

Before an Independent Hearings Panel of the Waikato District Council

**Under the** Resource Management Act 1991

**In the matter** of the Waikato IPIs – Waikato District Council Variation 3

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**REBUTTAL EVIDENCE OF SARAH NAIRN ON BEHALF OF HYNDS PIPE SYSTEMS LIMITED  
AND THE HYNDS FOUNDATION (PLANNING)**

**19 July 2023**

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**1. INTRODUCTION**

**1.1** My full name is Sarah Nairn.

**1.2** I prepared a statement of evidence dated 4 July 2023 in relation to the Hynds Pipe Systems Limited and the Hynds Foundation (together, **Hynds**) submission on Variation 3 to the Proposed Waikato District Plan 2022 (**PWDP**). My qualifications, experience, and background to my involvement in this matter are as set out in my evidence-in-chief.

**2. CODE OF CONDUCT**

**2.1** I reconfirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and have complied with it in preparing this evidence. I confirm that the issues addressed in this evidence are within my area of expertise and I have not omitted material facts known to me that might alter or detract from my evidence.

**3. SCOPE OF EVIDENCE**

**3.1** This statement of rebuttal evidence on behalf of Hynds responds to various matters arising from the statements of planning evidence of:

- (a) Michael Campbell (Kāinga Ora – Homes and Communities);
- (b) Mark Tollemache (Havelock Village Limited); and
- (c) Pam Butler (KiwiRail Holdings Limited).

#### 4. EVIDENCE OF MICHAEL CAMPBELL

4.1 Mr Campbell has prepared a primary statement of evidence on behalf of Kāinga Ora dated 4 July 2023. Whilst Mr Campbell’s evidence addresses a wide range of topics, my rebuttal is limited to responding to the parts of his evidence relating to reverse sensitivity, minimum lot size, and stormwater.

#### Reverse Sensitivity

##### Objective MRZ2-O6

4.2 In paragraph 3.8(c) of his evidence Mr Campbell states that he supports the removal of ‘avoid’ from objective MRZ2-O6. The relevant objective is set out below, with Mr Campbell’s proposed change shown in red:

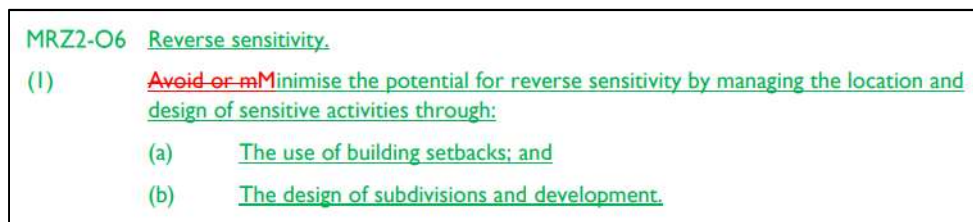


Figure 1 extract from Appendix 2 - Amendments to Text to Section 42 report

4.3 I disagree that ‘avoid’ should be removed from the above objective. In particular, the use of the word ‘avoid’ aligns with the reference to building setbacks later in the objective as building setbacks ‘avoid’ reverse sensitivity effects by ensuring that there is an adequate separation between incompatible activities. An example of such a setback is PREC4-SX in the Havelock Precinct that requires any new buildings or additions to existing buildings to be located outside of the Pookeno Industry Buffer.

- 4.4 Furthermore, I consider that removing the word ‘avoid’ would mean that the objective would no longer align with Policy 4 of the Waikato Regional Policy Statement (**WRPS**):

**IM-P4 – Regionally significant industry and primary production**

The management of natural and physical resources provides for the continued operation and development of regionally significant industry and primary production activities by:

1. recognising the value and long term benefits of regionally significant industry to economic, social and cultural wellbeing;
2. recognising the value and long term benefits of primary production activities which support regionally significant industry;
3. ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated;
4. co-ordinating infrastructure and service provision at a scale appropriate to the activities likely to be undertaken;
5. maintaining and where appropriate enhancing access to natural and physical resources, while balancing the competing demand for these resources;
6. **avoiding** or minimising the potential for reverse sensitivity; and
7. promoting positive environmental outcomes.

Figure 2 Extract from WRPS (emphasis added by highlighter)

- 4.5 It would also mean that the objective of the MDR2 zone would not give effect to Method 28 of the WRPS which explicitly directs councils to prepare district plan provisions which “avoid or minimise” not “minimise”:

**IM-M28 – Plan provisions**

**District** and regional plans should provide for regionally significant industry and primary production by:

1. identifying appropriate provisions, including zones, to enable the operation and development of regionally significant industry, which for new development is consistent with UFD-P11 and Table 35;
2. maintaining the life supporting capacity of soil to support primary production;
3. maintaining and where appropriate enhancing access to natural and physical resources for regionally significant industry and primary production, while balancing the competing demand for these resources;
4. recognising the potential for regionally significant industry and primary production activities to have adverse effects beyond its boundaries and the need to **avoid** or minimise the potential for reverse sensitivity effects;
5. recognising the need to ensure regionally significant industry is supported by infrastructure networks of appropriate capacity;
6. recognising the benefits of enabling the co-location of regionally significant industry to support efficient use of infrastructure, and minimise transportation requirements;
7. recognising and balancing the competing demands for resources between regionally significant industry, primary production and other activities;
8. ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated; and
9. promoting positive environmental outcomes.

