

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

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

4 July 2023



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1. INTRODUCTION

1.1 My full name is Sarah Nairn.

1.2 I am a Senior Planner at TSC in Pukekohe. I hold a Bachelor of Science and a Masters of Planning Practice (Hons) from the University of Auckland.

1.3 My relevant professional experience spans over 20 years in both the private and public sectors in New Zealand and the United Kingdom. In the public sector, I have worked in the policy team at Auckland Council undertaking a wide variety of plan changes to the Auckland City Isthmus District Plan. In this role, I was also part of the team who undertook a review of the Hauraki Gulf Islands District Plan and inputted into the preliminary stages of the Auckland Unitary Plan.

1.4 Within the private sector, I have worked for a range of clients to obtain resource consents for large scale residential subdivisions and other development projects. I have also undertaken private plan changes to rezone land such as Three Kings Quarry in Auckland. I also presented evidence at Auckland Unitary Plan hearings on a range of issues. These roles have provided me with a broad spectrum of both policy and resource consent experience in the Auckland and Waikato regions and New Zealand generally.

1.5 I presented planning evidence on behalf of Hynds Pipe Systems and the Hynds Foundation (together, **Hynds**) at Hearing 25 - Zone Extents of the Proposed Waikato District Plan (**PWDP**). The evidence for that hearing addressed both the Havelock Village Limited (**HVL**) submission seeking that its land be zoned residential (rather than rural) and Hynds' submission that its land at 62 Bluff Road be re-zoned Heavy Industry zone to enable it to expand its operations.

2. CODE OF CONDUCT

2.1 I confirm 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 In preparing this statement of evidence I have read the section 42A Report and the evidence on behalf of the Waikato District Council (**WDC**) that is relevant to Hynds, being the statements of evidence of Susan Fairgray (economics), Andrew Boldero (stormwater) and Katja Huls (Flooding and Natural Hazard Planning).

3.2 This evidence has been structured in the following way:

- (a) A summary of my evidence is set out in Section 4;
- (b) The planning background in relation to the Hynds' operation is set out in Section 5;
- (c) Sections 6 and 7 outline the potential reverse sensitivity effects that could be generated by the HVL proposal on Hynds and the surrounding Heavy Industrial land. This section also sets out the decision on the zoning of the HVL land by the Hearings Panel for the PWDP;
- (d) Sections 8-11 set out the various positions of the parties in relation to applying the Medium Density Residential Standards (**MDRS**) to Area 1 of the HVL land; and

- (e) Section 12 outlines the position in relation to applying the MDRS to the remainder of the HVL land.

4. SUMMARY OF EVIDENCE

- 4.1** Hynds operates the largest pre-cast concrete manufacturing plant in New Zealand from its site at 9 McDonald Road Pookeno. This plant comes within the definition of Regionally Significant Infrastructure under the Waikato Regional Policy Statement because it utilises the natural resources of the region (lime, sand and aggregate) for manufacturing to generate significant economic and employment benefits for the Waikato. Furthermore, Hynds products are essential for building the infrastructure that keeps the country running.
- 4.2** During hearings before the Hearings Panel for the Proposed Waikato District Plan (**PWDP**), Hynds opposed the re-zoning of the hill slopes above its site from rural (in the PWDP as notified) to residential, as sought by Havelock Village Limited (**HVL**) on the basis of reverse sensitivity effects. In particular, the combination of steep topography giving direct views, the number of dwellings/residents the proposed re-zoning would introduce into the area, and the dusty, noisy, obtrusive nature of the heavy industrial activities means that there is a high likelihood of reverse sensitivity effects as a result of the HVL proposal, particularly in relation to Area 1 of the HVL site which is an area that directly overlooks the heavy industrial area.
- 4.3** The Hearings Panel on the PWDP found that residential development should be precluded from Area 1, due to the potential for reverse sensitivity effects.

- 4.4** The notification of Variation 3 has raised the same reverse sensitivity issued by seeking to apply the Medium Density Residential Standards (**MDRS**) to residential zoned land within the HVL site. I consider that the additional height and density of development enabled by the MDRS will mean that the adverse effects that were evident under the General Residential zone are compounded even further.
- 4.5** To resolve this issue, I consider that the Reverse Sensitivity Qualifying Matter should be applied to exclude the MDRS from Area 1 of the HVL land. Reverse sensitivity is an established qualifying matter that all parties agreed was valid in the Joint Witness Conferencing.
- 4.6** I consider that the Havelock Industry Buffer is the most effective and efficient planning mechanism for giving effect to the Reverse Sensitivity Qualifying Matter because dwellings in the Havelock Industry Buffer are a non-complying activity, sending a clear message that development is not intended to be located on this area of land. Furthermore, the Havelock Industry Buffer already applies to a large portion of the land within the HVL site adjoining the Heavy Industry zone, to protect the Heavy Industry zone from reverse sensitivity effects. Accordingly, it is logical to extend the Heavy Industry Buffer to include Area 1, rather than creating an entirely new planning mechanism.
- 4.7** I consider extending the Heavy Industry Buffer to include Area 1 to be a balanced and reasonable approach as it will only exclude the MDRS from a relatively small portion of the overall site (being 1.8ha out of a total site which is over 90ha in size). Given the purpose of the Heavy Industry Buffer is to exclude development to address reverse sensitivity effects, I consider that all land underneath the buffer should be zoned General Residential (rather than MDRS as proposed in the section 42A Report) being the least intensive zoning outcome available under Variation 3.

- 4.8** For clarity, I note that I support the qualifying matters for reverse sensitivity and cultural landscapes proposed in the section 42a report for the remainder of the HVL land that is outside of Area 1. In addition, if the Panel is not minded to approve the reverse sensitivity qualifying matter for Area 1 as sought in my evidence, I also support the qualifying matters for Area 1 as set out in the section 42a report.
- 4.9** I support the MDRS applying to the remainder of the site which is currently zoned General Residential. Given the small size of Area 1 relative to the rest of the 90ha site, it would seem reasonable to assume that the uplift generated by applying the MDRS to the remainder of the site will offset the development capacity lost through excluding the MDRS from Area 1.
- 4.10** This approach will not materially impact housing supply given that the evidence of Susan Fairgray¹ on behalf of the Council confirms that there is more than sufficient housing supply to meet the Council's obligations to provide development capacity required by the National Policy Statement for Urban Development 2020.
- 4.11** Whilst Area 1 is the primary concern set out in my evidence, I also raise some technical matters and recommend specific amendments to the Variation 3 provisions to address issues in relation to:
- (a) The management of stormwater effects;
 - (b) The use of natural ground level for measuring the height of buildings;
 - (c) Buildings within the Havelock Industry Buffer; and
 - (d) The subdivision provisions.

¹ Susan Fairgray evidence paragraph 11.

5. BACKGROUND

Subject Site

- 5.1 Hynds operates the largest pre-cast manufacturing plant in New Zealand from their site at 9 McDonald Road, Pookeno. The site is shown below:



Figure 1 Aerial Photo of Hynds Factory Site (source: GRIP)

- 5.2 The evidence of Adrian Hynds sets out the history of the site and the nature and scale of the Hynds operation at Pookeno. It is clear from this evidence that the Hynds operation is an important supplier of infrastructure products and a significant contributor to economic productivity.

Planning Context to Hynds Site

5.3 In a planning context, the Hynds operation at Pookeno has three key roles. The first role is as a significant employer (over 200 people) which is important as it provides the opportunity for people to both work and live in Pookeno. This aligns with one of the guiding principles for the Pookeno Structure Plan which sought to “provide a mix of residential (e.g. density and cost), employment and recreational opportunities to ensure a sustainable live work and play community”².

5.4 The second role is that Hynds falls within the definition of Regionally Significant Industry from the Waikato Regional Policy Statement, which is defined as follows:

Regionally significant industry	Means an economic activity based on the use of natural and physical resources in the region and is identified in regional or district plans, which has been shown to have benefits that are significant at a regional or national scale. These may include social, economic or cultural benefits
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5.5 In terms of the above definition, Hynds is an economic activity which uses the region’s natural resources (sand, aggregate (Smythes Quarry) and limestone) for manufacturing and has benefits which are significant at a regional or national scale (being economic productivity and the supply of essential infrastructure). Examples of essential infrastructure that Hynds has supplied include branch pipes and shaft segments for the Central Interceptor (stormwater) project in Auckland, drainage products for the City Rail Link and a new trunk sewer main for Ruakura in Hamilton. In addition to this, I note that after the flood events earlier this year, Hynds was involved in the supply of products to Hastings, Gisborne, Whangarei and Warkworth to help in the emergency flood repairs.

² Planning report prepared by Carolyn Wratt for Proposed Plan Change 24 page 41.

