



SECTION 42A REPORT

Officer's supplementary written right of reply 11 March 2025

Hearing 9 – Rural, Horticulture and Horticulture Processing

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1 Introduction

1. This right of reply is supplementary to the right of reply report I prepared and submitted to the Hearings Panel (**the Panel**) on 3 March 2025 (**the Rural ROR**). It has been prepared by myself (Melissa Pearson), as the author of the section 42A reports for the six rural zones.

2 Purpose of Report

2. The purpose of this supplementary report is to provide a brief commentary on my drafting approach for converting the Horticulture zone (**HZ**) chapter into a Horticulture precinct (**HP**) chapter, for the reasons set out in Key Issue 1 of the Rural ROR. As this is the first precinct chapter to be recommended for the PDP, some of the drafting choices have implications for how other precincts may be proposed in the rezoning hearings and/or how other spatial layers might be drafted to interact with underlying zone or district wide provisions. As such, some of these structural and drafting choices are likely to be reconsidered through upcoming rezoning hearings and further refinements may be needed to achieve a consistent approach across the PDP.

3 Consideration of evidence recieved

3. As set out in paragraph 27(c) of the Rural ROR, I consider there is scope within the submission from Audrey Campbell-Frear (S209.001) to redraft the HZ as a precinct or similar spatial layer, with the RPROZ as the underlying zone. Based on the analysis in Table 1 of the Rural ROR, I consider the most appropriate spatial layer from the National Planning Standards to use is a precinct.
4. I have used the following mark-ups in the provisions to distinguish between the recommendations made in the section 42A report and my revised recommendations in this reply evidence:
 - a. Section 42A Report recommendations are shown in black text (with underline for new text and ~~strikethrough~~ for deleted text); and
 - b. Revised recommendations from this Report are shown in red text (with red underline for new text and ~~strikethrough~~ for deleted text)

4 The National Planning Standards

5. As per the Format Standard in the National Planning Standards, precincts must be identified with 'PREC', followed by a sequential number, a space, an en-dash, a space, the precinct's unique name, a space, and 'precinct'. Following this format, the HP is referenced in full as 'PREC1 – Horticulture precinct' and all provisions in the HP begin with 'PREC1'.



6. Under Section 4 of the National Planning Standards, "*precincts that apply to only one zone must be located within the relevant zone chapter or section*"¹. The HP only has one underlying zone, being the RPROZ. My reading of this direction is that there is an option to either incorporate the HP provisions into the RPROZ chapter itself, or for the precinct provisions to be included in the same section as the RPROZ chapter, i.e. included as a separate chapter that is a sub-set of the RPROZ chapter.
7. Given that the RPROZ chapter applies to the largest amount of land in the Far North district and will be used predominantly by landowners that are not located in the HP, I consider it appropriate and clearer for plan users for the HP provisions to remain in a separate chapter but located in the same section of the e-plan as the RPROZ chapter to make it easy for plan users to find. I consider that incorporating the HP provisions into the RPROZ chapter would make it very complex and more difficult to navigate for plan users with land outside the HP.

5 Drafting principles

8. In converting the HZ into a HP, I have followed the drafting principles that I set out in paragraph 31 of the Rural ROR, namely to:
 - a. Remove references to highly productive land and/or LUC 4 land in objectives and policies and instead refocus the policy direction on protecting all land within the HP, regardless of its LUC status;
 - b. Provide clearer direction as to the criteria for including land in the HP with respect to potential reverse sensitivity effects; and
 - c. Remove duplication of provisions between HZ and the HP.
9. I have also aimed to make the drafting of the HP as user friendly as possible, particularly as the use of the precinct as a spatial tool requires plan users to read and apply provisions from both the RPROZ and HP chapters. To achieve this, I have recommended text at the front end of the HP chapter to make it clear to plan users which provisions apply either in addition to or in place of provisions in the underlying RPROZ.
10. If the Panel consider that this text is not sufficiently clear or user friendly, the alternative is to include a note in the first column beside each provision (where necessary) to clarify which underlying RPROZ provision it prevails over. This is an approach that I have seen used in other district plans, but it does add additional text and clutter to a chapter.
11. I am also mindful that the drafting format adopted to explain the relationship between spatial tools such as precincts and development areas with underlying zone provisions needs to be consistently applied to any other new precincts or development areas that may be recommended through the

