Executive Summary

Section 42A Hearing Report and Rebuttal Evidence

Hearing 7

Industrial Zone and Heavy Industrial Zone

Jane Macartney

21 January 2020

Waikato DISTRICT COUNCIL

Te Kaunihera aa Takiwaa o Waikato

1. My name is Jane Macartney. I am the author of the s42A hearing report and WDC's rebuttal evidence which address submissions received on the PWDP's objectives, policies and rules for the Industrial Zone and Heavy Industrial Zone.

2. This executive summary provides a summary of:

    - Provisions for general industry and heavy industry
    - Outstanding issues for submitters wishing to be heard today

PWDP's framework of zones, objectives, policies and rules for industry

3. My s42A report provides background[1] to how industrial activities are provided in multiple zones in the Franklin Section and Waikato Section of the OWDP. The PWDP simplifies the approach of the OWDP by providing just two zones for industry – the Industrial Zone and the Heavy Industrial Zone.

4. I note that the National Planning Standards (NPS) set out various zone names. This includes the 'General Industrial Zone' (as opposed to the PWDP's 'Industrial Zone') and 'Heavy Industrial Zone'. Various submissions (including WDC's submission) provide scope to adopt the NPS where appropriate. While zoning is subject of a later hearing topic, I record my support here to replace the name 'Industrial Zone' with 'General Industrial Zone' and therefore use this alternative zone name from here onwards.

5. The PWDP does not increase the stock of land zoned for industrial purposes. Most of this stock is zoned for general industry and numerous sites in this category have yet to be developed.

6. In contrast, the proposed Heavy Industrial Zone only applies to a few sites that contain developments which are more significant in terms of their effects such as building scale, noise and odour. These sites include the Huntly Power Station, the former Meremere Power Station, Affco in Horotiu, and Hynds Pipes and the Yashili and Synlait dairy factories at Pokeno.

7. Chapter 4 (Urban Environment) contains various objectives and policies that guide the development and management of industry at a strategic level and these have been addressed in the earlier Hearing 3.

8. While outside the scope of the submissions that I have addressed for this Hearing 7, I felt it important to express opinions in my rebuttal evidence that depart from those expressed by the s42A authors for the earlier Hearing 2 (All of Plan) and Hearing 3 (Strategic Objectives). This is because these strategic objectives and policies provide a broader framework, and therefore strategic direction and guidance, for the more specific objectives and policies in Chapter 4 for industry that I have addressed as part of this Hearing 7.

9. Consequently, paragraph 144 of my rebuttal evidence contains a statement that I do not support any change to Policy 4.1.6[2] (addressed in Hearing 3) as I consider the Huntly Power Station to be 'regionally significant infrastructure' (in terms of the WRPS definition) rather than an industry. I need to correct my references to clause '1' in that paragraph so that this number is replaced with the letter (c).

[1] s42A report for Hearing 7, Part A (November 2019) – Section 3, page 9
[2] WDC Rebuttal Evidence for Hearing 7 (13 January 2020) – paragraph 144, page 30

10. For this same reason, I respectfully disagree with the s42A author for Hearing 2 who has recommended an amendment to Policy 5.3.17 so that it refers to the Huntly Power Station as a regionally significant industry.

11. Secondly, I respectfully disagree with the s42A author for Hearing 3 regarding Tuakau Proteins' request [402.3] for Policy 4.1.10 to recognise reverse sensitivity effects by including reference to 'rural industry'. That s42A author dismissed that request on the basis that the Tuakau Proteins' site 'is a considerable distance from the urban area of Tuakau'[3]. To clarify, it is the reason given for rejecting this request that I disagree with. I consider that Tuakau Proteins' operation is a clear fit with the NPS definition of 'industrial activity' which is expected to be adopted into the PWDP. Therefore, my opinion is that the fit with this definition should be the reason for not adding the term 'rural industry' into this policy, and not the site's location in relation to an urban area.

12. Turning to the specific policies in Chapter 4 for industry which I have addressed for this Hearing 7, I have recommended various amendments to Policies 4.6.2 and 4.6.3, mainly as the result of evidence received from Synlait. I consider that these amendments reflect the NPS terminology for general industry and heavy industry and also resolve concerns that the provision of further industrial land needs to be cognisant of the variable location and operation requirements of industry. I have also recommended removal of the 'avoid phrase' from Policy 4.6.3 as that may otherwise inadvertently prohibit developments outside of industrial zones which have merit.