5.6 The relevant policy relating to Regionally Significant Industry in the Waikato Regional Policy Statement is set out below:

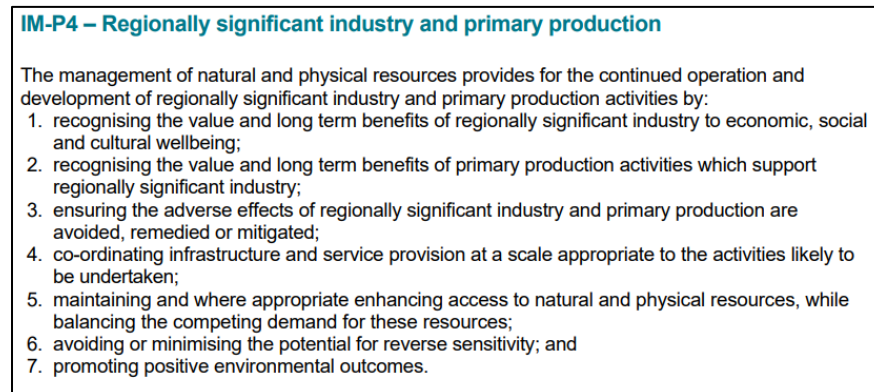


Figure 2 : Integrated Management Policy 4 in Part 2 of Waikato Regional Policy Statement.

5.7 In particular, Policy IM-P4 of the Waikato Regional Policy Statement requires the natural and physical resources of the Waikato District to be managed in a way that provides for the continued operation of regionally significant industry (such as Hynds operations at Pookeno), and for potential reverse sensitivity effects to be avoided or minimised.

5.8 The final role that Hynds plays in the planning context is that it is part of the Pookeno Strategic Industrial Node as identified on the Future Proof Map contained in 5.2.10 of the Waikato Regional Policy Statement. The Strategic Industrial Nodes form part of the district growth strategy by providing a location where industrial development is to locate in the district. Industrial activity located outside of these nodes is discouraged unless it is necessary to access a particular resource (e.g. aggregate). The Pookeno industrial node includes other industrial activities such as Synlait and Yashilli. As explained in Adrian Hynds' evidence, Hynds is actively planning to expand its activities on its site in Pookeno in the future. This planned expansion is entirely consistent with the site's status as a Strategic Industrial Node (and would be discouraged elsewhere).

5.9 Overall, I consider that the factors outlined above mean that it is important that Hynds (and the other industrial activities at Pookeno) can continue to operate in an efficient manner and are protected from issues such as reverse sensitivity. Otherwise, there could be significant consequences at a local, regional and national level.

PWDP Provisions

5.10 My evidence to the Hearings Panel on the PWDP identified that Hynds purchased the Hynds Factory Site in 2005 in part, due to the ‘trifecta’ of planning provisions created by the planning framework in the Operative Plan at that time being:

- (a) The Industrial 2 zone applied to the Hynds Factory Site (this zone enabled the operations that we see today);
- (b) The application of the Aggregate Extraction and Processing (**AEP**) zone to land adjoining and surrounding the Hynds Factory Site to the south and west (this ensured that sensitive activities were not located in these areas); and
- (c) A setback which required any dwellings to be located at least 500m back from the AEP zone boundary, unless resource consent or written approval from the operator of the extraction site was obtained.

5.11 This planning framework provided Hynds with a high level of assurance that there would be very little opportunity for residential development in close proximity to its operations. This contributed to the rationale behind the purchase and development of the site.

- 5.12** The security given by the planning framework put in place by the Operative Plan has now dissolved. The PWDP as notified rezoned the adjoining land Rural, and the Independent Hearings Panel in its decision on the PWDP then zoned large parts of the surrounding hillslopes for residential development, in response to HVL's submission.

Reverse sensitivity effects that have already occurred

- 5.13** Despite the fact that Hynds has been operating lawfully in accordance with its resource consent, reverse sensitivity issues have already arisen in the 10 years that the site has been in operation. In particular, residents of a dwelling located at 10 Bluff Road complained about lighting from the Hynds Factory Site seen from their bedroom windows. Hynds was able to resolve the issue by purchasing the land, meaning that the issue would not arise again. However, if this had not been the case Hynds may have felt the need to restrict their operations in some form.

6. HAVELOCK VILLAGE PROPOSAL – REVERSE SENSITIVITY EFFECTS

- 6.1** The HVL proposal, as per its submission on the PWDP, is to rezone the hillslopes above the Heavy Industrial land at Pookeno to enable a mix of residential and large lot development. To give some context to the size of the HVL proposal (as promoted through the Proposed District Plan process), there were 942 homes in Pookeno at the time of the 2018 census and HVL was proposing a further 600 homes.
- 6.2** My primary concern with the HVL proposal, as expressed in my evidence given at Hearing 25 of the PWDP, is that the portion of the development directly behind the Hynds and Synlait operations would likely have reverse sensitivity effects. This part of the development is known as Area 1 and is shown in Figure 3 below, as viewed from the Hynds' site and in plan view in the plans in Figure 4:



Figure 3 View from Hynds Factory Site south- west (photo taken 7 December 2020 and by Boffa Miskell Limited).
Reproduced from attachments to Rachel de Lambert's evidence on behalf of Hynds.



Figure 4 Aerial photo showing Area 1 marked in red.

6.3 The following sections of my evidence set out the background to reverse sensitivity effects in general and provide an analysis specific to the HVL and Hynds situation.

Reverse sensitivity effects – Background

6.4 As part of assessing the effects of the HVL proposal on the Hynds Factory Site I sought advice from Simpson Grierson, Hynds’ legal counsel, in terms of the case law and general legal commentary around reverse sensitivity effects. This advice identified that reverse sensitivity effects can be defined and described as follows:

Refers to the effects of the existence of sensitive activities on other activities in their vicinity, particularly by leading to restraints in carrying on of those other activities.³

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

6.5 A practical application of the above definitions and descriptions is the future occupants of HVL homes complaining about the noise, dust, lighting and/or visual effects of Hynds’ operation and these complaints eventually leading to Hynds having to restrict its activities or further development. At a day to day level, these restrictions could be reducing hours of operation or making changes to the manufacturing process. In the longer term, the restrictions resulting from complaints or objections could make it difficult for Hynds to obtain resource consents needed to fully develop the remaining 13ha of their site or possibly lead to Hynds not being able to manufacture particular infrastructure products. In particular, I note that after the flood events earlier this year, Hynds was involved in the supply of products to Hastings, Gisborne, Whangarei and Warkworth to help in the emergency flood repairs - it would be a poor planning outcome if the manufacture of such products was limited or restricted by reverse sensitivity effects.

3 *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205 (NZEnvC) at 206.

4 *Affco New Zealand Ltd v Napier City Council* NZEnvC W082/2004, 4 November 2004 at [29].

6.6 The commentary provided by Simpson Grierson also identifies the following important points:

- (a) Reverse sensitivity is an effect on the environment in terms of sections 31 and 32 of the Resource Management Act 1991 (**RMA**) (in relation to plans such as the PWDP);⁵
- (b) There are numerous cases where the Courts have held that a failure to appropriately address reverse sensitivity effects has meant that the proposed plan change would not achieve the integrated management of or the effective use and development of land;⁶
- (c) Territorial authorities as part of their functions under the RMA are able to control reverse sensitivity effects including making rules in their district plans to regulate reverse sensitivity situations (sections 31 and 76(3));⁷
- (d) The Courts have recognised that for some valuable and important activities total internalisation of adverse effects is neither required nor reasonable;⁸ and
- (e) Reverse sensitivity concerns include noise, vibration, lighting, dust, visual amenity and traffic effects.⁹

6.7 Simpson Grierson will address these points in greater detail in their legal submissions on behalf of Hynds.

⁵ *Ibid* at [30].

⁶ See for example: *CJ McMillan Ltd v Waimakariri District Council* NZEnvC C87/98 11 August 1998;

⁷ Derek Nolan and Kristen Gunnell *Reverse sensitivity and “no complaints” covenants* (2007) 7 BRMB 50. See *Auckland Regional Council v Auckland City Council* [1997] NZRMA 205 (NZEnvC).

⁸ Derek Nolan and Kristen Gunnell *Reverse sensitivity and “no complaints” covenants* (2007) 7 BRMB 50.

⁹ Derek Nolan and Kristen Gunnell *Reverse sensitivity and “no complaints” covenants* (2007) 7 BRMB 50.

6.8 Having considered the above information, I am of the view that reverse sensitivity is a relevant effect which is required to be appropriately addressed in Variation 3, especially as residential activities in close proximity to heavy industry is a 'classic' reverse sensitivity issue. The need to address reverse sensitivity effects has also been recognised by the Council, but to a more limited degree as discussed later in my evidence.