Figure 3 Extract from WRPS (emphasis added by highlighter)

Anticipated environmental results	
IM-AER1	Te Ture Whaimana o te Awa o Waikato is being implemented.
IM-AER2	Land use activities are appropriately managed to avoid, remedy or mitigate future adverse effects, including the effects of climate change and reverse sensitivity effects.

Figure 4 Extract from WRPS (emphasis added by highlighter)

4.6 Overall, I consider that the removal of the word “avoid” from MRZ2-O6 would mean that the objective would no longer give effect to the WRPS as required by s 75(3) of the Resource Management Act (**RMA**).

#### Reverse Sensitivity as a Qualifying Matter

4.7 In paragraph 7.3 of his evidence-in-chief, Mr Campbell states that he does not consider reverse sensitivity is a “relevant qualifying matter”. I strongly disagree. Mr Campbell did not attend the planning expert conferencing held on 17 May 2023 in relation to the Havelock Precinct. However, I note that all the planning experts who did attend the expert conferencing agree that reverse sensitivity is a qualifying matter as per the below extract from the Joint Witness Statement:

<p><b>3.2.2 Reverse sensitivity</b></p> <p><b>All planning experts agree</b> that reverse sensitivity is a QM (in relation to reverse sensitivity and protecting the Heavy Industrial area) in respect to s771(j) and that the statutory requirements of s77L are met.</p>
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Figure 5 Extract from Joint Witness Statement on the Havelock Precinct as contained in Appendix 3 of the Section 42a report.

4.8 The rationale given by Mr Campbell for opposing reverse sensitivity as a qualifying matter is that reverse sensitivity does not warrant a reduction in the level of development otherwise enabled by the Medium Density Residential Standards (**MDRS**)<sup>1</sup> and that there is a requirement for activities to manage their effects as far as practicable “at source”.<sup>2</sup> I disagree with Mr Campbell’s position for the reasons below:

1 Evidence-in-chief of Michael Campbell at paragraph 7.3.  
2 Evidence-in-chief of Michael Campbell at paragraph 7.4.

- (a) Reverse sensitivity is a long-established planning concept that has been recognised by the Environment Court and is relevant to (as here) the assessment of zoning proposals. This will be addressed further by counsel for Hynds in legal submissions.
  
- (b) If reverse sensitivity is not recognised as a qualifying matter, the planning consequences of this will be severe. This would result in medium density residential development being enabled on the Havelock Village Limited (**HVL**) site, right up to the boundary of the Heavy Industry zone (as shown on the maps attached to Mr Campbell's evidence) without the ability to require any additional controls. In my opinion, this would be the epitome of poor planning practice. Even the planner for HVL, Mr Tollemache acknowledges reverse sensitivity is an issue that needs to be addressed through the Havelock Industry Buffer, and height restrictions within the 40dB LA eq noise contour.<sup>3</sup> Mr Styles' acoustic evidence on behalf of HVL supports this also. The Havelock Industry Buffer, noise contours and height restriction controls rely on the acknowledgement of reverse sensitivity as a qualifying matter.
  
- (c) Failing to protect Regionally Significant Infrastructure from reverse sensitivity effects would impact on the credibility of both the district and regional council's planning documents<sup>4</sup> as these documents require activities like Hynds to locate in Strategic Industrial Nodes and state that such activities will be protected from reverse sensitivity effects.
  
- (d) In terms of Mr Campbell's rationale, that reverse sensitivity does not warrant a reduction in the level of development<sup>5</sup> I disagree with this. There are times where the density of

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3 Evidence-in-chief of Mark Tollemache at paragraphs 5.19(a) and 5.23.

4 Waikato Regional Policy Statement IM-P4, IM-M28, UFD-P11 and Waikato District Plan SD-O10.

5 Evidence-in-chief of Michael Campbell at paragraph 7.3.

development on neighbouring land does need to be limited to avoid reverse sensitivity effects. A specific example is the Havelock Industry Buffer that includes (at PREC4-SX) a building setback rule that requires any new building or alternation to an existing building for a sensitive land use located inside the Buffer to obtain resource consent as a non-complying activity. New buildings or alternations to existing buildings containing sensitive land uses located outside the setback are permitted activities. The purpose of this is to ensure that dwellings are adequately separated from the adjoining Strategic Industrial Node. The Havelock Industry Buffer clearly limits density as dwellings within the buffer are a non-complying activity. I note that the evidence of Mr Tollemache also acknowledges that the buffer limits density where he states “no range of densities or heights of buildings are appropriate in the Pokeno Industry Buffer”.<sup>6</sup> I also note that this approach was agreed as being valid method to give effect to the Reverse Sensitivity Qualifying Matter by all planning experts at the conferencing:

**All planning experts propose** that reverse sensitivity as a QM be implemented (in part) and that through the following methods: Pōkeno Industry Buffer (PIB); the 40dB LAeq noise contour area. The experts agreement is at a conceptual level as specific wording of proposed provisions has not been circulated or discussed.

