

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 Waikato IPIs – Waikato District Council Variation 3

**LEGAL SUBMISSIONS ON BEHALF OF HYNDS PIPE SYSTEMS LIMITED AND THE
HYNDS FOUNDATION**

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MAY IT PLEASE THE COMMISSIONERS:

1. INTRODUCTION

1.1 These submissions are made on behalf of Hynds Pipe Systems Limited and the Hynds Foundation (together, **Hynds**) in support of their submission and further submission on Variation 3 to the Proposed Waikato District Plan (**Variation 3**).

1.2 Hynds has made a multi-million dollar investment to establish a regionally significant concrete manufacturing and distribution plant within the Strategic Industrial Node at 9 McDonald Road, Pookeno (**Hynds Factory Site**). In addition, Hynds has purchased adjoining land at 62 Bluff Road, Pookeno to enable it to expand its activities in the future. The sites are zoned Industrial 2 under the Operative Waikato District Plan (**Operative Plan**) and Heavy Industrial under the Proposed Waikato District Plan (**PWDP**). Hynds currently employs over 200 people in Pookeno, and its manufacturing activities at Pookeno are a regionally significant industry under the Waikato Regional Policy Statement (**WRPS**).

1.3 The Hynds Factory Site operates 24 hours a day and 7 days per week. Hynds lodged a submission and further submission on Variation 3 primarily due to concerns that medium density residential development of parts of the Havelock Village (**HVL**) land overlooking the Hynds Factory site would result in reverse sensitivity effects on the Hynds Factory Site that could affect its operations.

1.4 As at the date of filing these legal submissions, Hynds' reverse sensitivity concerns are addressed by an agreed position between Hynds and HVL (**Agreed Position on Reverse Sensitivity**) based on:

- (a) Planning provisions for Variation 3, as set out in the Planning Joint Witness Statement dated 25 July 2023 in which Mr Tollemache and Ms Nairn indicate they both support:

- (i) The proposed Havelock Industry Buffer¹ and Havelock 40dB LAeq noise contour and controls as proposed, based on the reverse sensitivity qualifying matter;
 - (ii) The extension of the proposed Height Restriction Area over all of Area 1 (limiting the height of dwellings in Area 1 to 5m);
 - (iii) The deletion of the proposed Environmental Protection Area (**EPA**) over Area 1; and
 - (iv) Amendments to the Variation 3 provisions, including in particular to provide for (as a matter of discretion for subdivision) the provision of a 3m wide band of fast growing ever green planting along the boundary of the Havelock Industry Buffer; and
- (b) A side agreement entered into between Hynds and HVL that addresses additional matters relating to potential reverse sensitivity effects, that sit outside of the Variation 3 process.

1.5 In Hynds' submission, the Agreed Position on Reverse Sensitivity is a sound planning outcome that addresses both Hynds' and HVL's concerns. In particular, it will enable residential development of HVL's land, while avoiding or minimising potential reverse sensitivity effects on the Heavy Industrial zone at Pookeno.

1.6 Hynds notes that the Agreed Position on Reverse Sensitivity requires the Hearing Panel to make a finding that reverse sensitivity is a qualifying matter. In relation to this, the planning witnesses to be called by the Waikato District Council (**WDC**) and all of the other relevant submitters (with the exception of Kāinga Ora) agree that reverse sensitivity is a qualifying matter under section 77I(j) of the Resource Management Act 1991 (**RMA**).²

1.7 In Hynds' submission, a finding that reverse sensitivity is a qualifying matter is defensible and legally correct for the reasons set out in Part 7 of these submissions.

1 Counsel note that the buffer is described as the Pokeno Industry Buffer in the MDR2 zone rules relating to the Havelock Precinct but the Havelock Industry Buffer on the Havelock Precinct Plan. These submissions will refer to the buffer throughout as the Havelock Industry Buffer.

