

BEFORE AN INDEPENDENT HEARINGS PANEL
THE PROPOSED WAIKATO DISTRICT PLAN

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

IN THE MATTER OF hearing submissions and further submissions on Variation 3
Enabling Housing Intensification to the Proposed Waikato District
Plan (Stage 2)

**STATEMENT OF REBUTTAL EVIDENCE OF MARK SEYMOUR MANNERS
TOLLEMACHE ON BEHALF OF HAVELOCK VILLAGE LIMITED [Submitter 105]
FOR SUBSTANTIVE HEARING**

Town Planning

19 July 2023

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1. EXECUTIVE SUMMARY

- 1.1 My full name is Mark Seymour Manners Tollemache.
- 1.2 I previously presented evidence on the Urban Fringe Qualifying Matter associated with Variation 3 Enabling Housing Intensification (V3) to the Proposed Waikato District Plan (PDP) and provided primary evidence dated 4 July 2023 in respect to the substantive hearing.
- 1.3 It is understood that following the exchange of primary evidence and conferencing the issues in contention regarding the Havelock Precinct and relevant Qualifying Matters (QM) are now fairly limited, relating to the application of the EPA to Area 1 and the proposal by Ms Nairn for the expansion of the Pokeno Industry Buffer across the land known as Area 1.
- 1.4 The Pokeno Industry Buffer was identified in the PDP based on the detailed acoustic modelling prepared by Mr Styles. The Pokeno Industry Buffer avoids noise related reverse sensitivity effects by providing significant setbacks from the adjoining Pokeno industry zones and residential development in Havelock. The separation distances it provides also addresses the potential reverse sensitivity matters relating to air quality and light spill.
- 1.5 The matter in contention in respect to Area 1 is whether being able to see the Pokeno industry zones from Area 1 would give rise to complaints that would curtail industrial activities, and whether the effects are real or perceived. I am of the opinion that this is unlikely given the detailed investigations undertaken by experts for HVL, along with the height restricted areas that apply within Area 1, and the opportunities to plant screening vegetation within the Pokeno Industry Buffer to minimise views down to the Pokeno industry zones (and in particular the Hynds site which is the most distant of the industry sites from Havelock).
- 1.6 In my opinion sections 771(j) and 77L of the RMA impose a considerably high threshold in respect to the basis for restricting development let alone density or height within a residential zone. Based on my assessment of the Pokeno Industry Buffer and the package of controls applying to the residential zone (including Area 1), I do not consider that the option of making residential development in Area 1 a non-complying activity through extending the Pokeno Industry Buffer is appropriate or necessary. It is an option advanced by Ms Nairn based on allowing no residential opportunities in a residential zone, which is not supported by any expert evidential foundation.

- 1.7 While I accept Ms Nairn and I have differing views on the concept of visual reverse sensitivity, more fundamentally we also have differing views on the level of effect from the industrial activity that any future residents will be able to see. Ms Nairn's concern is views of "obtrusive"¹ industrial activities such as dust and lighting discharges and noise generating activities will lead to reverse sensitivity effects on Hynds. The technical evidence I have reviewed is that these effects will not be experienced in Area 1 beyond that which complies with residential standards and the buffer separation distance was designed to achieve this. Furthermore, if the Panel do not agree there are in my opinion other more appropriate options available to address Ms Nairn's concern regarding the concept of 'visual reverse sensitivity'.
- 1.8 I consider the approach identified in the section 42A report, and in my primary evidence, is appropriate in managing reverse sensitivity. Even if the concept of visual reverse sensitivity was acknowledged, then the approach within V3 addresses these matters appropriately and consistently with sections 77I, 77L and Schedule 3A of the RMA.
- 1.9 Should the Panel consider that additional options must be explored, and while that is not my position, I have suggested an additional height restriction to apply to all of Area 1 and a planting discretion to further minimise opportunities to view the Pokeno industry zones and the Hynds site from Area 1 and to enable screening to establish more quickly for that area.
- 1.10 In respect to the Stormwater and Flooding Expert Conferencing, I also identify matters relevant to the outcomes of the Joint Witness Statement (JWS) given the final text provisions were not resolved during the conference and the issue I raised in my primary evidence. In addition, I identify the rationale for matters I addressed in the JWS where these seek to respond to matters raised in the evidence of Mr Davis (for Anna Noakes et al).
- 1.11 I also attended further conferencing on 18 July 2023 in relation to the minimum vacant lot size. The outcomes of the conferencing are contained within the JWS dated 18 July 2023. At conferencing, no additional reasons were provided by the experts for the Council to support the 450m² minimum vacant lot size restriction other than those provided in the s42A report although it is now acknowledged that the stormwater / flooding aspect was an error. The Council experts are reconsidering their position in light of the matters discussed and assume this will be provided via rebuttal evidence. I

¹ Paragraph 6.22 of Ms Nairn's evidence.

will therefore have to consider any additional reasoning provided in Council's rebuttal evidence and will respond further on this issue at the hearing.

