

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

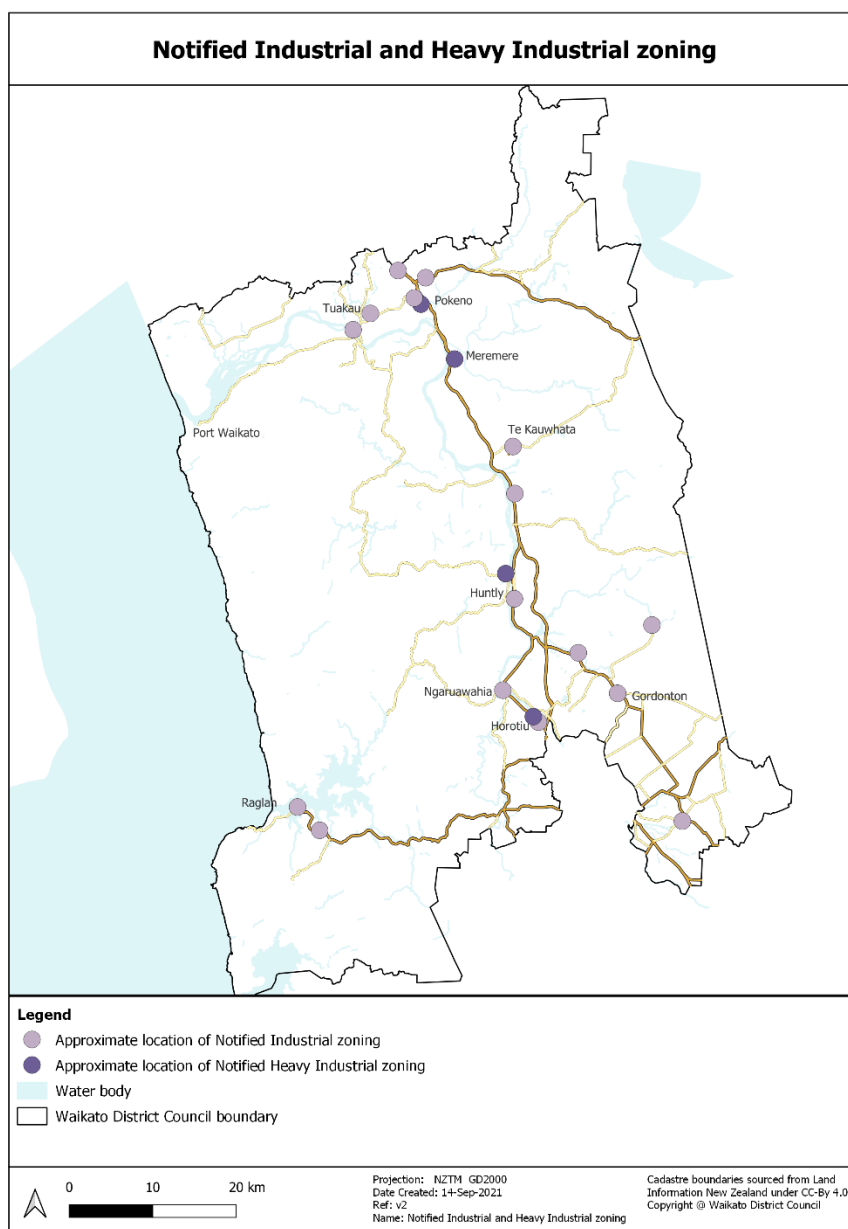
Mr Weo Maag

Contents

1	Introduction	2
2	Hearing Arrangement.....	3
3	Overview of issues raised in Submissions.....	5
4	Overview of evidence.....	7
5	Panel Decisions	14
6	Conclusion	24

1 Introduction

- 1.1 Hearing 7 related to all the submissions received by the Waikato District Council (Council) on the provisions of the General Industrial Zone and Heavy Industrial Zone within the Proposed Waikato District Plan (PDP). This hearing specifically related to objectives, policies, land use activities, land use effects, building and subdivision within the two industrial zones.
- 1.2 The General Industrial Zone contains areas used predominantly for a range of industrial activities. This zone may also be used for activities that are compatible with the adverse effects generated from industrial activities. The General Industrial Zone applies mainly to perimeter areas within the main towns and villages. Some particular sites within and outside these settlements are also zoned industrial to reflect historic industrial occupation, such as service stations, dairy factories, timber mills and wool scouring sites.
- 1.3 The Heavy Industrial Zone contains areas used predominantly for industrial activities that generate potentially significant adverse effects. This zone may also be used for associated activities that are compatible with the potentially significant adverse effects from industrial activities. This zone applies to only four specific sites, namely Huntly Power Station, the former Meremere Power Station, Affco in Horotiu, and the Hynds Pipes and Yashili and Synlait dairy factories at Pōkeno.
- 1.4 The locations of the notified Industrial Zones are illustrated on Figure 1 below. The General and Heavy Industrial Zones are a rationalisation of several industrial zones and scheduled areas applying under the Operative Franklin and Waikato District Plans.



