

UNDER

the Resource Management Act 1991

IN THE MATTER

of a Private Plan Change to the Matamata-Piako District Plan under Schedule 1 of the RMA by Rings Scenic Tours Limited, to introduce new objectives, policies and rules, primarily through a Development Concept Plan, to enable the ongoing operation and growth of tourism activities at the Hobbiton Movie Set within an appropriate framework.

SYNOPSIS OF LEGAL SUBMISSIONS ON BEHALF OF SECTION 42A TEAM

A INTRODUCTION

1. These brief legal submissions on behalf of the Matamata-Piako District Council s42A team (the **s42A team**) address several legal issues raised by proposed Plan Change 50 to the Matamata-Piako District Plan: Hobbiton Development Concept Plan, 487, 501 and 502 Buckland Road, Matamata (**PC50**). These submissions are made in support of the Section 42A report dated March 2019, and the recommended changes to the DCP contained in Annexure B to that report (**Proposed Provisions**). The s42A team propose several amendments to those provisions as a result of discussions that have occurred during the the hearing, and these will be addressed by Ms van Kuijk.
2. In these submissions I:
 - a. Outline the legal framework for assessing PC50;
 - b. Briefly address law on the “environment” that PC50 is to be assessed against;
 - c. Address the principles for permitted activity standards;
 - d. Briefly summarise the law on scope.
3. At the outset, I confirm that the s42A team does not oppose the acceptance of the late submission by Derry’s Farm Ltd. The s42A team also concurs with the Applicant that there is no jurisdiction to consider the submission by Opal Hot Springs on the basis that it raises only trade competition concerns.

B LEGAL FRAMEWORK FOR PC50

4. The legal framework for assessing a plan change was set out by the Environment Court in **Colonial Vineyard Ltd v Marlborough District Council**:¹

“A. General requirements

1. A district plan (change) should be designed to **accord with**^[18] — and assist the territorial authority to **carry out** — its functions^[19] so as to achieve the purpose of the Act^[20].
2. The district plan (change) must also be prepared **in accordance with** any regulation^[21] (there are none at present) and any direction given by the Minister for the Environment^[22].
3. When preparing its district plan (change) the territorial authority **must give effect** to^[23] any national policy statement or New Zealand Coastal Policy Statement^[24].
4. When preparing its district plan (change) the territorial authority shall:
 - (a) have regard to any proposed regional policy statement^[25];
 - (b) give effect to any operative regional policy statement^[26].
- ...
6. When preparing its district plan (change) the territorial authority must also:
 - have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations^[29] to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities^[30];
 - take into account any relevant planning document recognised by an iwi authority^[31]; and
 - not have regard to trade competition^[32] or the effects of trade competition;
7. The formal requirement that a district plan (change) must^[33] also state its objectives, policies and the rules (if any) and may^[34] state other matters.

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act^[35].

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies^[36];
10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives^[37] of the district plan taking into account:
 - (i) the benefits and costs of the proposed policies and methods (including rules); and

¹ [2014] NZEnvC 55 at [17].

- (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods^[38]; and
- (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances^[39].

D. Rules

- 11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment^[40].
- 12. Rules have the force of regulations^[41].
- 13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive^[42] than those under the Building Act 2004.
- 14. There are special provisions for rules about contaminated land^[43].
- 15. There must be no blanket rules about felling of trees^[44] in any urban environment^[45].

E. Other statutes:

- 16. Finally territorial authorities may be required to comply with other statutes.

- 5. Section 77A of the RMA provides a local authority with the power to make rules and specify conditions in a plan or proposed plan, so long as they relate to matters in s108 of the RMA.

C “ENVIRONMENT” TO BE ASSESSED AGAINST

- 6. I concur with the legal submissions on behalf of the Applicant that the “environment” to be considered includes a future state as may be modified by permitted activities and existing consents.² I also record that the legal test from **Hawthorn** that established this principle has been confirmed as also applying in a plan change context.³
- 7. When assessing the effects of PC50, it is those effects over and above the effects of the lawfully consented activity that are to be considered.

² **QLDC v Hawthorn Estate Ltd** [2006] NZRMA 424.

³ **Queenstown Airport Corporation Ltd v Queenstown Lakes District Council** [2013] NZEnvC 14 at [122]. Upheld by the High Court in **Shotover Park Limited v Foodstuffs** [2013] NZHC 1712.

D LEGAL FRAMEWORK FOR PERMITTED ACTIVITY RULES

8. Permitted rules must be sufficiently certain to be understandable and functional.⁴
9. In **Friends of Pelorus Estuary v Marlborough District Council**⁵ the Environment Court cautioned against adopting rules requiring an evaluative process for determining whether a proposal is a permitted activity. It found, however, that a degree of evaluation in a rule alone did not invalidate it. The Court stated at [16]:

Within reason, an assessment can be made by a regulatory authority and decisions made about it. Such assessments may involve some form of evaluation and in this case I would have thought that was straightforward enough.

