

Concluding Hearing Report

Hearing 7

General Industrial Zone & Heavy Industrial Zone

Report prepared by: Jane Macartney

8 May 2020



TABLE OF CONTENTS

1	Executive Summary	3
2	Background	4
3	Submitter feedback on revised provisions.....	4
3.1	Accepted amendments to revised provisions	4
3.2	Synlait	5
3.3	Hynds	10
3.4	Hamilton City Council Feedback.....	13
3.5	'The Oil Companies' Feedback.....	14
3.6	Genesis Feedback.....	16
3.7	Northgate Feedback.....	18
3.8	Ports of Auckland Limited (POAL).....	20
4	Specific Area 20.5: Nau Mai Business Park.....	23
4.1	Background	23
4.2	PWDP Submissions from NMBP and Tasman Lands Limited.....	26
4.3	Analysis of Submissions.....	27
4.4	Meetings and Site Visit to NMBP.....	28
4.5	Agreements reached with NMBP	29
4.6	Recommendation on NMBP	30
5	Conclusion	30

I Executive Summary

1. This concluding hearing report is the result of Hearing 7, submitter evidence, matters discussed by the hearings panel during the hearing, and feedback from submitters on my suggestions for revisions of Chapters 4, 20 and 21 in the PWDP. Further dialogue with submitters after the adjournment of the hearing has resulted in provisions set out in Attachments 1, 2 and 3 (and Attachment 17) that I consider to be a vast improvement on the notified versions in the PWDP as well as my original s42A recommendations and rebuttal evidence.
2. Overall, there are very few remaining points of disagreement. These mainly relate to the policy framework for industry in Chapter 4, where some submitters remain concerned that the policies do not sufficiently attend to reverse sensitivity issues which could risk the success of their industrial operations. While I have accepted some policy amendments, it is my view that the revised rules for industry in Chapters 20 and 21 are appropriately enabling and that reverse sensitivity needs to be addressed in the more strategic objectives and policies for the district, the zoning topic and rules for adjacent sensitive zones that manage location of sensitive land uses and buildings that contain noise-sensitive activities.
3. I consider that the significant amount of positive feedback from submitters confirms that the revised rules are both enabling and reasonable. The most substantive changes include:
 - a. The carry-over of the operative noise rules into the PWDP for Pokeno's industry, the Huntly Power Station and Horotiu Industrial Park
 - b. The carry-over of the operative building height rule for the existing Whangarata Business Park Structure Plan Area into the PWDP to permit a building height of 18 metres in this specific location
 - c. Permitting service stations in both industrial zones
 - d. A new permitted activity rule for landscaping
 - e. An appropriate threshold for buildings to be set back from identified wetlands
 - f. A new objective, policy and rule framework in Development Area 20.5 that recognises and supports the inland freight hub at Horotiu Industrial Park
 - g. Providing residential units for a caretaker or security personnel
 - h. Deleting Specific Area 20.5 for Nau Mai Business Park in favour of applying the standard General Industrial Zone rules.
4. While the district plan review is an opportunity to amend provisions in this way, it is also my view that there are good reasons to carry over some provisions (particularly noise rules) where they relate to legacy developments, are tried and tested, and work well. It is important not to unravel the confidence that industrial investors and the general public have in these types of provisions, as these have involved significant collaboration in previous district plan review or plan change processes.
5. I conclude that the package of provisions satisfies the section 32AA tests (Attachment 16), in that they represent an appropriate balance between enabling industry to thrive within Waikato

District and managing adverse effects generated by them on surrounding environments. Overall, it is my view that these revised provisions provide for sustainable development and therefore achieve the purpose of the RMA.

6. Finally, it will be apparent that my revised rule provisions are expressed differently from those in the PWDP in response to the panel's instructions that they be clear, concise and unambiguous. The panel may wish to consider using Chapters 20 and 21 as a template for other zones.

2 Background

7. Hearing 7 for the General Industrial Zone and Heavy Industrial Zone was held on 21 January 2020.
8. In response to the expert evidence presented at this hearing and matters discussed by the hearings panel at the hearing adjournment, I developed revised objectives, policies and rules for these two zones that, at that time, I considered:
 - (a) clear, concise and unambiguous
 - (b) more enabling for industry
 - (c) reflective of the need for two industrial zones, or alternative methods for efficiently managing the different industrial areas in Waikato District
 - (d) made use of the definitions from the National Planning Standards.
9. These revised provisions for Chapters 4, 20 and 21 are shown in green text in Attachments 1, 2 and 3 and were emailed to all Hearing 7 submitters on 16 April 2020, with an invitation to provide feedback no later than 24 April 2020.

3 Submitter feedback on revised provisions

10. Feedback was received from the following submitters:
 - a. Synlait: Attachment 4
 - b. Hynds: Attachment 5
 - c. Hamilton City Council: Attachment 6
 - d. 'The Oil Companies': Attachment 7
 - e. Genesis: Attachment 8
 - f. Northgate: Attachment 9
 - g. Ports of Auckland Limited: Attachment 10

3.1 Accepted amendments to revised provisions

11. The following sections of this report address the feedback from the submitters in the order of the attachments shown above.
12. To assist the hearings panel, where I have accepted submitter requests to amend provisions in revised Chapters 4, 20 and 21, these amendments are shown in purple ~~strikeout~~/underline.

13. I recommend a small amendment be made to the rule for construction noise in Chapters 20 and 21. This involves deletion of the word ‘controlled’, as the existing word ‘managed’ is sufficient. This amendment was requested by the hearings panel in the context of the hearing for designations (Hearing 15). The recommended amendment to this rule for the industrial zones is therefore consistent with that request.

3.2 Synlait

14. Synlait’s concern is that the revised provisions for their site in the Heavy Industrial Zone ‘*water down the focus on enabling heavy industry, free from the constraints on neighbouring zones*’ and that they reduce or remove their development rights.
15. Synlait requests amendments to Policy 4.6.2(a)(ii)A., shown in red text below:

4.6.2 Policy – Provide Industrial Zones with different functions

- (a) Recognise and provide for a variety of industrial activities within two industrial zones that have different functions depending on their purpose and effects as follows:

(i) **General Industrial Zone**

...

(ii) **Heavy Industrial Zone**

- A. Recognise and provide for an operating environment for a range of heavy industrial and other compatible activities that may generate effects in respect of noise, odour, lighting, and heavy traffic and create potentially high levels of visual impact from buildings and associated parking and loading spaces, outdoor storage, ~~lighting, noise, odour and heavy traffic.~~

16. In my view, these amendments are unnecessary. This policy concerns the provision of industrial zones in recognition of the different needs of industry. I have also considered the amendments sought by Hynds to clarify Policy 4.6.2 (addressed in the following section) and recommend a reordering of text to make this policy clear.
17. How industries operate is a matter managed by rules and I consider that the revised rules (in Attachments 2 and 3) are appropriately enabling, as they permit the establishment and operation of industries with reasonable standards.
18. Synlait supports the revision of Policy 4.6.7, although expresses some concern that clause (b), shown below, could be interpreted in a way that supports or allows the encroachment of sensitive activities on the Heavy Industrial Zone and may impose consequential limitations on heavy industrial activities.

4.6.7 Policy – Management of adverse effects from industrial zones on adjoining sensitive zones

- (a) Manage adverse effects from the visual dominance of buildings, structures and ancillary parking and loading spaces on adjoining sensitive zones.
- (b) Manage adverse effects from the operation of industrial activities, including lighting, noise, odour and traffic, on adjoining sensitive zones.

19. Synlait suggests that this concern could be resolved with a clearer direction in Policy 4.6.2 which identifies the operational requirements of heavy industry and the need to protect this from encroachment by sensitive activities. I consider that this is a separate matter that needs to be addressed in the zoning topic and the rules for adjacent sensitive zones (particularly for nearby sites in rural and residential zones), as these manage the location of sensitive land uses and acoustic construction for buildings that contain noise-sensitive activities. Policy 4.6.7 provides the framework for rules specific to activities operating within the industrial zones.
20. Synlait also suggests that while Policy 4.7.11(b), shown below, is not part of Hearing 7, it may be appropriate to provide a cross reference within this policy to the suite of Section 4.6 policies.

