

BEFORE THE INDEPENDENT HEARINGS PANEL FOR THE PROPOSED WAIKATO
DISTRICT PLAN

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Waikato District Plan, Stage 1: Hearing 18 – Rural
Zone

PRIMARY STATEMENT OF EVIDENCE BY RICHARD MATTHEWS

8 September 2020

FOR GENESIS ENERGY LIMITED SUBMITTER #924

EXECUTIVE SUMMARY

1. In my evidence, I have proposed changes to the Proposed Plan Rural Zone provisions, based on submissions made by Genesis Energy Limited, seeking to:
 - a) Ensure that the ongoing operation, maintenance and upgrading of the nationally significant HPS is not compromised through or affected by sensitive activities in the Rural Zone; and
 - b) Ensure that the HPS infrastructure that is located in the Rural Zone, in particular the coal management area, HPS ash ponds and ash pipeline, are provided for.
2. I set out relevant provisions of the Waikato Regional Policy Statement as these should guide the District Plan provisions, observing that the District Plan is required to "give effect" to the Regional Policy Statement in accordance with section 75 (3) (c) of the Resource Management Act 1991. In particular, I refer to the definition of "reverse sensitivity" as well as the Policy Statement provisions for regionally significant infrastructure and regionally significant industry.
3. I consider that the Regional Policy Statement definition for reverse sensitivity should be used in the District Plan, rather than creating a new definition for the District Plan alone.
4. I recommend a change to Policy 5.3.3 (Industrial and Commercial Activities) to provide for existing non-rural activities in rural locations where those activities are managed to ensure that their scale, intensity, and built form are in keeping with their existing scale and they maintain a level of amenity for neighbouring sites in keeping with a rural environment.
5. I generally agree with the rewording of Policy 5.3.7 proposed in the section 42A Report by Mr Cleese. However, in my opinion, the rewording proposed focuses on avoiding reverse sensitivity effects on activities within the rural zone and does not adequately address reverse sensitivity caused by activities within the Rural Zone on activities lawfully established outside (but adjacent to) the zone. Clause (b) in the proposed rewording only relates to "lawfully established productive rural activities, intensive farming, rural industry, strategic infrastructure, or extractive activities" and does not provide any policy support for activities on the interface of zones.
6. Mr Cleese also refers to "network infrastructure" in the section 42A Report and

(for example) in proposed amendments to Objective 5.1.1. In Policy 5.3.7, the term "strategic infrastructure" is used. The term "strategic infrastructure" is not used consistently throughout the Proposed Plan or section 42A reports (this varies between "infrastructure", "significant infrastructure", "regionally significant infrastructure" and various other phrases, including "utilities" as used in the Stage 2 provisions) nor is this term defined by any of the s42A Report authors.

7. The term "infrastructure" should also include the HPS ash ponds and related infrastructure which should also be protected from reverse sensitivity effects as it is an integral part of the Huntly Power Station operation.
8. I recommend amendment to the policy to address the matters I have identified and to focus on reverse sensitivity effects.
9. I agree with the s42A Report recommended changes in respect of the naming of Policy 5.3.17 (which would become Policy 5.3.20 with the recommendations) to better reflect the nature of the ash ponds operations and with the recommended amendments to the policy.
10. I consider that the rule framework, as recommended by the s42A Report author is unnecessarily complex as it still requires reference back to the rules in the Zone as a whole to determine what the rules relevant to the Ash Management Area are. I recommend that the hierarchy is simplified and set out my recommended wording to achieve this.
11. In addition to seeking clarification of the rule framework, the Genesis submission also sought specific provision in the permitted activity rules for up to 85 heavy vehicle movements per day for transport of coal ash away from the ash management area. The transportation of ash away from the ash management site is an integral part of the management of the ash and enables the long-term disposal of ash. Several transportation assessments have shown that the traffic movements involved (up to 85 heavy vehicles per day) can be readily accommodated within the roading network and with the accessways provided. I therefore recommend inclusion of provision for up to 85 heavy vehicle movements per day from the ash management site as a permitted activity.

INTRODUCTION

12. My name is Richard John Matthews. I hold the qualifications of Master of Science (Hons) degree specialising in Chemistry and have been working on resource consent applications (and their former descriptions under legislation prior to the commencement of the Resource Management Act 1991) since 1979 and advising on Regional and District Plan provisions since 1991.
13. I am a partner with Mitchell Daysh Limited, a specialist environmental consulting practice with offices in Auckland, Hamilton, Napier, and Dunedin. Mitchell Daysh Limited was formed on 1 October 2016, as a result of merger between Mitchell Partnerships Limited and Environmental Management Services.
14. I prepared evidence for the Proposed Waikato District Plan, Stage 1: Hearing 1, Chapter 1 Introduction and Hearing 2, Plan Structure and All of Plan hearings. My experience is set out in that evidence.
15. I have been providing planning advice to Genesis Energy Limited (“**Genesis**”) with respect to Huntly Power Station activities since 1999 and am familiar with the power station operations, the resource consents applicable to the site and the Operative Regional and District Plan provisions relevant to the site.

Code of Conduct

16. While not directly applicable to this hearing, I confirm that I have read the “Code of Conduct for Expert Witnesses” contained in the Environment Court Consolidated Practice Note 2014. I agree to comply with this Code of Conduct. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

Scope of Evidence

17. My evidence discusses the Genesis Submissions (submitter ID 924) and Further Submissions (submitter ID 1345) on the Proposed Waikato District Plan (“**PDP**”) with respect to the matters addressed in the Section 42A Report (prepared by Mr Jonathan Clease) for Hearing 18.

Genesis Energy Limited Background and Submissions

18. Section 2 of the Genesis submission and my Hearing 1 and 2 evidence sets out the background to Genesis' interests in the Waikato District.
19. Genesis Energy owns and operates the Huntly Power Station ("**HPS**"). The HPS is located on Heavy Industrial Zone land bordering Rural Zoned land and activities related to the power station operation, such as coal receipt and ash management activities, are located on Rural Zone land.
20. The Submissions made by Genesis in respect of the Rural Zone fall into two broad categories, as follows:
 - (a) Ensuring that the ongoing operation, maintenance and upgrading of the nationally significant HPS is not compromised through or affected by sensitive activities in the Rural Zone.
 - (b) Ensuring that the HPS infrastructure that is located in the Rural Zone, in particular the coal management area, HPS ash ponds and ash pipeline are provided for.
21. I have read the s42A Reports relevant to Hearing 18. I do not propose to repeat the matters addressed in those reports other than to highlight particular points and focus on the aspects addressed in the Genesis submissions and further submissions.