2 Hearing Arrangement

- 2.1 The hearing was held on Tuesday 21 January 2020 at Council's offices in Ngaruawahia. All of the relevant information pertaining to this hearing (i.e., section 42A report, legal submissions and evidence) is contained on Council's website.
- 2.2 We heard from the following parties on the General and Heavy Industrial Zones provisions of the PDP:

Submitter organisation	Attendee at the hearing
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Council	Jane Macartney (author of section 42A Report)
Genesis Energy	Richard Matthews – planning Damian Ellerton – noise
Ports of Auckland	Mark Arbuthnot – planning Chris Day – noise Alistair Kirk – corporate
Hamilton City Council	Paul Bowman
KiwiRail	Allison Arthur-Young / Lauren Eaton – legal counsel Pam Butler – planning
Northgate Developments and Northgate Industrial Park	Kathryn Drew
Tuakau Proteins	Nicki Williams
Fire and Emergency NZ	Craig Sharman
Pōkeno Village Holdings	Sue Simons / Kate Storer – legal counsel Adam Jellie – planning
Synlait	Ewan Chapman – legal counsel Robert Stowell – corporate Nicola Rykers – planning
Department of Corrections	Matt Allott
Tasman Lands	Philip Barrett Bob Carter

Van den Brink Limited	Renee Fraser-Smith
Havelock Village	Jon Styles – noise Mark Tollemache – planning
Hynds Pipes and Hynds Foundation	Bill Loutit / Sarah Mitchell – legal counsel Adrian Hynds – corporate Chanel Hargraves – planning

2.3 Although these parties did not attend the hearing, evidence was filed by:

- a. Tanya Running on behalf of Waka Kotahi;
- b. Kahlia Thomas on behalf of The Oil Companies;
- c. Lisette Balsom on behalf of Waikato Regional Council;
- d. Bevan Houlbrooke on behalf of Greig Metcalfe;
- e. Keith Frentz on behalf of Ministry of Education;
- f. Leigh Shaw on behalf of Fellrock Development Ltd/TTT Products Ltd;
- g. Pauline Whitney on behalf of Transpower NZ; and
- h. Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga.

2.4 Following the hearing, Council staff developed revised provisions in response to the evidence presented. These were circulated to the submitters for feedback on 16 April 2020. A final Concluding Hearing Report was prepared by Ms Macartney on 8 May 2020.

3 Overview of issues raised in Submissions

3.1 In the section 42A report, Ms Macartney set out the full list of submissions received pertaining to the General Industrial Zone and Heavy Industrial Zone provisions. These were broadly categorised as relating to the following wider topics:¹

- a. Objectives and policies (Chapter 4);

¹ Section 42A Report Hearing 7: Industrial Zone and Heavy Industrial Zone, Paragraph 16, dated November 2019.

- b. Rules for the Industrial Zone (Chapter 20);
 - c. Rules for the Industrial Zone Heavy (Chapter 21); and
 - d. Provisions for the Horotiu Industrial Park – new Development Area.
- 3.2 Common themes identified were the need for greater clarity within the provisions and the need for more liberal rules to better implement and achieve the notified objectives and policies. Following the exchange of evidence, the submitters' outstanding matters of contention at the time of hearing were set out in Ms Macartney's rebuttal evidence as:²
- a. Definition of and provision for educational facilities;
 - b. Real estate signage;
 - c. Provision of community corrections activities;
 - d. Emergency service facilities and firefighting water supply;
 - e. Building setback from and earthworks in proximity to the railway corridor;
 - f. Tuakau Proteins Limited – provision as an 'industrial activity' and acoustic matters;
 - g. Huntly Power Station – provision as a 'regionally significant industry', health and safety signage, and acoustic matters;
 - h. Hamilton City Council – discretionary activity status for commercial/retail activities;
 - i. Signage for heritage buildings and Maaori sites and areas of significance;
 - j. Effects of signage on traffic users;
 - k. Specific provisions for Horotiu Industrial Park – Ports of Auckland and Northgate;
 - l. Pōkeno Village Holdings – permitted activities in Pōkeno Gateway Industrial Park;
 - m. Havelock Village Limited – acoustic matters;
 - n. Van Den Brink Group – general development in Industrial Zone;

² Section 42A rebuttal evidence Hearing 7: Industrial Zone and Heavy Industrial Zone, Paragraph 8, dated 13 January 2020.

- 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.

- 4.10 KiwiRail's concerns related to earthworks near the railway corridor. KiwiRail considered that the rail corridor could be impacted from a change in the contour of land caused by earthworks if not appropriately managed. KiwiRail was also concerned that inadequate sediment control measures on adjacent sites could affect the rail corridor. KiwiRail therefore sought that all earthworks be located at least 1.5 metres away from any infrastructure.
- 4.11 Ms Kathryn Drew presented planning evidence on behalf of Northgate Developments and Northgate Industrial Park (collectively Northgate), who is a developer and major landowner in the Horotiu Industrial Park. Northgate submitted that specific existing Horotiu Industrial Park provisions should be retained in the PDP; and Ms Macartney's section 42A report agreed that a specific set of provisions should be included in Section 20.6 of the General Industrial Zone chapter. Northgate sought to amend the proposed wording of some of these provisions, including:
- a. The removal of the rule relating to planting of the earth bund;
 - b. The volume of free-standing signage permitted to relate to the site size or frontage; and
 - c. Night time noise limits to be 45dB.
- 4.12 Ms Nicola Williams presented planning evidence on behalf of Tuakau Proteins, which has been established on Lapwood Road, Tuakau since the 1970s. She supported a site-specific noise limit applying to the Tuakau Proteins site similar to the Horotiu Industrial Park, being 45dBA L_{Aeq} (10pm to 7am the following day) measured within the notional boundary of any site zoned Rural. In her opinion, this relaxation of the General Industrial Zone noise limit by 5dB would recognise the isolated nature of the Lapwood Road Industrial zone, the particular characteristics of the zone (being limited to one industrial site) and would enable the activity to continue on the site without the continued issue of night-time noise compliance.
- 4.13 Ms Williams also sought that Policy 4.7.11 - Reverse Sensitivity ensures the protection of existing industrial activities. She supported Ms Macartney's amended recommendation in relation to Policy 4.6.7 - Management of adverse effects within industrial zones.
- 4.14 Mr Craig Sharman presented planning evidence on behalf of Fire and Emergency New Zealand (FENZ). FENZ were supportive of Ms Macartney's proposed addition of new Objective 4.6.16 and Policy 4.6.17 in relation to the recognition of emergency services facilities in the industrial zones. They were also in support of the retention of building setbacks from waterbodies within the Industrial Zones, as these rules provide mitigation of flood hazard risk to buildings, therefore safeguarding the wellbeing of communities.
- 4.15 Mr Sharman clarified that permitted activity status for both 'emergency services training and management activities', and 'emergency service facilities' was sought by FENZ in both the Heavy and General Industrial Zones. He clarified that 'emergency service facilities' refers to fire stations and other emergency response facilities (i.e., buildings)

that do not otherwise fall within the meaning of the phrase 'emergency services training and management activities'.

