

IN THE MATTER of the Resource Management Act 1991(RMA)

AND

IN THE MATTER Variation 3 to the Waikato District Plan

JOINT WITNESS STATEMENT (JWS) IN RELATION TO:

Enabling Housing Supply Variation 3 and PLANNING (1)

17 May 2023

Expert Conferencing Held on: 17 May 2023

Venue: Online

Independent Facilitator: Marlene Oliver

Admin Support: Sandra Kelly, Jamahl Khan

1 Attendance:

1.1 The list of participants is included in the schedule at the end of this Statement.

2 Basis of Attendance and Environment Court Practice Note 2023

2.1 All participants agree to the following:

- (a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing session;
- (b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- (c) They will make themselves available to appear before the Panel;
- (d) This statement is to be filed with the Panel and posted on the Council's website.

3 Matters considered at Conferencing – Agenda and Outcomes

3.1 **Background and overview:**

- i) Overview of the Havelock Precinct Provisions including Qualifying Matters
- ii) Overlaps with the Environment Court appeals to the proposed district plan

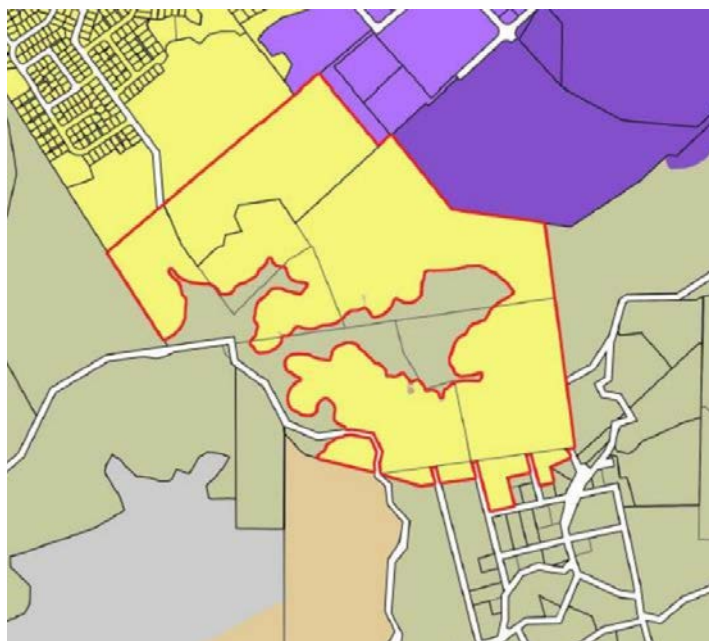
Fiona Hill & Emily Buckingham clarified that the Environment Court has directed that the Noakes appeal be amended such that it would not affect the land included in Variation 3 being referred to as

the Havelock Precinct. Therefore there are two outstanding zoning appeals affecting this area (being Havelock Village Limited (HVL) and Hynds Pipes Systems Limited). The Hynds appeal as lodged is broad and seeks the Havelock area be zoned General Rural. If the area was to be zoned General Rural then the MDRS provisions would not apply. The HVL appeal seeks to rezone some General Rural zoned land to General Residential and if that occurred then the MDRS would apply to the General Residential zoned area (subject to any Qualifying Matters (QM) but the application of Variation 3 to this area is not confirmed.

Sarah Nairn (planner for Hynds) and Mark Tollemache (planner for HVL) indicated that they consider further discussions between the parties to these Plan appeals should be actively progressed without waiting for any formal directions from the Court.

All of the other experts attending this expert conference endorse the statement above made by Sarah Nairn and Mark Tollemache.

3.2 **Qualifying Matters – the scope of the balance of this expert conference session relates to the geographic extent of Variation 3 within the Havelock Precinct (refer to the map below and the area outlined in red – identified as the relevant Residential zone within the Precinct).**



Karin Lepoutre outlined the Council’s proposal (refer to attachment A: “Havelock Precinct draft Qualifying matters and Controls 24th April 2023”):