6.9 I also consider that Hynds is an example of an operation which cannot 'internalise' all adverse effects as the dust, noise, visual and lighting effects of the operation transcend the site boundaries (despite the fact that the operation complies with the relevant resource consents). These effects can be very difficult to mitigate, particularly given the topography involved. For example, screen planting would not be an effective mechanism for internalising lighting or visual effects on HVL's site, as the land to the west and south is of a higher elevation than the Hynds site.

Reverse sensitivity effects – HVL proposal

6.10 The specific potential reverse sensitivity effects that could be generated by the HVL proposal are outlined below:

Reverse sensitivity - lighting effects

6.11 Hynds is a 24/7 operation which means that lighting is a necessity. Having observed the Hynds operation from the HVL land at night, I am aware of light spill, glare and brightness in the night sky that I think is likely to be obtrusive for residents on the HVL land. The photo below shows the Hynds Factory Site at night (this photo was supplied by Hynds):



Figure 5 Photo looking north, showing:

- *Foreground illuminated Synlait tank;*
- *Dark area between Synlait and Hynds Buildings southeast yard under development;*
- *Northeast yard further north; and*
- *Road lights (not part of Hynds Factory Site) lighting SH1 in the background.*

6.12 In my opinion, the obtrusive nature of the lighting is likely to lead to complaints, even where Hynds is operating in compliance with its consent.

6.13 In particular, my opinion is that:

(a) The lighting used within the Hynds Factory Site, as viewed from the proposed HVL development, will be impactful due to the 'larger' viewable area as seen from the elevated position. This is what I observed at night when preparing for the PWDP hearing in June 2021.

(b) It is the type of view that could be interesting when initially viewed but could become irritating over time. Especially, if it is viewed from the habitable spaces of your home on a daily basis.

- (c) The dwelling at 10 Bluff Road, from which previous lighting complaints were received, is set back some 576m from the Hynds operation as it existed at that time. Given any dwellings built on the HVL site will be set back a similar distance (590m¹⁰) and will have an even higher elevation than the dwelling at 10 Bluff Road, it seems logical that they may also experience similar effects, with the potential for complaints. The photo in Figure 6 below shows the setback between the 10 Bluff Road house and the existing Hynds operation:



Figure 6 Distance between the house on 10 Bluff Road and the Hynds operation that existed at the time of the complaint

Reverse sensitivity - visual effects

- 6.14** The HVL proposal is to locate dwellings on the hillslopes above the industrial zoned land in Pookeno. Given the steep topography of the hillslopes and the fact that the vast majority of people will orientate their indoor and outdoor living areas to the north (to maximise sunlight), the

¹⁰ Evidence of Andrew Curtis on behalf of HVL at para 4.11

future dwellings on these lots will have very clear and direct views of the Hynds Factory Site and the other industrial sites. This is confirmed in paragraph 7.6 of the evidence of Ms Rachel de Lambert on behalf of Hynds and PVHL which states:

Given the nature of the landform the east and some north facing components of the proposed Havelock Village would have direct views over the industrial zoned land including the 22ha Hynds industrial site with no potential for Hynds to screen or otherwise buffer itself from such residential overlooking.

6.15 The HVL evidence does not include any photos of the views from the future lots or even 3D renders or montages of the future dwellings on the hillslopes. This makes it hard to determine exactly how many homes will have clear views of the industrial land, and what those views will be of. To fill this gap and demonstrate the hillslopes relative to the Hynds (and Synlait) operations I have included the photo below which is contained in Attachment A to the evidence of Ms de Lambert (View Point 7):



Figure 7 Photo looking south west from the 62 Bluff Road site (refer Boffa Miskell viewpoint 7) and showing the relationship between the hillslopes on which the HVL development will sit (indicatively outlined in red) and the Synlait and Hynds operations.

6.16 Given the direct views of the heavy industrial activities (including large unattractive buildings, outdoor storage activities, strong and flashing lights and plumes of dust and steam) and the inability to screen those views, there could well be complaints from future residents of HVL's land. In this regard, I note the evidence of Ms Rachel de Lambert which states:

A new residential community such as that proposed within the Havelock Village development, specifically that component that has the potential to overlook the industrial zoned land will, in my opinion, become sensitive to the nature of their neighbouring activities. Complaints will undoubtedly result and at any time future consents are sought or expansion proposed opposition from the residential neighbours will inevitably follow¹¹

6.17 As well as those residents who consider the current operations are having unreasonable visual effects, there will also be those residents who are prepared to accept the visual effects that exist at the time their house was built, but may object to future development and expansion on the site. An example of this would be Hynds constructing a 35m high building with a footprint the size of a rugby field and surrounding residents complaining about the effect on their visual amenity - despite the fact that it would comply with the coverage and height standards for the Heavy Industrial zone in the PWDP. I consider that the likelihood of complaints in this situation to be high especially as such a building would be 16m higher than the current batching plant and 6m higher than the batching tower (shown in the photo at Figure 8 below).

11 Evidence of Rachel de Lambert on behalf of Hynds and Pookeno Village Holdings Limited at para 7.7



Figure 8 Photo showing batching plant (16m) and batching tower (29m). Photo is taken, by me, from 62 Bluff Road site.

6.18 I am aware of a recent situation where residents on a hillslope overlooking industrial land in Upper Hutt complained about a new building (grain silo) and a limited notified consent was required. Whilst modifications were eventually made to the design of the grain silo and a resource consent was eventually issued, tensions between the residents, Council and the industrial use ran so high that an independent review had to be commissioned to avoid similar problems occurring in the future.

6.19 A further example of future development that may cause visual amenity reverse sensitivity effects is the provision of additional outdoor storage areas (for concrete products) around the Hynds Factory Site. Under the notified version of the PWDP, such storage areas would require a restricted discretionary consent if standards are not complied with. Such a resource consent could be difficult to obtain if the Council felt that the outdoor areas were going to have an adverse effect on the visual

amenity of surrounding residents (noting that visual amenity is one of the listed matters of discretion). If an application were notified there is a potential for residents to lodge submissions that object to the consent being granted on the basis of the likely visual and amenity effects they would experience.

- 6.20** The paragraphs above outline the potential visual effects from development on the Hynds site. These effects are potentially compounded by the fact that the adjoining industrial sites could also undertake significant development in the future. Therefore, there is the potential for cumulative visual effects to occur which may also give rise to complaints from HVL residents.

Reverse sensitivity – Dust

- 6.21** A side effect of the existing Hynds operation and the other heavy industrial activities is that they inevitably generate dust and in some cases odour. Even if dust and odour do not leave the Heavy Industrial land, they may be perceived by residents as having adverse effects on their wellbeing generating complaints and possibly restrictions on the activity of Hynds and others.

Reverse sensitivity effects – conclusion

- 6.22** Overall, as indicated in my evidence to the Independent Hearings Panel as part of the re-zoning hearings for the PWDP, I consider that the combination of steep topography giving direct views, the number of dwellings/residents proposed by HVL and the dusty, noisy, obtrusive nature of the heavy industrial activities means that there is a high likelihood of reverse sensitivity effects as a result of the HVL proposal, particularly in relation to Area 1 and the parts of HVL's site that overlook the heavy industrial area. This high likelihood of effects is then compounded by the fact that reverse sensitivity effects are even more

significant if they impact upon regionally significant industrial operations such as Hynds and the strategic industrial node generally.

- 6.23** Given that there is a very real risk of complaints both now and in the future from residents whose sites overlook Hynds' operations, Hynds may find itself in a position where it becomes too hard or risky to undertake development. As a result, they may choose not to undertake their intended masterplan or be forced to modify it in some way. This is not only highly undesirable for Hynds, it is undesirable for Pookeno and the Waikato given the potential loss of jobs and the benefits that such development brings to the economy.

7. HEARINGS PANEL DECISION – ZONING UNDER THE PWDP

- 7.1** The Hearings Panel for the PWDP agreed that dwellings in Area 1 of the HVL proposal have the potential to generate reverse sensitivity effects. The relevant excerpt from the decision is set out below:

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 9 Decision Report 281: Zoning Pookeno

- 7.2** In order to ensure that dwellings were not located in Area 1, the Hearings Panel applied an Environmental Protection Area (EPA) overlay as this approach would not only exclude dwellings but would also have the added benefit of extending the planted/natural backdrop provided by Transmission Hill. The Hearing Panel stated in relation to this:

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 10 Decision report 28I: Zoning Pookeno

7.3 Overall, the decision of the Hearings Panel on the PWDP makes it clear that Area 1 should not form part of the HVL residential development due to reverse sensitivity effects as there needs to be more separation between the HVL development and the Heavy Industrial land.