CURRENT POLICY AND PLANNING FRAMEWORK

22. The following section of my evidence identifies the relevant provisions of the statutory planning framework applicable to reverse sensitivity and protecting regionally significant industry and regionally significant infrastructure. In particular, I set out below relevant provisions of the Waikato Regional Policy Statement ("**Waikato RPS**") as these should guide the District Plan provisions.

Waikato Regional Policy Statement

23. In accordance with section 75 (3) (c) of the Resource Management Act 1991, the PDP is required to "give effect" to the Waikato RPS.
24. I note that the Waikato RPS includes a definition of "Reverse Sensitivity":

Reverse sensitivity – is the vulnerability of a lawfully established activity to a new activity or land use. It arises when a lawfully established activity causes potential, actual or perceived adverse environmental effects on the new activity, to a point where the new activity may seek to restrict the operation or require mitigation of the effects of the established activity.

25. While I address the matter of the definition of reverse sensitivity in response to the section 42A report later in my evidence, in my opinion, instead of including a new definition of reverse sensitivity in the PDP, the Waikato RPS definition should be utilised.

26. As detailed in my evidence for Hearing 1, Chapter 1 Introduction and Hearing 2, Plan Structure and All of Plan and Hearing 7, Industrial and Heavy Industrial Zone, the HPS is a 'Regionally Significant Industry', as defined in the Waikato RPS as follows:

Regionally significant industry – means an economic activity based on the use of natural and physical resources in the region and is identified in regional or district plans, which has been shown to have benefits that are significant at a regional or national scale. These may include social, economic or cultural benefits.

27. The HPS is also an example of a Regionally Significant Infrastructure, defined in the Waikato RPS as being [emphasis added]:

Regionally significant infrastructure – includes:

- a) pipelines for the distribution or transmission of natural or manufactured gas or petroleum;
- b) infrastructure required to permit telecommunication as defined in the Telecommunications Act 2001;
- c) radio apparatus as defined in section 2(1) of the Radio Communications Act 1989;
- d) the national electricity grid, as defined by the Electricity Industry Act 2010;
- e) a network (as defined in the Electricity Industry Act 2010);
- f) infrastructure for the generation and/ or conveyance of electricity that is fed into the national grid or a network (as defined in the Electricity Industry Act 2010);

- g) significant transport corridors as defined in Map 6.1 and 6.1A;
 - h) lifeline utilities, as defined in the Civil Defence and Emergency Management Act 2002, and their associated essential infrastructure and services;
 - i) municipal wastewater treatment plants, water supply treatment plants and bulk water supply, wastewater conveyance and storage systems, municipal supply dams (including Mangatangi and Mangatawhiri water supply dams) and ancillary infrastructure;
 - j) flood and drainage infrastructure managed by Waikato Regional Council;
 - k) Hamilton City bus terminal and Hamilton Railway Station terminus; and
 - l) Hamilton International Airport.
28. I address the Waikato RPS provisions relating to both Regionally Significant Industry and Regionally Significant Infrastructure in my evidence as the provisions of the Waikato RPS are framed differently for each. In my opinion, the HPS fits within the ambit of both definitions.
29. The overarching RPS objective relating to this issue is Objective 3.12 which relates to the Built Environment. Clause (g) requires the built environment and associated land uses to be developed in a manner that minimises land use conflicts, including minimising the potential for reverse sensitivity.

3.12 Built environment

- a) Development of the built environment (including transport and other infrastructure) and associated land use occurs in an integrated, sustainable and planned manner which enables positive environmental, social, cultural and economic outcomes, including by:
 - b) promoting positive indigenous biodiversity outcomes;
 - c) preserving and protecting natural character, and protecting outstanding natural features and landscapes from inappropriate subdivision, use, and development;
 - d) integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of

- infrastructure corridors;
- e) integrating land use and water planning, including to ensure that sufficient water is available to support future planned growth;
 - f) recognising and protecting the value and long-term benefits of regionally significant infrastructure;
 - g) protecting access to identified significant mineral resources;
 - h) minimising land use conflicts, including minimising potential for reverse sensitivity;
 - i) anticipating and responding to changing land use pressures outside the Waikato region which may impact on the built environment within the region;
 - j) providing for the development, operation, maintenance and upgrading of new and existing electricity transmission and renewable electricity generation activities including small and community scale generation;
 - k) promoting a viable and vibrant central business district in Hamilton city, with a supporting network of sub-regional and town centres; and
 - m) providing for a range of commercial development to support the social and economic wellbeing of the region.

Regionally Significant Industry

30. The Waikato RPS sets out an extensive range of policy directives in relation to the built environment, including Regionally Significant Industry. The policy directives require:

- (a) "integrating land use and infrastructure planning, including by ensuring that development of the built environment does not compromise the safe, efficient and effective operation of infrastructure corridors";¹
- (b) "minimising land use conflicts, including minimising potential for reverse sensitivity";²
- (c) "The management of natural and physical resources provides for the continued operation and development of regionally significant industry ... by

¹ Waikato RPS Objective 3.12(c).

² Waikato RPS Objective 3.12(g).

... recognising the value and long-term benefits of regionally significant industry to economic, social and cultural wellbeing ... [and] ... avoiding or minimising the potential for reverse sensitivity";³

- (d) "Local authorities should have particular regard to the potential for reverse sensitivity when assessing resource consent applications, preparing, reviewing or changing district or regional plans and development planning mechanisms such as structure plans and growth strategies. In particular, consideration should be given to discouraging new sensitive activities, locating near existing and planned land uses or activities that could be subject to effects including the discharge of substances, odour, smoke, noise, light spill, or dust which could affect the health of people and / or lower the amenity values of the surrounding area.";⁴ and
- (e) "New development should ... be directed away from identified regionally significant industry ... [and] ... not result in incompatible adjacent land uses (including those that may result in reverse sensitivity effects), such as industry, rural activities and existing or planned infrastructure".⁵

31. Policy 4.4 is particularly pertinent, stating:

Policy 4.4 Regionally significant industry and primary production

- a) The management of natural and physical resources provides for the continued operation and development of regionally significant industry and primary production activities by:
- b) recognising the value and long term benefits of regionally significant industry to economic, social and cultural wellbeing;
- c) recognising the value and long term benefits of primary production activities which support regionally significant industry;
- d) ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated;
- e) co-ordinating infrastructure and service provision at a scale appropriate to the activities likely to be undertaken;
- f) maintaining and where appropriate enhancing access to natural and physical resources, while balancing the competing demand for

³ Waikato RPS Policy 4.4.