¹ Section 4: District Plan Structure Standard, clause 10.



rezoning hearings. As such, there may need to be further amendments to the format of the HP depending on the outcome of the rezoning hearings to ensure a consistent approach across the PDP.

6 Rationale for key changes

12. The most substantive drafting changes that I recommend are to the HP objectives and policies, to remove duplication with the RPROZ objectives and policies, provide stronger reverse sensitivity direction and remove content relating to LUC status or NPS-HPL tests. I consider that the drafting I have recommended in **Appendix 1** achieves the same intent as the NPS-HPL in terms of protecting the land within the HP for use by land-based primary production activities such as horticulture and other types of farming. However, given the legal questions raised in evidence at the Rural hearing as to whether the NPS-HPL can even be applied to land that was zoned a special purpose zone at the time the NPS-HPL was gazetted, I consider it appropriate to draft the HP objectives and policies in a manner that is not reliant on NPS-HPL terms such as 'highly productive land' or any references to the LUC status of land or particular tests for land use and subdivision in the NPS-HPL.
13. As I indicated in paragraph 31(a) of the Rural ROR, my intention for the HP provisions is that they protect all land within the HP equally, regardless of LUC status. Whether or not land should or should not be included in the HP is a matter to be determined in Hearing 15C when the spatial extent of the HP will be considered. As such, my focus in drafting the HP provisions is to ensure they apply to the HP as a whole and not just parts of the HP that are used for horticulture/farming and/or have a LUC 1-3 status.
14. As signalled in paragraph 31(b) of the Rural ROR, I have redrafted HZ-P1 (being the criteria for inclusion of land in the HZ) as PREC1-P1, which sets out the criteria for land being included in the HP. This policy now clarifies that there are two reasons why land should be included in the HP, which I consider better reflects the original intent of creating a HZ in the first place, as per the HZ overview and the section 32 evaluation.
15. Under the revised drafting of PREC1-P1, either land meets the criteria in PREC1-P1(a), which are the same criteria in principle as notified in HZ-P1, or the land meets the criteria in PREC1-P1(b), meaning that there is a need to control potentially sensitive activities and/or subdivision opportunities to manage potential reverse sensitivity effects on horticultural or farming operations in the HP. These pathways will be explored extensively as part of the rezoning hearings covering the spatial extent of the HP.
16. The drafting changes to convert the HZ rules and standards into HP rules and standards are more straightforward. All rules and standards that are identical to those in the RPROZ are recommended to be deleted. All remaining HP rules and standards are either unique to the HP and apply in addition to the RPROZ provisions (e.g. rules for garden centres or plant and food research), or are more enabling or stringent than the equivalent RPROZ



provision and apply in place of that provision (e.g. visitor accommodation in the HP is discretionary but it is permitted in the RPROZ, so the HP rule prevails).

17. I have recommended deletion of the notes in the HP, as these duplicate the RPROZ notes. I have also recommended deletion of 'HZ-R16 – Activities not otherwise listed in this chapter', as this conflicts with the equivalent RPROZ catch all rule. This has necessitated several new rules being inserted into the HP to cover activities that previously defaulted to a discretionary activity under HZ-R16 but now need to be explicitly listed as discretionary in the HP, otherwise they will be permitted as per the underlying RPROZ rules, for example minor residential units, emergency service facilities and recreation activities.



Appendices

Appendix 1 – Officers recommended amendments to the HZ chapter to redraft as a Horticulture precinct