the Countryside Living development (even with the extended Buffer). Given this substantial amount of development, we actually consider the Reserve zone to be 'enabling' (rather than a constraint) as it helps to resolve the incompatibility between residential and industrial uses and consequentially 'enables' the HVL development. We are also cognisant that HVL themselves has imposed a buffer that they describe as a 'no build buffer' – which, in effect, is like a reserve anyway.
- 5.8** If the Reserve zone (and EPA overlay) is not accepted by the Panel, then our second option would be to have the revised extent of the Buffer area, with modifications to the provisions put forward by HVL (and amended by the s42A report). In this circumstance, we consider that the planning provisions set out in the table below should apply. For completeness and clarity we have listed all the provisions which we consider necessary to address reverse sensitivity effects and the reasons for them (including where we agree with the wording proposed by HVL or in the s42A report).

Planning Provision	Amendment Sought	Reasons
Buffer	Extension of the Buffer and EPA area as per the Boffa Miskell Plan	As set out in full above and in the rebuttal evidence of Ms de Lambert, an extension to the Buffer is required to avoid direct overlooking of the Industrial land (so as to avoid reverse sensitivity effects).
Policy	<p>Amend Policy 4.1.11 - Pokeno</p> <p>(a) Pokeno is developed to ensure;</p> <ul style="list-style-type: none"> i. subdivision, land use and development of new growth areas does not compromise the potential further growth and development of the town; ii. walking and cycling networks are integrated with the existing urban area; and iii. reverse sensitivity effects from the strategic transport infrastructure networks are avoided or minimised iv a range of densities and types of residential development are enabled in new subdivisions, as well as the existing urban area <p>(b) <u>Development and subdivision within the Havelock Village Precinct Plan area ensures:</u></p>	<p>We consider that this amendment is necessary as it identifies that reverse sensitivity effects created by HVL's rezoning proposal are an issue that needs to be addressed in the future development of Pokeno. Furthermore, the amendment <u>requires</u> the creation of a buffer in the form identified on the planning maps and makes it very clear that dwellings are not be located within it.</p> <p>In our view, the proposed amendment ensures that Policy 4.1.11 addresses all the key issues relating to the future development of Pokeno. Having a complete policy is the most appropriate way to give effect to the objective 4.7.1 relating to the character of towns such as Pokeno.</p> <p>The above policy is consistent with the approach taken in the policy relating to Te Kauwhata and the Lakeside Precinct in that there are two parts to the policy – the first relating to the township generally and then the second relating to a specific precinct within the township.</p>

	<p>i. <u>Reverse sensitivity effects on the adjoining industrial land are avoided by establishing a planted buffer which has an area matching the “Pokeno Industry Buffer/EPA” identified on the planning maps;</u></p> <p>ii. <u>Sensitive land uses are not located within the Pokeno Industry Buffer area.</u></p>	
<p>Activity Status in 16.3.9.2 Building Setback – Sensitive Land Uses and 16.4.12 Subdivision</p>	<p>Sensitive land uses and building platforms are a <u>non-complying</u> activity within the Pokeno Industry Buffer/EPA area (rather than the discretionary activity status as set out in the HVL evidence and the s42A report).</p>	<p>To complement the above policy we consider that sensitive land uses and building platforms should be a <u>non-complying</u> activity within the Buffer. The s42A report identifies that this activity status is not necessary. We disagree as we consider that such a status will provide a very clear direction that sensitive land uses are not expected in this location. It also provides a very clear ‘cascade’ through the provisions in that the non-complying status will match the use of ‘avoid’ in the policy recommended above.</p> <p>A discretionary status on the other hand will imply that the location of dwellings within the buffer could be appropriate in the right circumstances (with very limited direction given as to what those circumstances would be). For the reasons outlined in Hynds’ evidence in chief we do not consider that these hillslopes are an appropriate</p>

		<p>location for dwellings, and that there will be very limited ability to provide mitigation to address the reverse sensitivity effects given the elevation of the land above the heavy industrial operations. In our opinion non-complying is the most appropriate activity status.</p>
<p>Subdivision provisions</p>	<p>Amend 16.4.18 Subdivision: Havelock Precinct Plan Area as follows:</p> <p>(a) All subdivision within the Havelock Precinct Plan area (Appendix XX) must comply with all of the following conditions:</p> <p>(i) The first subdivision to create residential lots must include the indicative road connections as road to vest, from Hitchen Road and Yashilli Drive.</p> <p>(ii) The proposal must included the indicative road as roads to vest, provided that this can be constructed and vested in stages;</p> <p>(iii) The proposal must include the provision of the Hilltop Park <u>and the creation of the Pokeno Industry Buffer/EPA</u></p>	<p>The amendment to Rule 16.4.18 requires the creation of the Buffer. This is an essential part of managing the reverse sensitivity effects.</p>

	<p style="text-align: center;"><u>area (as identified on the planning maps).</u></p> <p>Amend the matters of discretion in Rule 16.4.18(b) as set out in the s42A report by retaining the Council's reservation of discretion over ownership and management of the Buffer/EPA.</p>	<p>The matter of discretion should be inserted to ensure that the subdivision application that creates the Buffer/EPA can consider its ownership and management into the future and the mechanisms (e.g. consent notices) that will be put in place to ensure that it is a 'no-build' area.</p>
<p>Rule 16.3.9.2 Building Setback Sensitive Land Use</p>	<p>Retain as set out in the s42A report although it is noted that the noise contours will need to be included on the planning maps.</p>	<p>Retain for the reasons set out in the s42A report and the evidence of Mr Hegley.</p>

6. CONCLUSIONS

- 6.1** We remain of the view that the HVL proposal (as set out in the evidence filed by HVL) has the potential to result in significant visual, traffic, stormwater and reverse sensitivity effects. As such, we consider that the HVL proposal should be rejected.
- 6.2** However, if the Panel was minded to accept the HVL proposal we consider that the Buffer needs to be extended as per the Boffa Miskell Plan to include all the HVL land which will have clear and direct views of the Strategic Industrial Node at Pokeno.
- 6.3** Having extended the Buffer, there are then two options for crafting planning provisions which will give effect to that Buffer. The option which we prefer is applying the Reserve zone with an EPA overlay to the full extent of the Buffer and the Hilltop Park. The Reserve zone will provide a very clear direction to all parties that this land is not be developed for residential use both now and in the future. It is a robust and enduring solution.

6.4 The second option (and less favourable in our opinion) is to make a series of modifications to the amendments proposed by HVL and in the s42A report. These modifications are summarised below:

- (a) expanding the Buffer and EPA to include the two additional areas identified on the Boffa Miskell Plan as set out at paragraph 5.1 above;
- (b) including a policy indicating that reverse sensitivity effects created by HVL need to be addressed through the creation of a buffer and that the buffer is to remain free of sensitive land uses;
- (c) identifying that sensitive land uses are a non-complying activity in the Buffer; and
- (d) amending the subdivision provisions to ensure that the Buffer is created as identified on the planning maps.

6.5 Collectively, these amendments would ensure that the Buffer applies to an appropriate area, is created in the first stage of subdivision, and will remain a 'no-build' area.

6.6 We consider that the options we have set out above are more appropriate, and better meet the statutory tests, than both those proposed by HVL and the reporting officer in the s42A report.

DHARMESH CHHIMA AND SARAH NAIRN

4 May 2021