SECTION 42A REPORT

Rebuttal Evidence

Hearing 7:

Industrial Zone & Heavy Industrial Zone

Report prepared by: Jane Macartney

13 January 2020

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1 Introduction

1.1 Background

1. My full name is Jane Macartney. I am employed by Waikato District Council as a Senior Policy Planner and am the writer of the original section 42A report for Hearing 7: Industrial Zone and Heavy Industrial Zone.

2. My qualifications and experience are set out in the introduction of the s42A report together with my statement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014.

3. The recommended text changes as a result of this rebuttal evidence are set out in Rebuttal Appendix 1. Recommended amendments that are the result of the original s42A report are shown in red, with recommended changes arising from this rebuttal evidence shown in blue.

2 Purpose of the report

4. In the directions of the hearings panel dated 26 June 2019, paragraph 18 states:

   If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.

5. The purpose of this report is to consider the primary evidence filed by submitters. I do not address every point raised in evidence. I respond only to the points where I consider it is necessary to clarify an aspect of my earlier s42A report, or where I am persuaded to change my recommendation. In all other cases, I respectfully disagree with the evidence, and affirm the recommendations and reasoning in my s42A report.

6. Evidence was filed by the following submitters regarding the Industrial Zone and Heavy Industrial Zone provisions:

   a. Ministry of Education [781]

   b. Department of Corrections [496]

   c. Fellrock Development Limited/TTT Products Limited [543]

   d. Transpower New Zealand Limited [*FS1350*]

   e. Heritage New Zealand Pouhere Taonga [559]

   f. New Zealand Transport Agency [742]

   g. Fire and Emergency New Zealand [378]

   h. KiwiRail Holdings Limited [986]

   i. The Surveying Company [746]

   j. Hamilton City Council [535]

   k. Waikato Regional Council [81]

   l. Genesis Energy Limited [924]

   m. Greig Metcalfe [602]

   n. Tuakau Proteins Limited [402]

   o. Ports of Auckland Limited [578]

   p. Northgate Developments Limited and Northgate Industrial Park Limited [790]

q. Hamilton City Council [535]
r. Havelock Village Limited *[FS1291]*
s. Van Den Brink Limited [633]
t. Pokeno Village Holdings Limited [386] and [*FS1281*]
u. Hynds Pipe Systems Limited [*FS1341*] and Hynds Foundation [*FS1306*]
v. Synlait Milk Limited [581]
w. The 'Oil Companies' [785]

3 Consideration of evidence received

3.1 Evidence in support of the s42A report recommendations

7. Evidence in support of the s42A report recommendations was received from the following parties:

a. Transpower New Zealand Limited [*FS1350*];
b. Fellrock Development Limited/TTT Products Limited [543]; and
c. The 'Oil Companies' [785]
d. Waikato Regional Council [81]

3.2 Topics addressed in submitter evidence

8. The main topics raised in evidence from submitters who are in disagreement with the recommendations of the original s42A report for Hearing 7: Industrial Zone and Heavy Industrial Zone, include:

a. Definition of, and provision of, educational facilities
b. Real estate signage
c. Provision of community corrections activities
d. Emergency service facilities and firefighting water supply
e. Building setback from, and earthworks in proximity to, the railway corridor
f. Tuakau Proteins Limited – provision as an 'industrial activity' and acoustic matters
g. Huntly Power Station – provision as a 'regionally significant industry', health and safety signage, and acoustic matters
h. Hamilton City Council – discretionary activity status for commercial/retail activities
i. Signage for heritage buildings and Maaori sites and areas of significance
j. Effects of signage on traffic users
k. Specific provisions for Horotiu Industrial Park – Ports of Auckland and Northgate
l. Pokeno Village Holdings – permitted activities in Pokeno Gateway Industrial Park
m. Havelock Village Limited – acoustic matters
n. Van Den Brink Group – general development in Industrial Zone
o. Synlait – development on existing dairy factory site

p. Hynds – development at 9 Mcdonald Road, Pokeno

9. I have structured my response to address each of these topics in turn.

4 Definition of, and provision of, educational facilities

4.1 Analysis

10. Mr Frentz (Beca Limited) has provided evidence on behalf of the Ministry of Education (the Ministry).

11. Mr Frentz states that the intent of the Ministry's submission is to ensure that the provisions and planning tools of the Proposed Waikato District Plan (PWDP) facilitate the development of a range of educational facilities within Waikato District that will enable the community to meets its educational needs.

12. The Ministry supports the principle that educational facilities are defined but seeks replacement of the term 'education facility' with 'educational facility' to align with the National Planning Standards. The Ministry also requests deletion of the definition for 'childcare facility' to ensure that the full range of activities that may be provided at an educational facility is recognised in the definition.

13. I have read the s42A hearing report and rebuttal evidence for Hearing 5 (Definitions). I consider these paragraphs 129-136 from Council's rebuttal evidence to be relevant to Mr Frentz's evidence for Hearing 7:

129. The Ministry is concerned that the Proposed Plan is overly restrictive with respect to educational facilities in many zones. Mr Frenz points out that if the definition of 'childcare facility' is retained, this will default to a non-complying activity in many of the District's zones, which is overly limiting and will have a detrimental effect on enabling the community to meet its educational needs. He also considers that retaining the two definitions has potential for misinterpretation as to which activity applies.

130. We consider that the potential implications of any potential misinterpretation is overstated as, by and large, the two types of facilities have the same activity status, with the exception of the Rural Zone and Country Living Zone. Even in the Rural Zone, as childcare facilities fall under 'educational facility', in effect these activities have the same status.

131. We consider childcare facilities are a sub-definition of 'educational facility', and that if it is the Council's intention to manage this sub-category of education facilities differently, the Planning Standards allows for this approach. Having considered this further, we consider that the term should be re-labelled 'childcare services', rather than 'childcare facility', to ensure consistency with the higher level definition. One way in which the effects of a childcare facility may differ from other educational facilities is in relation to the traffic generation and parking effects of a childcare facility. Such uses typically have a relatively high parking demand relative to the site area.

132. We note that the Ministry for Environment intended the definition of 'educational facility' to have a focus on facilities exclusively used for teaching or training. The authors of the Planning Standards definitions agree that 'different types of education facilities have different effects and different ancillary activities', and that it is appropriate, if Councils wish, to include locally-derived subcategories of the definition[41].

133. We appreciate the wider argument raised by Mr Frenz in relation to the activity status of childcare facilities and education facilities, but ***that is an issue which cannot be resolved at this Definitions hearing and will no doubt be debated at future hearings.*** [my emphasis]

134. Mr Frenz has proposed amendments to the definition of 'childcare facility', if the Panel is minded to retain the definition. These amendments would simplify the definition, but we do not consider they would assist plan users. We consider the inclusions and exclusions proposed in our recommendation provide a level of guidance locally as to what is intended to be included in this definition, given the diversity of early childhood facilities that exist. This also reflects the relief sought by other submitters.

135. Having reviewed the evidence we stand by our original recommendations. We further recommend that the definition of 'childcare facility' be renamed 'childcare services' to ensure consistency with the Planning Standard definition of 'educational facility'.

136. We recommend the following amendment:

Childcare ~~facility~~ services	*Means any land or buildings used for the care or training of predominantly preschool children and includes a ~~P~~play centre, kindergarten or daycare.* *It excludes* *(a) children residing overnight on the property; and* *(b) a school*

14. I agree with the Hearing 5 recommended amendment on this matter and now turn to the Ministry's concern that some zones do not provide for educational facilities.

15. While 'trade and industry training' is permitted in both the Industrial Zone and Heavy Industrial Zone, other educational facilities in these two zones are otherwise non-complying. With the exception of the Business Zone, which permits educational facilities, the Ministry requests that all other zones provide for educational facilities as a restricted discretionary activity. I note here the evidence received from Genesis which supports my s42A recommendation to reject this request from the Ministry.[1]

16. In my s42A hearing report, I emphasised the importance of retaining industrial land for industrial activities and discouraging the location of sensitive activities in industrial zones. The Ministry opposes my views as they state that, in their experience, it is not common, but reasonable to expect educational facilities in the Industrial Zone for the convenience of parents, students, employers and employees in relation to the studies provided. They refer to schools, tertiary facilities, specialised training facilities and early childhood education, all of which are included in the definition of 'educational facility'. However, these statements do not change my view that the use of industrial land for industrial purposes and discouraging the co-location of non-compatible land uses are key outcomes.

17. The Ministry states that there is no definition for 'trade and industry training', and appears to suggest that there should be. However, I consider this term to be self-explanatory. Furthermore, I am not aware of any submission that requested such a definition, nor is this term included in the National Planning Standards.

[1] Primary Statement of Evidence by Richard Matthews – 9 December 2019 – Executive Summary, page 1 paragraph 2

18. I do not accept the Ministry's view that a non-complying activity status 'denies' education providers the opportunity to establish within industrial zones. However, I do acknowledge that a non-complying activity signals a challenging resource consent process, given the objectives and policies of the industrial zones. Nevertheless, the nature of industrial activities is variable (particularly within the general Industrial Zone), and it remains open for an applicant to demonstrate the merits of their case such that their particular educational facility can be accommodated in a manner that satisfies the statutory test. My position remains unchanged that educational facilities should be non-complying in industrial zones.

19. In regard to Nau Mai Business Park (Specific Area 20.5), the Ministry requests the following amendments shown in black underline/~~strikeout~~:

    (a) Rule 20.5.2 Permitted Activities P10 ~~An e~~Education facilit~~y~~ies (for no more than 10 students)
    (b) A new restricted discretionary activity rule to provide for education facilities in Nau Mai Business Park when the number of staff or students exceeds 10.

20. In response, I consider it only necessary to amend Rule 20.5.2 P10 so that it refers to 'an educational facility' (rather than an 'education facility') to match the recommendation made in Hearing 5 (Definitions) to use this term that is in the National Planning Standards.

21. Mr Frentz has also stated that:

    > While it may be unlikely for an education facility to be established in the Business Park, the imposition of a limit of 10 students on such a facility significantly constrains the community providing for a facility when it may be needed in the future'.[2]

22. This statement appears to suggest that there may be little demand for this type of facility at the present time. In my mind, this raises a question as to why Council should now consider a less restrictive activity status (i.e. restricted discretionary versus discretionary). If demand for an educational facility in this location does increase over the life of the district plan, I consider that this matter can be addressed in detail through the necessary resource consent process.

23. I am therefore reluctant to support any further change to the provisions for an educational facility in Nau Mai Business Park, as these have been developed to essentially mirror the resource consent granted on 5 August 2010 (see Attachment 9 to s42A hearing report).[3]. There may well be a situation where it is appropriate to locate a larger-scale educational facility within Nau Mai Business Park, but it is apparent that, in the context of the 2010 resource consent, the default to a discretionary activity (rather than a restricted discretionary) was most appropriate, given the framework of objectives and policies that are specific to this location. I am unaware of any change in circumstances since the grant of that resource consent that would justify a different activity status.

4.2 Recommendations

24. As a result of the evidence received from the Ministry of Education, the only amendment I recommend is in respect to P10 in Rule 20.5.2 shown as follows:

    P10 An ~~education~~ educational facility

4.3 Section 32AA evaluation

25. Given the minor grammatical amendment shown above, no s32AA evaluation is considered necessary.

[2] Paragraph 7.7 – Statement of Primary evidence of Keith Frentz on behalf of Ministry of Education (9 December 2019)

[3] Proposed District Plan Hearing 7 – Industrial Zone s42A Attachment 9 Nau Mai Business Park

5 Real estate signage

5.1 Analysis

26. Mr Houlbrooke (CKL) has provided evidence on behalf of Mr Greig Metcalfe who operates a real estate agency in Waikato District.

27. Mr Metcalfe's submissions seek the following amendments to the signage rules in both the Industrial Zone and Heavy Industrial Zone:

    a. Allow more than 1 standard real estate sign measuring 60mm x 900mm per site (common for corner sites or when there are multiple agencies selling/leasing a site);
    b. Allow 1 feature real estate sign measuring 1800mm x 1200mm (common for properties being sold by tender or auction);
    c. Allow 1 header real estate sign measuring 1800mm x 1200mm (used on another site to point purchasers to the site which is for sale)

28. Mr Metcalfe's submission [602.27] seeks to introduce a new definition for 'real estate sign', and this was recommended to be accepted in the s42A report for Hearing 5 (Definitions) as follows:

Real estate sign[4]	Means a real estate sign advertising a property or business for sale, for lease, or for rent.

29. As noted in my s42A hearing report, the notified rules for real estate signs in the Industrial Zone and Heavy Industrial Zone are rather permissive, in that they do not specify any size limit for real estate signs. This permission appears to be deliberate, given the lower level of amenity which is characteristic of industrial zones (compared to other zones).

30. While I have recommended amendments to these particular rules (in response to other submissions), Mr Metcalfe still considers that not having any size limit for real estate signs could lead to perverse outcomes and result in adverse effects on character and amenity.

31. 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 that this requirement be added to the Industrial Zone provisions. 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 the 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.

32. If the hearings panel agrees to 3 signs per site, I consider this would provide sufficient flexibility for real estate signage to be accommodated on corner sites, which typically have generous road frontages in industrial zones. I also note that real estate signs are generally a temporary structure and therefore their effects are typically short-term. I consider it unnecessary to further amend these rules, as requested by Mr Metcalfe, to set a limit of 1 sign per agency per road frontage.

33. In my view, Mr Metcalfe's additional request to allow 'header signs' on another site with the approval of that landowner, remains problematic. Council's monitoring team often has to deal with illegal signs being erected on sites (whether or not they are responding to complaints) where they have no relationship with the sites being advertised. Not only is this an inefficient use of staff resources, but this type of signage can compromise amenity and character, and traffic safety.

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[4] s42A Hearing 5 - Appendix 2: Recommended Amendments to Chapter 13: Definitions

34. I accept that there may be some extenuating situations, such as where a property for sale is located on a low-volume no-exit road, or on a rear site down a shared right-of-way. However, it is my view that the merits of these types of situations are best dealt with through the resource consent process, where a restricted discretionary activity requires consideration of specific matters, including visual amenity and effects on traffic safety.

5.2 Recommendations

35. As a result of the evidence provided by Mr Houlbrooke (on behalf of Mr Greig Metcalfe), I recommend that Rule P3 for real estate signs in the industrial zones be amended as follows:

Industrial Zone – Rule 20.2.7.1

P3	(a) A real estate ~~'for sale'~~ sign must comply with all of the following conditions: (i) The sign relates to the sale of the site on which it is located; (ii) There are no more than ~~1~~ 3 signs per site ~~agency~~; (iii) The sign is not illuminated; (iv) The sign does not contain any moving parts, fluorescent, flashing or revolving lights or reflective materials; (v) The sign shall not exceed dimensions of 1800mm x 1200mm ~~The sign does not project into or over road reserve.~~

Heavy Industrial Zone – Rule 21.2.7.1

P3	(a) A real estate ~~'for sale'~~ sign must comply with all of the following conditions: (i) The sign relates to the sale of the site on which it is located; (ii) There are no more than ~~1~~ 3 signs per site ~~agency~~; (iii) The sign is not illuminated; (iv) The sign does not contain any moving parts, fluorescent, flashing or revolving lights or reflective materials; (v) The sign shall not exceed dimensions of 1800mm x 1200mm ~~The sign does not project into or over road reserve.~~

5.3 Section 32AA Evaluation

5.3.1 Effectiveness and efficiency

36. Increasing the limit of number of real estate signs in the industrial zones, while limiting the maximum size, is an effective way of achieving Objective 4.6.6 – Manage adverse effects, and Objective 4.6.9A – Adverse effects of land use and development. This approach will ensure that adverse effects on amenity values outside of industrial zones are protected, as well as effectively managing any adverse effects from real estate signage within the industrial zones. Unlimited numbers and sizes of real estate signage could otherwise cause visual clutter and obscure industrial signs and premises.

5.3.2 Costs and benefits

37. An increase in the permitted number of real estate signs, with a limit on their size, is not likely to have a negative impact on the sale of industrial properties.

5.3.3 Risk of acting or not acting

38. The effects of real estate signs are well understood and there is no risk in acting.

5.3.4 Decision about most appropriate option

39. In my opinion, the recommended amendments to the real estate signage rules are a more effective way of achieving Objectives 4.6.6 and 4.6.9A. These achieve a balance with the need to provide real estate signs and sell industrial property, while managing any adverse visual effects associated with them, and not compromising the economic viability and visibility of other industrial sites.

6 Provision for community corrections activities

6.1 Analysis

40. Mr Matthew Allott (Boffa Miskell Limited) has provided evidence on behalf of the Department of Corrections (the Department).

41. This evidence primarily relates to the Department's submission point [496.8] that seeks a permitted activity status for 'community corrections activities' in the Industrial Zone. They support this provision primarily because 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. The Department's evidence provides examples of existing community corrections facilities within industrial zones at Manurewa, Greerton (Tauranga) and Invercargill.

42. I note that the s42A report for Hearing 5 (Definitions) supports the Department's request for the following new definition of 'community corrections activity'[5] which is consistent with that contained in the National Planning Standards:

Community corrections activity	Means the use of land and buildings for non-custodial services for safety, welfare and community purposes, including probation, rehabilitation and reintegration services, assessments, reporting, workshops and programmes, administration, and a meeting point for community works groups

43. I consider this new definition of 'community corrections activity' to be very helpful, in that it distinguishes between custodial and non-custodial services. This split is not recognised in the notified version of the PWDP because 'correctional facility' is the only definition[6] that explicitly refers to the justice system and custodial facilities.

44. I also accept that the provision of a 'trade and industry training activity' as a permitted activity in the Industrial Zone might 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 this defined term. Therefore I recommend that a new permitted activity for community corrections activities be included in the Industrial Zone.

6.2 Recommendations

45. As a result of the evidence provided by the Department of Corrections, I recommend that the following new permitted activity rule be added for 'community corrections activities' in the Industrial Zone:

[5] s42A hearing report - Appendix 2: Recommended Amendments to Chapter 13: Definitions

[6] Correctional facility – Means a facility where people are detained in the justice system. It includes a prison, detention centre, youth detention centre and secure unit.

Rule 20.1.1 Permitted Activities

Activity		Activity-specific conditions
…	…	…
P16	Community corrections activity	Nil

6.2.1 Effectiveness and efficiency

46. Providing for a community corrections activity as a permitted activity is an effective method to recognise that 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. Providing these type of work opportunities expand the skill base of people wishing to enter the industrial labour force which supports and strengthens the economic growth of the district's industry and therefore helps to achieve Objective 4.6.1.

6.2.2 Costs and benefits

47. Provision for a community corrections activity as a permitted activity removes the costs associated with a resource consent process while providing benefits to people wishing to enter the industrial labour force and for growth of the district's economy.

6.2.3 Risk of acting or not acting

48. No risks have been identified as a result of providing for a community corrections activity as a permitted activity in the Industrial Zone. Evidence from the Department of Corrections contains examples of existing community corrections facilities within industrial zones at Manurewa, Greerton (Tauranga) and Invercargill, and no adverse outcomes have been identified as a result of those operations.