2 Rebuttal evidence of Ms Nairn at paragraph 4.7, and paragraph 3.2.2 of the Planning Joint Witness Statement dated 17 May 2023.

- 1.8** On the other hand, a finding that reverse sensitivity is not a qualifying matter (as sought by Kāinga Ora) would enable medium density residential development to be undertaken right up to the boundary of the Heavy Industrial zone. Such an outcome is not supported by any of the other parties. In Hynds' submission, such an outcome would be the epitome of poor planning practice, and could jeopardize the continued operation of the Heavy Industrial zone at Pookeno.
- 1.9** In relation to flooding and stormwater effects, Hynds has proposed amendments to the matters of discretion for the Medium Density Residential 2 zone (**MDR2 Zone**) to ensure that any recommendations in a Council-endorsed Stormwater Catchment Management Plan can be addressed through conditions of consent.³ These amendments are supported by WDC.⁴
- 1.10** Hynds supports the re-zoning of HVL's land to MDR2 Zone as part of Variation 3⁵, subject to the above amendments relating to reverse sensitivity effects which address its concerns.
- 1.11** These submissions address the following matters:
- (a) Hynds' site at Pookeno, and its current and planned future activities;
 - (b) Background to Hynds' involvement in Variation 3;
 - (c) The legal framework for the Hearing Panel's decision-making on Variation 3;
 - (d) The Height Restriction Areas;
 - (e) The relevant qualifying matters to be applied to the HVL site;
 - (f) Reverse sensitivity as a qualifying matter;

3 Evidence of Mr McGregor, paragraphs 7.14 and 8.1.

4 Rebuttal evidence of Ms Huls, paragraph 30.

5 Apart from the parts of HVL's site that are above RL100 and do not fall within Variation 3.

- (g) The Agreed Position on Reverse Sensitivity that addresses Hynds' concerns;
- (h) Hynds' position on other amendments to the MDR2 zone including, MR2-06, and the approach to management of stormwater and flooding effects; and
- (i) Conclusion.

2. HYNDS' SITE AT POOKENO AND ITS CURRENT AND PLANNED FUTURE ACTIVITES

- 2.1** Hynds Pipe Systems Limited is owned by the Hynds Group, which is a family owned and operated business that specialises in the manufacture and supply of construction materials throughout New Zealand, Australia and the South Pacific Islands.⁶
- 2.2** Hynds supplies over 40,000 product types for urban and rural infrastructure development. Hynds' products are used to improve environmental water-based waste management, allow development of infrastructure for private and public transport, allow new housing and commercial sites to be built and improve industrial rural businesses. In addition, Hynds has also manufactured and supplied custom-built essential infrastructure to the Central Interceptor (stormwater) project in Auckland, drainage products for the City Rail Link, and a new trunk sewer main for Ruakura in Hamilton. Hynds also supplied products to Hastings, Gisborne, Whangarei and Warkworth to help with emergency flood repairs, following Cyclone Gabrielle and other storm events earlier this year.⁷
- 2.3** The Hynds Foundation is a charitable foundation established by the directors of the Hynds Group that owns the land adjoining the Hynds Factory Site, at 62 Bluff Road. Part of 62 Bluff Road is zoned Heavy Industrial. However, the balance of the land is being developed by the Hynds Foundation as a park. The Foundation has already planted 120,000 native plants and has commissioned landscape and ecological consultants to undertake further design work.⁸
- 2.4** With respect to the selection of the Hynds Factory Site at Pookeno, Mr Hynds' evidence is that:
- (a) Stuart Property, another Hynds Group entity, purchased the Hynds Factory Site in 2004. Stuart Property then participated in the Plan Change 24 (**PC24**) process, and a design and consenting process, to provide for the Hynds Factory within a wider heavy industrial zone (the Industrial 2 zone of the Operative Plan).⁹