2. INTRODUCTION

2.1 This rebuttal statement relates to evidence filed by:

- (a) Ms Nairn for Hynds Pipe Systems Ltd and the Hynds Foundation (Hynds); and
- (b) Ms de Lambert for Hynds Pipe Systems Ltd, the Hynds Foundation and Pokeno Village Holdings Ltd.

2.2 I also address matters arising from the stormwater and flooding Joint Witnesses Statement (JWS) dated 11 and 13 July 2023. This includes stormwater matters relating to the evidence of:

- (a) Mr Davis for Anna Noakes and MSBCA Fruhling Trustee's Company Ltd; and
- (b) Ms Rykers for Synlait Milk Ltd.

2.3 As noted in my summary, I have been unable to address the Council's justification for the 450m vacant lot size as the expert position was not clarified at the final conference on 18 July immediately prior to finalising this statement.

2.4 I confirm that I have the qualifications and expertise previously set out in paragraphs 2.2 to 2.5 of my primary evidence dated 4 July 2023.

2.5 I repeat the confirmation given in my primary evidence that I have read the Code of Conduct for expert witnesses contained in the Environment Court Consolidated Practice Note 2023 and that my evidence has been prepared in accordance with that Code.

3. HAVELOCK QUALIFYING MATTERS

3.1 Ms de Lambert and Ms Nairn support the following qualifying matters for the Havelock Precinct:

- (a) the Havelock Ridgeline Height Restriction Area;²
- (b) the Havelock Industry Buffer (subject to an expansion of this buffer across Area 1);³

² Paragraph 9.9 of Ms de Lambert's evidence and paragraph 14.1 of Ms Nairn's evidence

³ Paragraphs 4.3 and 9.5 of Ms de Lambert's evidence and paragraph 14.1 of Ms Nairn's evidence

(c) the Havelock Industry Buffer Height Restriction Area (where a maximum building height of 5m applies within 50m of the Havelock Industry Buffer);⁴ and

(d) the Havelock Hilltop Park Height Restriction Area (where a maximum building height of 5m applies within 50m of Hilltop Parks).⁵

3.2 It is understood that the issue in contention are fairly limited, relating to the application of the EPA to Area 1 and the proposal by Ms Nairn for the expansion of the Pokeno Industry Buffer across Area 1. I address this matter below.

3.3 I have addressed the matter of the Environmental Protection Area (EPA) in my primary evidence.

4. EXPANSION OF THE POKENO INDUSTRY BUFFER ACROSS AREA 1

4.1 Ms Nairn has recommended that the land known as 'Area 1' in Havelock be treated in the same manner as the Pokeno Industry Buffer.

4.2 Area 1 is subject to an appeal by HVL to remove the Environmental Protection Area (EPA) (being the planting rule) from that land. The visibility of the industrial area from Area 1 and the potential for that to constrain Hynds' operations remains the primary contentious issue with respect to the Havelock provisions.

4.3 The matters of reverse sensitivity have been extensively addressed in evidence during the PDP hearings. HVL prepared evidence and technical assessments associated with:

(a) Acoustics⁶ as discussed in the evidence of Jon Styles;

(b) Air quality⁷ (**Attachment 1**); and

(c) Lighting⁸ (**Attachment 2**).

4.4 Ms Gilbert and Mr Styles have prepared primary evidence in respect to V3. Ms Gilbert has also prepared rebuttal evidence.

4.5 As part of the PDP hearing, a planning Joint Witness Statement dated 12 May 2021 included the provisions agreed with Mr Jones (on behalf of Yashili New Zealand Dairy Co Ltd) to manage reverse sensitivity with respect to the Yashili/Havelock interface.

⁴ Paragraph 9.6 of Ms de Lambert's evidence and paragraph 12.1 of Ms Nairn's evidence

⁵ Paragraph 9.7 of Ms de Lambert's evidence and paragraph 12.1 of Ms Nairn's evidence

⁶ Mr Jon Styles, Primary Evidence dated 17 February 2021 and Rebuttal Evidence dated 3 May 2021

⁷ Mr Andrew Curtis, Primary Evidence dated 17 February 2021 and Rebuttal Evidence dated 3 May 2021

⁸ Mr Bryan King, Rebuttal Evidence dated 3 May 2021

This addressed the rules that are now numbered Rules SUB-R19, SUB-R21, PREC4-S2 and PREC4-S3 (**Attachment 3**).