⁴ Waikato RPS – Implementation Method 6.1.2.

⁵ Waikato RPS – Section 6A Development Principles (h) and (o).

these resources;

- g) avoiding or minimising the potential for reverse sensitivity; and
- h) promoting positive environmental outcomes.

32. This policy requires that the Waikato District Council manage resource management processes so as to provide for the continued operation and development of the HPS (being a Regionally Significant Industry).
33. Policy 4.4 also requires the provision for the operation and development of Regionally Significant Industry by:
- Recognising the benefits of industry (clause a);
 - Ensuring that the effects of industry are appropriately managed (clause c);
 - At least maintaining (and in some instances, enhancing) access of industry to natural and physical resources, while balancing demands for resources (clause f); and
 - Avoiding or minimising the potential for reverse sensitivity (clause f).
34. In my opinion, Clause (f) is fundamental in respect of HPS submission points relating to sensitive activities locating in close proximity to the HPS. As with Objective 3.12 it requires the Waikato District Council to avoid or minimise the potential for reverse sensitivity. In this regard, the test is to analyse whether there is the *potential* for reverse sensitivity.
35. Implementation Method 4.4.1 (plan provisions) requires that district plans provide for regionally significant industry by (among other matters):
- Identifying appropriate provisions, including zones, to enable the operation and development of regionally significant industry (clause a).
 - maintaining and where appropriate enhancing access to natural and physical resources for regionally significant industry (clause c).
 - recognising the potential for regionally significant industry activities to have adverse effects beyond its boundaries and the need to avoid or minimise the potential for reverse sensitivity effects.
 - recognising and balancing the competing demands for resources between regionally significant industry and other activities (clause g);

- ensuring the adverse effects of regionally significant industry and primary production are avoided, remedied or mitigated (clause h).
36. The thrust of the provisions relating to reverse sensitivity are that where there is potential for reverse sensitivity, this should be actively minimised. There is no need to confirm that reverse sensitivity is an issue for the RPS provisions to carry weight, which in fact would largely be impossible as reverse sensitivity only becomes an issue when it constrains lawfully established operations. It could take a number of years for reverse sensitivity to become an issue for an activity, which is why the potential for reverse sensitivity has to be managed appropriately. One of the key mechanisms utilised in planning to minimise land use conflicts and reverse sensitivity is through appropriate zonings and through setbacks/separation distances.

Regionally Significant Infrastructure

37. In respect of Regionally Significant Infrastructure, RPS Objective 3.12 requires the recognition and protection of the “value and long-term benefits of regionally significant infrastructure”
38. Policy 6.6 requires the management of the built environment in a manner that recognises Regionally Significant Infrastructure. Policy 6.6 states:

Policy 6.6 Significant infrastructure and energy resources

- a) Management of the built environment ensures particular regard is given to:
 - b) that the effectiveness and efficiency of existing and planned regionally significant infrastructure is protected;
 - c) the benefits that can be gained from the development and use of regionally significant infrastructure and energy resources, recognising and providing for the particular benefits of renewable electricity generation, electricity transmission, and municipal water supply; and
 - d) the locational and technical practicalities associated with renewable electricity generation and the technical and operational requirements of the electricity transmission network.
39. Implementation Method 6.6.1 requires that district plans include provisions that:

- (f) provides for infrastructure in a manner that:
 - i) recognises that infrastructure development can adversely affect people and communities;
 - ii) enables the ongoing operation, maintenance, upgrading and development of municipal water supply infrastructure so as to provide for the justified and reasonably foreseeable needs of current and future generations; and
 - iii) does not result in land uses that adversely affect the effective and efficient operation of existing and planned regionally significant infrastructure.

ANALYSIS OF GENESIS' SUBMISSIONS

40. As detailed earlier in my evidence, Genesis' primary interests in the Rural Zone provisions of the PDP are:
- (a) Ensuring that the potential for reverse sensitivity impact on the HPS is avoided or minimised; and
 - (b) Ensuring that the HPS infrastructure that is located in the Rural Zone, in particular the coal management area, HPS ash ponds and ash pipeline, are provided for.
41. I address these matters below in response to the section 24A Report discussions on them.

Definition of Reverse Sensitivity (Submission 924.14, further submission 1345.70)

42. Mr Cleese (at paragraph 293) recommends that a definition of reverse sensitivity be included in the Waikato District Plan:
- means the effect on existing lawful activities from the introduction of new sensitive land uses that may lead to restrictions on existing lawful activities as a consequence of complaints.
43. While I agree that reverse sensitivity should be explicitly defined in the plan, in my opinion, the Waikato RPS definition is preferable as it explicitly mentions the "perception of effects". In my experience, the challenges associated with sensitive activities locating in proximity to non-sensitive activities is the perception that the non-sensitive activity causes adverse effects.

44. I therefore support the PDP using the Waikato RPS definition of “reverse sensitivity” (the Waikato RPS definition is quoted in paragraph 24 of my evidence).

Policy 5.3.3 – Industrial and Commercial Activities (submission 924.47, further submission 1345.23)

45. Mr Cleese recommends that Policy 5.3.3 be amended⁶ as follows:

5.3.3 Policy – Industrial and commercial activities

- ~~(a) Rural industries and services are managed to ensure they are in keeping with the character of the Rural Zone.~~
- (a) Provide for rural industry and rural commercial activities where they are either dependent on the rural soil resource or have a functional or operational need for a rural location. Such activities are to be managed to ensure that:
- (i) their scale, intensity, and built form are in keeping with rural character;
- (ii) they maintain a level of amenity for neighbouring sites in keeping with a rural environment; and
- (iii) they minimise reverse sensitivity effects on existing productive rural, intensive farming, mineral extraction, or rural industrial activities.
- (b) Avoid locating industrial and commercial activities ~~in areas~~ that do not have a genuine reliance on functional connection with the rural land or soil resource or a functional or operational need to locate in the Rural Zone.