*Figure 6 Extract from Joint Witness Statement on the Havelock Precinct. Note that reference to Pokeno Industry Buffer is the same as the Havelock Industry Buffer.*

- (e) Mr Campbell’s opinion that activities need to manage adverse effects “at source”<sup>7</sup> contradicts the very basis of the concept of reverse sensitivity which is that not all effects can be internalised “at source”. For example dust, noise, air discharges, lighting and visual effects can all extend beyond the boundary of a site irrespective of the fact that an operation complies with the relevant standards or resource consent. I note that this is not just my view but is in fact well established

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6 Evidence-in-chief of Mark Tollemarch paragraph 5.19(d).

7 Evidence-in-chief of Michael Campbell paragraph 7.3.

through case law (refer to paragraphs 6.4-6.7 of my evidence-in-chief) and is also recognised in IM-M28(4) of the WRPS as set out in Figure 3 above.

- (f) In relation to the HVL site, as set out in my evidence-in-chief, and in the evidence-in-chief of Ms Rachel de Lambert, there is every reason to believe that residential development of the land adjacent to the Heavy Industry zone, and the hill tops over-looking the Heavy Industry zone (and in particular residential development within Area 1), will result in reverse sensitivity effects and lead to complaints from residents overlooking Hynds' operations.
- (g) Accordingly, in my opinion, the consequence of removing the Reserve Sensitivity Qualifying matter (as Mr Campbell proposes) is significant and could jeopardise the efficient operation of the Heavy Industry zone in Pookeno. This includes Hynds' operation of a regionally significant industry employing over 200 people.<sup>8</sup>
- (h) Of particular concern to Hynds is that (as set out above) the removal of the Reverse Sensitivity Qualifying Matter would mean that the Havelock Industry Buffer, and height restrictions to 8m within the noise contours within the Havelock Precinct would also need to be removed. As a consequence, residential development under the MDRS up to 11m high could occur directly adjoining the boundary with the Strategic Industrial Node at Pookeno. Given that noise in this location has been determined as being too high to be an appropriate location for residential use<sup>9</sup> by HVL's own specialist, Mr Styles, in my opinion this is likely to result in complaints about noise and other matters such as visual effects, dust and air discharges

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8 My evidence-in-chief at paragraphs 5.3-5.5.

9 Evidence-in-chief of Mark Tollemache at paragraph 5.19(b), with reference to modelling and evidence of Mr Styles.



given the close proximity to the existing activities. I note in this regard, that as outlined by Mr Hynds in his evidence-in-chief, complaints have already been received from three different property owners (with, as a result, Hynds deciding to purchase 10 Bluff Road).<sup>10</sup> These complaints could lead to limitations on existing activities or possibly curtail future planned expansion and development in the Heavy Industry zone, all of which would have significant adverse effects in terms of employment, economic productivity and the supply of vital infrastructure products and other goods. Mr Campbell's evidence does not recognise these consequences, rather he only considers the effects on the developer of not being able to maximise yield. Although, as I have noted above, this outcome is not supported by Mr Tollemache's planning evidence on behalf of HVL.

- 4.9** Overall, I strongly disagree with the analysis of Mr Campbell that reverse sensitivity should not be a qualifying matter. I consider that it is necessary to be able to limit or exclude the MDRS on the basis of reverse sensitivity as to not do so could seriously compromise the efficient operation of heavy industrial activities (including Regionally Significant Industry). Ultimately, it could also compromise the ability to achieve a well-functioning urban environment as sought by Objective 1 of the National Policy Statement on Urban Development 2020 (**NPS-UD**).

#### **450m<sup>2</sup> Minimum Lot Size**

- 4.10** In paragraphs 7.25 to 7.33 of his evidence, Mr Campbell opposes the 450m<sup>2</sup> minimum lot size proposed in the Section 42A report for vacant sites within the Subdivision Constraint Overlay. The rationale provided is that the 450m<sup>2</sup> lot size does not align with Clause 7 within Schedule 3A

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<sup>10</sup> Evidence-in-chief of Adrian Hynds at paragraph 5.7.

of the Resource Management Act 1991 (RMA).<sup>11</sup> Clause 7 of Schedule 3A states:

<p><b>7 General subdivision requirements</b></p> <p>Any subdivision provisions (including rules and standards) must be consistent with the level of development permitted under the other clauses of this schedule, and provide for subdivision applications as a controlled activity.</p> <p><small>Schedule 3A clause 7: inserted, on 21 December 2021, by section 17 of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (2021 No 59).</small></p>
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Figure 7 Extract showing Clause 7 of Schedule 3A of the RMA

**4.11** I disagree with the view of Mr Campbell for the reasons set out below:

- (a) I consider that the 450m<sup>2</sup> minimum lot size sought in the Section 42A report is consistent with the level of development permitted by the MDRS as it will accommodate three dwellings per site. In particular, 450m<sup>2</sup> is the minimum amount of land required to accommodate three terrace houses at 120m<sup>2</sup> each plus provision for access (120m<sup>2</sup> x 3 = 360m<sup>2</sup> plus 90m<sup>2</sup> for access). I have used 120m<sup>2</sup> as the evidence of Mr Wallace on behalf of Kāinga Ora states<sup>12</sup> that typical terrace housing in New Zealand is between 100m<sup>2</sup> and 180m<sup>2</sup>.
- (b) I do not consider that Mr Campbell's analysis that a 15m x 8m shape factor is appropriate is correct, as 120m<sup>2</sup> is not sufficient to accommodate the three dwellings per site permitted by the MDRS.
- (c) I consider that a larger site size is required in the Subdivision Constraints overlay as this overlay contains greenfield areas which are generally sloping and therefore larger site sizes are required to accommodate access gradients, retaining walls etc. The HVL site is an example of proposed greenfield development on sloping land.