- 4.16 Mr Sharman also noted that for firefighting purposes, reticulated water supply is not a requirement for industrial activities and this can be provided through alternative means. Therefore, FENZ suggested further amendments to the wording of the subdivision conditions to only require proposed lots to be 'connected to water supply sufficient for firefighting purposes'.
- 4.17 Ms Sue Simons and Ms Kate Storer filed legal submissions on behalf of Pōkeno Village Holdings Limited (PVHL), while Mr Adam Jellie presented planning evidence. PVHL sought that the Pōkeno Structure Plan (PSP) be incorporated into the PDP, as developed as part of Plan Change 24 to the operative Waikato District Plan – Franklin Section (operative in 2010), which provides a bespoke solution for Pōkeno. In relation to the industrial zones, the PSP provides for additional community and commercial facilities in the industrial area between the town centre and the Heavy Industry zone, with interface controls applying. Mr Jellie therefore proposed that a 'Development Area' apply to the Industrial zoned land in Pōkeno, that reflected the range of uses anticipated by the PSP. He noted that a comprehensive case for the inclusion of the PSP would be made at Hearing 26: Other Matters, but that a form of secondary relief would be to modify the activity tables for the Industrial zones to permit additional activities (within the PSP area only).
- 4.18 Mr Ewan Chapman filed legal submissions on behalf of Synlait Milk Limited, accompanied by corporate evidence from Mr Robert Stowell of Synlait and planning evidence by Ms Nicola Rykers. Synlait's interests focused on the ongoing use of its Heavy Industrial site at Pōkeno for milk-processing purposes. They sought amendments to policies and rules to better protect the ability of the Heavy Industrial zone to operate, and recognise the importance of dairy processing. Specifically, Ms Rykers supported the following amendments to the provisions proposed by Ms Macartney's section 42A report:
- a. Amend Policy 4.6.2 to distinguish between the two industrial zones in terms of both activities anticipated and environmental outcomes sought;
 - b. Amend Policy 4.6.3 to recognise that sufficiency of supply of industrial land should also consider appropriateness of location;
 - c. Expand Policy 4.6.7 to identify that the General Industrial Zone can function as a transition between heavy industrial and other more sensitive zones;
 - d. Increase the permitted earthworks limit to 10,000 cubic metres in volume and 5 metres total depth;
 - e. Make signage for health and safety and regulatory purposes permitted activities within Chapter 21; and
 - f. Amend Rule 21.3.3 Daylight admission so that it only applies at the Residential zone boundary.

- 4.19 Mr Matthew Allott presented planning evidence in support of the Department of Corrections' submission seeking a permitted activity status for 'community corrections activities' in the Industrial Zone. He considered that light industrial areas provide suitable sites for such activities and noted there are many examples of community corrections facilities in Industrial zoned sites around the country. He explained that activities at community corrections facilities are industrial in nature, in particular the community work components, where large sites with yard-based activities such as job training, large equipment storage and vehicle storage are required.
- 4.20 Section 20.5 of the notified Industrial Zone chapter related specifically to the Nau Mai Business Park (NMBP) within the Industrial Zone near Raglan, and contained a location-specific set of rules. Mr Philip Barrett and Mr Bob Carter presented planning and corporate evidence, respectively, on behalf of Tasman Lands Limited, with a focus on provisions applying to the NMBP. Mr Barrett considered that any light industrial activity within the NMBP should be a permitted activity, subject to compliance with performance standards. He noted that the NMBP is approximately 90 per cent developed, with the bulk of activities onsite being light industrial, and consent notices applied to each lot to ensure consistency with the original land use consent. He stated there is no obvious reason not to allow for similar activities as in the General Industrial Zone to occur at the NMBP.
- 4.21 Mr Barrett's evidence also proposed various other changes to the provisions for the NMBP relating to signage, the storage of fireworks, landscaping, mapping of 'effective building areas', and on-site tanks for liquid trade waste.
- 4.22 Ms Renee Fraser-Smith presented planning evidence on behalf of Van den Brink Limited. She stated that she concurred with changes to Rule 20.3.3 and Policy 4.6.9A recommended in Ms Macartney's rebuttal evidence, as well as a number of changes recommended to the General Industrial Zone rules and standards in Ms Macartney's original section 42A report.
- 4.23 Ms Fraser-Smith then set out various matters of disagreement with Ms Macartney. She supported a 3-metre building setback being applied to the General Industrial Zone rather than the 5-metre setback recommended in Ms Macartney's rebuttal evidence. She also sought an amendment to Policy 4.6.2 to refer to the efficient use of industrial land, because in her opinion, such a reference is missing from the policy framework of the PDP. Lastly, she supported the continued application of a 18-metre height limit for the Whangarata Business Park as per the operative District Plan provisions, or alternatively supported an increased height limit of 20 metres in Industrial Zones more broadly to encourage the efficient use of industrial land.
- 4.24 Mr Jon Styles presented noise evidence and Mr Mark Tollemache presented planning evidence on behalf of Havelock Village Limited. Mr Styles supported lowering the anytime noise limits for the General and Heavy Industrial Zones by 5 dB each (to 70 dB L_{Aeq}). Additionally, he did not support the introduction of lower night-time noise limits for the General Industrial Zone, as he was unaware of any night-time activities permitted in the General Industrial Zone that would require night-time noise amenity protection,

noting that interface noise limits are included to adequately protect adjacent zones. He strongly supported the interface rules (Rule 20.2.2.1 P1 and Rule 21.2.2.1 P2(b)) applying between industrial zones and all other zones where noise sensitive activities are permitted, including the Rural zone, but suggested a wording amendment to provide additional clarity.