4.7.11 Policy – Reverse sensitivity

- (a) *Development and subdivision design minimises reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment; and*
 - (b) *Avoid potential reverse sensitivity effects of locating new dwellings in the vicinity of an intensive farming, extraction industry or industrial activity.*
21. Cross references are considered unnecessary, as the PWDP, with its objectives and policies, should be read as a whole. This is the intention of locating all of the policies in one section - so they provide overall guidance in the evaluation of zones (in the case of future plan changes) and activities (when applications are made for resource consents).
22. Synlait considers that the description of the Heavy Industrial Zone should be consistent with Policy 4.6.2 and needs to describe the purpose of this zone as enabling the efficient operation of heavy industry without constraints from other activities. I disagree. The zone description mirrors the National Planning Standards and the policies should be consistent with these, rather than the reverse.
23. It is not considered reasonable for an activity to operate without an appropriate framework of rules. The revised rules address a range of thresholds for permitted activities. While front yard or landscape rules could be constraints to industrial development, there are good reasons why, in those cases, amenity impact on receiving environments is highlighted as a matter of discretion. At the same time, because the industrial zones are located in various environments, with each having a diverse range of activities, the scale of environmental impact on them will also vary. Adverse effects from industrial activities must be reasonable and should not be permitted to an extent where third parties are unfairly compromised.
24. Synlait opposes the recommended new noise rule for the Heavy Industrial Zone that is specific to Pokeno (Rule 21.2.2.1A). They are concerned that this new noise rule specifies a maximum limit of 70dBA, rather than the notified limit of 75dBA. They say that they relied on the noise provisions when they purchased their site, and while the first stage of development is complete, the overall long-term noise budget is based on the existing threshold.
25. I consider Synlait's reference to 'the existing threshold' to be the operative Rule 29.5.1 in the Franklin Section of the OWDP which manages noise generated by activities in the Industrial 2 Zone. This rule, shown below, applied when Synlait developed their site in this existing zone, and is operative at the present time:

29.5.1 NOISE

No activity within the zone shall cause the following NOISE levels to be exceeded, for the stated times, at or within the boundary of any other SITE, where the other site is:

- (a) Industrial 2 Zone: 70 dBA Leq
- (b) Residential, Residential 2, Rural-Residential, Village or the notional boundary of any existing dwelling house as of 18 December 2008 in the Rural Zone (Note: the notional boundary is defined as 20 metres from any side of a dwelling house):

Area	The noise level measured within the boundary of a site within the area described in column 1 of this table shall not exceed the following limits:		
	7.00am – 10.00pm	10.00pm – 7.00am	
	(dBA L _{eq})	(dBA L _{eq})	dBA L _{max}
High Background Noise Area (refer to planning maps)	55	45	75
All other areas	50	40	70

- (c) Business Zone:

7.00am – 10.00pm	10.00pm – 7.00am	
(dBA L _{eq})	(dBA L _{eq})	dBA L _{max}
60	50	75

- (d) Light Industrial Zone
65 dBA Leq

Clause 1. above does not apply to construction noise.

The NOISE levels shall be measured and assessed in accordance with the requirements of NZS 6801: 2008 Measurement of Environmental Sound and NZS 6802: 2008 Environmental Noise respectively, or any standards that supersede these standards.

The NOISE shall be measured by a sound level meter complying with the International Standard IEC (1979): Sound Level Meters, Type 1 or any standard that supersedes that standard.

Explanation

The main purpose of the noise controls is to protect Residential and Business Zones from the adverse effects of intrusive noise. As well as providing noise protection on Residential and Business Zone boundaries it is also appropriate that some acoustic control is provided between sites within the Industrial 2 Zone itself.

- 26. Synlait obtained resource consent on 19 March 2018 for bulk earthworks. This was followed by two variations to this consent granted on 7 December 2018 and 19 March 2020 in respect to the volume of earthworks, including cleanfill.

27. I have shown below condition 12 (for LUC04013/18.01) in Attachment 11 and advice note 2 (for LUC0403/18.02) in Attachment 12. These confirm that Synlait must comply with the operative Rule 29.5.1, which includes the 70dBA noise limit within the existing Industrial 2 Zone.

Noise

- 12 Prior to the application for building consent(s) or prior to construction (where a building consent is not required) for sections of works, the Consent Holder shall either provide evidence to the satisfaction of Council, that a AR is not required for that section of work or that a AR has been approved by Council as required by this condition.

The consent holder shall engage a suitably qualified and experienced acoustics expert to prepare a report to the satisfaction of Waikato District Council. The acoustic report (AR) shall demonstrate how the design complies with the noise limits detailed under Rule 29.5.1 b) of Part 29B of the Waikato District Plan Franklin Section, and shall include specific consideration of whether any adjustment for special audible characteristics shall apply in accordance with NZS6802:2008. If any design features (such as cladding) are required to be implemented, these shall be included as a part of any building consent application(s) and shall be maintained in perpetuity. For the avoidance of doubt, a copy of Rule 29.5.1 b) is attached with the consent (Appendix A) and the zoning and policy areas are applicable as of the date of consent granting.

Advice Note: Council may or may not have any report peer reviewed.

2. Other consents/permits may be required

To avoid doubt; except as otherwise allowed by this resource consent, all land uses must comply with all remaining standards and terms of the relevant Waikato District Plan. The proposal must also comply with the Building Act 2004, Hamilton City Council Infrastructure Technical Specifications and Waikato Regional Plans. All necessary consents and permits shall be obtained prior to development.

28. The same approach applies to management of noise generated by Yashili, which is located nearby in the existing Light Industrial Zone. Rule 29C.6.1 in the Franklin Section of the OWDP, shown below, applied when Yashili developed their site in this zone and is operative at the present time.

29C.6.1 Noise

No activity within the zone shall cause the following NOISE levels to be exceeded, for the stated times, at or within the boundary of any other SITE, where the other site is:

- (a) Light Industrial Zone:
65 dBA Leq
- (b) Residential, Residential 2, Rural Residential or Village or the notional boundary of any existing dwelling house in the Rural Zone (Note: the notional boundary is defined as 20 metres from any side of a dwelling house):

Area	The noise level measured within the boundary of a site within the area described in column 1 of this table shall not exceed the following limits:		
	7.00am – 10.00pm	10.00pm – 7.00am	
	(dBA Leq)	(dBA Leq)	dBA L _{max}

High Background Noise Area (refer to the planning maps)	55	45	75
All other areas	50	40	70

(c) Business Zone:

7.00am – 10.00pm	10.00pm – 7.00am	
(dBA L _{eq})	(dBA L _{eq})	dBA L _{max}
60	50	75

(d) Industrial 2 Zone
70 dBA L_{eq}

Clause 1 above does not apply to construction noise.

The NOISE levels shall be measured and assessed in accordance with the requirements of NZS 6801: 2008 Measurement of Environmental Sound and NZS 6802: 2008 Environmental Noise respectively, or any standards that supersede these standards.

The NOISE shall be measured by a sound level meter complying with the International Standard IEC (1979): Sound Level Meters, Type 1 or any standard that supersedes that standard.

Explanation

The main purpose of the noise controls is to protect Residential and Business Zones from the adverse effects of intrusive noise. As well as providing noise protection on Residential and Business Zone boundaries, it is also appropriate that some acoustic control is provided between sites within the Light Industrial Zone itself.

29. As an example, I have shown condition 14(a) below from Attachment 13 which contains the variation granted on 23 October 2015 to Yashili's original resource consent. This confirms that noise from the Yashili site must not exceed 65dBA within the existing Light Industrial Zone.

14 The site shall be designed and the activity operated to ensure that the following noise levels are not exceeded at or within the boundary of any other site:

(a) In the Light Industrial Zone:

(i) 65 dBA (Leq).

30. To date, neither Synlait nor Yashili has applied for resource consents to depart from these noise rules. The recommended noise provisions reflect the status quo and I therefore disagree with Synlait's statement that this involves the loss of development rights.