6 Evidence of Adrian Hynds, paragraph 3.1.

7 Evidence of Adrian Hynds, paragraphs 3.2-3.3.

8 Evidence of Adrian Hynds, paragraph 4.14.

9 Evidence of Adrian Hynds, paragraph 4.1.

- (b) The provisions of the Operative Plan, and the zoning that was in place at that time, gave Hynds confidence that Pookeno was a location where it could confidently develop a long term base for its business. Specifically:
- (i) the Hynds Factory Site was zoned as Industrial 2;
 - (ii) the surrounding sites to the south and west overlooking the site were zoned Aggregate Extraction and Processing (AEP), and the land to the north-west was zoned Light Industrial, meaning that sensitive land uses could not locate there; and
 - (iii) the requirement for a 500m setback from the AEP zone meant that new dwellings could not be located near the Hynds Factory Site without a resource consent or written approval being obtained.¹⁰
- (c) Furthermore, Hynds understood from its involvement in PC24 that the development of the surrounding hills that formed the backdrop to Pookeno would not be permitted under the planning documents, providing it with a buffer from sensitive development.¹¹

2.5 Based on the planning framework outlined above, Hynds proceeded to establish its operations at Pookeno. Hynds now manufactures a range of pre-cast concrete products at the Hynds Factory Site in Pookeno, operating 24 hours a day, 7 days a week, and employing over 200 people.¹²

2.6 Hynds' investment in Pookeno represents a significant, and ongoing, multi-generational investment with an expected 80 year life-span. Hynds has invested millions of dollars in the Hynds Factory Site. It has firm plans to continue to develop the Hynds Factory Site in the years ahead to take advantage of the synergies of operating a single site with shared infrastructure. Hynds is planning the addition of several factory halls, an inland container facility and additional storage. In addition

10 Evidence of Adrian Hynds, paragraph 4.2.
11 Evidence of Adrian Hynds, paragraph 4.4.
12 Evidence of Adrian Hynds, 8.3.

Hynds also has plans to develop the 4.27 hectares of land at 62 Bluff Road that has been zoned Heavy Industrial under the PWDP, all of which will bring further growth and employment to Pookeno.¹³

2.7 In Hynds' submission, it is clear that Hynds' manufacturing activities at Pookeno provide significant social and economic benefits for Pookeno, the Waikato Region, and Southern Auckland Region. In addition, Ms Nairn's evidence is that (unsurprisingly) Hynds' operations are regionally significant industry under the WRPS.¹⁴

3. BACKGROUND TO HYNDS' INVOLVEMENT IN VARIATION 3

3.1 Hynds' operations, like many in the Heavy Industrial Zone, are, by their very nature, noisy, visually obtrusive, generate dust, and are very brightly lit. It is for that reason that Hynds has located its activities in the Heavy Industrial Zone. In particular, the Heavy Industrial Zone at Pookeno forms part of a Strategic Industrial Node identified on the Future Proof Map contained in 5.2.10 of the WRPS. Ms Nairn's evidence explains that industrial activities are encouraged to locate there under the WRPS, and are (generally) discouraged from locating outside of these nodes.¹⁵ Accordingly, Hynds has located its factory in precisely the location that is envisaged under the planning documents.

3.2 Mr Hynds' evidence explains the background to why Hynds lodged a Submission and Further Submission and has participated in Variation 3. In particular:

- (a) Hynds is concerned about the potential for reverse sensitivity effects on Hynds' current and future operations from medium density residential development on parts of the HVL site overlooking the Hynds Factory Site;
- (b) When Hynds designed the layout of its plant, it deliberately located noisier, dustier and more visually intrusive activities in the southern part

13 Evidence of Adrian Hynds, 4.6-4.14.

14 Evidence of Ms Nairn, paragraphs 5.4-5.5.

15 Evidence of Ms Nairn, paragraph 5.8.

of the Hynds Factory Site (i.e. closest to the HVL land) in order to minimise effects on Pookeno Village; and

- (c) Hynds has already experienced complaints from three property owners on Bluff Road in relation to its activities, and as a result has purchased the property at 10 Bluff Road.¹⁶

3.3 As set out earlier in these submissions, Hynds' concerns regarding potential reverse sensitivity effects are now addressed through the Agreed Position on Reverse Sensitivity between Hynds and HVL. This is addressed further in Part 9 of these submissions.

