

## Section 32AA for Revised Chapters 4, 20 and 21

### Statutory Context

1. Section 32AA of the RMA sets out the requirements for undertaking and publishing further evaluations of the revised Chapters 4, 20 and 21 in Attachments 1, 2 and 3.
2. Clause 32AA(1)(a) requires these evaluations only for any changes that have been made to, or are proposed for, these chapters since the initial section 32 evaluation.
3. Clause 32AA(1)(b) requires the further evaluations to be undertaken in accordance with section 32(1)-(4) which, in turn, requires:
  - a. an evaluation in terms of clause 32(1)(a) of the extent to which any amendment to an objective is the most appropriate way to achieve the purpose of the RMA
  - b. an evaluation in terms of clause 32(1)(b) as to whether the provisions are the most appropriate way of achieving the objectives by identifying other options, assessing the efficiency and effectiveness of the provisions in achieving those objectives, and summarising the reasons for deciding on the provisions.
  - c. an evaluation in terms of clause 32(1)(c) where the level of detail corresponds with the scale and significance of the environmental, economic, social and cultural effects anticipated from implementing the revised provisions.
  - d. an evaluation in terms of clause 32(2) of the anticipated benefits and costs from implementing the revised provisions (and quantification of these if practicable), including the opportunities for economic growth and employment, and an assessment of the risk of acting or not acting if there is uncertain or insufficient information available about the subject matter.
  - e. Clause 32(3) requires any evaluation in terms of section 32(1)(b) to consider any amendment to a standard, statement, national policy statement, regulation, plan, or change that is already proposed or that already exists. Clause 32(3) is not relevant in this particular instance.
  - f. Clause 32(4) requires any evaluation to consider whether the revised provisions will impose a greater or lesser prohibition or restriction on an activity to which a national environmental standard applies and whether that prohibition or restriction is justified in the circumstances of the region or district. Clause 32(4) is not relevant in this particular instance.
4. To assist the hearings panel, I have split the s32AA evaluations so that the changes to Chapters 4, 20 and 21 are addressed in the following Parts A, B and C respectively.
5. Track change versions of Chapters 4, 20 and 21 are contained in Attachment 17.

## Part A: Chapter 4 - Objectives and Policies

6. The notified objectives and policies for industry are contained in Section 4.6 of Chapter 4 of the PWDP.
7. The s32AA test requires an evaluation as to whether my recommended changes to the notified objectives are the most appropriate way to achieve the purpose of the RMA which is 'to promote the sustainable management of natural and physical resources'<sup>1</sup>.
8. In achieving this purpose, Council shall recognise and provide for the section 6 matters of national importance, have particular regard to other matters in section 7 matters and, as required by section 8, take into account the principles of the Treaty of Waitangi.
9. The notified parts of Section 4.6 are shown below in black text. The changes recommended by me, and subject of the s32AA test, are shown in ~~blue strike-out~~/underline.

### 4.6 General Industrial Zone and Heavy Industrial Zones

#### 4.6.1 Objective – Economic growth of industry

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

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10. I consider my recommended change to Objective 4.6.1 is a more appropriate way of achieving the purpose of the RMA than the notified version. This is because the reference to positive employment and economic benefits of industrial activities provides a wider and more balanced context for the assessment of development proposals. It is important to recognise that while adverse effects are expected from industry, positive employment and economic effects are also important as they enable people and communities to provide for their social, economic and cultural wellbeing, these being listed in s5(2) of the RMA as a component of sustainable management.
11. The amendment to the Section 4.6 heading so that there is reference to both the General Industrial Zone and Heavy Industrial Zone is consistent with the National Planning Standards.

#### 4.6.2 Policy – Provide Industrial Zones with different functions

- (a) Recognise and provide for a variety of industrial activities within two industrial zones that have different functions depending on their purpose and effects as follows:
  - (i) General Industrial Zone
    - A. Recognise and provide for a range of industrial and other compatible activities that can operate in ~~close~~ proximity to more sensitive zones due to the nature and relatively limited effects of these activities, including noise, odour and heavy traffic, and visual impact from buildings, and associated parking and loading spaces, outdoor storage, and lighting; ~~noise, odour and traffic, subject to appropriate separation distances.~~
  - (ii) Heavy Industrial Zone

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<sup>1</sup> Section 5, Part 2 of RMA  
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- A. Recognise and provide for a range of heavy industrial and other compatible activities that may generate potentially significant levels of effects on more sensitive zones, including levels of noise, odour and heavy traffic, and visual impact from buildings, associated parking and loading spaces, outdoor storage and lighting, ~~noise, odour, heavy traffic, subject to appropriate separation distances.~~

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12. I consider my recommended changes to Policy 4.6.2 are a more appropriate way to achieve Objective 4.6.1 than the notified version. This is because the changes make it clear that environmental impacts from the spectrum of adverse effects vary due to the fact that the type and scale of industrial activities within the district are broad in nature. Without these changes, this policy is ambiguous because it does not clearly separate adverse effects that are visual (e.g. building form) and non-visual (i.e. odour and noise).
13. It is also important to remove the phrase ‘subject to appropriate separation distances’ otherwise this policy would present a barrier to establish any industry and maximise investment. This potential cost to industrial operators could also undermine public confidence in employment opportunities. I consider the notified version to be neither efficient nor effective as it would stymie achieving the objective of economic growth.
14. The key purpose of Policy 4.6.2 is to provide industrial zones that have different functions. However, the separation of industry from more sensitive zones is a reverse sensitivity matter that needs to be appropriately managed through the zoning method, the strategic objective and policy framework in Chapter 3, and rules for adjacent zones. The location and distribution of zones is being addressed as a separate topic.