10. The High Court in **TL & NL Bryant Holdings Ltd v Marlborough DC**⁶ considered the legality of a permitted activity standard requiring notification to the Council of various matters prior to the commencement of any work.⁷ The High Court found that a permitted activity condition requiring notification to the Council does not reserve any discretion to the council, in that it does not require any form of subjective judgment to be made. Furthermore, the Court considered that it was not necessary to read the word “conditions” in s 77B (now s 77A) as only entitling a territorial authority to specify a condition that relates directly to the nature of the activity, as opposed to requiring the giving of notice.
11. Ultimately, rules need to be assessed on their own merits and context. In this case, I submit that the Hobbiton DCP is of such scale and significance that an approach providing greater oversight and monitoring from the territorial authority, and greater ongoing community engagement, than might be present in other DCPs in the District is warranted. I note the following in this regard:
 - a. While the Council has confidence in the conduct of the Applicant and the responsible manner in which it runs its operation, PC50 provisions may be in operation for ten years and are to apply to any future operators of Hobbiton. A “trust us” approach is not appropriate. Rather, we need to establish a regime that future proofs Hobbiton and any future operators.

⁴ **McLeod v Countdown Properties Ltd** CP No. 949/89.

⁵ EnvC BLE ENV-2007-CHC-000113 24 January 2008, per Thompson J at [16].

⁶ [2008] NZRMA 485 (HC).

⁷ The proposed condition is set out at paragraph [17] of the decision.

- b. In comparison to other provisions in the District Plan, the DCP is very enabling. The proposed standards (for example monitoring and community liaison) are considered entirely reasonable in the context of the extensive range of activities proposed to be permitted in the DCP. Furthermore they are considered necessary for the Council to fulfil its obligations under the RMA.
 - c. Adding weight to this is the history of non-compliance with consent conditions by the Applicant.
 - d. The Applicant has drawn comparisons with other DCPs in the District. With respect, the majority of these DCPs are 'first generation' plan provisions drafted in 1996 and in my submission do not offer an appropriate comparison. Attached to these submissions are extracts from several plans with permitted activity performance standards that can provide helpful examples:
 - i. Extract from Stratford District Plan relating to payment of costs for monitoring compliance with permitted standards;
 - ii. Chapter E33 of the Auckland Unitary Plan with permitted activity performance standards for monitoring and reporting (refer E33.6.1.1(2) at pages 13-14).
12. I also submit that section 139 of the RMA provides an acceptable avenue for the Council to assess compliance with the proposed permitted activity performance standards.
13. Notwithstanding this, the s42A team does consider there are several improvements that can be made to the DCP provisions, and these will be addressed by Ms van Kuijk.

E SCOPE

14. The Environment Court in **Environmental Defence Society Inc & Ors v Otorohanga District Council**⁸ identified two "fundamental principles" for considering scope for making amendments to a plan change:⁹

⁸ [2014] NZEnvC 070 at [7] to [22].

⁹ [18].

- (i) The Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected; and
- (ii) Care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the appeal are not subverted by an unduly narrow approach.

15. With reference to the High Court's judgment **Westfield (NZ) Limited v Hamilton City Council**,¹⁰ the Environment Court went on to say at [19]:

There is an obvious potential for tension between these two principles. As observed by Fisher J in **Westfield (NZ) Ltd v Hamilton City Council**, the resolution of that tension depends on ensuring that the process for dealing with amendments is fair, not only to the parties but also to the public:

[72] I agree that the Environment Court cannot make changes to a plan where the changes would fall outside the scope of a relevant reference and cannot fit within the criteria specified in ss292 and 293 of the Act: see Applefields, Williams and Purvis, and Vivid.

*[72] On the other hand I think it implicit in the legislation that the jurisdiction to change a plan conferred by a reference is not limited to the express words of the reference. **In my view it is sufficient if the changes directed by the Environment Court can fairly be said to be foreseeable consequences of any changes directly proposed in the reference.***

*[74] **Ultimately, it is a question of procedural fairness.** Procedural fairness extends to the public as well as to the submitter and the territorial authority. Adequate notice must be given to those who might seek to take an active part in the hearing before the Environment Court if they know or ought to foresee what the Environment Court may do as a result of the reference. This is implicit in ss292 and 293. The effect of those provisions is to provide an opportunity for others to join the hearing if proposed changes would not have been within the reasonable contemplation of those who saw the scope of the original reference.*

16. The High Court in **Albany North Landowners v Auckland Council**¹¹ adopted a "reasonably foreseen logical consequence test" when considering whether amendments to the Proposed Auckland Unitary Plan were within the scope of submissions made on the proposed plan.
17. I submit that the proposed amendments outlined in Annexure B to the section 42A report are reasonably foreseen logical consequences of submissions made on PC50, and do not give rise to any procedural unfairness. With respect to the scope for

¹⁰ [2004] NZRMA 556.

