

# Waitangi Limited

## 1. Intro

- 1.1. Waitangi is one if not the most prominent historic site in Aotearoa. Waitangi Limited is the commercial arm which looks after the daily operations at the Waitangi Treaty Grounds. They have an interest in the Waitangi Estate, which is legally described as Lots 1, 2 & 3 DP 326610, Lots 1 & 2 DP 152502, Lot 3 DP 51155, Sec 6 - 11, 15 & 16 SO 338905, located at Tau Henare Drive and Haruru Falls Road in Waitangi. Waitangi Limited have engaged Northland Planning and Development 2020 Limited to represent them in making a submission upon this particular site.

## 2. Definitions

- **Maintenance**

*In relation to a heritage item, means activities required or undertaken to conserve as nearly, and as long, as possible the condition of the item while compensating for normal wear and tear.*

- 2.1. The words maintenance and repair occur in many places within the Proposed District plan. We seek clarification on whether it is the intent that in all instances where the words maintenance and repair are used in this plan that they are restricted to heritage items only.
- 2.2. In the event that this is not the case, we seek the ability to make a further submission as particular objectives, policies or rules may impact upon operations.

- **Repair**

*in relation to a heritage item, means the [repairs](#) of materials by patching, piercing in, splicing and consolidating existing materials, and including minor replacement of minor components, such as individual bricks, cut stone, timber sections, tiles and slates, where these have been damaged beyond reasonable [repair](#) or are missing. The replacement should be of the original or similar material, colour, texture, form and design as the original it replaces, and the number of components replaced should be substantially less than the existing components.*

- 2.3. The words maintenance and repair occur in many places within the plan. We seek clarification on whether it is the intent that in all instances where the words maintenance and repair are used in this plan whether they are restricted to heritage items only.
- 2.4. In the event that this is not the case, we seek the ability to make a further submission as particular objectives, policies or rules may impact upon operations.
- 2.5. A space has been included between the words 'have' and 'been' which is a typo.

- **Residential Unit**

*means a building(s) or part of a building that is used for a residential activity exclusively by one household, and must include sleeping, cooking, bathing and toilet facilities.*

- 2.6. Confirmation is sought that activities such as motels do not fall under this definition, even if they do include sleeping, cooking, bathing and toilet facilities.
- 2.7. In the event activities such as motels are captured, and the definition is unable to be changed as it is a National Template, we seek the relief that all Residential Activity and similar rules exclude motels and similar activities and further that the Visitor Accommodation rule be amended to provide clarity regarding hotels and motels.

- **Rural Tourism Activity**

*means the use of [land](#) or [buildings](#) for people to visit and experience ~~the~~ [tourism activities](#) [within the](#) rural environment. It does not include:*

1. *Rural production retail*
2. *Rural production manufacturing*
3. [Visitor accommodation](#)
4. [Home business](#)

- 2.8. Inserted the words ‘tourism activities within the’ rural environment to make it clear that it is the use of the buildings or land specifically for tourism related activities located within the rural environment, which is the intent of the definition and the accompanying rule. This ensures that tourism activities which rely upon natural, historic or cultural features or areas which are not rural in nature but are located within the rural environment are able to utilize this rule.
- 2.9. Item 1 Rural production retail. We have assumed that this covers the selling of goods and services generated from nearby production activities as opposed to retail activities directly associated with the tourism activity, i.e. selling souvenirs. If this is not the intent, we seek relief via clarification in this definition that associated tourism retail is covered by the definition of Rural Tourism Activity.
- 2.10. The reason for this is that if the site is the only place in which a tourism activity could go based on its natural, historic or cultural significance then the retail activity works in conjunction with the main tourist attraction / activity as opposed to generating any additional effects such as traffic and parking. We have sought further relief with the associated rule.

- **Structure**

*has the same meaning as in section 2 of the [RMA](#) (as set out below)*

*means any [building](#), equipment, device, or other facility, made by people and which is fixed to [land](#); and includes any [raft](#).*

- 2.11. While we acknowledge that this is a National Template Definition clarity is sought on whether this definition now captures items such as fences and stock fences, lighting poles, flag poles, footpaths and paving.
- 2.12. If the intent is to capture these structures, then we seek relief that setback from boundary, and setback from water rules exclude fences and stock fences, foot paths and paving and other similar structures which will have similar effects.

- **Temporary Activities**

*means an activity that is temporary and limited in duration. It may include carnivals; concerts; fairs; festivals and events; markets and exhibitions; public meetings; parades; special events; sporting events; filming activities; [temporary military training activities](#); temporary [motorsport activities](#); and emergency response training by ambulances, Civil Defence, Coast Guard New Zealand, Fire and Emergency New Zealand, New Zealand Police, [Land](#) Search and Rescue, or Surf Life Saving New Zealand. It also includes [buildings](#) or [structures](#) accessory to [temporary activities](#), temporary car parking areas, and the [ancillary activities](#) associated with the [temporary activities](#).*

2.13. We support this definition.

- **Wetland Lake and River Margins**

*In the Light Industrial and Heavy Industrial zones means the area of [land](#) within 20 metres of a:*

- [wetland](#);
- [lake](#); or
- [river](#) greater than 3m average width

*In the General Residential, Russell Township, Quail Ridge or Mixed Use zones means the area of [land](#) within 26 metres of a:*

- [wetland](#);
- [lake](#); or
- [river](#) greater than 3m average width

*In all other zones means the area of [land](#) within 30 metres of a:*

- [wetland](#);
- [lake](#); or
- [river](#) greater than 3m average width

*Where a [river](#) is smaller than 3m average width **the river margin is the area of land within means 10m of a [river](#).***

***Note: The width is measured in relation to the bed of the waterbody***

2.14. The change is sought to clarify that where a river is less than 3m in width that the applicable margin is only 10m in width.

### 3. Special Zoning / Precinct

3.1. The Waitangi Treaty Grounds and its surrounding estate is one if not the most prominent historic site in Aotearoa. The Waitangi Estate is managed by the Waitangi National Trust and its board in accordance with the Waitangi National Trust Board Act 1932. The Deed of Trust sets out the objectives for the Estate. These include priorities being given to the repair and restoration of the former residency, which at Lord Bledisloes request, was renamed the Treaty House.

- 3.2. The Waitangi National Trust board is made up of descendants and representatives of people directly associated with the historic site including local Maori, European settlers, people in the North and South Island and the government. The Governor General of NZ also has the right to choose to be patron of the trust.
- 3.3. While the National Trust Board oversees the bigger decision making of the estate, the everyday operational running of the Treaty Grounds is undertaken by Waitangi Limited who have made this submission.
- 3.4. The preamble to the Waitangi National Trust Board Act is as follows -

### **Preamble**

Whereas the Right Honourable Charles, Baron Bledisloe, Governor-General and Commander-in-Chief of the Dominion of New Zealand, and the Right Honourable Alina Kate Elaine, Lady Bledisloe, his wife, are registered as proprietors of an estate in fee simple in the lands described in the deed or declaration of trust set out in [Schedule 1](#), and acquired the same by reason of their interest in and desire to preserve places of historical interest in the Dominion, and with a view to presenting and giving the said land as a place of historic interest, recreation, enjoyment, and benefit in perpetuity to the inhabitants of New Zealand:

And whereas it is desirable that provision should be made for the vesting, management, and control of the said lands and for certain other matters.

- 3.5. As detailed above, the Waitangi Estate was set aside as a place of historic interest, recreation, enjoyment and benefit in perpetuity to the people of New Zealand. Given the high historic value of the site and the Waitangi Trust Board Act which sets out how it the site should be managed and who it should be managed by, we seek that a Special Purpose Zone or Precinct be applied to the Estate.

The *MfE National Planning Standard Guidance for 12. District Spatial Layers Standard and 8. Zone Framework Standard* provides guidance on when a Precinct or Special Purpose zone should apply. In the case of a Special Purpose Zone there are 3 criteria which must be met. These are expanded upon as follows:

**a) Are Significant to the district, region or country**

- *Are the activities within the zone significant because of their scale and expanse, or their social, economic, cultural or environmental benefits?*

Waitangi is the most culturally important site in New Zealand. It is considered the birthplace of our nation which makes the activities within the site significant. We consider that this test is therefore satisfied.

- *Are the activities located in a specific area and not found elsewhere in the district?*

The Waitangi Estate is a specified area which is governed by the Waitangi National Trust Board Act. It is not found elsewhere in the District or anywhere else in the country. Therefore, this test is satisfied.

**b) Are impractical to be managed through another zone**

- *Are the provisions required to manage the effects or operation of the activities so highly specific that a zone in the Zone Framework cannot practically enable or manage this?*

The Waitangi Estate is very unique given that it is the birthplace of our nation. Given the high historical importance it has a number of overlays which apply to the site. The assessment undertaken in the rules assessment below indicates that if it was left with the underlying zone and appropriate general overlays that from a planning perspective the rules assessment would be difficult to undertake. As each overlay stipulates that the more restrictive rule set is applicable it would result in very minor activities which are generally enabled being captured and requiring consent. This is considered to be a perverse outcome. Given this specific situation we have an opportunity to tailor make some rules which are specific to the Waitangi Estate and help give effect to the deed established in 1932. A special zone would be the most practical option to cover this off. This test is therefore considered to be met.