6.2.4 Decision about most appropriate option

49. In my opinion, the recommended new permitted activity rule for a community corrections activity is an effective way of promoting economic growth in the district and therefore helps to achieve Objective 4.6.1. This provision also achieves the purpose of the RMA in that it provides for the social and economic well-being of people and communities (s5(2)).

Emergency service facilities and firefighting water supply

7.1 Analysis

50. Mr Craig Sharman (Beca) has provided evidence on behalf of Fire and Emergency New Zealand (FENZ).

51. In my s42A hearing report, I recommend the following new specific objective and accompanying policy that provide for FENZ's operations:

    4.6.16 Objective – Recognise the essential support role of emergency services training and management activities within industrial zones

    Recognise the essential support role of emergency services training and management activities and their important contribution to the health, safety and wellbeing of people within the industrial zones.

4.6.17 Policy – Emergency services facilities and activities

Enable the development, operation and maintenance of emergency services training and management activities within the industrial zones

52. While FENZ supports this recommended objective and policy, I have reflected on the wording of Policy 4.6.17, and consider that the following minor amendment is appropriate to clearly provide for buildings or equipment (i.e. facilities) which are necessary and integral to FENZ's activities, and therefore match the heading:

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

53. I also note an inadvertent omission of the word 'and' in the new permitted activity rule recommended for the Industrial Zone. This correction is shown as follows:

Rule 20.1.1 Permitted Activities

P13 Emergency services training and management activities

54. FENZ requests that 'emergency service facilities' are also explicitly permitted in the rules for both the Industrial Zone and Heavy Industrial Zone. This is to ensure that buildings (such as fire stations) are permitted.

55. In response to other submissions, my s42A report recommends these two new rules so that buildings (required to accommodate permitted activities) are explicitly permitted in both industrial zones:

Rule 20.1.1 Permitted Activities (Industrial Zone)

Activity		Activity-specific conditions
…	…	…
P15	Construction or demolition of, or alteration or addition to, a building	Nil

Rule 21.1.1 Permitted Activities (Heavy Industrial Zone)

Activity		Activity-specific conditions
…	…	…
P9	Construction or demolition of, or alteration or addition to, a building	Nil

56. I invite FENZ to indicate at the hearing whether these new rules for building (in addition to the new rule for ancillary activities) would satisfy these particular concerns raised in their evidence.

57. I note that some other zones have not provided explicitly for buildings. For example, while a dwelling is an obvious and expected component of residential living in the Rural Zone, the building of a dwelling is not explicitly permitted. 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.

58. FENZ has clarified their reasons for supporting Rules 20.3.4.2 and 21.3.4.2 which prescribe building setbacks from water bodies in the industrial zones. They have stated that these rules 'inadvertently' provide mitigation of flood hazard risks to buildings, therefore safeguarding the wellbeing of communities in accordance with the purpose of the RMA and the purpose of FENZ in the effective protection of lives, property and surrounding environment. I acknowledge this reasoning, and no change is necessary to my original s42A recommendation to accept FENZ's submission points [378.106 and 378,112].

59. My s42A report recommends the following amendments to the subdivision rules in the Industrial Zone and Heavy Industrial Zone so that proposed lots must be connected to public-reticulated water supply and wastewater:

Industrial Zone

20.4.1 Subdivision - General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots must have a minimum net site area of 1000m^2; (ii) proposed lots must have an average area of at least 2000m^2; and ~~(iii) no more than 20% rear lots are created;~~ (iii) proposed lots must be connected to public-reticulated water supply and wastewater (b) Council's discretion is restricted to the following matters: (i) the extent to which a range of future industrial activities can be accommodated; ~~(ii) amenity values;~~ (ii) provision of infrastructure and (iii) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.

Heavy Industrial Zone

21.4.1 Subdivision – General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots must have a minimum net site area of 1000m^2; (ii) proposed lots must have an average net site area of at least 2000m^2; and ~~(iii) no more than 20% rear lots are created.~~ (iii) proposed lots must be connected to public-reticulated water supply and wastewater
~~RD2~~	~~(a)~~ (b)Council's discretion is restricted to the following matters: (i) the extent to which a range of future activities can be accommodated; ~~and~~ ~~(ii) amenity values~~ (iii) provision of infrastructure; and (iv) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.

60. FENZ supports in part these amendments but remain concerned with the omission of the wording 'or water supply sufficient for firefighting purposes' from the new clause RD1 (a)(iv) in each of these rules. Instead, they request that this new clause be amended as follows:

(iv) proposed lots must be connected to ~~public reticulated~~ water supply sufficient for firefighting purposes and public reticulated wastewater

61. While most industrial-zoned land in the district is reticulated with a public water supply given their location within urban limits, I am aware that some relatively isolated industrial sites are self-serviced, in that they rely on water bores and/or water storage tanks. Nau Mai Business Park on the outskirts of Raglan and the Max Birt timber mill on State Highway 2 are examples. I therefore share Mr Clease's position[7] that there may be situations where it is impractical to provide a water supply sufficient for firefighting purposes. Therefore I do not recommend any change to the recommended requirements in (a)(iv) for subdivision in either of the industrial zones.

62. I am also aware of FENZ's request to add this matter of discretion to Rule 24.4.1 RD1(c) for the Village Zone:

(viii) The provision of water supply for firefighting where practicable; and

63. This matter was canvassed in FENZ's evidence and Council's rebuttal evidence for Hearing 6 (Village Zone)[8]. I consider that there needs to be consistency in how firefighting provisions are addressed across all zones, and therefore recommend that this matter of discretion be added to both Rules 20.4.1 and 21.4.1 for the Industrial Zone and Heavy Industrial Zone.

64. I also concur with Mr Clease's comment that the hearing for Chapter 14 (Infrastructure and Energy) would appear to be the most appropriate forum to address the matter of a water supply for firefighting as a district-wide matter. I agree that FENZ's request for a specific reference to the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNA PAS 4509:2008 can be more comprehensively addressed at that time, rather than addressing this matter through a series of zone-specific subdivision provisions.

7.2 Recommendations

65. As a result of the evidence provided by Fire and Emergency New Zealand, I recommend the following amendments to Policy 4.6.17, Rule 20.1.1 P13, and the subdivision rules for the Industrial Zone and Heavy Industrial Zone:

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

Rule 20.1.1 Permitted Activities

P13 Emergency services training and management activities

20.4.1 Subdivision - General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots must have a minimum net site area of 1000m^2; (ii) proposed lots must have an average area of at least 2000m^2; and ~~(iii) no more than 20% rear lots are created;~~ (iii) proposed lots must be connected to public-reticulated water supply and wastewater (b) Council's discretion is restricted to the following matters: (i) the extent to which a range of future industrial activities can be accommodated; ~~(ii) amenity values;~~ (ii) provision of infrastructure ~~and~~ (iii) provision of water supply for firefighting where practicable; and

[7] Rebuttal evidence for Village 6 (Hearing 6) prepared by Jonathan Clease, paragraph 57
[8] ibid

	(iv) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.

Heavy Industrial Zone

21.4.1 Subdivision – General

RD1	(b) Subdivision must comply with all of the following conditions: (i) proposed lots must have a minimum net site area of 1000m²; (ii) proposed lots must have an average net site area of at least 2000m²; and ~~(iii) no more than 20% rear lots are created.~~ (iii) proposed lots must be connected to public-reticulated water supply and wastewater
~~RD2~~	~~(a)~~ (b)Council's discretion is restricted to the following matters: (i) the extent to which a range of future activities can be accommodated; ~~and~~ ~~(ii) amenity values~~ (ii) provision of infrastructure; ~~and~~ (iii) provision of water supply for firefighting where practicable; and (iv) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.

7.2.1 Effectiveness and efficiency

66. The recommended amendments are an effective method to ensure that industrial subdivisions are provided with a water supply for firefighting where practicable. There may be situations where it is not practicable to provide a water supply for this purpose, but the subdivision application requires that this be addressed before titles are created. Safeguarding against fire risk is necessary and this will help to support the economic growth of industry and thus achieve Objective 4.6.1.

7.2.2 Costs and benefits

67. There are obvious benefits in listing this additional matter of discretion and this will assist in safeguarding people and their industrial investments.

7.2.3 Risk of acting or not acting

68. No risks are identified as a result of listing this additional matter of discretion.

7.2.4 Decision about most appropriate option

69. In my opinion, the additional matter of discretion is an appropriate way of supporting the economic growth of industry. It also helps to achieve the promotion of economic growth in the district and therefore achieve Objective 4.6.1. Requiring this matter to be addressed with all industrial subdivision applications will help to achieve the purpose of the RMA in that it recognises and provides for the health and safety of people and communities (s5(2)).

8 Building setbacks and earthworks from the railway corridor

8.1 Analysis

70. Ms Pam Butler has provided evidence on behalf of KiwiRail to support a new rule in all zones that requires buildings to be set back a minimum of 5m from the rail corridor. KiwiRail states that this setback is necessary to avoid or minimise potential adverse effects on the safety of the rail corridor (and people) that may arise where any building is adjacent to the corridor. They consider their recommended default to a restricted discretionary activity does not prevent the establishment of new buildings within 5m of the railway corridor if the merits of a particular case can be demonstrated.

71. My s42A report recommended rejection of KiwiRail's requested 5m building setback, on my initial understanding that the need for private landowners to access KiwiRail land (or vice versa) was no different to two private landowners negotiating an access agreement where no legal right of way exists. KiwiRail disagrees with my statement because, aside from a 'Permit to Enter', access onto KiwiRail land is not the issue they seek to address.

72. Instead, KiwiRail states that many activities undertaken by third parties do not require them to physically access the corridor. They refer to maintenance, cleaning or vegetation clearance on sites adjoining the railway corridor, involving scaffolding, poles and the like, that sometimes enter the corridor with the potential to cause a serious incident, should those objects or structures collide with a moving train.

73. I note that the equivalent request for a 5m building setback was recommended to be accepted in the s42A hearing report for the Village Zone. However, I respectfully disagree that this building setback should apply to any site within the district (irrespective of zone) that is adjacent to the railway corridor.

74. I have researched this matter and understand that while some relatively recent district plans specify building setbacks from a railway corridor (4m in Christchurch City and 5m in Hamilton City), such requirement has not been universally accepted across New Zealand.

75. As one example, the Auckland Unitary Plan does not include this type of building setback rule. The independent hearings panel engaged by Auckland Council did not accept KiwiRail's reasons (or support from Council staff on this matter) as a result of evidence from various landowners who would be adversely impacted by having to locate their buildings a minimum of 5 metres from the railway corridor. I consider these excerpts[9] from the hearing panel's recommendations to be particularly helpful:

> ***5.3. Building setback from the rail corridor statement of issue***
> *Whether to include the proposed building setback from the rail corridor.*
>
> ***5.4. Panel recommendation and reasons***
> *These provisions were proposed by the Council with the support of Kiwirail late in the hearings process. It was designed to introduce a 2.25 metre buffer on either side of the rail corridor and within that buffer to control development such that safe distances are maintained around the electrified rail infrastructure.*
>
> *Vaughan Smith, an expert planner for a number of parties raised the issue that this proposed setback rule would be a blunt and inefficient way to address the perceived problem. He provided evidence to show situations where the buffer outside the existing designation is not required to meet KiwiRail's safety concerns but nevertheless the setback rule would restrict the*

[9] IHP Report to Auckland Council Topics 043 and 044 Transport 2016-07-22

affected property owners' rights to develop their property. He recommended KiwiRail address this issue by reaching commercial arrangements with relevant property owners or by using its designation powers. Mr Vijay Lala, an expert planner for Ngati Whatua Orakei Whai Rawa Limited, raised similar issues with respect to the implications on their property at Quay Park.

The Panel was concerned that these provisions would apply in a blanket fashion along the rail corridor whether needed or not, that it is an issue that could be addressed through the application of KiwiRail's designation powers if needed, and that the costs of the Overlay would fall entirely on property owners with insufficient evidence that such an approach would lead to an efficient outcome. In this context the Panel recommends that the building setback from the rail corridor provisions not be included in the plan.

76. I have read Mr Vaughan Smith's evidence[10] and concur with his view that it would be more 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. This is particularly relevant for landowners of industrial-zoned land who need to maximise their investment and the efficient use of the land resource. A considerable number of sites in the district are located immediately adjacent to the rail corridor and industrial sites represent a fraction of these. In my opinion, a 5m setback would effectively 'sterilise' the use of this space for activities on these particular sites that should be permitted.

77. I also wish to note the comments provided by Genesis in respect to the earlier Hearing 6 (Village Zone). Mr Matthews (on behalf of Genesis) notes[11] in his evidence for Hearing 7 that, while the reporting officer (Mr Cattermole) for Hearing 6 supported the changes sought by KiwiRail as they relate to the Village Zone, this support was not accurately reflected in the recommended amendments to Policy 4.4.2(a). I have brought this matter to Mr Cattermole's attention, as it is outside the scope of my rebuttal evidence for the industrial zones, although I acknowledge that any decision to amend that policy rests with the hearings panel.

8.2 Recommendations

78. The proposed rules for the Industrial Zone and Heavy Industrial Zone permit buildings to be located flush with a railway boundary. For the reasons discussed above, my s42A recommendation to reject KiwiRail's request for a 5m setback remains unchanged.

8.3 Section 32AA evaluation

79. I do not support the introduction of a 5m setback from the railway corridor for buildings in the industrial zones, and therefore no section 32AA evaluation is necessary.

9 Tuakau Proteins Limited – 'industrial activity' definition and reverse sensitivity

9.1 Analysis

80. Ms Nicola Williams (Mitchell Daysh Limited) has provided evidence on behalf of Tuakau Proteins Limited (TPL), which owns and operates a long-established rendering plant beside the Waikato River on Lapwood Road in Tuakau.

[10] Vaughan Smith Evidence Rail Corridor

[11] Primary Statement of Evidence by Richard Matthews for Genesis Energy Limited (9 December 2019) – page 9

81. The primary issues raised in their evidence concern the definition of 'industrial activity' and the desire to protect TPL's existing operation and future development plans.

82. TPL submitted on the notified definition of 'industrial activity', as they considered that their activity does not clearly fit with that definition. While I still consider that the notified definition is broad enough to accommodate TPL's activities, I agree that the National Planning Standards (NPS) definition is more relevant to TPL with its specific reference to the processing of raw materials.

83. The term 'industrial activity' is included in the table on page 32 of my s42A report. This table indicates the recommended amendments that are specific to Hearing 7. TPL requests that this table be updated to signal the Hearing 5 recommendation to adopt the NPS definition.

84. However, no wording change is necessary for the term 'industrial activity' in Chapter 20 (or Chapter 21 for the Heavy Industrial Zone). Instead, once all hearings and deliberations are finalised, a decision version of the PWDP will be produced. If the hearings panel decides to adopt the definition of 'industrial activity' and 'ancillary activity' from the NPS, these will be included in the decision version of Chapter 13 which contains the list of definitions.

85. TPL refers to their submission on Policy 4.7.11 addressed in the earlier Hearing 3 (Strategic Objectives). They wish to further emphasise that there is a significant difference between industrial activities on their site and the existing adjoining rural environment, and that potential residential activities in this adjoining rural area and nearby Tuakau are sensitive land uses. TPL remains concerned that their interest in the topic of reverse sensitivity was dismissed by the author of that s42A with this statement:

> *Submission 402.3 (Tuakau Proteins Limited) seeks recognition of reverse sensitivity effects. However, I consider this is unnecessary as their site is a considerable distance from the urban area of Tuakau.*[12]

86. TPL remains concerned that it is not just the urban area of Tuakau that is relevant, and that the area adjoining their site also needs to be considered. In my view, any proposal to locate new sensitive land uses in close proximity to industries (such as a dwelling on a rural site) must be carefully assessed, particularly if expected adverse effects generated by industries such as odour and noise, cannot be wholly contained within the industrial site. I therefore agree with TPL's position.

87. TPL's evidence notes that one key focus of the Draft Growth & Economic Development Strategy (Waikato 2070) is to "build our business". While submissions on this document close on 24 January 2020, it is important to emphasise that this is a non-statutory document that will not be finalised until later in 2020.

88. TPL further notes that the s42A report for Hearing 3 recommended[13] the following amendments to Policy 4.7.11 – Reverse Sensitivity:

> *(a) Development and subdivision design (including use of topographical and other methods) minimises the potential for reverse sensitivity effects on adjacent sites, adjacent activities, or the wider environment; and*
>
> *(b) Avoid potential reverse sensitivity effects of locating new ~~dwellings~~ sensitive land uses in the vicinity of an intensive farming, extraction industry or industrial activity and strategic infrastructure. Minimise the potential for reverse sensitivity effects where avoidance is not practicable.*

89. Because some submitters have interests that overlap a number of topics (particularly reverse sensitivity), TPL considers that it would have been helpful if the s42A report for Hearing 7

[12] Paragraph 173, s42A Report Hearing 3 (Strategic Objectives) prepared by Alan Matheson (30 September 2019)

[13] ibid, para 374

had shown all recommended amendments for Chapter 4 (Urban Environment) from the earlier Hearing 3. In my opinion, because Policy 4.7.11 is specific to the management of activities within the urban environment (and is therefore applicable to a number of zones), a reference to this policy would be of more value to s42A reports for later hearings in 2020 which will address the extent of urban zones and provisions within them.

90. TPL states that two further submission points have been inadvertently missed from the s42A hearing report for Hearing 7. Their first missed further submission point *[FS1353.5]* supports EnviroWaste [302.34] in relation to Policy 4.6.3 – Maintain a sufficient supply of industrial land. My s42A recommendation is to accept EnviroWaste's submission point[14]. I therefore recommend that TPL's further submission point [*FS1353.5*] also be accepted.

91. I have investigated TPL's statement that their second further submission point has been missed which supports the amendment requested by Buckland Marine Limited [465] regarding Policy 4.6.7 – Management of adverse effects within industrial zones. It would appear that TPL's further submission has inadvertently referred to submission point [465.10] (which refers to the rules for hazardous substances), rather than the correct submission point [465.9]. However, as TPL's further submission document clearly sets out the amended policy requested by Buckland Marine, I conclude that TPL's position as a further submitter on Policy 4.6.7 should be considered valid.

92. The amendments to Policy 4.6.7 sought by Buckland Marine are shown in black underline/~~strikeout~~ as follows:

   (a) Manage adverse effects including visual impact from buildings, parking, loading spaces and outdoor storage, lighting, noise, odour and traffic by managing the location of industrial uses, bulk and form of buildings, landscaping and screening ~~at the interface with roads and environmentally sensitive areas.~~ Where appropriate.

93. TPL supports these amendments, as industrial sites are often large and the development standards of the zone include specific setbacks for the location of buildings from boundaries and a landscape planting requirement for sites adjoining various zones. They also note that the development standards in Chapter 20 do not refer to '*environmentally sensitive areas*' and that this is not a defined term.

