

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

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of the proposed Waikato
District Plan (Stage 1)
Hearing 7

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

Dated: 16 January 2020

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1. INTRODUCTION

- 1.1 These submissions are made on behalf of Hynds Pipe Systems Limited (**Hynds**) and the Hynds Foundation.
- 1.2 Hynds has made a considerable multi-million dollar investment to establish a concrete manufacturing and distribution plant in Pokeno that operates 24 hours a day and manufactures critical building supplies.
- 1.3 Hynds will be appearing before this Independent Hearings Panel (**Panel**) on a number of occasions throughout this hearing process, as it seeks to ensure that its operations, and the investment it has made (both in its plant and in Pokeno) are not compromised by the provisions of the Proposed Waikato District Plan (**Proposed Plan**).
- 1.4 There are two key elements to Hynds' concerns:
- (a) First, Hynds wants to make sure that the provisions of the Heavy Industrial zone appropriately provide for the continued operation of its plant. That is the purpose of its appearance at this hearing; and
 - (b) Secondly, Hynds has serious concerns about the reverse sensitivity effects that would result from some of the zoning included in the Proposed Plan, and from the re-zoning requests made by a number of submitters. For that reason Hynds will be appearing at the hearings later in the year in relation to the Residential Zone (Hearing 10), the Rural Zone (Hearing 19) and Zone extents (Hearing 25).

2. THE HYNDS GROUP

- 2.1 Hynds operates a concrete manufacturing and distribution site at 9 McDonald Road, Pokeno (**Hynds Site**). The Hynds Site is zoned 'Industrial 2' under the Operative Waikato District Plan (**Operative Plan**) and 'Heavy Industrial' in the Proposed Plan.
- 2.2 Hynds made a submission¹ and a further submission² on the Proposed Plan.

1 Submitter number 983

2 Further submitter number 1341

- 2.3** Hynds is owned by the Hynds Group, which is a family owned and operated business that specialises in the manufacture and supply of construction materials in New Zealand and Australia.
- 2.4** The Hynds Foundation is a charitable foundation established by the directors of the Hynds Group, and is the owner of the land adjoining the Hynds Site, 62 Bluff Road.
- 2.5** The Hynds Foundation is also a further submitter³ on the Proposed Plan. The previous owner of the property at 62 Bluff Road (Grander Investments Limited) lodged a submission seeking to amend its zoning from a combination of Aggregate Extraction/Industrial to Heavy Industrial. Both Hynds and the Hynds Foundation's further submissions support the rezoning request.

3. WITNESSES

- 3.1** Two witnesses have filed evidence on behalf of Hynds and the Hynds Foundation. They have also filed written summaries of their evidence in accordance with the Panel's directions and will address the Panel at the hearing:
- (a) Mr Adrian Hynds, a director of Hynds and the managing director of Hynds Holdings Limited, which includes the Hynds Foundation. Mr Hynds' evidence describes the reasons why the Hynds Site was selected, the nature of Hynds' operations there and the investment it has made in Pokeno; and
 - (b) Ms Anna McLellan and Ms Chanel Hargrave prepared a joint brief of expert planning evidence. Their evidence addresses the lack of policy direction on the purpose of, and outcomes sought for, the two industrial zones. They address and recommend changes to the specific objectives and policies. Ms Hargrave will be addressing the Panel today. Ms Hargrave's summary statement also addresses the matters on which Hynds were invited to comment on in the Reporting Officer's Section 42A Rebuttal Evidence dated 13 January 2020.

³ Further submitter number 1306

4. PURPOSE OF INDUSTRIAL ZONING

- 4.1** In my submission industrial zones have a very specific, and important, purpose – to provide for activities that cannot be appropriately carried out anywhere else because of the potential for significant adverse effects. Industrial zoned land (and heavy industrial zoned land in particular) is an important, and often scarce, resource. It needs to be appropriately provided for by territorial authorities in their district plans.
- 4.2** Businesses like Hynds rely on appropriately zoned land to operate. Mr Hynds' evidence describes the nature of Hynds' operations and the effects that are generated. Mr Hynds also explains the challenging site requirements for a precast concrete manufacturing and distribution facility, and the substantial investment that Hynds has made in its site, in reliance on its Heavy Industrial zoning.
- 4.3** However, as explained in the evidence of Ms McLellan and Ms Hargrave, Hynds has concerns that the provisions in the Proposed Plan that apply to the Industrial and Heavy Industrial Zones do not make adequate, or appropriate provision for the activities that need to locate in those zones. This is particularly the case for the Heavy Industrial Zone.
- 4.4** The Reporting Officer's Section 42A Rebuttal Evidence proposes further amendments to the Proposed Plan that address a number (but not all) of Hynds' concerns. This is explained further in Ms Hargrave's summary statement.