- 4.25 Mr Styles also commented on the 'date stamp' approach for applying noise limits to the Huntly Power Station and Horotiu inland port operations, as advanced by acoustic witnesses. He considered that this approach may be reasonable for specific sites and situations but did not support its use on a district-wide level. Mr Styles preferred the establishment of noise control boundaries combined with setback rules to manage noise emissions from sites.
- 4.26 Mr Tollemache supported the position of Mr Styles and provided some comments on other submitters' evidence, noting his agreement with Mr Jellie's proposal to retain the bespoke provisions of the operative District Plan for the industrial zones in Pōkeno.⁶
- 4.27 Mr Bill Loutit and Ms Sarah Mitchell filed legal submissions on behalf of Hynds Pipes and the Hynds Foundation (collectively Hynds). Hynds' key interest in relation to this hearing was to ensure that the provisions of the Heavy Industrial Zone appropriately provide for the continued operation of its plant at Pōkeno. Hynds also provided background on its concerns around residential development proposed in the vicinity of its plant, the details of which are to be addressed at the rezoning hearings.
- 4.28 Mr Adrian Hynds, a director of Hynds, provided a description of Hynds' operations and the criteria used to select the Pōkeno site. These included allowing for 24/7 production, generous land area, room for future expansion and proximity to raw materials supply and markets. He stated that Hynds had made a significant investment in their facility and are planning for ongoing investment, describing that stage two and three developments are planned to the west and south of Hynds' current development. He was very concerned about reverse sensitivity effects on the operation resulting from potential residential development near the site.
- 4.29 Ms Chanel Hargraves presented planning evidence on behalf of Hynds, which addressed what she considered to be a lack of policy direction on the purpose of, and outcomes sought for, the two industrial zones. While Ms Hargraves supported the majority of Ms Macartney's recommendations in relation to Hynds' submission points, she proposed the following amendments to the provisions proposed in Ms Macartney's rebuttal evidence:
- a. Inclusion of additional wording in Objective 4.6.1 recognising the positive effects of industrial activities;

⁶ Primary Evidence of Adam Jellie for Pokeno Village Holdings Limited, dated 10 December 2019.

- b. Inclusion of additional wording in Policy 4.6.2(ii)A identifying that because of the nature of their operation, heavy industrial activities be required to locate in the Heavy Industrial Zone; and
 - c. Replacing the reference to in Policy 4.6.2(ii) to having 'appropriate separation distances' with reference to avoiding encroachment from sensitive activities or protecting Heavy Industrial activities from reverse sensitivity.
- 4.30 Ms Tanya Running filed evidence to be tabled at the hearing on behalf of Waka Kotahi. Ms Running's evidence set out a limited number of areas where she disagreed with the section 42A report's recommendations. These related to signs and building setbacks from State Highways. Waka Kotahi sought a restriction on the number of characters and words on signs viewed from State Highways, and that all signs be set back from State Highways by at least 15 metres. Waka Kotahi also requested a 20-metre building setback from State Highways should apply in the Heavy Industrial Zone in order to manage effects on traffic safety.
- 4.31 Ms Kahlia Thomas filed evidence to be tabled at the hearing on behalf of Z Energy Limited, BP Oil New Zealand Limited and Mobil Oil New Zealand Limited (collectively the Oil Companies). She noted that the Oil Companies generally supported the section 42A report recommendations in relation to their submission points.
- 4.32 Ms Lisette Balsom on behalf of Waikato Regional Council also tabled evidence expressing support for the section 42A report recommendations. These included the retention of Objectives 4.6.1 and 4.6.6, and Policies 4.6.4 and 4.6.7.
- 4.33 Mr Bevan Houlbrooke filed evidence to be tabled at the hearing on behalf of Mr Greig Metcalfe, owner of a Real Estate Agency with an interest in signage provisions applying in the General and Heavy Industrial Zones. He suggested further refinements to the amended real estate signs rules proposed in the section 42A report. These included removing the requirement for the sign to relate to the site on which it is located and the introduction of a maximum sign size of 2.16 square metres. He considered that these changes would further assist in reducing the instances of real estate signs requiring resource consent.
- 4.34 Mr Keith Frentz filed evidence on behalf of the Ministry of Education which sought a restricted discretionary activity status for educational facilities in the General Industrial Zone, rather than the notified default non-complying activity status for educational facilities other than Trade and Industry Training. In Mr Frentz's opinion, matters of discretion would be able to appropriately address the effects of educational activities in the General Industrial Zone. Alternatively, should this not be accepted, Mr Frentz considered that a discretionary activity status should apply. He also supported a discretionary activity status being applied to educational facilities in the Heavy Industrial Zone, to support the provision of education as a fundamental right.
- 4.35 Mr Frentz also sought changes to the notified rules for educational facilities in the NMBP, which permit facilities with up to 10 students and default to non-complying status for

those with greater than 10 students. He instead supported a restricted discretionary status being applied to facilities with more than 10 students.