13. As a result of evidence received from Tuakau Proteins Limited, I have recommended that Policy 4.6.7 be amended to remove subjective text (i.e. 'environmentally sensitive areas').

14. My rebuttal evidence notes that POAL and Van Den Brink have correctly identified an inadvertent error in respect to my new Objective 4.6.9A. This objective need to relate specifically to effects from signage in industrial zones (rather than the general effects from industry) and consistency is also needed with accompanying new Policy 4.6.9A.

4.6.9A Objective – Adverse effects of signage ~~land use and development~~
[785.58, *FS1110.20, FS1202.56, FS1322.41, FS1345.65*]

(a) The health and well-being of people, communities and the environment are protected from the adverse effects of signage ~~land use and development~~.

15. My last amendment recommended for Chapter 4 concerns Policy 4.6.17 in response to evidence from FENZ so that it refers to facilities (which would cover buildings or equipment) because these are necessary and integral to their activities.

4.6.17 Policy – Emergency services facilities and activities

Enable the development, operation and maintenance of emergency services training and management facilities and activities within the industrial zones. [378.59]

16. Overall, I consider that the amendments recommended in my s42A and rebuttal evidence provide a sufficiently robust framework of objectives and policies for rules in Chapters 20 and 21.

17. I will briefly cover the points of difference from the 16 submitters involved in Hearing 7. I note here that the Ministry of Education, the New Zealand Transport Agency and Heritage New Zealand Pouhere Taonga will not attend this hearing but will table evidence instead.

[3] s42A report for Hearing 3 (Strategic Objectives) – paragraph 173

Ministry of Education

18. An educational facility in the General Industrial Zone and Heavy Industrial Zone is a non-complying activity. The Ministry requests a restricted discretionary activity status instead.

19. My view remains unchanged that it is important to retain industrial land for industrial purposes and that locating sensitive activities in industrial zones should be discouraged. I do not accept the Ministry's views that a non-complying activity status 'denies' education providers the opportunity to establish within industrial zones. It remains open for an applicant to demonstrate the merits of their case.

20. The only location that is an exception to this activity status is Nau Mai Business Park which permits an education facility (for no more 10 students) with a default to a discretionary activity. The Ministry requests a default to a restricted discretionary activity. I remain reluctant to support a more liberal approach as I am unaware of any change in circumstances that would justify this in light of the 2010 resource consent that enabled comprehensive development of the Nau Mau Business Park. The only change that I recommend for Nau Mai Business Park provisions is the replacement of the term 'education facility' with 'educational facility' in Rule 20.5.2 to reflect the NPS term.

Mr Greig Metcalfe

21. On the basis of Mr Metcalfe's evidence that real estate signs are typically no larger than 1800mm x 1200mm, I have no difficulty in recommending this requirement for rules in both the General Industrial Zone and Heavy Industrial Zone. I accept that this would manage a risk (albeit small) of 'over-sized' signs creating unacceptable adverse effects, even if the hearings panel were to accept my recommended increase in the number of permitted real estate signs from 1 to 3 per site, and particularly where an industrial site interfaces with another (more sensitive) zone.

22. I consider it unnecessary to further amend the signage rules, as requested by Mr Metcalfe, to set a limit of 1 sign per agency per road frontage. I also consider that his request to allow 'header signs' on another site with the approval of that landowner, remains problematic because of the concerns with amenity and character and traffic safety. My discussions with Council's monitoring team have confirmed that this type of signage is already a concern (whether or not they are responding to complaints). It is therefore undesirable to permit a situation where adverse effects are already experienced.

23. I accept that that there may be some extenuating situations where real estate signage needs to breach a permitted activity standard. However, I remain of the view that the merits of these situations are best dealt with through a resource consent process for a restricted discretionary activity which requires consideration of specific matters, including visual amenity and effects on traffic safety.