4. THE LEGAL FRAMEWORK FOR THE HEARING PANEL'S DECISION-MAKING ON VARIATION 3

4.1 The legal framework that applies to the Hearing Panel's decision-making on Variation 3 has been comprehensively addressed in the Joint Opening Legal Submissions on behalf of the Waipa District Council, Hamilton City Council and Waikato District Council dated 8 February 2023 and presented at the Joint Opening Hearing for the IPIs.

4.2 Hynds agrees with those legal submissions, and adopts them.

4.3 Accordingly, it is not proposed to address these matters, in detail, as part of these legal submissions.

4.4 However, for the purposes of this hearing, in Hynds' submission, notable features of the legal framework for decision-making on Variation 3, as an IPI, are:

- (a) The Hearing Panel is required to incorporate the MDRS into residentially zoned land, except where a qualifying matter applies;

16 Evidence of Adrian Hynds, paragraphs 5.4-5.9.

- (b) As a result of the application of a qualifying matter(s) the MDRS may be made less enabling, or (alternatively) may enable a greater level of development;
- (c) The relevant qualifying matters are the 9 qualifying matters listed in 77L(a)-(i) of the RMA. However, in addition, section 77L(j) provides for the identification of additional qualifying matters, where the requirements of section 77L of the RMA are met. Significantly, in Hynds' submission, this includes reverse sensitivity as a qualifying matter. This is addressed further in Part 7 of these submissions;
- (d) With respect to the higher order planning documents, these cannot be used to justify a reduction in the density provided for under the MDRS. This can only be done on the basis of qualifying matters. However, the higher order planning documents, and in particular the WRPS, are relevant to other provisions in the MDR2 zone. In particular, in Hynds' submission, Objective MRZ2-06 relating to reverse sensitivity is required to give effect to the higher order direction in relation to reverse sensitivity in IM-P4 and Im28 of the WRPS.¹⁷

5. THE HEIGHT RESTRICTION AREAS

5.1 In relation to the Havelock Precinct, the section 42A Report dated 15 June 2023 and HVL propose the inclusion of a Havelock Hill Top Park Height Restriction Area, Havelock Industry Buffer Height Restriction Area, and Havelock Ridgeline Height Restriction Area restricting the height of buildings to 5m within 50m of (respectively) the Hill Top Park, Havelock Industry Buffer and within mapped Ridgelines.¹⁸ Hynds supports these height restriction areas.

5.2 The way these controls have been mapped in the section 42A report dated 15 June 2023, they would apply to both land that is zoned residential under the PWDP, but also to land within the Havelock Precinct above RL100 that is zoned Rural under

¹⁷ As addressed in the Rebuttal Evidence of Ms Nairn, paragraphs 4.2 – 4.6.

¹⁸ Evidence of Ms Gilbert on behalf of HVL, paragraph 2.10, and the Variation 3 – Havelock Precinct (draft) Plan attached to the Evidence of Mr Tollemache, on behalf of HVL.

the PWDP.¹⁹ Concerns regarding scope have been noted in the updated section 42A Report dated 19 July 2023, which has removed the proposed Height Restriction Areas from the Rural Zone.²⁰

6. THE RELEVANT QUALIFYING MATTERS

6.1 The section 42A Report identifies the relevant qualifying matters for Variation 3, applicable to the Havelock Precinct, as being:

- (a) The protection of culturally significant landscapes within the Havelock Precinct.
- (b) The management of significant risks from natural hazards within the slope residential area of the Havelock Precinct.
- (c) The management of significant risks from stormwater and flooding effects (related to natural hazards and giving effect to Te Ture Whaimana).
- (d) Minimising reverse sensitivity effects of residential activities on industrial operations within the Havelock Precinct.²¹

6.2 Hynds agrees with this assessment of the qualifying matters.

7. REVERSE SENSITIVITY AS A QUALIFYING MATTER

7.1 Planning expert conferencing was held on 17 May 2023 in relation to the Havelock Precinct, resulting in a Joint Witness Statement being produced.