46. The Genesis submission sought that the HPS ash management activities are referenced in this policy, through the introduction of a new clause stating:

Provide for the existing coal and ash transport and management facilities associated with the Huntly Power Station.

47. The HPS ash pond area is provided for as a Specific Area in the plan. In my opinion, Policy 5.3.3 should explicitly refer to the HPS ash pond area as sought in the Genesis submission. Alternatively, if Policy 5.3.3 is to be amended the way

⁶ At paragraph 145.

Mr Clease proposes, then it should include specific recognition for *existing* non-rural activities located in the Rural Zone, as follows (my additions in red underlined):

- (a) Provide for rural industry and rural commercial activities where they are either dependent on the rural soil resource or have a functional or operational need for a rural location. Such activities are to be managed to ensure that:
 - (i) Their scale, intensity, and built form are in keeping with rural character;
 - (ii) They maintain a level of amenity for neighbouring sites in keeping with a rural environment; and
 - (iii) They minimise reverse sensitivity effects on existing productive rural, intensive farming, mineral extraction, or rural industrial activities.
- (b) Avoid locating industrial and commercial activities that do not have a genuine reliance on the rural land or soil resource or a functional or operational need to locate in the Rural Zone.
- (c) Provide for existing non-rural activities that have a functional or operational need for a rural location. Such activities are to be managed to ensure that:
 - (i) Their scale, intensity, and built form are in keeping with their existing scale; and
 - (ii) They maintain a level of amenity for neighbouring sites in keeping with a rural environment.

Policy 5.3.7 – Reverse Sensitivity (submission 924.14, further submission 1345.70, 1345.35)

48. Mr Clease recommends that Policy 5.3.7 be reworded⁷, as follows:

5.3.7 Policy – Separation of incompatible activities

- (a) Contain adverse effects as far as practicable within the site where the effect is generated, including through the provision of adequate separation distances between the activity and site boundaries.
- (b) Ensure that the design and location of new sensitive land uses achieves adequate separation distances to mitigate potential

⁷ At paragraph 291

reverse sensitivity effects on lawfully established productive rural activities, intensive farming, rural industry, strategic infrastructure, or extractive activities.

49. I agree with the section 42A Report author generally in terms of the rewording of the policy. However, in my opinion, the RPS policy directives relate to the concept of reverse sensitivity in which the separation of activities is a tool to manage the potential for reverse sensitivity. The rewording proposed also focuses on avoiding reverse sensitivity effects on activities within the rural zone and in my opinion does not adequately address reverse sensitivity caused by activities within the Rural Zone on activities lawfully established outside (but adjacent to) the zone.
50. Clause (b) only relates to “lawfully established productive rural activities, intensive farming, rural industry, strategic infrastructure, or extractive activities”. This does not provide any policy support for activities on the interface of zones, for example, the HPS site is zoned Heavy Industrial but the land surrounding the site is Rural Zone. It therefore does not provide a policy cascade to requiring appropriate separation distances in the Rural Zone for the HPS.
51. Mr Cleese also refers to “network infrastructure” in the section 42A Report and (for example) in proposed amendments to Objective 5.1.1. In Policy 5.3.7, the term “strategic infrastructure” is used. In my opinion, it is important to observe that “network infrastructure” does not include all “infrastructure”. The Rural Zone provisions should not be limited to “network infrastructure” but should refer to “infrastructure”, as well as existing regionally significant industry that is either located in, or adjacent to, a Rural Zone.
52. In paragraph 41 of the s42A Report, Mr Cleese refers to “*organisations that operate either network infrastructure or large existing facilities that are located in or adjacent to the Rural Zone*”, including (amongst others) New Zealand Transport Agency, KiwiRail Holdings Ltd, Radio New Zealand, Genesis Energy Ltd, Meridian Energy Ltd, Synlait Milk and Fonterra. At paragraph 242, Mr Cleese observes that Genesis is an operator “*of network infrastructure*”. Genesis does not (and cannot) operate network infrastructure, nor can it be a Requiring Authority for such activities.
53. As I have set out in my earlier evidence for the Proposed Plan, I consider that the Huntly Power Station is both “regionally significant infrastructure” and “regionally

significant industry” as identified in the Regional Policy Statement. Policy 5.3.7 should provide for both of these.

54. I also note that the term “strategic infrastructure” is not used consistently throughout the Proposed Plan or section 42A reports (this varies between “infrastructure”, “significant infrastructure”, “regionally significant infrastructure” and various other phrases, including “utilities” as used in the Stage 2 provisions) nor is this term defined by any of the s42A Report authors.
55. The term “infrastructure” should also include the HPS ash pond related infrastructure. This activity should also be protected from reverse sensitivity effects as it is an integral part of the HPS operation. I observe that the term “utilities” should also be avoided in the context of electricity generation facilities as electricity generators cannot be Requiring Authorities nor do they provide “network” functions.
56. I also note that clause (b) as proposed by Mr Cleese relates to new sensitive activities. However, in my opinion, this policy should also apply where sensitive activities have already been located in proximity to an existing activity. A policy of this nature is important where that existing activity is required to undertake a new consenting process.
57. Some amendments to the policy to address the matters I have identified above are suggested below (my additions in red underlined and deletions in red ~~strikethrough~~):

5.3.7 Policy – Reverse Sensitivity and separation of incompatible activities

- (a) Contain adverse effects as far as practicable within the site where the effect is generated, including through the provision of adequate separation distances between the activity and site boundaries.
- (b) Ensure that the design and location of new and modification to sensitive land uses achieves adequate separation distances and/or adopts appropriate mitigation measures to mitigate potential reverse sensitivity effects on lawfully established productive rural activities, intensive farming, rural industry, ~~strategic~~ infrastructure, regionally significant industry, or extractive activities.
- (c) Require sensitive activities adjacent to lawfully established productive

rural activities, intensive farming, rural industry, infrastructure, regionally significant industry, or extractive activities to adopt appropriate mitigation measures to mitigate potential reverse sensitivity effects.