7.4 Notwithstanding the clearly expressed intent in the Independent Commissioners decision that residential development would be excluded from Area 1, this land was zoned residential and the Havelock Precinct Plan did not extend the Havelock Industry Buffer (or Pookeno Industry Buffer as it was then called) to encompass the full extent of Area 1. Given the clearly stated intention in the decision that Area 1 would be excluded from development, it is not clear to me why the Council zoned this land residential and did not apply the Havelock Industry Buffer. The EPA overlay was extended to cover the full extent of this area so as to provide a planted backdrop.

8. VARIATION 3

8.1 As the Panel will be well aware, Variation 3 is the mechanism by which the Council is giving effect to the MDRS (as required by central government). In essence, the MDRS allow for development up to 3 stories in height and 3 dwellings per site. This level of development is to be enabled on all land zoned residential unless a qualifying matter is applied. A qualifying matter is the only mechanism that the legislation

has put in place to limit or displace the MDRS due to a particular characteristic.

8.2 When Variation 3 was first notified WDC proposed not to apply the MDRS to the HVL land on the basis that this land and other land zoned residential on the fringe of Pookeno (and other smaller urban centres in the District) was covered by WDC’s proposed “urban fringe qualifying matter”, and would therefore remain General Residential Zone. The urban fringe qualifying matter is no longer supported by the Council. The Hearing Panel has issued interim guidance “the urban fringe is not a qualifying matter under s771(j) as it does not appear to satisfy the requirements of s77L RMA.”¹² If the urban fringe qualifying matter is not to apply, the MDRS will apply to the parts of the HVL site zoned residential, subject to the limited qualifying matters that have already been proposed, and the identification through this hearing process of any other qualifying matters (discussed later in this evidence).

8.3 One of the key enabling mechanisms in the MDRS is the increased height 11m (as compared to the 8m height limit in the General Residential zone). The section below prepared by TSC demonstrates how dwellings up to 11m in height would have views of the Hynds land (a larger higher resolution version is contained in **Attachment A**):

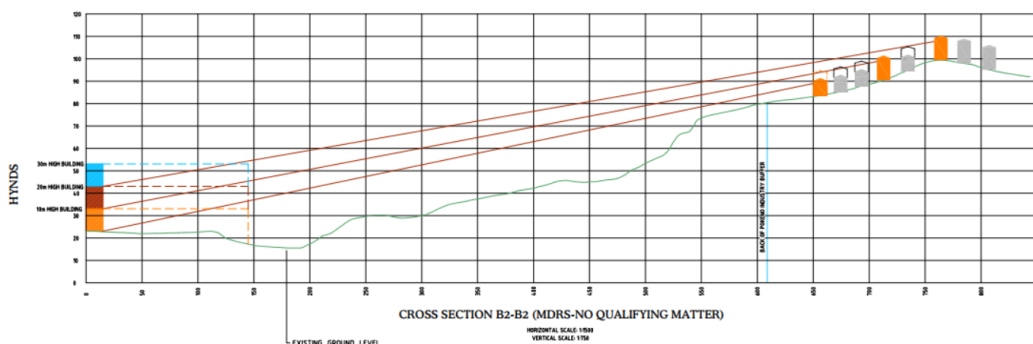


Figure 11 Cross section showing MDRS on HVL land (orange buildings have sightlines shown)

12 Waikato District Council IPI Interim Guidance #1, 14 March 2023, at 3.

8.4 The other key enabling aspect is the ability to develop 3 dwellings per site. This effectively triples the number of dwellings that could be created, compared to if the land is zoned General Residential zone with a minimum lot size of 450m². From a reverse sensitivity perspective, tripling the number of dwelling means a tripling of the number of people. In my opinion, the more people living in Area 1 means the more propensity there is for complaints and ultimately reverse sensitivity effects. The part of Area 1 that is zoned residential and therefore potentially could be re-zoned MDRS2 zone is approximately 1.8 hectares in area. By my calculations, applying a density of 3 dwellings per 450m² site and other standard assumptions about the level of development that could be achieved means that re-zoning Area 1 MDRS2 would result in capacity for at least 50 houses. Assuming an average occupancy of 2.6 persons per dwelling (as per Census NZ household projections 2018-2043) that would potentially result in 130 people living in this area and, on a day to day basis, looking directly at and observing the lighting, air discharges, dust, buildings and storage of industrial goods and products.

8.5 Given that in my evidence to the Hearing Panel for the PWDP opposed zoning Area 1 General Residential zone it will come as no surprise that I also oppose the application of the MDRS to Area 1 of the HVL development. In sections 9 to 11 of my evidence below I outline the approach of the Council, HVL and Hynds to applying the MDRS to Area 1 of the HVL land. As identified above, Area 1 is the hillslope directly behind the Hynds site. Section 13 of my evidence below addresses the application of the MDRS to the remainder of the HVL land.

9. THE COUNCIL'S APPROACH TO APPLYING THE MDRS TO AREA 1

9.1 My understanding of the Council officer intention regarding the application of the MDRS to Area 1 (as set out in the section 42A Report) is that dwellings are to be generally precluded from Area 1, due to the Environmental Protection Area (EPA) that has been applied. Despite this, as discussed further below, there will still be the ability to apply for

resource consent for dwellings within the EPA, as a discretionary activity. Whilst I agree that Area 1 should not be built on and I am supportive of applying an EPA generally, I do not think that an EPA is the appropriate mechanism to stop the MDRS applying. I consider that a qualifying matter is the only mechanism that can exclude the application of the MDRS, in this regard I refer to s77I of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021:

<p>77I Qualifying matters in applying medium density residential standards and policy 3 to relevant residential zones</p> <p>A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present:</p>
--

- 9.2** Furthermore, the authors of the section 42A Report agree that reverse sensitivity is a relevant qualifying matter that can limit or displace the application of the MDRS¹³.
- 9.3** In making the above statement, I observe that the EPA that the section 42A report proposes to be applied to Area 1 is different from other EPAs in the district. In particular, it is not just applied to the edge of the land or to particular ecological areas, rather it is being applied to developable land in a way which is intended to directly limit the density of development that can occur. In the case of the EPA on the HVL land, I estimate 50 dwellings could occur on the land under its residential zoning if the EPA was not in place. Accordingly, my view differs from that set out in Appendix 6 of the section 42A Report, which states that the EPA's do not affect density.
- 9.4** I also note that dwellings within the EPA overlay are provided for as a discretionary activity and may, accordingly, be approved if certain measures were put in place. Whilst I acknowledge that dwellings are not permitted, I do not consider that this activity status gives full effect to the Council position, as expressed in its decision on the PWDP, that Area

13 Paragraph 595 S42a report

1 should not be built on, or its acknowledgement in Variation 3 that reverse sensitivity is a qualifying matter.

9.5 In my view it would be more effective to apply a qualifying matter (by extending the extent of the Pookeno Industry Buffer over Area 1) than rely on the EPA to preclude development. I discuss this further in section 11 below.

9.6 The second part of the section 42A team's position on Area 1 is to rezone the land MDR2 (as opposed to retaining the existing General Residential zone). In my opinion, zoning land within Area 1 MDR2 sends the wrong message, in that it signals to all parties that an increased level of development (i.e. medium density residential development) should occur on this land. This does not align with the application of the EPA or the overall position that this land should not be built on for reverse sensitivity reasons.

9.7 In my opinion it is more appropriate, and consistent with the Council's finding that Area 1 will result in reverse sensitivity effects on the neighbouring industrial land to apply the reverse sensitivity qualifying matter to Area 1, so that the General Residential zone is retained. While in my professional opinion I do not support Area 1 being zoned General Residential (and consider another zoning e.g. rural to be more appropriate) I note that, in terms of the underlying zoning for Area 1, General Residential zoning is as far as this Hearing Panel can go to minimise the potential for residential development, under this process.

9.8 I also consider that the existing area of Havelock Industry Buffer should retain the General Residential zone rather than being rezoned to MDR2 as proposed by the Council. Upzoning a piece of land that is not intended to be built on at all is sending the wrong message and does not accord with the non-complying status of buildings.

9.9 The final aspect of the Council’s position is to limit development in parts of Area 1 to the extent required by the following qualifying matters:

- (a) Height is restricted to 5m within: 50m of the boundary of a hilltop park (Transmission Hill and Potters Hill). This is a cultural landscape qualifying matter.
- (b) Height is restricted to 5m within 50m of the Havelock Industry Buffer Height Restriction Area. This was originally proposed as a reverse sensitivity qualifying matter.
- (c) Height is restricted to 8m within the 40dB LAeq noise contour area (outside the Havelock Industry Buffer). This is a reverse sensitivity qualifying matter.

9.10 In my view, applying the MDRS to Area 1 will exacerbate the reverse sensitivity issue by enabling more houses and more views of the heavy industrial land. The qualifying matters above do not solve the exacerbation issue as they do not change the density of development (3 dwellings per 450m² site) and as the graduated height limits do not stop views of the heavy industrial land, in fact they maintain them by ensuring that dwellings have views over the one in front. This is shown in the cross section below (also contained in **Attachment A**).