7.2 All of the planning witnesses who participated in this expert conferencing agreed that “Minimising reverse sensitivity effects of residential activities on industrial operations within the Havelock Precinct” (referred to hereafter simply as **reverse**

19 See the Havelock Precinct (draft) plan attached to Mr Tollemarke’s evidence.

20 See the amended Havelock Precinct Plan attached to the updated section 42A Report dated 19 July 2023.

21 Section 42A Report, paragraph 22.

sensitivity) is a qualifying matter, meeting the requirements of section 77I(j) and 77L of the RMA.²²

7.3 Mr Campbell, the planning witness for Kāinga Ora did not attend the expert conferencing for the Havelock Precinct. Mr Campbell indicates in his evidence that he does not consider reverse sensitivity to be a relevant qualifying matter.²³ The rationale given by Mr Campbell for this is that, in his view, reverse sensitivity does not warrant a reduction in the level of development otherwise enabled by the MDRS and that there is a requirements for activities to manage their effects as far as practicable “at source”.²⁴

7.4 Accordingly, at the time of filing these submissions Hynds understands that Kāinga Ora’s position in relation to the HVL Precinct is that:

(a) All of the HVL Precinct (with the exception of the land above RL100 that is Rural) should be zoned MDR2, with no reduction in density or any additional controls (e.g. to address noise) applying to any part of the site.

(b) This would enable medium density residential development (3 town houses per site up to 3 stories high) right up to the boundary of the Heavy Industry Zone.²⁵

8. It is notable that Kāinga Ora’s position in this respect goes further than the position set out in the evidence on behalf of HVL, which acknowledges reverse sensitivity as a qualifying matter, and proposes a number of restrictions to address reverse sensitivity effects on the Heavy Industry Zone, including the Havelock Industry Buffer and Havelock 40dB LAeq noise contour based on an expert acoustic assessment by Mr Jon Styles,²⁶ and the 5m height restriction for Area 1.

22 Paragraph 3.2.2 of the JWS.

23 Evidence of Michael Campbell, paragraph 7.3.

24 Evidence of Michael Campbell, paragraphs 7.3 and 7.4.

25 Evidence of Michael Campbell, Appendix B, Map labelled: Pookeno – Kainga Ora Revised Hearing Position, Proposed Variation 3.

26 Evidence of Mr Tollemarche, Variation 4 – Havelock Precinct Plan.

8.1 In Hynds' submission, it is critical to the future of the Heavy Industry Zone at Pookeno that the Hearing Panel make a finding that reverse sensitivity is a qualifying matter. A finding that reverse sensitivity is a qualifying matter under section 77I(j) is defensible and legally correct. In particular:

(a) As the Hearing Panel will be aware, a long line of case law has established the relevance of reverse sensitivity as an effect on the environment under the RMA.²⁷ The potential effect of reverse sensitivity, from a proposed new use on an existing use, is an effect on the environment in terms of sections 31 and 32, and therefore is relevant to the assessment of rezoning proposals. A failure to address reverse sensitivity effects as part of a plan change may mean the plan change does not achieve the integrated management of or the effective use and development of land.²⁸

(b) In particular, in response to Mr Campbell's evidence, activities (such as those in the Heavy Industry zone) are required to internalise their effects as far as reasonably possible. However, the RMA does not impose a requirement that total internalisation of effects must be achieved. Constraints on neighbouring land uses are appropriate where there is a long standing activity which cannot internalise all of its adverse effects, and the continued presence of the activity in the area is of national, regional or local importance.²⁹ It is notable that these principles are recognised in the existing planning framework, and in particular IM-P4 of the WRPS, that requires reverse sensitivity effects on regionally significant industry to be avoided or minimised.³⁰ Accordingly, overall, there is nothing novel, or inappropriate about seeking to manage reverse sensitivity effects under the RMA.