4.6 As part of V3, Ms Rykers (on behalf of Synlait Milk Ltd) and I have expert conferenced. The result of this is the Joint Witness Statement dated 19 July 2023 (and filed separately). This addresses the QMs associated with rules SUB-R19, PREC4-S2 and PREC4-S3.

4.7 As part of the PDP hearing, Mr Styles modelled an appropriate separation distance for the Pokeno Industry Buffer, and the land within it at 88 Bluff Road is identified as an Environmental Protection Area for enhancement planting (providing it with a specific use). The Pokeno Industry Buffer is identified as a QM in my primary evidence of 4 July 2023 and the Havelock QM JWS dated 17 May 2023. I understand that there is no evidence that opposes the Pokeno Industry Buffer as a QM.

4.8 In terms of potential lighting effects, Mr King⁹ in the PDP hearing identified:

1.8 My analysis and measurements demonstrate that the Gateway Business Park operators are in compliance with Waikato District Council allowable limits as they relate to HVL's proposed residential lots.

1.9 Based on current operational light sources from the Gateway Business Park, the resultant HVL exposure zone is very small and the light levels for residential receivers in that zone are less than one tenth of the allowable limit.

4.9 In terms air quality and potential dust effects, Mr Curtis¹⁰ in the PDP hearing identified:

1.6 HVL is proposing to incorporate a Pokeno Industrial Buffer on the Site, to provide separation between industrial activities and sensitive land uses.

1.7 While the width of the buffer is less than that proposed by some submitters, it is my opinion that the proposed buffer is appropriate to ensure that any residual air discharges from lawfully established activities within both the Industrial and Heavy Industrial zoned land do not result in potential reverse sensitivity effects from sensitive activities located within Site that forms part of the rezoning proposed by HVL.

1.8 I consider this level of separation is better than that proposed in the PWDP, where residential land to the northeast of the Site immediately abuts the Industrial zone, and the Business zoned land to the east abuts the Heavy Industry zone.

1.9 I have reviewed evidence submitted on behalf of Hynds and do not consider from an air quality perspective that there is potential for visible dust or steam emissions from its activities that fit within the WRC Permitted Activity standards to result in reverse sensitivity effects.

⁹ Highlights Package of Bryan King on behalf of Havelock Village Limited dated 12 May 2021

¹⁰ Highlights Package of Andrew Curtis on behalf of Havelock Village Limited dated 12 May 2021

1.10 I am comfortable that the proposed HVL light industrial buffer adjacent to the Yashili site is appropriate for activities that are being undertaken within the existing Industrial zone.

1.11 I consider that the HVL light industrial buffer provides a separation distance which is suitable to avoid the potential for conflict between what could be considered incompatible activities and therefore meets one of the key objectives set out in the S42A Framework report.

- 4.10 The separation distance provided by the Pokeno Industry Buffer was specifically designed to provide more than adequate separation to ensure appropriate amenity for the proposed residential dwellings in terms of noise, lighting and air discharges from the Pokeno industry zones. This in turn addresses potential reverse sensitivity by avoiding and managing potential incompatibility reducing the risk of complaints leading to potential constraints on existing industrial operations. I will address the issue of visual effects leading to reverse sensitivity later in this rebuttal evidence.
- 4.11 In my opinion, setbacks are an appropriate and common method to manage the potential for reverse sensitivity effects. However, the separation distances should not be so great, as sought by Hynds by including Area 1 in the Pokeno Industry Buffer, so as to result in the inefficient use of a scarce land resource in Pokeno, or a pattern of development that does not support the wellbeing of future residents. This is because of the novel approach of Hynds to identify the concept of visual reverse sensitivity effects.
- 4.12 A specific boundary condition was agreed for land adjoining Yashili¹¹ where mitigation opportunities are available through the use of a General Industry Zone buffer together with a specified acoustic barrier. Mr Styles evidence for V3 refers to this acoustic barrier which was the subject of expert conferencing and based on agreed technical inputs.
- 4.13 This can be contrasted with the approach adopted by Hynds' experts which is not supported by empirical or expert assessments as relevant (noise, lighting and air discharge) and is often supported by photos taken from mis-labelled locations, supplied by their own client without any expert verification (see for example, the night-time photo included in Ms Nairn's evidence).
- 4.14 The lighting measurements undertaken by HVL's expert Mr King for the PDP hearing illustrate that the light spill received beyond the Pokeno Industry Buffer (within the Havelock site) is less than 1/10th of the compliance limit of the District Plan.