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

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

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15. I consider my recommended changes to Policy 4.6.3 are a more appropriate way of achieving Objective 4.6.1 than the notified version. This is because the need to ensure a sufficient stock of zoned land within strategic industrial nodes is a zoning matter that is different to how land within these zones is developed. Unless this is made clear, there is a risk of activities being established in industrial zones that have no genuine connection with industrial operations and the purpose of the industrial zones would then be undermined. It is unnecessary for this policy to outline the approach for addressing industrial activities in other zones as this policy only relates to the General Industrial Zone and Heavy Industrial Zone.

### 4.6.4 Policy – Maintain industrial land for industrial purposes

- (a) Maintain industrial zones for industrial activities unless a development is ancillary to an on-site industrial activity and does not undermine the integrity of those zones.

- (b) Avoid the unnecessary development of any sensitive land use or noise-sensitive activity in industrial zones, including residential activities that are not required for caretaker or security personnel associated with an industrial activity.
- (c) Provide for retail activities and offices in the General Industrial Zone that are ancillary to industrial activities and/or, because of their size, design or operational characteristics, are incompatible with the function and character of a town centre.
- (d) Avoid retail activities and offices in the Heavy Industrial Zone that are not ancillary to industrial activities.

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- 16. I consider my recommended changes to Policy 4.6.4 are a more appropriate way of achieving Objective 4.6.1 than the notified version. This is because this policy needs to clearly signal particular circumstances where it may be appropriate to allow industrial land to be used for the establishment of non-industrial activities. This includes residential accommodation for a caretaker or security personnel associated with an industrial activity, which is still subject to a resource consent test, and ancillary retail activities and offices.
- 17. Policy support for these types of ancillary activities is important to ensure the effective and efficient operation, and economic growth, of all industries. Recommended clause (d) provides the necessary policy framework for non-complying retail activities and offices in the Heavy Industrial Zone in recognition of the scarce land resource and the scale of historic developments within this zone.

#### **4.6.5 Policy – Recognition of industrial activities outside of urban areas**

- (a) Manage activities within specific sites containing lawfully established industrial activities that are not immediately adjacent to towns or villages.

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- 18. No change is recommended for Policy 4.6.5 and therefore no section 32AA evaluation is required.

#### **4.6.6 Objective – Manage adverse effects**

- (a) The amenity values of sensitive activities and ecosystem values outside of industrial zones are protected from the significant adverse effects of industrial activities.

#### **Section 32AA Evaluation**

- 19. No change is recommended for Policy 4.6.6 and therefore no section 32AA evaluation is required.

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

- (a) **Manage adverse effects from the visual dominance of including visual impact from buildings, structures, ancillary parking, and loading spaces on adjoining sensitive zones. and outdoor storage, lighting, noise, odour and traffic by managing the location of industrial uses, bulk and form of buildings,**

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~~landscaping and screening at the interface with roads and environmentally sensitive areas.~~

- ~~(b) Manage adverse effects from the operation of industrial activities, including lighting, noise, odour and traffic, on adjoining sensitive zones.~~

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20. I consider my recommended changes to Policy 4.6.6 are a more appropriate way of achieving Objective 4.6.1 than the notified version. This is because the changes make it clear that the policy manages adverse effects from industrial zones on adjoining sensitive zones, rather than managing adverse effects that are internal to the zone. The policy therefore manages effects that are received in sensitive zones that have an interface with an industrial zone and also separates built elements that can be visually dominant from other effects that are not visible or static. The changes also remove the phrase 'environmentally sensitive areas' which is subjective and therefore uncertain.

~~**4.6.8 Policy – Specific activities within Nau Mai Business Park**~~

- ~~(a) Nau Mai Business Park is developed with specific types activities given its location outside of the district's strategic industrial nodes.~~

~~**4.6.9 Policy – Management of adverse effects within Nau Mai Business Park**~~

- ~~(a) Activities within Nau Mai Business Park are to be established and operated so that adverse effects generated by them are managed within Park and not on neighbouring zones.~~

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21. The combination of notified Policies 4.6.8 and 4.6.9 for Nau Mai Business Park is not the most appropriate way of achieving Objective 4.6.1. This is because, despite its location in the General Industrial Zone, an industrial activity is only permitted if it is specifically listed in notified Schedule 20.5. This does not enable the effective and efficient use of the industrial land resource.
22. The risks of retaining notified Schedule 20.5 are already known. This is because the operative Schedule 24F is restrictive and this has resulted in the landowner and prospective purchasers having to rely on the 2010 land use consent, rather than the district plan, in order to establish the type of industrial activities normally expected in an industrial zone. In the past, this has created a great deal of uncertainty and frustration for some developers/operators who feel that the land use consent does not provide them with the certainty that they need to establish an industrial activity in an industrial zone. Anecdotal evidence from the landowner has indicated that this uncertainty has resulted in some land purchases not proceeding, which then compromises the objective of growing the industrial economy and employment opportunities.
23. In my view, there is nothing unique about Nau Mai Business Park that would justify it being treated differently from other land in the General Industrial Zone. Deleting all specific provisions for this location in favour of applying all Section 4.6 policies (together with the standard Chapter 20 rules) will result in the effective and efficient use of industrial land in this location and much greater certainty to users of the district plan as to what activities are permitted.