(c) In terms of Variation 3, as set out in Part 4 of these legal submissions, section 77I(j) of the RMA provides for the identification of additional

27 DA Nolan KC (ed) *Environmental and Resource Management Law Online* (online edition) at [13.31].
28 See for example: *CJ McMillan Ltd v Waimakariri District Council* NZEnvC 87/98 11 August 1998.
29 Thompson Reuters *Resource Management* (online edition) at A3.04(2).
30 Rebuttal evidence of Ms Nairn, paragraphs 4.4-4.6.

qualifying matters, where the requirements of section 77L of the RMA are met. All of the planning witnesses who participated in expert conferencing in relation to the Havelock Precinct agree that reverse sensitivity is a qualifying matter, meeting the requirements of section 77L.

- (d) Lastly, a finding by the Hearing Panel that reverse sensitivity is not a qualifying matter, would have significant consequences. In particular, the requirement to obtain a non-complying activity resource consent for new buildings or alternations to buildings containing sensitive activities within the Havelock Industry Buffer, and height restriction to 8m within the 40dB LAeq noise contour supported by the WDC and HVL (based on expert noise evidence from Mr Styles) would need to be removed. Medium density development of up to 3 dwellings per site up to 11 metres in height could occur right up to the boundary of the Heavy Industrial zone and Strategic Industrial Node at Pookeno. In Hynds' submission, such an outcome would be the epitome of poor planning practice, and could jeopardize the continued operation of the Heavy Industry zone.

9. THE AGREED POSITION ON REVERSE SENSITIVITY

- 9.1** As set out above, all of the relevant planning experts (with the exception of Mr Campbell for Kāinga Ora) all agree that reverse sensitivity is a qualifying matter, meeting the requirements of section 77L(j) and 77L of the RMA.³¹
- 9.2** As the Hearing Panel is aware, Hynds and HVL have been engaged in on-going discussions in relation to reverse sensitivity effects.
- 9.3** As outlined earlier in these legal submissions, Hynds' reverse sensitivity concerns are addressed by an Agreed Position on Reverse Sensitivity based on:

31 Paragraph 3.2.2 of the JWS.

- (a) Planning provisions for Variation 3, as set out in the Planning Joint Witness Statement dated 25 July 2023 in which Mr Tollemache and Ms Nairn indicate they both support:
- (i) The proposed Havelock Industry Buffer and Havelock 40dB LAeq noise contour and controls as proposed, based on the reverse sensitivity qualifying matter;
 - (ii) The extension of the proposed Height Restriction Area over all of Area 1 (limiting the height of dwellings in Area 1 to 5m);
 - (iii) The deletion of the proposed EPA over Area 1; and
 - (iv) Amendments to the Variation 3 provisions, including in particular to provide for (as a matter of discretion for subdivision) the provision of a 3m wide band of fast growing ever green planting along the boundary of the Havelock Industry Buffer; and
- (b) A side agreement entered into between Hynds and HVL that addresses additional matters relating to potential reverse sensitivity effects, that sit outside of the Variation 3 process.

9.4 In Hynds' submission, the Agreed Position on Reverse Sensitivity is a sound planning outcome that address both Hynds' and HVL's concerns. In particular, it will enable residential development of HVL's land, while avoiding or minimising potential reverse sensitivity effects on the Heavy Industrial zone at Pookeno.