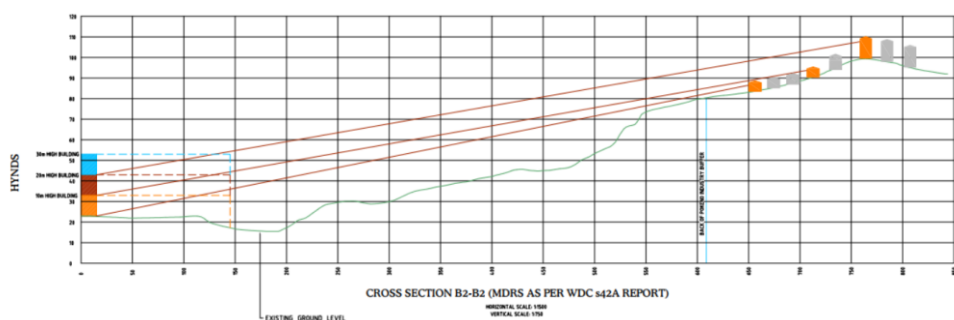


Figure 12 Cross Section showing the MDRS as per the WDC s42a report (orange shows dwellings with viewshafts)

9.11 In my view it would be more effective to apply a qualifying matter that precluded the application of the MDRS to Area 1 rather than trying to limit the height of development as proposed by the Council. I discuss this further in Section 11 below.

9.12 Whilst I do not support the application of the MDR2 zone to the subject site, if it was to be applied I would support the minimum vacant lot site restriction area which has a 450m² lot size as it would help to reduce the density of development albeit that 3 dwellings per lot could still be established.

9.13 Overall, I consider that the Council's position is sending mixed messages as on the one hand the EPA is indicating no development (albeit that dwellings are a discretionary activity) but then on the other hand rezoning to MDR2 is indicating that intensification is to be enabled (with limits in certain areas).

10. HVL'S POSITION

10.1 It is not clear to me what HVL's position is on the provisions that should apply to Area 1 under Variation 3 and so I will review any evidence filed by HVL and provide updated comments at the hearing. To have a full understanding of the HVL position, I would need to have the following information:

- (a) The number of dwellings that could be located in Area 1 under the MDRS;
- (b) The relevant specialist reports supporting their proposed qualifying matters; and
- (c) If the MDRS is indeed proposed to apply to Area 1, an assessment as to how the reverse sensitivity effects confirmed

by the Hearings Panel on the PWDP will be avoided despite the application of the MDRS; and

(d) A visual assessment of the provisions proposed by HVL.

10.2 The joint witness statement contained in Appendix 3 of the s42A report indicates that Mark Tollemache had agreed to facilitate the circulation of the above information, but this has not occurred:

<p>Follow up action: Mark Tollemache agrees to prepare a list of relevant information that is available relating to the Havelock Precinct appeals. He will circulate this to the planning experts (to act as co-ordinators) for the relevant parties. To be followed up by discussions to clarify if this information has been received and to also discuss the substance of the issues.</p>

10.3 If HVL are seeking to apply the MDRS over the full extent of Area 1, and as I have noted above, I consider that this will exacerbate the potential for reverse sensitivity issues given that the increased density (3 dwellings per site) and height (11m) will enable more people to have views of the lights, buildings, air discharges and storage of industrial products on the Heavy Industrial zoned land.

11. THE HYNDS APPROACH TO APPLYING THE MDRS TO AREA 1

11.1 As it clear from the preceding sections, I consider that applying the MDRS to Area 1 will exacerbate the potential for reverse sensitivity effects due to the increased height and density of residential development that would be enabled, resulting in more people and more views of the lights, buildings, air discharges and storage of industrial products on the Heavy Industrial zoned land.

11.2 The question then becomes how best to ensure that the MDRS do not apply? As set out above, I consider that a qualifying matter is the only effective way to achieve this. Given that the Hearings Panel excluded development from Area 1 for reverse sensitivity reasons, it seems logical to apply the Reverse Sensitivity Qualifying Matter that is already included in the Section 42A Report. I also note that all parties at the joint

witness conferencing agreed that Reverse Sensitivity is a valid qualifying matter under s77(j) of the RMA.

11.3 Having established that the Reverse Sensitivity Qualifying Matter is to be applied, I then consider that the Havelock Industry Buffer (which is already applied to a portion of the HVL land) should be the mechanism used to exclude the MDRS from Area 1. This will be an effective mechanism as buildings for sensitive land uses are a non-complying activity in the Havelock Industry Buffer. The non-complying status sends a clear message that dwellings are not intended in this location. The existing Havelock Industry Buffer Area is shown by the purple line below. The extension that I am seeking is marked with the red dashed line.

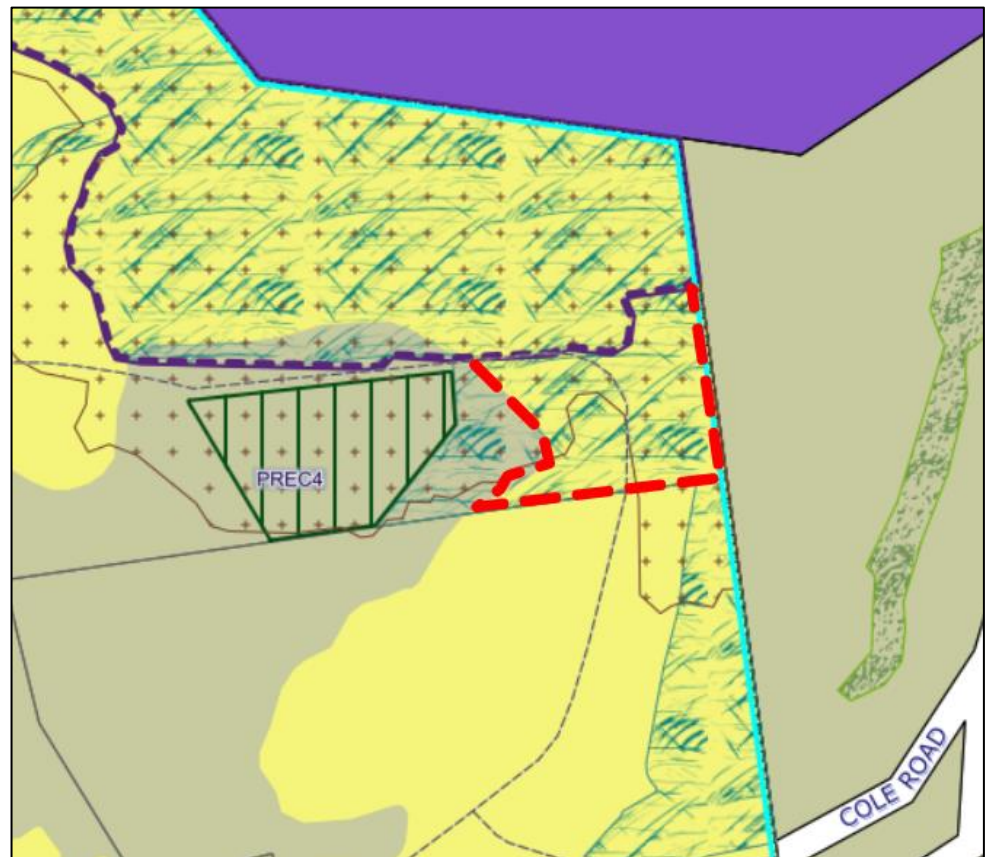


Figure 13 PWDP Maps (Appeals Version) with extended PIB shown in red.

11.4 I consider this to be a robust solution given that:

- (a) The joint witness statement contained in Appendix 3 of the s42A report confirms that all planners agree that reverse sensitivity is a valid qualifying matter under s77(j) of the RMA.
- (b) The joint witness statement contained in Appendix 3 of the s42A report confirms that all planners agree that the Pookeno Industry Buffer is a qualifying matter for reverse sensitivity.
- (c) The Havelock Industry Buffer is an established mechanism in the plan that has been specifically prepared to exclude residential development, therefore it will be an efficient and effective mechanism.
- (d) The Hearings Panel on the PWDP excluded residential development from Area 1 for reverse sensitivity reasons so applying a reverse sensitivity qualifying matter is consistent with the Panel's decision.