¹¹ [2017] NZHC 138.

distinguishing between 'themed' and 'non-themed' events, as raised by counsel for the Applicant, I refer the Panel to the submissions by David Reichmuth and Nelson McKosh which I submit provide scope. It is also relevant that the only party potentially affected by such amendments is the Applicant, who has had ample opportunity to respond to the proposed provisions.

CONCLUSIONS

18. I submit that the proposed PC50 provisions attached as Annexure B to the section 42A report best meet the purpose of the RMA and request that they be adopted by the Panel, subject to the amendments to be suggested by Ms van Kuijk.
19. The Council is calling the following witnesses:
 - a. Bridget Gilbert (landscape)
 - b. Nevil Hegley (noise)
 - c. Alastair Black (transportation)
 - d. Ally van Kuijk (planning, standing in the shoes of reporting officer Marius Rademeyer)

Dated: 9 April 2019

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Rachel Abraham

Counsel for the s42A reporting team

E33. Industrial and trade activities

E33.1. Background

Industrial and trade activities involve the use, handling and storage of environmentally hazardous substances as part of their production and operation. Unless these activities are appropriately managed, hazardous substances can be discharged from the site, as contaminants, onto land or into rivers and streams, groundwater systems and coastal waters. Appropriate management includes:

- disposal as trade waste to the wastewater network;
- collection for disposal or recycling to an appropriate facility;
- treatment onsite prior to discharge to the receiving environment; and
- adoption of appropriate industry standards, site practices, operating procedures and plans.

It is the overriding purpose of the land use provisions to avoid the discharge of contaminants in the first instance. Where the avoidance of discharges cannot be achieved, good onsite management practices remain the primary method of minimising the discharge of environmentally hazardous substances

E33.2. Objective [rcp/rp]

- (1) Industrial and trade activities are managed to avoid adverse effects on land and water from environmentally hazardous substances and discharge of contaminants, or to minimise adverse effects where it is not reasonably practicable to avoid them.

E33.3. Policies [rcp/rp]

- (1) Manage the use of land for industrial or trade activities to prevent or minimise any adverse effects of storage, use or disposal of environmentally hazardous substances.
- (2) Require industrial or trade activities to have, where reasonably practicable, onsite management systems, processes, containment, treatment, or disposal by lawful means.
- (3) Require measures to be implemented, where contaminants cannot be disposed as trade waste to the wastewater network or contained on site, to minimise adverse effects on land and water including:
 - (a) reducing contaminant volumes and concentrations as far as practicable; and
 - (b) applying measures, including treatment, management procedures, monitoring, controls, or offsite disposal, having regard to the nature of the discharge and the sensitivity of the receiving environment.

E33.4. Activity table

Table E33.4.1 specifies the activity status of use of land for industrial or trade activities pursuant to section 9(2) of the Resource Management Act 1991. It also specifies the activity status of the use of a structure in the coastal marine area for industrial or trade activities pursuant to section 12(3) of the Resource Management Act 1991.

The industrial or trade activity land use and discharge rules address stormwater quality aspects of the discharge of contaminants from an industrial or trade activity area. The rules should be read in conjunction with E31 Hazardous substances, E8 Stormwater – Discharge and diversion and relevant zone rules.

For the purposes of this section 'existing' means existing at the date of notification of the Proposed Auckland Unitary Plan, being 30 September 2013.

Table E33.4.1 Activity Table – Use of land for an industrial or trade activity
[rcp/dp]

Activity		Activity status
Consented industrial or trade activities		
(A1)	Use of land for an industrial or trade activity that is authorised by a resource consent to discharge contaminants	P
(A2)	Use of land for an industrial or trade activity that is listed in Appendix 22 Consented existing high risk industrial or trade activities and for which the specified consent(s) has not expired or may be exercised under section 124(1) and (3) of the Resource Management Act 1991	P
Unlisted industrial or trade activities		
(A3)	Use of land for an existing or new industrial or trade activity not listed in Table E33.4.3	P
Low risk industrial or trade activities		
(A4)	Use of land for an existing or new industrial or trade activity listed as low risk in Table E33.4.3	P
Moderate risk industrial or trade activities		
(A5)	Use of land for an Existing or new industrial or trade activity listed as moderate in Table E33.4.3	P
High risk industrial or trade activities		
Existing sites		
(A6)	Use of land for an existing industrial or trade activity listed as high risk in Table E33.4.3 (before the Table E33.4.3 timeframe expires)	P
(A7)	Use of land for an existing industrial or trade activity listed as high risk in Table E33.4.3 (after the Table E33.4.3 timeframe expires)	C