Table 1: Effects of Qualifying Matters on MDRS Standards in Havelock Precinct

MRZ2 Provision	Requirement	Variation required?	Qualifying Matter/s
Number of residential units per site (MRZ2-S1)	Three residential units per site	Yes: - The number of residential units per site will be restricted to one residential unit per site within the Slope Residential Area. Three residential units per site will be permitted in all other parts of the Havelock Precinct.	Slope stability
Building height (MRZ2-S2)	11 metres	Yes: - 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 L _{Aeq} noise contour area (outside the Pokeno Industry Buffer Zone) Heights of up to 11m will be permitted in all other parts of the Havelock Precinct (subject to no other qualifying matters or district wide provisions applying).	Cultural landscape Reverse sensitivity Reverse sensitivity
Building coverage (MRZ2-S5)	50%	Yes: - Building coverage within the Slope Residential Area must not exceed 40% of the net site area.	Slope stability
Building setback – sensitive land use (MRZ2-S14)	This rule stipulates setback requirements for sensitive land uses to a number of sites/infrastructure.	Yes: - This rule will be amended to avoid sensitive land uses (new buildings or alterations to existing buildings) within the Havelock Industry Buffer (providing for it as a non-complying activity).	Reverse sensitivity
Subdivision (SUB-R153)	Minimum lot size of 200 square metres.	Yes: - The minimum lot size within the Slope Residential Area is required to be at least 2,500 square metres. The minimum vacant lot size for all other areas within the Havelock Precinct is 200 square metres.	Slope stability

3.2.1 Slope stability

Mark Tollemache, Melissa McGrath and Sarah Nairn agree that slope stability is a QM in respect to s771(a). They agree with the provisions outlined in the table above subject to finalising specific wording of the rules.

In relation to the above, Melissa McGrath and Sarah Nairn record that they have concerns relating to infrastructure. This is discussed further in item 3.2.4 below.

3.2.2 Reverse sensitivity

All planning experts agree that reverse sensitivity is a QM (in relation to reverse sensitivity and protecting the Heavy Industrial area) in respect to s771(j) and that the statutory requirements of s77L are met.

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

Area 1

The following is also relevant to this agenda item. The land area affected by the Environmental Protection Area (EPA) on Area 1 is subject to an appeal to the Plan decision by HVL. The decision identified that the EPA in this part of the Precinct was required due to potential reverse sensitivity effects (refer to decision para. 100) and residential activities should be excluded. The range of matters affecting Area 1 require further discussion (and sharing of information) between the parties and this matter cannot be advanced any further in this expert conferencing session.

Karin Lepoutre clarified that there is a additional provision proposed by Council which restricts height to 5m within 50m of the Pōkeno Industry Buffer (PIB). She notes that this a new provision that is not existing and is related to the draft provisions that were circulated as part of the appeals process. This proposed provision is not intended to relate to reverse sensitivity however it is another matter affecting Area 1 (and a wider area) and it would be appropriate to include it in the discussions and sharing of information as referred to in the paragraph above.

At this stage the planning experts have not agreed on the provisions that should apply but they are concerned that the default position where by the MDRS would apply is not an appropriate outcome, therefore QM(s) need to be identified.

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.

3.2.2.1 Pōkeno Industry Buffer (PIB)

All planning experts agree that the PIB (as shown in attachment A – draft Havelock Village Precinct (p.6)) implements a QM (in relation to reverse sensitivity and protecting the Heavy Industrial area). They agree, at a conceptual level, with the PIB provisions outlined in the table above subject to finalising specific wording of the rules.

3.2.2.2 The 40dB LAeq noise contour area

Mark Tollemache confirmed that in relation to the proposed standard *“Height is restricted to 8m within the 40dB LAeq noise contour area (outside the Pokeno Industry Buffer Zone)”* that further technical confirmation will be available from the HVL acoustic engineer.

Follow up action: Mark Tollemache agrees to 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.

There was insufficient time at this expert conference (17 May 2023) to address the following two agenda items. Karin Lepoutre (for the Council) will seek to schedule a further session.

- 3.2.3. The protection of landscapes with high cultural values.
- 3.2.4. Other provisions needed to recognise/protect Qualifying Matters (district wide provisions).
Sarah Nairn identified infrastructure limitations as a relevant topic to be discussed.
Melissa McGrath identified EPA's in the wider area as a relevant topic to be discussed.

4 PARTICIPANTS TO JOINT WITNESS STATEMENT

- 4.1 The participants to this Joint Witness Statement, as listed below, confirm that:
- (a) They agree that the outcome(s) of the expert conferencing are as recorded in this statement; and
 - (b) They agree to the introduction of the attached information – Refer to para 3.2 above; and
 - (c) They have read the Environment Court's Practice Note 2023 and agree to comply with it; and
 - (d) The matters addressed in this statement are within their area of expertise; and
 - (e) As this session was held online, in the interests of efficiency, it was agreed that each expert would verbally confirm their position in relation to this para 4.1 to the Independent Facilitator and the other experts and this is recorded in the schedule below.