¹¹ Joint Witness Statement dated 12 May 2021 and Rules SUB-R19, SUB-R21, PREC4-S2 and PREC4-S3

Notwithstanding this, the experts for Hynds assert that lighting at these levels will generate complaints and, in their opinion, that would result in Hynds having to restrict or curtail their operations. I disagree.

- 4.15 The primary evidence and rebuttal evidence of Mr Curtis also confirmed that the separation distances were appropriate to ensure that there was not an air quality amenity effect on Havelock land beyond the Pokeno Industry Buffer.
- 4.16 The assertions of a range of adverse effects emanating from the Hynds site onto Area 1, resulting in the potential for neighbour complaints, and consequently the curtailing of Hynds' operations, are overstated.
- 4.17 I note that agreement was reached with Mr Jones for Yashili in respect to the PDP hearing and with Ms Rykers for Synlait Milk Ltd in respect to V3. No issues have been raised in respect to unmanaged reverse sensitivity effects by any other party, even though Synlait's operation is closer to Havelock and Area 1 than the Hynds' site.
- 4.18 The evidence for Hynds does not acknowledge that sensitive activities and significant residential development opportunities are already located in closer proximity to the Hynds' site than Havelock (or Area 1) within the town centre that could overlook its site. This includes sites within the existing residential and business land.
- 4.19 I also do not agree with the argument put forward by Ms de Lambert that visual effects are a reverse sensitivity matter, and that complaints regarding existing or new buildings would result in the curtailing of the Hynds' operation.
- 4.20 In a planning framework, reverse sensitivity is more than just the inconvenience of receiving complaints from adjoining residents. These matters need to reasonably relate either to a non-compliance with a consent or rule, or to a breach of obligations pursuant to sections 16 and 17 of the RMA. I understand that reverse sensitivity is commonly defined as:

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.

- 4.21 There is no evidence that I am aware of, or that is presented in the evidence of the submitters, that complaints, including legitimate complaints, have resulted in the restriction or curtailing of any industrial operations in Pokeno.

- 4.22 There are numerous examples of large scale buildings in industrial and commercial areas in close proximity to residential activities. I do not consider there is a compelling case to indicate that because a building is visible it is likely to be complained about, and that this complaint will curtail activities occurring within that building.
- 4.23 In the case of Hynds, the PDP provides for their activity and buildings as a permitted activity and specific performance standards apply in respect to noise, vibration and light spill effects. I believe it is important to acknowledge that unsubstantiated complaints for activities that comply with District Plan rules will not result in that activity's operations being curtailed through a resource consent or those applicable rules.

5. ASSESSMENT OF MS NAIRN'S OPTION

- 5.1 My primary evidence, along with that of Mr Styles, outlines the basis for the Pōkeno Industry Buffer. I support the identification of the Pōkeno Industry Buffer, as is mapped in the PDP, as the method to address the reverse sensitivity QM to manage incompatibility between residential and industrial activities.
- 5.2 In reviewing Ms Nairn's option to extend the Pokeno Industry Buffer over Area 1, and on the basis that the effects of noise, lighting and air quality have been demonstrated to be addressed by the existing Pōkeno Industry Buffer, I make the following comments in respect to sections 77I(j) and 77L of the RMA:
- (a) Area 1 does not relate to land that has characteristics in respect to section 77I(a) to (i) of the RMA. In respect to section 77I(j) of the RMA the threshold associated with meeting this requirement is high, being 'inappropriate' in an area.
- (j) any other matter that makes higher density, as provided for by the MDRS or policy 3, **inappropriate** in an area, but only if section 77L is satisfied. [my emphasis]
- (b) In respect to Section 77L(a) of the RMA, a specific characteristic identified by Ms Nairn is the visibility of industrial land from the Havelock site and the potential for visual reverse sensitivity. I do not consider there is any noise, air quality or lighting reverse sensitivity effects as demonstrated by the evidence of Messrs Styles, Curtis and King. Visual reverse sensitivity is novel and I do not consider any perceived effects will arise given the significant separation distances between Havelock and the Hynds' site and the intervening Pōkeno Industry Buffer and planting required by the EPA. I have found no example of

visual reverse sensitivity in another district plan, nor by reference to the WRPS. In looking at the existing environment, a large number of existing dwellings can view the Hynds, Synlait and Yashili sites and I have found no evidence that their operations have been curtailed because these are visible to dwellings in Pōkeno, nor that residents of Area 1 would have more propensity to initiate complaints that would be substantiated.