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11 Evidence-in-chief of Michael Campbell at paragraph 7.31

12 Evidence-in-chief of Cameron Wallace at paragraph 4.22

- (d) I support the rationale set out in the paragraph 112 of the Section 42A report and the evidence of Ms Fairgray<sup>13</sup> that a 200m<sup>2</sup> vacant lot size throughout the residential zones will not promote a well-functioning urban environment as it will disperse development rather than focussing development in the town centre.

**4.12** Overall, I am of the view that Mr Campbell has not adequately considered that the MDR2 zone enables up to three dwellings per site as a permitted activity and that the minimum site size needs to be able to accommodate that level of development to be consistent with Clause 7 of Schedule 3A of the RMA. Furthermore, a distinction needs to be drawn between the areas closer to the town centre and those more than 800m away as the areas further away are more likely to have sloping topography.

#### **Stormwater and Appendix B Map**

**4.13** In paragraph 8.27 of his evidence, Mr Campbell:

- (a) Seeks an alternative method for addressing the stormwater issues associated with applying the MDRS. In particular he seeks an approach based on non-statutory layers and removal of the existing provisions in the MDR2 zone relating to stormwater; and
- (b) Recommends that the flooding overlay and associated provisions (including amendments with the section 42A report) are “removed from V3”.

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13 Evidence-in-chief of Susan Fairgray (Urban Economics) on behalf of WDC at paragraph 110.

**4.14** Mr Campbell appropriately acknowledges that any such changes would be outside the scope of Variation 3, and would require the Waikato District Council (**WDC**) to prepare and notify a separate district wide plan change.<sup>14</sup>

**4.15** In my view the approach that Mr Campbell is suggesting is not efficient or effective as such a plan change would be at the discretion of WDC as to timing or if it was to even happen at all. In the meantime, if the provisions managing flooding and stormwater are “removed from V3” as Mr Campbell suggests, without any new district wide provisions being put in place by way of a separate plan change by WDC, there would be no planning provisions managing the flooding and stormwater effects of the MDRS.

**4.16** In my opinion, to allow medium density development (including development of land uphill of the Heavy Industrial zone in Pookeno that has already experienced flooding effects) to proceed without controls to manage flooding and stormwater (as Mr Campbell appears to be proposing), would be inconsistent with good planning practice and WDC’s functions under the RMA. My view is that the MDR2 Zone should include provisions to ensure these effects are appropriately addressed and assessed at the time of future consent applications and this needs to be included now as part of Variation 3. I refer to my evidence-in-chief, which sets out my recommended changes to the Variation 3 provisions, and to Mr McGregor’s evidence-in-chief on behalf of Hynds which addresses stormwater matters.

## **5. EVIDENCE OF MARK TOLLEMACHE**

**5.1** Mr Tollemache has prepared a primary statement of evidence dated 4 July 2023 on behalf of HVL who is seeking to undertake a large-scale residential development on the hillslopes behind the existing Strategic

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<sup>14</sup> Evidence-in-chief of Michael Campbell at paragraphs 8.27 and 8.5.

Industrial Node at Pookeno which contains the Synlait, Yashilli and Hynds operations.

- 5.2** The primary focus of my rebuttal relates to the evidence-in-chief of Mr Tollemache regarding the Environmental Protection Area (EPA), the Pookeno Industry Buffer and the application of qualifying matters outside of the scope of Variation 3. I also provide rebuttal evidence in relation to residential capacity, subdivision and the drafting of the building setback and noise contour provisions.

### **Environmental Protection Area**

- 5.3** In paragraphs 6.3-6.5 of his evidence-in-chief, Mr Tollemache addresses the Environmental Protection Area (**EPA**) as applied to the HVL land and describes it as a “planting rule” serving multiple purposes. However, he notes that the EPA is not a “qualifying matter”. He further states in relation to the EPA that “It was not supported by any PDP evidence from HVL (in particular reverse sensitivity)...”.<sup>15</sup>
- 5.4** I disagree with Mr Tollemache’s description of the EPA and his characterisation of it as a “planting control”. This description omits the fact that the EPA was applied to Area 1 of the HVL land by the Hearings Panel on the PWDP primarily to avoid reverse sensitivity effects from residential development on the hillslopes above the Heavy Industrial zoned land. The relevant excerpts from the decision are set out below:

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<sup>15</sup> Evidence-in-chief of Mark Tollemache at paragraph 6.5.

99. We also accept the evidence that light emissions and air discharges from the industrial activities will be able to comply with relevant regional and district plan standards, as experienced at the proposed dwellings. However, despite industrial activities operating in compliance, we also accept that it is still possible for residents to experience perceived effects, and in fact this has been evidenced by the complaints received by Hynds to date. We do not consider that all views of industrial buildings from dwellings must be avoided, but we do accept that dominant views of lighting and air discharges from industrial activities and experiencing accompanying noise can generate concerns from residents. We also consider that the presence of nearby residential activities has the potential to influence the consideration of future industrial expansions during the consenting process. In particular, "Area 1" to the west of Transmission Hill, as identified by Ms de Lambert, is physically close to the Synlait site, at a high elevation and has an eastern outlook over the southern portion of the Hynds site.