31. I have recommended new noise rules for Pokeno's heavy industry (and general industry) on the basis of evidence provided at the hearing by Havelock Village and Pokeno Village Holdings. In my view, that evidence provides the justification for maintaining the current operative approach to noise generation in Pokeno, which reflects the operative noise limits for general and heavy industry developed as part of the Pokeno Structure Plan and the spatial distribution of the Pokeno zones.

32. The Pokeno Structure Plan is the result of the former Franklin District Council's Plan Change 24 (PC24). It is embedded in the Franklin Section of the OWDP, has been operative for almost a decade, and has enabled significant residential and industrial development within Pokeno in an integrated manner. I see this structure plan as the most significant in the Waikato District because of the scale of existing development that it enables at a strategic location and continuing demands for further development.
33. The Pokeno Structure Plan was not included in the notified PWDP, however I believe this is a concern to Pokeno Village Holdings, as the plan's spatial distribution and specific rules support the overall integration and development of this town. I support the carry-over of this structure plan into the decision version of the PWDP so that investments in industrial and residential development can continue based on confidence, integration and the framework established by those district plan rules.
34. It is important to note here that the revised versions of Chapters 20 and 21 reflect the operative (therefore, status quo) noise limits, but they provide even more flexibility for industry so that they may generate constant noise levels on a 24/7 basis, rather than having to curb noise during the night-time period (as was notified in the PWDP). This is an important enabling provision that still requires industrial noise to not exceed specified limits when measured in sensitive zones. This approach is also consistent with relevant consents which reference the existing OWDP rules in respect to the noise generated by existing activities in Pokeno.
35. Synlait refers to the request in their submission for rules that provide for directional signage and health and safety signage. I have not responded further to this matter, on the basis that signage will be addressed on a district-wide basis in a new discrete chapter, in accordance with the National Planning Standards.
36. Lastly, Synlait remains concerned with revised Rule 21.3.4 which manages building height in relation to boundary, as they consider that this rule should only apply to adjacent residential zones. I addressed this matter in my rebuttal evidence (at paragraphs 273-274 and repeated below) and remain unpersuaded to change my s42A recommendation.
273. *In respect to my s42A recommendation for Rule 21.3.3 Daylight admission, Synlait states that there is considerable variation across New Zealand as to how this matter is addressed and that there is no clear 'best practice'. However, they consider that a residential zone is clearly the most sensitive, as that is where people expect to enjoy sunlight and an outlook where there is space between buildings. They do not consider that the same applies to a Rural Zone.*
274. *In my view, it is still important to consider shading effects on sites in an adjoining Rural Zone, particularly if there is an existing dwelling in close proximity, or if there is a small adjoining rural title that has yet to be developed. I have presumed that this is the reason why the operative height-to-boundary rule in the Industrial 2 Zone applies to the Rural Zone, in addition to the Recreation, Residential, Residential 2, Rural Residential and Village Zones. My s42A recommendation on this matter is therefore unchanged.*

3.3 Hynds

37. Hynds states that their key outstanding issue is the lack of policy direction to protect the Heavy Industrial Zone from sensitive activities. Without an appropriate policy direction, they say that the integrity of this zone may be compromised and existing, expanded or new heavy industry is at risk of being curtailed, rather than enabled. They have repeated their concern

raised at the hearing about new residential zoning (such as that promoted by Havelock Village) being located in proximity to their site.

38. Hynds supports the intent of Objective 4.6.1, but proposes a minor amendment, shown in red text below, to recognise employment benefits and give better effect to strategic Objective 1.12.6, which seeks to maximise employment and economic growth.

4.6.1 Objective – Economic growth of industry

- (a) ~~The economic growth~~ of the district's industry is supported and strengthened in industrial zones ~~–, recognising the positive employment and economic benefits of industrial activities.~~

39. I agree with this amendment for the reason that it complements, rather than gives effect to, this strategic objective, and have shown this in revised Chapter 4.

40. Hynds requests an amendment to Policy 4.6.2(a)(ii) A., shown in red text below, as they say it otherwise reads as if visual impact from the matters listed is the effect. They also state that this policy needs to refer to potentially significant effects to align with the National Planning Standards and the description of the Heavy Industrial Zone now included in Chapter 21.

4.6.2 Policy – Provide Industrial Zones with different functions

- (a) Recognise and provide for a variety of industrial activities within two industrial zones that have different functions depending on their purpose and effects as follows:

(i) General Industrial Zone

...

(ii) Heavy Industrial Zone

- A. Recognise and provide for a range of heavy industrial and other compatible activities that may generate potentially high significant levels of ~~visual impact from buildings and associated parking and loading spaces~~, outdoor storage, lighting, noise, odour, ~~and~~ heavy traffic. , and visual impact from buildings and associated parking and loading spaces.

41. I agree that alignment with the National Planning Standards is appropriate. However, it is my opinion that visual impact from heavy industrial activities may be significant for more sensitive zones and can relate to outdoor storage, lighting, buildings, and associated parking and loading spaces. Odour and noise effects are not visual but also need to be listed.

42. It would seem that the drafting of the notified Policy 4.6.2 (shown in black text below) and the request from Hynds are both problematic. Instead, my amendments which include a reordering of words (shown in blue text below) for both industrial zones remove what I consider to be ambiguity in notified Policy 4.6.2 so that the directives are made clear:

4.6.2 Policy – Provide Industrial Zones with different functions

- (a) Recognise and provide for a variety of industrial activities within two industrial zones that have different functions depending on their purpose and effects as follows:

- (i) General Industrial Zone
 - A. Recognise and provide for a range of industrial and other compatible activities that can operate in ~~close~~ proximity to more sensitive zones due to the nature and relatively limited effects of these activities, including noise, odour and heavy traffic, and visual impact from buildings, ~~and~~ associated parking and loading spaces, outdoor storage, and lighting, ~~noise, odour and traffic, subject to appropriate separation distances.~~
- (ii) Heavy Industrial Zone
 - A. Recognise and provide for a range of heavy industrial and other compatible activities that may generate potentially significant effects on more sensitive zones, including noise, odour and heavy traffic, and relatively high levels of visual impact from buildings, ~~and~~ associated parking and loading spaces, outdoor storage, and lighting, ~~noise, odour and heavy traffic, subject to appropriate separation distances.~~

- 43. These recommended amendments to Policy 4.6.2 are reflected in revised Chapter 4 (in Attachment I as well as the track change version of Chapter 4 in Attachment 17).
- 44. Hynds requests a new clause (b) in Policy 4.6.3, shown in red text below, as they say that this policy otherwise does not appropriately protect the Heavy Industrial Zone and that, for land supply to be sufficient for future foreseeable demand, it needs to be protected from sensitive activities.

4.6.3 Policy – Maintain a sufficient supply and the integrity of industrial land

- (a) Maintain a sufficient supply and the integrity of industrial land within strategic industrial nodes to meet foreseeable future demands, having regard to the different requirements of general and heavy industries and the location of any sensitive land use or noise-sensitive activity.
 - (b) Protect the heavy industrial activities from reverse sensitivity.
- 45. I do not support the requested clause (b), as this policy deals specifically with the supply and integrity of industrial land within the General Industrial Zone and Heavy Industrial Zone. In my view, the outcome sought by this request is dealt with in the determination of zone extents (particularly new sensitive residential zoning), and rules within those zones that manage the location of sensitive land uses, as well as acoustic construction of buildings which contain noise-sensitive activities.
 - 46. The only other point of disagreement is the recommended new noise rule for the Heavy Industrial Zone that is specific to Pokeno (Rule 21.2.2.1A). Hynds does not provide any reason for their opposition to this new rule, but it is assumed that they are concerned with the reduction in the permitted noise limits compared to the notified version. My response to Synlait’s feedback on this matter is the same and is repeated here.
 - 47. I have recommended new noise rules for Pokeno’s heavy industry (and general industry), on the basis of evidence provided at the hearing by Havelock Village and Pokeno Village Holdings. In my view, that evidence provides the justification for maintaining the current operative approach to noise generation in Pokeno, which reflects the operative noise limits for general

and heavy industry developed as part of the Pokeno Structure Plan and the spatial distribution of the Pokeno zones.