10. HYNDS' POSITION ON OTHER AMENDMENTS TO THE MEDIUM DENSITY RESIDENTIAL 2 ZONE

10.1 This part of the legal submissions addresses Hynds position on amendments to the provisions of the MDR2 zone.

MRZ2-06 re reverse sensitivity effects

10.2 Ms Nairn's evidence in relation to objective MRZ2-06 regarding reverse sensitivity effects is that:

- (a) She supports amendments to MR22-06 proposed by Ms Butler (on behalf of KiwiRail), subject to the addition of the word “height”;
- (b) However, she is opposed to the amendments to MR22-06 proposed by Michael Campbell to delete the word “avoid” in relation to reverse sensitivity effects. As in Ms Nairn’s opinion, the inclusion of the word “avoid” is necessary for MR2-06 to give effect to provisions relating to reverse sensitivity in the WRPS.³²

Management of stormwater effects

10.3 In relation to stormwater effects, Mr McGregor, the independent stormwater expert called on behalf of Hynds, has assessed Variation 3, and the measures to manage stormwater effects outlined in the WDC’s Pookeno Stormwater Catchment Management Plan 2021 (**PSCMP 2021**). In his opinion, amendments are required to the matters of discretion to ensure that any recommendations in a Council-endorsed Stormwater Catchment Management Plan can be addressed through conditions of consent.³³

10.4 This is supported by Ms Nairn, who proposes an amendment to Rule SUB153, matters of discretion for subdivision creating vacant lots to refer to “consistency with the relevant stormwater catchment management plan.”

10.5 This amendments is supported by the WDC.³⁴

10.6 Mr Campbell, on behalf of Kāinga Ora, seeks that flooding and stormwater effects be managed in an alternative way based on the use of non-statutory layers, and that the provisions in the MDR2 zone relating to stormwater and the flooding overlay and rules be “removed from Variation 3”. Mr Campbell acknowledges that

32 Rebuttal evidence of Ms Nairn, at paragraph 4.2-4.6.

33 Evidence of Mr McGregor, paragraphs 7.14 and 8.1.

34 Rebuttal evidence of Ms Huls at paragraph 30.

the ability to make any such changes is outside the scope of Variation 3, and would require the WDC to prepare and notify a district wide plan change.³⁵

11. Putting to one side the merits (or otherwise) of what Kāinga Ora proposes, these changes are clearly outside the scope of the current Variation 3 process, and in that sense are issues for “another day”.

11.1 Whether or not a district wide plan change addressing these matters is prepared and notified, and the timing of this, is at the discretion of the WDC. However, in the meantime, controls managing stormwater and flooding are clearly needed.

11.2 Accordingly, in Hynds submission, the current approach to managing flooding and stormwater, set out in the MDR2 zone provisions should be retained, with the addition of Hynds’ proposed amendment to the matters of discretion in Rule SUB153 (discussed above). This will ensure that flooding and stormwater effects from development of the HVL site, including on the Heavy Industrial zone located downhill, are appropriately managed, in accordance with the WDC’s functions under 31(1)(b) of the RMA.

12. CONCLUSION

12.1 Hynds has made a multi-million dollar, multi-generational, investment to establish a regionally significant concrete manufacturing plant at Pookeno that employs over 200 people.

12.2 Hynds’ position is that the Hearing Panel should make a finding that reverse sensitivity is a qualifying matter. This is supported by experts from Hynds, HVL and WDC.

12.3 Hynds’ concerns regarding potential reverse sensitivity effects arising from medium density residential development of parts of HVL land are now addressed

35 Evidence of Mr Campbell, paragraphs 8.5 and 8.27.

by an Agreed Position on Reverse Sensitivity between Hynds and HVL. In Hynds' submission, the Agreed Position on Reverse Sensitivity is a sound planning outcome that address both Hynds' and HVL's concerns. In particular, it will enable residential development of HVL's land, while avoiding or minimising reverse sensitivity effects on the Heavy Industrial zone at Pookeno.

12.4 In relation to stormwater effects, Hynds' concerns are addressed by the additional matter of discretion for subdivision (to be added to SUB153) proposed by Mr McGregor and Ms Nairn, and supported by WDC.

DATED at Auckland this 25th day of July 2023



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