Figure 8 Decision Report 281: Pookeno

100. We have reviewed the photographs provided by Mr Pryor and the cross sections prepared by Mr Pitkethley as well as undertaking our own site visits and we consider that the planting of the EPA will not provide enough screening of existing and future industrial activities from proposed dwellings in Area 1. We agree with Mr Mead's assessment that residential activity should be excluded from this area due to potential reverse sensitivity effects resulting from dominant views of lighting and air discharges, which would be difficult to minimise through subdivision design. The exclusion of this area, instead of adding the land into the EPA, will have the added benefits of extending the natural backdrop provided by Transmission Hill hilltop park and the EPA, and maintaining Transmission Hill as a visually prominent feature. These merits were apparent to us after examining the additional visual information representing the proposal, which we requested that HVL provide, following the hearing (see Figure 12 below).

Figure 9 Decision Report 281: Pookeno (emphasis added by underline)

- 5.5** I consider that a more accurate description of the EPA would be to acknowledge that the EPA on Area 1 was primarily put in place to exclude residential development based on evidence of reverse sensitivity effects, and then to acknowledge that the EPA would also have the added benefit of extending the natural backdrop provided by Transmission Hill Hilltop Park.
- 5.6** By omitting the important function of the EPA in avoiding reverse sensitivity effects from residential development located in Area 1, in my opinion Mr Tollemache has not adequately assessed the characteristics of the HVL site (being its topography and proximity to the heavy industrial activities) and therefore has not identified the need to apply the Reverse Sensitivity qualifying matter to Area 1.

**5.7** The consequence of this is significant as it means that the MDRS is able to be applied to Area 1 and therefore intensive residential development up to 11m in height and three dwellings per site will be able to occur in close proximity to and overlooking the heavy industrial activities. I consider this combination of topography, proximity and activities is likely to lead to reverse sensitivity effects. I have explained in my evidence-in-chief what amendments I think are necessary to the plan to address this issue. In particular, that the Havelock Industry Buffer should be extended over Area 1 (in addition to the EPA overlay). This is addressed below.

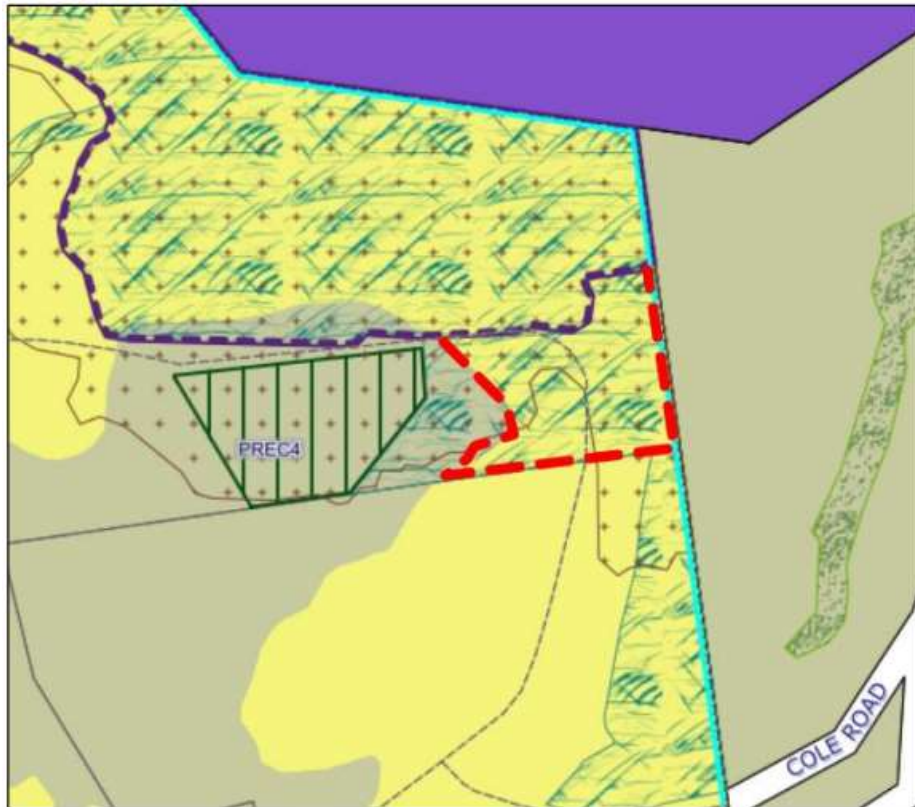
**Pokeno Industry Buffer (also known as the Havelock Industry Buffer)**

**5.8** In paragraph 5.19 of his evidence-in-chief, Mr Tollemache states that he supports the identification of the Pokeno Industry Buffer as the method to address the reverse sensitivity qualifying matter to manage the incompatibility between residential and industrial activities.