New sites		
(A8)	Use of land for a new industrial or trade activity listed as high risk in Table E33.4.3	C
Unlisted, low, moderate and high risk industrial or trade activities that do not meet the relevant land use standards		
(A9)	Any activity in this table that does not meet the relevant permitted or controlled land use standards	D

Table E33.4.2 Activity table – Discharge of contaminants from an industrial or trade activity area [rcp/dp]

Table E33.4.2 specifies the activity status of discharges of contaminants from industrial or trade activity areas pursuant to section 15 of the Resource Management Act 1991.

The industrial or trade activity land use and discharge rules address stormwater quality aspects of the discharge of contaminants from an industrial or trade activity area. The rules should be read in conjunction with E31 Hazardous substances, E8 Stormwater – Discharge and diversion and relevant zone rules.

For the purposes of this section 'existing' means existing at the date of notification of the Proposed Auckland Unitary Plan, being 30 September 2013.

Activity		Activity status
Consented industrial or trade activities		
(A10)	The discharge of contaminants from an industrial or trade activity that is authorised by a resource consent to discharge contaminants.	P
Unlisted industrial or trade activity areas		
(A11)	Discharge of contaminants from an existing or new industrial or trade activity area not listed in Table E33.4.3	P
(A12)	Discharge of contaminants from an existing or new industrial or trade activity area not listed in Table E33.4.3 where the permitted discharge standards are not met	C
(A13)	Discharge of contaminants from an existing or new industrial or trade activity area not listed in Table E33.4.3 where the controlled discharge standards are not met	D
Low risk industrial or trade activity areas		
(A14)	Discharge of contaminants from an existing or new industrial or trade activity area listed as low risk in Table E33.4.3	P
(A15)	Discharge of contaminants from an existing or new industrial or trade activity area listed as low risk in Table E33.4.3 where the permitted discharge standards are not met	C
(A16)	Discharge of contaminants from an existing or new industrial or trade activity area listed as low risk in Table E33.4.3 where the	D

E33 Industrial and trade activities

	controlled discharge standards are not met	
Moderate risk industrial or trade activity areas		
(A17)	Discharge of contaminants from an existing or new industrial or trade activity area listed as moderate risk in Table E33.4.3	P
(A18)	Discharge of contaminants from an existing or new industrial or trade activity area listed as moderate risk in Table E33.4.3 where the permitted discharge standards are not met	C
(A19)	Discharge of contaminants from an existing or new industrial or trade activity area listed as moderate risk in Table E33.4.3 where the controlled discharge standards are not met	D
High risk industrial or trade activity areas		
Existing sites		
(A20)	Discharge of contaminants from an existing industrial or trade activity area listed as high risk in Table E33.4.3 (before the Table E33.4.3 timeframe expires)	P
(A21)	Discharge of contaminants from an existing industrial or trade activity area listed as high risk in Table E33.4.3 (before the Table E33.4.3 timeframe expires) where the permitted discharge standards are not met	C
(A22)	Discharge of contaminants from an existing industrial or trade activity area listed as high risk in Table E33.4.3 (before the Table E33.4.3 timeframe expires) where the controlled discharge standards are not met	D
(A23)	Discharge of contaminants from an existing industrial or trade activity area listed as high risk in Table E33.4.3 (after the Table E33.4.3 timeframe expires)	D
New sites		
(A24)	Discharge of contaminants from a new industrial or trade activity area listed as high risk in Table E33.4.3	D

Table E33.4.3 Activity table – Industrial or trade activity risk criteria

Table E33.4.3 contains a list of industrial or trade activity risk criteria to assist in application of Table E33.4.1 and Table E33.4.2.

The industrial or trade activity land use and discharge rules address stormwater quality aspects of the discharge of contaminants from an industrial or trade activity area. The rules should be read in conjunction with E31 Hazardous substances, E8 Stormwater – Discharge and diversion and relevant zone rules.

For the purposes of this section 'existing' means existing at the date of notification of the Proposed Auckland Unitary Plan, being 30 September 2013.