#### **4.6.8 Objective – Development of Horotiu Industrial Park as a strategic industrial node**

The Horotiu Industrial Park is developed as a strategic industrial node in a manner which enables industrial activities to locate and function efficiently.

#### **4.6.9 Policy – Support of primary function of Horotiu Industrial Park**

Provide for activities within the Horotiu Industrial Park that support the primary function of this strategic industrial node.

#### **4.6.9A Policy – Support of regionally significant industry**

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

#### **4.6.10 Objective – Protection of Horotiu Industrial Park from reverse sensitivity**

The Horotiu Industrial Park is protected from reverse sensitivity effects from activities sensitive to noise.

#### **4.6.11 Policy – Protection of activities sensitive to noise from Horotiu Industrial Park**

Activities that are sensitive to noise are required to protect themselves from noise arising from the operation of the Horotiu Industrial Park.

#### **4.6.12 Objective – Servicing of Horotiu Industrial Park by road and rail**

The Horotiu Industrial Park is serviced by efficient road and rail network connections.

#### **4.6.13 Policy – Use of road and rail network connections in Horotiu Industrial Park**

Industrial development in the Horotiu Industrial Park is encouraged to make use of both road and rail network connections to enable the efficient use of the industrial land resource.

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24. These new objectives and policies for Horotiu Industrial Park (HIP) were not included in the notified PWDP. However, the merits of this bespoke framework in this location were discussed in my s42A report and the evidence of submitters (namely Ports of Auckland and Northgate) and these are summarised here.
25. I consider that this framework generally maintains the status quo in that enabling provisions should continue to apply to development within the HIP. I agree with POAL and Northgate that there is a clear statutory basis for applying enabling provisions for this industrial location, compared to the provisions in the standard Industrial Zone.
26. The previous history of the Environment Court's consent order, the regional significance of the HIP as an inland freight hub and the nature of the existing and consented activities are compelling reasons, in my view, why a bespoke approach is more appropriate than sole reliance on the standard General Industrial Zone provisions.
27. This is particularly important when current development is proceeding on the basis of the operative provisions. I do not consider that it is appropriate to remove the existing bespoke approach for the HIP on the basis that the PWDP seeks to apply a standard approach for all industry within the Waikato District. While I consider that most PWDP provisions for the General Industrial Zone should also apply to the HIP, bespoke provisions that integrate development at this location are considered better at achieving the desired economic and environmental outcomes.

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28. The recommended objectives and policies for HIP are considered to give effect to the WRPS. The objectives address specific issues and opportunities relevant to the HIP. They provide specific directions for development of this regionally significant industrial node that are effective in supporting the outcomes sought. Having this specific direction can greatly assist landowners who seek to establish and invest in their particular type of industries because this provides certainty.
29. The benefits of the recommended bespoke approach include:
  - a. Enabling development of the HIP as an inland freight hub. This has social and economic benefits to the community in terms of access to transport, logistics and employment opportunities
  - b. Management of freight activities associated with State Highway 1 and the rail network, therefore using this regionally significant infrastructure in an efficient and effective manner
  - c. Certainty in the outcome of planning and consent processes for landowners and neighbouring activities.
30. Few costs are identified. However, where they do apply, these are directly associated with land within HIP and these form part of the currently operative provisions that are the result of an agreement between parties by consent order. These costs relate to landowners within this industrial node having to maintain the amenity of neighbouring properties and the environment.
31. I do not doubt that the HIP could be developed based on the PWDP provisions. However, the main issue is that resource consents would be required. For every resource consent application needing to be made, this would require reference to the WRPS, the objectives and policies of the PWDP and the available discretions given the nature of the infringements. In my view, this creates uncertainty for all parties as it unravels the certainty that is the result of the consent order. It therefore constitutes an inefficient approach.
32. Consequently, I consider that the bespoke framework of objectives and policies (together with the relevant rules in Chapter 20 and the specific rules for Development Area 20.5 involves fewer risks than the notified version of PWDP and clear guidance for future resource consent applications. Conversely, retaining the notified version of the PWDP would increase risks and uncertainty for the management of effects and leveraging economic development. This is a more efficient and effective approach to enabling the development of the HIP and recognition of it as a strategic industrial node.

#### **4.6.14 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.

#### **4.6.15 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.

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33. Objective 4.6.14 and Policy 4.6.15 were not included in the notified PWDP. However, they are the most appropriate way of achieving Objective 4.6.1 and the overall purpose of the RMA which is set out in Part 2. In particular, these provisions respond to the obligation in s5(2) of the RMA which is to provide for the development of resources in a way which enables people and communities to provide for their health and safety.