- (c) In respect to section 77L(b) of the RMA, I do not consider that the characteristic identified by Ms Nairn makes the level of development inappropriate within the residential zone of Area 1 in light of the national significance of urban development and the objectives of the NPS-UD. Section 77L(c)(iii) of the RMA also requires an evaluation of an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS, or as provided for by policy 3, while managing the specific characteristics.
- (d) I note that rule SUB-R19 would prevent residential development within the Pōkeno Industry Buffer, and rule PREC4-SX (Building setback - sensitive land use within PREC4 – Havelock precinct) and PREC4-SX would restrict the height of buildings to 8m and 5m respectively in 2rds of Area 1. In addition, the EPA overlaying the Pōkeno Industry Buffer requires the planting of the foreground for Area 1, creating the opportunity for screening. I consider that these controls address in a direct, efficient and effective way the characteristics that Ms Nairn is concerned with. I consider that with the imperative of section 77L(c)(iii) of the RMA, there is no basis to prevent residential development in Area 1 as sought by Ms Nairn where a comprehensive suite of approaches is available in the PDP and through the section 42A Report and my primary evidence to manage the effects of concern.
- (e) I do not support an option that prevents development in Area 1. There is a strong and comprehensive evidential basis for providing residential development in Area 1, given that it is already located in a General Residential Zone.
- (f) I consider that an appropriate outcome is to remove the EPA from most of Area 1 and restrict the height of development (as proposed in the rules identified above), along with ensuring the requirements to plant the EPA within the Pōkeno Industry Buffer are met. This minimises the visibility of the Pōkeno industry zones to residents of Area 1.

(g) Noting the above, I do not support three storey development in the land covered by the Height Restriction Area and within the 40 dba noise contour within Area 1. As I outlined in my primary evidence, I consider there are reasons why the maximum height is inappropriate in these areas.

5.3 I do not consider that the tests of section 77L of the RMA are addressed by the retention of the EPA over Area 1 or the option to extend the Pōkeno Industry Buffer over Area 1.

5.4 With reference to Ms Gilbert's visual screening recommendations, I consider it is appropriate to include an additional discretion for fast-growing species within the EPA (which adjoins Area 1). The proposed wording is included in **Attachment 4**.

6. ALTERNATIVE APPROACH TO AREA 1

6.1 In my opinion, maintaining the existing extent of the Pokeno Industry Buffer would be consistent with the outcomes of Schedule 3A of the RMA and represents an appropriate balance in terms of the assessment required by section 77L.

6.2 For completeness, I do not consider it is strictly necessary to manage visual reverse sensitivity effects as outlined by Ms De Lambert or Ms Nairn. Neither do I consider that there is legitimate effects-basis in terms of potential air or lighting discharges that would give rise to perceived or actual visibility of those discharges from Area 1 given the separation distance to the industrial area particularly the Hynds site. The technical advice I have been provided as part of my master planning of the Havelock does not support that position. However, I outline below an option to assist the Panel if it disagrees with respect to Area 1 and seeks a more targeted solution to manage an perceived issue.

6.3 Given the concern is visual reverse sensitivity and the existing buffer area manages other reverse sensitivity matters (noise, air quality, lighting), an option is to limit the height of buildings within all of Area 1 to 5m (one storey) as is proposed through the other Havelock height restriction areas (including those already overlaying Area 1).

6.4 This provides targeted land use controls to address the additional risk identified by Hynds' witnesses. Essentially, strengthening the effectiveness of the existing screening mechanisms (as above and in Attachment 4) but also limiting the height of buildings to limit visibility from Area 1 reduces the potential for "perceived effects" and in turn any complaints.