11.5 An assessment of this qualifying matter under the three tests contained in s77(L) is set out below:

- (a) The specific characteristic that makes the level of development enabled by the MDRS inappropriate is the proximity to and elevation above the Heavy Industrial zone/Strategic Industrial Node.
- (b) The proximity to, and the elevation above, the existing heavy industrial zoned land makes the MDRS inappropriate as it will enable development with a height and density which will likely generate reverse sensitivity effects. Restricting the application of the MDRS in this location is consistent with the NPS-UD as both Objective 1 and Policy 1 of the NPS-UD seek to enable

economic well-being, including, via Policy 1, through the provision of sites that are suitable for different business sectors e.g. industrial zoned land. The provision of suitable sites needs to include not just the identification of land for a particular use but also the ability to use the land in the way required for heavy industrial activity.

(c) In terms of a site-specific analysis:

(i) The site in question is the Havelock Precinct as shown below:

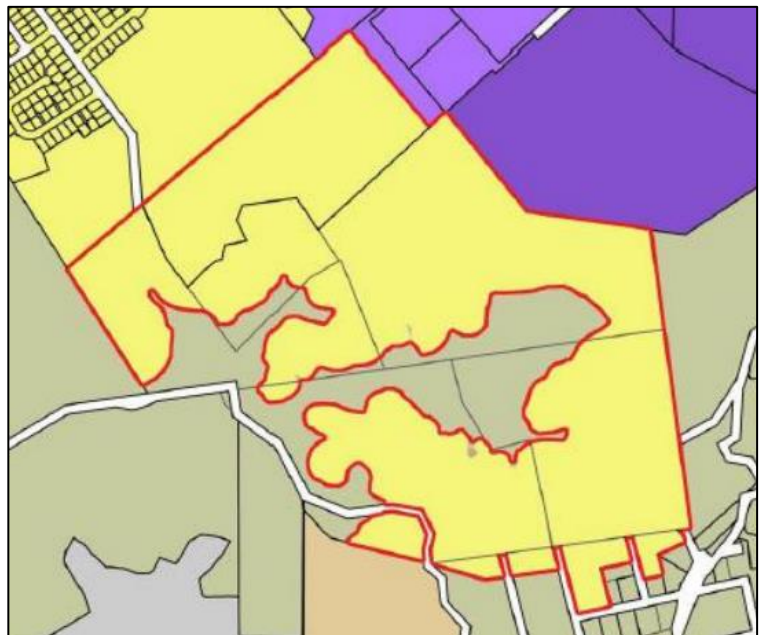


Figure 14 Havelock Precinct PWDP Planning Maps (Appeals Version).

(ii) The specific geographic area within this the Havelock Industry Buffer qualifying matter is Area 1 as shown in Figure 13 above. The analysis undertaken by the Hearings Panel as part of the PWDP process identified that this area of the site has a proximity and elevation which means that development is close to and overlooks the Heavy Industrial zoned land and consequently is likely to generate reverse sensitivity

effects. It is not necessary to extend the qualifying matter to the remainder of the HVL site because this area of the site does not have the same proximity or elevation.

- (iii) The cross sections contained in Figures 11 and 12 above show that different heights have been evaluated but ultimately all development on the hillslope within Area 1 will have views of the Heavy Industrial zoned land and therefore the potential to generate reverse sensitivity effects.

11.6 The consequence of stretching the Havelock Industry Buffer over Area 1 is that MDRS will be excluded from one small area of the HVL development. However, Area 1 is only a small area of land, comprising 1.8ha out of the total 90ha HVL site. Any contribution that Area 1 makes to housing supply would be small –based on my calculations 50 homes. This is a very small number of houses compared to what is enabled on the 90ha HVL site overall, and fairly negligible in terms of the housing supply enabled under the MDRS across the district. Removal of the MDRS from Area 1 will not materially impact on housing supply. Especially, as the evidence of Ms Susan Fairgray confirms that both the plan enabled and feasible development capacity are large relative to demand within all modelled scenarios (including qualifying matters)¹⁴.

11.7 I also consider that excluding the MDRS from Area 1 of the development will also help to achieve the differentiated urban form supported by Ms Susan Fairgray as it will preclude development in the outermost portion of the site, which is some 2.5km from the centre of Pookeno. This will encourage more intensive development in the portions of the site which are closer to the shops and amenities located in the Pookeno centre.

¹⁴ Susan Fairgray evidence paragraph 9.

- 11.8** In terms of the zoning that should apply under the Havelock Industry Buffer, given the purpose of the Heavy Industry Buffer is to exclude development to address reverse sensitivity effects, I consider that all land underneath the buffer should be zoned General Residential (rather than MDRS as proposed in the section 42A Report) being the least intensive zoning outcome available under Variation 3. In my view, retaining the existing General Residential zone is the most appropriate option. This zoning approach is consistent with the Hearings Panel's decision on the PWDP. I have provided a section 32AA analysis of this proposed change at **Attachment B**.
- 11.9** I also consider that the Environmental Protection Area applied to the Hearings Panel to Area 1 should be retained. This will ensure that the planted backdrop sought in the Hearings Panel's decision will still occur.
- 11.10** Overall, I consider that the MDRS will exacerbate the potential for reverse sensitivity effects on the Heavy Industrial zoned land and that this incompatibility should be avoided by stretching the existing Havelock Industry Buffer over Area 1 and, thereby, excluding the MDRS. This will not have a material consequence in terms of housing supply as Area 1 is only a small portion (1.8ha) of the overall HVL development (90ha) and as such more than sufficient development capacity has been enabled.

12. SUMMARY OF POSITIONS ON AREA 1

12.1 To assist in the Panel understanding of Hynds and the Council in relation to Area 1 I have prepared the table below:

	HYNDS	COUNCIL
Zone	General Residential	Medium Density Residential 2
Environmental Protection Area	Yes	Yes
Havelock Industry Buffer QM	Yes, but <u>stretched</u> over Area 1	Yes, but limited to existing area
Other QM provisions	Not necessary if Havelock Industry Buffer QM is extended over Area 1 as this will exclude MDRS from Area 1 and dwellings within the Havelock Industry Buffer QM are a non-complying activity.	Yes
<ul style="list-style-type: none"> • Height is restricted to 5m within: 50m of the boundary of a hilltop park (Transmission Hill and Potters Hill). • Height is restricted to 5m within 50m of the Havelock Industry Buffer Height Restriction Area. • Height is restricted to 8m within the 40dB LAeq noise contour area (outside the Pookeno Industry Buffer Zone) - 	Supported for the remaining parts of the Havelock Precinct as identified in the plans in the section 42a Report (i.e. for other parts of the precinct that are within the Havelock Industry Buffer Height Restriction Area).	

12.2 Overall, I consider that the PWDP Hearings Panel’s findings that dwellings should be excluded from Area 1 should be given effect to, via the application of the Havelock Industry Buffer and the EPA, until the Environment Court decides otherwise. It should not be overruled by the decision on this variation.

13. REMAINDER OF HAVELOCK PRECINCT

13.1 This section of my evidence relates to the remainder of the Havelock Precinct i.e. the land outside of Area 1. When it comes to this land, I do not hold the same concerns in relation to the potential for reverse sensitivity effects as this area of the site is further away from and does not overlook the Heavy Industrial zoned land in the same way, however I consider that the qualifying matters set out in the s42A report should apply, namely:

- (a) Height is restricted to 5m within 50m of the boundary of a hilltop park (Transmission Hill and Potters Hill). This is a cultural landscape qualifying matter.

- (b) Height is restricted to 5m within 50m of the Havelock Industry Buffer Height Restriction Area. This was originally proposed as a reverse sensitivity qualifying matter.
- (c) Height is restricted to 8m within the 40dB LAeq noise contour area (outside the Havelock Industry Buffer Zone). This is a reverse sensitivity qualifying matter.
- (d) The restrictions relating to the Slope Residential Areas of the site. These are slope stability qualifying matters.