48. The Pokeno Structure Plan is the result of the former Franklin District Council's Plan Change 24 (PC24). It is embedded in the Franklin Section of the OWDP, has been operative for almost a decade, and has enabled significant residential and industrial development within Pokeno in an integrated manner. I see this structure plan as the most significant in the Waikato District because of the scale of existing development that it enables at a strategic location and continuing demands for further development. This structure plan was not included in the notified PWDP, however I believe this is a concern to Pokeno Village Holdings, as the plan's spatial distribution and specific rules support the overall integration and development of this town. I support the carry-over of this structure plan into the decision version of the PWDP so that investments in industrial and residential development can continue based on confidence, integration and the framework established by those district plan rules.
49. It is important to note here that the revised versions of Chapters 20 and 21 reflect the operative (therefore, status quo) noise limits, but they provide even more flexibility for industry so that they may generate constant noise levels on a 24/7 basis, rather than having to curb noise during the night-time period (as was notified in the PWDP). This is an important enabling provision that still requires industrial noise to not exceed specified limits when measured in sensitive zones. This is also consistent with relevant consents which reference the existing OWDP rules in respect to the noise generated by existing activities in Pokeno.
50. Overall, I consider that there is sufficient section 32AA justification to retain Rule 21.2.2.1A, as it represents an appropriate balance between enabling heavy industry and managing the effects of noise on sensitive receiver environments. This reflects the pattern of development and the framework of rules which growth in Pokeno is based upon, where an overall outcome of residential, employment and commercial activity is supported.

3.4 Hamilton City Council Feedback

51. Hamilton City Council (HCC) remains concerned that the revised provisions require large-format retail or offices to be considered as a discretionary activity in the General Industrial Zone, rather than a non-complying activity. They consider that it is unclear what analysis is required for an application to site such activities in industrial zones, and that there is misalignment with Policies 4.6.3 and 4.6.4 unless there is a non-complying activity status.
52. Revised Chapter 21 for the Heavy Industrial Zone specifies a non-complying activity status for retail activities and offices. However, I consider that this is appropriate, given that the land resource in this zone is much more scarce compared to that within the General Industrial Zone. In addition, most of the Heavy Industrial Zone contains substantial, often historic, developments that are extremely important to local, regional and national economies, and these require protection and support.
51. In my rebuttal evidence, I responded to HCC's statement that "it is important that the purpose of the Industrial Zone is not eroded by stand-alone non-industrial activities such as large format retail or offices, which could otherwise be located within the Business Zone or Business Town Centre Zone" with this paragraph:

145. *In response to this evidence, I have studied the pattern of typically small and already developed titles in town centres such as Tuakau and Huntly. In these towns, I consider that it would not be appropriate for 'big box retail' (as one example of a retail activity) to be discouraged from locating within the Industrial Zone as the result of a non-complying activity status, in favour of encouraging their location within the Business Zone and Business Town Centre Zone, which rely predominantly on pedestrian traffic.*
52. I remain of the opinion that a discretionary activity also calls for the precautionary approach sought by HCC, in that it still requires a robust analysis against the objectives and policies for the General Industrial Zone, and the merits of a particular commercial activity must be demonstrated.
53. I remain unconvinced that a more stringent non-complying activity test is warranted for the General Industrial Zone. I consider that this would act as a disincentive for offices and retail from locating in perimeter industrial zones (such as in Tuakau and Huntly) which suit their operational needs as well as customers, without compromising town centres.

3.5 'The Oil Companies' Feedback

54. Key issues supported by 'The Oil Companies' include restructuring of the PWDP to provide discrete chapters for district-wide matters such as signage and earthworks, and the adoption of definitions as directed by the National Planning Standards.
55. They support the provision for service stations as a permitted activity in the General Industrial Zone. However, they are concerned that the revised Chapter 4 does not contain specific objectives and policies for signage or earthworks. They also do not agree that their health and safety signage should be addressed in Chapter 14, because service stations do not meet the definition of 'infrastructure'.
56. They suggest that a new definition for 'service station' would assist, as they consider it is not clear whether a discretionary activity or non-complying activity applies to establish such activity on a site in the Heavy Industrial Zone. This is because a service station is not included in the definition of an 'industrial activity', nor does it qualify as an ancillary retail operation, given that the percentage of gross floor area devoted to retail is typically substantial.
57. I have reflected on the type of activities permitted in the Heavy Industrial Zone, and consider that service stations should also be permitted in this zone. This is because a service station would likely involve a similar amount of land cover from buildings and concreted apron areas when compared to a permitted truck refuelling stop. This approach would be consistent with the provisions in the General Industrial Zone, which permit both truck refuelling stops and service stations.
58. Accordingly, I recommend a new permitted activity rule for service stations in the Heavy Industrial Zone shown as below and in the revised Chapter 21:

Rule 21.1.1 Permitted Activities

Activity		Activity-specific conditions
...		
PII	Service station	Nil

59. The submission from 'The Oil Companies' [785] requests an amendment to the sign rule in the General Industrial Zone to permit a height of 15 metres (rather than 10 metres) for their 'brand' signs. They did not appear at the hearing to provide evidence on the matter of signage as their response tabled at the hearing stated that they generally agreed with the s42A recommendations, which, at that time, supported a resource consent process for service stations in this zone. Without evidence, it is difficult to support any change to signage for service stations in the industrial zones, as the revised provisions already appear to be accommodating. I have therefore not made any change to the rules which allow a 10 metre high sign in the General Industrial Zone and a 15 metre high sign in the Heavy Industrial Zone.
60. I have no further response on service station signage, including health and safety signage, as it is expected that these provisions will be relocated to a discrete new chapter in accordance with the National Planning Standards.
61. I have researched the definition of 'service station' in various district plans, should the hearings panel consider it appropriate to introduce this into the decision version of the PWDP. This research has also followed the recommendation in the earlier Hearing 5 (Definitions) for a definition of 'service station' to be further investigated as a result of various submissions (including from 'The Oil Companies').
62. I have set out below how the definition of 'service station' appears in the Auckland Unitary Plan, Hamilton City District Plan and Waipa District Plan. Overall, my preference is the simpler version in the Auckland Unitary Plan, but I recommend replacement of the term 'accessory activities' with 'ancillary activity', as that is a defined term in both the RMA and National Planning Standards.

a. Auckland Unitary Plan

Service station

A facility where the primary business is selling motor vehicle fuels.

Includes the following accessory activities:

- retail;
- car wash facilities;
- mechanical repair, servicing and testing of motor vehicles and domestic equipment;
- sale of lubricating oils, kerosene, LPG, or spare parts and accessories for motor vehicles; and
- trailer hire.

b. Hamilton City District Plan

Service Station (within the Rototuna Town Centre Zone): Means any premise primarily used for the sale of motor fuels and lubricants by retail and includes:

- a) Mechanical repair and servicing.
- b) Ancillary retail of goods and food provided that the trading space provided within the building devoted to their display, sale or hire does not exceed 50m² GFA.
- c) Vehicle washers.
- d) The hire of trailers.
- e) The storage and retailing of LPG and CNG.

But excludes:

- f) Panel beating and spray painting.
- g) Heavy engineering such as engine reboring and crankshaft grinding.

c. Waipa District Plan

‘Service station’

means any SITE where the PRINCIPAL ACTIVITY is the retail sale of motor fuels and lubricating oils and includes:

- The sale of kerosene, tyres, batteries and other accessories normally associated with motor vehicles; and/or
- The cleaning of vehicles; and/or
- Mechanical and electrical servicing and repair of vehicles and light machinery such as lawn mowers; and/or
- ANCILLARY RETAIL; and/or
- Trailer hire.

But does not include panel beating, spray painting or heavy engineering such as engine reboring and crank shaft grinding.