**5.9** The Pokeno Industry Buffer was proposed by WDC in the Section 42A Report to address reverse sensitivity effects. Whilst I agree with Mr Tollemache that this buffer area is the correct method to give effect to the reverse sensitivity qualifying matter, I disagree with the extent of the buffer identified in the Section 42A Report and supported by Mr Tollemache. This is because, as Mr Tollemache explains, it is limited to the area required to address acoustic effects (as identified by Mr Styles)<sup>16</sup> rather than defining the extent on the basis of all reverse sensitivity effects including acoustic, visual, dust, air discharge, light spill and future development reverse sensitivity effects. Consequently, I consider that the buffer should be extended to include Area 1 of the HVL land as set out in my evidence-in-chief:

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<sup>16</sup> Evidence-in-chief of Mark Tollemache at paragraph 5.19.



*Figure 10 Extension sought to Havelock Industry Buffer as sought in my evidence-in-chief (purple shows existing buffer as supported by Mr Tollemache whilst red dashed line is the buffer sought in my evidence-in-chief).*

**5.10** I note that defining the extent of the buffer area as I have set out in red above (Figure 10) would align with the decision of the Hearings Panel on the PWDP as the decision found residential development in Area 1 was likely to generate reverse sensitivity effects due to overlooking and proximity to the Heavy Industrial zoned land. Whilst due to its topography and location Area 1 has the potential to generate reverse sensitivity effects on the Heavy Industrial zone, as outlined in my evidence-in-chief, Area 1 represents only 1.8 hectares of the 90 hectare HVL site and by my calculations provides development capacity for only around 50 houses.<sup>17</sup>

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<sup>17</sup> My evidence-in-chief at paragraph 8.4.



### Qualifying Matters and the scope of Variation 3

5.11 At paragraph 5.9 of his evidence-in-chief, Mr Tollemache states that a map of his proposed qualifying matters for the Havelock Precinct is attached to his evidence. The attached map is shown below:

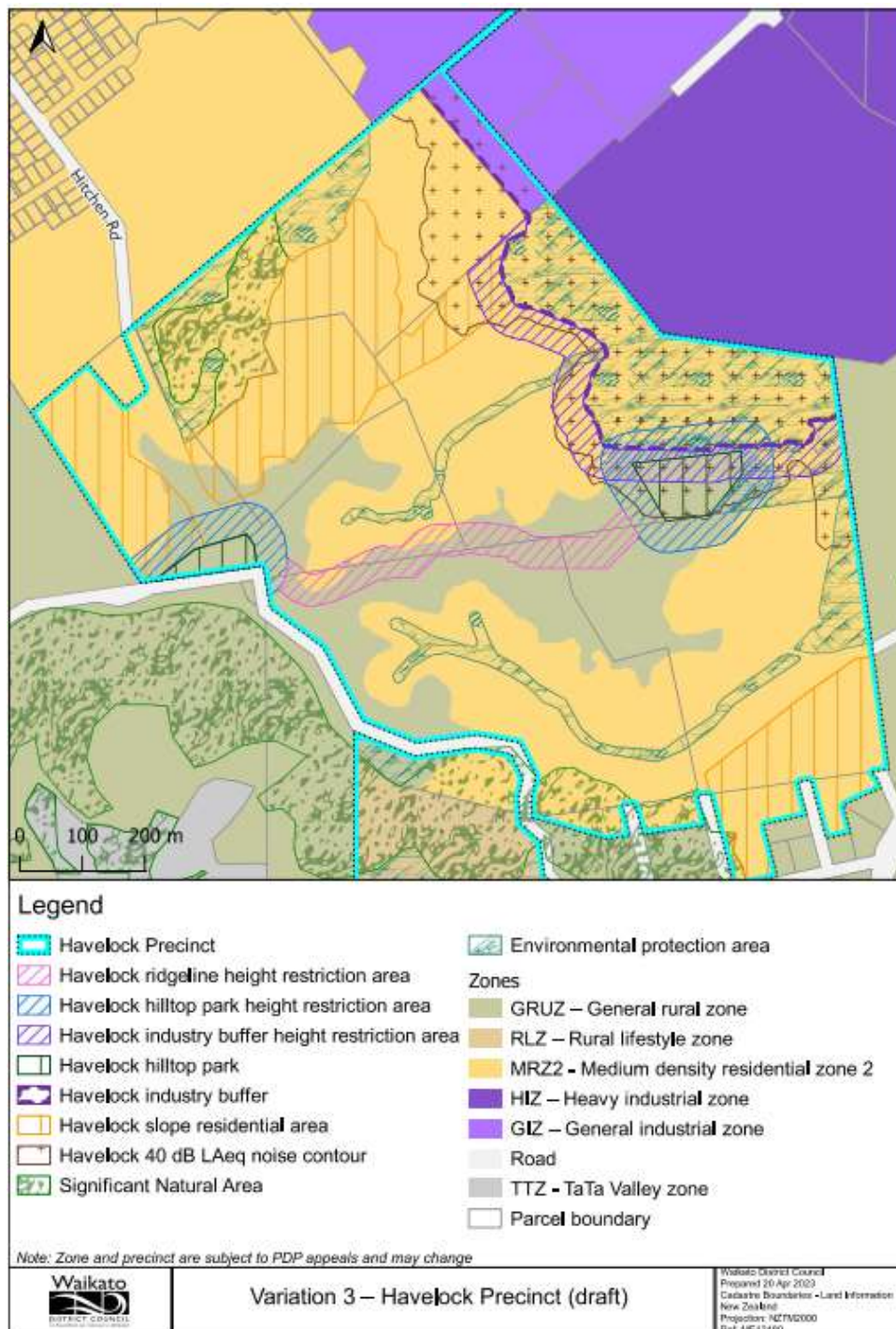
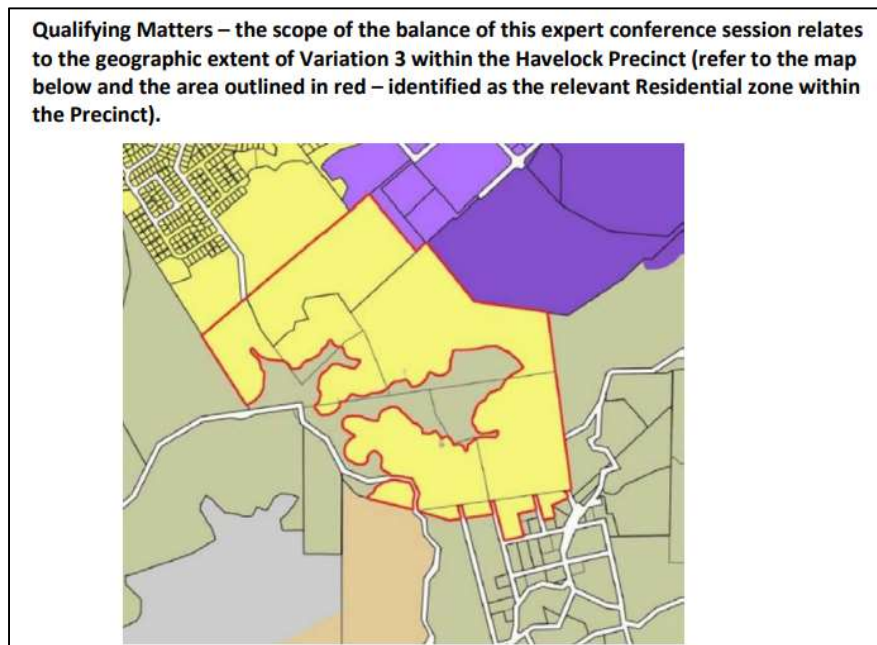


