

APPENDIX A – RELEVANT PARTS OF THE DECISION

WAIKATO DISTRICT COUNCIL

Hearings of Submissions on the Proposed Waikato District Plan

Report and Decisions of Independent Commissioners

Decision Report 21: Industrial Zones

17 January 2022

Commissioners

Dr Phil Mitchell (Chair)

Mr Paul Cooney (Deputy Chair)

Mr Dynes Fulton

Mr Weo Maag

- o. Synlait – development on existing dairy factory site; and
- p. Hynds – development at 9 McDonald Road, Pōkeno.

4 Overview of evidence

- 4.1 Mr Richard Matthews presented planning evidence on behalf of Genesis Energy, with a focus on providing for the continued operations of Genesis' Huntly Power Station within the Heavy Industrial Zone. Mr Matthews considered that to avoid any doubt, Huntly Power Station must be explicitly identified as a 'Regionally Significant Industry' within the Waikato District Plan. He also considered that the height limit for the Huntly Power Station should be amended to the operative height limit, allowing a maximum of 60 metres, and 35 metres over 90 per cent of the site. Mr Matthews clarified that no change is proposed with respect to the scale of the present buildings on the power station site, and potential future peaker units would be of a similar scale to existing smaller units on the site.³
- 4.2 In terms of activities provided for in the Heavy Industrial Zone, Mr Matthews considered that electricity generation activities and associated coal stockpiling activities at the Huntly Power Station should be explicitly provided for, while signage for health and safety or asset identification purposes or that is required by legislation should be identified as a permitted activity in Chapter 14 of the PDP. He agreed with the section 42A report recommendation that education facilities should not be provided for within industrial zones.
- 4.3 Mr Matthews also referred to primary noise evidence prepared on behalf of Genesis Energy by Mr Ellerton, and supported the changes to noise rules proposed in that evidence. These included the need for a "date stamp" for the Huntly Power Station noise limits as received at surrounding dwellings and to tag this to the notional boundary of dwellings existing near the power station as of 25 September 2004.
- 4.4 Mr Mark Arbuthnot and Mr Chris Day presented planning and acoustic evidence, respectively, on behalf of Ports of Auckland Limited (POAL), who have an inland freight hub at Horotiu Industrial Park in the Heavy Industrial Zone. In response to POAL's submission, Ms Macartney's section 42A report had recommended that a new Development Area be applied to the Horotiu Industrial Park.⁴
- 4.5 Mr Arbuthnot sought that POAL's inland freight hub be explicitly recognised as a 'regionally significant industry' through a policy. He also considered that the following provisions were appropriate for the Horotiu Industrial Park:
 - a. a controlled activity status for workers' accommodation, which would only apply to people whose duties require them to live on-site;

³ Summary of Evidence of Richard Matthews for Genesis, Paragraph 6B, dated 21 January 2020.

⁴ Section 42A report Hearing 7: Industrial Zone and Heavy Industrial Zone, Part D, dated 25 November 2019.

- b. a landscape planting permitted activity standard for development that provides 4m riparian planting and 5m planting fronting Horotiu Road;
 - c. a specific rule relating to building setbacks adjacent to waterbodies that would retain the status quo from the operative District Plan;
 - d. a permitted area of 15 square metres for freestanding signs in the industrial zones.
- 4.6 In relation to permitted noise levels, Mr Day considered that an upper night-time noise limit of 45 dB L_{Aeq} for activities in the Horotiu Industrial Park would maintain a reasonable level of acoustic amenity for Residential zoned properties at Horotiu, rather than the 40 dB L_{Aeq} in the PDP. He also supported the application of the 'notional boundary' when measuring noise received at land located outside of the Industrial and Residential zones, and the use of a 'date stamp' for the Horotiu Industrial Park noise rules. He proposed that the date stamp refers to the date that the Waikato District Plan becomes operative.⁵
- 4.7 Mr Paul Bowman presented evidence on behalf of Hamilton City Council. He supported the section 42A report recommendations made by Ms Macartney with regards to Policy 4.6.3 (maintain a sufficient supply of industrial land) and Policy 4.6.4 (maintain industrial land for industrial purposes). However, Mr Bowman disagreed with the application of a discretionary activity status for standalone retail and office activities of any size and scale in the General Industrial Zone. He instead sought a non-complying activity status to clearly signal that these activities are not anticipated and are discouraged from locating in these zones. It was his view that this would better protect industrial land supply, in line with Policies 4.6.3 and 4.6.4.
- 4.8 Ms Allison Arthur-Young and Ms Lauren Eaton filed legal submissions on behalf of KiwiRail. These noted that KiwiRail agreed with a number of Ms Macartney's section 42A report recommendations. The key outstanding issues for KiwiRail were in relation to setbacks for buildings from the railway corridor, and setbacks for earthworks from any infrastructure. The legal submissions referred to the primary evidence of Ms Pam Butler on behalf of KiwiRail, which provided further detail on these issues. They explained that provision of a 5-metre physical setback for buildings adjacent to the railway corridor boundary, as sought by KiwiRail, is primarily a safety control to manage the interface between operations within the railway corridor and activities on adjoining sites.
- 4.9 KiwiRail's legal submissions provided a section 32 and section 32AA analysis in response to rebuttal evidence on behalf of POAL and by Ms Macartney, which preferred KiwiRail increasing the width of its existing designation rather than apply a building setback rule. The section 32 analysis stated that increasing the designation width would subject the neighbouring owners and occupiers to a more restrictive regime than the building setback rule would, as restricted discretionary consent could still be sought for new or altered activities within the setback under KiwiRail's proposal.