Department of Corrections

24. The Department of Corrections requests that a 'community corrections activity' be permitted in the Industrial Zone. They support such provision as the typically large size and accessibility of industrial sites suit the yard-based nature of some of the Department's operations, such as work with large equipment and/or vehicle storage.

25. I consider that this request is reasonable given that the provision in the notified rules for a 'trade and industry training activity' may lead to interpretation difficulties as it does not fully capture the extent of non-custodial services offered by the Department. I agree that it is both appropriate and necessary to explicitly list 'community corrections activity' in the rules in order to provide a clear link with the term that is defined in the NPS and therefore added to Chapter 13 (Definitions) as recommended in the earlier Hearing 5.

26. I consider this new definition to be very helpful in that it distinguishes between custodial and non-custodial services. This split is not recognised in the notified PWDP because 'correctional facility' is the only definition that explicitly refers to the justice system and custodial facilities.

Fire and Emergency New Zealand

27. The submission from Fire and Emergency New Zealand (FENZ) has highlighted what appears to be an inadvertent omission in the notified PWDP with respect to the provision of emergency services training and management facilities. This matter was also addressed in the earlier Hearing 6 (Village Zone).

28. In order to address this oversight, I have recommended a new objective and policy in Chapter 4 and new permitted activity rules for the General Industrial Zone and Heavy Industrial Zone.

29. I have also recommended a permitted activity rule in the industrial zones to provide for the construction or demolition of, or alteration or addition to, a building. The hearings panel may wish to replicate this recommended activity rule across all zones to avoid any inadvertent default to a resource consent process for buildings that accommodate permitted activities. I have referred to the Rural Zone as an example, where the construction of a dwelling is not explicitly permitted.

30. I have recommended amendments to the rules for industrial subdivision to require new lots to connect to a public-reticulated water supply and wastewater system. While most subdivisions would have reticulation available, I am aware that some relatively isolated industrial sites are self-serviced, in that they rely on water bores and/or water storage. In my view, the later hearing for Chapter 14 (Infrastructure and Energy) would appear to be the most appropriate forum to address water supplies for firefighting as a district-wide matter.

Building setback from the railway corridor

31. KiwiRail requests a 5m building setback from the rail corridor for all zones to avoid or minimise safety concerns. They provide examples of when objects or structures could collide with a moving train.

32. My research on this matter has confirmed that while some relatively recent district plans specify setbacks (which do vary), a rule requiring a building setback from a railway corridor has not been universally accepted across New Zealand.

33. I have cited the Auckland Unitary Plan which does not include this type of rule and the hearing panel's reasons for rejecting KiwiRail's request. I agree that it would be appropriate for KiwiRail to increase the width of their existing designation where this is deemed necessary for safety reasons, rather than impinging on private property rights. In my opinion, the requested 5m setback would effectively 'sterilise' the use of this space for activities on these particular sites that should be permitted.

Tuakau Proteins Limited

34. I consider the main issue outstanding is Tuakau Proteins' request for a 'noise interface' to enable a relaxation of 5dB for receiver sites in the Rural Zone during the night-time period (10pm to 7am) so that the future growth of their operation is not unreasonably restricted. My rebuttal evidence notes that their site is not unique in that it is not the only industrial site that adjoins a Rural Zone.

35. Council recently engaged Mr Malcolm Hunt to peer review all acoustic evidence received from submitters for Hearing 7. This review was posted on Council's website on 17 January 2020 and the hearings panel and those submitters were advised that this had been received.

36. Tuakau Proteins' evidence for this Hearing 7 indicated that their acoustic expert would provide details on their requested noise interface at the later hearing for the Rural Zone which has tentatively been scheduled for June 2020. My concern is that deferring this acoustic evidence could potentially prejudice submitters involved in Hearing 7 who may wish to respond to that evidence, but have not submitted on the Rural Zone topic. I seek guidance from the hearings panel as to how they wish this matter to be managed.

37. In the meantime however, Mr Hunt has commented that Tuakau Proteins has not offered any suggested amendments to the noise rules that would, in his opinion, improve the noise controls where noise from the industrial zone affects sensitive sites in the Rural Zone and potential adverse effects are not discussed.