- 4.36 Mr Leigh Shaw on behalf of Fellrock Development Limited/TTT Products Limited filed evidence to be tabled in support of a number of section 42A report recommendations in relation to the General Industrial Zone rules. These included the deletion of Rule 20.2.1 (servicing and hours of operation) and Rule 20.2.8 (outdoor storage of goods or materials), increased permitted volumes of earthworks, changes to sign rules, removing the restriction on number of rear lots for subdivision in Rule 20.4.1, retention of Rule 20.4.2 (Subdivision - boundaries for records of title), amendments to the daylight admission standard, and retention of building setbacks.
- 4.37 Ms Pauline Whitney filed evidence on behalf of Transpower NZ which focused on whether the rules regarding subdivision and earthworks near the National Grid should be replicated in each of the zone chapters or the infrastructure and energy chapter. Ms Whitney opposed the “zone by zone” approach and instead preferred a standalone set of National Grid provisions, for the reason it avoids duplication and provides a coherent set of rules which plan readers can refer to. She supported clear cross referencing in the zone chapters. We address this in another decision⁷ but record here that we have adopted a standalone set of provisions for the National Grid, and other infrastructure in the district.
- 4.38 Ms Carolyn McAlley filed evidence on behalf of Heritage New Zealand Pouhere Taonga, and sought recognition of historic and cultural values in Rule 20.2.7.1 Signs, in particular the inclusion of a restricted discretionary activity for signs on historic heritage sites or Maori Sites and Areas of Significance. Alternatively, if a sign is enabled as a permitted activity, then Ms McAlley sought the inclusion of an additional standard regarding the location of the sign on the building and method of attachment of the sign. Ms McAlley concurred with Ms Macartney’s section 42A report recommendation on Rule 20.3.1 Building Height.

5 Panel Decisions

- 5.1 **Attachment 1** contains our decisions. We note that 440 primary submission points were received on the General Industrial and Heavy Industrial Zones, which were considered in a comprehensive section 42A report and rebuttal evidence prepared by Ms Macartney. Following the hearing, Ms Macartney helpfully prepared a further report which contained amended provisions to address many of the submitters’ remaining concerns and incorporated feedback from the submitters.⁸ We have therefore focused our decision on the areas of contention and where we have an alternate view to Ms Macartney’s recommendations set out in her closing statement. We have only briefly discussed the changes to the notified provisions which were agreed between the relevant parties.

⁷ See Decision Report 13: Infrastructure.

⁸ Concluding Hearing Report: Hearing 7 by Jane Macartney, dated 8 May 2020

5.2 The following sub-sections have been grouped by topic, generally in the order of where the provisions appear in the PDP.

General Industrial Zone and Heavy Industrial Zone objectives and policies

5.3 We heard from several submitters on their preferred phrasing of the objectives and policies framework for the Industrial Zones, with a view to providing for the continued operation and growth of industrial activities in the district. Key themes were:

- a. Defining the functions and outcomes of the General Industrial Zone and the Heavy Industrial Zone;
- b. Providing for an increased level of effects generated by activities in the Heavy Industrial Zone; and
- c. Protecting those activities from reverse sensitivity effects.

5.4 We also heard about the importance of maintaining appropriate industrial land supply and protecting its functioning for industrial purposes.

5.5 After careful deliberations we have comprehensively redrafted and consolidated the objectives and policies attached to Ms Macartney's closing statement to concisely state what we consider to be the key aims and outcomes for the Industrial Zones.

5.6 We have adjusted the wording of Objective 4.6.1 from that which was notified so that it supports both existing and new Industrial Zones. These amendments will also better encapsulate the key outcome for both the General and Heavy Industrial Zones, being that the existing and future growth of the district's industry is supported and strengthened. We do not consider that reference to recognising the positive employment and economic benefits of industrial activities is necessary within this objective, as suggested by Ms Hargraves, as it is already addressed in strategic Objective 1.12.6.

5.7 We have then included five policies on:

- a. The functions of the two Industrial Zones (4.6.2);
- b. Maintaining sufficient industrial land (4.6.3);
- c. Management of environmental effects in the Heavy Industrial Zone (4.6.4);
- d. Management of environmental effects in the General Industrial Zone (4.6.5); and
- e. Support of regionally significant industry (4.6.6).

5.8 The new wording of Policy 4.6.2 makes clear the distinction between the zones, being that for the General Industrial Zone, adverse effects should be confined to within the zone, whereas for the Heavy Industrial Zone, effects may extend beyond the zone boundary and be potentially significant (in alignment with the description of these zones in the National Planning Standards). In both Industrial Zones there is still a general obligation on landowners/occupiers to avoid, remedy and mitigate adverse effects. We do not see any need to specify the types of adverse effects generated from Industrial Zones in the policy, as per the wording proposed by Hynds and Ms Macartney.

5.9 We have also carried the functions of the two Industrial Zones through to revised zone descriptions in each of the Industrial Zone chapters, consistent with the National Planning Standards, as follows:

The General Industrial Zone contains areas used predominantly for a range of industrial activities, other than Heavy Industrial Activities, but also other compatible activities.

The Heavy Industrial Zone contains areas used predominantly for industrial activities that generate potentially significant adverse effects, but also other compatible activities.

5.10 Next, we have combined and simplified policies aimed at ensuring a sufficient supply of industrial land and the utilisation of industrial land primarily for industrial purposes into new Policy 4.6.3, as follows:

4.6.3 Policy – Maintain sufficient industrial land

(a) Maintain a sufficient supply of industrially zoned land to meet reasonably foreseeable future demand for industrial land

(b) Utilise industrial land primarily for industrial purposes so as to preserve the functionality of industrially zoned land

(c) Protect industrial activities, and in particular heavy industrial activities, from reverse sensitivity effects associated with activities in non-industrial zones.