## Part B: Chapter 20 – General Industrial Zone

34. The notified rules for the General Industrial Zone are contained in Chapter 20 of the PWDP.
35. The s32AA test requires an evaluation as to whether my recommended changes to the notified rules provisions are the most appropriate way of achieving the objectives by identifying other options, assessing their effectiveness and efficiency in achieving those objectives, summarising the reasons for deciding on them, and addressing the scale and significance of environmental, economic, social and cultural effects that are anticipated from implementing them.

### Introductory paragraphs

36. A description of the General Industrial Zone was not included in the notified PWDP. This addition is considered effective in that it provides context and guidance for assessing developments in this zone and reflects the description of this zone in the National Planning Standards that were released in April 2019, after notification of the PWDP.
37. Other text changes are editorial and therefore not significant. This includes removing the reference to Schedule 20.5 for Nau Mai Business Park and including a reference to new Development Area 20.5 for Horotiu Industrial Park.

### Permitted Activities in the General Industrial Zone

38. The most significant change to notified Rule 20.1.1 is the recommended addition of these activities listed below.

P7	<a href="#">Hire centre</a>	<a href="#">Nil</a>
P8	<a href="#">Wholesale</a>	<a href="#">Nil</a>
P9	<a href="#">Trade supply outlet</a>	<a href="#">Nil</a>
P10	<a href="#">Transport depot</a>	<a href="#">Nil</a>
P11	<a href="#">Garden centre</a>	<a href="#">Nil</a>
P12	<a href="#">Retailing of agricultural and industrial motor vehicles and machinery</a>	<a href="#">Nil</a>
P13	<a href="#">Emergency services training and management activities</a>	<a href="#">Nil</a>
P14	<a href="#">Ancillary activity</a>	<a href="#">Nil</a>
P15	<a href="#">Construction or demolition of, or alteration or addition to, a building</a>	<a href="#">Nil</a>



PI6	Community corrections activity	Nil
PI7	Service station	Nil

39. Most of the activities in this list are typical in perimeter urban industrial zones because they require large sites to store and display their goods, or conduct their operations. It would be unreasonable to require a resource consent process because this would create uncertainty for owners/operators and costs that could significantly outweigh economic and employment benefits. This would not be an effective or efficient outcome given the objective to grow the district's industrial economy.
40. The new P15 rule removes uncertainty as to whether any building works are permitted because the notified PWDP does not make this explicit.
41. Permitting emergency services training and management activities in this zone through new rule P13 will enable communities and people to provide for their wellbeing as required by s5(2) of the RMA, and specifically their health and safety. A resource consent process for these particular activities, which are relied on by the whole of the district's community, would also not be effective or efficient in achieving that outcome.

#### **Residential units for caretakers and security personnel**

42. Recommended new Rule 20.1.2 provides for caretaker/security personnel residential units in the General Industrial Zone as a restricted discretionary activity. No provision was made for this type of activity in the notified PWDP, however these can provide an important supportive role to industry, particularly those involving 24/7 operations.
43. A resource consent test for a restricted discretionary activity is recommended to ensure that a residential unit does not become the dominant activity and that reverse sensitivity effects are acceptable. There will be varying degrees of reverse sensitivity impact depending on the particular nature of an industrial operation and a resource consent process therefore enables Council to consider each case on its merits. I have recommended the default of a discretionary activity if a residential unit exceeds a gross floor area of 70m<sup>2</sup>. The same is recommended for the equivalent rule in the Horotiu Industrial Park.
44. Providing for this activity in this way is effective and efficient in achieving the objective of growing the district's industrial economy. The status quo option where no provision is made would otherwise result in a default to a non-complying activity. This is an onerous outcome considered neither effective nor efficient in that it creates uncertainty and potentially greater costs in having to satisfy the s104(D)(1) gateway test for non-complying activities in the RMA.

#### **Discretionary Activities**

45. The new discretionary activity rule (20.1.3) provides cross references to activities that are permitted and the new restricted discretionary activity rule for caretaker/security personnel accommodation. The new D8 rule also provides certainty that if an activity is not specifically listed, then it falls to be considered as a discretionary activity. It is appropriate for this approach to align with s87(B)(1)(b) in the RMA. Overall, recommended Rule 20.1.3 is more

effective than the notified rule for discretionary activities in that it provides greater certainty and clearer navigation for district plan users.

### **Non-complying Activities**

46. The new Rule 20.1.4 for non-complying activities removes the uncertainty of activity status in the notified version so that unless a development involves a residential unit for caretakers/personnel, any noise-sensitive activity or sensitive land use requires consideration as a non-complying activity. This onerous activity status is appropriate because of the key objective to support industry and safeguard it against unacceptable reverse sensitivity effects that would undermine the purpose of the General Industrial Zone.

### **Deletion of Rule 20.2.1 Servicing and hours of operation**

47. I have recommended deletion of this rule from the notified PWDP as it has the effect of compromising industrial operations that often occur on a 24/7 basis. The primary effects generated by the servicing and operation of industrial activities are limited to noise, glare and light spill which are effects already managed by other rules. Retaining the status quo is neither effective nor efficient as it does not achieve the objective of growing the district's industrial economy.