38. Mr Hunt remains concerned that the requested interface approach would result in an unnecessary increase in night-time noise from activities on industrial sites received in rural areas. He refers to some extracts in NZS 6802:2008 that state:

> '*The results of sound level surveys, planning expectations, or the need for protection of a particular type of amenity, can guide the setting of noise limits.*'
>
> '*The setting of noise performance standards should involve all stakeholders and provide sufficient information to explain the acoustical implications and consequences of the proposed performance standards. Transparency in utilising noise guidelines and local noise data to develop noise performance standards helps to increase public acceptance of measures that may be necessary for sustainable development reasons.'*

39. Mr Hunt therefore considers that further information is required from Tuakau Proteins, including (as a minimum) results from an up-to-date survey of ambient sound levels, mapping the location of sensitive receivers who may experience the effects of the increased noise limit of 5dB during the night-time period, and consultation with those parties. To be of use to Council as a whole, this information should quantify the nature and scale of actual and potential effects on the people and communities of any expected increase in allowable night-time and day-time noise.

Huntly Power Station

40. One outstanding matter is the request from Genesis to rollover the operative building height requirements (i.e. a maximum height of 50 metres and 35 metres over 90% of the net site area). The submission from Genesis requests a maximum height of 60m (not 50m). I am unsure whether this is a typographical error.

41. I note also my own error at paragraph 113 on page 24 of my rebuttal (my reference to 80% is meant to be 90%). I have reserved my position pending Genesis providing visual detail at the

hearing to indicate how the future peaker units would be accommodated within the existing building envelope, and confirmation as to when the already secured air discharge consents need to be implemented.

42. I have recommended that electricity generation on the Huntly Power Station site be explicitly permitted by a new rule in Chapter 21 for the Heavy Industrial Zone. This is because I consider the Huntly Power Station to be 'regionally significant infrastructure' rather than an industry. Furthermore, Chapter 14 does not provide for this particular scale of energy generation.

43. I have recommended that health and safety signage be permitted across the district by amending Rule 14.3.1 P11 in Chapter 14 rather than introducing zone-specific rules. This is because the introduction section of Chapter 14 states that it contains a number of rules relating to district-wide land development activities. I see no reason to introduce 13 identical rules for all zones in the district if my recommended amendment is consistent with how Chapter 14 currently manages district-wide matters. Another potential solution is to produce a new chapter that contains district-wide provisions, including signage, as signalled by the NPS.

44. Mr Hunt has peer reviewed the acoustic evidence provided by Mr Damian Ellerton. In suummary, this peer review:
    - supports the requested 'date stamp' of 25 September 2004 in the noise rule for the Huntly Power Station so that there is certainty in respect to the location of notional boundaries for dwellings existing as at that date [The last review of the WDP was publicly notified on that date]
    - considers that a 'date stamp' approach may be reasonable for specific sites but this should not apply as a district-wide control
    - considers that the indoor noise level of 40dBL_{Aeq} in Table 14 (Appendix 1) of the PWDP is problematic with Council's ability to lawfully enforce insulations standards, but that this particular pitfall can be avoided by including measures in this table that address low frequency sound (hertz measurements) and referring to *AS/NZS2107:206 Acoustics – Recommended design sounds levels and reverberation times for building interiors*
    - supports the use of a 60 minute indoor LA_{eq} limit (rather than Mr Ellerton's 24 hour LA_{eq} limit) as this will allow application of the rule for the 'worst hour' rather than designing against a 24 hour average sound level. Council supports further liaison between Mr Hunt and Mr Ellerton on this matter.

Hamilton City Council

45. Hamilton City Council's main concern appears to be that the notified discretionary activity status for offices and retail activities does not reflect their 'precautionary approach' and that these should be non-complying activities in the industrial zone.

46. My view is that a discretionary activity status also calls for a precautionary approach, in that it requires a robust analysis against the objectives and policies and the merits of a particular commercial activity must be demonstrated.

47. I remain unconvinced that a more stringent non-complying activity test is warranted. I have referred to two town centre examples of Tuakau and Huntly where I consider 'big box retail' should not be discouraged from locating in their industrial zones in favour of the Business

Zone and Business Town Centre Zone (as HCC requests) that rely predominantly on pedestrian traffic.

48. I also consider it unnecessary to specify a floor area threshold for such activities given that the needs of retail vary considerably and, in any case, the loss of industrial land for that purpose would need to be justified through a resource consent process.