E33 Industrial and trade activities

Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
Agricultural support industries	Inorganic fertiliser manufacture, storage or handling	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
Animal feedstuffs	Stock food manufacture storage or handling	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Pet food manufacture	Less than 1000m ²	1,000m ² to 5000m ²	More than 5,000m ²	12
Chemical and associated product manufacturing	Batteries	Activity is never low risk	No activity area	Any activity area	12
	Cosmetics, toiletry, soap and other detergents	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Explosives and pyrotechnics	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Fungicides, herbicides, pesticides, timber preservatives and related products	Activity is never low risk	No activity area	Any activity area	12
	Industrial Gas	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12
	Medicinal, pharmaceutical or veterinary products	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Paint, pigment, inks and dyes	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Polishes, adhesives or sealants	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Solvents	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Synthetic resins	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Acids, alkalis or heavy metals	Activity is never low	No activity area	Any activity area	12
	Other chemical products (e.g. plastic manufacturing)	Less than 1000m ²	1,000m ² to 5000m ²	More than 5,000m ²	12
Commercial livestock processing industries	Slaughter	Less than 1000m ²	1,000m ² to 5000m ²	More than 5,000m ²	12

E33 Industrial and trade activities

Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
	Manufacture, store or handle products derived from animal slaughter (e.g. gelatin, fertiliser or meat products)	Less than 1000m ²	1,000m ² to 5000m ²	More than 5,000m ²	12
	Scouring or carbonising greasy wool or fleeces	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Tanneries or Fellmongeries	Activity is never low risk	No activity area	Any activity area	12
	Rendering or fat extraction	Activity is never low risk	No activity area	Any activity area	12
Electronics	Circuit board manufacturing (excluding assembly only)	Activity is never low risk	No activity area	Any activity area	12
Food or beverage manufacturing or handling	Bakery product manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Bakery product handling	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
	Beverages or malt product manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Beverages or malt product handling	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
	Flour mill or cereal foods	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Meat and meat product manufacture (including fish)	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Meat product handling (including fish)	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
	Oil or fat product manufacturing or handling	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Processed dairy foods manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Processed dairy foods handling	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A

E33 Industrial and trade activities

Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
	Vineyards or wine manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Other foodstuffs manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Other foodstuffs handling	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
Research or defence	Research establishments	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
	Naval and Air Force defence activities	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	0
Machinery or equipment manufacturing	Industrial machinery or equipment	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Motor vehicles or parts	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Other machinery or equipment	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
Metal product manufacturing	Sheet and structural metal products	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
Motor vehicle services facilities	Existing or new service stations that comply with the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand, Ministry for the Environment, December 1998	Activity is never low risk	Activity is always moderate risk	Activity is never high risk	N/A
	All other service stations	Activity is never low risk	Activity is never moderate risk	Activity is always high risk	12
	Mechanical servicing of motor vehicles	Activity is never low risk	Activity is always moderate risk	Activity is never high risk	N/A

E33 Industrial and trade activities

Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
Non-metallic mineral product manufacturing	Cement, lime, plaster and concrete products	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Concrete batching plants - ready mixed concrete	Activity is never low risk	No activity area	Any activity area	12
	Glass	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12
Metal processing, metallurgical works or metal finishing	Metal plating, anodising or polishing	Activity is never low risk	No activity area	Any activity area	0
	Metal blasting or coating, excluding spray painting	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Refinement of ores	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Processing of metals e.g. smelting, casting	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
Petroleum or coal product manufacturing	Bitumen/asphalt premix or hot mix	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Coal products	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Petroleum refining	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Petroleum hydrocarbon, oil or grease manufacturing	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
Power	Electricity generation	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
Product storage or handling centres	Bulk chemicals	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Bulk hydrocarbons - non-service station	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
Recycling, recovery, reuse or disposal	Automotive dismantling	Activity is never low risk	No activity area	Any activity area	12

E33 Industrial and trade activities

Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
	Batteries	Activity is never low risk	No activity area	Any activity area	12
	Chemicals	Activity is never low risk	No activity area	Any activity area	12
	Crushing, grinding or separation works other than sand, gravel, rock or mineral e.g. slag, road base, demolition material	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12
	Hazardous materials storage or treatment	Activity is never low risk	No activity area	Any activity area	12
	Landfills	Activity is never low risk	No activity area	Any activity area	12
	Metals - crushing, grinding, sorting or storage	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	0
	Non-metal recycling e.g. composting, glass, paper or paper board	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Oil, petroleum hydrocarbon wastes	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Chemical containers cleaning, reconditioning, or recycling	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Sewage solids treatment or storage facilities	Activity is never low risk	No activity area	Any activity area	12
	Tyres	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Waste transfer stations	Activity is never low risk	No activity area	Any activity area	12