### **Replacement of landscaping rule**

48. I consider that the replacement of the notified landscaping rule with new Rule 20.2.2 is a more appropriate way of achieving the objective of growing the district's industrial economy. This is because it removes the cost burden associated with a resource consent process for a controlled activity. The recommended rule provides an appropriate starting point as a permitted activity subject to reasonable planting thresholds. This is important in order for industries to maximise effective and efficient use of the land resource. It also provides an appropriate balance with the need to manage amenity impact from industrial buildings or activities where the adjoining site is in a more sensitive zone.

### **Replacement of noise rules**

49. Compared to the notified noise rules, the recommended package of noise rules is a more appropriate way of achieving the objective of supporting growth of the district's industrial economy. This is because they provide greater certainty with respect to standards, the default to a restricted discretionary activity better reflects the specific matters that would be considered with a breach of a permitted activity standard, and the reworded rule for construction noise reflects the flexibility within the NZ Standard subject to implementing best practicable options.
50. Furthermore, the recommended noise rules do not unnecessarily restrict industrial operations during the night-time period which is important for 24/7 operations. This is because it remains incumbent on operators to run their businesses so that noise received in more sensitive zones does not exceed the maximum decibel limit relevant to that receiver zone. The recommended rules are therefore more effective in achieving the objective of industrial growth.

51. It is also my view that applying the notified noise rule to Pokeno does not give effect to the Waikato Regional Policy Statement which identifies this location as a strategic industrial growth node. It is therefore expected that industrial development here will flourish. Unless the operative bespoke noise rule for Pokeno is retained, there is a risk that industrial growth within the Pokeno Structure Plan Area will not continue in an integrated manner and investor/operator confidence could be lost.

#### **Replacement rule for glare and artificial light spill**

52. The new replacement rule is more appropriate than the notified rule in that it makes clear reference to adjoining sites that are not in the General Industrial Zone or Heavy Industrial Zone. Retaining the notified rule would mean that lux levels would need to be complied with for any receiver sites, irrespective of zoning. This could have the result of compromising industries that operate during the night-time period, including security measures for their assets, which in turn would not assist in achieving the objective of supporting the growth of the district's industrial economy.

#### **Replacement of rules for earthworks**

53. The package of replacement rules for earthworks is a more appropriate way of achieving the objective of supporting the district's industrial economy. This is because they provide more liberal area and volume thresholds which will reduce time and cost involved in resource consent processes. These changes will enable industrial land to be used more effectively and efficiently. The wording of the new rules is considered more clear and concise than the notified versions.

#### **Replacement rule for hazardous substances**

54. No substantive change is recommended for the hazardous substances rule as this is a matter addressed in a separate topic. Grammar in the replacement rule is considered to be an improvement on the notified version.

#### **Signage rules**

55. The replacement set of signage rules is considered to be a more appropriate way of achieving the objectives of supporting the district's industry economy and managing amenity impact on sensitive zones. This is because the changes provide more flexibility for the number and size of free-standing signs and real estate signs which provide a supportive role for industry. Grammar in the replacement rules is considered to be an improvement on the notified version. The recommended default to a restricted discretionary activity, rather than a discretionary activity, is more appropriate in that it clearly signals the restricted matters would be considered if there were to be a breach of the permitted activity standards.

#### **Deletion of rule for outdoor storage**

56. The notified rule for outdoor storage is not the most appropriate way of achieving the objective of supporting the growth of the district's industrial economy. This is because other rules manage amenity such as building height, boundary setbacks and landscaping. Furthermore, the risks associated with this notified rule are already known as Council's monitoring staff have reported difficulties in monitoring and enforcing this type of rule in the

past. For these reasons, I conclude that retaining this rule does not result in an effective or efficient outcome.

### **Replacement of rules for indigenous vegetation clearance**

57. The recommended changes to these notified rules are not substantive as indigenous vegetation clearance is a matter addressed in a separate hearing topic. Grammar in the replacement rules is considered to be an improvement on the notified versions.

### **Replacement of building height rules**

58. The replacement rules for building height are considered to be more appropriate in achieving the objective of supporting the district's industrial economy. This is because they carry over the bespoke rule for buildings in the Whangarata Business Park Structure Plan Area at Tuakau. Retaining the permitted 18 metre height limit in this specific location will retain certainty and confidence for industrial investors/operators by reducing the likelihood of resource consent processes. Notified Rule 20.3.3 can be deleted because no site in the General Industrial Zone is affected by the airport obstacle limitation surface.

### **Replacement height in relation to boundary rule**

59. The new rule which manages the height of buildings in relation to boundaries is better understood than the notified daylight admission rule. The term 'height in relation to boundary' is also consistent with the term used in the National Planning Standards.