Location of Sensitive Activities / Building Setback (Submission 924.37, further submission 1345.129, 1345.148)

58. The section 42A Report, in respect of Genesis submission requesting a 500-metre setback rule for sensitive activities, states⁸:

Genesis Energy [924.37] have sought a new clause covering sensitive land uses within 500m of Huntly Power Station. Huntly Power Station is significant infrastructure where reverse sensitivity risks should be managed. As with the above infrastructure providers, I do not in principle have any objections to the use of setbacks as a tool for mitigating this risk. The submitter is welcome to provide evidence as to why a 500m setback is considered necessary, noting that sensitive land uses are already required to be acoustically insulated where they are located within 350m of Huntly Power Station (see Appendix 1 of the Proposed Plan). I am not convinced that further setbacks are needed on the basis of the information provided in the submission, but am happy to consider specific evidence from the submitter on this matter.

59. While noise is one matter that could result in reverse sensitivity effects, there are other “effects” that can be managed by way of setbacks for sensitive activities. Such effects include visual effects, lighting effects, 24-hour operation, and, in many instances, the mere “presence” of an activity creating the potential for reverse sensitivity effects. The effects may also include air quality effects, where an activity has been established in reliance on existing Regional Council controls and meets required air quality standards, but where land use controls through the District Plan provide the only mechanism to assess the appropriateness of locating next to an existing activity with an authorised discharge to air. I note that Implementation methods 5.3.1 (control discharges) and 5.3.2 (manage air amenity) of the Waikato RPS identifies that the potential for reverse sensitivity to occur in the context of discharges to air.

⁸ At paragraph 312.

60. The 350-metre setback from the HPS only addresses noise, and in my opinion it is equally important for a setback to be imposed, further than 350 metres to deal with other potential effects such as those relating to potential effects that arise in proximity to a heavy industrial site. The Genesis submission sought that 500 metres be used as a buffer for sensitive activities, recognising that noise is only one potential effect that should be considered.
61. In my opinion, the “buffer” should be limited to the area north of Hetherington Road and up to 500 metres from the HPS where there are very few sensitivity activities at present. Such a buffer would retain the existing situation while discouraging any future sensitive activities. The restriction (a consenting regime) would only apply to a new sensitive activity, would provide a buffer out beyond the area where other effects (including consented air discharge and dust effects) could occur, while also reducing some of the visual effects of the HPS. It would also in part incorporate the existing HPS end of the coal conveyor system. In my opinion, 500 metres is a realistic distance to manage other (non-noise) potential reverse sensitivity effects and is appropriate given the scale of the HPS activities.
62. With respect to air discharge effects, the existing Huntly Power Station discharges to air are authorised by way of existing resource consent AUTH123641.01 that expires on 30 June 2037. This consent was granted following a detailed assessment of the effects of discharges to air from the station, which included assessment of expected ground level concentrations from the combustion of fuel at the station and the effect of such discharges on existing and expected activities around the site. In my opinion, it would be appropriate to ensure that the existing low level of development of sensitive activities close to the station is maintained and that any change is only authorised once the full implications of the existing activities have been considered.
63. The effect of the proposed 500-metre setback / buffer would be that any new sensitive activity within 500 metres of the HPS would require a resource consent, rather than being a permitted activity. Genesis, as I understand, is not seeking prohibited activity status and I would not support prohibited or non-complying activity status for these activities but would support a consent regime where the existence of the HPS and the potential for effects on sensitive activities could be addressed. The activity would default to being a discretionary activity in accordance with Rule 22.3.7.2 D1.

64. Through the consenting process, the applicant and Genesis could actively engage on methods to ensure there will not be reverse sensitivity impacts (including such non-RMA matters such as no complaints / no objection covenants). Such methods could include noise insulation as well as the orientation of dwellings.
65. In my opinion, this approach would give effect to the RPS direction requiring the potential for reverse sensitivity to be “avoided or minimised”.

Policy 5.3.17 & Rule 22.6 HPS Coal and Ash Management Area (Submission 924.15, 924.38)

66. Mr Clease accepts the submission of Genesis in respect of the changes to the wording of Policy 5.3.17 (which would become Policy 5.3.20 with his recommendations) to better reflect the nature of the ash ponds operations⁹. I agree with the recommended amendments to the policy.
67. Turning to the rule framework, in my opinion the rule framework as recommended by Mr Clease is still unnecessarily complex as it still requires reference back to the rules in the Zone as a whole to determine what the rules relevant to the Ash Management Area are. I recommend that the hierarchy is simplified, with possible wording set out below.
68. In addition to seeking clarification of the rule framework, the Genesis submission also sought specific provision in the permitted activity rules for up to 85 heavy vehicle movements per day for transport of ash away from the ash management area. This is an integral part of the management of the site, enabling the long term disposal of ash.
69. Proposed Rule P4 14.12.1.4(1)(d) in the proposed Chapter 14 Infrastructure and Energy Zone provides that activities in the Rural Zone can have a maximum of 200 vehicle movements per day, of which no more than 15% are to be heavy vehicle movements. The Proposed Plan provisions therefore allow for up to 30 heavy vehicle movements per day as a baseline for the ash management site.
70. I understand that Genesis has gone through two consenting processes to enable the transportation of ash from the ash ponds to the Hampton Downs Landfill for long term disposal. Both of those consent processes have involved the completion

⁹ At paragraph 433.

of detailed Transportation Assessments that demonstrate that heavy vehicle movements to and from the ash ponds are onto a road that can readily handle the number of heavy vehicle movements involved (up to 85 per day), and that the accessways to and from the site are also appropriate for the number of vehicles involved.