94. On reflection, I consider that it is undesirable for a policy to contain subjective text, and that it is unclear what is meant by '*environmentally sensitive areas*' and '*where appropriate*'. I consider that there is already sufficient direction in the accompanying Objective 4.6.6 Manage adverse effects and the Chapter 20 provisions, as to how significant adverse effects from industrial activities on receiver sites outside of industrial zones are to be managed. In the case of landscaping, the appropriateness of waiving or reducing the amount of planting required by the development standards can be addressed through a resource consent process for a restricted discretionary activity. I therefore recommend further amendments to Policy 4.6.7.

95. The last matter raised in TPL's evidence addresses noise standards for the Industrial Zone. They reiterate their request for a noise interface as "*… the TPL site is the only site zoned Industrial and adjoins the Rural Zone.*"[15] In summary, this interface enables a relaxation of 5dB for receiver sites in the Rural Zone during the night-time period (10pm to 7am). TPL considers that adopting a similar approach to that taken in the Invercargill District Plan and Hastings District Plan would ensure that the future growth of their operations would not be unreasonably restricted due to noise limitations.

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[14] Page 34 – Part A s42A Hearing Report (10.4 Recommendation paragraph 100. b.)

[15] Paragraph 8.1 Evidence of Nicola Williams on behalf of TPL

96. As stated in my s42A report, acoustic matters are outside my field of expertise. However, I note that the TPL site is not unique, as it is not the only industrial site that adjoins the Rural Zone – the Nau Mai Business Park being just one other example.

97. I agree that the noise interface request needs to be assessed by an acoustic engineer, and note TPL's advice that a brief of evidence from Marshall Day was unable to be provided in time for Hearing 7. While TPL has indicated that this acoustic evidence will be provided for the later Rural Zone hearings in 2020 to address this matter, I have some reservations with this timing. Because Hearing 7 specifically addresses the provisions for the industrial zones and Hearing 21 specifically addresses the provisions for the Rural Zone, I am concerned that deferring the acoustic evidence to Hearing 21 could potentially prejudice submitters for 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.

9.2 Recommendations

98. As a result of the evidence provided by Tuakau Proteins Limited, it is recommended that the hearings panel:

a. **Accept** the further submission from *Tuakau Proteins Limited [FS1353.5]*

b. **Amend** Policy 4.6.7 as follows:

(a) Manage adverse effects including visual impact from buildings, parking, loading spaces and outdoor storage, lighting, noise, odour and traffic by managing the location of industrial uses, bulk and form of buildings, landscaping and screening. ~~at the interface with roads and environmentally sensitive areas.~~

10 Genesis Energy Limited – Huntly Power Station

10.1 Analysis

99. Genesis Energy Limited (Genesis) has provided evidence from Mr Richard Matthews (Mitchell Daysh Limited) and acoustic evidence from Mr Damian Ellerton. I will address these in turn.

100. Mr Matthews refers to the submission[16] from Genesis, which requests that the following clause be added to Policy 4.6.2 – Provide Industrial Zones with different functions:

(iii) Recognise and provide for the Huntly Power Station as a regionally significant industry.

101. In my s42A report[17], I considered it unnecessary to single out the Huntly Power Station in Chapter 4 because heavy industrial developments are already recognised through clause (a)(ii) in Policy 4.6.2 (shown below) without needing elaboration:

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:
…
(ii) Heavy Industrial Zone
A. Recognise and provide for a range of industrial and other compatible activities that generate potentially significant effects on more sensitive zones, including relatively high levels of visual

[16] Genesis - Submission point [924.44]
[17] Paragraph 84, s42A hearing report – Part A

impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and heavy traffic, subject to appropriate separation distances.

102. My s42A report also deferred to the rebuttal evidence from Mr Eccles in Hearing 2 which recommended this amendment to Policy 5.3.17 shown in black underline:

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.

(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.

103. Mr Eccles recommended this amendment for reasons given in these following paragraphs 29-31:

29. *Mr Matthews raises a valid point at paragraphs 46-50 in his evidence that the WRPS definiton of Regionally Significant Industry requires such industry to be specifically identified in district plans. I had not considered that definition when preparing my s42A report.*

30. *In my view it is clear that the Huntly Power Station is a Regionally Significant Industry and in accordance with the WRPS it should be identified as such in the Proposed Waikato District Plan.*

31. *The most appropriate place within the PWDP for this recognition to occur is in my view in the existing Rural policy 5.3.17 that recognises facilities at Huntly Power Station. The alternative was to insert provisions into Chapter 6 infrastructure and Energy however given the subtle difference between Industry and Infrastructure the recommended amendment below was preferred.*

104. I have reflected on my original s42A recommendation and Mr Eccles' recommendation. I agree with Mr Matthews that Policy 5.3.7 refers to coal storage and delivery, and the transport of ash water which occur in the Rural Zone, and are ancillary to the Huntly Power Station itself, which is located in the Heavy Industrial Zone.

105. However, I do not completely agree with Mr Matthews' statement that the definition of 'regionally significant industry' in the WRPS "*requires such industry to be specifically identified in district plans*". This is because this definition uses the words 'regional or district plans" rather than 'regional and district plans'. It is also unclear as to what 'specifically identified' means, i.e. does it mean that all regionally significant industries need to be specifically named in text and/or shown on the planning maps? I have found 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.

106. I have considered whether there is value in amending Objective 6.3.6 and Policy 6.3.7, as these address non-renewable energy and are not zone-specific. However, these appear to recognise non-renewable resources (such as coal) at their source, rather than the generation of electricity from them at industrial-zoned locations. In this regard, I consider that the Huntly Power Station may better fit this WRPS definition of 'regionally significant infrastructure':

***Regionally significant infrastructure** – includes:*

…

*f) **infrastructure** for the generation and/or conveyance of electricity that is fed into the national grid or a network (as defined in the Electricity Industry Act 2010);*[18]

[18] Waikato Regional Policy Statement – Glossary Page G-9

107. I have also contemplated an amendment to Policy 4.6.2 so that it refers to 'any regionally significant industry'. This is because there are numerous industries in the district that could be captured by such term. However, the use of this WRPS definition may be problematic, in that its use of the term 'economic activity' may potentially overlap the NPS definitions of 'industrial activity' and 'commercial activity', which are both expected to be adopted into the PWDP.

108. Overall, I consider that it is not necessary to amend Policy 5.3.17 (as recommended by Mr Eccles) or amend Policy 4.6.2 in the manner requested by Genesis. These notified policies already work hand-in-hand with the Specific Area 20.5 rules for coal storage and delivery, the transport of ash water within the Rural Zone, and the rules for the Heavy Industrial Zone, such that further and 'specific identification' of the Huntly Power Station is not necessary.

109. In respect to the Ministry of Education's request to add a new restricted discretionary activity rule for educational facilities in the Industrial Zone, Genesis agrees with my recommendations to reject that request, as such activities in this zone are inappropriate and involve inefficient use of industrial land.

110. In respect to the height limit of buildings in the Heavy Industrial Zone, Genesis submitted to request the following new permitted activity rule[19]:

> That a new permitted activity rule be inserted as follows:
>
> P2
>
> (a) The construction or alteration of any building or structure at the Huntly Power Station may be up to:
>
> (i) a maximum height of 60m, and
>
> (ii) 35m on 90% of the site

111. Mr Matthews states that this new rule was requested so that permitted height limits on the Huntly Power Station site are "more consistent with the Operative District Plan height controls than those in the PDP."[20]

112. Mr Matthews has also helpfully clarified that the 50 metre height limit in the Operative District Plan Rule 24.42 relates to the main boiler hall building envelope at the Huntly Power Station site, while the 35 metre height limit relates to other buildings. The two main stacks on the site are approximately 150 metres tall. Genesis therefore requested a maximum building height of 60 metres in order to accommodate the existing building envelope (which includes building vents).

113. Mr Matthews has indicated that the rollover of the Operative District Plan building height provision (i.e. maximum height of 50 metres and 35 metres over 80% of the net site area) 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.

114. In my opinion, it would be helpful for further visual detail to be provided at the hearing to make clear where these peaker generation units would be located within the existing building envelope. It would also be helpful for Genesis to confirm when the air discharge consents were granted and when these need to be given effect to. I therefore wish to reserve any change in recommendation on the matter of building height on the Huntly Power Station site until these details are provided at the hearing.

115. 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

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[19] Genesis submission #924 page 16

[20] Primary Statement of Evidence by Mr Matthews (9 December 2019) – paragraph 50

'ancillary activity'. This term is defined by the NPS and also included within the definition of 'industrial activity'.

116. However, Genesis remains uncertain as to whether electricity generation is an industrial activity that is permitted in the Heavy Industrial Zone. Genesis has therefore requested amendments to Rule 14.6 Electricity generation (Chapter 14 of the PWDP) so that electricity generation on the Huntly Power Station site is explicitly permitted, subject to compliance with the Heavy Industrial Zone rules.

117. Having considered Mr Matthews' comments, I tend to agree that the PWDP does not explicitly permit the Huntly Power Station's activities in the Heavy Industrial Zone or Chapter 14. While he has suggested a new schedule in Chapter 30 to identify regionally significant industries, I do not consider that this is a solution, primarily because I consider that the WRPS definition of 'regionally significant infrastructure' is a better fit for the Huntly Power Station, as opposed to the NPS definition of 'industry' and the WRPS definition of 'regionally significant industry'. In addition, I note that Rule 14.1(1) in the introduction to Chapter 14 specifies that the zone chapters and their associated overlays, objectives, policies and rules do not apply to infrastructure and energy activities, unless specifically referred to within that chapter.

118. Therefore, rather than amending Chapter 14, my preference is to explicitly permit electricity generation on the Huntly Power Station site by amending Rule 21.1.1 as follows:

Rule 21.1.1 Permitted Activities (Heavy Industrial Zone)

Activity		Activity-specific conditions
P10	Electricity generation on the Huntly Power Station site	Nil

119. Lastly, Genesis acknowledges that there may be some merit in my s42A recommendation for Chapter 14 to address health and safety signage on a district-wide basis, but prefers that this rule be inserted into each zone chapter:

> *Signage required for health and safety or asset identification purposes and/or required by legislation or any associated regulations.*

120. Genesis considers that an amendment to the Chapter 14 rule is not ideal because that chapter is devoted to the management of 'infrastructure' (defined by the PWDP) rather than being a chapter that contains 'district-wide' provisions. I disagree with this comment after noting Rule 14.1(2) in the introduction section of Chapter 14 which states that:

> ' … *It should be noted that* ***this chapter also contains a number of rules*** *(such as on-site car parking and stormwater management)* ***relating to district-wide land development activities****; and as such these particular rules should be read in conjunction with the relevant zone chapters where applicable.'* [my emphasis]

My recommended amendment to Rule 14.3.1 P11 therefore does not introduce any inconsistency in respect to how Chapter 14 currently manages district-wide matters.

121. Given that Chapter 14 already contains various district-wide provisions, my s42A recommendation for Chapter 14 to address health and safety signage, is unchanged. I also do not consider it necessary for such a signage rule to refer to 'any associated regulations' as requested by Genesis, because I consider regulations to be part and parcel of legislation. I invite Genesis to provide an example of regulations that would need to be cited in this way.

122. I now turn to the acoustic evidence of Mr Damian Ellerton. In summary, this evidence:

(a) Supports policy that reverse sensitivity effects on regionally significant infrastructure and industry shall be avoided or minimised, including not locating noise sensitive activities near regionally significant infrastructure and industry and by requiring subdivision design to avoid reverse sensitivity effects.

(b) Requests that the Operative District Plan 'date stamp' of 25 September 2004 be carried over to the permitted noise rules for the Huntly Power Station with regard to the existence of notional boundaries at which noise levels are to be complied with.

(c) Requests that the Operative District Plan 'date stamp' of 25 September 2004 be carried over to the permitted noise rules for the Huntly Power Station with regard to the existing residential boundaries at which noise levels are to be complied with.

(d) Requests that the Operative District Plan 350m setback from the Huntly Power Station site, within which houses are required to provide acoustic insulation, be carried over to the Proposed Waikato District Plan.

123. I address each of these matters in turn.

124. Firstly, Mr Ellerton supports the recommendation made in the s42A report[21] for Hearing 3 (Strategic Objectives) to amend Policy 4.1.13 – Huntly, as follows:

4.1.13 Policy – Huntly

(a) Huntly is developed to ensure:
- *(i) Infill and redevelopment of existing sites occurs;*
- *(ii) Reverse sensitivity effects ~~from~~ on the strategic transport infrastructure networks and regionally significant industry are avoided or minimised;*
- *(iii) Development of areas where there are hazard and geotechnical constraints is managed to ensure the associated risks are reduced to levels acceptable to the proposed use;*
- *(iv) Development is avoided on areas with hazard, and geotechnical ~~and ecological~~ constraints that are unable to be remedied or sufficiently mitigated to achieve a level of risk acceptable to the proposed use;*
- *(v) Ecological values are maintained or enhanced; and*
- *(vi) Development of areas with significant natural and ecological values is avoided.*

125. Secondly, Mr Ellerton considers it necessary to retain the 'date stamp' for notional boundaries/dwellings that existed as at 25 September 2004, because this reflects the Environment Court's consent order issued on 15 June 2011.[22] This date is understood to be important because it signals the notional boundary to newcomers where the noise limit applies. Therefore, the received noise level would be higher if a new dwelling was constructed closer to the Huntly Power Station, thus creating a new compliance location.

126. Without this 'date stamp', Mr Ellerton considers that the notional boundary limit would change when a new dwelling is constructed and that this would result in uncertain outcomes and potential constraints on the operation of the Huntly Power Station.

127. In order to rectify this concern, Mr Ellerton recommends the following amendments to Rule 21.2.3.2 Noise – Huntly Power Station:

21.2.3.2 Noise – Huntly Power Station

P1	Noise generated by emergency generators and emergency sirens.

[21] Paragraph 213 s42A report for Hearing 3 (Strategic Objectives)
[22] Environment Court consent order 15 June 2011 – Appendix A to Mr Ellerton's evidence

P2	(a) Noise measured ~~at~~ within the notional boundary of any dwelling existing as at 25 September 2004 in the Rural Zone ~~must~~ shall not exceed: (i) 55dB (LA_{eq}) 7am to 10pm; and (ii) 45dB (LA_{eq}) and 75dB (LA_{max}) 10pm to 7am the following day. (b) Noise measured within any ~~site in the~~ Residential Zone where a dwelling exists as at 25 September 2004 shall not exceed: ~~must meet the permitted noise levels for that zone.~~ (i) 50dB (LA_{eq}) 7am to 7pm; and (iii) 45dB (LA_{eq}) 7pm to 10pm; and (iv) 40dB (LA_{eq}) and 65dB (LA_{max}) 10pm to 7am the following day. (b) Noise levels must be measured in accordance with the requirements of NZS 6801:2008 "Acoustics Measurement of Environmental Sound". (d) Noise levels must be assessed in accordance with the requirements of NZS 6802:2008 "Acoustics Environmental Noise".
~~P3~~	~~(a) Noise measured within any site in the Residential Zone must meet the permitted noise levels for that zone.~~
~~P4~~	~~(a) Noise levels must be measured in accordance with the requirements of NZS 6801:2008 "Acoustics Measurement of Environmental Sound".~~ ~~(b) Noise levels must be assessed in accordance with the requirements of NZS 6802:2008 "Acoustics Environmental Noise".~~ ~~(a)~~
RD1	(a) Noise that does not comply with Rule 21.2.3.2 P1, P2, P3 or P4. (b) Council's discretion is restricted to the following matters: (i) effects on amenity values; (ii) hours and days of operation; (iii) location of noise sources in relation to any boundary; (iv) frequency or other special characteristics of noise; (v) mitigation measures; and (vi) noise levels and duration.

128. Thirdly, Mr Ellerton makes reference to Table 14 in Appendix 1 of the PWDP, shown as follows:

6.1 Conditions for Permitted Activities

(1) Compliance with the internal design sound levels shall be demonstrated through the production of a design certificate from an appropriately-qualified and experienced acoustic specialist certifying that the internal sound level will not exceed the levels listed in Table 14.

Table 14: Internal sound level

Area	*Internal design sound level*
• *Within 350m of the Huntly Power Station* • *Dwellings in the Business Zone* • *Dwellings in the Business Town Centre Zone* • *Within 100m of the Tamahere Commercial Areas A, B and C* • *Multi-Unit Development*	*40dB L_{Aeq}*

• *Comprehensive Development – Rangitahi Peninsula*	

129. Mr Ellerton supports the 350m setback which requires new dwellings to provide sound insulation if they are located within this setback, although states that it is unclear whether the intention is for this measurement to apply to any boundary of the site containing the Huntly Power Station site, or to existing buildings within that site. I agree that this needs to be clarified in the later s42A report for the Rural Zone, and note that the Environment Court's consent order (and the operative Rule 25.68.1 for the Rural Zone) refers to the Huntly Power Station site boundary.

130. Mr Ellerton is also of the opinion that 40dBL_{Aeq} internal design sound level shown in Table 14 should be reduced to 35dBL_{Aeq} to be appropriate for the protection of bedrooms, and that this limit should incorporate a time basis to be technically correct and achievable, similar to the approach taken in the Operative WDP.

131. Lastly, reference is made to paragraph 784 in my s42 report shown below:

> *784. As above, analysis of any change to acoustic levels and measurements in respect to the Genesis submissions [924.30 and 924.31] is outside my area of expertise, but I note that the National Planning Standards contain definitions for noise levels expressed as L_{A90}, L_{Aeq} and $L_{AF(max)}$. Genesis may be concerned about potential rezoning for residential use around the Huntly Power Station, rather than the specified noise limits per se. I therefore invite Genesis to clarify their position on this matter at the hearing. In the meantime, without this supporting acoustic evidence, I consider it necessary to reject these submission points.*

132. While Mr Ellerton accepts my reference to the acoustic parameters, such as L_{A90}, L_{Aeq} and $L_{AF(max)}$ in the National Planning Standards, he notes that these standards do not define or determine where such standards should apply or what the noise limit should be in site-specific cases.

133. Prior to notifying the PWDP, Council engaged Mr Nevil Hegley to review all acoustic provisions. Because the matter of acoustics is outside of my area of expertise, I seek guidance from the hearings panel as to how they wish to address Genesis' challenges to the proposed noise provisions for the Huntly Power Station.

134. I note here that Council has recently engaged Mr Malcolm Hunt, an acoustic expert, to peer review all acoustic evidence provided by submitters. I may be in a position to provide his feedback at the hearing.

10.2 Recommendations

135. As a result of the evidence provided by Genesis, it is recommended that the hearings panel:

a. **Accept in part** the further submission from *Genesis [FS1345.80]*
b. **Amend** Rule 21.1.1 Permitted Activities, as follows:

Activity		Activity-specific conditions
P10	Electricity generation on the Huntly Power Station site	Nil

10.2.1 Effectiveness and efficiency

136. The recommended permitted activity rule is an effective method to ensure that electricity generation on the Huntly Power Station site is explicitly recognised and permitted. It would be unreasonable to require resource consent applications, as a starting point, for further development associated with this operation. I consider that this activity fits better with the WRPS definition of 'regionally significant infrastructure', rather than its definition of a

'regionally significant industry'. However, this provision will directly link and help achieve Objective 6.3.7 which is to recognise the actual and potential contribution to national energy production from non-renewable electricity resources.