**c) Are impractical to be managed through a combination of spatial layers**

- *Are you satisfied that none of the other spatial planning tools, either individually or as a package, provide a practical management approach for the activities?*

The MfE guidance details a number of different options for covering specified areas, these are Overlays, Precincts, Specific Controls and Development Areas.

**Overlays**

The site is already subject to overlays for Sites of Cultural Significance to Maori, Outstanding Landscape and Outstanding Natural Features, Historic Heritage, Natural Character and the Coastal Environment. As there are so many applicable overlays it makes assessment difficult and rules which enable development or specific activities to occur are undermined by more stringent rules in other overlay rules. This is a perverse outcome for the site, and as such we do not consider this option to be viable.

**Precincts**

Precincts are applied to areas which require management via additional place based provisions to modify and or refine outcomes anticipated in the underlying zones. This means that the underlying zone rules are generally applied to the site with some specific changes which are either more restrictive or more enabling. There is potential for this to be an option for the Waitangi Estate.

The MfE guidance provides additional questions when deciding between a special purpose zone and a precinct.

- *To what extent are the underlying zone provisions relevant?*
  - *If they remain relevant, the high-level policy intent of the zone remains the same or similar, and the introduction of complementary provisions would then enable/restrict the activities of interest, then a precinct is most suitable.*

In our opinion the high-level policy intent of the Rural Production zone which is to ensure availability for primary production activities and its long-term

protection for current and future generations, provide for ancillary activities which support primary production and activities which have a functional need to be located within the rural environment, enable land use which protects highly productive land and primary production without compromising farming activities while not exacerbating natural hazards and being serviced by appropriate infrastructure while maintaining rural character and amenity is not consistent with the Waitangi Estate. The high-level intent of the Waitangi Estate is to give effect to the Waitangi Trust Board Act which is to preserve places of historical interest in the dominion and with a view to presenting and giving the said land as a place of historic interest, recreation, enjoyment, and benefit in perpetuity to the inhabitants of New Zealand.

As a result, there may be times where in giving effect to the deed that there would be a conflict with the higher-level policies of the Rural Production zone. In protecting those historic interests' activities within the wider estate may need to establish such that income from these activities can fund repair and maintenance within the Treaty Grounds. No other zones within the District Plan would cover this specific activity and as such, we believe a special purpose zone is the most appropriate option.

- *If the existing zone's high-level policy intent is contrary to how the activities should be managed, and few or none of the existing zone provisions would apply, and no other spatial layers can apply, then a new special purpose zone is most suitable.*

As detailed above, the existing Rural Production zone may directly conflict with the Waitangi Trust Board Act's preamble which has set aside the site for a specific purpose. Given the conflict with this, the fact that no other zones in the District Plan would be appropriate given the specific nature of this site, and moreover that the other spatial layers would cause undue confusion and perverse outcomes in terms of the activities they would capture, we consider that the use of a special purpose zone is most suitable to this site.

- *What would be the most appropriate zone if the activity was removed, shut down or relocated from the site? For example, if a large rural industry in the middle of a rural environment were to close, or a museum in a commercial area were to relocate, what would be the most appropriate zone to manage the area into the future?*

This site is the birthplace of our nation. It is very site specific and cannot be removed or relocated. As such, no other zone is considered appropriate to manage the area.

- *If the underlying zone would be the same as the adjacent land, and existing use rights and resource consents are not sufficient to manage the activity, then a precinct is most suitable.*

The site is bounded by many different zones. While generally Waitangi does have existing use rights for its current operations buildings are getting older which require more maintenance. Various standards are increasing such as for disabled access which means additional works are required to bring pathways and other structures up to standard. This all requires revenue and there is a fine line in charging the people of New Zealand to visit this historic place. If other activities could be established on the wider estate which may assist in providing much needed revenue to service the treaty grounds, this would be advantageous in meeting the purpose of the estate. For this reason, we believe a Special Purpose zone would still be the most practical option.

#### **Specific Controls**

This method is utilized where the matter it is controlling is not of a scale of size to warrant a precinct or an overlay. For example, the Coastal Environment overlay has been utilized in this manner. As this area is very specific and has a range of matters in which control is necessary it is not considered to be a viable option.

#### **Development Areas**

The development areas feature is more tailored to a specific area where growth is to occur. It is more of a short-term method to enable a specific development to occur, and then the zone is reverted to a standard underlying zoning. The Waitangi Estate does not fit this category as it is a specific place which requires long term master planning to ensure the goals of its establishment continue to be met.

- 3.6. As per the assessment above, a Special Purpose zone is considered to be the most practical option as it offers a more tailored and targeted management of the Treaty Grounds and the Estate, such that the Estate can continue to meet the purpose of why it was established in the first instance. A more tailored approach will provide clarity as at present the Proposed District Plan seeks to establish multiple rule overlays to the site which makes everyday management and maintenance activities require consent. The multiple layers make any planning assessment difficult as in all cases the most stringent rules in any overlay apply. This means that more enabling rules imposed under certain overlays tailored for a particular activity cannot be utilized which results in almost all activities requiring consent as a Discretionary or Non-Complying activity. A special zoning would be the most appropriate outcome for the site rather than seeking changes to each individual rule to permit enabling works allowed in one chapter which are discouraged by another. A specific set of rules, which relates to the Waitangi Estate would be more straight forward to assess by everyone, which makes confirmation clear on whether consent is required or not, especially for minor activities. Specified rules for the Waitangi Estate could be specifically tailored to the subject site, and take into account its historic value and legal background.
- 3.7. In the event that a Special zone is not accepted, we seek relief that a Precinct be established. Moreover, if Council chooses to not accept either option, we seek that the rules in the sections below be changed to avoid confusion and provide assistance in clarifying when resource consent is required. The following rules assessment and commentary help to

provide additional context about why a special zoning would be more appropriate for this site.

- 3.8. In the event the Special zoning is accepted some changes expressed in the sections below may still be applicable to provide clarity. Consideration of some of these changes should be made regardless of the outcome.

## 4. Mapping

- 4.1. The Waitangi Estate consists of a Rural Production zoning across the majority of the site, with the exception of the Copthorne and part of the golf course.
- 4.2. We seek that in the event the site is not set aside for special zoning that both Lots 2 & 3 DP 326610 be zoned as Sport and Active Recreation. This is due to both allotments being set aside and operated as a golf club. At present only Lot 2 is zoned as Sport and Active Recreation.

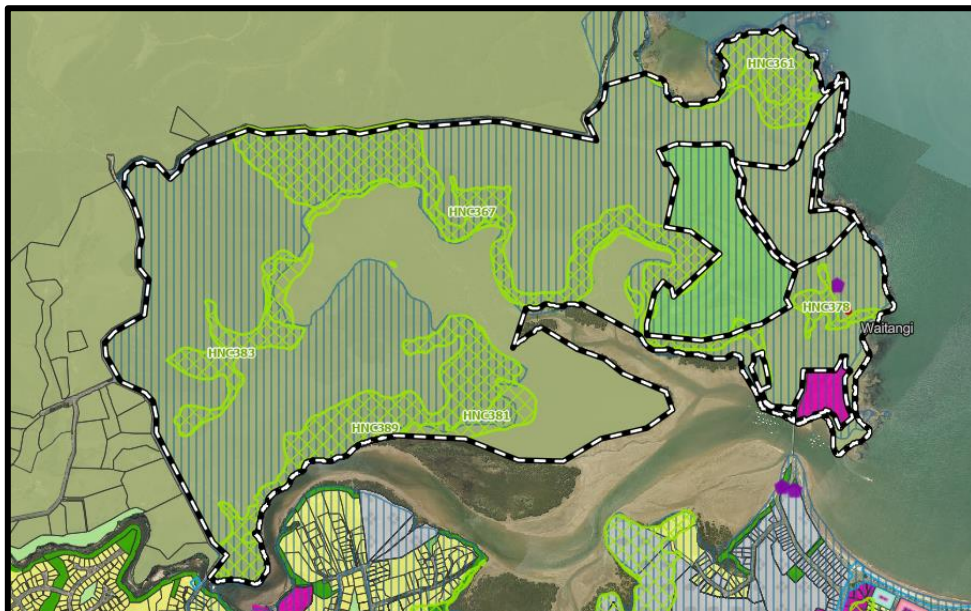


Figure 1 - Proposed zoning of the Waitangi Estate

- 4.3. Historic Site 100 covers the Treaty House, Hobson Memorial, Whare Runanga and Flagpole and is indicated by the purple icon on the above image. While located within the general vicinity of each other, the combination of all items into one record can be confusing and there is potential that a historic building or structure may be missed in assessment. As such we seek that Site 100 is split into 4 separate notations on the map such that it is clear what buildings are considered historic within the planning document. This is consistent with other historic items in the District where there are multiple listings on a site.