- 6.5 Within Area 1, there are a combination of Rules PREC4-S3¹² (8m height within the 40 dba contour) and PREC4-SX¹³ (5m height within 50m of the Pokeno Industry Buffer) that restrict height to appropriately manage effects within the specific site context.
- 6.6 The option above of applying a consistent 5m height restriction area to all of Area 1 would affect a total additional area of approximately 6000 m² beyond the existing combined effect of Rule PREC4-SE and SX.
- 6.7 In respect to sections 77I(j) and 77L of the RMA (and in comparison to the assessment provided above in respect to Ms Nairn's extended Pokeno Industry Buffer Option option):
- (a) The boundaries of Area 1 can be mapped. The Panel would need to identify visual reverse sensitivity as the characteristic applying to Area 1 to meet section 77L(a) of the RMA.
 - (b) The matter of the national significance of urban development in this circumstance indicates that, as per the section 32AA associated with the PDP hearing process, this land is capable of residential development and intensification opportunities, however its height should be limited to 5m (one storey) so as to maximise the effectiveness of the proposed screening and minimise views from Area 1 to the Hynds' site (and the remainder of the Pokeno industry zones). Removing the additional height opportunity available in the MDRS reduces the visibility from dwellings to the industrial land and Hynds' site thereby reducing potential for incompatibility of land uses, perceived and actual visibility of the Hynds' industrial activities and potential for complaints or constraints on future operations.
 - (c) When comparing this option with the imperatives of section 77L(b) of the RMA, the approach is better than seeking to extend the Pokeno Industry Buffer to Area 1 because it does not seek to avoid residential development (given the underlying zone is residential) but rather is targeted to the matter of concern, i.e. visibility of the industrial land as opposed to any actual noise, air quality or lighting issue.
 - (d) A reasonable approach to visual reverse sensitivity can include the 5m height rule and provide landscape screening (as achieved by the EPA and Rule SUB-21 and which can be supplemented by a reference to fast-growing species as

¹² Titled: Building design – sensitive land uses within PREC4 – Havelock Precinct

¹³ Titled: Height – Havelock height restriction area

identified by Ms Gilbert) to allow residential development to occur, albeit with a limit on height. This may not necessarily affect the yield of development (this being a matter of national importance) as it would still provide for the same density opportunity, however it would limit opportunities for two and three storey buildings within the context of screening views down towards the industry zones through the combination of height and vegetation. My experience of intensification opportunities is that these can be achieved by one storey developments on smaller lots without necessarily relying solely on height controls. While the gross floor area of the building may be limited with a restriction on height, this does not necessarily mean that a dwelling with a gross floor area equating to one storey cannot result in a higher density form of housing when compared with the existing General Residential Zone.

6.8 On this basis, the Panel could manage development within Area 1 and remove the remainder of the EPA applying to Area 1. This is because the EPA itself is inconsistent with the development potential of this land when the matter of visual reverse sensitivity could be adequately addressed to avoid or minimise adverse effects through other methods.

6.9 **Attachment 5** includes the manner in which the option identified above could be included in the V3 provisions and the planning maps.

7. **STORMWATER AND FLOODING**

7.1 This matter has been subject to expert conferencing on 11, 12 and 13 July 2023. The JWS dated 13 July 2023 addresses amendments to the V3 provisions, particularly Rule SUB-R153. I support the amendments to Rule SUB-R153 (1) (a) and the matters of discretion (but not the text in yellow highlight) because the approach to drafting by Council in the section 42A Report, Council evidence and Section 32AA assessment:

- (a) Had, whether by design or inadvertently, provided for subdivision of a 450 m² lot inclusive of its building platform within the Stormwater Constraints Overlay. Such an approach would not address the characteristics of the QM as it relates to natural hazards.
- (b) Would apply the Stormwater Constraints Overlay to an entire greenfield site, regardless of the area of land within the actual overlay. The terms 'part of a site' and 'site' were used interchangeably, with the effect being that any greenfield site with a Stormwater Constraints Overlay for part of it would have the rules apply to all the site.

- (c) Had, in Section 11.2 paragraph 5 of the Section 32AA for planning – three waters infrastructure and flooding, justified the retention of the 450m² minimum lot size in the Urban Fringe area to better manage stormwater stating:

Retain the minimum site size that applies to the General Residential zone (450m²) in the Urban Fringe area to better manage stormwater on development sites and enable compliance with WWS-R1. This would negate the presumption that stormwater can be effectively managed on very constrained sites, for example, three houses on a 200m² lot, thereby reducing the risk that new development will generate stormwater contaminants and flood risk by requiring developers to obtain a resource consent for denser development forms. This would entail an assessment of the proposed stormwater management measures via a resource consent process.