10.2.2 Costs and benefits

137. There are obvious benefits in explicitly listing electricity generation on the Huntly Power Station site as a permitted activity in the Heavy Industrial Zone. It removes any doubt as to whether any further developments relating to this operation require resource consent or not. It would not be reasonable to require resource consents for activities that relate to electricity generation on this site.

10.2.3 Risk of acting or not acting

138. No risks are identified as a result of explicitly listing this new permitted activity rule.

10.2.4 Decision about most appropriate option

139. In my opinion, it is appropriate to explicitly list this activity to remove any doubt as to whether electricity generation on the Huntly Power Station is permitted in the context of the Heavy Industrial Zone. It is necessary to provide a clear link between a rule and Objective 6.3.7 as noted above.

11 Hamilton City Council

11.1 Analysis

140. Mr Paul Bowman has provided evidence on behalf of Hamilton City Council (HCC).

141. This evidence reiterates HCC's objective to protect the sub-regional need for industrial land to be managed and maintained, and not lost to other non-industrial purposes such as large format retail or offices.

142. HCC supports the s42A recommendations to retain Policy 4.6.3 – Maintain a sufficient supply of industrial land, and Policy 4.6.4 – Maintain industrial land for industrial purposes. However, it remains concerned that offices and retail activities (which are not ancillary to an industrial activity) are provided as discretionary activities in the Industrial Zone, rather than non-complying activities.

143. HCC's evidence therefore seeks clear alignment with Objective 4.6.1 – Economic growth of industry, to ensure that there is no erosion of the Industrial Zone for non-industrial uses. In addition, it draws on the following amendment to Policy 4.1.6 as recommended in the 42A report[23] for the earlier Hearing 3 (Strategic Objectives):

[23] s42A prepared by Alan Matheson for Hearing 3 (Strategic Objectives) - Appendix 4, Chapter 4: Urban Environment, page 8

4.1.6 Policy – Location of ~~C~~commercial and industrial activities

(a) Provide for commercial ~~and industrial~~ development in the following zones;
  (i) Business Town Centre; and
  (ii) Business.~~;~~
(b) Provide for industrial development in the following zones:
  (i) Industrial; and
  (ii) Heavy Industrial.
(c) Industry is only to be located in identified Industrial Zones and the industrial strategic growth nodes of:
  (i) Tuakau;
  (ii) Pokeno;
  (iii) Huntly; ~~and~~
  (iv) Horotiu; and
  (v) Electricity generation within the Huntly Power Station Heavy Industrial Zone.

[Changes to Policy 4.1.6 refer to s42A Report – Section 18 - Chapter 4: Urban Environment Policy – 4.1.6 Commercial and industrial activities]

144. I agree with the s42A report author that it is appropriate for this policy to split out commercial and industrial activities. I also wish to respectfully note that the recommended clause 1(v) is grammatically incorrect and the Huntly Power Station site is not an industrial node. More importantly however, I consider that the Huntly Power Station is 'regionally significant infrastructure' (in terms of the WRPS definition) rather than an industry. I therefore do not support any change to clause 1 in Policy 4.1.6.

145. HCC considers that it is important that the purpose and function of the Industrial Zone is not eroded by stand-alone non-industrial activities such as large format retail or offices, which could otherwise be better located within the Business Zone or Business Town Centre Zone. HCC considers this necessary because of the need to comply with the NPS-UDC and maintain the Future Proof settlement pattern which is supported by the Business Development Capacity Assessment 2017.

146. 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.

147. Mr Bowman also states[24] that:

> *Until there has been a comprehensive reconciliation of the WDOP, the WPDP and the proposed Waikato 2070 Draft Growth and Economic Development Strategy with a stocktake of sufficient industrial land capacity, then I consider it sensible to adopt a precautionary approach to retaining industrial land for industrial uses.*

148. It would appear that HCC is requesting a non-complying activity status for offices and retail activities to reflect their desired 'precautionary approach'. However, in my opinion, a discretionary activity also calls for a precautionary approach, in that it requires a robust analysis against the objectives and policies for the Industrial Zone and the merits of a particular commercial activity must be demonstrated. I am therefore not convinced that a more stringent non-complying activity test is warranted.

149. I also do not concur with HCC's suggestion of the introduction of a floor area threshold in a discretionary activity rule, as this would vary considerably depending on the type of commercial activity. Again, the onus is on the resource consent applicant to demonstrate a compelling need to use industrial-zoned land in a manner that does not undermine the

[24] Hamilton City Council evidence – page 11, paragraph 38

integrity of the zone provisions. These include objectives and policies relating to the supply of industrial land and reverse sensitivity.

11.2 Recommendation

150. For the reasons discussed above, my s42A recommendation to reject HCC's submission point [525.68] remains unchanged and therefore no section 32AA evaluation is necessary.

12 Signage on historic heritage items

12.1 Analysis

151. Ms Carolyn McAlley provided evidence on behalf of Heritage New Zealand Pouhere Taonga (NZHPT).

152. NZHPT's submission [559.83] requests a restricted discretionary activity status for all signage on historic heritage items and Maaori sites and areas of significance.

153. NZHPT's further submission [*FS1323.85*] opposes EnviroWaste's primary submission which seeks clarification as to whether Rule 20.2.7.1 P2(a) only applies to freestanding signs. They state that this further submission is generic and relates to permitted signage rules throughout the PWDP where there are variations between zones.

154. My s42A report noted[25] that P2(a) applies to all signs, regardless of whether they are attached to a building or are freestanding. P2(b) and (c) set out additional controls for signs that are attached to a building or are freestanding respectively. No amendment to P2 is considered necessary.

155. In response to my request for further information about heritage items in the Industrial Zone, NZHPT has identified the former dairy factory at Matangi (Item 172 – Historic Heritage Schedule 30.1). On this basis, I now reverse my s42A recommendation so that there is no change to notified RD1 (b)(viii) in Rule 20.2.7.1. This clause enables Council to consider the effects on notable architectural features of a heritage building if a proposal does not comply with Rule 20.2.7.1 P2 or P3. I note here that submissions have been received from the owners of this site (Mowbray Group) to rezone this particular site.

156. NZHPT suggests that if there is an interest in maintaining a more enabling approach to signage of heritage buildings, additional matters could be incorporated into the permitted standards – such as the location of the sign in relation to significant detailing of the building and the manner in which the sign is attached to the building. They note that Waipa District Council and South Waikato District Council have adopted this particular approach, while Waipa District Council has differing provisions between zones. However, I am reluctant to recommend any such amendments on the basis that there does not appear to be jurisdiction to do so. Instead, I consider that the restricted matters of discretion appropriately deal with signage that does not comply as a permitted activity.

157. NZHPT advises that they have not reviewed all Maaori sites and areas of significance, but considers it necessary to retain a relevant rule framework to ensure that these important sites are not compromised by inappropriate signage. They also request additional consideration of earthworks necessary to install a signage pole on a Maaori site or area of significance.

158. I have now confirmed with Council's GIS staff that there are no Maaori sites of significance or Maaori areas of significance located within the Industrial Zone or Heavy Industrial Zone.

[25] Part B Industrial Zone – paragraph 399

Therefore, I recommend that any rules within these zones that address these features be deleted.

12.2 Recommendation

159. For the reasons discussed above, I recommend:

a. No change to notified Rule 20.2.7.1 RD1 (b)(viii) Effects on notable architectural features of a heritage building.
b. Deletion of the notified rules in Chapters 20 and 21 that refer to any Maaori site or area of significance, given that none of these features are located in the industrial zones.

13 Effects of signage on traffic

13.1 Analysis

160. Ms Tanya Running provided evidence on behalf of the New Zealand Transport Agency (NZTA).

161. NZTA's submission requested the following amendments to Rule 20.2.7.2 P1(iv) for the Industrial Zone and Rule 21.2.7.2 P1(iv) for the Heavy Industrial Zone:

> (iii) Contain no more than 40 characters and no more than 6 <u>word</u>s, symbols or <u>graphics</u>;

162. NZTA seeks these amendments on the basis of their brochure ('Advertising Signs on State Highways'), which was prepared with input from their Safety Engineers and is used to manage applications for signage within and adjoining the state highway reserve area. NZTA advises that this brochure has adopted elements from their 2010 bylaw for dealing with signs on state highways, which has also been prepared with input from their Safety Engineers.. In NZTA's opinion, these documents can be directly applied to local roads.

163. This matter was also addressed in the rebuttal evidence for the earlier Hearing 6 (Village Zone – land use provisions). I agree with Mr Cattermole, who was the author of that rebuttal, in that there does not appear to be any evidence that supports the application of these documents to local roads.

164. I also do not support NZTA's alternative suggestion that this following advice note shown in <u>black underline</u> could be added to Rule 20.2.7.2 and Rule 21.2.7.2:

> <u>Note: in relation to clause (iv), where the sign is intended to be viewed from the state highway the following shall apply – Contain no more than 40 characters and no more than 6 words, symbol or graphics.</u>

165. Notwithstanding my view that advice notes do not have legal status, I have some reservation about applying these requirements to a state highway. This is because the definition of 'road' in the Land Transport Act 1998 does not explicitly include a state highway. I invite NZTA to comment on this aspect at the hearing.

166. NZTA has correctly identified an inadvertent error in respect to my s42A recommendation for Rule 21.2.7.1 P2 (iv) which provides for freestanding signs in the Heavy Industrial Zone. This rule should mirror the equivalent rule in the Industrial Zone, in that any freestanding sign must be set back at least 15m from the boundary of a state highway. Accordingly, I recommend a new clause (iv) C. in Rule 21.2.7.1 P2(a).

167. NZTA submitted to request that buildings in the Heavy Industrial Zone observe a 20m setback from a state highway. They refer to the Operative District Plan rule which requires a 10m setback from a state highway or 25m from the Waikato Expressway. These rules are

intended to mitigate the effects of bigger buildings and provide flexibility if road widening becomes necessary in the future. I remain unclear as to 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. I invite NZTA to provide further reasoning to support their request. In the meantime, my s42A recommendation to reject NZTA's submission point [742.219] is unchanged.

168. I do not consider it necessary to undertake a s32AA evaluation in respect to the recommended addition of P2(a)(iv)C. as this corrects an inadvertent error so that there is consistency in how this rule applies in both the Industrial Zone and Heavy Industrial Zone.

13.2 Recommendation

169. For the reasons discussed above, I recommend that the hearings panel:

a. **Accept** the submission from the New Zealand Transport Agency [742.216]

b. **Amend** Rule 21.2.7.2 as follows:

P2 (a)(iv) Where the sign is a freestanding sign, it must:

A. not exceed an area of $3m^2$ for one sign per site, and $1m^2$ for ~~any other~~ one additional freestanding sign on the site; ~~and~~

B. be set back at least 5m from the boundary of any site in any Residential or Reserve Zone; and

C. be set back at least 15m from the boundary of a state highway.

14 Horotiu Industrial Park – specific provisions

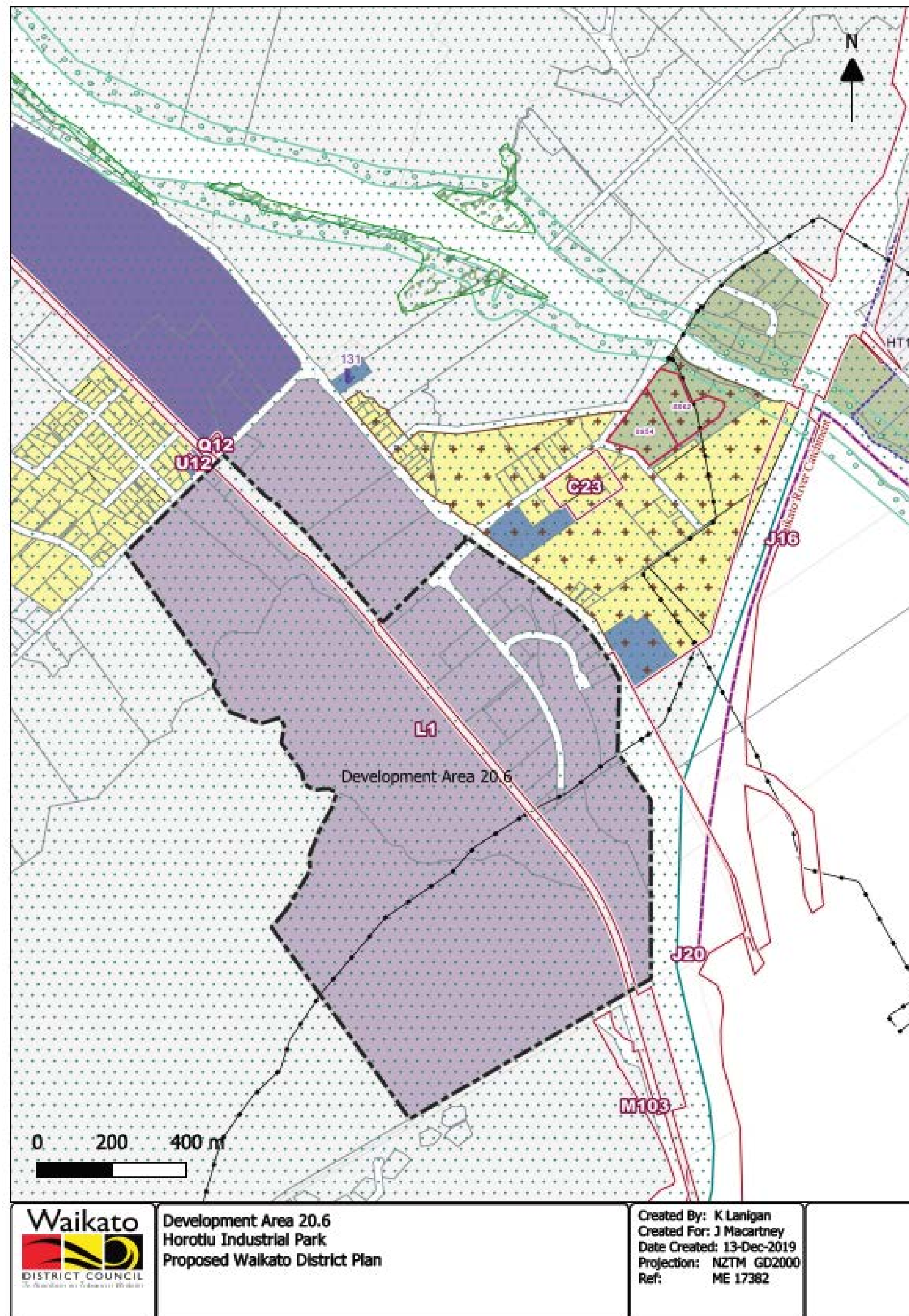
14.1 Analysis

170. Ms Kathryn Drew has provided evidence on behalf of Northgate Developments Limited and Northgate Industrial Park Limited (Northgate). Mr Mark Arbuthnot has provided evidence on behalf of Ports of Auckland Limited (POAL).

171. Northgate and POAL own the majority of landholdings within Horotiu Industrial Park. Therefore, prior to the release of my s42A report, I invited both parties to comment on my draft provisions to enable the appropriate development of Horotiu Industrial Park. Their evidence requests further changes to these provisions, and I will address each of these in turn.

14.1.1 Northgate's evidence

172. Northgate has correctly noted that the planning maps need to identify the Horotiu Industrial Park. My draft Rule 20.6.1(a) notes that 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. Unfortunately, this map work was unable to be completed by the s42A report deadline, but the amendment to the notified planning map is now shown below. The black dashed line encompasses the Horotiu Industrial Park.



173. Ms Drew also notes her preference that the 'style' of Rule 20.6.1 Application of rules, should be consistent with the equivalent type of rule that exists for the Nau Mai Business Park. I acknowledge this inconsistency, but sought comment from one of Council's Team Leaders in the Consents Team when developing Rule 20.6.1. From a user perspective, their preference is to have a succinct instruction on rules that do and do not apply, and that Rule 20.6.1 makes this clear.

174. However, I note here that Mr Arbuthnot has suggested that Rule 20.6.1(b) should be deleted because it is unclear whether both sets of provisions in Chapter 20 and Development Area 20.6 technically apply either in whole or in part. I agree. I accept Mr Arbuthnot's request to delete clause (b) and consequentially amend clause (a) as follows:

20.6.1 Application of rules

(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 20.6.~~

175. I invite Ms Drew to comment at the hearing as to whether these amendments to Rule 20.6.1 are a more acceptable alternative.

176. Northgate has expressed support for draft Rules 20.6.2.1, 20.6.2.2, 20.6.2.3 and 20.6.2.4 which list permitted, restricted discretionary, discretionary and non-complying activities respectively.

177. Northgate remains concerned that the Operative District Plan noise rule for Horotiu Industrial Park has not been carried over to the PWDP. They defer to Mr Chris Day's acoustic evidence, which has been provided as part of POAL's evidence. Council has recently engaged an acoustic expert (Mr Malcolm Hunt) to review Mr Day's evidence, and I may be in a position to provide feedback on this matter at the hearing.

178. Northgate remains concerned that draft Rule 20.6.3.2 Landscape planting – Horotiu Road, specifies a controlled activity status, whereas the equivalent Rule 24B.20 in the Operative Waikato District Plan (shown below) has a permitted activity starting point.

24B.20 Landscaping

ITEM	PERMITTED	RESOURCE CONSENT
24B.20 Landscaping	24B.20.1 Any activity is a permitted activity if land within: (a) 5m of the Horotiu Road boundary is planted and maintained with a 5m wide buffer strip of indigenous species that will achieve a height of at least 5m within 5 years and sufficient density to visually screen the activity from the Living Zone; and (b) 5m along the boundary abutting the Horotiu Primary School of Stage 3C is planted and maintained with a 5m wide buffer strip of indigenous species that will achieve a height of at least 3m within 5 years and sufficient density to visually screen the activity from the Horotiu Primary School.	24B.20.2 Any activity that does not comply with a condition for a permitted activity is a discretionary activity. Discretionary activity criteria shall include, in addition to any other criteria in the plan, the extent to which the amenities of the Living zone, and the Horotiu Primary School are maintained.

179. They consider a controlled activity to be "an over-zealous approach to managing compliance with this provision". However, it is my view that a permitted activity rule needs to be clear and certain as to its outcome. I consider that the term "… sufficient density to visually screen …" in operative Rule 24B.20 has elements of subjectivity.

180. I note here that I have addressed a similar matter in the evidence received for Van Den Brink. Overall, I consider that there is benefit in further liaising with Van Den Brink, POAL and Northgate to develop a permitted activity rule for landscaping in industrial zones that is certain and consistent with the style of other rules in the PWDP. I may be in a position at the hearing to provide a recommended permitted activity rule following my liaison with these submitters.