E33 Industrial and trade activities

Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
Rubber industries	Tyre manufacturing or retreading	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Synthetic rubber manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
Transport and related activities	Boat or ship construction, repair or maintenance	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	0
	Bus depots	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12
	Commercial airports other than Auckland International Airport Limited	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Auckland International Airport Limited activities contained within the secure area as declared from time to time by the Director of Civil Aviation under section 84 of the Civil Aviation Act 1990 provided that the stormwater runoff from that secure Area complies with Stormwater Management Devices: Design Guidelines Manual second edition, May 2003, Technical Publication 10	Activity is never low risk	Activity is always moderate risk	Activity is never high risk	N/A
	Heliports other than Auckland International Airport Limited	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Road freight transport depot (non-chemical) with mechanical servicing	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
	Road freight transport depot (bulk chemical)	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
	Railway workshops or refuelling depots	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12

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Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
	Shipping container reconditioning (not located at port areas)	Less than 1000m ²	More than 1,000m ²	Activity is never high risk	N/A
	Commercial ports (including the Ports of Auckland Limited), shipping container reconditioning, and shipping loading/unloading	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12
	Existing or new truck refuelling facilities (non-service stations) that comply with the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand, Ministry for the Environment, December 1998	Activity is never low risk	Less than 1,000m ²	More than 1,000m ²	12
Wood or paper product storage, manufacturing or fabrication	Log storage yards outside forested areas	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12
	Plywood or veneer manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Particle board or other wood panel manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Pulp, paper or paper board manufacturing	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12
	Timber treatment	Activity is never low risk	Activity is never moderate risk	Any activity area	0
	Treated timber storage	Activity is never low risk	Less than 5,000m ²	More than 5,000m ²	12

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Description of Industrial or trade activity		Low risk	Moderate risk	High risk	Time-frame (mths)
Sewage treatment and handling (excluding any part of a sewage conveyance network as that network does not form an industrial or trade activity for the purposes of the industrial or trade activity rules	Environmentally hazardous substances storage or use (excluding sewage)	Activity is never low risk	No activity area	Any activity area	12
	Sewage solids storage.	Less than 1000m ²	1,000m ² to 5,000m ²	More than 5,000m ²	12

Note 1

The risk is based on the size of the industrial or trade activity area. The level of risk e.g. low, moderate or high, determines the type of authorisation required for the activity. Thereafter compliance or otherwise with the provisions of the industrial or trade activity rules, or changes to the size of the industrial or trade activity area, dictate the site's status and therefore the site's risk status can change over time.

Note 2

Some activities are categorised as moderate risk even if they have no industrial or trade activity area.

Note 3

Timeframes should be interpreted as the number of months after this chapter of the Auckland Unitary Plan becomes operative.

Note 4

If the timeframe is 0, this means the timeframe expires the date the provisions becomes operative.

Note 5

The timeframes apply to high risk activities only.

Note 6

The owners or operators of high-risk industrial or trade activity whose permitted activity status expiry dates are approaching should commence the preparation of an Environmental Management Plan for the activity.

Note 7

Electrical substations that contain 1,000 litres or less of oil, are not considered an industrial or trade activity for the purposes of the plan.

E33.5. Notification

- (1) An application for resource consent for a controlled activity listed in Table E33.4.1, Table E33.4.2 and Table E33.4.3 will be considered without public or limited notification or the need to obtain written approval from affected parties unless the Council decides that special circumstances exist under section 95A(4) of the Resource Management Act 1991.
- (2) Any application for resource consent for an activity listed in Table E33.4.1, Table E33.4.2 and Table E33.4.3 and which is not listed in E33.5(1) will be subject to the normal tests for notification under the relevant sections of the Resource Management Act 1991.
- (3) When deciding who is an affected person in relation to any activity for the purposes of section 95E of the Resource Management Act 1991 the Council will give specific consideration to those persons listed in Rule C1.13(4).

E33.6. Standards

E33.6.1. Permitted activities

Activities listed as a permitted activity in Table E33.4.1, Table E33.4.2 and Table E33.4.3 must comply with the following permitted activity standards except activities (A1) and (A2) from Table E33.4.1 and Activity (A10) from Table E33.4.2 do not have to comply with the permitted activity standards.

E33.6.1.1. Use of land for an industrial or trade activity

Activities listed as a permitted activity in Table E33.4.1 must comply with Standards E33.6.1.1(1) to E33.6.1.1(12). In addition, activities (A17) and (A20) in Table E33.4.2 must also comply with Standards E33.6.1.1(13) and E33.6.1.1(14).

- (1) Wastewater and washwater produced by industrial or trade activities must be disposed of on-site via the sanitary sewer, subject to approval from Watercare, or it must be collected, either for recycling or disposal, to a system or facility with all the appropriate authorisations to accept wastewater of that type. For the purposes of this rule, wastewater or washwater also includes:
 - (a) boiler blow down and condensate;
 - (b) all waste liquids generated or collected as part of an industrial or trade activity;
 - (c) cooling tower water excluding vapour; and
 - (d) condensate from air compressors.