⁵ Statement of Evidence of Chris Day for POAL, dated 20 January 2020.

not support the inclusion of policies specific to the Horotiu Industrial Park (proposed Policies 4.6.8-4.6.13 in the Concluding Hearing Report version of Chapter 4). While submissions sought that Huntly Power Station and the inland freight hub at Horotiu be recognised in policies as regionally significant industry, that would result in an ad hoc approach and we have concluded that to do so would exclude other regionally significant industry. We have instead elected to support regionally significant industry in new Policy 4.6.6 and also include a definition of regionally significant industry (see Decision Report 30: Definitions).

- 5.15 A new objective and policy supporting the presence of emergency services-related activities in Industrial Zones has been proposed by Ms Macartney. We agree with the intent of these provisions, but also see a need for them to apply to a wider range of zones.
- 5.16 The revised policy framework for the Industrial Zones does not depart significantly from the notified policy framework in the PDP. We have evaluated the revised objective in accordance with section 32AA of the RMA, and consider it is the most appropriate way to achieve the purpose of the RMA. We have also turned our minds as to whether the policies are the most appropriate way of achieving the objectives and concluded that they are the most effective and efficient options.

Activities within the Industrial Zones

- 5.17 We support Ms Macartney's recommendation to include electricity generation on the Huntly Power Station site as a permitted activity. Genesis Energy also sought that stockpiling of coal be included in the permitted activity rule. We agree with Ms Macartney that an explicit reference to coal stockpiling activities is unnecessary and that this would be captured by the term 'ancillary activity', which we have also included as a permitted activity in both the General and Heavy Industrial Zones.
- 5.18 We have considered the status of accommodation for workers whose duties require them to live on-site and agree with Mr Arbuthnot for POAL that this activity is compatible with the functioning of Industrial Zones. Such persons are engaged with the activity occurring on the site and are not likely to be sensitive to the effects of the activity. This reasoning does not only apply in Horotiu Industrial Park, but throughout the Industrial Zones. Rather than the controlled activity status suggested by Mr Arbuthnot, we also see no reason why caretaker and security personnel accommodation should not be permitted (as sought by the original POAL submission)¹⁰ if it is located within an industrial building and is also of a small scale. In that regard, a 70-square-metre gross floor area limit has been agreed as appropriate between Mr Arbuthnot and Ms Macartney. We have therefore included 'Caretaker's or security person's residential unit' as a permitted activity within both the General and Heavy Industrial Zones, provided it is for one or two people, is located within an industrial building and does not exceed 70

¹⁰ POAL primary submission point 578.4.

square metres in gross floor area. Should a proposal not comply with these conditions, then it would be a discretionary activity.

- 5.19 FENZ sought in addition to ‘emergency services training and management activities’, that ‘emergency services facilities’ also have a permitted status in both Industrial Zones to ensure that buildings such as fire stations are permitted. Ms Macartney agreed that the emergency services activities should be permitted and suggested that her revised recommended rules that would permit construction of buildings in the Industrial Zones may address that issue.¹¹ We concur with adding the construction of buildings and emergency services activities and facilities as a permitted activity in both Industrial Zones.
- 5.20 Hamilton City Council was concerned about applying a discretionary activity status for large format retail and offices in the General Industrial Zone and sought a non-complying status instead. We agree with Ms Macartney’s assessment that there are situations where these activities may be appropriate in the General Industrial Zone, and so they should be assessed on their merits under a discretionary status, rather than being actively discouraged through a non-complying activity status.¹² However, we support a non-complying status for large format retail and offices in the Heavy Industrial Zone.
- 5.21 In relation to the amended activity status for educational activities in the Industrial Zones sought by Mr Frentz for Ministry of Education, we agree with Mr Matthews and Ms Macartney that a non-complying status is appropriate. This signals that it would generally be challenging to demonstrate that these activities (other than Trade and Industry Training, which are provided for) are compatible with the outcomes sought for the Industrial Zones. Mr Frentz also sought amendments to the rules for educational facilities in the NMBP. For the NMBP, we have deemed that the General Industrial rules should apply in addition to the land use consent conditions, and that no bespoke rules are required – including in relation to educational activities (further discussed later in this decision).
- 5.22 We agree with Ms Macartney’s recommendation to permit service stations in both Industrial Zones, noting that this is consistent with providing for truck refuelling stops as permitted activities. We also accept Mr Allott’s evidence that community corrections activities should be permitted in the General Industrial Zone, as these are fundamentally industrial in nature.
- 5.23 In response to various submissions,¹³ we agree that it is appropriate to specify the following activities as permitted in the General Industrial Zone: hire centre; wholesale; trade supply outlet; transport depot; garden centre; and retailing of agricultural and industrial motor vehicles and machinery. We have also amended the classification of activities that are not otherwise specified in either of the zones to default to discretionary

¹¹ Attachments 3 and 4 to Section 42A Report Hearing 7: Industrial Zone and Heavy Industrial Zone, dated November 2019.

¹² Concluding Hearing Report: Hearing 7 by Jane Macartney, Paragraphs 51-53, dated 8 May 2020.

¹³ See submissions from EnviroWaste 302.4; Van Den Brink 633.51; Holcim 766.11.