3.6 Genesis Feedback

63. Genesis comments that the revised Chapter 4 provided for submitter feedback does not indicate any amendment in respect to Policy 4.4.2 Noise (Urban Environment), as it is not coloured green. Their position is that this policy needs to explicitly refer to ‘noise-sensitive activities’ rather than ‘sensitive land uses’.
64. Policy 4.4.2 was addressed in the earlier Hearing 3 (Strategic Objectives), whereas this concluding hearing report deals specifically with submissions addressed as part of Hearing 7. If the hearings panel does consider that an amendment to Policy 4.4.2 is required, this will be reflected in the decision version of the PWDP to be released in 12-18 months’ time.
65. Genesis’ second concern is that Policy 4.6.2 (Provide industrial Zones with different functions) still does not make explicit reference to Huntly Power Station as a ‘regionally significant industry’, as they say that this is required by the Waikato Regional Policy Statement (WRPS).
66. This matter was discussed in my rebuttal evidence (paragraphs 103-108), where I noted that there is no explicit reference to the Huntly Power Station in the WRPS. The only reference made to the Huntly Power Station in the Waikato Regional Plan concerns water take for cooling purposes.

67. Rather than amending Policy 4.6.2 by singling out the Huntly Power Station, I consider that it may be more appropriate to recognise the significance of this operation in the district by further amending the higher level, and therefore strategic, Policy 5.3.17 as shown below. The black underlined text was recommended by Mr Eccles in Hearing 2 and the purple struckout/underlined text is now recommended by me.

5.3.17 Policy – Specific area – Huntly Power Station – Coal and ash water

- (a) *Recognise and protect facilities that are integral to energy production at Huntly Power Station, which is a ~~Regionally Significant Industry~~ and regionally significant infrastructure.*
- (b) *Provide for specific facilities that include the handling and haulage of coal and the disposal of coal ash water within identified areas in close proximity to Huntly Power Station.*
68. Because the Huntly Power Station qualifies with both WRPS definitions of ‘regionally significant industry’ and ‘regionally significant infrastructure’, this further amendment may address the question put to me from the hearings panel that the debate as to whether either definition is a better fit for the Huntly Power Station might simply be ‘a matter of splitting hairs’. I agree.
69. Genesis remains concerned that ‘associated coal stockpiling’ is not explicitly listed alongside the recommended new permitted activity rule in Chapter 21 for ‘Electricity generation on the Huntly Power Station site’ (Rule 21.1.1 P10). They consider that it is necessary to explicitly provide for coal stockpiling activities to avoid potential misinterpretation.
70. I do not consider that an explicit reference to coal stockpiling activities is necessary. This is because such activities are captured by the National Planning Standards definition of ‘ancillary activity’. In my view, there is no risk of future questions on the legitimacy of coal stockpiling which has occurred here for many years and is an obvious component of electricity generation on this site. Furthermore, I note that Genesis supports my s42A recommendation to delete Rule 21.2.8, as it relates to the outdoor storage of materials, on the basis that the stockpiling of coal is captured by the term ‘ancillary activity’.
71. Genesis supports the revised Rule 21.2.2.2 which specifically provides for noise emanating from the Huntly Power Station site. They have noted that the word ‘since’ has been inadvertently missed from P2(a). This correction is shown below and in the attached Chapter 21:
- P2(a) Noise measured within the notional boundary of any residential unit that has existed since 25 September 2004 in the Rural Zone that does not exceed: ...*
72. Genesis has also correctly identified an inadvertent omission from Rule 21.3.1 which deals with building height in the Heavy Industrial Zone, as there is no specific provision for the Huntly Power Station. It would appear that this omission is the result of Genesis needing to first clarify a seeming conflict in their submission, which requested a maximum building height of 60 metres on the Huntly Power Station site, but also the rollover of the operative provision in Rule 24.42, which specifies a maximum height of 50 metres.
73. At the hearing, Mr Matthews helpfully clarified that the 50 metre height limit referred to in operative Rule 24.42 relates to the main boiler hall building envelope, while the 35 metre height limit that applies to 90% of the site relates to other buildings. The two main stacks on the site are approximately 150 metres tall. Mr Matthews stated that the submission requested

a maximum building height of 60 metres in order to accommodate the existing building envelope (which includes building vents).

74. Mr Matthews indicated that the rollover of the operative provision into the PWDP would provide for the development of peaker generation units which are likely needed to support future renewable generation in New Zealand. It is understood that Genesis has already secured air discharge consents for these units.
75. In my view, there is still a conflict between the request for a 60 metre building height and the request to rollover the operative rule which provides for a building height of 50 metres. However, because Genesis' evidence states that a 60 metre height reflects the existing building envelope (including building vents), I consider this is the benchmark that needs to be stated in the rule. I therefore recommend a new P2 rule in Rule 21.3.1 shown as follows and in revised Chapter 21:

21.3.1 Building Height

PI	(a) A building that does not exceed a height of: (i) 35 metres for 2% of the net site area; and (ii) 20 metres over the balance of the net site area.
P2	(a) A building or structure on the Huntly Power Station site that does not exceed a height of: (i) 60 metres; and (ii) 35 metres over the balance of the site.
RDI	(a) A building that does not comply with Rule 21.3.1 PI or P2. (b) Council's discretion is restricted to the following matter: (i) effects on amenity.

3.7 Northgate Feedback

76. With the exception of two issues, Northgate supports all specific Development Area 20.5 rules for Horotiu Industrial Park (HIP) contained in revised Chapter 20.
77. The first issue concerns Rule 20.5.1(a), shown below, which sets out how various rules apply to HIP.

20.5.1 Application of rules

- (a) The rules in Chapter 20 for the General Industrial Zone and Development Area 20.5 apply to the Horotiu Industrial Park identified on the planning maps, unless otherwise specified below, except for all land use activity rules listed as Rules 20.1.1, 20.1.2 and 20.1.3.
78. Northgate has correctly identified an inadvertent omission, in that clause (a) should also to refer to Rule 20.1.4. The non-complying activities list in Rule 20.1.4 for the General Industrial Zone is exactly the same as the list of non-complying activities in Rule 20.5.2.4 for HIP, except that these rules contain different cross-references to the provisions for residential units (i.e. Rule 20.1.1.2 RDI and Rule 20.5.2.2 RD2).
79. Accordingly, it is recommended that Rule 20.5.1(a) be amended as follows:

20.5.1 Application of rules

- (a) The rules in Chapter 20 for the General Industrial Zone and Development Area 20.5 apply to the Horotiu Industrial Park identified on the planning maps, unless otherwise specified below, except for all land use activity rules listed as Rules 20.1.1, 20.1.2, ~~and 20.1.3~~ and 20.1.4.
80. The second matter raised by Northgate is that it is necessary to further amend Rule 20.5.1 by listing the rules in Chapter 20 that do not apply to HIP. They consider that if this is not done, Rule 20.5.1 would require application of all (general) rules in 20.2, 20.3 and 20.4 in addition to the specific rules in Development Area 20.5.
81. In my rebuttal evidence (at paragraph 174), I agreed with the evidence from Mr Mark Arbuthnot (for Ports of Auckland) that it was necessary to amend clause (a) and strike out clause (b) in the notified version (shown below), otherwise it would not be clear whether the provisions in Chapter 20 apply in whole or in part.
- ~~(a) The rules in Chapter 20 for the Industrial Zone and Development Area 20.6 apply to the Horotiu Industrial Park identified on the planning maps, unless otherwise specified below, except for all land use activity rules listed as Rules 20.1.1, 20.1.2 and 20.1.3.~~
- ~~(b) The rules in Development Area 20.6 take precedence where there is any inconsistency with the rules in Chapter 20.~~
82. I consider that the words ‘unless otherwise specified below’ in clause (a) make it clear that the specific 20.5 rules apply instead of the equivalent type of rules in Chapter 20. For this reason, I do not support Northgate’s request to reinstate clause (b).
83. However, I have recently liaised with Mr Arbuthnot on this matter to consider whether clause (a) could be made even clearer, and we both agree that the following wording should alleviate Northgate’s concern:
- (a) The rules in Chapter 20 for the Industrial Zone and Development Area 20.6 apply to the Horotiu Industrial Park identified on the planning maps, unless otherwise specified below in which case the equivalent rules in the General Industrial Zone do not apply, except for all land use activity rules listed as Rules 20.1.1, 20.1.2, ~~and 20.1.3~~ and 20.1.4.”
84. I have therefore amended Rule 20.5.1 (a) in revised Chapter 20 to show this new (purple) text.
85. Northgate remains concerned that the rules for freestanding signs in the General Industrial Zone are too stringent. In their evidence, they suggest the adoption of the approach taken by Hamilton City Council which permits 1m² of signage for every metre of site frontage, up to a maximum of 10m². They also suggest that if this approach is not suitable for the entire General Industrial Zone, it could just apply to Horotiu Industrial Park.
86. As discussed in my rebuttal evidence (paragraph 150), I consider that there is no particular reason why signage provisions should be relaxed specifically for Horotiu Industrial Park. I am still not persuaded that allowing multiple freestanding signs based on a calculation of site frontage would result in a more appropriate environmental outcome than my s42A