## 5. Coastal Environment

### **CE-R1 – New buildings or structures, and extensions or alterations to existing buildings or structures**

#### **PER-2**

If a new [building](#) or [structure](#) is not located within an [urban](#) zone it is:



1. ancillary to farming activities (excluding a residential unit).
2. no greater than 25m<sup>2</sup>.
3. located outside outstanding natural character areas

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

#### PER-2

If a new building or structure is not located within an urban zone it is:

1. ancillary to farming activities **and no greater than 50m<sup>2</sup>** (excluding a residential unit) **or**
  2. **a building not ancillary to farming** no greater than 25m<sup>2</sup> **and**
  3. located outside outstanding natural character areas
- 5.1. PER-2 relates to all rural zones, including rural production, rural lifestyle, rural residential and settlement, as well as the sport and active recreation zone. The coastal environment covers the entirety of the Waitangi Estate. It is considered that provision should be made for buildings which are not ancillary to farming, as PER-2 relates to smaller density rural zones, which do not consist of rural productive activities, such as farming.
  - 5.2. The Operative plan allowed for non-habitable buildings under 50m<sup>2</sup> and habitable buildings under 25m<sup>2</sup>, as a permitted activity, in coastal zones with any buildings over this being a controlled activity, if it was in an approved building envelope or Restricted Discretionary if not.
  - 5.3. It is considered provision should be made for buildings no greater than 25m<sup>2</sup> and not ancillary to farming, such as sheds/garages associated with sport and recreation activities. This generally aligns with the Melean Absolum Limited Landscape Report as buildings which are of such a small size will generally be ancillary to a principal activity such as a sleepout or be of such a small size that the effects are easily mitigated. We note that while the Melean landscape report refers to non-habitable buildings it does not specify if these are ancillary to farming. PER-4 provides additional controls on height and colours and materials, which are to be complied with. With these controls in place, it is considered that buildings no greater than 25m<sup>2</sup> within sites not zoned urban, will meet the objectives and policies of the coastal environment by ensuring the characteristics and qualities of the natural character of the coastal environment is preserved.
  - 5.4. Provision has also been made for buildings or structures ancillary to farming activities, no greater than 50m<sup>2</sup>. The reasoning behind this is that farm buildings less than 50m<sup>2</sup> are generally less functional as there tends not to be sufficient space to park machinery or sufficiently store hay as an example. Offering a 25m<sup>2</sup> restriction is unlikely to be utilized especially given that a double garage is at a minimum 36m<sup>2</sup>. Once again, the height, colours and materials of such buildings are controlled by PER-4, such that any building of 50m<sup>2</sup> or less could be considered to not adversely affect the natural character of the coastal environment. This is also consistent within Policy CE-P6 which seeks to 'enable farming activities within the coastal environment.'
  - 5.5. In the event this relief is not accepted, we seek that the above changes apply to the Waitangi Estate only.

## **CE-R2 – Repair or Maintenance**

### **PER-1**

The *repair* or *maintenance* of the following activities where they have been lawfully established and where the size, scale and materials used are like for like:

1. *roads*.
2. *fences*.
3. *network utilities*.
4. *driveways and access*.
5. *walking tracks*.
6. *cycling tracks*.
7. *farming tracks*

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

### **PER-1**

The *repair* or *maintenance* of the following activities where they have been lawfully established and where the size, scale and materials used are like for like:

1. *roads*.
2. *fences*.
3. *network utilities*.
4. *driveways and access*.
5. *walking tracks*.
6. *cycling tracks*.
7. *farming tracks*
8. **Carparking areas**
9. **Board walks**
10. **Boat ramps**
11. **Buildings or structures**

- 5.6. As per the definition section above, we are unsure whether it is the intent of the plan to cover just historic features or whether this rule seeks to extend wider to other elements which may not be historic. Regardless of this fact we seek that the following features also be added as they are similar in nature to others described within the list. These features are common within the coastal environment and require ongoing repair and maintenance to ensure there are no adverse impacts on the surrounding environment and that they remain in good condition. It is considered unnecessary for additional consent to be required for repair and maintenance of such features, if the size, scale and materials used are like for like.
- 5.7. The same is considered to apply for buildings and structures. The Operative Plan provided for renovation and maintenance of buildings as a permitted activity, with no requirement for scale, size and materials being like for like. It is considered that with the additional control of requiring scale, size and materials to be like for like, this will ensure that any repair and maintenance on buildings and/or structures does not change how the natural character of the coastal environment is perceived. Once again, repair and maintenance of lawfully

established buildings and structures is required on an on-going basis to ensure that the natural character of the coastal environment is preserved and enhanced.

- 5.8. In the event the above relief is not accepted, we seek that the changes be imposed insofar as the Waitangi Estate.

### **CE-S1 – Maximum height**

1. The maximum height of any new building or structure above ground level is 5m and must not exceed the height of the nearest ridgeline, headland or peninsula.
2. Any extension to a building or structure must not exceed the height of the existing building above ground level or exceed the height of the nearest ridgeline, headland or peninsula.

***This standard does not apply to:***

- i. The Orongo Bay zone

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

1. The maximum height of any new building or structure above ground level is ~~5m~~ **8m** and must not exceed the height of the nearest ridgeline, headland or peninsula.
2. Any extension to a building or structure must not exceed the height of the existing building above ground level or exceed the height of the nearest ridgeline, headland or peninsula.

***This standard does not apply to:***

- ii. The Orongo Bay zone

- 5.9. Amendment to the permitted height allowance is requested. Within the underlying Operative zone rules, the minimum permitted height is 8 metres, with the exception of the rural production zone which allows for 12 metres. The coastal zone covers a large area of rural zoned land which has a functional need to establish sheds for machinery and general farm buildings which would easily exceed the 5m threshold. Enabling an 8m height restriction ensures most farm buildings are able to comply with the standard. The additional requirement to not exceed the height of the nearest ridgeline, headland or peninsula provides additional mitigation in comparison to the existing rule set.
- 5.10. We do note that the Melean Landscape Assessment does discuss a 5m height restriction as being acceptable. However, this report provides little justification as to why a 5m height restriction has been utilised. We do note that generally many single-story houses which are constructed exceed a 5m height restriction. In the event that an 8m height restriction is not

accepted we seek further relief that a 6m height restriction be accepted as generally most single story houses would fit within this height restriction.

- 5.11. In the event the above relief is not accepted, we seek that the changes apply insofar as the Waitangi Estate.

## **CE-S2 – Colours and materials**

*The exterior surfaces of buildings or structures shall:*

- 1. be constructed of materials and/or finished to achieve a reflectance value no greater than 30%.*
- 2. have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette*

## **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

*The exterior surfaces of buildings or structures shall:*

- 1. be constructed of materials and/or finished to achieve a **light reflectance** value no greater than 30%.*
  - ~~*2. have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette*~~
- 5.12. Reference to the BS5252 standard colour range has been removed. Many coloursteel colours, which have an LRV of less than 30% are not listed within the BS5252 standard colour palette. An example of this is Coloursteel Sandstone Grey, which is a very common colour used and has an LRV of 27% but is not listed within the BS5252 colour range. This results in consent being required for a large number of sheds/garages, dwelling roofs, which are constructed of coloursteel materials and have an LRV of less than 30%, but are not stated within the BS5252 standard colour palette range. The Resene BS5252 colour range was created in 2008 and is therefore very outdated. It also gives an unfair trade advantage to Resene where only their products can be utilised. It is considered that with the requirement of an LRV no greater than 30%, the intention of this rule will still be achieved, and will remove the need for consent for coloursteel products which have an LRV of less than 30% (as well as any other products which have the same issue).
- 5.13. Furthermore, by deleting point 2, it enables natural wood products such as cedar to be utilised which are not painted or stained without requiring consent.
- 5.14. In the event this relief is not accepted we ask that Council make the following changes –
- ~~2.~~ ***If painted*** have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette **or equivalent product**

### **CE-S3 – Earthworks or indigenous vegetation clearance**

Any earthworks or indigenous vegetation clearance must (where relevant):

1. not occur in outstanding natural character areas.
2. not exceed a total area of 50m<sup>2</sup> for 10 years from the notification of the District Plan in an area of high natural character.
3. not exceed a total area of 400m<sup>2</sup> for 10 years from the notification of the District Plan in an area outside high or outstanding natural character areas.
4. not exceed a cut height or fill depth of 1m.
5. screen any exposed faces.

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

Any earthworks or indigenous vegetation clearance must (where relevant):

1. not occur in outstanding natural character areas.
2. not exceed a total area of 50m<sup>2</sup> for 10 years from the notification of the District Plan in an area of high natural character.
3. **For indigenous vegetation clearance - not exceed a total area of 400m<sup>2</sup> for 10 years from the notification of the District Plan and for earthworks – not exceed a total area of 400m<sup>2</sup> per calendar year** in an area outside high or outstanding natural character areas.
4. not exceed a cut height or fill depth of 1m.
5. screen any exposed faces.