Confirmed online: 17 May 2023

EXPERT'S NAME & EXPERTISE	PARTY	EXPERT'S CONFIRMATION REFER PARA 4.1
Fiona Hill (planning - 42A reporting officer)	Waikato District Council	Yes
Karin Lepoutre (planning - 42A reporting officer)	Waikato District Council	Yes
Emily Buckingham (planning - appeals planner)	Waikato District Council	Yes - attended to provide information on the appeals process and for integration purposes, rather than to provide an expert opinion about the QMs.
Mark Tollemache (planning)	Havelock Village Limited	Yes
Bridget Gilbert (landscape architecture)	Havelock Village Limited	Yes
Melissa McGrath (planning)	Pokeno Village Holdings Ltd	Yes
Rachel de Lambert (landscape architect)	Pokeno Village Holdings Ltd	Yes
Sarah Nairn (planning)	Hynds Pipes Systems Ltd	Yes
Dharmesh Chhima (planning)	Hynds Pipes Systems Ltd	Yes
Rachel de Lambert (landscape architecture)	Hynds Pipes Systems Ltd	Yes

Nicola Rykers (planning)	Synlait Milk Limited	Yes
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Attachment A: Havelock Precinct draft Qualifying matters and Controls - 24th April 2023

Havelock Precinct – Draft Qualifying Matters and Controls

Purpose and Statutory Context

The purpose of this document is to outline Waikato District Council's (WDC) draft qualifying matters and controls for the Havelock Precinct (excluding infrastructure and stormwater). The circulation of these provisions was directed by the Independent Hearing Panel (IHP) on 3 March 2023.

The purpose of the draft provisions is to provide a starting point for discussions with interested and affected parties in relation to the outcomes for the Havelock Precinct. While these provisions and qualifying matters have partially been identified and developed through discussions with the primary landowner, we seek further input into the application of the provisions as part of the expert conferencing and hearing process for Variation 3.

We recognise that there are numerous Environment Court appeals against the WDC's decision on the PDP in relation to the Havelock Precinct. The outcome of some of the appeals may affect the ultimate application of the MDRS within the Havelock Precinct (in whole or in part). The appeals process will continue in parallel with the Variation 3 process with the best endeavours made by WDC to align outcomes where possible.

Background

In response to the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021, WDC notified Variation 3 to the Proposed District Plan (PDP) to incorporate the Medium Density Residential Standards (MDRS) and give effect to Policy 3 of the National Policy Statement – Urban Development 2020 (NPS-UD).

Variation 3 was notified on 19 September 2022 and included an urban fringe qualifying matter which limited the geographic application of the MDRS to within the walkable catchments of Pookeno, Tuakau, Huntly and Ngaaruawaahia. Submissions were received both in support of, and against, the urban fringe qualifying matter. In addition, some submitters also questioned its legality as a qualifying matter under the Resource Management Act 1991 (RMA).

On 3 March 2023, the IHP directed any submitters with an interest in the urban fringe qualifying matter to provide evidence and legal submissions to support their position for the IHP's consideration. On 14 March 2023 the IHP issued interim guidance and concluded that the urban fringe is not a qualifying matter under section 771(j) as it does not appear to satisfy the requirements of section 77L of the RMA¹.

The removal of the urban fringe qualifying matter would extend the application of the MDRS to all land zoned General residential or Medium density residential within Pookeno, Tuakau, Huntly and Ngaaruawaahia (at a minimum). The removal of the urban fringe qualifying matter therefore requires that the MDRS be applied to all the land zoned General residential within the Havelock Precinct with qualifying matters applied to areas within the precinct where higher density outcomes are inappropriate.

¹ The interim guidance is not binding on submitters, Council or on the IHP.

Havelock Precinct Context

Figure 1 below shows the approximate extent of the land zoned General residential within the context of the Havelock Precinct where the MDRS will need to be applied.