Figure 11 Havelock Precinct Proposed Qualifying Matters as attached to the evidence-in-chief of Mark Tollemache.

**5.12** I disagree with the above map as a number of the qualifying matters proposed by Mr Tollemache are outside of the scope of Variation 3 as they are not located on land within a relevant residential zone. In particular, Mr Tollemache has mapped the following qualifying matters as applying to land zoned General Rural:

- (a) The Havelock Ridgeline Height Restriction Area;
- (b) The Havelock Hilltop Park Height Restriction Area; and
- (c) The Havelock Industry Buffer Height Restriction Area (only where it adjoins the Hilltop Park).

**5.13** Given that these qualifying matters are outside the scope of Variation 3 they should not be addressed in the evidence of Mr Tollemache. I also note that the scope of Variation 3 was agreed at expert conferencing as shown by the extract of the Joint Witness Statement below:



*Figure 12 Extract from Joint Witness Statement on the Havelock Precinct as contained in Appendix 3 to the Section 42A report.*

**5.14** I also disagree with paragraphs 5.27 to 5.37 of Mr Tollemache’s evidence-in-chief, as this evidence also relates to land zoned General Rural and is, therefore, outside the scope of Variation 3.

### **Residential Capacity**

**5.15** In paragraphs 1.17 and 10.10 of his evidence-in-chief, Mr Tollemache states in the context of his evidence supporting a reduced minimum lot size of 240m<sup>2</sup> compared to 450m<sup>2</sup> as proposed by the Council, that he disagrees “with the Council’s position that additional residential capacity is unnecessary”. I disagree with Mr Tollemache that further residential capacity is needed. The evidence-in-chief of Ms Fairgray includes a detailed assessment of residential capacity and it is clear from her evidence that additional residential capacity is unnecessary, stating that:

9. At the total level, the modelled scenarios all enable additional dwelling capacity that is large relative to demand, including with the application of qualifying matters. Plan enabled capacity under the Council-proposed scenarios ranges from 5 to 12 times the level of long-term demand. The projected level of feasible development capacity is also large relative to demand within all of the modelled scenarios. This suggests that the proposed intensification provisions provide a wide development potential for the market to take up capacity.

*Figure 13 Evidence-in-chief of Susan Fairgray on behalf of WDC (at paragraph 9).*

**5.16** I also note that Mr Tollemache does not provide any evidence to contradict or provide an alternative view to the comprehensive analysis provided by Ms Fairgray.