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- (2) A spill response plan is prepared where any environmentally hazardous substance is handled, used or stored on land at a quantity greater than used for domestic purposes. These plans must meet the requirements of Table E33.9.1 as relevant and be supplied to the Council on request.
- (3) For environmentally hazardous substances in quantities covered by Part 4 of the Hazardous Substances (Emergency Management) Regulations 2001, a spill response plan prepared in accordance with those regulations will be considered to comply with Standard E33.6.1.1(2) provided the emergency spill response plan also explicitly addresses matters (vi) to (x) in Table E33.9.1.
- (4) For environmentally hazardous substances not covered by Part 4 of the Hazardous Substances (Emergency Management) Regulations 2001, a spill response plan prepared in accordance with Council's factsheet 'Being Prepared for a Spill' will be considered to comply with Standard E33.6.1.1(2).
- (5) When the quantity of environmentally hazardous substances stored above the ground exceeds that used for domestic purposes, it must be stored:
 - (a) in a container and in a manner that prevents the entry of rainwater into the container; and
 - (b) within a secondary containment device or within a containment system that is constructed of impervious materials that are resistant to chemical attack from the substances contained therein.
- (6) For environmentally hazardous substances in quantities covered by Part 4 of the Hazardous Substances (Emergency Management) Regulations 2001, storage requirements in accordance with those regulations will be considered to comply with Standard E33.6.1.1(5).
- (7) For environmentally hazardous substances not covered by Part 4 of the Hazardous Substances (Emergency Management) Regulations 2001, storage requirements in accordance with council's factsheet 'Above Ground Storage' noting the following bund sizing criteria for secondary stage storage, will be considered to comply with Standard E33.6.1.1(5) where:
 - (a) for tanks the bund has a storage capacity of at least 110 per cent of the capacity of the largest tank taking into account the volume displaced by any equipment and/or materials stored within the bund; and
 - (b) for drums the bund has an effective storage height of at least 100mm, allowing for any sloping ground, and the bund is set back from the drums by a distance equal to half the height of the stacked or stored drums.

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- (8) All secondary containment devices must be designed, constructed and managed so that uncontaminated rainwater and stormwater runoff is prevented from flowing into the contained area.
- (9) Weekly inspections must be undertaken and recorded to check that environmentally hazardous substances are stored and/or contained appropriately except as follows:
 - (a) National Grid - monthly inspections;
 - (b) electricity substations – annual inspections; and
 - (c) unmanned depots or facilities - monthly inspections.
- (10) A regular reconciliation process must be undertaken for any environmentally hazardous substance stored in an underground storage tank that will identify any leakage or unaccounted losses of material from the tank.
- (11) Any waste compactors and bins must be located and operated in such a manner that prevents leachate or waste leaking from them.
- (12) All on-site vehicle re-fuelling areas must be segregated and housed under cover, and/or surrounded by a drain that drains to an appropriately designed and sized stormwater treatment and spill containment device fitted with a shut-off valve.
- (13) Operations must be undertaken in accordance with an environmental management plan specific to the industrial or trade activity. This plan must be prepared in accordance with Table E33.9.2, and supplied to Council upon request.
- (14) Where the industrial or trade activity is located within a sewage treatment facility then the wastewater generated on site by that industrial or trade activity may be disposed of within that facility.

E33.6.1.2. Discharge from an industrial or trade activity area

Activities listed as a permitted activity in Table E33.4.2 must comply with the following standard.

- (1) The discharges of contaminants from an industrial or trade activity area must result in less than minor adverse environmental effects on the receiving environment without the need for stormwater treatment (with the exception of on-site vehicle refuelling areas requiring stormwater treatment and spill contaminant devices under the permitted activity Standard E33.6.1.1(12)).

E33.6.2. Controlled Activities

E33.6.2.1. Use of land for an industrial or trade activity

Activities listed as a controlled activity in Table E33.4.1 must comply with the following standard.

- (1) The activity must comply with 'Use of land for an industrial or trade activity' permitted activity standards E33.6.1.1(1) to E33.6.1.1(12).

E33.6.2.2. Discharge from an industrial or trade activity area

Activities listed as a controlled activity in Table E33.4.2 must comply with the following standards.

- (1) The activity must comply with the relevant 'Use of land for an industrial or trade activity' in Standard E33.6.1.1.
- (2) Treatment devices to treat the discharge of contaminants from the industrial or trade activity area are installed and operated to avoid, remedy or mitigate adverse environmental effects.