- 5.15. Changes are sought to the permitted total area of earthworks for a site. As mentioned, the coastal environment covers many rural zones, including large areas of rural productive sites. Currently, the permitted volume of earthworks in a coastal zone is 300m<sup>3</sup> in any 12 month period, with 5000m<sup>3</sup> being provided for within the Rural production zone.
- 5.16. Under the Proposed Plan, any site not within the coastal environment overlay, as a permitted activity can undertake earthworks covering an area of 2500m<sup>2</sup>, which is significantly greater than the 400m<sup>2</sup> provided for over 10 years from the notification of the District Plan.
- 5.17. It is understood that some controls are needed on indigenous vegetation clearance within the coastal environment, which is why no changes have been proposed to the stated amount. While the 10-year timeframe is easily able to monitor from aerials for vegetation clearance, for earthworks this is not the case. This is especially evident on larger blocks which are farmed where small scale earthworks are undertaken regularly. It is considered more appropriate to allow 400m<sup>2</sup> of earthworks per calendar year for sites within the coastal environment overlay. This will ensure that earthworks are controlled to a certain degree, whilst still enabling ongoing farming activities as well as establishment of some new buildings or structures, which do not breach the 400m<sup>2</sup> area. The provision for 400m<sup>2</sup> of earthworks per calendar year is considered to be a good compromise to ensure that the objectives and policies within the coastal environment overlay are adhered to.
- 5.18. In the event Council does not accept the relief above, we seek that this applies to Waitangi Estate only.

### **CE-R13 - Building or structures ancillary to farming activities**

Coastal hazard area

Where:

#### **PER-1**

*The accessory building or structure has a footprint that is less than 100m2.*

#### **PER-2**

*The accessory building or structure is not located within a High Risk Coastal Hazard area.*

#### **PER-3**

*The accessory building or structure does not contain a vulnerable activity.*

#### **PER 4**

*The accessory building or structure, including any associated earthworks, does not direct coastal inundation onto other properties.*

#### **PER 5**

*All standards of the relevant rural zone applying to the activity are met.*

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **CE-R13 - Building or structures ancillary to farming activities**

Coastal hazard area

Where:

#### **PER-1**

*The accessory building or structure has a footprint that is less than 100m2.*

#### **PER-2**

*The accessory building or structure is not located within a High Risk Coastal Hazard area.*

#### **PER-3**

*The accessory building or structure does not contain a vulnerable activity.*

#### **PER 4**

*The accessory building or structure, including any associated earthworks, does not direct coastal inundation onto other properties.*

## ~~PER-5~~

~~All standards of the relevant rural zone applying to the activity are met.~~

- 5.19. There is a rule within the operative District plan at Present – Residential Intensity where there is similar wording to PER-5. It has been assessed that if you need consent for any other rule that you also breach this standard. This should be removed in its entirety for this reason as it triggers unnecessary consent.
- 5.20. If similar wording is sought to capture compliance with the rural zone rules while removing the unnecessary consent trigger, we ask that an assessment of the district is completed to ensure that there are no special zones or lifestyle zoning which may lie outside of the Rural environment which would subsequently trigger this rule.

## 6. Natural Features and Landscapes

### NFL-R1 – New buildings or structures, and extensions or alterations to existing buildings or structures

#### PER-1

If a new [building](#) or [structure](#) is located outside the [coastal environment](#) it is:

1. ancillary to [farming](#) (excluding a [residential unit](#));
2. no greater than 25m<sup>2</sup>.

#### PER-2

If a new [building](#) or [structure](#) is located within the [coastal environment](#) it is:

1. ancillary to [farming](#) (excluding a [residential unit](#));
2. no greater than 25m<sup>2</sup>.

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

#### PER-1

If a new [building](#) or [structure](#) is located outside the [coastal environment](#) it is:

1. ancillary to [farming](#) **and no greater than 25m<sup>2</sup>** (excluding a [residential unit](#)) **or**
2. **a non-habitable building not ancillary to farming** no greater than 25m<sup>2</sup>

#### PER-2

If a new [building](#) or [structure](#) is located within the [coastal environment](#) it is:

1. ancillary to [farming](#) **and no greater than 25m<sup>2</sup>** (excluding a [residential unit](#)) **or**
2. **a non-habitable building not ancillary to farming** no greater than 25m<sup>2</sup>

- 6.1. The Operative plan allowed for non-habitable buildings under 25m<sup>2</sup> as a permitted activity, in outstanding landscapes, with any building greater than 25m<sup>2</sup> (habitable or non-habitable) being assessed as a Restricted Discretionary Activity.
- 6.2. It is considered that provision should be made for buildings no greater than 25m<sup>2</sup> and not ancillary to farming, such as sheds/garages. PER-4 provides additional controls on height and colours and materials, which are to be complied with. With these controls in place, it is considered that buildings no greater than 25m<sup>2</sup> within sites with an outstanding landscape overlay, will meet the objectives and policies of the overlay by ensuring the characteristics and qualities of the natural character of the coastal environment is preserved.
- 6.3. Provision has also been made for buildings or structures ancillary to farming activities, no greater than 25m<sup>2</sup>. The reasoning behind this is that the area which is subject to the Outstanding Landscape overlay within the Waitangi Treaty Grounds is not used for farming activities. Therefore, provision is required for non-habitable buildings not associated with farming activities. Once again, the height and colours and materials of such buildings are controlled by PER-4, such that any building of 25m<sup>2</sup> or less is not considered to adversely affect the characteristics and qualities of the ONL or ONF.
- 6.4. In the event the wider reaching relief is not accepted, we seek that the above relief be applied to the Waitangi Estate only.

## **NFL-R2 – Repair or Maintenance**

### **PER-1**

*The **repair** or **maintenance** of the following activities where they have been lawfully established and where the size, scale and materials used are like for like:*

1. **roads**.
2. **fences**.
3. **network utilities**.
4. **driveways and access**.
5. **walking tracks**.
6. **cycling tracks**.
7. **farming tracks**

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **PER-1**

*The **repair** or **maintenance** of the following activities where they have been lawfully established and where the size, scale and materials used are like for like:*

1. **roads**.
2. **fences**.
3. **network utilities**.
4. **driveways and access**.



5. *walking tracks.*
6. *cycling tracks.*
7. *farming tracks*
8. **Carparking areas**
9. **Board walks**
10. **Boat ramps**
11. **Buildings or structures**

- 6.5. As per the discussion above, we are unsure whether it is the intent of the plan to cover just historic features or whether this rule seeks to extend wider to other elements which may not be historic. Regardless of this fact we seek that the following features also be added as they are similar in nature to others described within the list. These features are common within the coastal environment and require ongoing repair and maintenance to ensure there are no adverse impacts on the surrounding environment and that they remain in good condition. It is considered unnecessary for additional consent to be required for repair and maintenance of such features, if the size, scale and materials used are like for like.
- 6.6. The same is considered to apply for buildings and structures. The Operative Plan provided for renovation and maintenance of buildings as a permitted activity, with no requirement for scale, size and materials being like for like. It is considered that with the additional control of requiring scale, size and materials to be like for like, this will ensure that any repair and maintenance on buildings and/or structures does not change how the natural character of the coastal environment is perceived. Once again, repair and maintenance of lawfully established buildings and structures is required on an on-going basis to ensure that the natural character of the coastal is preserved and enhanced.
- 6.7. In the event the wider reaching relief if not accepted, we seek that the above relief be applied to the Waitangi Estate only.

## **NFL-R6**

### **DIS-1**

The *farming* activity and is located outside the *coastal environment*.

## **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **~~DIS-1~~**

~~The *farming* activity and is located outside the *coastal environment*.~~

- 6.8. Changes are sought to remove the restriction on farming activities with an area of ONL and ONF. Under this rule, if the location is within an ONL or ONF and is located within the coastal environment, then any farming activity will be a non-complying activity. This contradicts Policy NFL-P4 which stipulates providing for farming activities within ONL and ONF where there is no compromise to any identified characteristics and qualities of the ONL or ONF. It is considered that farming activities should be a permitted activity within and outside of the coastal environment.