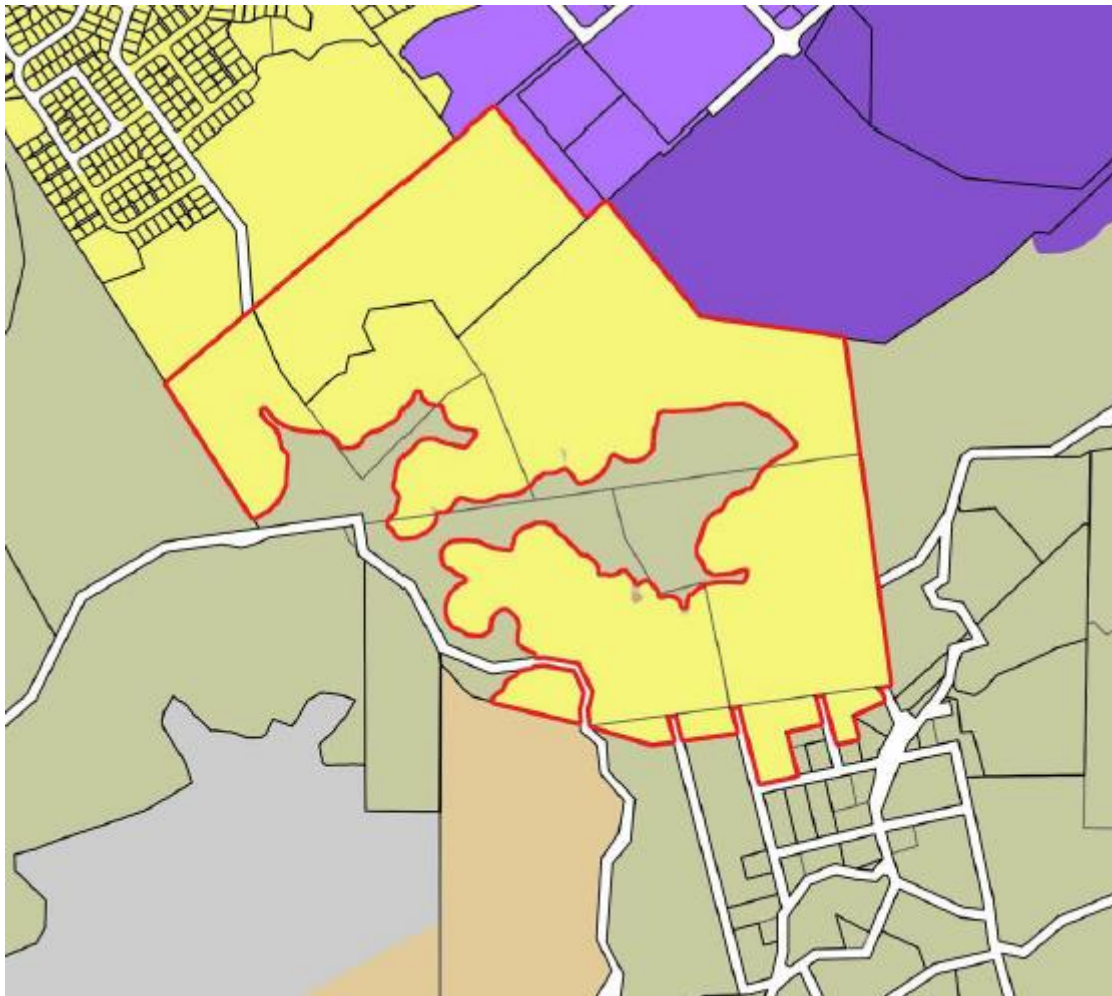


Figure 1: Approximate extent of the General residential zone within the Havelock Precinct

The wider Havelock Precinct encompasses land zoned General rural, General Industrial and Rural lifestyle. The MDRS is not proposed to be applied within these zones as they are not identified as relevant residential zones under the RMA.

The Havelock Precinct was partially zoned General residential through the district plan review process, the decision of which was notified on 17 January 2022. The decision on the PDP proposed that a range of other provisions were concurrently applied to the Havelock precinct to control development outcomes and manage a range of actual and potential effects on the environment. These provisions (applying within the General residential zone part of the precinct) include:

- The Havelock industry buffer which restricts the development of sensitive land uses within the buffer.
- Havelock 40dB L_{Aeq} noise contour and associated standards that impose building design requirements for sensitive land uses within the contour.
- Significant Natural Areas (SNAs) to protect and enhance the indigenous biodiversity within the identified SNAs.

- Height restrictions on sites adjoining Hilltop parks
- Subdivision controls including a minimum net lot size of 2,500 square metres within the Slope Residential Area
- Environmental Protection Areas (EPAs)

The above provisions (existing within the PDP) combined with an assessment of decision Report 28I (Zoning- Pokeno) and evidence provided at the PDP hearing in relation to the Havelock Precinct have been used to identify the proposed provisions and qualifying matters for the precinct which are outlined in the following section.