recommendation to allow a maximum of two freestanding signs (allowing the first sign to be up to 3m2 and the second sign to be up 1m2) per industrial site. My s42A recommendation, which provides greater flexibility than the notified signage rules, remains unchanged.

87. Unless the hearings panel considers that signage within HIP does need to be treated differently from the rest of the General Industrial Zone, it is expected that their decision on signage will be reflected in a new and discrete chapter so that signage is managed on a district-wide basis as directed by the National Planning Standards.

3.8 Ports of Auckland Limited (POAL)

88. POAL considers that three policies in revised Chapter 4 need amendment.
89. Firstly, they consider that the words 'and the location of any sensitive land use or noise sensitive activity' should be deleted from Policy 4.6.3(a), as shown below:

4.6.3 Policy – Maintain a sufficient supply and the integrity of industrial land

~~(b) Maintain a sufficient supply and the integrity of industrial land within strategic industrial nodes to meet foreseeable future demands, having regard to the different requirements of general and heavy industries. and the location of any sensitive land use or noise sensitive activity.~~

88. They consider that this deletion is necessary, otherwise there will be the potential for sensitive land uses or noise-sensitive activities to constrain the supply of land within the Horotiu strategic industrial node, and that such an outcome is inconsistent with Objective 3.12(g), Policy 4.4(f) and Implementation Method 6.1.2 of the Waikato Regional Policy Statement.
89. I concede that retaining these words (shown in ~~red-strikeout~~ above) would be problematic, because the emphasis of Policy 4.6.3 is to maintain a sufficient supply within industrial nodes for industrial purposes. I consider that the location of any sensitive land use or noise-sensitive activity is a separate matter that needs to be addressed when confirming the extent of sensitive zones (such as residential) and rules within zones (such as setbacks or noise attenuation). Accordingly, I have shown the strikeout of these words in revised Chapter 4.
90. Secondly, POAL states that Policy 4.6.4(b) is directive as a result of using the word 'avoid', therefore it needs to clarify that caretaker and security personnel associated with an industrial activity are anticipated in industrial zones. Otherwise, any application for caretaker or security personnel accommodation would conflict with this policy. I agree. Accordingly, I have shown this amendment to Policy 4.6.4(b) in revised Chapter 4:

4.6.4 Policy – Maintain industrial land for industrial purposes

...

- b) Avoid the unnecessary development of any sensitive land use or noise-sensitive activity in industrial zones, including residential activities: that are not required for caretaker or security personnel associated with an industrial activity.
91. Thirdly, POAL states that an additional policy is required to recognise the inland freight hub as 'regionally significant industry', otherwise, an activity is unable to benefit from the policy

support contained within the Waikato Regional Policy Statement. I agree to this new policy, subject to a minor amendment, so that the hub is referred to as a location for regionally significant industries, rather than it being an industry per se. My amendments to POAL's requested new policy are shown below and in revised Chapter 4:

4.6.9A Policy – Support of regionally significant industry

The inland freight hub at Horotiu Industrial Park is recognised as a regionally significant industry. Support the inland freight hub at Horotiu Industrial Park as a location of regionally significant industry.

- 92. I now turn to POAL's feedback on three matters in revised Chapter 20.
- 93. Firstly, they remain of the opinion that the permitted standards for freestanding signs are too stringent. They request that the size of a freestanding sign should be increased to 15m² (as opposed to the 3m² area recommended in my s42A report) and that any subsequent sign should be allowed to be up to 2m² (as opposed to the 1m² area for one additional freestanding sign recommended in my s42A report).
- 94. As per my response to Northgate, I consider that there is no particular reason why signage provisions should be relaxed specifically for Horotiu Industrial Park. I am not persuaded that allowing larger freestanding signs and setting no limit on the number of such signs on one site would result in a more appropriate environmental outcome than what I recommended in my s42A report.
- 95. Secondly, POAL requests amendments Rule 20.3.4.2 (Building setback – waterbodies) shown in red text below, as they consider that the distinction between P1 and P3 is not as clear as it should be. This is because the broad definition of 'river' in the RMA captures all perennial and intermittent streams, without any distinction between the scale of these water bodies.

20.3.4.2 Building setback – water bodies

PI	(a) A building that is set back a minimum of 30 metres from: (i) the margin of any: A. lake B. wetland C. river bank, other than the Waikato River and Waipa River; <u>or a perennial or intermittent stream.</u>
P2	A building that is set back at least 50 metres from a bank of the Waikato River and Waipa River.
P3	A building that is set back at least 10 metres from the bank of a perennial or intermittent stream; <u>whose bed has an average width of 3m or more.</u>
P4	A pump shed, or a public amenity not exceeding an area of 25m ² , that is located within the building setbacks identified in Rule 20.3.4.2 P1, P2 and P3.
RDI	(a) Any building that does not comply with Rule 20.3.4.2 P1, P2, P3 or P4. (b) Council's discretion is restricted to the following matters: (i) the extent to which the natural character values of the water body are maintained.

- 96. However, I consider that these requested amendments are problematic, as any perennial or intermittent stream whose bed has an average width of less than 3 metres would require

buildings to be set back 30 metres from them. It would appear that POAL has inadvertently applied their P3 amendments to P1 and vice versa.

97. While further reviewing Rule 20.3.4.2, I have also reached the conclusion that a 30 metre setback from any wetland is unreasonable. This is because the RMA definition of ‘wetland’ is so broad that a building setback could apply to any area of ‘soggy land’, irrespective of size and ecological quality. In my view, it is necessary to apply a permitted activity threshold to a wetland in the same way that different grades of waterbodies are addressed. I therefore recommend a further amendment to this rule so that buildings are set back a minimum of 30 metres from a wetland that is identified on the planning maps, otherwise a 10 metre setback applies.

98. My reworked Rule 20.3.4.2 is acceptable to POAL, and is shown below and in revised Chapter 20:

20.3.4.2 Building setback – water bodies

PI	(a) A building that is set back a minimum of 30 metres from: (i) a lake margin (ii) a wetland that is identified on the planning maps (iii) the bank of a river, other than the Waikato River and Waipa River, whose bed has an average width of 3 metres or more.
P2	A building that is set back at least 50 metres from a bank of the Waikato River and Waipa River.
P3	(a) A building that is set back a minimum of 10 metres from: (i) the bank of a perennial or intermittent stream whose bed has an average width of less than 3 metres (ii) a wetland that is not identified on the planning maps.
P4	A pump shed, or a public amenity not exceeding an area of 25m ² , that is located within the building setbacks identified in Rule 20.3.4.2 P1, P2 and P3.
RDI	(a) Any building that does not comply with Rule 20.3.4.2 P1, P2, P3 or P4. (b) Council’s discretion is restricted to the following matters: (i) the extent to which the natural character values of the water body or wetland are maintained.

99. For consistency, I consider that the equivalent rule in the Heavy Industrial Zone should be amended in this way. I have shown this amendment for Chapter 21 in Attachment 3.