## **NFL-S2 – Colours and materials**

The exterior surfaces of buildings or structures shall:

1. be constructed of materials and/or finished to achieve a reflectance value no greater than 30%.
2. have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

The exterior surfaces of buildings or structures shall:

1. be constructed of materials and/or finished to achieve a **light reflectance** value no greater than 30%.
  - ~~2. have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette~~
- 6.9. Reference to the BS5252 standard colour range has been removed. Many coloursteel colours, which have an LRV of less than 30% are not listed within the BS5252 standard colour palette. An example of this is Coloursteel Sandstone Grey, which is a very common colour used and has an LRV of 27% but is not listed within the BS5252 colour range. This results in consent being required for a large number of sheds/garages, dwelling roofs, which are constructed of coloursteel materials and have an LRV of less than 30%, but are not stated within the BS5252 standard colour palette range. The Resene BS5252 colour range was created in 2008 and is therefore very outdated. It also gives an unfair trade advantage to Resene where only their products can be utilized. It is considered that with the requirement of an LRV no greater than 30%, the intention of this rule will still be achieved, and will remove the need for consent for coloursteel products which have an LRV of less than 30% (as well as any other products which have the same issue).
- 6.10. Furthermore, by deleting point 2, it enables natural wood products such as cedar to be utilized which are not painted or stained without requiring consent.
- 6.11. In the event this relief is not accepted we ask that Council make the following changes –
2. **If painted** have an exterior finish within Groups A, B or C as defined within the BS5252 standard colour palette **or equivalent product**

## **NFL-S3 – Earthworks or indigenous vegetation clearance**

Any earthworks or indigenous vegetation clearance must (where relevant):

1. Not exceed a total area of 50m<sup>2</sup> over the life of the District Plan
2. Not exceed a cut height or fill depth of 1m
3. Screen any exposed faces

4. Be for the purpose of access and/or *building* platform

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

Any *earthworks* or indigenous vegetation clearance must (where relevant):

1. Not exceed a total area of ~~50m<sup>2</sup> over the life of the District Plan~~ **100 m<sup>2</sup> per calendar year**
  2. Not exceed a cut *height* or fill depth of 1m
  3. Screen any exposed faces
  4. Be for the purpose of **establishing or maintaining an** access and/or *building* platform, **or undertaking repair and maintenance activities which are not covered by NFL-R2.**
- 6.12. Changes are sought to the permitted total area of earthworks for a site. Currently, the permitted volume of earthworks in an area of ONL is 300m<sup>3</sup> in any 12 month period.
- 6.13. Under the Proposed Plan, any site not within the ONL, ONF or coastal environment overlay, as a permitted activity can undertake an earthworks activity over an area of 2500m<sup>2</sup>, which is significantly greater than the 50m<sup>2</sup> provided for over 10 years from the notification of the District Plan.
- 6.14. 50m<sup>2</sup> of earthworks over 10 years is very restrictive and with the changes being made to the definition of earthworks likely to trigger consent for a number of activities, including repair and maintenance activities not already covered under NFL-R2. It is considered more appropriate to allow 100m<sup>2</sup> of earthworks per calendar year for sites within the ONF and ONL overlay. This will ensure that earthworks are controlled to a certain degree, whilst still enabling ongoing activities as well as establishment of some new buildings or structures, which do not breach the 100m<sup>2</sup> area. The provision for 100m<sup>2</sup> of earthworks per calendar year is considered to be a good compromise to ensure that the objectives and policies within the ONF and ONL overlay are adhered to.
- 6.15. Again, with repair and maintenance we seek clarification that where mentioned that these activities only relate to historic items as general repair and maintenance activities can generate some small scale earthworks.

## 7. Sites and areas of Significance to Maori

### **SASM-R1 – New buildings or structures, extensions or alterations to existing buildings or structures, earthworks or indigenous vegetation clearance**

#### PER-1

*The activity is undertaken by the requesting party listed in Schedule 3.*

#### PER-2

*Any indigenous vegetation clearance is for customary purposes.*

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

**PER-1**

*The activity is undertaken by the requesting party listed in Schedule 3 **or by another party where written approval has been received from the requesting party for the works.***

**PER-2**

*Any indigenous vegetation clearance is for customary purposes.*

- 7.1. Changes have been sought to state that if written approval has been received by the requesting party listed in Schedule 3, then the works are deemed to be a permitted activity. In this case, Heritage NZ Pouhere Taonga are the requesting authority for MS09-49 which is the Waitangi Treaty Grounds. At times minor works such as the trenching of a cable is required or general repair and maintenance activities on the grounds are needed to be undertaken which would trigger a resource consent. In these cases given the very minor nature of some of these activities if the written approval from Heritage NZ has been received a consent process should not be necessary.
- 7.2. In the event this relief is not accepted, given the wider implications of this change, we would also be satisfied in having this change apply to the Waitangi Estate specifically.

## **8. Historic Heritage**

### **HH-R1 – Maintenance and Repair of scheduled Heritage Resource buildings or structures**

**PER-1**

*The exterior facades of all buildings or structures where the existing colour scheme is to be changed, must be finished in accordance with the colour scheme from the following paint ranges or equivalent:*

- i. *resene heritage colours;*
- ii. *resene whites and neutrals;*
- iii. *resene colour range BS5252 (A01-C40 range).*

#### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

**PER-1**

*The exterior facades of all buildings or structures where the existing colour scheme is to be changed, must **if painted** be finished in accordance with the colour scheme from the following paint ranges or equivalent:*

- i. *resene heritage colours;*
- ii. *resene whites and neutrals;*
- iii. *resene colour range BS5252 (A01-C40 range).*

- 8.1. There are times where a fence, or deck which is part of a Heritage Building may be repaired and as part of this it may not be painted, rather it may be left as a natural product or stained. We seek to add in 'if painted' to cover this particular scenario.

#### **HH-R4 – New buildings or structures, extension or alterations to existing buildings or structures**

##### **PER-1**

Any new [buildings](#) or [structures](#), additions or alterations are [setback](#) a minimum of 20m from a [scheduled Heritage Resource](#).

##### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (bold and underlined) and deletions shown as (strikethrough). Reasons for the changes are explained below:

##### **PER-1**

Any new [buildings](#) or [structures](#), additions or alterations are [setback](#) a minimum of 20m from a [scheduled Heritage Resource](#) **with the exception of the Waitangi Estate where written approval has been received by Heritage New Zealand Pouhere Taonga.**

- 8.2. Heritage New Zealand will be able to determine if any adverse effects will be created on the scheduled heritage resource, such that if written approval is received from them an application through the resource consenting process should not be required. Similar to the examples above, at times there will be very minor structures which will be placed on a site within 20m of a heritage building which will have no adverse impacts. Where this is the case, an option should be made available such that with the approval of the relevant party no consent is required. Obtaining approval from the relevant party will ensure that the pertinent issues within the matters of discretion listed within this rule are adhered to.

#### **HH-R5 – Earthworks**

##### **PER-1**

Any [earthworks](#) are [setback](#) a minimum of 20m from a [scheduled Heritage Resource](#).

***This rule does not apply to [earthworks](#) associated with burials within an existing cemetery.***

##### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

##### **PER-1**

Any [earthworks](#) are [setback](#) a minimum of 20m from a [scheduled Heritage Resource](#).

***This rule does not apply to [earthworks](#) associated with burials within an existing cemetery or minor earthworks under 50m3 volume with a cut/fill face of less than 0.5 metres.***

8.3. The definition of earthworks is now all encompassing such that minor works are now defined as earthworks in the plan. Works such as putting in a path or trenching of cables are generally so minor that they should not require consent. Provision has been made for minor earthworks to be undertaken on site without triggering resource consent. A volume of 50m<sup>3</sup> has been adapted as anything less than 50m<sup>3</sup> doesn't trigger the Control of Earthworks bylaw.

8.4. In the event this relief is not accepted, we seek that the following changes apply –

**PER-1**

Any earthworks are setback a minimum of 20m from a scheduled Heritage Resource.

***This rule does not apply to earthworks associated with burials within an existing cemetery or minor earthworks under 50m<sup>3</sup> volume with a cut/fill face of less than 0.5 metres within the Waitangi Estate.***

## 9. Notable Trees

9.1. While there are no notable trees currently mapped on the Waitangi Estate we seek the following amendments be applied to the rules to capture any trees which may be included in the future –

### **NT-R1 Gardening, mowing and cultivation within the rootzone area of a notable tree or trees**

**Where:**

**PER-1**

*It does not:*

1. involve mechanical cultivation;
2. include sealing or paving;
3. involve the release, injection or placement of chemicals or toxic substances;
4. involve planting of trees; and
5. involve altering of the existing ground level or the disturbance of land other than to the extent necessary to undertake gardening

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **NT-R1 Gardening, mowing and cultivation within the rootzone area of a notable tree ~~or~~ trees**

**Where:**

**PER-1**

*It does not:*

1. involve mechanical cultivation;

2. include sealing or paving **of new pathways**;
3. involve the release, injection or placement of chemicals or toxic substances;
4. involve planting of trees **with the exception of the Waitangi Treaty Grounds**; and
5. involve altering of the existing ground level or the disturbance of land other than to the extent necessary to undertake gardening

- 9.2. We have sought the removal of 'or trees' as this rule should only apply to notable trees.
- 9.3. Confirmation is sought regarding existing pathways. Where these are sealed but may have cracked, we seek relief that they can they be resealed or repaved without consent? We have added in the words 'of new pathways' to try and capture the formation of new pathways only.
- 9.4. Within item 4 the Waitangi Treaty Grounds has been excluded as trees which have significance tend to be planted in close proximity to each other and within the root zones of each other.

## 10. Rural Production

### **RPROZ-R3 – Residential Activity**

#### **PER-1**

The site area per residential unit is at least 40ha.

#### **PER-2**

The number of residential units on a site does not exceed six.

PER-1 does not apply to: a single residential unit located on a site less than 40ha.

#### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

#### **PER-1**

The site area per residential unit is at least 40ha.

#### **~~PER-2~~**

~~The number of residential units on a site does not exceed six.~~

- 10.1. In most cases sites generally do not exceed 40ha. However, on larger farming units where the site does exceed 40ha additional housing is required to provide living accommodation for workers. The larger and more diverse the site, the more workers which are required. In the case of the Waitangi Estate there are a number of dwellings which either house staff working at the treaty grounds or staff working at the Copthorne. In the future if any further activities are established on site where affordable workers accommodation is needed this will likely trigger consent. Further restrictions on housing for workers is not considered to assist with the affordable housing shortages in the country. As such, we seek relief that PER-2 is deleted in its entirety.