181. Northgate expresses similar concerns in respect to the controlled activity status for draft Rule 20.6.3.3 Planting of Earth Bund. They state that the earth bund is now complete and that planting has already occurred in accordance with their land use consent granted on 18 January 2019. From my telephone conversation with Ms Drew in November 2019, my understanding was that some minor works remained outstanding for the toe of this earth bund. Ms Drew may be able to confirm at the hearing whether this is still the case. If all earthworks and landscaping have been completed in terms of the resource consent

conditions, then I agree that Rule 20.6.3.3 is superfluous and can be deleted. I reserve any change to my recommendation on this rule pending further clarification from Northgate.

182. Northgate supports draft Rules 20.6.4.1, 20.6.4.2 and 20.6.5.1 which deal with building height, aerials, antennae and light masts, and subdivision respectively.

183. Turning to the Chapter 20 rules, Northgate has identified that there is a reference to the earth bund in Rule 20.3.4.1 Building setbacks – All boundaries. This reference was inadvertently left in this rule while developing the provisions for Development Area 20.6. I agree that this reference should be removed from Rule 20.3.4.1 and recommend the following new building rule:

Rule 20.6.4.1A Building setback from earth bund

P1	Any building on land that contains the Horotiu Industrial Park earth bund shall be set back 5m from the toe of the bund.
RD1	Any building that does not comply with Rule 20.6.4.1A. Council's discretion is restricted to the following matter: (i) Effects on the Horotiu Industrial Park earth bund.

184. I also agree with Ms Drew's suggestion that the location of this earth bund can be indicated on the planning maps. This can be easily incorporated into the same map which shows the location of the Horotiu Industrial Park.

185. Northgate supports the s42A recommendation to delete the requirement in Chapter 20 for earthworks to be set back at least 1.5m from any site boundary.

186. Northgate remains concerned that the rules for freestanding signs in the Industrial Zone are too stringent. In their evidence, they suggest the adoption of the approach taken by Hamilton City Council which permits 1m^2 of signage for every metre of site frontage, up to a maximum of 10m^2. They also suggest that if this approach is not suitable for the entire Industrial Zone, it could just apply to Horotiu Industrial Park.

187. In my view, there is no particular reason why signage provisions should be relaxed specifically for Horotiu Industrial Park. I am 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 (up to 3m^2 and 1m^2) per industrial site. My s42A recommendation is therefore unchanged.

14.2 Recommendation

188. As a result of the evidence received from Northgate and POAL, it is recommended that the hearings panel:

a. **Amend** draft Rule 20.6.1 Application of rules, as follows:

20.6.1 Application of rules

(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 20.6.~~

b. **Amend** Rule 20.3.4.1 Building setbacks – All boundaries, as follows:

20.3.4.1 Building setbacks – All boundaries

P1	(a) A building must be set back at least: (i) 5m from a road boundary; (ii) 7.5m from any other boundary where the site adjoins another zone, other than the Heavy Industrial Zone; and ~~(iii) 5m from the toe of the earth bund located on Lot 17 DP 494347 (53 Holmes Road, Horotiu).~~
RD1	(a) A building that does not comply with Rule 20.3.4.1 P1. (b) Council's discretion is restricted to the following matters: (i) effects on amenity values; (i) effects on streetscape; (iii)traffic and road safety; and ~~(iv)effects on the earth bund located on lot 17 DP 494347 (53 Holmes Road, Horotiu).~~

c. **Add** a new rule for Development Area 20.6 as follows:

Rule 20.6.4.1A Building setback from earth bund

P1	(a) Any building on land that contains the Horotiu Industrial Park earth bund shall be set back 5m from the toe of the bund.
RD1	(a) Any building that does not comply with Rule 20.6.4.1A. (b) Council's discretion is restricted to the following matter: (i) Effects on the Horotiu Industrial Park earth bund.

d. **Amend** the planning map showing the Horotiu Industrial Park by annotating the location of the earth bund.

14.3 POAL's evidence

189. Evidence submitted by Mr Mark Arbuthnot is supported by evidence received from Mr Alistair Kirk (POAL's General Manager Infrastructure & Property) and acoustic evidence from Mr Chris Day (Marshall Day).

190. While POAL accepts various s42A recommendations[26], they do not wish to withdraw their submission points in order to preserve their position if any changes occur as a result of other submitter evidence or hearing panel direction/decision.

191. While outside the scope of POAL's submissions, they have correctly identified an inadvertent error concerning the recommended new objective for signage in the Industrial Zone and Heavy Industrial Zone.

192. I agree that new Objective 4.6.9A needs to relate to the adverse effects of signage (for consistency with accompanying Policy 4.6.9A), as opposed to the more general adverse effects of industrial activities which are addressed elsewhere in Objective 4.6.6 and Policy 4.6.7. I therefore recommend the following amendment to Objective 4.6.9A:

4.6.9A Objective – Adverse effects of ~~land use and development~~ signage
The health and well-being of people, communities and the environment are protected from the adverse effects of ~~land use and development.~~signage.

[26] Statement of Evidence from Mr Mark Arbuthnot (9 December 2019), page 4

193. POAL accepts the s42A recommendations in respect to new objectives and policies for the Horotiu Industrial Park. However, their evidence requests this additional policy shown in black underline to expressly recognise the inland freight hub as 'regionally significant industry':

Policy 4.6.11A – Support of regionally significant industry

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

194. In my opinion, this policy is not appropriate because the inland freight hub is a location rather than being an industry per se. For this reason, I do not recommend that this policy be adopted.

195. POAL remains concerned that there is no specific permission for workers' accommodation in the Horotiu Industrial Park and that this should be considered in the same context as accommodation for caretakers and security personnel. My s42A report recommends a restricted discretionary activity test for the accommodation of caretakers and security personnel that may be necessary for this location. My view is that POAL's requested controlled activity rule for caretakers, security personnel and industrial workers within Horotiu Industrial Park, would send the wrong signal that any living accommodation (which may extend to a worker and their family) in this location is appropriate, particularly given that consent must be granted to a controlled activity. I also note that 24/7 industrial operations are not unique to Horotiu Industrial Park. My s42A recommendations are therefore unchanged.

196. If such a controlled activity rule were to be introduced, this may highlight an inconsistency, in that POAL has expressed support[27] for a non-complying activity status for 'noise-sensitive activities' and 'sensitive land uses' within the Industrial Zone. Accommodation for caretakers and security personnel is clearly a noise-sensitive activity also. I invite POAL to elaborate on this matter at the hearing.

197. My s42A report recommends that 'ancillary activity' be added as a permitted activity in both the Industrial Zone and Heavy Industrial Zone. POAL confirms that this satisfies their original request to add 'rail operations including associated sidings, structures and earthworks within the Horotiu Industrial Park'.

198. POAL agrees with my s42A recommendation to reject Woolworth's request for supermarkets to be a restricted discretionary activity in the Industrial Zone. I consider that it is appropriate for supermarkets to remain a discretionary activity in this zone.

199. Turning to the Chapter 20 provisions, POAL remains concerned with the notified Rule 20.2.2 which requires, as a controlled activity, an 8 metre wide landscaped strip to be provided on land that contains, or is adjacent to, a river or permanent or intermittent stream. Their evidence has highlighted an inadvertent error, in that my recommendation to reduce this landscaped width from 8 metres to 4 metres in the equivalent rule for the Heavy Industrial Zone has not been replicated for the Industrial Zone.

200. In my s42A report[28] for the Heavy Industrial Zone, I agreed with the request from Synlait Milk Limited [581] for a 4 metre landscaped width. I considered that a total landscaped width of 16 metres would be excessive, unduly costly and could risk the effective and efficient use of industrial land for industrial purposes, particularly for sites that are crossed by streams.

201. I commented that the PWDP requires new sites in the Heavy Industrial Zone to have a minimum net site area of 1000m^2, and that a 4 metre landscaped strip is considered the

[27] Mr Mark Arbuthnot's evidence – paragraph 8.3, page 12
[28] S42A report – Part C, paragraphs 746-748

most appropriate method for implementing Policy 4.6.7 and thus achieve Objective 4.6.6. Given that draft Rule 20.6.5.1 for Horotiu Industrial Park enables a much smaller lot size of 500m², I consider that there is even further justification for a reduced landscaped width.

202. POAL's evidence also notes that the existing resource consents require riparian planting to a width of at least 5 metres. Therefore, those consents require a more onerous width than my recommendation for a width of 4 metres. I therefore invite POAL to confirm whether my s42A recommendation and associated s32AA evaluation would compromise their future developments.

203. POAL remains concerned that the OWDP noise rule for Horotiu Industrial Park has not been carried over to the PWDP. Their primary concerns are with the night-time noise limits and the manner in which noise is to be measured within any other zone outside of the Horotiu Industrial Park. POAL has therefore engaged Mr Chris Day, who has provided acoustic evidence to support this carry-over. I have noted earlier that Council has recently engaged an acoustic expert (Mr Malcolm Hunt) to review Mr Day's evidence, and I may be in a position to provide feedback on this matter at the hearing.

204. POAL disagrees with my s42A recommendation to reject their request to increase the size of freestanding signs in the Industrial Zone (from 3m² to 15m², and 2m² for any other freestanding sign). Their evidence states that a 15m² sign is not large in the context of an Industrial Zone, and that these signs are typically 1.5m-2m wide and 7.5m-10m high. They suggest that these dimensions are reasonable, given the permitted building height of 15m in this zone. I remain reluctant to change my s42A recommendation because of the risk of compromising visual amenity, particularly for small industrial sites that adjoin a more sensitive zone.

205. POAL agrees with my s42A recommendation to reject KiwiRail's request for a 5m building setback from the rail corridor. I have clarified my reasons for rejecting this request earlier in this rebuttal evidence. POAL agrees with my comment that it would be more appropriate to increase the width of the existing rail designation where that is proven necessary.

206. POAL disagrees with my s42A recommendation to reject their request to carry over the OWDP Rule 24.46.1 to the PWDP as it relates to building setbacks from water bodies. They state that the effects on water quality are already addressed through their stormwater discharge consent, that the first stormwater treatment pond has been constructed and further stormwater ponds will be constructed as their site is progressively developed.

207. I remain unclear as to how the proposed 30m building setback would compromise POAL's future (unconsented) developments and why Horotiu Industrial Park should be treated any differently from other sites in the Industrial Zone. POAL may wish to further elaborate on these matters at the hearing. However, as discussed in my s42A report, I have followed suit with the recommendations made for the Village Zone (Hearing 6) and defer to an expert on natural character, if this is in fact relevant to the objective of this type of district-wide rule.

208. POAL supports my s42A recommendation to amend Rule 20.1.1 by permitting the 'construction or demolition of, or alteration or addition to, a building' in the Industrial Zone. However, they request that this same permitted activity rule be included in the provisions for Development Area 20.6, otherwise there will be a 'gap' in the plan and an unintended default to a discretionary activity. I agree. I therefore recommend that Rule 20.6.2.1 be amended as follows:

20.6.2.1 Permitted Activities

Activities		**Activity-specific conditions**
P1	Industrial activity	Nil
P2	Ancillary activity	Nil

P3	Trade and industry training activity	Nil
P4	Truck stop for refuelling	Nil
P5	An office that is ancillary to a permitted activity	Does not exceed 100m² or 30% gross floor area of all buildings on the site.
P6	A retail activity that is ancillary to a permitted activity.	Does not exceed 10% gross floor area of all buildings on the site.
P7	Food outlet	Does not exceed 200m² gross floor area.
P8	Construction or demolition of, or alteration or addition to, a building	Nil

209. Lastly, POAL notes that Rule 20.6.5.1 Subdivision – General, does not contain an activity status in the event that the restricted discretionary conditions are not met in respect of lot sizes. They therefore recommend a new RD2 rule shown in black underline below:

20.6.5.1 Subdivision – General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots (excluding access allotments and utility allotments) must have a minimum net site area of 500m² (ii) proposed lots for a network utility must have a minimum net site area of 100m² (b) Council's discretion is restricted to the following matter: (i) the extent to which a range of future industrial activities can be accommodated
RD2	(a) Subdivision not in accordance with RD1. (b) Council's discretion is restricted to the following matters: (i) the extent to which a range of future industrial activities can be accommodated (ii) effects on the supply of industrial land within Horotiu Industrial Park (iii) function of the Horotiu Industrial Park as a regional significant industrial node.

210. It would appear that POAL's requested RD2 rule does not introduce any new material that is not already part of RD1 or the objectives and policies that are specific to the Horotiu Industrial Park.

211. That aside, the absence of a default rule was addressed in my s42A report (Part B), where I recommended rejection of WDC's submission [697.660] that requested a discretionary activity rule as a default if any condition in RD1 was not met. The relevant paragraphs are noted below:

> *571. Waikato District Council [697] requests that D1 be added to Rule 20.4.1 to form a complete rule cascade.*
>
> *572. In my view, this is not necessary because the starting point of a restricted discretionary activity already requires consideration of the extent to which non-compliance would affect the accommodation of a range of future activities and amenity values. Council has the ability to grant or decline consent to a restricted discretionary activity, and is not reliant on a discretionary activity status to do so.*

> 573. *This appears to be a consistency matter that needs to be addressed across the whole of the district plan. It is considered that a discretionary activity is best applied when the scope of adverse effects is wide or uncertain.*

212. I also expressed the view that a default to a discretionary activity was not appropriate because that would significantly expand the breadth of assessment matters that could be taken into account, and that this would be unreasonable if a proposal were to involve a minor breach of an RD1 condition. I also understood that any subdivision proposal would need to comply with a number of rules in any case, and that the overall activity status would be determined by 'bundling' the status of all relevant rules.

213. I have now reflected on this s42A recommendation after discussion with Council's legal counsel. Their advice is that it is not desirable to rely on 'bundling' and that it is important to clearly 'sign-post' a default activity for any rule. Best planning practice is for the plan to expressly identify the activity status rather than relying on s87B of the RMA, which many plan users would not be aware of, thus creating unnecessary confusion. I also now acknowledge that there may be situations where a subdivision proposal may involve a significant breach (not just a minor breach) of an RD1 condition.

214. Legal counsel has also alerted me to section 108AA in the RMA (shown below), which sets out the necessary prerequisites for imposing any resource consent condition:

> **108AA Requirements for conditions of resource consents**
>
> (1) A consent authority must not include a condition in a resource consent for an activity unless—
>
> (a) the applicant for the resource consent agrees to the condition; or
>
> (b) the condition is directly connected to 1 or both of the following:
>
> (i) an adverse effect of the activity on the environment:
>
> (ii) an applicable district or regional rule, or a national environmental standard; or
>
> I the condition relates to administrative matters that are essential for the efficient implementation of the relevant resource consent.

215. As a result of this advice, I consider it appropriate to now accept WDC's submission [697.660] and that a new discretionary activity rule be introduced in Rule 20.6.5.1 as follows:

20.6.5.1 Subdivision – General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots (excluding access allotments and utility allotments) must have a minimum net site area of 500m^2 (ii) proposed lots for a network utility must have a minimum net site area of 100m^2 (b) Council's discretion is restricted to the following matter: (ii) the extent to which a range of future industrial activities can be accommodated
D1	Subdivision that does not comply with any standard in Rule 20.6.5.1 RD1(a).

216. For consistency, I also recommend these amendments to the general subdivision rules in Chapter 20 (Industrial Zone) and Chapter 21 (Heavy Industrial Zone):

20.4.1 Subdivision – General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots must have a minimum net site area of 1000m^2;

	(ii) proposed lots must have an average area of at least 2000m²; and ~~(iii) no more than 20% rear lots are created;~~ (iii) proposed lots must be connected to public-reticulated water supply and wastewater (b) Council's discretion is restricted to the following matters: (i) the extent to which a range of future industrial activities can be accommodated; ~~(c) amenity values; and~~ (d) provision of infrastructure and (e) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.
D1	Subdivision that does not comply with any standard in Rule 20.4.1 RD1(a).

21.4.1 Subdivision – General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots must have a minimum net site area of 1000m²; (ii) proposed lots must have an average net site area of at least 2000m²; and ~~(i) no more than 20% rear lots are created; and~~ (iii)proposed lots must be connected to public-reticulated water supply and wastewater
	(b) Council's discretion is restricted to the following matters: (i) the extent to which a range of future activities can be accommodated; ~~and~~ ~~(ii) amenity values~~ (iii) provision of infrastructure; and (iv) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.
D1	Subdivision that does not comply with any standard in Rule 21.4.1 RD1(a).

14.4 Recommendations

217. As a result of the evidence received from POAL, it is recommended that the hearings panel:

a. **Amend** Objective 4.6.9A, as follows:

4.6.9A Objective – Adverse effects of ~~land use and development~~ signage
The health and well-being of people, communities and the environment are protected from the adverse effects of ~~land use and development.~~ signage.

b. **Amend** Rule 20.2.2 Landscaping planting as follows:

20.2.2 Landscape planting

C1	(a) Any activity on a lot that has a side and/or rear boundary adjoining any Residential, Village, Country Living or Reserve Zone shall provide a 3m wide landscaped strip running parallel with the side and/or rear boundary; and (b) Any activity on a lot that contains, or is adjacent to, a river or a permanent or intermittent stream shall provide ~~an 8m~~ 4 metre wide landscaped strip measured from the top edge of the closest bank and extending across the entire length of the watercourse. (c) Council's control is reserved over the following matters: (i) the adequacy of the width of landscaping strip; (ii) type, density and height of plantings conducive to the location; (iii) maintenance measures; (iv) amenity values; and (v) natural character and cultural values of a river or stream.

RD1	(a) Any activity that does not comply with Rule 20.2.2 C1. (b) Council's discretion is restricted to the following matters: (i) adequacy of the width of landscaped strip; (ii) type, density and height of plantings conducive to the location; (iii) maintenance measures; (iv) amenity values; and (v) natural character and cultural values of a river or stream.

14.5 Section 32AA evaluation

14.5.1 Effectiveness and efficiency

218. I consider that the amended clause (b) in Rule 20.2.2 is an effective and efficient method to implement the policies and objectives set out in Section 4.6. A 4 metre landscaped width achieves an appropriate balance between the need to use industrial land for industrial purposes and the need to manage the effects of industrial development on watercourses.

14.5.2 Costs and benefits

219. A reduced landscaped width from 8 metres to 4 metres would reduce the costs of required landscaping and associated maintenance. It would also enable industrial development to maximise the use of land within the site for industrial use. It is considered that a watercourse would still obtain a sufficient benefit from an adjacent 4 metre wide landscaped strip.

14.5.3 Risk of acting or not acting

220. I consider that there is some risk in retaining the notified version of Rule 20.2.2, in that the extent of landscaping required could jeopardise investment and the efficient use of industrial land and, in turn, the economic growth of industry. In particular, where a stream runs through an industrial site, the requirement to provide and maintain a total landscaped width of 16 metres is not considered fair and reasonable.