71. The proposed rule for the ash management site is consistent with the site-specific vehicle movement rule 14.12.1.4(1)(f) for the HPS site which recognises that several Transportation Assessments undertaken have demonstrated that heavy vehicle movements to and from the HPS at the numbers identified do not adversely affect the road network. Other site specific assessments have resulted in site specific permitted activity rules (within rule 14.12.1.4) for vehicle movements from the Huntly Quarry site, the Agricultural Research Centre Specific Areas and the Te Kowhai Airpark Zone.
72. In my opinion, given the importance of the HPS and its associated infrastructure, within the Specific Area, a new clause should be inserted permitting up to 85 heavy vehicle movements per day. I have included this matter in my suggested amendments to Rule 22.6.2 P2 below.
73. My amendments to Rule 22.6.2 P2 are as follows, using as a base the amendments recommended by Mr Cleese (my deletions in red ~~strikethrough~~ and insertions in red underline compared with his recommendations):

22.6 Specific Area – Huntly Power Station Coal and Ash Management Areas

22.6.1 Application of Rules

- (a) The rules that apply to a permitted activity are set out in Rule 22.6.2.
- (b) The rules that apply to any other activity that is not provided for in Rule 22.6.2 are those that apply to the Rural Zone, as follows:
 - (i) ~~Rule 22.1 Land Use – Activities~~
 - (ii) ~~Rule 22.2 Land Use – Effects~~
 - (iii) ~~Rule 22.3 Land Use – Building, and~~
 - (iv) ~~Rule 22.4 Subdivision~~

22.6.2 Permitted Activities – Huntly Power Station Coal and Ash Management Areas

(a) In addition to the specific area 22.6 rules, the additional rules that apply to a specific permitted activity within the Huntly Power Station: Coal and Ash Management ~~Specific~~ Areas as identified on the planning maps are as follows:

- (i) Rule 22.2 Land Use – Effects, except:
 - A. Rules 22.3.1 Earthworks
- (ii) Rule 22.3 Land Use – Building, except:
 - A. Rules 22.3.7 Building setbacks do not apply and Rule 22.6.34 applies instead; and
 - B. Rule 22.3.4 Height does not apply and Rule 22.6.45 applies instead.
 - ~~C. Rule 22.6.6 Coal stockpile height, setback and coverage; and~~
 - ~~D. Rule 22.6.7 Energy corridor – transportation of minerals and substances~~

P1	<p>(a) Coal related activities involving:</p> <ul style="list-style-type: none"> (i) stockpiling; (ii) screening and sorting; (iii) use of transportation conveyors; (iv) erection, operation, and maintenance of loading and unloading facilities; and (v) an activity that is ancillary to those listed in (i) – (iv) above.
P2	<p>(a) The management, stockpiling, <u>transportation</u> and disposal of coal ash and the transport of coal ash water where:</p> <ul style="list-style-type: none"> (i) these materials are transported between the Huntly Power Station and the ash disposal ponds located adjacent to Te Ohaaki Road via the pipeline located within Specific Area 22.6; and (ii) they involve the operation and maintenance of the ash disposal ponds located adjacent to Te Ohaaki Road within Specific Area 22.6. (ii) <u>they involve the transportation of ash from the ash ponds to a long-term disposal facility, provided the heavy vehicle movements are no more than 85 per day.</u>

22.6.3 Restricted Discretionary Activities – Huntly Power Station Coal and Ash Management Areas

(a) The activities listed below are restricted discretionary activities.

RD1	<p>(a) The management, stockpiling, <u>transportation</u> and disposal of coal ash and the transport of coal ash water that does not comply with Rule 22.6.7 P1.</p> <p>(b) Council's discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> (i) visual amenity; and (ii) traffic effects.
<u>RD2</u>	<p><u>Any coal-related activity that does not comply with Rule 22.6.2 P1.</u></p> <p><u>(b) Council's discretion is restricted to the following matters:</u></p> <ul style="list-style-type: none"> <u>(i) visual amenity; and</u> <u>(ii) traffic effects.</u>

22.6.3 Discretionary Activities – Huntly Power Station

~~(a) — The activities listed below are discretionary activities.~~

D1	Any coal-related activity that does not comply with Rule 22.6.2 P1.
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22.6.4 Building Setback and Location – Huntly Power Station Coal and Ash Management Areas

P1	(a) A building must be: <ul style="list-style-type: none"> (i) set back at least 20m from every boundary of Specific Area 22.6 where its height exceeds 20m; and (ii) set back at least 10m from every boundary of Specific Area 22.6 where its height is up to 20m; or (iii) located within an energy corridor.
D1	A building that does not comply with Rule 22.6.4 P1.

22.6.5 Building height - Huntly Power Station Coal and Ash Management Areas

P1	(a) A building must not exceed a height of: <ul style="list-style-type: none"> (i) 30m within an area of up to 1500m²; and (ii) 20m for the balance of Specific Area 22.6.
D1	A building that does not comply with Rule 22.6.5 P1.

22.6.6 Coal stockpile height, setback and coverage - Huntly Power Station Coal and Ash Management Area

P1	(a) Coal stockpiles must: <ul style="list-style-type: none"> (i) not exceed a height of 15m; (ii) be set back at least 5m from the boundary of Specific Area 22.6; (iii) not exceed 25% of Specific Area 22.6.
RD1	(a) Coal stockpiles that do not comply with Rule 22.6.6 P1. (b) Council's discretion is restricted to the following matter: <ul style="list-style-type: none"> (i) visual amenity

22.6.7~~8~~ Energy corridor - transportation of minerals and substances - Huntly Power Station Coal and Ash Management Area

P1	(a) The transportation of minerals and substances in an energy corridor must comply with all the following conditions: <ul style="list-style-type: none"> (i) be limited to coal ash, aggregate, overburden, cleanfill, wastewater and other liquids (other than a hazardous substance); (ii) not deposit discernible minerals or dust; and (iii) not result in odour identified outside the energy corridor.
RD1	(a) Any activity that does not comply with Rule 22.6.8 P1. (b) Council's discretion is restricted to the following matter: <ul style="list-style-type: none"> (i) adverse amenity effects.

SECTION 32AA

74. Section 32AA, requires that:

Requirements for undertaking and publishing further evaluations

- (1) A further evaluation required under this Act—
 - (a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and
 - (b) must be undertaken in accordance with section 32(1) to (4); and
 - (c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and
 - (d) must—
 - (i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or
 - (ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.
- (2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).
- (3) In this section, proposal means a proposed statement, national planning standard, plan, or change for which a further evaluation must be undertaken under this Act.

75. In my opinion, the amendments I have proposed are more effective and efficient than those in the section 42A Report because they will achieve similar environmental outcomes, but do so in a manner that does not impact the ongoing operation and maintenance of the HPS and gives effect to the direction of the RPS.