### **Replacement of building setback rules**

60. The replacement set of building setback rules are a more appropriate way of achieving the objective of supporting the district's industrial economy. This is because, for sites that adjoin a sensitive zone, a setback of 3 metres rather than the notified 7.5 metres will enable industries to more effectively and efficiently use the land resource and maximise industrial investment. Retaining the notified rules is neither effective nor efficient because of time and cost involved in resource consent processes. The reference to the earth bund at Horotiu Industrial Park is not included here as this matter is managed by rules for Development Area 20.5.
61. The recommended new rule concerning setbacks to waterbodies is more appropriate than the notified version. This is because a threshold is now introduced in respect to wetlands. Without this threshold, a 30 metre setback would apply, and this would increase the likelihood of resource consents being triggered, irrespective of the area or ecological quality of any wetland. The new rule also addresses the ambiguity in the notified rule so that it is clear what setback applies to different scales of perennial or intermittent streams.

### **Rules for heritage items**

62. The recommended changes to the notified rules for heritage items are not substantive as this is a matter addressed in a separate hearing topic. Grammar in the replacement rules is considered to be an improvement on the notified versions.

### **Replacement subdivision rules**

63. The replacement package of subdivision rules is a more appropriate way of achieving the objective to support the district's industrial economy. This is because it removes the requirements for an average lot size and rear lots. All new rules contain a default to a discretionary activity to clearly signal the test that is required if a subdivision proposal breaches a standard for a restricted discretionary activity.

#### **Deletion of Specific Area 20.5 for Nau Mai Business Park**

64. The track change version of Chapter 20 indicates the wholesale deletion of Specific Area 20.5. This is appropriate for the reasons set out in my s32AA for Chapter 4.

#### **Introduction of Development Area 20.5 for Horotiu Industrial Park**

65. The track change version of Chapter 20 indicates the introduction of rule provisions for Horotiu Industrial Park. This set of rules has been developed in collaboration with Ports of Auckland and Northgate and is the most appropriate way of achieving the new objectives and policies for this location set out in Chapter 4. Since receiving feedback from these two submitters, I have considered it appropriate to add a default to a discretionary activity if a residential unit for a caretaker/security personnel exceeds a gross floor area of 70m<sup>2</sup>. Without specifying this default, it is not clear what activity status should be assigned. I have also recommended changes to the setback rule in respect to wetlands, otherwise retaining the rule as notified would trigger an increase in resource consents as a 30 metre setback would then apply to any wetland, irrespective of size or ecological quality. This change would be beneficial to any developer within Horotiu Industrial Park.

### **Part C: Chapter 21 – Heavy Industrial Zone**

66. The notified rules for the Heavy Industrial Zone are contained in Chapter 21 of the PWDP.
67. The s32AA test requires an evaluation as to whether my recommended changes to the notified rule provisions are the most appropriate way of achieving the objectives by identifying other options, assessing their effectiveness and efficiency in achieving those objectives, summarising the reasons for deciding on them, and addressing the scale and significance of environmental, economic, social and cultural effects that are anticipated from implementing them.
68. The options analysis is supported by the s32 notified with the PWDP, submissions, evidence from submitters, and matters addressed at the hearing through the s42A report. The s32AA evaluation below is the final report on the recommended changes which has culminated from these processes.

#### **Introductory paragraphs**

69. A description of the Heavy Industrial Zone was not included in the notified PWDP. This addition is considered effective in that it provides context and guidance for assessing developments in this zone and reflects the description of this zone in the National Planning Standards that were released in April 2019, after notification of the PWDP.
70. Other text changes are editorial and therefore not significant.

#### **Permitted Activities in the Heavy Industrial Zone**

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71. The most significant change to notified Rule 21.1.1 is the recommended addition of these activities listed below.

P7	<a href="#">Emergency services training and management activities</a>	Nil
P8	<a href="#">Ancillary activity</a>	Nil
P9	<a href="#">Construction or demolition of, or alteration or addition to, a building</a>	Nil
P10	<a href="#">Electricity generation on the Huntly Power Station site</a>	Nil
P11	<a href="#">Service station</a>	Nil

72. It would be unreasonable to require a resource consent process for these activities because this would create uncertainty for owners/operators and costs that could significantly outweigh economic and employment benefits. This would not be an effective or efficient outcome given the objective to grow the district's industrial economy.
73. There is no resource management reason why these activities should not be permitted in the Heavy Industrial Zone as they are for the General Industrial Zone. The only exception is new rule P10 which permits electricity generation on the Huntly Power Station site in the Heavy Industrial Zone. It is appropriate to list this specific activity as no part of the notified PWDP explicitly permits this operation, including Chapter 14 (Infrastructure and Energy).
74. Permitting emergency services training and management activities in this zone through new rule P7 will enable communities and people to provide for their wellbeing as required by s5(2) of the RMA, and specifically their health and safety. A resource consent process for these particular activities, which are relied on by the whole of the district's community, would also not be effective or efficient in achieving that outcome.
75. The new P9 rule removes uncertainty as to whether any building works are permitted because the notified PWDP does not make this explicit.