**5.17** Furthermore, paragraph 32 from the evidence of Ms Fairgray seems to indicate that the HVL land is not even included in the Council’s calculation of the plan enabled housing supply. This is because the plan enabled housing supply was modelled on the notified version of the PWDP (in which the HVL land was zoned Rural):

32. The 2021 HBA assessed the capacity to meet this growth from the existing Operative District Plan (short-term), Proposed District Plan (PDP) Notified Version (medium-term) and Waikato Strategy 2070 (W2070) growth cells (long-term) provisions within the context of the 2021 market conditions. It is worth noting that the Operative Plan had limited opportunities for additional residential growth and was based on a single residential density. The notified version of the Proposed Plan, adopted for the medium-term capacity, provided for new greenfield growth opportunities compared to the Operative Plan, but was also limited to a single residential density. The medium density zone was only introduced through the Decisions version of the PDP on 17 January 2022 in response to the Kāinga Ora submission. The Decisions version of the PDP also increased greenfield growth opportunities through additional rezoning as a result of submissions. While we adopted the notified version of the PDP for the assessment, we were aware of the potential for a medium density zoning to be included, we therefore conservatively included a small area of medium density zoning in the assessment.

Figure 14 Evidence of Susan Fairgray (Urban Economics) on behalf of WDC

**5.18** Overall, Mr Tollemache provides no evidence to confirm his view that additional housing supply is required to be enabled within the PWDP to achieve the housing supply targets. In addition, it does not seem that the HVL development has been factored in the plan enabled development capacity, therefore, rezoning this land to MDRS is not necessary from a housing supply perspective.

### **Subdivision**

**5.19** In paragraphs 1.18 and 14.5 of his evidence-in-chief, Mr Tollemache states that he considers that the 450m<sup>2</sup> minimum site size proposed in the Section 42A report is inappropriate and that a 240m<sup>2</sup> minimum site size should be applied instead. I disagree that a 240m<sup>2</sup> minimum site size is more appropriate than the 450m<sup>2</sup> lot size for the reasons set out in paragraph 4.11 above.

## Building Setback – Sensitive Land Use

5.20 In paragraph 5.21 of his evidence-in-chief, Mr Tollemache states that he supports the wording below for the Building Setback – sensitive land use within PREC4 – Havelock Precinct:

<b>PREC4-SX</b>	<b>Building setback – sensitive land use within PREC4 – Havelock precinct</b>
<b>(3) Activity status: PER</b> <b>Where:</b> (a) <u>Any new building or alteration to an existing building for a sensitive land use within the PREC4 – Havelock precinct that is located outside the Pōkeno Industry Buffer identified on the planning maps.</u>	<b>Activity status where compliance not achieved: NC</b>

Figure 15 Extract from Page 23 of Appendix 2 - Amended Text to the Section 42A report

5.21 Whilst I acknowledge that it is buildings containing sensitive activities which are an issue from a reverse sensitivity perspective, I consider that drafting of the above rule needs to be broader to cover all buildings so as to align with my understanding of what the EPA overlay in this location is intended to achieve, as described in the evidence-in-chief of HVL’s landscape specialist Ms Bridget Gilbert which states that the buffer will be “retired and planted with locally appropriate eco-sourced species”.<sup>18</sup>

## Height of Buildings within the 40dBa acoustic contour

5.22 In paragraph 5.26 of his evidence-in-chief, Mr Tollemache recommends a specific rule to restrict the height of buildings within the 40dBa acoustic contour to 8m. I agree with this in principle and note that my evidence-in-chief also sought such a rule.<sup>19</sup> However, I disagree with the wording proposed by Mr Tollemache as it limits the height of buildings to 8m as measured from natural ground. I consider that that the wording should be amended to 8m and two storeys to align the provision with the evidence of Mr Styles on behalf of HVL which also references two storeys.

18 Evidence-in-chief of Bridget Gilbert referencing the Decisions Version of the Havelock Precinct at paragraph 64.

19 My evidence-in-chief at paragraph 13.5(d).

7.4 For this reason, I consider that the houses between the Pokeno Industry Buffer and the 40dB L<sub>Aeq</sub> contour should be limited to two-storeys (8m). This will ensure that the noise levels and effects will be consistent with what has been modelled for the development of the Pokeno Industry Buffer and provided for in the PWDP.

Figure 16 Extract showing paragraph 7.4 of the evidence-in-chief of Jon Styles (Acoustic) on behalf of HVL.

## 6. EVIDENCE OF PAM BUTLER

6.1 The evidence-in-chief of Pam Butler on behalf of Kiwirail Holdings Limited (**Kiwirail**) seeks to amend MRZ2-06 as follows:

(1) Avoid or minimise the potential for reverse sensitivity and risks to public health and safety by managing the location and design of sensitive activities through:

(a) The use of building setbacks; and

(b) The design of subdivisions and development-; and

(c) The design of buildings, including use of acoustic insulation, ventilation and vibration measures.

Figure 17 Extract showing paragraph 5.1 of the evidence-in-chief of Pam Butler on behalf of Kiwirail.

6.2 I support the above amendments on the basis that they provide further clarity as to the methods that can be used to address reverse sensitivity effects, however I also consider that “height” should be included into (c) in recognition of the provision sought by HVL (PREC4-SX(3)) limiting height of buildings in the noise contours to 8m.<sup>20</sup> My suggested wording is as follows:

(c) The height and design of buildings, including the use of acoustic insulation, ventilation and vibration measures

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20 Evidence-in-chief of Mark Tollemache at paragraph 5.26.

**6.3** I also support the amendment sought by Ms Butler to MRZ2-P6 as it makes clear that reverse sensitivity effects are not just generated by residential development.

**Sarah Nairn**

19 July 2023