E33.7. Assessment – controlled activities

E33.7.1. Matters of control

The Council will reserve its control to all of the following matters when assessing a controlled activity resource consent application:

- (1) management practices, treatment systems or devices, to the extent that they are required to avoid remedy or mitigate adverse environmental effects, having regard to:
 - (a) the degree to which the land use controls avoid or minimise the risk of discharge contaminants from the industrial or trade activity area; and
 - (b) the nature and sensitivity of the receiving environment and its susceptibility to the adverse effects of the contaminants of concern.
- (2) the operation and maintenance requirements of any structural controls or treatment devices.

E33.7.1.1. Assessment criteria

The Council will consider the relevant assessment criteria below for controlled activities:

- (1) policies in E33.3 Policies.

E33.8. Assessment - Restricted discretionary activities

There are no restricted discretionary activities in this section.

E33.9. Special information requirements**Table E33.9.1 Spill response plan requirements**

No.	Requirement
i.	A protocol/method for identifying and stopping the discharge of environmentally hazardous substances to land or water and avoiding future events of this nature
ii.	Emergency containment and clean-up procedures
iii.	A list of appropriate spill kit contents to enable the containment and/or absorption of spilt material and a plan showing the location of the spill kits
iv.	A requirement for appropriate signage to identify the location of spill kits and the actions to be taken in the event of a spill
v.	Actions to remedy or mitigate any adverse effects on the environment or public health and safety arising from the discharges or spills of environmentally hazardous substances to land or water
vi.	Methods for disposal of spilt environmentally hazardous substances and any other contaminated materials used in the spill clean-up
vii.	A schedule of adequate training for personnel in the use of the emergency spill response plan and in anticipating and preventing the likelihood of spills
viii.	Up-to-date and accurate copies of all drainage plans for the land on which the industrial or trade activity is undertaken showing the location of the final discharge point to the public stormwater system or to land or water
ix.	A procedure for notifying as soon as practicable Council's 24-hour emergency response service and the relevant stormwater or wastewater network operator in the event of any discharge of environmentally hazardous substances that results in, or is likely to result in, contamination of any stormwater system, or land or water
x.	Methods for disposing of any spills in a secondary containment device. The plan must set out how it will be disposed of in an appropriate and authorised manner

Table E33.9.2 Environmental management plan requirements

No.	Requirement
i.	Specify how the permitted activity controls will be complied with
ii.	Identify the environmentally hazardous substances associated with the industrial or trade activity
iii.	Set out the methods to be used to avoid discharges of environmentally hazardous substances onto or into land or water
iv.	For discharge of contaminants arising from land on which the industrial or trade activity is undertaken, set out the primary treatment or source control methods that may be necessary to avoid, remedy or mitigate more than minor adverse effects on the receiving environment
v.	Specify the methods for the operation and maintenance of any treatment devices on site

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vi.	Identifies assessment requirements to report on the performance of the environmental management plan
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Note 1

The environmental management plan must be appropriate to the scale and significance of the risk at each site. Where appropriate, the environmental management plan may include cross references to relevant documentation that is readily accessible at the site, rather than including the full documents themselves.

B2.1.18 Administrative Charges

In accordance with Section 36 of the Resource Management Act, the cost of any work incurred by the District Council in -

- assessing and monitoring the compliance of permitted activities with the applicable Standards, Conditions, and Terms in this Plan; and
- assessing and processing applications for resource consents; and
- assessing and monitoring the compliance of holders of resource consents with the applicable Standards, Conditions, and Terms of that consent; and
- undertaking any other work as described in Sections 36 and/or 108 of the Resource Management Act;

shall be at the cost of those undertaking the activity, based on a fair and reasonable assessment by the District Council of the costs it incurs in carrying out such work.

Purpose:

To recover any actual and reasonable costs incurred by the District Council in performing the exercise of its powers and functions under the Resource Management Act.

B2.2 Forestry

In addition to any relevant Rule or any other applicable Standard, Condition, or Term of this District Plan, all new forestry must comply with the following:

- No tree planting shall be planted or allowed to grow in any position which produces the following effects in regards to a “strategic arterial roads” (as defined under “road” in Part E Definition of Terms):
 - (i) Shading of the road pavement between 10.00 am and 2.00 pm on the shortest day;
 - (ii) Impairment of a motorist’s vision below the safe stopping sight distance detailed in Figure 12 “Minimum separation and sight distances”, Appendix 7.
- No forestry planting is allowed on road reserve. For these purposes, road reserve is defined as:
 - 20m measured in a straight horizontal line from the centreline of a formed road maintained by the District Council in the case of “district arterial roads”, and “collector roads” (as defined under “road” in Part E, Definition of Terms); or