### **Residential units for caretakers and security personnel**

76. Recommended new Rule 21.1.2 provides for caretaker/security personnel residential units in the Heavy Industrial Zone as a restricted discretionary activity. No provision was made for this type of activity in the notified PWDP, however these can provide an important supportive role to heavy industry, particularly those involving 24/7 operations, such as Synlait, Hynds, Affco and the Huntly Power Station.
77. A resource consent test for a restricted discretionary activity is recommended to ensure that a residential unit does not become the dominant activity and that reverse sensitivity effects are acceptable. There will be varying degrees of reverse sensitivity impact depending on the particular nature of a heavy industrial operation and a resource consent process therefore enables Council to consider each case on its merits.
78. Providing for this activity in this way is effective and efficient in achieving the objective of growing the district's industrial economy. The status quo option where no provision is made would otherwise result in a default to a non-complying activity. This is an onerous outcome considered neither effective nor efficient in that it would create uncertainty and potentially

greater costs in having to satisfy the s104(D)(1) gateway test for non-complying activities in the RMA.

### **Discretionary Activities**

79. The new discretionary activity rule (21.1.3) provides cross references to activities that are permitted and the new restricted discretionary activity rule for caretaker/security personnel accommodation. The new D6 rule also provides certainty that if an activity is not specifically listed, then it falls to be considered as a discretionary activity. It is appropriate for this approach to align with s87(B)(1(b) in the RMA. Overall, recommended Rule 21.1.3 is more effective than the notified rule for discretionary activities in that it provides greater certainty and clearer navigation for district plan users.

### **Non-complying Activities**

80. The new Rule 21.1.4 for non-complying activities removes the uncertainty of activity status in the notified version so that unless a development involves a residential unit for caretakers/personnel, any noise-sensitive activity or sensitive land use, or any office or retail activity that is not ancillary to a heavy industry, requires consideration as a non-complying activity. This activity status is appropriate because of the key objective to support heavy industry and safeguard it against unacceptable reverse sensitivity effects that would undermine the purpose of the Heavy Industrial Zone.
81. In this case, the notified PWDP did not appropriately propose methods to implement the relevant objectives and policies which, if accepted, could result in proposals to develop sensitive land uses in this zone. Given the scarcity of the land resource in this zone, the proposed approach is more certain and therefore efficient and effective.

### **Deletion of Rule 21.2.1 Servicing and hours of operation**

82. I have recommended deletion of this rule from the notified PWDP as it has the effect of compromising industrial operations that occur on a 24/7 basis. The primary effects generated by the servicing and operation of industrial activities are limited to noise, glare and light spill which are effects already managed by other rules. Retaining the status quo is neither effective nor efficient as it does not achieve the objective of growing the district's industrial economy. It could have the effect of reducing economic activity along with creating inefficient industrial operations.

### **Replacement of landscaping rule**

83. I consider that the replacement of the notified landscaping rule with new Rule 21.2.2 is a more appropriate way of achieving the objective of growing the district's industrial economy. This is because it removes the cost burden associated with a resource consent process for a controlled activity.
84. The recommended rule provides an appropriate starting point as a permitted activity subject to reasonable planting thresholds. This is important in order for heavy industries to maximise effective and efficient use of the scarce land resource. It also provides an appropriate balance with the need to manage amenity impact from industrial buildings or activities where the adjoining site is in a more sensitive zone, or where the site contains or adjoins a

watercourse. Little amenity gain would be achieved by requiring a resource consent to review a landscape plan, particularly where the species selection is the choice of an individual developer.

### **Replacement of noise rules**

85. Compared to the notified noise rules, the recommended package of noise rules is a more appropriate way of achieving the objective of supporting growth of the district's industrial economy while recognising the specific planning framework that underpins existing towns. This is because this package provides greater certainty with respect to standards, the default to a restricted discretionary activity better reflects the specific matters that would be considered with a breach of a permitted activity standard, and the reworded rule for construction noise reflects the flexibility within the NZ Standard subject to implementing best practicable options.
86. In considering the range of sites in the Heavy Industrial Zone, it is not considered appropriate or necessary to apply a 'one size fits all' approach. The notified PWDP recognised this by carrying forward a specific noise standard for the Huntly Power Station. It is considered appropriate to address heavy industries in Pokeno in a similar manner, subject to them also not breaching internal noise standards for this zone.
87. Furthermore, the recommended noise rules do not unnecessarily restrict industrial operations during the night-time period which is important for 24/7 operations. This is because it remains incumbent on operators to run their businesses so that noise received in more sensitive zones does not exceed the maximum decibel limit relevant to that receiver zone. The recommended rules are therefore more effective in achieving the objective of industrial growth while also reflecting that some land in the Heavy Industrial Zone borders more sensitive zones.
88. It is also my view that applying the notified noise rule to Pokeno would not give effect to the Waikato Regional Policy Statement, nor does it reflect the structure planning that underpins Pokeno, both of which identify this location as a strategic industrial growth node. It is expected that industrial development here will flourish which is evidenced by the existing growth and development in Pokeno enabled by Plan Change 24 and the pattern of resource consents for industrial development. Evidence provided by Synlait and Hynds at the hearing also addressed their future development plans that rely on existing noise rules that have already been tried and tested.
89. Unless the operative bespoke noise rule for heavy industry in Pokeno is retained, there is a risk that industrial growth within the Pokeno Structure Plan Area will not continue in a manner that is integrated with the overall pattern of zoning implemented as a result of Plan Change 24.