14.5.4 Decision about most appropriate option

221. In my opinion, the recommended rule is the most appropriate in achieving the purpose of the RMA, as it balances the need to provide industrial land and the need to manage adverse effects on watercourses. The amended rule remains consistent with the objectives and policies in Section 4.6 and higher order documents.

c. **Amend** draft Rule 20.6.2.1 Permitted Activities, as follows:

20.6.2.1 Permitted Activities

Activities		**Activity-specific conditions**
P1	Industrial activity	Nil
P2	Ancillary activity	Nil
P3	Trade and industry training activity	Nil
P4	Truck stop for refuelling	Nil
P5	An office that is ancillary to a permitted activity	Does not exceed 100m^2 or 30% gross floor area of all buildings on the site.
P6	A retail activity that is ancillary to a permitted activity.	Does not exceed 10% gross floor area of all buildings on the site.

P7	Food outlet	Does not exceed 200m² gross floor area.
P8	Construction or demolition of, or alteration or addition to, a building	Nil

d. **Accept** the submission from Waikato District Council [697.660] and **amend** the rules for general subdivision (Rule 20.6.5.1, 20.4.1 and 21.4.1), as follows:

20.6.5.1 Subdivision - General

RD1	(a) Subdivision must comply with all of the following conditions: (i) proposed lots (excluding access allotments and utility allotments) must have a minimum net site area of 500m² (ii) proposed lots for a network utility must have a minimum net site area of 100m² (b) Council's discretion is restricted to the following matter: (ii) the extent to which a range of future industrial activities can be accommodated
D1	Subdivision that does not comply with any standard in Rule 20.6.5.1 RD1(a).

20.4.1 Subdivision - General

RD1	(c) Subdivision must comply with all of the following conditions: (j) proposed lots must have a minimum net site area of 1000m²; (iii) proposed lots must have an average area of at least 2000m²; and ~~(iii) no more than 20% rear lots are created;~~ (iv) proposed lots must be connected to public-reticulated water supply and wastewater (d) Council's discretion is restricted to the following matters: (j) the extent to which a range of future industrial activities can be accommodated; ~~(f) amenity values; and~~ (g) provision of infrastructure and (h) the extent to which the subdivision design impacts on the operation, maintenance, upgrade and development of existing infrastructure.
D1	Subdivision that does not comply with any standard in Rule 20.4.1 RD1(a).

21.4.1 Subdivision – General

RD1	(b) Subdivision must comply with all of the following conditions: (j) proposed lots must have a minimum net site area of 1000m²; (ii) proposed lots must have an average net site area of at least 2000m²~~;~~ and ~~(v) no more than 20% rear lots are created; and~~ (vi) proposed lots must be connected to public-reticulated water supply and wastewater
	(b) Council's discretion is restricted to the following matters: (v) the extent to which a range of future activities can be accommodated; ~~and~~ ~~(vi) amenity values~~ (vii) provision of infrastructure; and (viii) the extent to which the subdivision design impacts on the operation,

	maintenance, upgrade and development of existing infrastructure.
D1	Subdivision that does not comply with any standard in Rule 21.4.1 RD1(a).

14.6 Section 32AA Evaluation

14.6.1 Effectiveness and efficiency

222. I consider that the new D1 subdivision default rules are an effective and efficient method to implement the policies and objectives relevant to subdivision in the Horotiu Industrial Park and the two industrial zones. These clearly 'sign-post' the default position if any RD1 standards are not met.

14.6.2 Costs and benefits

223. There are no identified costs in introducing these default rules, as resource consent is required for any subdivision and Council must be mindful of section 108AA of the RMA to justify any conditions being imposed. The benefits are that the default position is clearly 'sign-posted' to any plan user when subdivision is contemplated, and this provides certainty.

14.6.3 Risk of acting or not acting

224. I consider that there is some risk in retaining the notified versions of Rules 20.6.5.1, 20.4.1 and 21.4.1 without any default rule, in that these may generate uncertainty for landowners and Council staff when dealing with a proposal that does not comply with any RD1 standard.

14.6.4 Decision about most appropriate option

225. In my opinion, the recommended D1 rules are the most appropriate in achieving the purpose of the RMA, in that it provides certainty for landowners and Council staff when assessing a proposal that does not comply with any condition in RD1.

15 Pokeno Village Holdings – incorporation of industrial provisions in Pokeno Structure Plan

15.1 Analysis

226. Mr Adam Jellie (Beca) provided evidence on behalf of Pokeno Village Holdings Limited (PVHL) to support the incorporation of the Pokeno Structure Plan (PSP) into the PWDP. While their submission [386.6] on this matter has been allocated to Hearing 26 (Other Matters), they consider it appropriate to address the industrial provisions in the PSP as part of this Hearing 7. My rebuttal evidence is therefore confined to the industrial and Heavy Industrial Zone provisions.

227. The PSP was introduced into the Operative Franklin Section of the WDP via Plan Change 24, and this included provisions for the Light Industrial Zone and Industrial 2 Zone. PVHL notes[29] that various activities currently permitted in the Operative Light Industrial Zone have not been carried over to the Industrial Zone in the PWDP. Attachment A of Mr Jellie's evidence provides an example of provisions for a 'Development Area' that could apply to

[29] Mr Adam Jellie's Evidence – page 2, paragraph 2.4

Pokeno's existing Gateway Industrial Park and these essentially replicate the operative industrial provisions.

228. I acknowledge that the operative Light Industrial Zone permits a wide range of activities, such as service stations, veterinary centres, fitness centres, child care and learning centres, schools, active recreation, funeral service premises, health centres, hospitals and community facilities. Some of these activities are subject to a 100m setback from the Industrial 2 Zone boundary to protect heavy industries from reverse sensitivity effects.

229. My s42A report (Attachment 3) recommends that various activities be permitted in the Industrial Zone. I have also recommended that service stations be a restricted discretionary activity in the Industrial Zone. However, I am reluctant to support a permitted activity status for all activities listed in Attachment A of Mr Jellie's evidence. This is primarily because of concerns with reverse sensitivity and the loss of industrial land, having noted the framework of objectives and policies for the industrial zones. My preference is for these to be tested through a resource consent process. I therefore make no change to my s42A recommendations unless compelling further evidence is provided at the hearing.

230. As noted above, PVHL's wider issue is that the PWDP contains a limited suite of zones and that local circumstances have not been taken into account. PVHL's request to introduce a Development Area to mirror the operative PSP Area is far broader than the topic of industrial zones in Hearing 7. I agree that the later Hearing 26 is the appropriate forum to address this issue.

16 Havelock Village Limited – acoustic matters

16.1 Analysis

231. Mr Mark Tollemache (Tollemache Consultants Limited) provided evidence on behalf of Havelock Village Limited (HVL) to address acoustic provisions in the industrial zones. Mr Jon Styles (Styles Group Acoustics and Vibration Consultants) provides supporting acoustic evidence that assesses land uses surrounding HVL's land in south Pokeno to assist the planning process for the PWDP's residential zones.

232. Mr Tollemache agrees with my s42A recommendation to correct Rule 21.2.3.1 in this manner:

21.2.3.1 Noise – General

P1	Noise generated by emergency generators and emergency sirens.
P2	(a) Noise measured within any other site: (i) In the Heavy Industrial Zone must not exceed: A. 75dB (LA_{eq}) at any time. (ii) In the Industrial Zone must not exceed: A. 75dB (LA_{eq}); 7am to 10pm; and B. 55dB (LA_{eq}) and 85dB (LA_{max}) 10pm to 7am the following day. (b) Noise measured within a site in any zone, other than the Heavy Industrial Zone and Industrial Zone, must not exceed the permitted noise levels for that zone. (c) Noise levels must be measured in accordance with the requirements of NZ 6801:2008 "Acoustics Measurements of Environmental Sound' (d) Noise levels must be assessed in accordance with the requirements of NZS 6802:2008 "Acoustics Environmental Noise"
~~P3~~	~~(a) Noise measured within any site in any zone, other than the Heavy Industrial Zone, must meet the permitted noise levels for that zone.~~

~~P4~~	~~(a) Noise levels must be measured in accordance with the requirements of NZS 6801:2008 "Acoustics Measurement of Environmental Sound".~~ ~~(b) Noise levels must be assessed in accordance with the requirements of NZS 6802:2008 "Acoustics Environmental Noise".~~
RD1	(a) Noise that does not comply with Rule 21.2.3.1 ~~P2, P3 or P4.~~ P1 or P2 (b) Council's discretion is restricted to the following matters: (i) effects on amenity values; (ii) hours and days of operation; (iii) location of noise sources in relation to any boundary; (iv) frequency or other special characteristics of noise; (v) mitigation measures; and (vi) noise levels and duration.

233. Mr Tollemache agrees that it is necessary for P3 and P4 to be subsets of P2, rather than stand-alone rules. If the notified version were left unchanged, he considers this could create conflict between the noise standard in P2 and the requirement in P3 to adopt the adjoining zone standard. He notes that recommended P2(b) is an approach common to many district plans, including the Auckland Unitary Plan.

234. However, Mr Styles has identified that the new P2(b) (notified as P3) could have interpretation issues. In order to resolve this, Mr Styles recommends this amendment shown in black underline:

P2(b)

Where noise generated by any activity on a site in one zone is received by any activity on a site in a different zone, the activity generating the noise must comply with the noise limits and standards of the zone at the receiving site.

235. Mr Styles has also raised these other concerns:

a. The PWDP sets noise limits for the Heavy Industrial Zone that are 5 dB higher than the operative Industrial 2 Zone.

b. The PWDP daytime noise limits for the Industrial Zone are 10 dB higher than the operative Light Industrial Zone.

c. There are inherent difficulties in prescribing a high enabling noise limit of 75 db L_{Aeq} (at all times) where the noise-generating potential of industrial activities is constrained by the noise limits applying at other proximate and more sensitive zones.

d. A comparison is made with the operative provisions that prescribe a noise limit of 70 dB L_{Aeq} (at all times) for noise generated and received at sites in the Industrial 2 Zone, and a noise limit of 65 dB L_{Aeq} (at all times) for noise generated and received in the Light Industrial Zone. The operative provisions also include noise limits to control industrial noise received in zones containing noise-sensitive activities.

e. The PWDP's lower night-time noise controls for the Industrial Zone should be removed. These are redundant, because this zone does not anticipate or provide for noise-sensitive activities that require night-time protection from sleep disturbance. Instead, the day-time noise limit should apply at all times.

f. To maintain the amenity and viability of noise-sensitive zones adjacent to industrial zones, it is essential that the PWDP maintains the interface noise limits. However, the following amendment to P3 shown in black underline is suggested to make it easier to apply and understand:

P3

Where noise generated by any activity on a site in one zone is received by any activity on a site in a different zone, the activity generating the noise must comply with the noise limits and standards of the zone at the receiving site.

236. As noted earlier, Council has recently engaged Mr Malcolm Hunt, an acoustic expert, to review Mr Styles' evidence and I may be in a position to provide feedback on these acoustic matters at the hearing.

237. Lastly, in response to my s42A query, Mr Tollemache has helpfully clarified that HVL is a further submitter [*FS1377*] in support of the changes to various noise provisions for the Heavy Industrial Zone sought by WDC and the Waikato District Health Board.

17 Van Den Brink – general development in Industrial Zone

17.1 Analysis

238. Ms Renee Fraser-Smith (Tollemache Consultants Limited) has provided evidence on behalf of Van Den Brink Limited (VdBL).

239. Ms Fraser-Smith agrees with my s42A recommendations in regard to:

a. Replacement of the notified definition of 'industrial activity' with the NPS definition of the same;
b. Inclusion of new permitted activities for the Industrial Zone;
c. Deletion of Rule 20.2.1 Servicing and hours of operation;
d. Amendment to Rule 20.2.4 Glare and Artificial Light Spill, so that it does not apply to other sites in an industrial zone;
e. Amendment to Rule 20.2.5.1 to increase the permitted volume and area of earthworks, and delete maximum depth and boundary setback standards;
f. Deletion of Rule 20.2.8 Outdoor storage of goods and materials;
g. Amendment to Rule 20.4.1 to delete rear lot restriction in subdivisions; and
h. Amendment to Rule 20.3.3 Daylight admission – subject to clarification that this rule clearly excludes roads.

240. Ms Fraser-Smith does not agree with my s42A recommendations regarding landscape planting (Rule 20.2.2), building height (Rule 20.3.1) and building setbacks (Rule 20.3.4.1). I address these rules in turn, following my further assessment of Rule 20.3.3 (daylight admission).

241. My s42A report recommends these amendments to the daylight admission rule:

~~20.3.3~~ 20.3.3 Daylight Admission

P1	~~(a) A building, structure, sign, or any stack or stockpile of goods or materials must not protrude through a height control plane rising at an angle of:~~ ~~(i) 45 degrees commencing at an elevation of 2.5m above ground level at any boundary of the Industrial Zone with any other zone;~~ ~~(ii) 37 degrees commencing at an elevation of 2.5m above ground level at any boundary of the Industrial Zone with any other zone between south-east or south-west of the building or stockpile.~~ (a) A building must not project beyond a 45 degree height control plane measured from a point 3 metres above natural ground level along the boundary of a site located outside of an Industrial Zone or Heavy Industrial Zone.

RD1	(a) A building, ~~structure, sign, or any stack or stockpile of goods or materials~~ that does not comply with Rule ~~20.3.3~~ 20.3.4 P1. (b) Council's discretion is restricted to the following matter: (i) effect on amenity.

242. VdBL's submission [633.66] requests that this daylight admission rule be amended so that the commencement height is 3m rather than the notified 2.5m. They also considered that this rule should not apply to roads in the Industrial Zone. My s42A report contains this paragraph:

> *485. I have recommended that this daylight admission rule be amended in response to other submissions, in order for the height-to-boundary formula to be more easily understood and applied. This is not expected to be an issue for the submitter, because the reference to 'sites' within the recommended rule does not include roads. The submitter is invited to comment on whether this new rule would satisfy their relief.*

243. The interpretation of whether this rule applies to roads hinges on the PWDP's definition of 'site' which is as follows:

Site	*Means:* *(a) any area of land comprised in one Record of Title, or two or more Records of Title linked pursuant to s37 of the Building Act 1991, or s75 of the Building Act 2004, or s220 of the Resource Management Act 1991;* *(b) in the case of land developed under the Unit Titles Act 2010, the area comprised in a principal unit or accessory unit excluding any common property;* *I in the case of cross-leases, the area for exclusive use comprised within the cross-lease, excluding any common property*

244. However, I note that the s42A report for Definitions (Hearing 5) recommends this amendment to reflect the National Planning Standard definition of 'site':

Site	~~*Means:*~~ ~~*(a) any area of land comprised in one Record of Title, or two or more Records of Title linked pursuant to s37 of the Building Act 1991, or s75 of the Building Act 2004, or s220 of the Resource Management Act 1991;*~~ ~~*(b) in the case of land developed under the Unit Titles Act 2010, the area comprised in a principal unit or accessory unit excluding any common property;*~~ ~~*I in the case of cross leases, the area for exclusive use comprised within the cross-lease, excluding any common property*~~ *Means* *a. an area of land comprised in a single record of title as per Land Transfer Act 2017; or* *b. an area of land which comprises two or more adjoining legally defined allotments in such a way that the allotments cannot be dealt with separately without the prior consent of the council; or*

	<u>*c. the land comprised in a single allotment or balance area on an approved survey plan of subdivision for which a separate record of title as per Land Transfer Act 2017 could be issued without further consent of the Council; or*</u> <u>*d. except that in relation to each of sub clauses (a) to (c), in the case of land subdivided under the Unit Title Act 1972 or 2010 or a cross lease system, a site is the whole of the land subject to the unit development or cross lease.*</u>

245. I am also mindful that the s42A report authors on the Definition topic (Hearing 5) flagged that some notified definitions (including 'site') need to be further considered in other hearing topics. This is to ensure that the application of such definitions does not have unintended outcomes for zones.

246. In my view, there is no ambiguity in Rule 20.3.3 that this could apply to a road. This is because the term 'site' in this rule will be hyperlinked to the definition in Chapter 13 and it is clear that a road does not qualify. I therefore recommend no further change to this rule.

247. VdBL requests an amendment to Policy 4.6.1, although they mean Policy 4.6.2. This amendment is shown below in black underline:

4.6.2 Policy – Provide Industrial Zones with different functions

(a) Recognise and provide for a variety of industrial activities <u>to locate and function efficiently</u> within two industrial zones that have different functions depending on their purpose and effects as follows:

...

248. They consider that the words 'to locate and function efficiently' are necessary to promote the efficient use of industrial land, rather than focusing on its supply and maintenance. Given the complete framework of objectives, policies and rules for the industrial zones which work in tandem with zoning, I am not persuaded that this amendment adds value. However, I invite VdBL to comment further on this at the hearing.

249. VdBL has correctly identified the inadvertent omission in regard to my recommended new Objective 4.6.9A. POAL has highlighted this same issue. I agree that new Objective 4.6.9A needs to relate to the adverse effects of signage (for consistency with accompanying Policy 4.6.9A), as opposed to the more general adverse effects of industrial activities, which are addressed elsewhere in Objective 4.6.6 and Policy 4.6.7. I have therefore already recommended the following amendment to Objective 4.6.9A:

<u>**4.6.9A Objective – Adverse effects of ~~land use and development~~**</u> <u>signage</u>
<u>The health and well-being of people, communities and the environment are protected from the adverse effects of ~~land use and development.~~ Signage.</u>

250. VdBL remains concerned about the controlled activity status in Rule 20.2.2 Landscape planting. They consider that a resource consent process (regardless of status) is an inefficient use of applicant and Council resources (time and money), and that there is no resource management need to specifically require planting plans to be reviewed.

251. VdBL refers to similar provisions in other plans (Rule 42A.6.3 in the Whangarata Business Park Structure Plan Area – Operative Franklin Section, Rule 25.5.3.1 in the Hamilton City District Plan and Rule H17.6.4(2)-(3) in the Auckland Unitary Plan) which set out permitted activity standards for plantings that adjoin more sensitive zones and streams.

252. I have reflected on my s42A recommendation and am persuaded somewhat by VdBL's evidence. My only reservation, however, is that any permitted activity rule needs to be clear and certain as to outcome and that there should be no subjectivity.

253. The district plans noted above appear to have slightly different approaches, with some requirements being less certain (in my opinion) and sometimes more onerous than others.

254. In this regard, I consider that there are elements of subjectivity in Rule H17.6.4(2)-(3) of the Auckland Unitary Plan shown below:

> (2) Front yards (excluding access points) must be planted with a mixture of trees, shrubs or ground cover plants (including grass) within and along the full extent of the yard.
>
> (3) Side and rear yards must be planted with a mixture of trees, shrubs or ground cover plants (including grass) within and along the full extent of the yard to provide a densely planted visual buffer for a depth of at least 3m and must be appropriately maintained thereafter.

255. Rule 42A.6.3 in the operative Franklin Section appears to be more onerous that the Auckland Unitary Plan rule, in that it requires a landscaping and planting plan to accompany a building consent, compliance certificate or resource consent application and a bond may be required to ensure the completion and maintenance of work for up to two years thereafter.