- 10.2. In the event this is not accepted we seek an exemption be put in place specifically for the Waitangi Estate similar to what has been put in place under rule MPZ-R5 Maori Purpose Zone – Rural for Matauri X.

#### **RPROZ-R4 – Visitor Accommodation**

##### **PER-1**

*The visitor accommodation is within a residential unit, accessory building or minor residential unit.*

##### **PER-2**

*The occupancy does not exceed 10 guests per night.*

##### **PER-3**

*The site does not share access with another site.*

#### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

##### **PER-1**

*The visitor accommodation is within a residential unit, accessory building, ~~or~~ minor residential unit, **or marae.***

##### **PER-2**

*The occupancy does not exceed 10 guests per night. **With the exception of the Waitangi Estate.***

##### **PER-3**

*The site does not share access with another site.*

- 10.3. The Waitangi Treaty grounds has a marae on site which at times could accommodate more than 10 guests per night. Accommodation is not currently offered however, if it was to be offered, we seek that there be no restrictions be imposed in terms of visitor numbers.

#### **RPROZ-R6 – Educational Facility**

##### **PER-1**

*The educational facility is within a residential unit, accessory building or minor residential unit.*

##### **PER-2**

*Hours of operation are between;*

1. 7am-8pm Monday to Friday.



2. 8am-8pm Weekends and public holidays.

PER-3

*The number of students attending at one time does not exceed four, excluding those who reside onsite*

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strike through~~). Reasons for the changes are explained below:

PER-1

*The educational facility is within a residential unit, accessory building ~~or~~, minor residential unit- **Museum, marae or other similar facility.***

PER-2

*Hours of operation are between;*

1. 7am-8pm Monday to Friday.
2. 8am-8pm Weekends and public holidays.

PER-3

*The number of students attending at one time does not exceed four **within a residential unit, accessory building or minor residential unit,** excluding those who reside onsite*

**PER-4**

**The number of students attending at one time does not exceed the number of people for which a museum, marae or other similar facility has been designed for.**

- 10.4. It appears that a museum, marae, town hall, or community center may not fall under the definition of an accessory building.
- 10.5. Buildings of this nature host educational programs often and should be allowed to continue to do so without triggering consent. We seek relief that provision is made such that museums, maraes and other similar buildings can accommodate an educational facility as a permitted activity.

## **RPROZ-R22 – Rural Tourism Activity**

### **Activity Status: Restricted Discretionary**

**Matters of discretionary are restricted to:**

- a. the character and appearance of the building(s);
- b. the link between the tourism activity and the rural environment;
- c. the siting of the building(s), decks and outdoor areas including parking relative to adjoining sites;
- d. whether the building(s) are visually dominant and create a loss of privacy for surrounding residential units and their associated outdoor areas;

- e. ability of the supporting roading network to cater for the additional vehicular and if applicable cycling and pedestrian traffic;
- f. servicing requirements and any constraints of the [site](#);
- g. whether the location of the [building\(s\)](#) and [rural tourism activity](#) could create reverse sensitivity [effects](#) on adjacent and surrounding [primary production](#) activities;
- h. whether the development will result in the [site](#) being unable to continue to undertake a [primary production](#) activity or undertake one in the future due to loss of productive [land](#);
- i. whether the layout of the development maintains the existing rural character of the surrounding area;
- j. any lighting or [noise effects](#);
- k. the frequency of the use, hours and days of operation and the number of people it can cater for;
- l. any [natural hazard](#) affecting the [site](#) or surrounding area.

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as **(bold and underlined)** and deletions shown as ~~(strikethrough)~~. Reasons for the changes are explained below:

#### **Matters of discretion are restricted to:**

- a. the character and appearance of the [building\(s\)](#);
- b. the link between the tourism activity and the rural environment **and/or the site**;
- c. the siting of the [building\(s\)](#), decks and outdoor areas including parking relative to adjoining [sites](#);
- d. whether the [building\(s\)](#) are visually dominant and create a loss of privacy for surrounding [residential units](#) and their associated outdoor areas;
- e. ability of the supporting roading network to cater for the additional vehicular and if applicable cycling and pedestrian traffic;
- f. servicing requirements and any constraints of the [site](#);
- g. whether the location of the [building\(s\)](#) and [rural tourism activity](#) could create reverse sensitivity [effects](#) on adjacent and surrounding [primary production](#) activities;
- h. whether the development will result in the [site](#) being unable to continue to undertake a [primary production](#) activity or undertake one in the future due to loss of productive [land](#);
- i. whether the layout of the development maintains the existing rural character of the surrounding area;
- j. any lighting or [noise effects](#);
- k. the frequency of the use, hours and days of operation and the number of people it can cater for;
- l. any [natural hazard](#) affecting the [site](#) or surrounding area.
- m. Whether the tourism activity could be operated on another site.**

- 10.6. Generally, we support the inclusion of this rule. However, we do seek to add in some minor matters of clarification. Item b we seek to add whether there is a link to that tourism activity being undertaken on that particular site. The Waitangi Treaty Grounds is a site in which both international and domestic travelers come to visit. There is opportunity to provide additional experiences associated with the historic site across the wider estate which could utilize this rule. As Waitangi is a site which cannot be moved or relocated elsewhere similar to other businesses which utilize the natural features, landscapes and historic spaces located on certain sites, it is fitting to include this as a criteria to further enable businesses of this nature.

We have further enabled these particular activities on those specific sites by adding in an additional criteria m.

## **RPROZ-R24 – Rural Industry**

### ***RDIS-1***

*The rural industry activity does not exceed a GBA of 500m2 per site.*

### ***RDIS-2***

*The number of rural industry activities per site does not exceed one.*

## **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### ***RDIS-1***

*The rural industry activity does not exceed a GBA of 500m2 per site.*

### ***RDIS-2***

~~*The number of rural industry activities per site does not exceed one.*~~

- 10.7. On larger sites like the Waitangi Treaty Grounds which are diverse in what they offer there can be multiple rural industries operating on site. As a Rural Industry captures all businesses undertaken in a rural environment which are dependent on primary production it can include things such as the small scale selling of honey, vegetables, flowers or wine just to name a few. If these are run as separate businesses, this would technically require consent. We seek relief that RDIS-2 is deleted in its entirety. If this is not accepted, we seek that RDIS-2 does not apply to the Waitangi Estate.

## **RPROZ-S4 Setbacks from MHWS**

The building or structure, or extension or alteration to an existing building or structure must be setback at least 30m from MHWS.

## **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **PER-1**

The building or structure, or extension or alteration to an existing building or structure must be set back at least 30m from MHWS

### **PER-2**

~~**The building or structure, or extension or alteration to an existing building or structure within the 30m setback from MHWS is required for:**~~

1. restoration and enhancement purposes; or
2. natural hazard mitigation undertaken by, or on behalf of, the local authority; or
3. a post and wire fence for the purpose of protection from farm stock; or
4. Lighting poles by, or on behalf of, the local authority or NZTA; or
5. Footpaths and or paving no greater than 2m in width; or
6. Boundary fences or walls no more than 2m in height above ground level;

- 6.1. Some consistency is sought with NATC-R1 which covers activities within proximity to a wetland, lake or a river margin. As such the layout of the rule has been changed to reflect this, while at the same time allowing for certain structures to be exempt.
- 6.2. The definition for a Structure includes any building, equipment, device, or other facility, made by people and which is fixed to land; and includes any raft.
- 6.3. There are many structures fixed to land such as stock fences that have a functional requirement to be located within 26m of the MHWS. Exclusion of this is consistent with NATC-R1.
- 6.4. Lighting poles by or on behalf of FNDC have been sought as these are generally within legal road (which assumes the zoning of the neighboring site) or within park areas. In the case of the Waitangi Estate, the site contains a boat ramp and other infrastructure utilized by the general public which may at times require lighting not covered by a designation.
- 6.5. Exclusions have been sought for footpaths and paving for both private and public use. In terms of the Waitangi Estate footpaths and paving convey people from Paihia onto the site and through to the Treaty grounds, and the Haruru Falls walking track among other uses. Generally, these are setback more than 30m from the coast but there are instances on the site where existing shell pathways are within the setback which may at some point require an upgrade. A 2m wide footpath has been sought to enable easy passing by two mobility scooters. The impact of sealing pathways is considered minor.
- 6.6. Boundary fences and walls are also sought to be excluded so long as they are no more than 2m in height. This is because they are now captured under the definition of structure.