Heritage New Zealand Pouhere Taonga

49. As a result of HNZ's evidence which identifies the former dairy factory site at Matangi as a historic heritage item, I have reversed my s42A recommendation. This will enable notable architectural features of a heritage building to be considered if a sign proposal breaches a condition. I therefore consider that all notified matters of restricted discretion are appropriate.

50. As a result of our GIS staff confirming that there are no Maaori sites of significance or Maaori areas of significance located within the General Industrial Zone or Heavy Industrial Zone, I recommend that any industrial rule, or part of a rule, that addresses these features be deleted.

New Zealand Transport Agency

51. NZTA requests amendments to the signage rules that reflect their brochure 'Advertising Signs on State Highways' and their 2010 bylaw which were prepared with input from their Safety Engineers. Their opinion is that the content of these documents can be applied to local roads.

52. I have expressed alignment with the author of the s42A for the Village Zone (Mr Cattermole) in that there does not appear to be any evidence to support this approach. I have invited NZTA to respond to my query as to whether the definition of 'road' in the Land Transport Act 1998 includes a state highway.

53. I have recommended consistency between the General Industrial Zone and Heavy Industrial Zone in respect to requiring freestanding signs to be set back at least 15m from a state highway.

54. I have also invited NZTA to comment on how the absence of any building setback would compromise the operation of a state highway, particularly if the existing designation width is already sufficient to accommodate NZTA's assets.

Horotiu Industrial Park

55. POAL and Northgate have indicated broad agreement in respect to most draft rules set out in my s42A report for a new Development Area for Horotiu Industrial Park. Matters outstanding include the development of a permitted activity rule (rather than controlled activity) for landscaping, Northgate's request to delete the rule requiring planting of the existing earth bund, reference to this earth bund in Rule 20.3.4 (1), signage and acoustic provisions for this location, and POAL's request for workers' accommodation to be provided as a controlled activity.

56. Northgate and POAL provided email feedback last week for a potential permitted activity rule for landscaping within the Horotiu Industrial Park and email feedback from Van Den Brink was received yesterday for the same rule in the General Industrial Zone. I consider the suggested wording from these parties is a start, but would appreciate the hearings panel providing additional time for us to collectively work on a potential solution that can then be forwarded

for consideration by the panel. This would include development of a default rule to deal with a land use or building that breaches any permitted activity condition.

57. Northgate and POAL have relied on acoustic evidence provided by Mr Chris Day. This evidence has been peer reviewed by Mr Malcolm Hunt who comments that:

- Mr Day has provided reasonably compelling acoustic evidence to support changing the LA_{eq} 40 dB night-time limit for Horotiu Industrial Park given that ambient noise levels at this time from rail and highway sources that already exceed this limit (i.e. between 41-47 dB)
- The imposition of a site boundary noise limit is unnecessarily restrictive for industrial users and is contrary to the widely accepted 'notional boundary' concept referred to within NZS 6802:2008.
- A 'date stamp' for the noise rules applying to the Horotiu Industrial Park is not recommended.
- Rule 20.6.3 P2 (c) should be amended so that noise from an activity in the Horotiu Industrial Park does not exceed the limits specified when measured <u>within the notional boundary of any building containing a noise sensitive activity</u> in any zone outside of the HIP and Heavy Industrial Zone (except the Residential Zone).

Pokeno Village Holdings

58. PVH has given background on the operative rules that provide for development within the Gateway Industrial Park and essentially request that these be rolled over into the PWDP.

59. My s42A report recommends that various activities (requested by PVH) be permitted and that service stations be provided as a restricted discretionary activity in the Industrial Zone. I have expressed a reluctance to support a permitted activity status for all activities listed in PVH's evidence because of concerns with reverse sensitivity and the loss of industrial land. My preference is to test these through a resource consent process.

60. PVH's wider issue is that the PWDP contains a limited suite of zones and that local circumstances have not been taken into account. They request a Development Area to mirror the operative Pokeno SP Area. This request is far broader than the topic of industrial zones in this Hearing 7. I agree with PVH that the later Hearing 26 is the appropriate forum to address this issue.