256. Rule 25.5.3.1 in the Hamilton City District Plan contains a note which states that guidance on the selection of plant species appropriate to the site conditions is available from Council. My view is that the content of the note is not in a rule, and is therefore non-mandatory.

257. Overall, I consider that there is benefit in further liaising with VdBL (together with POAL and Northgate) to develop a permitted activity rule for landscaping in industrial zones that is certain and consistent with the style of the PWDP. I would also support a cascade to a restricted discretionary activity with appropriate matters of discretion upon non-compliance with the standards. I therefore intend to address this matter in further detail at the hearing.

258. VdBL remains concerned about the 15m building height limit in the Industrial Zone. Their submission requests a maximum height of 18m, on the basis that this matches the operative rule for the Tuakau Industrial Zone. They further state that an increase to 20m would establish a 'level playing field' with adjoining districts (such as Auckland and Hamilton).

259. I note that Policy 4.6.2 distinguishes the visual impact of buildings in the Industrial Zone from those in the Heavy Industrial Zone. I have also considered expected building height limits with the range of permitted activities recommended for the Industrial Zone. At this point in time, I am not persuaded to change the 15m height limit, but invite VdBL to provide examples of industrial buildings that would trigger resource consent if this height were to be exceeded, and an assessment of the effects of an increased height limit.

260. Rule 20.3.4.1 requires a 7.5m building setback from a side or rear boundary where the site adjoins another zone, other than the Heavy Industrial Zone. VdBL considers that this setback is excessive, given the daylight admission rule and the landscape planting rule which, together, already sufficiently manage the effects of shade and visual impact on more sensitive zones.

261. I am persuaded that this setback should be reduced to 5 metres to enable easy maintenance of required landscaping and a more efficient use of industrial land. Accordingly, I recommend the following amendment to Rule 20.3.4.1. For consistency, I recommend the same amendment to the equivalent Rule 21.3.4.1 for the Heavy Industrial Zone.

20.3.4.1 Building setbacks – All boundaries

P1	(a)A building must be set back at least: (i)5m from a road boundary; ~~(ii)7.5m~~ 5m from any other boundary where the site adjoins another zone, other than the Heavy Industrial Zone; and

	(iii) 5m from the toe of the earth bund located on Lot 17 DP 494347 (53 Holmes Road, Horotiu).
RD1	(a)A building that does not comply with Rule 20.3.4.1 P1. (b)Council's discretion is restricted to the following matters: (i)effects on amenity values; (ii)effects on streetscape; (iii)traffic and road safety; and (iv)effects on the earth bund located on lot 17 DP 494347 (53 Holmes Road, Horotiu).

21.3.4.1 Building setbacks – all boundaries

P1	(a) A building must be set back at least: (i) 5m from a road boundary; and (ii) ~~7.5m~~ 5m from any other boundary where the site adjoins another zone, other than the Industrial Zone.
RD1	(a) A building that does not comply with Rule 21.3.4 P1. (b) Council's discretion is restricted to the following matters: (i) effects on amenity values; (ii) effects on streetscape; and (iii) traffic and road safety.

262. Lastly, VdBL agrees with my s42A recommendation to reject KiwiRail's request for a 5m building setback from the rail corridor.

17.2 Recommendations

263. As a result of the evidence received from VdBL, it is recommended that the hearings panel:

a. **Accept in part** the submission from Van Den Brink Limited [633.68] and
b. **Amend** Rules 20.3.4.1 and 21.3.4.1 as follows:

20.3.4.1 Building setbacks – All boundaries

P1	(a) A building must be set back at least: (i) 5m from a road boundary; (ii) ~~7.5m~~ 5m from any other boundary where the site adjoins another zone, other than the Heavy Industrial Zone; and (iii) 5m from the toe of the earth bund located on Lot 17 DP 494347 (53 Holmes Road, Horotiu).
RD1	(a) A building that does not comply with Rule 20.3.4.1 P1. (b) Council's discretion is restricted to the following matters: (i) effects on amenity values; (vii) effects on streetscape; (viii) (iii)traffic and road safety; and (ix) (iv)effects on the earth bund located on lot 17 DP 494347 (53 Holmes Road, Horotiu).

21.3.4.1 Building setbacks – all boundaries

P1	(a) A building must be set back at least: (i) 5m from a road boundary; and (ii) ~~7.5m~~ 5m from any other boundary where the site adjoins another zone, other than the Industrial Zone.

RD1	(a) A building that does not comply with Rule 21.3.4 P1. (b) Council's discretion is restricted to the following matters: (i) effects on amenity values; (ii) effects on streetscape; and (iii) traffic and road safety.

17.3 Section 32AA Evaluation

17.3.1 Effectiveness and efficiency

264. I consider that the reduced setback to 5m (rather than 7.5m) is an effective and efficient method to implement the policies and objectives relevant to development in the Industrial Zone and Heavy Industrial Zone. A 5 metre setback will enable easy maintenance of required landscaping within side and rear yards and a more efficient use of industrial land.

17.3.2 Costs and benefits

265. A reduced setback is expected to result in fewer resource consent applications involving time and cost. The benefits are that this will enable a more efficient use of industrial land.

17.3.3 Risk of acting or not acting

266. I consider that there is some risk in retaining the notified version of Rules 20.3.4.1 and 21.3.4.1, in that a 7.5m building setback could act as a disincentive to investment and industrial development, thus compromising the economic growth of industry within the district.

17.3.4 Decision about most appropriate option

267. In my opinion, the recommended amendments are the most appropriate in achieving the purpose of the RMA, in that they provide certainty and flexibility for landowners who wish to invest and develop their properties.

18 Synlait Milk – development standards for heavy industry

18.1 Analysis

268. Ms Nicola Rykers (Locality Limited) has provided evidence on behalf of Synlait Milk Limited (Synlait) which produces a range of added-value nutritional milk products, including infant nutrition, everyday dairy and ingredients, for the domestic and global markets. Supporting evidence has been provided by Mr Robert Stowell (General Manager, Supply Chain).

269. Synlait's dairy factory at McDonald Road in Pokeno is located in the operative Industrial 2 Zone and proposed Heavy Industrial Zone.

270. Synlait considers that Policy 4.6.2 requires amendment because it does not provide sufficient clarity on the types of activities within the industrial zones and that this, in turn, does not appropriately implement Objective 4.6.1 concerning the support and strengthening of economic growth in the district. Synlait's concern is that the distinction between the Industrial Zone and Heavy Industrial Zone relies entirely on how these two zones may affect adjoining zones.

271. Synlait's expectation is that heavy industry, within identified sites that have been zoned accordingly, should be able to operate without pressure to meet compliance standards of more sensitive zones, noting the scale of the industrial activities and relative importance of those activities to regional economies. Therefore, Synlait considers that the character of the Heavy Industrial Zone should be 'self-standing' and that it should not rely on standards that are more applicable to more sensitive zones. They have referenced the approach of the Auckland Unitary Plan to support this view.

272. In order to resolve this issue, Synlait has suggested the following two amendments to Policy 4.6.2(a)(ii)A. shown in black underline/~~strikeout~~:

(ii) Heavy Industrial Zone

A. Recognise and provide for a range of industrial and other compatible activities that generate potentially ~~significant effects on more sensitive zones, including relatively~~ high levels of visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and heavy traffic, subject to appropriate separation distances.

or:

A. Recognise and provide for a range of heavy industrial and other compatible activities that require an operational environment where ~~generate potentially significant effects on more sensitive zones, including relatively highly~~ higher levels of visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and heavy traffic are anticipated, subject to appropriate separation distances.

273. I have reflected on my s42A position and consider that Synlait's evidence has merit. I agree that Policy 4.6.2(a)(ii)A. should focus more on operational efficiency that is necessary for heavy industry in the Heavy Industrial Zone. Noting that the word 'high' is already contained in this notified policy (rather than 'higher' or 'highly'), my preference is Synlait's first suggestion, with the following further minor amendments shown in blue underline:

(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 relatively~~ high levels of visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and heavy traffic, subject to appropriate separation distances.

274. As a result of amending Policy 4.6.2(ii)A. in this way, I consider that clause (a)A. for the Industrial Zone should be amended to further emphasise the difference between general industry and heavy industry:

(i) Industrial Zone

Recognise and provide for a range of general industrial and other compatible activities that can operate in close proximity to more sensitive zones dues to the nature and relatively limited effects of these activities, including visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and traffic, subject to appropriate separation distances.

275. I invite Synlait to comment at the hearing as to whether these amendments shown in blue underline are acceptable to them.

276. Regarding Policy 4.6.3 which deals with the supply of industrial land, Synlait considers that this may contain a typographical error, having considered that this policy wording may have

been adopted from an equivalent rule in the Christchurch District Plan which reads as follows:

> *Maintain a sufficient supply of industrial land to meet future demand up to 2028, having regard to the requirements of different industries, and to avoid the need for industrial activities to locate in non-industrial areas.*

277. I have reflected on my s42A position and consider that the following amendments, shown in blue underline/~~strikeout~~, may resolve Synlait's concern that further industrial land is 'appropriately located', noting that general industry and heavy industry have different locational requirements:

> *Maintain a sufficient supply of industrial land within strategic industrial nodes to meet foreseeable future demands, having regard to the different requirements of ~~different~~ general and heavy industries. ~~to avoid the need for industrial activities to locate in non-industrial areas.~~*

278. The recommendation to remove the 'avoid' phrase is considered appropriate, in that it may inadvertently result in a prohibition of developments outside of industrial zones which would otherwise have merit.

279. I invite Synlait to comment on whether my recommended amendments to Policies 4.6.2 and 4.6.3 also resolve their concern that their application might only apply to the 92ha area of land within Pokeno's industrial node, as specified in the WRPS.

280. In my view, Policies 4.6.2 and 4.6.3 work in tandem with the PWDP's zoning of land as Industry and Heavy Industry, and these give effect to the WRPS. However, I do not consider that either policy would stymy the consideration of any rezoning/development proposal that demonstrates merit to provide additional industrial land beyond 2021. In this regard, I note that Implementation Method 6.14.3 in the WRPS sets out criteria for alternative land release and enables total land allocations in Table 6-2 to be exceeded if 'justified through robust and comprehensive evidence (including but not limited to, planning, economic and infrastructural/servicing evidence)[30]. I also invite Synlait to confirm whether my suggested amendments mean that Policy 4.6.7 (Management of adverse effects within industrial zones) can remain without change.

281. Synlait supports my s42A recommendations to introduce the NPS definitions of 'industrial activity' and 'ancillary activity'. They also support my recommendations to delete Rule 21.2.1 (Servicing and hours of operation), and amend Rule 21.2.2 (Landscape planting), Rule 21.2.3.1 (Noise – General) and Rule 21.2.3.3 (Noise – Construction).

282. With respect to earthworks in the Heavy Industrial Zone, Synlait agrees with the s42A recommendation to increase the area threshold to 10,000m^2 (from 1000m^2). However, they consider that the recommended volume threshold of 500m^3, and the notified depth limit of 1.5m, would still be problematic in that these could compromise future developments intended for their site.

283. Synlait's evidence has highlighted a few inadvertent errors in the recommended Rule 21.2.5.1, in that there needs to be consistency with some of the clauses in the equivalent rule for the Industrial Zone. This includes deletion of the 1.5m depth limit, the introduction of a new permitted activity rule (shown as P1a), and the consequential deletion of P2 shown below.

[30] WRPS – 6.14.3 Criteria for alternative land release, Page 6-21

284. I also commented in Part D[31] of my s42A report for the Industrial Zone, that there appears to be little rationale for controlling the amount of earthworks on an industrial site. This is because earthworks for industrial development are normally confined to the construction of accessways, building platforms, on-site parking and ancillary works such as stormwater ponds. Other than earthworks for required landscaping (which are exempt from the definition in the National Planning Standards), it would be highly unusual for earthworks to be required for any other purpose. I agree with Synlait that resource consents do not offer any more effective management of the environment than would be achieved under a building consent. My preference would be to delete these thresholds wholesale. However, in the absence of scope to do so, I am left with a recommendation to accept the 10,000m³ volume for the Heavy Industrial Zone requested by Synlait.

285. Accordingly, I recommend these further changes to Rule 21.2.5.1:

21.2.5.1 Earthworks – General

P1	Earthworks within a site, that may or may not involve the importation of clean fill material, for the purpose of creating a building platform and/or ancillary hardstand area.
~~P1~~ P2	(a) Earthworks (excluding the importation of fill material) within a site must meet all of the following conditions: (i) be located more than 1.5 m horizontally from any waterway, open drain or overland flow path; (ii) not exceed a volume of ~~more than 250m³; 500m³ ;~~ 10,000m³ (iii) not exceed an area of ~~more than 1000m²~~ 10,000m² ~~over any single consecutive~~ within a 12 month period; (iv) ~~the total depth of~~ any excavation or filling does not exceed ~~1.5m above or below ground level;~~ ~~(v) the slope of the resulting cut, filled areas or fill batter face in stable ground, does not exceed~~ a maximum of 1:2 (1 vertical to 2 horizontal); ~~(vi) earthworks are set back at least 1.5m from all boundaries:~~ (vii) areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface; (viii) sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; and (ix) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
~~P2~~	~~(a) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material. must meet the following condition:~~ ~~(i) be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development.~~

[31] Part D s42A report – paragraph 1034

P3	(a) Earthworks for purposes other than creating a building platform ~~for residential purposes~~ within a site, using imported fill material (excluding cleanfill) must meet all of the following conditions: ~~(i)~~ must not exceed a total volume of ~~500m³;~~ 10,000m³ ~~(ii) must not exceed a depth of 1m 1.5m;~~ (iii) the slope of the resulting filled area in stable ground ~~to~~ must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); ~~(iv) fill material is set back at least 1.5m from all boundaries;~~ (v) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks or finished with a hardstand surface; (vi) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; and (vii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
RD1	(a)Earthworks that do not comply with Rule 21.2.5.1 P1, P2 or P3. (b) Council's discretion is restricted to the following matters: (i) amenity values and landscape effects; (ii) volume, extent and depth of earthworks; (iii) nature of fill material; (iv) contamination of fill material; (v) location of the earthworks to waterways, significant indigenous vegetation and habitat; (vi) compaction of the fill material; (vii) volume and depth of fill material; (viii) protection of the Hauraki Gulf Catchment Area; (ix) geotechnical stability; (x) flood risk, including natural water flows and established drainage paths; and (xi) land instability, erosion and sedimentation.

286. If the hearing panel agrees with my recommended deletion of P2 in Rule 20.2.5.1 for the Industrial Zone, I recommend that P2 in Rule 20.2.5.1 for the Industrial Zone also be deleted, as shown below:

20.2.5.1 Earthworks – General

P1~~a~~	Earthworks within a site, that may or may not involve the importation of clean fill material, for the purpose of creating a building platform and/or ancillary hardstand area.
~~P1~~ P2	(a) Earthworks (excluding the importation of fill material) within a site must meet all of the following conditions: (i) be located more than 1.5 m horizontally from any waterway, open drain or overland flow path; (ii) not exceed a volume of more than ~~250m³;~~ 2500m³ (iii) not exceed an area of more than ~~1000m²~~ 10,000m² ~~over any consecutive~~ within a 12 month period; ~~(iv) the total depth of~~ any excavation or filling does not exceed ~~1.5m above or below ground level;~~ (v) ~~the slope of the resulting cut, filled areas or fill batter face in stable ground, does not exceed~~ a maximum of 1:2 (1 vertical to 2 horizontal); ~~(vi) earthworks are set back 1.5m from all boundaries:~~ (vii) areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface;

	(viii) sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; and (ix) do not divert or change the nature of natural water flows, ~~or~~ water bodies ~~or established drainage paths.~~
~~P2~~	~~(a) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material.~~ ~~must meet the following condition:~~ ~~(ii) be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development.~~
P3	(a) Earthworks for purposes other than creating a building platform ~~for residential purposes~~ within a site, using imported fill material (excluding cleanfill) must meet all of the following conditions: (i) <u>must</u> not exceed a total volume of 500m^3; ~~(ii) must not exceed a depth of 1m;~~ (iii) the slope of the resulting filled area in stable ground must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); ~~(iv) fill material is setback 1.5m from all boundaries;~~ (v) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, <u>or finished with a hardstand surface</u>; (vi) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; and (vii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
RD1	(a) Earthworks that do not comply with Rule 20.2.5.1 P1, P2 or P3. (b) Council's discretion shall be restricted to the following matters: (i) amenity values and landscape effects; (ii) volume, extent and depth of earthworks; (iii) nature of fill material; (iv) contamination of fill material; (v) location of the earthworks in relation to waterways, significant indigenous vegetation and habitat; (vi) compaction of the fill material; (vii) volume and depth of fill material; (viii) protection of the Hauraki Gulf Catchment Area; (ix) geotechnical stability; (x) flood risk, including natural water flows and established drainage paths; and (xi) land instability, erosion and sedimentation.

287. Synlait agrees with my s42A recommendation to provide for health and safety signage across the zone. However, they do not consider that my recommended amendment to Rule 14.3.1 P11 in Chapter 14 (Infrastructure and Energy) is a solution. This is because they state that Chapter 14 only applies to infrastructure and that it is not applicable to the Heavy Industrial Zone. I disagree. This is because 14.1(2) includes this statement:

> 14.1 Introduction
>
> …
>
> (2) … It should be noted that this chapter also contains a number of rules (such as on-site car parking and stormwater management) relating to district-wide land development activities; and as such these particular rules should be read in conjunction with the relevant zone chapters where applicable.

288. My s42A recommendation therefore remains unchanged. I consider that the use of hyperlinks will also enable the provisions in Chapter 14, which apply to all zones, to be easily navigated by plan users.

289. Synlait accepts my s42A recommendations in respect to Rule 21.2.7.2 (Signs – effects on traffic) and Rule 21.3.1 (Building height).

290. 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.

291. 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.