5.11 Although Ms Macartney recommended that the activities that are and are not appropriate in the Industrial Zones be described in the policies,⁹ we prefer the approach taken in the notified PDP whereby no such descriptions are included in the policies. We consider that the specific activities which are appropriate in the Industrial Zones are better addressed in the rules. In our view, Policy 4.6.3 above is sufficiently directive when considering any proposed non-industrial activities within the Industrial Zones.

5.12 We have then included two policies setting out the approach to management of environmental effects in each of the Industrial Zones, in order to reflect the different functions and zone purposes set out above, (i.e., with activities in the General Industrial Zone required to avoid significant adverse effects on other adjoining zones, and activities in the Heavy Industrial Zone required to avoid, remedy or mitigate adverse effects on adjoining zones). We have also focused on the ‘functionality’ of adjacent zones being maintained in order that they allow the expected outcomes to be delivered.

5.13 As well as the policies specifically applying to the Industrial Zones, we agree with Ms Williams for Tuakau Proteins that Policy 4.7.11 – Reverse sensitivity is also relevant. For consistency with the new Policy 4.6.3, we consider it necessary to amend Policy 4.7.11 so that development in the two Industrial Zones is not required to minimise reverse sensitivity effects. This will help to address submitters’ requests to protect industrial activities from reverse sensitivity effects.

5.14 We do not see a need to include specific objectives and policies addressing any individual Industrial Zone location, and support one set of provisions that are applied consistently across the Industrial Zones throughout the District. For this reason, we do

⁹ See the version attached to the Concluding Hearing Report: Hearing 7 by Jane Macartney, dated 8 May 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 Frenz 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 Frenz 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.

rather than non-complying status, as we consider that a non-complying status may well have unintended consequences in serving to discourage activities that would otherwise be considered to be appropriate.

Landscape planting rules

5.24 Revised permitted activity rules for landscaping were developed by Ms Macartney in collaboration with POAL, Northgate and Van Den Brink, in response to those (as well as other) submitters' concerns about resource consents being required for landscape planting. At the time of the hearing, the wording was not yet settled, but the revised rules were included within the closing statement version of provisions.¹⁴ We consider these to be an appropriate solution and we agree that the provision of landscaping within accepted parameters should have a permitted activity status.

5.25 However, we consider that the rationale for requiring only indigenous vegetation planting, in order to be permitted, is unclear. In our view it is unjustified to specify only indigenous species in relation to the mitigation of landscape and visual effects, and we note that exotic vegetation may often be able to provide screening more quickly than natives would. We also note that this requirement was not included in the notified PDP and have therefore removed the reference to 'indigenous' vegetation from the lot boundary planting rule.

5.26 We also do not consider that 4-metre-wide planting should be required on either side intermittent streams within the Industrial Zones.

Noise rules

5.27 Ms Macartney has generally proposed to carry-over the operative noise rules for the Industrial Zones and specific industrial sites into the PDP. We agree with Ms Macartney that there are good reasons to carry over noise rules where they relate to legacy developments, in circumstances where they are tried and tested, and work well.¹⁵ We support the use of site-specific noise rules, including a date stamp approach for noise from activities for the Horotiu Industrial Park and Huntly Power Station. We note that Tuakau Proteins also sought a site-specific noise rule for its site on Lapwood Road. No acoustic evidence was provided at the Industrial Zones hearing to support this submission and Mr Malcolm Hunt, providing acoustic advice to Council, remained concerned with the requested approach and the potential increase in night-time noise in rural areas that may result.¹⁶ While Tuakau Proteins indicated that acoustic evidence would be provided at the Rural Zone hearing (Hearing 18), this was not provided. We therefore decline to introduce a site-specific noise rule for the Tuakau Proteins facility.

¹⁴ Provisions 20.2.1, 20.5.3.2, 21.2.1 attached to Concluding Hearing Report: Hearing 7 by Jane Macartney, dated 8 May 2020.

¹⁵ Concluding Hearing Report: Hearing 7 by Jane Macartney, Paragraph 4, dated 8 May 2020.

¹⁶ Section 42A Opening statement: Hearing 7 by Jane Macartney, Paragraphs 37-39, dated 21 January 2020.

- 5.28 We heard from PVHL and HVL who supported maintaining the operative plan's approach to noise generation in Pōkeno. We agree with Ms Macartney's revised assessment¹⁷ and consider that revised rules she proposed, and that maintain the status quo situation, provide a more appropriate outcome for Pōkeno than the notified provisions of the PDP.
- 5.29 We note that Ms Macartney's revised provisions for the Heavy Industrial Zone include a night-time noise limit that is to be achieved at sites within the General Industrial Zone. No such night-time limit was included in the provisions for the General Industrial Zone. We agree with the acoustic evidence on night-time limits provided by Mr Styles¹⁸ and are satisfied that no night time noise limits are required between Industrial Zones.

Signage rules

- 5.30 The signage rules are now to be addressed in a new discrete chapter of the PDP, however we include our decisions in relation to signage in the Industrial Zones in this decision as they were canvassed at Hearing 7.
- 5.31 We are satisfied that the signage provisions included in Ms Macartney's closing statement are appropriate. While the planning witnesses for Northgate and POAL disagree with the provisions relating to freestanding signs, we are satisfied that permitted activity rules allowing one sign with an area of 3 square metres, and 1 square metre for an additional sign, are appropriate. We are also satisfied that those rules adequately respond to Mr Houlbrooke's concerns in relation to real estate signs, Waka Kotahi's issues with respect to signs viewed from State Highways, and the controls over signs attached to heritage items sought by NZHPT (noting that there is only one heritage item identified within the General Industrial Zone).
- 5.32 The Oil Companies' submission sought a height limit of 15 metres for signs in the General Industrial Zone but provided no evidence in support of that limit. Absent such evidence, we consider the notified 10-metre height limit to be appropriate.
- 5.33 We are also satisfied that health and safety signage associated with infrastructure is adequately covered for all zones by Rule 14.3.1 P11 in Chapter 14, and that health and safety signage continues to be managed by legislation outside of the PDP.