5. COMMENTS ON THE ZONE PROVISIONS

- 5.1** In my submission the recommendations presented by the Reporting Officer in the Section 42A Report and Rebuttal Evidence in respect of the Industrial and Heavy Industrial Zones' objectives and policies do not appropriately define the purpose and intended outcomes for the two industrial zones. Ms McLellan and Ms Hargrave have proposed amendments to the objectives and policies to set out more clearly the differences between the two industrial zones. This will ensure that the policy framework appropriately provides for heavy industrial activities that may generate significant adverse effects. This will also help to ensure heavy industry is protected from adverse reverse sensitivity effects.

- 5.2** As noted by Ms McLellan and Ms Hargrave, the potential effects generated by heavy industry are high, and potentially significant on sensitive receivers. The amount of heavy industrial zoned land throughout the Waikato District is also relatively limited. For these reasons it is paramount that the objectives and policies correctly reflect the realities of heavy industrial activities.
- 5.3** Ms McLellan and Ms Hargrave have reviewed the amendments proposed by the Reporting Officer in the Section 42A Rebuttal Evidence. It is their expert opinion that further amendments are required to Objective 4.6.1 and Policy 4.6.2. This is explained in Ms Hargrave's summary statement.
- 5.4** Ms McLellan and Ms Hargrave also raised concerns about, and suggested amendments to, a number of the rules of the Industrial and Heavy Industrial Zone provisions. As noted in Ms Hargrave's summary statement, the amendments that have been proposed by the Reporting Officer in the Section 42A Rebuttal Evidence address the submitters concerns in that regard and no further amendments are sought.
- 5.5** Finally, we note the amendments sought to the Noise rules (21.2.3.1). As set out in Ms Hargrave's summary statement, Hynds accepts the recommendations in the Section 42A Report and supports the 75dB LAeq noise limit for the Heavy Industrial zone. It does not support the amendment proposed by Havelock Village Limited to reduce that limit to 70 dB LAeq.

6. REVERSE SENSITIVITY EFFECTS

- 6.1** The Environment Court has described the concept of reverse sensitivity as follows:

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 the 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 not to adversely affect the new activity.⁴

- 6.2** The potential effect of reverse sensitivity, from a proposed new use on an existing use, is an effect on the environment in terms of ss 31 and 32 of the

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

Resource Management Act 1991 (**RMA**).⁵ Under these provisions, the Waikato District Council is tasked with assessing and controlling environmental effects, including reverse sensitivity effects. Part of that responsibility is ensuring that the zoning applied to heavy industrial operations appropriately provides for that activity. In my submission, and as outlined above, this is not yet the case in the Proposed Plan.

- 6.3** Legal submissions and evidence will be presented on behalf of Hynds and the Hynds Foundation at Hearings 10 (Residential), 19 (Rural) and 25 (Zone extents). These will address how Hynds considers reverse sensitivity effects should be managed via the zoning and rules applied to land in proximity to Hynds. This will include comments on both the zoning and rules included in the Proposed Plan, and the rezoning requests made by other submitters.

7. SECTION 32 ANALYSIS

- 7.1** It is my submission that unless the amendments sought by Hynds are made, the Industrial and Heavy Industrial zone provisions of the Proposed Plan, as amended by the recommendations in the Reporting Officer's Section 42A Report and Rebuttal Evidence:

- (a) Will not promote the sustainable management of natural and physical resources, are not the most appropriate way to achieve the purpose of the RMA and are contrary to the principles in Part 2 of the RMA; and
- (b) Do not represent the most appropriate way of exercising the Council's functions, having regard to the efficiency and effectiveness of the provisions, and in particular the assessment of the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions in terms of s 32(2) of the RMA.


8. CONCLUSION

- 8.1** If the Proposed Plan were amended as proposed by Ms McLellan and Ms Hargrave this would help to ensure that the Industrial and Heavy Industrial zone

⁵ Derek Nolan QC (ed), Environmental and Resource Management Law (6th ed, Lexis Nexis, Wellington, 2018) at [13.32].

provisions appropriately provide for heavy industrial activities that may generate significant adverse effects. This will also assist in protecting heavy industry from adverse reverse sensitivity effects.

DATED at Auckland this 16th day of January 2020



Bill Loutit / Sarah Mitchell
Counsel for Hynds Pipe Systems Limited and
the Hynds Foundation