100. Lastly, POAL requests an amendment to P2(c) in Rule 20.5.3.1 to ensure that the ‘notional boundary’ concept only applies to existing noise-sensitive receivers as at the date the PWDP becomes operative, otherwise the establishment of a noise-sensitive activity could be established much closer to, and significantly restrict, the industrial activity. This amendment is consistent with POAL’s acoustic evidence provided by Mr Chris Day (paragraphs 3.3-3.4) and recognises this particular reverse sensitivity issue explained in clause 8.4.8 of the NZ Standard 6802 (2008 version). I agree. This accepted amendment is shown below and in revised Chapter 20:

Rule 20.5.3.1 Noise

P2(c) Noise from an activity in the Horotiu Industrial Park that does not exceed the following limits when measured within the notional boundary of any building containing a noise-sensitive activity existing at [the date that the PWDP becomes

[operative\]](#) within any zone outside of the Horotiu Industrial Park and Heavy Industrial Zone (except the Residential Zone):

- (i) 55dBA (LAeq) 7am to 10pm
- (ii) 45dBA (LAeq) and 70dBA (LAmax) 10pm to 7am the following day.

4 Specific Area 20.5: Nau Mai Business Park

4.1 Background

101. Nau Mai Business Park (NMBP) has been developed as the result of a combined land use consent (LUC 0071/10) and subdivision consent (SUB 0048/10) issued on 5 August 2010¹.

4.1.1 Land Use Consent

102. The land use consent for NMBP prescribes the following mix of permitted activities:

¹ Land use and subdivision consent - Attachment 9 s42A hearing report

A. Land Uses Permitted

Provided the performance standards in 'C' below are met the following land uses/activities will be permitted activities within Precincts 12, 14, 15 and 16 (and any subsequent subdivision of these precincts) of the Nau Mai Business and Industrial Park. Light industries/businesses involving the processing, manufacturing, fabricating, packing or storage of goods and servicing and repair activities including:

1. Depots for rural, roading, building contractors and building sub-contractors;
2. Light engineering, manufacturing, and sheet metal fabrication;
3. Woodworking, including but not limited to; kitchen manufacturing, pre-nailing of timber trusses and frames, and furniture making including upholstery;
4. Panel beating and auto trimming;
5. Spray painting;
6. Vehicle disassembly (only within a building);
7. Transport depot – as defined in Appendix P District Plan;
8. Research and technology activities involved in the research, development, manufacture and commercial application of advanced technology including, but not limited to: agritechnology, energy technology, transportation technology, manufacturing technology, soils/water/air resources;
9. Dwelling for caretaker or security personnel (one dwelling per precinct – 70m² habitable floor area);
10. An educational institution involving no more than 10 students;
11. Office that is ancillary to any permitted industrial uses listed herein;
12. Retail activities that are ancillary to any permitted industrial uses (retail activities shall not exceed 20% of floor area of the associated industrial building and the goods sold must be manufactured or stored within the site/lot/precinct or associated industrial building) not including specific uses listed here that have a higher inherent retail component e.g. 15, 20, 21;
13. Food outlet less than 200m² gfa (one for all four precincts);

14. Intensive farming activity but limited to plant nurseries permanently contained in buildings or outdoor enclosures, boarding kennels or catteries;
15. Veterinary facilities;
16. Vehicle and machinery hire;
17. Plant and equipment hire;
18. Self storage facilities;
19. Vehicle and engine repair activities including but not limited to maintenance, testing and certification;
20. Timber and hardware merchant;
21. Farming supplies merchant;
22. Boat repair, building, servicing, storage and chandlery, including bait, ice, and tackle;
23. Refuelling depot (Diesel) – contractors only (not general public);
24. Produce storage;
25. Fertiliser storage;
26. Landscaping supplies;
27. Clothing manufacture;
28. Pump shed;
29. Part Precinct 14 – Uses authorised by Waikato District Council Consent LUC0177/07 – Mini-Mix Plant;
30. Salvaged vehicle compound (provided salvaged vehicles are not visible from SH23);
31. Manufacturing of concrete and clay products, surf boards and sails;
32. Pastoral farming and/or cropping on unused parts of precincts; and
33. Any combination of the above listed uses.

4.1.2 Plan Change 14 - Industrial Zoning of NMBP and introduction of Schedule 24F

103. Council's decision on Plan Change 14 (PCI4) issued on 5 September 2016 and resulted in the NMBP being zoned Light Industrial and the introduction of Schedule 24F into the OWDP. The PCI4 decision noted that the relevant conditions in the 2010 land use consent had been transferred to Schedule 24F as performance standards.
104. Rule 24F.10 in the OWDP sets out the following specific permitted activities:

ITEM	PERMITTED	RESOURCE CONSENT
24F.10 Type of activity	24F.10.1 Any activity listed below is a permitted activity if it complies with the relevant performance standards of this Schedule and the performance standards of the Industrial Zone: (a) Timber and hardware merchant; (b) Farming supplies merchant; (c) Plant nurseries permanently contained in buildings or outdoor enclosures; (d) Landscape supplies; (e) Retail activities that are ancillary to any permitted activity. Retail activities shall not exceed 20 % of the floor area of the associated industrial building and the goods sold must be manufactured or stored within the site/lot excluding those activities (a), (b), (c) and (d) listed in this rule that have higher inherent retail component; (f) Dwelling for caretaker or security personnel (one dwelling per lot with a maximum 70m2 habitable floor area); (g) Veterinary practice; (h) Boarding kennels or catteries permanently contained in buildings or outdoor enclosures; (i) Research and technology activities involved in the research, development, manufacture and commercial application of advanced technology including but not limited to: agritechnology, energy technology, transportation technology, manufacture technology, soils/water/air resources; (j) An educational institution involving no more than 10 students; (k) Food outlet less than 200m2 GFA; (l) Office that is ancillary to any permitted activity; (m) Plant and equipment hire.	24F.10.2 Any activity that is not listed in 24F.10.1 or does not comply with a condition for a permitted activity is a discretionary activity.

107. The list of permitted activities in operative Rule 24F.10.1 is not identical to the list of permitted activities in the 2010 land use consent, nor is it prefaced with the word ‘including’. The overall result is that the land use consent contains a non-exhaustive list of permitted light industrial/business activities, while Rule 24F.10.1 has an exhaustive (therefore, more narrow) list of permitted business activities. The land use consent has been given effect to, will not be surrendered and has precedence over Rule 24F.10.1.

4.2 PWDP Submissions from NMBP and Tasman Lands Limited

108. McCracken Surveys (now Cheal Consultants Limited) lodged Submission 943 to the PWDP on behalf of Tasman Lands Limited (TLL). Their submission opposes the Specific Area 20.5 provisions for NMBP and states: “Delete the entire chapter and consolidate the Nau Mai Business Park area within the Industrial Zone Chapter 20”. Mr Bob Carter, the director of TLL, lodged a further submission (FS1321) in support of this request.
109. TLL’s primary request is for the district plan rules to permit any ‘light industrial activity’, subject to meeting performance standards. This would effectively result in consistency with

the 2010 land use consent which sets out a non-exhaustive list of permitted activities, as confirmed in the legal opinion from Tompkins Wake², which states:

18. Provided an activity falls within the ambit of “light industry/businesses involving the processing, manufacturing, fabricating, packing or storage of goods and servicing and repair activities” and is not listed in section B of Appendix 1 (Land Uses Not Permitted), and meets the performance standards in section C of Appendix 1, the activity is permitted. Section A expressly uses the wording “including”. Hence, the list of activities in section A Permitted Land Uses is intended to be a non-exhaustive list.

110. TLL considers that it was always the intention for PC14 to permit light industry as per their request and discussions with Council at that time. However, despite PC14 rezoning NMBP from Rural to Light Industrial, the notified list of permitted activities did not explicitly provide for all light industries involving the ‘processing, manufacturing, fabricating, packing or storage of goods and servicing and repair activities’.
111. The PC14 decision in Attachment 14 also stated³ that permitted activities need to be specifically identified and that a permitted activity rule cannot contain a non-exhaustive list of activities.