Draft Provisions and Draft Qualifying Matters

It is proposed to rezone the General residential zone within the Havelock Precinct to Medium Density Residential Zone 2 (MRZ2). The provisions of MRZ2 as notified can be found here: [link to Variation 3 MRZ2 provisions](#). MRZ2 is a new zone introduced through Variation 3 which incorporates the MDRS. Any relevant District Wide Matters outlined in Part 2 of the PDP will continue to apply to the precinct.

We recognise that there are certain attributes and characteristics within the Havelock Precinct and the wider area that make higher density as provided for by the MDRS inappropriate. Some of these attributes and characteristics are proposed to be provided for and protected through qualifying matters, while others (such as wetlands and native vegetation) will be provided for through the existing district wide matters in the PDP. The qualifying matters identified for the Havelock Precinct include:

- Relationship of Maaori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga – in relation to the protection of landscapes with high cultural values. This qualifying matter falls under 77I(a) of the RMA as a matter of national importance.
- Slope stability – in relation to managing significant risks from natural hazards. This qualifying matter falls under 77I(a) of the RMA as a matter of national importance.
- Reverse sensitivity – in relation to the importance of avoiding potential reverse sensitivity effects of residential activities on industrial operations. This qualifying matter falls under 77I(j) of the RMA as ‘any other matter’ and is an existing qualifying matter proposed through Variation 3.

Note: potential qualifying matters to give effect to Te Ture Whaimana o Te Awa o Waikato – the Vision and Strategy for the Waikato River (including infrastructure and stormwater) are still under consideration. Updated information will be circulated to all submitters in future as directed by the IHP on 3 March 2023. We further note that other qualifying matters may be identified and applied as part of the expert conferencing and hearings processes.

Table I outlines how the above draft qualifying matters would vary the MDRS provisions of the MRZ2 (noting that some PDP appeals may further amend the application of these provisions)