## 7. Mixed Use Zone

### MUZ-S4 SETBACK FROM MHWS

*The building or structure, or extension or alteration to an existing building or structure must be set back at least 26m from MHWS*

#### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as **(bold and underlined)** and deletions shown as ~~(strikethrough)~~. Reasons for the changes are explained below:

**PER-1**

The building or structure, or extension or alteration to an existing building or structure must be set back at least 30m from MHWS

**PER-2**

**The building or structure, or extension or alteration to an existing building or structure within the 30m setback from MHWS is required for:**

- 1. restoration and enhancement purposes; or**
- 2. natural hazard mitigation undertaken by, or on behalf of, the local authority; or**
- 3. a post and wire fence for the purpose of protection from farm stock; or**
- 4. Lighting poles by, or on behalf of, the local authority or NZTA; or**
- 5. Footpaths and or paving no greater than 2m in width; or**
- 6. Boundary fences or walls no more than 2m in height above ground level;**

7.1. As per the relief above, the same changes are sought.

## **8. Transport**

### **TRAN R5 & TRAN-Table 11 – Trip Generation**

8.1. There are other forms of transport to a site such as via bus, shuttles or ferries. As these options generally carry many people it reduces the number of trips required, and parking spaces needed. For many tourist operations this is how people gain access to the site. We seek relief that other forms of transport such as those listed form part of the rule assessment.

### **TRAN-R1 – Parking & TRAN-Table 1 – Minimum number of parking spaces**

- 8.2. Clarification is sought on how parking is assessed for activities that are not listed within the rule or table. It is noted that in the Operative District Plan there was a category called places of entertainment which captured activities such as museums which is no longer required.
- 8.3. Where an activity does not fit in any one particular category do we utilize the closest activity or does a person need to engage a traffic engineer to determine the number of carparking spaces. Can clarity please be provided on this in the form of a note.

### **TRAN-S2 – Requirements for Vehicle Crossings & TRAN-Table 6 – Maximum number of vehicle crossings per site**

- 8.4. Larger land holdings such as the Waitangi Estate have multiple titles across a large area. As a result, they have and require a large number of vehicle crossings.
- 8.5. We seek clarification on a situation where you have more than one site frontage. Do you receive the allocated number of crossings per frontage or do you add them together. If the latter, what happens when you have two different road classifications?

## 9. Natural Character

- 9.1. We seek that this chapter be renamed to Wetlands, Lakes and River Margins to make these rules easier to find.

### NATC-R2 Repair or maintenance

**Where:**

#### **PER-1**

*The repair or maintenance within wetland, lake and river margins of the following activities where they have been lawfully established and where the size, scale and materials used are like for like:*

1. roads
2. fences
3. network utilities
4. driveways and access
5. walking tracks
6. cycling tracks
7. farming tracks

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

**Where**

#### **PER-1**

*The repair or maintenance within wetland, lake and river margins of the following activities where they have been lawfully established and where the size, scale and materials used are like for like:*

1. roads.
2. fences.
3. network utilities.
4. driveways and access.
5. walking tracks.
6. cycling tracks.
7. farming tracks
8. **Carparking areas**
9. **Board walks**
10. **Boat ramps**
11. **Buildings or structures**

- 9.2. As per the definition section above, we are unsure whether it is the intent of the plan to cover just historic features or whether this rule seeks to extend wider to other elements which may not be historic. Regardless of this fact we seek that the following features also be added as they are similar in nature to others described within the list. These features are common within wetland, lake and river margins and require ongoing repair and maintenance to ensure there are no adverse impacts on the surrounding environment and that they remain in good

condition. It is considered unnecessary for additional consent to be required for repair and maintenance of such features, if the size, scale and materials used are like for like.

- 9.3. The same is considered to apply for buildings and structures. The Operative Plan provided for renovation and maintenance of buildings as a permitted activity, with no requirement for scale, size and materials being like for like. It is considered that with the additional control of requiring scale, size and materials to be like for like, this will ensure that any repair and maintenance on buildings and/or structures does not change how the natural character of the coastal environment is perceived. Once again, repair and maintenance of lawfully established buildings and structures is required on an on-going basis to ensure that the wetland, lake and river margins is preserved and enhanced.

### **NATC-S2 Earthworks or indigenous vegetation clearance**

Any [earthworks](#) or indigenous vegetation on a [site](#) within [wetland, lake and river margins](#) clearance must:

1. not exceed a total area of 400m<sup>2</sup> for 10 years from the notification of the District Plan, unless a control in 5. below applies;
2. not exceed a cut [height](#) or fill depth of 1m;
3. screen exposed faces; and
4. comply with [Ecosystems and indigenous biodiversity chapter](#), [NFL-S3 Earthworks or indigenous vegetation clearance](#) and [CE-S3 Earthworks or indigenous vegetation clearance](#).

**Note:** The NESF requires a 10m [setback](#) from any natural [wetland](#) in respect of [earthworks](#) or vegetation clearance and may require consent from the Regional Council.

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

Any [earthworks](#) or indigenous vegetation on a [site](#) within [wetland, lake and river margins](#) clearance must:

1. not exceed a total area of 400m<sup>2</sup> for 10 years from the notification of the District Plan, unless a control in ~~5.4~~ below applies;
2. not exceed a cut [height](#) or fill depth of 1m;
3. screen exposed faces; and
4. comply with [Ecosystems and indigenous biodiversity chapter](#), [NFL-S3 Earthworks or indigenous vegetation clearance](#) and [CE-S3 Earthworks or indigenous vegetation clearance](#).

**Note:** ~~The NESF requires a 10m setback from any natural wetland in respect of earthworks or vegetation clearance and may require consent from the Regional Council. Attention is also drawn to the NESF which has additional requirements around works within 100m of a wetland area.~~

- 9.4. We believe the reference to point number 5 is a typo and should be point 4.

- 9.5. The note regarding the NESF is misleading. Generally speaking any activity you undertake within 100m of a wetland area will trigger consent as most activities will divert water in some way. Amended wording has been offered for consideration.

## 10. Signs

### **SIGN-R3 – Temporary Signs**

#### **PER-1**

The [sign](#) must comply with the [height](#), [height in relation to boundary](#), and [setback](#) standards for the zone, except for the [road boundary setback](#).

#### **PER-2**

The [sign](#) complies with standards:

1. [SIGN-S1 Maximum area](#);
2. [SIGN-S2 Maximum height](#);
3. [SIGN-S4 Traffic safety](#); and
4. [SIGN-S5 Sign design and content](#).

#### **PER-3**

The [sign](#) is associated with a permitted temporary event.

#### **PER-4**

The [sign](#) is erected for a maximum duration period of 3 months in any calendar year and must be removed within two weeks of the event ending.

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

### **SIGN-R3 – Temporary Signs**

#### **PER-1**

The [sign](#) must comply with the [height](#), [height in relation to boundary](#), and [setback](#) standards for the zone, except for the [road boundary setback](#).

#### **PER-2**

The [sign](#) complies with standards:

1. [SIGN-S1 Maximum area](#) **with the exception of the Waitangi Estate**;
2. [SIGN-S2 Maximum height](#);
3. [SIGN-S4 Traffic safety](#); and
4. [SIGN-S5 Sign design and content](#).

#### **PER-3**

The [sign](#) is associated with a permitted temporary event.

#### **PER-4**



The [sign](#) is erected for a maximum duration period of 3 months in any calendar year and must be removed within two weeks of the event ending.

- 10.1. Relief is being sought to allow an exception for the Waitangi Estate due to the nature of activities which occur on the property. Under this rule, it is highly likely that any temporary event will require consent due to the maximum area of signs being exceeded. It is considered that due to the nature of these events and the fact that they are temporary, any signs will not have an adverse effect on the surrounding environment.
- 10.2. We are also happy if this exemption is included within Sign-S1.

### **Sign-R8 Signs located within any overlay other than a Natural Hazard Overlay**

**Where:**

#### **PER-1**

The [sign](#) complies with standards:

[SIGN-S1 Maximum area](#);  
[SIGN-S2 Maximum height](#);  
[SIGN-S3 Maximum number](#);  
[SIGN-S4 Traffic safety](#); and  
[SIGN-S5 Sign design and content](#).

#### **PER-2**

The [sign](#) is an:

1. interpretation [sign](#);
2. [official sign](#);
3. directional [sign](#);
4. health and safety [sign](#); and
5. real estate [sign](#).

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

**Where:**

#### **PER-1**

The [sign](#) complies with standards:

[SIGN-S1 Maximum area](#) **with the exception of the Waitangi Estate where signs are not visible from a public viewing place**;  
[SIGN-S2 Maximum height](#);  
[SIGN-S3 Maximum number](#) **with the exception of the Waitangi Estate where signs are not visible from a public viewing place**;  
[SIGN-S4 Traffic safety](#); and  
[SIGN-S5 Sign design and content](#).

#### **PER-2**

The [sign](#) is an:

1. *interpretation [sign](#);*
2. *[official sign](#);*
3. *directional [sign](#);*
4. *health and safety [sign](#); and*
5. *real estate [sign](#).*

10.3. We have assumed that any overlay includes the coastal environment and all other overlays which apply to the Waitangi Treaty Grounds. Signage is necessary on this site to direct visitors, to inform of upcoming events, and for general information purposes about the site, about the buildings, vegetation or animals present. Given all the overlays the maximum sign area is very limited. The current amount of signage on site is high with many various signage needs. Given that in most cases you would be unable to see any signs from any public places the effect of placing a sign would be negligible on the wider environment. As such the above-mentioned exemptions are considered acceptable.