13.2 Notwithstanding the above, there are some technical matters that I would like clarified in relation to stormwater:

- (a) The rule framework refers to the “Stormwater Constraints Overlay - Medium Risk”. It is not clear to me whether these rules are referring to the maps contained in Annexure 2 of Katja Huls’ evidence labelled “Stormwater and Flooding Constraints Overlay” or is there a different set of maps that are to be referred to when using the rules?
- (b) The subdivision rules state “where the site is within the Stormwater Constraints Overlay, the minimum site size is 450m²”. Does this mean the site that is being created or the parent site? If it relates to the site that is being created it would be very easy to locate sites outside of the overlay areas on the HVL land (which as shown below are narrow overland flow paths) and then the 450m² minimum lot size would not apply. Similarly, if it does relate to the parent site, there is potential for parties to undertake boundary adjustments so that the Stormwater Constraints Overlay areas are not located on the “site” on which development is being undertaken. I have

snipped the Stormwater and Flooding Constraints Overlay map below for ease of reference:

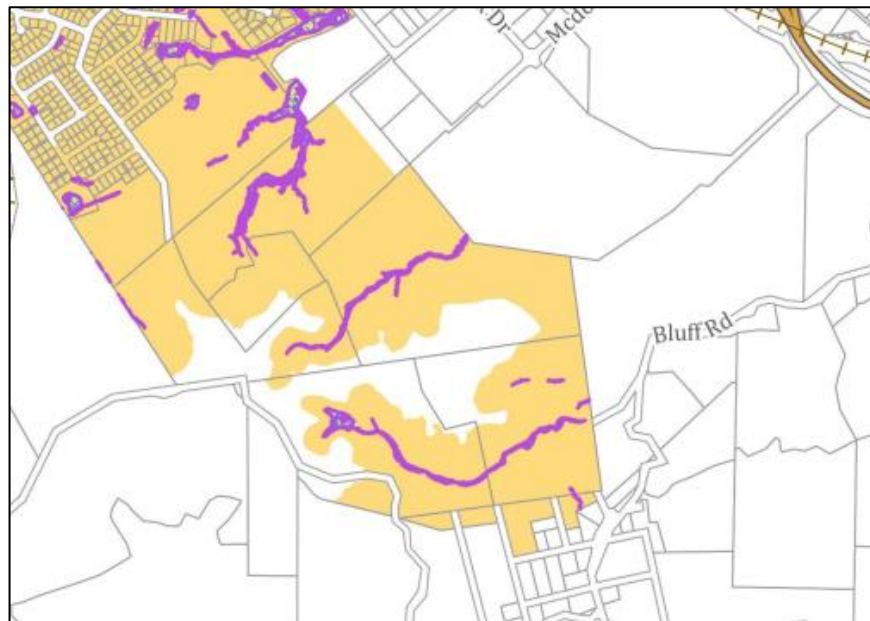


Figure 15 Stormwater and Flooding Constraints Overlay Map as contained in Annexure 2 of Katja Huls evidence.

13.3 The final point I wish to raise on stormwater is that developing large, formally rural landholdings like the HVL land has the potential to generate stormwater issues downstream. Therefore, it is important that the consideration of any subdivision application in these areas considers not just the stormwater effects on their own land but also on the wider catchment. Mr McGregor recommends remedying this issue by adding a new (4th) matter of discretion to include the “recommendations provided for under any specifically Council endorsed Stormwater Catchment management Plan” into the recommendation below:

511. **Recommendation 8:** Add new matters of discretion to MRZ-S1, MRZ-S4, MRZ-S5, MRZ2-S10(2), SUB-R153

1. *Flooding effects including safe access and ingress to the site*
2. *stormwater management and the use of Low Impact Design methods*
3. *the objectives and policies in Chapter 2-20 Te Ture Whaimana – Vision and Strategy*

13.4 I support this amendment and consider that it is inline with the evidence of Andrew Boldero (paragraph 23) which also references the need to consider catchment management plans.

13.5 In addition to the stormwater matters raised above, I also consider that it is important that the amendments below are made to the MDR2 zone:

- (a) The rules relating to the height of buildings adjoining Hilltop Park and the Havelock Industry Buffer need to be amended so that building height is limited to 5m AND a single storey. This amendment is necessary as the building height is measured from natural ground which means that a 2-3m cut could be undertaken to enable 7-8m height building under the 5m height limit.
- (b) The subdivision provisions for the Havelock Precinct need to apply to both the General Residential and the MDR2 zone. The standards specific to the Havelock Precinct (SUB-R19, SUB-R20, SUB-R21, SUB-R25) need to also be brought forward into the MDR2 provisions.
- (c) The building setback rule for the Havelock Precinct needs to be amended so that it relates to all buildings in the Havelock Industry Buffer not just “buildings for sensitive land uses”. This buffer is intended to be a no-build area and therefore all buildings are inappropriate whether they contain sensitive land uses or not.
- (d) There is no rule in the Havelock Precinct MDR2 provisions limiting the height of buildings to 8m in the 40dBa noise contour.
- (e) The provisions relating to the Havelock Precinct in the MDR2 zone need to be amended so that they consistently refer to the buffer area by the same number rather than as the Havelock Industry Buffer or the Pookeno Industry Buffer.

13.6 A summary of the changes sought by Hynds to Variation 3 is provided in **Attachment C** to my evidence.

14. CONCLUSION

14.1 The proximity of Area 1 of the HVL development to the established heavy industrial activities means that reverse sensitivity effects are likely to occur. This is accentuated by the elevated position of the residential land, the potential number of dwellings proposed by HVL and the fact that a more precautionary approach needs to be taken with regionally significant industry. I support the identification of qualifying matters in Variation 3, and the provisions (including the Havelock Industry Buffer and the Havelock Industry Buffer Height Restriction Areas) that are proposed in the section 42A report to vary the application of the MDRS in certain parts of the HVL site.

14.2 However, my opinion is that more is required. The Hearings Panel on the PWDP confirmed that reverse sensitivity effects are in fact likely to occur as a result of development in Area 1 and as such development should be excluded from this area. It then follows that MDRS should also be excluded from Area 1 given that the increased height and density is likely to generate even more reverse sensitivity effects. This is not achieved by the Variation 3 provisions as they currently stands. In my opinion this exclusion should occur via an extension of the Havelock Industry Buffer.

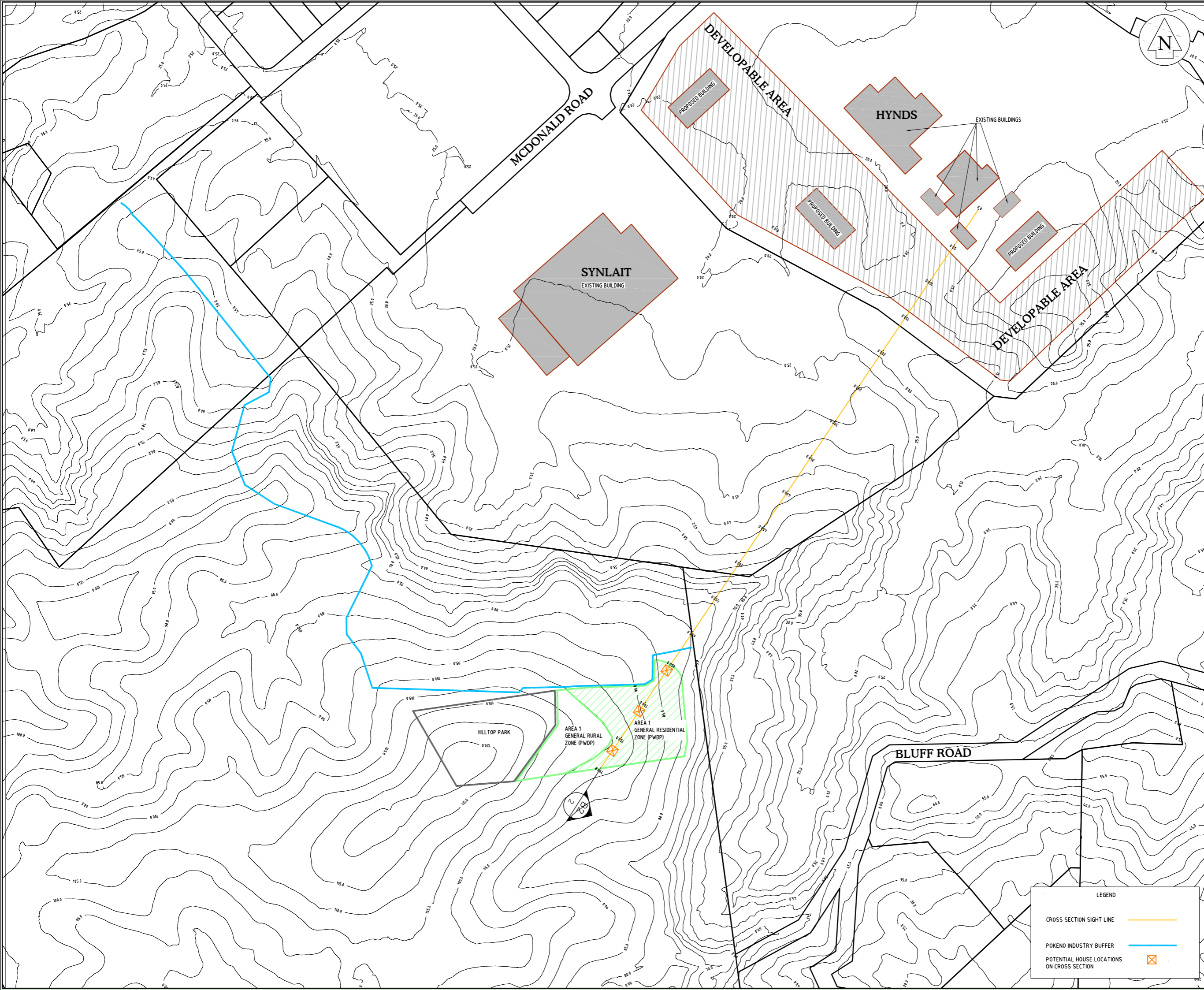
14.3 I consider that excluding the MDRS from Area 1 but yet applying the MDRS to the remainder of the land (subject to the other qualifying matters that have been identified by the WDC, such as the Height Restriction Areas) is a balanced approach as it precludes development where there is a risk to established Regionally Significant Industrial Activities but yet enables development where the risk is lower. Ultimately, a balanced approach is in-line with Objective 1 of the NPS-UD as it serves to create a “well-functioning urban environment” for both business (industry) and residential activities.