Variation 3 provisions Standards

Table 1: Effects of Qualifying Matters on MDRS Standards in Havelock Precinct

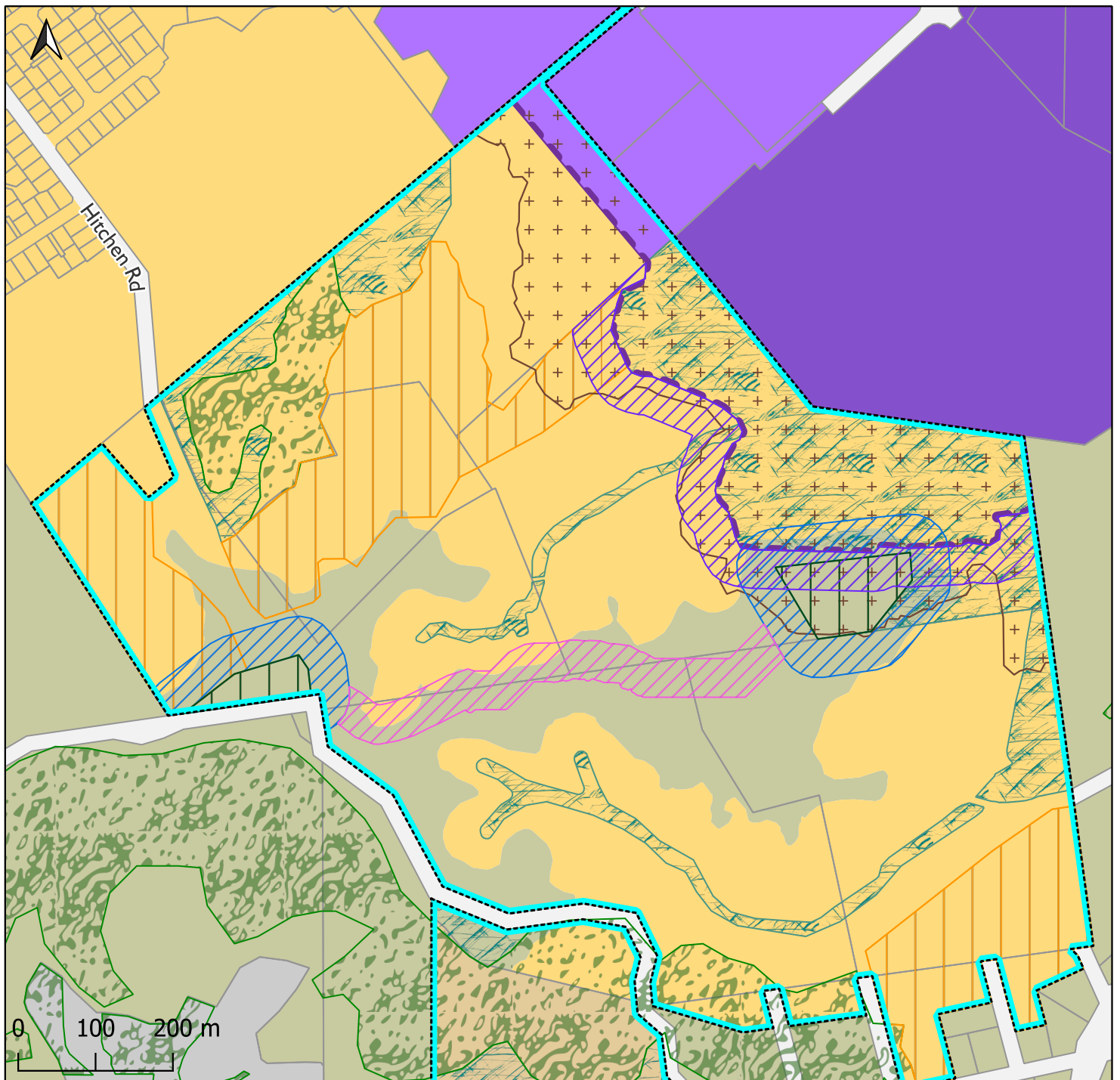
MRZ2 Provision	Requirement	Variation required?	Qualifying Matter/s
Number of residential units per site (MRZ2-S1)	Three residential units per site	Yes: <ul style="list-style-type: none"> - The number of residential units per site will be restricted to one residential unit per site within the Slope Residential Area. Three residential units per site will be permitted in all other parts of the Havelock Precinct. 	Slope stability
Building height (MRZ2-S2)	11 metres	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 L_{Aeq} noise contour area (outside the Pokeno Industry Buffer Zone) <p>Heights of up to 11m will be permitted in all other parts of the Havelock Precinct (subject to no other qualifying matters or district wide provisions applying).</p>	Cultural landscape Reverse sensitivity Reverse sensitivity
Building coverage (MRZ2-S5)	50%	Yes: <ul style="list-style-type: none"> - Building coverage within the Slope Residential Area must not exceed 40% of the net site area. 	Slope stability
Building setback – sensitive land use (MRZ2-S14)	This rule stipulates setback requirements for sensitive land uses to a number of sites/infrastructure.	Yes: <ul style="list-style-type: none"> - This rule will be amended to avoid sensitive land uses (new buildings or alterations to existing buildings) within the Havelock Industry Buffer (providing for it as a non-complying activity). 	Reverse sensitivity
Subdivision (SUB-R153)	Minimum lot size of 200 square metres.	Yes: <ul style="list-style-type: none"> - The minimum lot size within the Slope Residential Area is required to be at least 2,500 square metres. <p>The minimum vacant lot size for all other areas within the Havelock Precinct is 200 square metres.</p>	Slope stability

Appendix I shows how and where the identified draft qualifying matters would apply within the Havelock Precinct.



















In addition to the provisions outlined above, there are other provisions relating to the Havelock Precinct that do not affect density outcomes per se and will continue to apply. An example of such a provision is SUB-R21 which requires specific standards for subdivision including the requirement to create road reserves, Hilltop Parks and the construction of an acoustic barrier. We also understand that there may be additional provisions proposed as part of the appeals process negotiations. While these provisions cannot affect density outcomes without a qualifying matter, they can control development outcomes such as building reflectivity and the requirement for mechanical ventilation.

Waikato District Council
24 April 2023

Appendix I – Draft Havelock Village Precinct Plan



Legend

- | | |
|---|--|
|  Havelock Precinct |  Environmental protection area |
|  Havelock ridgeline height restriction area | Zones |
|  Havelock hilltop park height restriction area |  GRUZ – General rural zone |
|  Havelock industry buffer height restriction area |  RLZ – Rural lifestyle zone |
|  Havelock hilltop park |  MRZ2 - Medium density residential zone 2 |
|  Havelock industry buffer |  HIZ – Heavy industrial zone |
|  Havelock slope residential area |  GIZ – General industrial zone |
|  Havelock 40 dB LAeq noise contour |  Road |
|  Significant Natural Area |  TTZ - TaTa Valley zone |
| |  Parcel boundary |

Note: Zone and precinct are subject to PDP appeals and may change