10.4. We are also happy if this exemption is included within Sign-S1 and Sign-S3.

### **SIGN-S1 – Maximum sign area per site**

#### **All Zones**

1. Any temporary [sign](#) (excluding real estate and development) or community [sign](#) must not exceed 2m<sup>2</sup> in the area but may be double-sided. where a [sign](#) is double-sided, the maximum area of the [sign](#) is calculated as the area of one side of the [sign](#); and
2. Any [real estate and development sign](#) must not exceed 1.5m<sup>2</sup> in area.

#### **ONF's ONLs Heritage Areas, Scheduled Heritage resource**

1. The maximum total sign area within an ONF, ONL or Heritage Area must not exceed 0.5m<sup>2</sup>; and
2. The maximum total sign area on scheduled historic resource must not exceed 0.25m<sup>2</sup>.

*Note: This standard only has immediate legal effect for signs on or attached to a scheduled heritage resource or heritage area (Rules SIGN-R9 and SIGN-R10)*

#### **Rural Production zone, Horticulture Processing zone, Horticulture zone, Māori Purpose zone, Open Space zone, Sport and Active Recreation zone, Natural Open Space zone, Kauri Cliffs zone**

*The maximum total of sign area on any site must not exceed 3m<sup>2</sup>. Where a sign is double-sided, the maximum sign area is calculated as the area of one side of the sign.*

#### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **SIGN-S1 – Maximum sign area per site**

### All Zones

1. Any temporary sign (excluding real estate, ~~and~~ development, **Directional and Health and Safety**) or community sign must not exceed 2m<sup>2</sup> in the area but may be double-sided. ~~Where~~ **Where** a sign is double-sided, the maximum area of the sign is calculated as the area of one side of the sign; and
2. Any real estate, ~~and~~ development, **Directional and Health and Safety sign** must not exceed 1.5m<sup>2</sup> in area.

### ONF's ONLs Heritage Areas, Scheduled Heritage resource

1. The maximum total sign area within an ONF, ONL or Heritage Area must not exceed 0.5m<sup>2</sup>; and
2. The maximum total sign area on scheduled historic resource must not exceed 0.25m<sup>2</sup>.

*Note: This standard only has immediate legal effect for signs on or attached to a scheduled heritage resource or heritage area (Rules SIGN-R9 and SIGN-R10)*

### Rural Production zone, Horticulture Processing zone, Horticulture zone, Māori Purpose zone, Open Space zone, Sport and Active Recreation zone, Natural Open Space zone, Kauri Cliffs zone

*The maximum total of sign area on any site must not exceed 3m<sup>2</sup>. Where a sign is double-sided, the maximum sign area is calculated as the area of one side of the sign.*

- 10.5. Under the Operative Plan, Directional and Health and Safety signs are excluded from the maximum area per site thresholds and an allowance is provided for a maximum area per such signs of 1m<sup>2</sup>. We seek to align these with real estate and development signs which are also of a temporary nature. Directional and Health and Safety Signs are necessary to ensure the safety of the public.
- 10.6. In the event this relief is not accepted, we would also be satisfied in having this change apply to the Waitangi Estate specifically.

### **SIGN-S3 – Maximum number of signs**

#### All Zones

*There shall be no more than one temporary sign (excluding real estate and development) per site.*

#### Rural Production Zone

*There shall be no more than two signs per site.*

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~striketrough~~). Reasons for the changes are explained below:

### **SIGN-S3 – Maximum number of signs**

*There shall be no more than one temporary sign (excluding real estate, ~~and~~ development, **Directional and Health and Safety**) per site.*

- 10.7. Under the Operative Plan, Directional and Health and Safety signs are excluded from maximum number of signs per site thresholds. These signs are considered necessary to ensure the safety of the public. On larger sites especially, more than one sign is necessary to convey important messages to the wider public.
- 10.8. In the event this relief is not accepted, we would also be satisfied in having this change apply to the Waitangi Estate specifically.

## 11. Temporary Activities

### **TA-R1 – Temporary Activity (excluding any activity listed in the rules below as permitted or restricted discretionary)**

#### **PER-1**

The [site](#) is not used for more than two [temporary activity](#) events per calendar year, and the event does not exceed two consecutive days.

#### **PER-2**

The activity occurs between 6.30am to 10.00pm on each day.

#### **PER-3**

A maximum of 500 persons on the [site](#) each day.

#### **PER-4**

Any [accessory building](#) or [structure](#) is removed within seven days of the activity finishing.

#### **PER-5**

The activity complies with standards:  
[TA-S1 Road controlling authority approval](#).

### **Changes sought**

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

### **TA-R1 – Temporary Activity (excluding any activity listed in the rules below as permitted or restricted discretionary)**

#### **PER-1**

The [site](#) is not used for more than two [temporary activity](#) events per calendar year, and the event does not exceed two consecutive days **excluding the Waitangi Estate where a maximum of five events are allowed on the Treaty Grounds per calendar year.**

#### **PER-2**

The activity occurs between 6.30am to 10.00pm on each day, **with the exception of the Waitangi Estate within a week either side of Waitangi Day.**

#### **PER-3**

A maximum of 500 persons on the [site](#) each day **excluding the Waitangi Day event held at the Waitangi Treaty Grounds.**

#### PER-4

Any accessory building or structure is removed within seven days of the activity finishing.

#### PER-5

The activity complies with standards:

TA-S1 Road controlling authority approval.

- 11.1. In regards to PER-1 relief is sought to enable a larger number of events to be held per calendar year, due to the number of events which are held on the site already.
- 11.2. For PER-2 the lead up to Waitangi Day can have activities occurring on site before 6am and finishing after 10pm. Waitangi Day celebrations themselves start in the very early morning. We seek to exclude compliance with the temporary events rule to celebrate our national day at the birthplace of our nation.
- 11.3. Relief is also sought in regards to PER-3 for the Waitangi Day event held at the Waitangi Treaty Grounds. This is a non-ticketed event and therefore attendance is unknown. Restrictions on the number of persons is not considered relevant in this instance, especially considering there are additional controls within this rule which will ensure adverse effects are less than minor.

## 12. Earthworks

### EW-S1 – Maximum Earthworks thresholds

*The following maximum volumes and area thresholds for all earthworks undertaken on a site within a single calendar year*

<b>Zone</b>	<b>Volume (m<sup>3</sup>)</b>	<b>Area (m<sup>2</sup>)</b>
<i>General Residential , Mixed Use, Light Industrial, Heavy Industrial, Hospital, Horticulture Processing Facility, Carrington, Kororāreka Russell Township, Hospital, Māori Purpose - <u>Urban</u></i>	<i>200</i>	<i>2,500</i>
<i>Conservation, Open Space, Sport and Recreation, Rural Residential, Settlement, Quail Ridge, Airport</i>	<i>300</i>	<i>2,500</i>
<i>Rural Lifestyle</i>	<i>1000</i>	<i>2,500</i>
<i>Rural Production, Horticulture, Kauri Cliffs, Ngawha Innovation Park, Māori Purpose - Rural</i>	<i>5000</i>	<i>2,500</i>

### Changes sought

The following changes to the rule are shown as tracked changes with additions shown as (**bold and underlined**) and deletions shown as (~~strikethrough~~). Reasons for the changes are explained below:

The following maximum volumes and area thresholds for all earthworks undertaken on a site within a single calendar year, excluding any excavation works associated with fence lines, posts, piles, trenching of drains or cables, dam maintenance, normal rural practices, such as maintenance of farm drains, service connections, excavations for building foundations, septic tanks and associated drainage fields.

<b>Zone</b>	<b>Volume (m<sup>3</sup>)</b>	<b>Area (m<sup>2</sup>)</b>
General Residential , Mixed Use, Light Industrial, Heavy Industrial, Hospital, Horticulture Processing Facility, Carrington, Kororāreka Russell Township, Hospital, Māori Purpose - <a href="#">Urban</a>	200	2,500
Conservation, Open Space, Sport and Recreation, Rural Residential, Settlement, Quail Ridge, Airport	300	2,500
Rural Lifestyle	1000	2,500
Rural Production, Horticulture, Kauri Cliffs, Ngawha Innovation Park, Māori Purpose - Rural	5000	2,500

- 12.1. Provision has been made for the exclusion of certain activities due to the nature of the works. The activities stated to be excluded are normal practices which are not considered to create adverse effects on the environment. For example, the installation of a septic tank is required in most rural areas, where a new build is occurring. Due to the nature of the excavations and the fact that they are temporary, noting that once the septic tank is installed, the open ground is filled over, it is considered this should be exempt from the maximum earthworks thresholds. Similar comments are made for maintenance of farm drains. Although sites greater than 8 hectares do not have to account for this rule for farming activities, sites less than 8 hectares, which provide productive activities (such as orchards), will have to take this into account. These simple activities will increase the total amount of earthworks on sites exponentially although effects are not considered to be adverse due to the nature of the earthworks.
- 12.2. As such, it is requested that these activities are excluded from this rule.