### **Replacement rule for glare and artificial light spill**

90. The new replacement rule is more appropriate than the notified rule in that it makes clear reference to adjoining sites that are not in the General Industrial Zone or Heavy Industrial Zone. Retaining the notified rule would mean that lux levels would need to be complied with for any receiver sites, irrespective of zoning. This could have the result of compromising industries that operate during the night-time period, including security measures for their



assets, which in turn would not assist in achieving the objective of supporting the growth of the district's industrial economy.

### **Replacement of rules for earthworks**

91. The package of replacement rules for earthworks is a more appropriate way of achieving the objective of supporting the district's industrial economy. This is because they provide more enabling area and volume thresholds which will reduce time and cost involved in resource consent processes. These changes will enable industrial land to be used more effectively and efficiently. It is also appropriate for the earthwork rules to be consistent between the two industrial zones because there is no resource management reason for the notified PWDP to prescribe different standards. The wording of the new rules is considered more clear and concise than the notified versions.

### **Replacement rule for hazardous substances**

92. No substantive change is recommended for the hazardous substances rule as this is a matter addressed in a separate topic. Grammar in the replacement rule is considered to be an improvement on the notified version.

### **Signage rules**

93. The replacement set of signage rules is considered to be a more appropriate way of achieving the objectives of supporting the district's industry economy and managing amenity impact on sensitive zones. This is because the changes provide more flexibility for the number and size of free-standing signs and real estate signs which provide a supportive role for industry. The recommended default to a restricted discretionary activity, rather than a discretionary activity, is more appropriate in that it clearly signals the restricted matters would be considered if there were to be a breach of the permitted activity standards. Grammar in the replacement rules is considered to be an improvement on the notified version.

### **Deletion of rule for outdoor storage**

94. The notified rule for outdoor storage is not the most appropriate way of achieving the objective of supporting the growth of the district's industrial economy. This is because other rules manage amenity such as building height, boundary setbacks and landscaping. Furthermore, the risks associated with this notified rule are already known as Council's monitoring staff have reported difficulties in monitoring and enforcing this type of rule in the past. For these reasons, I conclude that retaining this rule does not result in an effective or efficient outcome.

### **Replacement of rules for indigenous vegetation clearance**

95. The recommended changes to these notified rules are not substantive as indigenous vegetation clearance is a matter addressed in a separate hearing topic. Grammar in the replacement rules is considered to be an improvement on the notified versions. References to Schedule 30.5 do not appear in the recommended version because each site in the Heavy Industrial Zone exceeds an area of 4000m<sup>2</sup> and therefore does not qualify as an 'urban allotment'.

### **Replacement of building height rules**

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96. The replacement rules for building height are considered to be more appropriate in achieving the objective of supporting the district's industrial economy. This includes permitting a building height of 60 metres and up to 35 metres over 90% of the Huntly Power Station site as a result of evidence provided at the hearing that these measurements reflect the existing building envelope. This change will provide certainty and confidence for industrial investors/operators on this particular site by reducing the likelihood of resource consent processes.

#### **Replacement height in relation to boundary rule**

97. The new rule which manages the height of buildings in relation to boundaries is much better understood than the notified daylight admission rule. The term 'height in relation to boundary' is also consistent with the National Planning Standards.

#### **Replacement of building setback rules**

98. The replacement set of building setback rules is a more appropriate way of achieving the objective of supporting the district's industrial economy. This is because, for sites that adjoin a sensitive zone, a setback of 3 metres rather than the notified 7.5 metres will enable industries to more effectively and efficiently use the land resource and maximise industrial investment. Retaining the notified rules is neither effective nor efficient because of time and cost involved in resource consent processes.
99. The recommended new rule concerning setbacks to waterbodies is more appropriate than the notified version. This is because a threshold is now introduced in respect to wetlands. Without this threshold, a 30 metre setback would apply, and this would increase the likelihood of resource consents being triggered, irrespective of the size or ecological quality of any wetland. The new rule also addresses the ambiguity in the notified rule so that it is clear what setback applies to different scales of perennial or intermittent streams. This is more effective and efficient compared to a 'one size fits all' approach to setbacks. Grammar in the replacement rules is considered to be an improvement on the notified versions.

#### **Rules for heritage items**

100. The recommended changes to the notified rules for heritage items are not substantive as this is a matter addressed in a separate hearing topic. Grammar in the replacement rules is considered to be an improvement on the notified versions.

#### **Replacement subdivision rules**

101. The replacement package of subdivision rules is a more appropriate way of achieving the objective to support the district's industrial economy. This is because it removes the control on the percentage of rear lots, thus enabling investment and development of industry. All new rules contain a default to a discretionary activity to clearly signal the required test where a subdivision proposal breaches any standard for a restricted discretionary activity.

#### **Overall conclusion on section 32AA evaluation**

102. My overall conclusion is that the package of provisions set out in Attachment 17 satisfies the section 32AA test, in that they represent an appropriate balance between enabling industry to thrive within Waikato District, and managing adverse effects generated by them on

surrounding environments. It is my view that these revised provisions provide for sustainable development and therefore achieve the purpose of the RMA.

Jane Macartney

8 May 2020