CONCLUSION

76. In addition to the amendments to the Rural Zone chapter recommended in the section 42A report, I consider that the additional amendments outlined in my evidence are necessary to give effect to the Waikato RPS.

Richard Matthews

8 September 2020

Appendix One: Summary of Proposed Changes

Changes Recommended (R Matthews Rural Zone Evidence, 8 September 2020)

1. Definition of “Reverse Sensitivity”:

The Waikato Regional Policy Statement definition for reverse sensitivity should be used in the Waikato District Plan:

Reverse sensitivity – is the vulnerability of a lawfully established activity to a new activity or land use. It arises when a lawfully established activity causes potential, actual or perceived adverse environmental effects on the new activity, to a point where the new activity may seek to restrict the operation or require mitigation of the effects of the established activity.

2. Policy 5.3.3 – Industrial and commercial activities

Amend Policy 5.3.3 as follows (changes from the s42A Report recommendation in red and underlined):

- (a) *Provide for rural industry and rural commercial activities where they are either dependent on the rural soil resource or have a functional or operational need for a rural location. Such activities are to be managed to ensure that:*
 - (i) *Their scale, intensity, and built form are in keeping with rural character;*
 - (ii) *They maintain a level of amenity for neighbouring sites in keeping with a rural environment; and*
 - (iii) *They minimise reverse sensitivity effects on existing productive rural, intensive farming, mineral extraction, or rural industrial activities.*
- (b) *Avoid locating industrial and commercial activities that do not have a genuine reliance on the rural land or soil resource or a functional or operational need to locate in the Rural Zone.*
- (c) *Provide for existing non-rural activities that have a functional or operational need for a rural location. Such activities are to be managed to ensure that:*
 - (i) *Their scale, intensity, and built form are in keeping with their existing scale; and*
 - (ii) *They maintain a level of amenity for neighbouring sites in keeping with a rural environment.*

3. 5.3.7 Policy – Separation of incompatible activities

Amend Policy 5.3.7 as follows (changes from the s42A Report recommendation in red and underlined, deletions in red strikethrough):

5.3.7 Policy – *Reverse sensitivity and s*~~S~~*eparation of incompatible activities*

- (a) *Contain adverse effects as far as practicable within the site where the effect is generated, including through the provision of adequate separation distances between the activity and site boundaries.*

(b) *Ensure that the design and location of new and modification to sensitive land uses achieves adequate separation distances and/or adopts appropriate mitigation measures to mitigate potential reverse sensitivity effects on lawfully established productive rural activities, intensive farming, rural industry, strategic infrastructure, regionally significant industry, or extractive activities.*

(c) Require sensitive activities adjacent to lawfully established productive rural activities, intensive farming, rural industry, infrastructure, regionally significant industry, or extractive activities to adopt appropriate mitigation measures to mitigate potential reverse sensitivity effects.

3. Rule 22.6 HPS Coal and Ash Management Area

Amend Rule 22.6 as follows (changes from the s42A Report recommendation in red and underlined, deletions in red strikethrough):

22.6 Specific Area – Huntly Power Station Coal and Ash Management Areas

22.6.1 Application of Rules

- (a) The rules that apply to a permitted activity are set out in Rule 22.6.2.
- (b) The rules that apply to any other activity that is not provided for in Rule 22.6.2 are those that apply to the Rural Zone, as follows:
 - ~~(i) Rule 22.1 Land Use – Activities~~
 - ~~(ii) Rule 22.2 Land Use – Effects~~
 - ~~(iii) Rule 22.3 Land Use – Building; and~~
 - ~~(iv) Rule 22.4 Subdivision~~

22.6.2 Permitted Activities – Huntly Power Station Coal and Ash Management Areas

- (a) In addition to the specific area 22.6 rules, the additional rules that apply to a specific permitted activity within the Huntly Power Station: Coal and Ash Management Specific Areas as identified on the planning maps are as follows:
 - (i) Rule 22.2 Land Use – Effects, except:
 - A. Rules 22.3.1 Earthworks
 - (ii) Rule 22.3 Land Use – Building, except:
 - A. Rules 22.3.7 Building setbacks do not apply and Rule 22.6.34 applies instead; and
 - B. Rule 22.3.4 Height does not apply and Rule 22.6.45 applies instead.
 - ~~C. Rule 22.6.6 Coal stockpile height, setback and coverage; and~~
 - ~~D. Rule 22.6.7 Energy corridor – transportation of minerals and substances~~

P1	(a) Coal related activities involving: <ul style="list-style-type: none"> (i) stockpiling; (ii) screening and sorting;
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	<ul style="list-style-type: none"> (iii) use of transportation conveyors; (iv) erection, operation, and maintenance of loading and unloading facilities; and (v) an activity that is ancillary to those listed in (i) – (iv) above.
P2	<p>(a) The management, stockpiling, <u>transportation</u> and disposal of coal ash and the transport of coal ash water where:</p> <ul style="list-style-type: none"> (i) these materials are transported between the Huntly Power Station and the ash disposal ponds located adjacent to Te Ohaaki Road via the pipeline located within Specific Area 22.6; and (ii) they involve the operation and maintenance of the ash disposal ponds located adjacent to Te Ohaaki Road within Specific Area 22.6. (ii) <u>they involve the transportation of ash from the ash ponds to a long-term disposal facility, provided the heavy vehicle movements are no more than 85 per day.</u>

22.6.3 Restricted Discretionary Activities – Huntly Power Station Coal and Ash Management Areas

(a) The activities listed below are restricted discretionary activities.

RD1	<p>(a) The management, stockpiling, <u>transportation</u> and disposal of coal ash and the transport of coal ash water that does not comply with Rule 22.6.7 P1.</p> <p>(b) Council’s discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> (i) visual amenity; and (ii) traffic effects.
<u>RD2</u>	<p><u>(a) Any coal-related activity that does not comply with Rule 22.6.2 P1.</u></p> <p><u>(b) Council’s discretion is restricted to the following matters:</u></p> <ul style="list-style-type: none"> <u>(i) visual amenity; and</u> <u>(ii) traffic effects.</u>

~~**22.6.3 Discretionary Activities – Huntly Power Station**~~

~~(a) The activities listed below are discretionary activities.~~

D4	Any coal-related activity that does not comply with Rule 22.6.2 P1.
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22.6.4 Building Setback and Location – Huntly Power Station Coal and Ash Management Areas

P1	<p>(a) A building must be:</p> <ul style="list-style-type: none"> (i) set back at least 20m from every boundary of Specific Area 22.6 where its height exceeds 20m; and (ii) set back at least 10m from every boundary of Specific Area 22.6 where its height is up to 20m; or (iii) located within an energy corridor.
D1	A building that does not comply with Rule 22.6.4 P1.