Land use – Building Controls

- 5.34 Regarding the building height rule for the Huntly Power Station site, we agree with Mr Matthews that the existing scale of buildings should continue to be provided for and have included a site-specific building height rule which accommodates the existing building envelope (including building vents), also preserving the potential for possible future site development. We have also included a specific building height rule for the Whangarata Business Park, reflecting the existing limit in the Operative District Plan which was set

¹⁷ Attachment 2 to Concluding Hearing Report: Hearing 7 by Jane Macartney, dated 8 May 2020.

¹⁸ Summary statement of evidence of Jon Styles for Havelock Village Limited, dated 21 January 2020.

- through Plan Change 22 to the Franklin District Plan – Whangarata Business Park (operative in 2010), thereby maintaining the existing development potential of the site.
- 5.35 We agree with Ms Macartney that the Height in Relation to Boundary rules should apply to sites in the Industrial Zones that abut a site located in other zones, due to potential amenity effects such as shading on those non-industrial sites. Ms Rykers for Synlait was concerned that this rule should not apply to adjoining rural zones. While we accept that amenity effects on rural land may not necessarily be an issue in all cases, we are not persuaded by Ms Ryker’s evidence.
- 5.36 KiwiRail sought that buildings and earthworks be required to be set back 5 metres from the railway corridor. Ms Macartney considered that a 5-metre setback would adversely impact landowners in the Industrial Zones. The evidence has not convinced us that a 5-metre building setback is required.
- 5.37 As recommended by Ms Macartney, we are reducing the building setback required where a site adjoins another zone (other than Industrial Zones), from 7.5 metres as notified to 3 metres in the PDP.
- 5.38 We consider that a 1.5-metre setback for earthworks from any infrastructure, as sought by KiwiRail, would be problematic and have not included that requirement in the provisions. We consider that the onus is on KiwiRail to ensure that the designated width of the railway corridor includes sufficient land to ensure that the integrity of the corridor can be maintained. We also note that there are permitted activity controls and matters for discretion relating to land stability that apply to earthworks in the Industrial Zones.
- 5.39 We now turn to consider the building setback rules for water bodies. Ms Macartney’s closing statement version proposes a 30-metre building setback from a lake margin, a wetland that is identified on the planning maps, and the bank of a river (other than the Waikato and Waipa Rivers) whose bed has an average width of 3 metres or more. She included a 50-metre setback from the Waikato and Waipa Rivers as per the notified PDP. For other perennial and intermittent streams and wetlands, a 10-metre building setback was proposed.
- 5.40 POAL’s submission sought the status quo approach from the Operative District Plan is applied, which contains the same 30-metre setback from 3-metre-wide rivers but does not require any setback from perennial or intermittent streams whose average width is less than 3 metres.¹⁹ Council’s submission requested the setback from the Waikato and Waipa Rivers be reduced to 32.5 metres.²⁰
- 5.41 We consider that the notified setbacks from waterbodies are excessive and require revision. We have included a setback of 37 metres from the Waikato River, consistent with the extent of the Outstanding Natural Landscape Overlay (as per Decision Report

¹⁹ POAL submission point 578.18, and POAL feedback in Attachment 10 to Concluding Hearing Report: Hearing 7 by Jane Macartney, dated 8 May 2020.

²⁰ Waikato District Council 697.652.

10). For all other rivers and perennial or intermittent streams, we consider a 10-metre setback to be sufficient and appropriate.

5.42 Finally, we agree with Ms Whitney for Transpower that a standalone set of provisions for the National Grid are appropriate in the Infrastructure Chapter and no provisions should be added into the Industrial Zones chapters.

Subdivision

5.43 Mr Sharman for FENZ sought a requirement for newly created lots to connect to water supply sufficient for firefighting purposes, which would not necessarily be public-reticulated. We agree that adequate water supply for firefighting is an important consideration for subdivision applications, which as a minimum have a restricted discretionary status. We consider that the addition of a matter of discretion on water supply for firefighting, as proposed by Ms Macartney,²¹ allows for the appropriate consideration of this matter.

Horotiu Industrial Park

5.44 Ms Macartney has recommended a new Section 20.5 be included in the General Industrial Zone chapter that specifically relates to Horotiu Industrial Park, where POAL's inland freight hub is located. We largely agree with the contents of this new section and have included a new 'Precinct' applying to this site on the planning maps (see Figure 2 below) as well as a 'specific control' mapping the location of the earth bund. However, as mentioned above, we do not support the inclusion of specific Horotiu objectives and policies in Chapter 4. Instead, we consider that the objectives and policies for the General Industrial Zone are sufficient.

5.45 We consider that the plan needs to state explicitly which rules from the General Industrial Zone apply to the Horotiu Industrial Park. While we acknowledge that Council has agreed wording with POAL and Northgate representatives, we are concerned that the wording is still not sufficiently clear in circumstances where the new Section 20.5 is silent on a matter addressed elsewhere in Section 20. We have therefore revised the wording of this clause.

5.46 We are satisfied that there is no compelling reason for having bespoke signage provisions for the Horotiu Industrial Park and agree with Ms Macartney that the provisions for the General Industrial Zone should apply.

²¹ Rule 20.4.1(RD1)(b)(iii) and Rule 21.4.1(RD1)(b)(iii), in Attachments 3 and 4 to Section 42A rebuttal evidence Hearing 7: Industrial Zone and Heavy Industrial Zone, dated 13 January 2020.