- 7.2 These matters were addressed in the JWS dated 13 July 2023.
- 7.3 I addressed the concern I had with the Council's approach to flooding and stormwater, along with the 450m² minimum lot size in my primary evidence. In respect to the changes proposed in the JWS, these were to address the matters raised in evidence, the QM for flooding and stormwater and, in particular, the matters raised in the evidence by Mr Davis for Anna Noakes et al.
- 7.4 The approach that I support for Rule SUB-R153 first acknowledges that all vacant lot subdivision requires a restricted discretionary resource consent. Therefore, there is no permitted baseline equivalent to the MDRS controls whereby a QM is required to address inappropriate development. Consequently, I consider the text highlighted in yellow in the JWS is unnecessary and overly complex because it is seeking to establish standards for matters which relate to design and site-by-site analysis, and these can be more effectively managed by reference in the discretions. In this respect I note:
- (a) Rule SUB-R153(1)(a) is unnecessary as there is no need to exempt part or the whole of a site from the Stormwater Constraints Overlay in Rule SUB-R153. I support this deletion.
- (b) The yellow highlighted text in Rule SUB-R153(1)(iii), (c) and (c) is also unnecessary and difficult to draft in the intended manner (ie. for the avoidance of building platforms/dwellings in the Stormwater Constraints Overlay when in a greenfield situation, as outlined by Mr Pitkethley, overland flow paths can be managed by roads and these type of risk assessments are common for design considerations in respect to hazards). I also freely admit to suggesting each draft of these rules as I considered and discounted options.

7.5 As an alternative to Rule SUB-R153(1)(iii), ~~(e)~~ and (c) I support discretion (e):

(e) Avoidance or mitigation of natural hazards, particularly in the Stormwater Constraints Overlay;

7.6 I support this approach to addressing the QM because:

- (a) Rule SUB-R153 requires consent as a restricted discretionary activity. There are no permitted activities.
- (b) The discretion already acknowledges natural hazards, and utilises the imperatives of 'avoidance' or 'mitigation'. Adding reference to the Stormwater Constraints Overlay places particular emphasis on this overlay and consequently it will be part of the consideration of resource consents.

7.7 This approach significantly addresses my original concerns.

7.8 Having considered the evidence of Mr Davis for Anna Noakes et al, I also support the proposed approach to add discretions k) to n) to Rule SUB-R153 as outlined in the JWS. This is because:

- (a) I understand the limitations of the scope issue, with Rule WWS-R1 applying to the whole district and being subject to appeal.
- (b) Applying the discretion from Rule WWS-R1 to SUB-R153 allows specific approaches to be developed for the 4 main towns subject to V3. These approaches would apply to all vacant subdivision, and while there may be a double-up ultimately with part of Rule WWS-R1, any amendments to the discretions are specific to the context of vacant subdivision.
- (c) Since the discretions in Rule WWS-R1 relate to the infringement of a permitted activity rule, amendments as reflected in discretions k) to n) were necessary so that these are in the context of subdivision as a restricted discretionary activity, with the effects of the proposal being considered through the design, modelling and resource consent process as is detailed in the rebuttal evidence of Mr Pitkethley (dated 19 July 2023).

7.9 I consider the approach of the JWS is better at managing the issues raised by Mr Davis in the context of vacant lot subdivision.

- 7.10 As outlined in the JWS dated 19 July 2023 between myself and Ms Rykers (for Synlait Milk Ltd), I also support her suggested amendment to discretion g) in SUB-R19 to clarify that downstream effects are to be considered.
- 7.11 I understand that Ms Huls will be producing an updated set of V3 provisions relating to stormwater and flooding that reflect the approach adopted in the JWS dated 11 and 13 July 2023. I may have further comments on that drafting as unfortunately there was insufficient time to redraft all the relevant rules in the expert conferencing sessions to reflect the principles outlined in the JWS.
- 7.12 With the amendments identified in the JWS, the Stormwater Constraints Overlay is likely to be mis-named. It now only applies to the modelled flood areas, and therefore should be identified as a 'Flooding Overlay'. This is because previously, as I noted above, the Council's Section 32AA Report was seeking to apply a constraint to subdivision of all greenfields land (450 m² vacant lots) on the basis of stormwater / impervious areas as a whole. I understand this is no longer being pursued, and therefore recommend a change in the terminology to be specific to the matter the overlay addresses.