22.6.5 Building height - Huntly Power Station Coal and Ash Management Areas

P1	(a) A building must not exceed a height of: (i) 30m within an area of up to 1500m ² ; and (ii) 20m for the balance of Specific Area 22.6.
D1	A building that does not comply with Rule 22.6.5 P1.

22.6.6 Coal stockpile height, setback and coverage - Huntly Power Station Coal and Ash Management Areas

P1	(a) Coal stockpiles must: (i) not exceed a height of 15m; (ii) be set back at least 5m from the boundary of Specific Area 22.6; (iii) not exceed 25% of Specific Area 22.6.
RD1	(a) Coal stockpiles that do not comply with Rule 22.6.6 P1. (b) Council's discretion is restricted to the following matter: (i) visual amenity

22.6.78 Energy corridor - transportation of minerals and substances - Huntly Power Station Coal and Ash Management Areas

P1	(a) The transportation of minerals and substances in an energy corridor must comply with all the following conditions: (i) be limited to coal ash, aggregate, overburden, cleanfill, wastewater and other liquids (other than a hazardous substance); (ii) not deposit discernible minerals or dust; and (iii) not result in odour identified outside the energy corridor.
RD1	(a) Any activity that does not comply with Rule 22.6.8 P1. (b) Council's discretion is restricted to the following matter: (i) adverse amenity effects.

Clean Version:

22.6 Specific Area – Huntly Power Station Coal and Ash Management Areas

22.6.1 Application of Rules

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- (b) The rules that apply to any other activity that is not provided for in Rule 22.6.2 are those that apply to the Rural Zone.

22.6.2 Permitted Activities – Huntly Power Station Coal and Ash Management Areas

- (a) In addition to the specific area 22.6 rules, the additional rules that apply to a specific permitted activity within the Huntly Power Station: Coal and Ash Management Areas as identified on the planning maps are as follows:
- (i) Rule 22.2 Land Use – Effects, except:
 - A. Rules 22.3.1 Earthworks
 - (ii) Rule 22.3 Land Use – Building, except:
 - A. Rules 22.3.7 Building setbacks do not apply and Rule 22.6.34 applies instead; and
 - B. Rule 22.3.4 Height does not apply and Rule 22.6.45 applies instead.

P1	<p>(a) Coal related activities involving:</p> <ul style="list-style-type: none"> (i) stockpiling; (ii) screening and sorting; (iii) use of transportation conveyors; (iv) erection, operation, and maintenance of loading and unloading facilities; and (v) an activity that is ancillary to those listed in (i) – (iv) above.
P2	<p>(a) The management, stockpiling, transportation and disposal of coal ash and coal ash water where:</p> <ul style="list-style-type: none"> (i) these materials are transported between the Huntly Power Station and the ash ponds located adjacent to Te Ohaaki Road via the pipeline located within Specific Area 22.6; and (ii) they involve the operation and maintenance of the ash disposal ponds located adjacent to Te Ohaaki Road within Specific Area 22.6. (ii) they involve the transportation of ash from the ash ponds to a long-term disposal facility, provided the heavy vehicle movements are less than 85 per day.

22.6.3 Restricted Discretionary Activities – Huntly Power Station Coal and Ash Management Areas

- (a) The activities listed below are restricted discretionary activities.

RD1	<p>(a) The management, stockpiling, transportation and disposal of coal ash and coal ash water that does not comply with Rule 22.6.7 P1.</p> <p>(b) Council’s discretion is restricted to the following matters:</p> <ul style="list-style-type: none"> (i) visual amenity; and (ii) traffic effects.
RD2	<p>(a) Any coal-related activity that does not comply with Rule 22.6.2 P1.</p>

	(b) Council’s discretion is restricted to the following matters: <ul style="list-style-type: none"> (i) visual amenity; and (ii) traffic effects.
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22.6.4 Building Setback and Location – Huntly Power Station Coal and Ash Management Areas

P1	(a) A building must be: <ul style="list-style-type: none"> (i) set back at least 20m from every boundary of Specific Area 22.6 where its height exceeds 20m; and (ii) set back at least 10m from every boundary of Specific Area 22.6 where its height is up to 20m; or (iii) located within an energy corridor.
D1	A building that does not comply with Rule 22.6.4 P1.

22.6.5 Building height – Huntly Power Station Coal and Ash Management Areas

P1	(a) A building must not exceed a height of: <ul style="list-style-type: none"> (i) 30m within an area of up to 1500m²; and (ii) 20m for the balance of Specific Area 22.6.
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22.6.6 Coal stockpile height, setback and coverage – Huntly Power Station Coal and Ash Management Areas

P1	(a) Coal stockpiles must: <ul style="list-style-type: none"> (i) not exceed a height of 15m; (ii) be set back at least 5m from the boundary of Specific Area 22.6; (iii) not exceed 25% of Specific Area 22.6.
RD1	(a) Coal stockpiles that do not comply with Rule 22.6.6 P1. (b) Council’s discretion is restricted to the following matter: <ul style="list-style-type: none"> (i) visual amenity

22.6.7 Energy corridor – transportation of minerals and substances – Huntly Power Station Coal and Ash Management Area

P1	(a) The transportation of minerals and substances in an energy corridor must comply with all the following conditions: <ul style="list-style-type: none"> (i) be limited to coal ash, aggregate, overburden, cleanfill, wastewater and other liquids (other than a hazardous substance); (ii) not deposit discernible minerals or dust; and (iii) not result in odour identified outside the energy corridor.
RD1	(a) Any activity that does not comply with Rule 22.6.8 P1. (b) Council’s discretion is restricted to the following matter: <ul style="list-style-type: none"> (i) adverse amenity effects.