Havelock Village Limited

61. Mr Malcolm Hunt has peer reviewed the acoustic evidence from Mr Jon Styles. In summary, Mr Hunt comments that:

- Mr Styles' recommending wording of Rule 21.2.3.1 allows elevated noise (at any time) so long as the accompanying P2(b) rule is also complied with which restricts noise received within residentially zoned sites, and within the notional boundary to rural dwellings. On this basis, noise within adjacent zones can be adequately controlled and managed.

- The proposed industrial noise limits are not unreasonable and take a more integrated approach. They are considered to adequately control noise effects both within the zone and within adjacent zones.

- The night-time limit should not be removed. This is a practical means of reducing low-level 'amenity' noise at distant sensitive receiver sites in other zones. The zones are not considered to be of sufficient land area to enable LA_{eq} 70 dB at night without creating low-level ambient night time noise effects within adjacent zones, so the PWDP is correctly

applying a 55 dB night-time limit (which provides for within-zone noise conditions that are not suitable for uses within the zone in itself that are sensitive to night-time noise).

- He does not agree with Mr Styles' concerns raised as the now-recommended wording for P2 adequately specifies where noise limits are to be achieved.
- No amendments are recommended for the noise rules as a result of Mr Styles' evidence.

Van Den Brink

62. I have earlier noted the development of a potential permitted activity rule for landscaping. I would appreciate the hearings panel providing additional time so that agreement can be reached on wording and development of a default rule (either controlled or restricted discretionary) that deals with a land use or building that breaches any permitted activity condition.

63. My rebuttal evidence confirms that the daylight admission rule does not apply to a road because a road is not included in the definition of 'site. I have also recommended a 5m building setback rule (reduced from 7.5m) for the Industrial Zone to accommodate VdB's request.

64. I have also requested that VdB provide substantive evidence as to what permitted activities would be expected to infringe the maximum 15m building height limit.

Synlait

65. I have reflected on my s42A positions in respect to Policies 4.6.2 and 4.6.3 and consider that Synlait's evidence has merit. I have invited Synlait to comment on whether my amendments to these policies sufficiently distinguish between general industry and heavy industry and that removal of the 'avoid phrase' is appropriate.

66. I have also invited Synlait to comment on my recommended amendments to the earthworks rule for the Heavy Industrial Zone and my view that it is important not to limit the effects of shading to just the Residential Zone. I consider it helpful for Synlait to comment on whether they have already experienced any difficulty in complying with the operative height-to-boundary rule for the Industrial 2 Zone which refers to the Rural Zone, amongst various other zones, as a potentially sensitive receiver location.

Hynds Pipe Systems/Hynds Foundation

67. I have invited Hynds to comment on whether my recommended policy amendments satisfy their relief sought and to respond to my reason for removing the 'avoid phrase'.

68. I have also invited Hynds to comment on whether the recommended amendment to the earthworks rule for the Heavy Industrial Zone would be acceptable to them.

69. Lastly, I invite Hynds to respond to my comments on minimum lot size and to provide examples of other district plan rules that permit a building height of 25m in heavy industrial zones. I have noted that a 20 metre height limit is specified in the Auckland Unitary Plan for the Heavy Industrial Zone. A 20m height limit is also specified for the Industrial Zone and Ruakura Industrial Park Zone in the Hamilton City District Plan.

Rule for Construction Noise

70. Lastly, Mr Hunt supports my recommendation for replacement wording in the construction noise rule so that it relies on the flexibility provided by NZS 6803:1999 and the 'best practicable option' in terms of s16 of the RMA, rather than applying the NZS as a limit that

cannot be exceeded. The only minor amendment recommended by Mr Hunt is that the word 'and' be replaced with 'or' as follows:

> *Noise from any construction, maintenance, ~~and~~ or demolition activity must be measured, assessed, managed and controlled in accordance with the requirements of NZS 6803:1999 Acoustics Construction Noise.*

71. If the hearings panel is minded to accept my recommendation for this rule in the industrial zones, they may wish to replicate this for all other zones in order to achieve consistency.

72. This concludes my executive summary. I look forward to hearing from the submitters today and am happy to answer any questions that the hearings panel may have.

Jane Macartney

21 January 2020