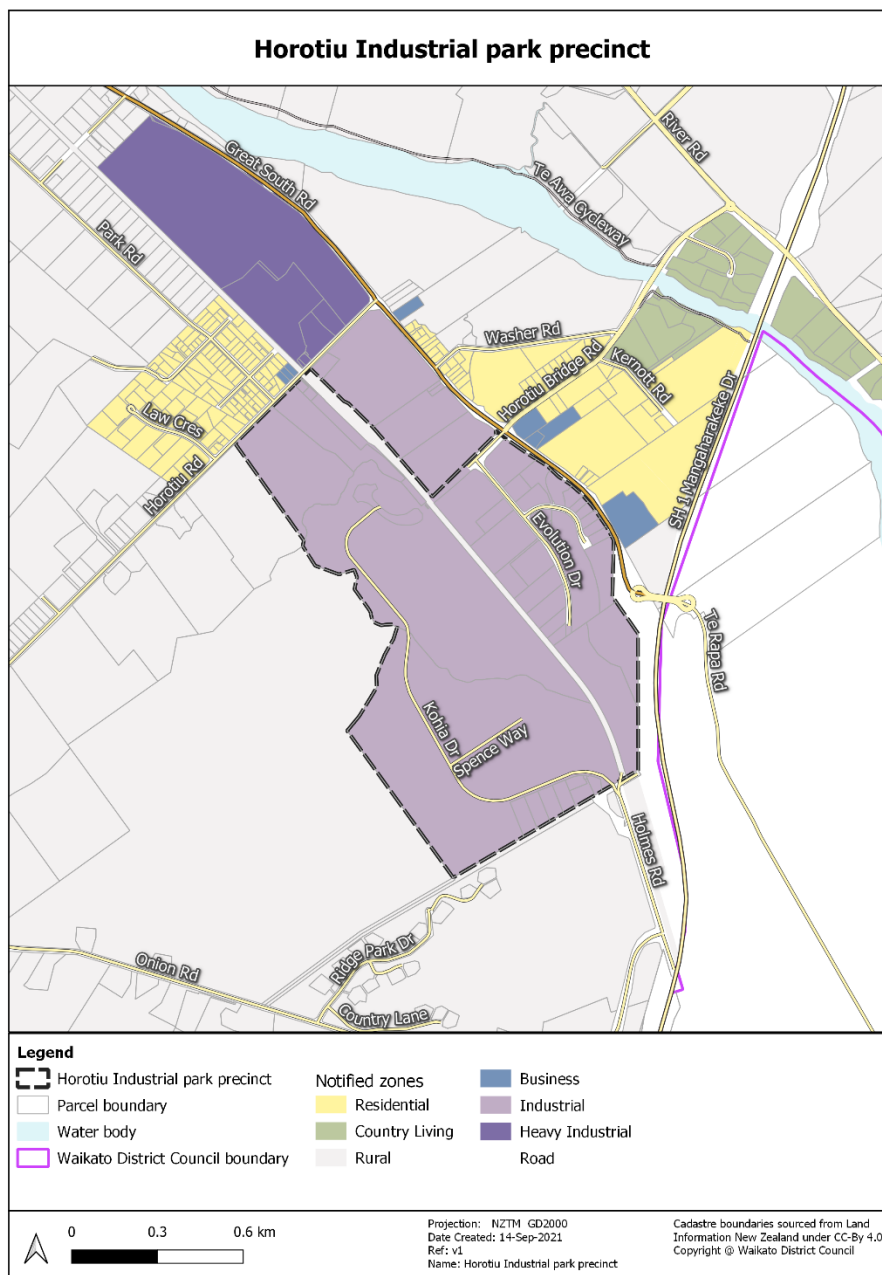


Figure 2: Horotiu Industrial Park precinct

Pōkeno Gateway Industrial Park

5.47 The decision on incorporating the Pōkeno Structure Plan activities into the PDP is covered under Decision Report 281 relating to Hearing 25.

Nau Mai Business Park

5.48 Ms Macartney and Mr Barrett are agreed that the General Industrial Zone provisions should apply to the Nau Mai Business Park and the notified site specific provisions removed from the District Plan. We agree.

5.49 We also agree with Ms Macartney's assessment that other matters relating to signage, the storage of fireworks, landscaping, mapping of 'effective building areas' and on-site tanks for liquid trade waste in the NMBP are addressed in the land use consent for the Nau Mai Business Park and the consent notices registered on the individual titles.²²

Other matters

5.50 We agree with the following recommendations made by Ms Macartney and have amended the plan provisions accordingly:

- a. Deletion of servicing and hours of operation and outdoor storage of goods or materials rules in both Industrial Zones;
- b. Minor amendments to the glare and artificial light spill rules for both Industrial zones so that they do not apply to other sites in the Heavy Industrial Zone and General Industrial Zone;
- c. Minor amendments to the earthworks rules for both Industrial Zones, including increased permitted limits of 10,000m³ volume and 10,000m² area; and
- d. For both Industrial Zones, removal of the rear lot restriction on subdivision, adjustments to esplanade reserve and esplanade strip rules, and the insertion of additional matters of discretion for subdivision.

5.51 We also have made a number of minor amendments to improve the clarity and application of the General Industrial Zone and Heavy Industrial Zone provisions. We have also deleted reference to those overlays that are not present within the zone in question.

6 Conclusion

- 6.1 We accept and / or reject the section 42A report and the evidence filed by the submitters, collectively forming the section 32AA assessment informing this Decision.
- 6.2 The final set of provisions for the General Industrial Zone and Heavy Industrial Zone are set out as **Attachment 1**.
- 6.3 Overall, we are satisfied that the General Industrial Zone and Heavy Industrial Zone provisions as amended will provide a suitable framework for managing land use, subdivision and development within these zones.

For the Hearings Panel

²² Concluding Hearing Report: Hearing 7 by Jane Macartney, Paragraphs 113-117, dated 8 May 2020.