Mark Tollemache

19 July 2023

Attachments 1 – 3 Separate Document

Attachment 4 – Amendments to SUB-R21 resulting from Ms Gilbert’s recommendations
 Amendment in red

SUB-R21	Subdivision – PREC4 – Havelock precinct	
PREC4 - Havelock precinct	<p>(1) Activity status: RDIS</p> <p>Activity specific standards:</p> <p>(a) Subdivision within the PREC – Havelock precinct that complies with all of the following standards:</p> <p>(i) The first subdivision to create residential lots includes the indicative road connections from Hitchen Road and Yashili Drive as a road to vest.</p> <p>(ii) The proposal includes the indicative roads as roads to vest, provided that this can be constructed and vested in stages.</p> <p>(iii) The proposal includes the provision of the Hilltop Park and the creation of the Pōkeno Industry Buffer areas and Environmental Protection Areas (all as shown on the planning maps).</p> <p>(iv) The proposal includes legal mechanisms to retain Environmental Protection Areas in perpetuity and which prevent further subdivision of them (such as via covenants, consent notice or vesting).</p> <p>(v) Either prior to or concurrent with subdivision in Lot 2 DP199997, an acoustic barrier (being a bund, building or structure, or any combination thereof) is constructed within the Havelock Precinct’s GIZ - General industrial zone which is designed so as to:</p> <p>(1) Achieve noise levels no greater than 45 dB L_{Aeq} between 10pm and 7am in the PREC4 – Havelock precinct and GRZ – General residential zone; and</p> <p>(2) Be at a height of no less than that illustrated on Figure 20 below and a length along the entire common boundary between Lot 2 DP199997 and Lots 3 and 4 DP 492007 (excluding the Collector Road on the Havelock Precinct Plan and 5m front yard setback – Rule GIZ-S6(1)(a)(1)).</p> <p>Council’s discretion is restricted to the following matters:</p> <p>(b) Consistency with the Havelock Precinct Plan (APP14 – Havelock precinct plan);</p> <p>(c) Design and construction of the indicative roads and pedestrian networks;</p> <p>(d) Design, location and timing of construction of the acoustic barrier within the Havelock Precinct’s GIZ – General industrial zone;</p> <p>(e) The design of, and potential effects on, the safe and efficient operation of the intersection of the Havelock Precinct’s Collector Road and Yashili Drive, including the design to accommodate safe vehicle access and egress for activities in the adjacent GIZ – General industrial zone;</p>	<p>(2) Activity status: DIS</p> <p>Where:</p> <p>(a) Subdivision that does not comply with Rule SUB-R21(1)(a)(i) – (iv)</p> <p>(3) Activity status: NC</p> <p>Where:</p> <p>(a) Subdivision that does not comply with Rule SUB-R21(1)(a)(v).</p>

	<p>(f) Design of the Hilltop Parks and adjoining park edge roads;</p> <p>(g) Avoidance, minimisation or mitigation of visual and physical disturbance to the upper flanks of Transmission and Potters Hills (where the hilltop parks are located) resulting from road design and alignment;</p> <p>(h) Potential effects on the safe and efficient operation of Bluff and Pioneer Roads (including where these intersect with State Highway 1) from roading connections to Cole Road;</p> <p>(i) The design of, and potential effects on, the safe and efficient operation of the intersections of:</p> <ul style="list-style-type: none"> (i) Yashili Drive and Gateway Park Drive; (ii) Gateway Park Drive and Hitchen Road; and (iii) Gateway Park Drive and McDonald Road. <p>(j) Potential effects on the safe and efficient operation of the McDonald Road railway crossing;</p> <p>(k) Accessible, safe and secure pedestrian and cycling connections within the Precinct and to the existing transport network and public facilities;</p> <p>(l) Provision within the Precinct design for future public transport;</p> <p>(m) Provision of planting, management plans for weed and pest control and their implementation, ownership and ongoing management of the Environmental Protection Area, <u>including a 3m width band of fast growing evergreen species along the upper edge of the Pōkeno Industry Buffer to provide a planting screen within the short term;</u></p> <p>(n) Design of earthworks (contours and aspect), lot size and orientation, fencing and landscape treatment between the 40 dba noise contour and the Pōkeno Industry Buffer on the planning maps to minimise possible reverse sensitivity effects on nearby HIZ - Heavy industrial zone activities, including through limiting potential for direct visual interaction from building platforms and associated future dwellings and outdoor living areas to industrial activities; and</p> <p>(o) Cultural effects.</p>	
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Appendix 5 - Alternative Option

Rule

PREC4-SX - Height – ~~Havelock industry buffer~~ height restriction area

(a) A building or structure with a maximum height not exceeding 5m, measured from the natural ground level, where it is located within the Havelock ~~industry buffer~~ height restriction area **identified on the Havelock precinct plan in APP14 – Havelock precinct plan.**

Precinct and Zone Map

Amend to apply a new 'Height Restriction Area' to the area identified as 'Area 1(a)' below.



Environmental Protection Area Map

Delete the EPA from the extent of Area 1 identified in red below.