14.4 The alternative to this balanced approach is to risk the efficient operation of established Regionally Significant Industrial Activities for the sake of say 50 dwellings that are not necessary to meet housing demand in either Pookeno or the Waikato generally.

Sarah Nairn

4 July 2023

Attachment A: Cross sections



LEGEND

CROSS SECTION SIGHT LINE	
POKENO INDUSTRY BUFFER	
POTENTIAL HOUSE LOCATIONS ON CROSS SECTION	

Amendments	Name	Date

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Surveyed		
Designed		
Drawn	Sheng-Ru Lai	06/23
Checked	Warren Boag	06/21
Approved		

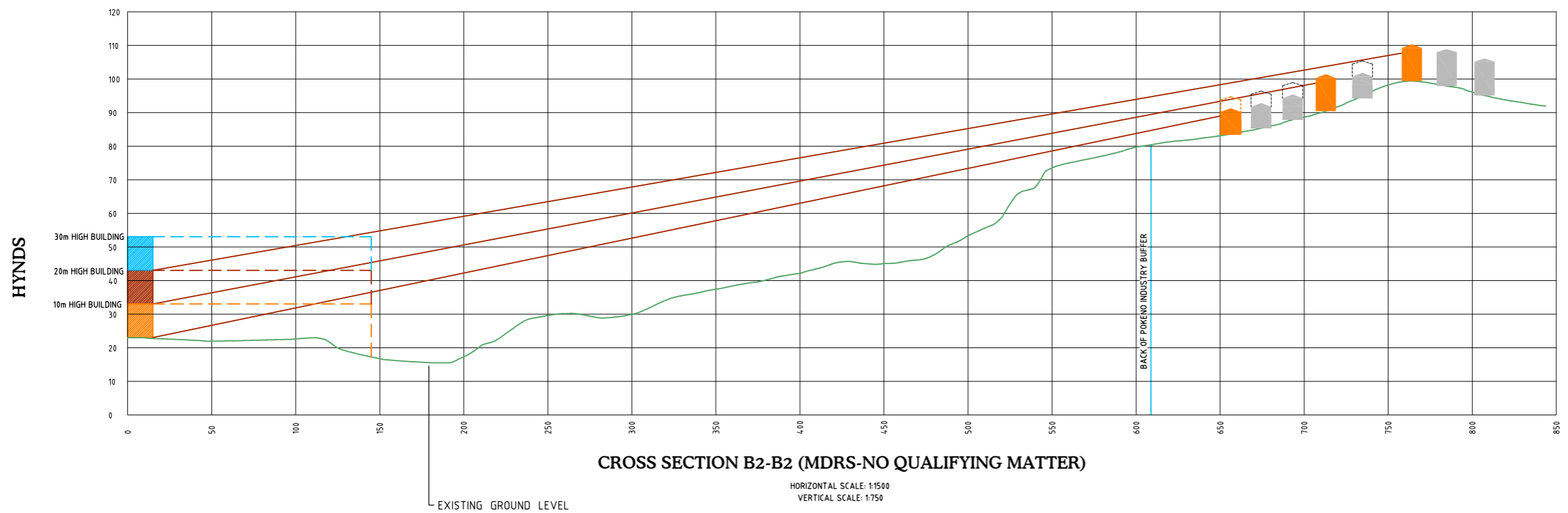
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Job Title
DEVELOPMENT AT McDONALD ROAD, POKENO

Client
HYNDS

Sheet Title
LAYOUT PLAN FOR MDRS

Project	J549	Drawing	J549-1
Cad Ref. File	C-503-03	Council Ref.	S
Scale (A1 Original)	1:2000	Amendment	A



CROSS SECTION B2-B2 (MDRS-NO QUALIFYING MATTER)

HORIZONTAL SCALE: 1:1500
VERTICAL SCALE: 1:750

Amendments	Name	Date

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Designed		
Drawn	Sheng-Ru Lai	06/23
Checked	Warren Boag	06/21
Approved		

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Job Title
DEVELOPMENT AT McDONALD ROAD, POKENO

Client
HYNDS

Sheet Title
**CROSS SECTION B2
MDRS-NO QUALIFYING MATTER**

Project	J549	Drawing	J549-2
Cad Ref. File	C-503-03	Council Ref.	S
Scale (A1 Original)	AS SHOWN	Amendment	A

Attachment B: Section 32AA Assessment

Section 32AA Assessment – Reverse Sensitivity Qualifying Matter – Amended Extent of Havelock Industry Buffer

Proposed changes to the extent of the Havelock Industry Buffer

As my evidence has recommended changes to the extent of the Havelock Industry Buffer over Area 1 of the HVL development since the section 32 assessment for Variation 3 was prepared, I have prepared an evaluation under section 32AA of the RMA at a level of detail that corresponds to the significance of the proposed changes.

In relation to Area 1, the following options are considered:

- Option 1 – Apply the MDRS (via MDR2 zone) to Area 1 without other related provisions or a qualifying matter.
- Option 2 – Apply the MDRS (via MDR2) to Area 1 and apply the qualifying matters and other related provisions as proposed by the Council.
- Option 3 – Apply the Reverse Sensitivity Qualifying Matter via the extension of the Havelock Industry Buffer over Area 1.

Option 1 is not considered to be the most effective or efficient as it does not provide for and/or address important features / characteristics of the site such as the need to address reverse sensitivity issues generated from the proximity of the site to the heavy industrial zoned land.

Option 2 is not considered to be the most effective or efficient as despite the identification of an EPA over Area 1 (which is not a qualifying matter), it still allows residential development (which in some areas will be up to 11m high) to occur in Area 1 of the HVL land.

Option 3 is considered to be the most effective and efficient option as it recognises the potential for reverse sensitivity effects generated by locating residential development in Area 1 of the development.

Additionally, the limited extent of the proposed extension of the Havelock Industry Buffer ensures that the MDRS are only limited to the extent necessary to address the characteristic i.e. MDRS are applied over the remainder of the HVL land, subject to some further restrictions imposed to reflect the qualifying matters identified by the Council. .

The costs of implementing the options to the Council are similar for all options. The costs of implementing each option for the developer are lowest for Option 1 and highest for Option 3. The environmental costs, including reverse sensitivity effects on the adjoining heavy industry zone are highest for Option 1 and lowest for Option 3.

For the above reasons, I recommend that Option 3 is the most appropriate way to achieve the objectives of the proposal. In my view, Option 3 provides the best balance for enabling MDRS outcomes while protecting and providing for the features of the site and the surrounds.

Attachment C: Changes sought by Hynds to Variation 3

The changes sought by Hynds to Variation 3 are:

- Extension of the Havelock Industry Buffer over Area 1.
- Amending the underlying zoning of all land covered by the Havelock Industry Buffer (including Area 1) from MDR2, to General Residential.

Amending the matters of discretion for stormwater Adding a new (4th) matter of discretion for subdivision to include the recommendations provided for under any specifically Council endorsed Stormwater Catchment management Plan” into the recommendation below: .

511. **Recommendation 8:** Add new matters of discretion to MRZ-S1, MRZ-S4, MRZ-S5, MRZ-S10(2), SUB-R153

1. *Flooding effects including safe access and ingress to the site*
2. *stormwater management and the use of Low Impact Design methods*
3. *the objectives and policies in Chapter 2-20 Te Ture Whaimana – Vision and Strategy*

- Amendments to the use of natural ground level for measuring the height of buildings in the provisions so that it refers to 5m and single story.
 - Amend the building setback rules within the Havelock Industry Buffer so that it relates to all buildings, and not just buildings with sensitive land uses.
 - Include a rule in the Havelock Precinct MDR2 provisions limiting the height of buildings to 8m in the 40dBa noise contour.
 - The provisions in the Havelock Precinct in the MDR2 zone need to be amended so that they consistently refer to the buffer area by the same name rather than as the Havelock Industry Buffer or the Pookeno Industry Buffer.
 - The subdivision provisions for the Havelock Precinct need to apply to both the General Residential and the MDR2 zone. The standard specific to the Havelock Precinct (SUB-R19, SUB-R20, SUB-R21 and SUB-R25) need to also be brought forward into the MDR2 provisions.
-