4.3 Analysis of Submissions

112. From my research of these land use consent and plan change processes, it would appear that in carrying over the consented land use activities into district plan rules with PC14, Council staff misunderstood the ‘ambit of light industry/businesses’ already permitted by the land use consent. I consider that the reference to ‘industrial building’ in Rule 24F.10.1(e) highlights this misunderstanding, as none of the permitted activities in Rule 24F.10.1 constitute an industrial activity and instead, appear to have more of a ‘mixed business’ character. In my view, this anomaly can be easily rectified by providing for an ‘industrial activity’ as a permitted activity in the NMBP.
113. TLL’s submission and evidence also request other, less significant, changes to the provisions for NMBP relating to signage, the storage of fireworks, landscaping, mapping of ‘effective building areas’ and on-site tanks for liquid trade waste. All these matters are addressed in the land use consent as well as the consent notice (Attachment 15) now registered on every title within NMBP, therefore I see no value in replicating these matters in the district plan.
114. If these matters were to be replicated in the PWDP, I consider these pitfalls would result:
- (a) The storage of fireworks is a matter addressed by HSNO and the requested prohibited activity rule, which requires an extremely robust s32AA test, would not completely remove the risk of fire from fireworks destroying established landscaping, this being TLL’s concern. Furthermore, no expert evidence on this risk was provided at the hearing to assist with this matter.
 - (b) The origin of proposed Rule 20.5.12 in the PWDP also relates to TLL’s concern with fire potentially destroying established landscaping. This proposed rule replicates condition 25 of the land use consent and stipulates a maximum gross floor area of 800m² for any

² Tompkins Wake legal opinion (Nau Mai Business Park) dated 7 September 2018 and tabled at Hearing 7

³ Plan Change 14 Decision 5 September 2016 – page 46, 5th paragraph

building. It relates to the provision of fire cells, water storage and fire hydrants, which are more appropriately addressed through the building consent process, rather than a district plan rule. I do not consider that there is a valid resource management reason to retain such a rule when there are other rules for building height, boundary setbacks and landscaping that address zone amenity and character. No expert evidence regarding the risk of fire to vegetation or buildings was provided at the hearing to assist with these matters.

- (c) While the storage of liquid trade wastes is addressed by condition 35 of the land use consent and therefore flagged to potential purchasers with the existing consent notice, this is a matter addressed by a Council bylaw. There is no need to replicate this matter in the PWDP.
- (d) The rules and planning map diagrams regarding specific landscaping requirements are addressed in condition 3 of the land use consent, and the requirement to maintain these areas is flagged to potential purchasers with the existing consent notice. However, I have observed that the site plan and cross sections developed by Bernard Brown Associates (Environmental Planning and Design Consultant) referenced in the land use consent, the OWDP and PWDP, are outdated and not easily interpreted, such that they should not be included in the district plan.

115. I have further observed that condition 3 of the land use consent refers to a report labelled 'Landscape and Visual Effects Assessment & Proposed Landscape Mitigation Concept' dated May 2009 and supplement dated 3 December 2009. These are more recent than the plan dated March 2009, which is referred to in notified Rule 20.5.5.

116. I therefore conclude that it is more appropriate for the consent notice to continue managing the landscaping of parking and storage areas alongside roads within NMBP, rather than using a district plan rule. For the General Industrial Zone outside of the NMBP, landscaping is only required along boundaries that adjoin a more sensitive zone (such as a Rural or Residential Zone). I do not consider that the district plan should impose landscaping rules (or any other rule) for the NMBP that are more stringent than for other sites in this same zone. I do not consider that there is an effective section 32AA justification for this, or evidence to support these outcomes.

117. The matters concerning 'Effective Building Areas' are already reflected in conditions 25 and 26 of the land use consent and are flagged to potential purchasers with the existing consent notice. It is also my opinion that the term 'Effective Building Area' is a misnomer because it prematurely signals that the whole of this area can be built on prior to any geotechnical investigation that is part of the building consent process and also disregards required on-site parking areas. I do not consider that potential building sites within NMBP should be treated differently from any other site in the district to warrant specific mapping in the district plan.

4.4 Meetings and Site Visit to NMBP

117. I met with Mr Philip Barrett (Cheal) and Mr Bob Carter on 30 January 2020 to discuss their concerns. I also visited NMBP with Mr Carter on 4 February 2020 to familiarise myself with this location and these already established/consented activities:

- Lockup storage
- Boat builder

- Surf kite-board builder
- Landscape supplies
- Clothing warehouse
- Drainlayer
- Motor mechanic
- Scaffold yard
- General contractor yards (x2)
- Roofing contractor
- Yoghurt factory
- Joinery shop
- Builder's yard
- Salvage yard
- Coffee cart
- Yurt assembly

4.5 Agreements reached with NMBP

118. As a result of my analysis and meetings with NMBP, we have reached agreement that:
- the permitted activities for the NMBP should be no different from any other site in the General Industrial Zone
 - this approach will not fetter the establishment of the wider range of activities permitted in the 2010 land use consent, which will continue to have precedence over district plan rules and will continue to apply (unless varied), as this consent has been given effect to irrespective of other district plan rules
 - this approach will enable NMBP to be developed in a way that caters for the demand for industrial land in close proximity to Raglan while managing adverse effects.
119. NMBP also agrees with my recommended new Rule 20.1.2 in revised Chapter 20 and shown below. This rule provides for a residential unit for a caretaker or security personnel on any site located in the General Industrial Zone as a restricted discretionary activity.

20.1.2 Restricted Discretionary Activities

Activity		Matters of discretion
RDI	Residential unit for caretaker or security personnel that meets the following condition: (i) Does not exceed 70m ² gross floor area	Council's discretion is restricted to the following matters: (i) reverse sensitivity effects including noise, odour, dust, glare and light spill

120. In developing Rule 20.1.2, I noted that NMBP's land use consent permits one dwelling for a caretaker or security personnel with a limit of 70m² habitable floor area per 'precinct'. These precincts relate to areas shown on plans accompanying the land use consent, although 'precinct' is not a term that is defined in the OWDP or PWDP.
121. I consider that this term 'precinct' is outdated, in the sense that each of these has been progressively subdivided and multiple titles now exist within NMBP. Recommended Rule

20.1.2 is therefore clear and more relevant to NMBP's title pattern and would enable Council to consider the merits of a proposal to establish this particular residential activity within NMBP no differently than for any other title in the General Industrial Zone.

4.6 Recommendation on NMBP

122. For the above reasons, it is recommended that the hearings panel:
- a. **Accept in part** the submission from McCracken Surveyors Limited [943.32] and further submission from *Tasman Lands Limited* [FS1321.1] to the extent that:
 - i. Specific Area 20.5 Nau Mai Business Park be deleted in its entirety from the PWDP and the provisions in revised Chapters 4 and 20 (Attachments 1 and 2) apply instead
 - ii. The annotations shown as 'Specific Area/Activity' and 'Nau Mai Effective Building Area' be deleted from the PWDP planning maps.

5 Conclusion

123. I consider the request made to all Hearing 7 submitters to provide their feedback on revised Chapters 4, 20 and 21 to be extremely helpful. This has enabled further dialogue, resulting in provisions that I consider to be a vast improvement on the notified versions in the PWDP as well as my original s42A recommendations and rebuttal evidence.
124. While the district plan review is an opportunity to amend provisions in this way, it is also my view that there are good reasons to carry over some provisions (particularly noise rules) where they relate to legacy developments, are tried and tested, and work well. It is important not to unravel the confidence that industrial investors and the general public have in these types of provisions, as these have involved significant collaboration in previous district plan review or plan change processes.
125. I conclude that the package of provisions satisfies the section 32AA test (set out in Attachment 16), in that they represent an appropriate balance between enabling industry to thrive within Waikato District, and managing adverse effects generated by them on surrounding environments. Overall, it is my view that these revised provisions provide for sustainable development and therefore achieve the purpose of the RMA.

I am happy to answer any further questions that the hearings panel may have.

Jane Macartney

8 May 2020