18.2 Recommendations

292. As a result of the evidence received from Synlait, I recommend that the hearings panel:

a. **Accept in part** the submission from Synlait [581.5] and **amend** Policy 4.6.2 as follows:

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) Industrial Zone

A. Recognise and provide for a range of general industrial and other compatible activities that can operate in close proximity to more sensitive zones dues to the nature and relatively limited effects of these activities, including visual impact from buildings and associated parking and loading spaces, outdoor storage, 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 relatively~~ high levels of visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and heavy traffic, subject to appropriate separation distances.

b. **Accept in part** the submission from Synlait [581.6] and **amend** Policy 4.6.3 as follows:

4.6.3 Policy – Maintain a sufficient supply of industrial land

Maintain a sufficient supply of industrial land within strategic industrial nodes to meet foreseeable future demands, having regard to the different requirements of ~~different~~ general and heavy industries.~~to avoid the need for industrial activities to locate in non-industrial areas.~~

c. **Accept** the submission from Synlait [581.27] and **amend** Rule 21.2.5.1 as follows:

21.2.5.1 Earthworks – General

P1	Earthworks within a site, that may or may not involve the importation of clean fill material, for the purpose of creating a building platform and/or ancillary hardstand

	area.
~~P1~~ P2	(a) Earthworks (excluding the importation of fill material) within a site must meet all of the following conditions: (i) be located more than 1.5 m horizontally from any waterway, open drain or overland flow path; (ii) not exceed a volume of ~~more than 250m^3; 500m^3 ;~~ 10,000m^3 (iii) not exceed an area of ~~more than 1000m^2~~ 10,000m^2 ~~over any single consecutive~~ within a 12 month period; (iv) ~~the total depth of~~ any excavation or filling does not exceed ~~1.5m above or below ground level;~~ ~~(v) the slope of the resulting cut, filled areas or fill batter face in stable ground, does not exceed~~ a maximum of 1:2 (1 vertical to 2 horizontal); ~~(x) earthworks are set back at least 1.5m from all boundaries:~~ (xi) areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface; (xii) sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; and (xiii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
~~P2~~	~~(a) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material. must meet the following condition:~~ ~~(iii) be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development.~~
P3	(a) Earthworks for purposes other than creating a building platform ~~for residential purposes~~ within a site, using imported fill material (excluding cleanfill) must meet all of the following conditions: ~~(i)~~ must not exceed a total volume of ~~500m^3;~~ 10,000m^3 ~~(ii) must not exceed a depth of 1m 1.5m;~~ (iii) the slope of the resulting filled area in stable ground ~~to~~ must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); ~~(iv) fill material is set back at least 1.5m from all boundaries;~~ (v) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks or finished with a hardstand surface; (vi) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; and (vii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
RD1	(a) Earthworks that do not comply with Rule 21.2.5.1 P1, P2 or P3. (b) Council's discretion is restricted to the following matters: (i) amenity values and landscape effects; (ii) volume, extent and depth of earthworks; (iii) nature of fill material; (iv) contamination of fill material; (v) location of the earthworks to waterways, significant indigenous vegetation and habitat; (vi) compaction of the fill material; (vii) volume and depth of fill material; (viii) protection of the Hauraki Gulf Catchment Area; (ix) geotechnical stability; (x) flood risk, including natural water flows and established drainage paths; and

	(xi) land instability, erosion and sedimentation.

d. Amend Rule 20.2.5.1 as follows:

20.2.5.1 Earthworks – General

P1a	Earthworks within a site, that may or may not involve the importation of clean fill material, for the purpose of creating a building platform and/or ancillary hardstand area.
P1 P2	(b) Earthworks (excluding the importation of fill material) within a site must meet all of the following conditions: (i) be located more than 1.5 m horizontally from any waterway, open drain or overland flow path; (ii) not exceed a volume of more than 250m³; 2500m³ (iii) not exceed an area of more than 1000m² 10,000m² over any consecutive within a 12 month period; (iv) the total depth of any excavation or filling does not exceed 1.5m above or below ground level; (v) the slope of the resulting cut, filled areas or fill batter face in stable ground, does not exceed a maximum of 1:2 (1 vertical to 2 horizontal); (vi) earthworks are set back 1.5m from all boundaries: (vii) areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface; (viii) sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; and (ix) do not divert or change the nature of natural water flows, or water bodies or established drainage paths.
P2	(b) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material. must meet the following condition: (iv) be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development.
P3	(b) Earthworks for purposes other than creating a building platform for residential purposes within a site, using imported fill material (excluding cleanfill) must meet all of the following conditions: (i) must not exceed a total volume of 500m³; (ii) must not exceed a depth of 1m; (iii) the slope of the resulting filled area in stable ground must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); (iv) fill material is setback 1.5m from all boundaries; (v) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface; (vi) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; and (vii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
RD1	(a) Earthworks that do not comply with Rule 20.2.5.1 P1, P2 or P3. (b) Council's discretion shall be restricted to the following matters: (i) amenity values and landscape effects; (ii) volume, extent and depth of earthworks; (iii) nature of fill material; (iv) contamination of fill material; (v) location of the earthworks in relation to waterways, significant indigenous vegetation and habitat; (vi) compaction of the fill material; (vii) volume and depth of fill material; (viii) protection of the Hauraki Gulf Catchment Area;

	(ix) geotechnical stability; (x) flood risk, including natural water flows and established drainage paths; and (xi) land instability, erosion and sedimentation.

18.3 Section 32AA evaluation

18.3.1 Effectiveness and efficiency

293. I consider that the amendments to Rules 20.2.5.1 and 21.2.5.1 are effective and efficient methods to implement Policy 4.6.7 and therefore achieve Objective 4.6.1.

18.3.2 Costs and benefits

294. The recommended amendments to these rules would reduce the need for resource consents to be obtained, thus saving time and costs. In turn, this provides economic benefits for industrial operators.

18.3.3 Risk of acting or not acting

295. I consider that there is a risk in retaining the notified version and s42A version of these rules, in that some outcomes sought are unclear and unjustified. The amendments provide greater clarity and flexibility for industrial development, while still appropriately managing adverse effects.

18.3.4 Decision about most appropriate option

296. In my opinion, the recommended rules shown above are the most appropriate in achieving the purpose of the RMA, as it provides flexibility for industrial development while managing the adverse effects associated with earthworks.

19 Hynds Pipe Systems Ltd/Hynds Foundation – development at 9 McDonald Road, Pokeno

19.1 Analysis

297. Ms Anna McLellan and Chanel Hargrave (The Surveying Company) provided joint evidence on behalf of Hynds Pipe Systems Limited and Hynds Foundation which are entities of Hynds Holdings Limited (Hynds).

298. Their evidence is supported by material provided by Mr Adrian Hynds, who is the director of Hynds Pipe Systems Limited and the managing director of Hynds Holdings Limited.

299. Their evidence confirms that Hynds' main site is located in the proposed Heavy Industrial Zone at 9 McDonald Road, Pokeno. The adjoining site to the south at 62 Bluff Road is in the ownership of Hynds Foundation and is located in the proposed Rural Zone. The former owner of 62 Bluff Road (Grander Investments) has submitted requesting that this property be rezoned Heavy Industrial.

300. Hynds considers that the PWDP does not provide clear direction on the purpose and outcomes sought for the Industrial Zone and Heavy Industrial Zone, which leaves only Policy 4.6.2 to be relied on. They consider that the rules for these zones are identical, except for the permitted height rule. They also comment that there is a significant demand for urban growth in Pokeno and that the Residential rezoning sought by Havelock Village Limited would impact on developments in the Heavy Industrial Zone.

301. Hynds disagrees with my s42A recommendation to retain Objective 4.6.1 as notified. Their further submissions [*FS1306.23* and *FS1341.20*] support Synlait's submission to amend this objective as shown in black underline, so that there is explicit reference to heavy and general industrial activities:

302. (a) The economic growth of the district's general and heavy industry is supported and strengthened in industrial zones.

303. In my view, this objective is already generic enough to encompass all industry, regardless of nature and scale, and I consider any refinement to be unnecessary.

304. Hynds also request the following new clause (b) in this objective shown in black underline:

> *(b) The positive economic and employment benefits of general and heavy industrial activities are recognised and provided for by appropriate zones for these types of activities.*

305. I am unclear as to how this new clause adds significantly to notified clause (a) which currently reads:

> *(a) The economic growth of the district's industry is supported and strengthened in industrial areas.*

306. I am also unclear as to why the evidence refers to the term 'industry' in WRPS, which is used in its broadest sense. I consider that the zoning of industrial land and the permission of an 'industrial activity' (as per the NPS definition) within industrial zones makes it clear that industrial development in these identified locations is expected. I invite Hynds to elaborate further on these matters at the hearing.

307. Hynds also requests the following amendments to Policy 4.6.2 shown in black underline/~~strikeout~~:

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) Industrial Zone

A. Recognise and provide for a range of industrial and other compatible activities that are required to locate there because of the nature of their operation. These activities generate limited effects on sensitive zones, ~~that can operate in close proximity to more sensitive zones due to the nature and relatively limited effects of these activities,~~ including visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and traffic, subject to appropriate separation distances.

B. Encroachment from sensitive activities is avoided through compatible zoning interface, appropriate separation distances and landscaping buffers.

(ii) Heavy Industrial Zone

A. Recognise and provide for a range of industrial and other compatible activities that are required to locate there because of the nature of their operation. These activities generate potentially significant effects on more sensitive zones, including relatively high levels of visual impact from buildings and associated parking and loading spaces,

outdoor storage, lighting, noise, odour and heavy traffic, subject to appropriate separation distances.

B. Encroachment from sensitive activities is avoided through compatible zoning interfaces and physical buffers.

308. I am unclear as to how these requested amendments improve the notified version of this policy. I am also reluctant to adopt any policy that uses the word 'avoid' as that would be tantamount to a prohibition which could effectively result in any merits of a sensitive activity proposal having to be disregarded. Furthermore, any encroachment of a sensitive activity towards an industrial zone is best dealt with by provisions for the adjoining zone, rather than the industrial zones themselves.

309. I have recommended amendments to Policy 4.6.2 as a result of Synlait's evidence. I invite Hynds to confirm at the hearing whether those amendments are acceptable to them. It would also be appreciated if they could confirm whether this then means that Policy 4.6.7 can remain unchanged, and that no new objectives and policies are required.

310. Hynds requests these amendments to Policy 4.6.3 shown in black underline/~~strikeout~~:

> Maintain a sufficient supply of ~~appropriately located~~ industrial land within the strategic industrial nodes, recognising the different locations required by heavy industrial and general industrial activities.

311. I invite Hynds to comment on whether my alternative amendment (as a result of Synlait's evidence) would be acceptable to them:

> ***4.6.3 Policy – Maintain a sufficient supply of industrial land***
>
> *Maintain a sufficient supply of industrial land within strategic industrial nodes to meet foreseeable future demands, having regard to the different requirements of ~~different~~ general and heavy industries.~~to avoid the need for industrial activities to locate in non-industrial areas.~~*

312. Hynds agrees with my s42A recommendations in respect to Policy 4.6.5 Recognition of industrial activities outside urban areas.

313. Hynds supports my s42A recommendations in regard to Rule 21.2.2 Landscape planting and Rule 21.2.3.1 Construction Noise. I note here my request to Mr Malcolm Hunt (acoustic expert) to comment on my recommended amendments to the construction noise rule and I may be able to provide feedback on this matter at the hearing.

314. Regarding Rule 21.2.5.1, Hynds agrees with the concerns raised by Synlait, in that the area and volume thresholds for earthworks in the Heavy Industrial Zone are too restrictive. As a result of Synlait's evidence, I have recommended that there be consistency with the equivalent rule in the Industrial Zone, and invite Hynds to comment on whether the following version of Rule 21.2.5.1 would be acceptable to them:

21.2.5.1 Earthworks – General

P1	Earthworks within a site, that may or may not involve the importation of clean fill material, for the purpose of creating a building platform and/or ancillary hardstand area.
~~P1~~ P2	(b) Earthworks (excluding the importation of fill material) within a site must meet all of the following conditions: (i) be located more than 1.5 m horizontally from any waterway, open drain or overland flow path; (ii) not exceed a volume of ~~more than 250m³;~~ ~~500m³ ;~~ 10,000m³ (iii) not exceed an area of ~~more than 1000m²~~ 10,000m² ~~over any single consecutive~~ within a 12 month period;

	~~(iv) the total depth of~~ any excavation or filling does not exceed ~~1.5m above or below ground level;~~ (v) ~~the slope of the resulting cut, filled areas or fill batter face in stable ground, does not exceed~~ a maximum of 1:2 (1 vertical to 2 horizontal); ~~(vi) earthworks are set back at least 1.5m from all boundaries;~~ (vii) areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface; (viii) sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; and (ix) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
~~P2~~	~~(a) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material. must meet the following condition:~~ ~~(i) be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development.~~
P3	(a) Earthworks for purposes other than creating a building platform ~~for residential purposes~~ within a site, using imported fill material (excluding cleanfill) must meet all of the following conditions: ~~(i)~~ must not exceed a total volume of ~~500m^3;~~ 10,000m^3 ~~(ii) must not exceed a depth of 1m 1.5m;~~ (iii) the slope of the resulting filled area in stable ground ~~to~~ must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); ~~(iv) fill material is set back at least 1.5m from all boundaries;~~ (v) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks or finished with a hardstand surface; (vi) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; and (vii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
RD1	(a) Earthworks that do not comply with Rule 21.2.5.1 P1, P2 or P3. (b) Council's discretion is restricted to the following matters: (i) amenity values and landscape effects; (ii) volume, extent and depth of earthworks; (iii) nature of fill material; (iv) contamination of fill material; (v) location of the earthworks to waterways, significant indigenous vegetation and habitat; (vi) compaction of the fill material; (vii) volume and depth of fill material; (viii) protection of the Hauraki Gulf Catchment Area; (ix) geotechnical stability; (x) flood risk, including natural water flows and established drainage paths; and (xi) land instability, erosion and sedimentation.

315. Hynds agrees with my s42A recommendation in respect to providing for health and safety signage by amending Rule 14.3.1 P11.

316. Lastly, Hynds considers that the height limit for buildings in the Heavy Industrial Zone should be increased from 20m to 25m. Their reason for this is that the combination of a 20m height limit and the daylight admission rule may result in the inefficient use of land in this zone, given the '*very small lot size allowable in this zone* …'.

317. I am unclear as to how a minimum lot size would be problematic for any new industry, on the basis that lot size is typically market driven, and usually determined with a sale and purchase agreement prior to a subdivision application being lodged with Council.

318. I therefore invite Hynds to provide further comment on this view and examples of other district plans where a 25m building height limit is permitted in heavy industrial zones. In this respect, I note that a 20 metre building height limit is specified in the Auckland Unitary Plan for the Heavy Industry Zone (Rule H16.6.1) and Hamilton City District Plan (Rule 9.4.2 for the Industrial Zone and Rule 11.4.4 for the Ruakura Industrial Park Zone).

19.2 Recommendations

319. As a result of the evidence received from Hynds, it is recommended that the hearings panel:

a. **Accept in part** the further submissions from *Hynds Pipe Systems Limited [FS1341.21]* and the *Hynds Foundation [FS1306.24]* and **amend** Policy 4.6.2 and Policy 4.6.3 as follows:

4.6.2 Policy – Provide Industrial Zones with different functions

(b) 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:

(iii) Industrial Zone

B. Recognise and provide for a range of general industrial and other compatible activities that can operate in close proximity to more sensitive zones dues to the nature and relatively limited effects of these activities, including visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and traffic, subject to appropriate separation distances.

(iv) 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 relatively~~ high levels of visual impact from buildings and associated parking and loading spaces, outdoor storage, lighting, noise, odour and heavy traffic, subject to appropriate separation distances.

4.6.3 Policy – Maintain a sufficient supply of industrial land

Maintain a sufficient supply of industrial land within strategic industrial nodes to meet foreseeable future demands, having regard to the different requirements of ~~different~~ general and heavy industries.~~to avoid the need for industrial activities to locate in non-industrial areas.~~

b. **Accept** the further submissions from *Hynds Pipe Systems Limited [FS1341.44* and *FS1341.45]* and *Hynds Foundation [FS1306.37* and *FS1306.38]* and **amend** Rule 21.2.5.1 as follows:

21.2.5.1 Earthworks – General

P1	Earthworks within a site, that may or may not involve the importation of clean fill material, for the purpose of creating a building platform and/or ancillary hardstand area.
~~P1~~ P2	(a) Earthworks (excluding the importation of fill material) within a site must meet all of the following conditions: (i) be located more than 1.5 m horizontally from any waterway, open

	drain or overland flow path; (ii) not exceed a volume of ~~more than 250m^3; 500m^3 ;~~ 10,000m^3 (iii) not exceed an area of ~~more than 1000m^2~~ 10,000m^2 ~~over any single consecutive~~ within a 12 month period; ~~(iv) the total depth of~~ any excavation or filling does not exceed ~~1.5m above or below ground level;~~ (v) ~~the slope of the resulting cut, filled areas or fill batter face in stable ground, does not exceed~~ a maximum of 1:2 (1 vertical to 2 horizontal); ~~(vi) earthworks are set back at least 1.5m from all boundaries:~~ (vii) areas exposed by earthworks are re-vegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks, or finished with a hardstand surface; (viii) sediment resulting from the earthworks is retained on the site through implementation and maintenance of erosion and sediment controls; and (ix) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
~~P2~~	~~(a) Earthworks for the purpose of creating a building platform for residential purposes within a site, using imported fill material. must meet the following condition:~~ ~~(i) be carried out in accordance with NZS 4431:1989 Code of Practice for Earth Fill for Residential Development.~~
P3	(a) Earthworks for purposes other than creating a building platform ~~for residential purposes~~ within a site, using imported fill material (excluding cleanfill) must meet all of the following conditions: ~~(i)~~ must not exceed a total volume of ~~500m^3;~~ 10,000m^3 ~~(ii) must not exceed a depth of 1m 1.5m;~~ (iii) the slope of the resulting filled area in stable ground ~~to~~ must not exceed a maximum slope of 1:2 (1 vertical to 2 horizontal); ~~(iv) fill material is set back at least 1.5m from all boundaries;~~ (v) areas exposed by filling are revegetated to achieve 80% ground cover within 6 months of the commencement of the earthworks or finished with a hardstand surface; (vi) sediment resulting from the filling is retained on the site through implementation and maintenance of erosion and sediment controls; and (vii) do not divert or change the nature of natural water flows, water bodies or established drainage paths.
RD1	(a) Earthworks that do not comply with Rule P1, P2 or P3. (b) Council's discretion is restricted to the following matters: (i) amenity values and landscape effects; (ii) volume, extent and depth of earthworks; (iii) nature of fill material; (iv) contamination of fill material; (v) location of the earthworks to waterways, significant indigenous vegetation and habitat; (vi) compaction of the fill material; (vii) volume and depth of fill material; (viii) protection of the Hauraki Gulf Catchment Area; (ix) geotechnical stability; (x) flood risk, including natural water flows and established drainage paths; and (xi) land instability, erosion and sedimentation.

19.3 Section 32AA evaluation

19.3.1 Effectiveness and efficiency

320. I consider that the amended Rule 21.2.5.1 is an effective and efficient method to implement Policy 4.6.7 and therefore achieve Objective 4.6.1.

19.3.2 Costs and benefits

321. The recommended amendments to this rule would reduce the need for resource consents to be obtained, thus saving time and costs. In turn, this provides economic benefits for industrial operators.

19.3.3 Risk of acting or not acting

322. I consider that there is a risk in retaining the notified version and s42A version of this rule, in that some outcomes sought are unclear and unjustified. The amendments provide greater clarity and flexibility for industrial development, while still appropriately managing adverse effects.

19.3.4 Decision about most appropriate option

323. In my opinion, the recommended rule shown above is the most appropriate in achieving the purpose of the RMA, as it provides flexibility for industrial development while managing the adverse effects associated with earthworks.